

Enrolled Senate Bill 228

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CHAPTER

AN ACT

Relating to licensing for construction contractors; creating new provisions; amending ORS 701.046, 701.063, 701.098, 701.117 and 701.992; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 701.

SECTION 2. (1) To the extent that a requirement necessary to obtain or maintain a license, endorsement or other authorization to perform work from the Construction Contractors Board is unclear, duplicative or in conflict, or in instances where a requirement conflicts with the board’s efforts to modernize operations and ensure consistent regulatory enforcement, the board may adopt rules the board deems necessary to interpret, harmonize, streamline, adjust or promote consistent application of the requirement.

(2) The board by rule may identify exceptional circumstances for considering a complaint under ORS 701.139, 701.140 or 701.143 that the board would ordinarily deny, if the complaint otherwise complies with the requirements of this chapter to the maximum extent possible under the identified circumstances.

SECTION 3. ORS 701.046 is amended to read:

701.046. (1) Except as provided in subsection (2) of this section, an applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application *[shall]* **must** include, but **is** not *[be]* limited to, the following information:

- (a) The endorsement being sought.
- (b) A list of construction debts involving the applicant, or an owner or officer of the applicant, if the order, award, penalty or judgment that establishes the debt was issued within the preceding five years.
- (c) For each person described in paragraphs (h), (i) and (j) of this subsection, a Social Security number.
- (d) **The applicant’s** workers’ compensation insurance account number, if the applicant is required to have workers’ compensation insurance.
- (e) **The applicant’s** unemployment insurance account number, if the applicant is required to have unemployment insurance.
- (f) **The applicant’s** state withholding tax account number, if the applicant is required to withhold state income tax.
- (g) **The applicant’s** federal employer identification number, if the applicant is required to have a federal employer identification number.

- (h) The name and address of:
- (A) Each [*partner*] **of the applicant's partners**, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.
 - (B) The **applicant's** general partner, if the applicant is a limited partnership.
 - (C) Each joint venturer, if the applicant is a joint venture.
 - (D) The **applicant's** owner, if the applicant is a sole proprietorship.
 - (E) The **applicant's** officers, if the applicant is a corporation.
 - (F) The **applicant's** manager and each member, if the applicant is a manager-managed limited liability company.
 - (G) Each [*member*] **of the applicant's members**, if the applicant is a member-managed limited liability company.
 - (H) The responsible managing individual designated by the applicant.
 - (I) Each [*trustee*] **of the applicant's trustees**, if the applicant is a trust.
 - (i) The name and address of the following if the applicant is a partnership, limited liability partnership, foreign limited liability partnership, joint venture, manager-managed limited liability company or member-managed limited liability company:
 - (A) Each partner in a partnership, limited liability partnership or foreign limited liability partnership that is a partner, joint venturer or member of the applicant.
 - (B) Each general partner in a limited partnership that is a partner, joint venturer or member of the applicant.
 - (C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the applicant.
 - (D) The manager and each member of a manager-managed limited liability company that is a partner, joint venturer or member of the applicant.
 - (E) Each member of a member-managed limited liability company that is a partner, joint venturer or member of the applicant.
 - (F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.
 - (G) Each individual who has a controlling ownership interest in, or management authority over, the applicant and who meets criteria adopted by the board by rule.
 - (j) The name and address of the following if the applicant is a limited partnership:
 - (A) Each partner of any partnership, limited liability partnership or foreign limited liability partnership that is the general partner of the applicant.
 - (B) Each general partner of any limited partnership that is the general partner of the applicant.
 - (C) Each joint venturer in any joint venture that is the general partner of the applicant.
 - (D) The manager and each member of any manager-managed limited liability company that is the general partner of the applicant.
 - (E) Each member of any member-managed limited liability company that is the general partner of the applicant.
 - (F) Each officer of any corporation that is the general partner of the applicant.
 - (k) For each person described in paragraphs (h), (i) and (j) of this subsection, information as required by board rule regarding the following if related to construction activities:
 - (A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.
 - (B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.
 - (C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.
 - (D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.098 [(1)(i)] **(1)(L)** entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.098 [(1)(i)] **(1)(L)** filed within five years preceding the application date.

(L) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

(2) Subsection (1)(h), (i) and (j) of this section does not apply if the applicant is a company that offers securities registered with the United States Securities and Exchange Commission for sale to the general public.

(3) The application described in subsection (1) of this section must be accompanied by proof satisfactory to the board that the applicant:

(a) Is in compliance with ORS 701.091.

(b) Has the legal capacity to enter into contracts.

(4) Subsection (3)(a) of this section does not apply to an applicant for licensing with endorsement solely as a residential or commercial developer.

(5) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

SECTION 4. ORS 701.063 is amended to read:

701.063. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.098.

(2) A **person may renew a** license [*may be renewed*] by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education **and an affirmation of the person's status as exempt under ORS 701.035 (2)(b), if the person continues to qualify as exempt**, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

(3) The board may vary the dates of license renewal by giving to the licensee written notice of the renewal date assigned and by making appropriate adjustments in the fee for the license renewal application.

(4) If a contractor applies for renewal not more than two years after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the board may renew the lapsed license. The board may designate the effective date of renewal as the last date on which the contractor was licensed.

(5) A contractor may convert a license to inactive status if the contractor is not engaged in work as a contractor. A contractor having an inactive license is subject to board licensing requirements and application fees, but is not subject to the bonding requirement of ORS 701.068 or the insurance requirement of ORS 701.073. A commercial general or commercial specialty contractor having an inactive license is not subject to the key employee continuing education requirements of ORS 701.086. An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, obtaining a building permit or performing construction work. A license may not be placed or maintained in inactive status more than once during any two-year licensing term.

(6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license issued.

SECTION 5. ORS 701.098 is amended to read:

701.098. (1) The Construction Contractors Board may revoke, suspend, **condition** or refuse to issue or reissue a license and [*the board*] may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing **that a licensee or applicant:**

(a) [*That the licensee or applicant has*] Violated a provision of this chapter.

(b) [*That the licensee has*] Violated a rule or order of the board.

(c) **Entered into a settlement agreement with another person under ORS 701.145 but failed to comply with the terms of the settlement agreement.**

(d) Is a business entity or is the owner, director, officer or partner of a business entity or of a reorganized business entity, as defined in ORS 305.330, that was subject to a revocation or suspension of a license, or subject to a civil or criminal penalty, imposed under this chapter or ORS chapter 447, 455, 460 or 693, or under the laws of another state, and the revocation, suspension or civil or criminal penalty was related to the licensee's or applicant's engaging in construction.

(e) Submitted an application to the board that, at the time the board issued or renewed the license or denied the application, was incomplete in any material respect or included a statement that was incorrect or misleading in light of the circumstances in which the licensee or applicant made the statement.

[(c)] (f) [That the licensee has] Knowingly assisted an unlicensed person to act in violation of this chapter.

[(d)] (g) [That the licensee has] Knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.

[(e)] (h) [That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien] **Wrongfully failed to perform a contractual duty to pay money to a person and the failure caused the person to file a lien on a structure under ORS 87.001 to 87.093.**

[(f)] (i) [That the licensee has] Knowingly provided false information to the board.

[(g)] (j) [That the licensee has] Worked without a construction permit where a permit is required and the work resulted in a complaint being filed with the board under ORS 701.139. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

[(h)] (k) [That the number of licensed contractors working] **Worked together with another contractor** on the same task on the same job site, where one of the contractors [is] **was** classed as exempt under ORS 701.035 (2)(b)[,] **and the number of contractors working together** exceeded the following:

- (A) Two sole proprietors;
- (B) One partnership;
- (C) One corporation; or
- (D) One limited liability company.

[(i)] (L) [Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been] **Was convicted, or an owner, director, officer or partner of the licensee or applicant was convicted, consistent with ORS 670.280,** of one of the following crimes in this state or an equivalent crime in another state:

- (A) Murder;
- (B) Assault in the first degree;
- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Extortion.

[(j)] (m) [That the licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made payment to any] **Did not pay another** person for supplying labor or materials contracted for [with] **under** a public **improvement** contract, [for a public improvement] plus the amount of interest due, **within 90 days after receiving payment from a contracting agency or, if the licensee or applicant was a subcontractor, from a contractor.**

[(k)] (n) [That the licensee or applicant has] Repeatedly reported bad faith or false complaints of nonpayment against contractors or subcontractors.

[(L)] (o) [That the licensee or applicant has] Engaged in conduct as a contractor that [is] **was** dishonest or fraudulent and that the board finds injurious to the welfare of the public.

[(m)] (p) [That the contractor has] Hired employees while licensed as exempt under ORS 701.035.

[(n)] (q) [That the contractor has utilized] **Used** one or more workers supplied by a worker leasing company while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend, **condition** or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that **a licensee or applicant** [an applicant or licensee] is unfit for licensure based upon information submitted to the board under ORS 701.046, submitted in a registration of securities described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty **against any person** as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that [any person has] **the person** violated ORS 701.021.

(4)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for the findings, may suspend or refuse to renew a license without hearing in any case where the administrator finds a serious danger to the public welfare, including but not limited to:

(A) Lack of a surety bond required by ORS 701.068;

(B) Lack of liability insurance required by ORS 701.073;

(C) Hiring employees while classed as exempt under ORS 701.035;

(D) [Utilizing] **Using** one or more workers supplied by a worker leasing company while classed as exempt under ORS 701.035;

(E) Conduct as a construction contractor that is dishonest or fraudulent; [or]

(F) Failure to pay a construction debt[.]; **or**

(G) Entering into a settlement agreement under ORS 701.145 and failing to comply with the terms of the settlement agreement.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue, pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if *[it appears to]* the board **determines** that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure is intentional.

(7) A certified copy of the record of conviction *[shall be]* **is** conclusive evidence of a conviction under subsection *[(1)(i)]* **(1)(L)** of this section.

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection *[(1)(h)]* **(1)(k)** of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122.

SECTION 6. ORS 701.117 is amended to read:

701.117. **(1)** A contractor shall notify the Construction Contractors Board of:

(a) Any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive[.]; **and**

(b) A change in the contractor's status as exempt under ORS 701.035 (2)(b) to nonexempt under ORS 701.035 (2)(a), or from nonexempt to exempt.

(2) The contractor shall *[so]* notify the board **of a change described in subsection (1) of this section** within 10 days *[of]* **after** the date upon which the change *[of address]* occurs. **A failure to provide timely notification under this subsection is a violation that is subject to the penalties provided in ORS 701.992 (4).**

(3) Initial notice of a contested case directed by the board to the last-known address of record *[shall be considered]* **is** delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record *[shall be considered]* **is** delivered when deposited in the United States mail, regular mail.

SECTION 7. ORS 701.992 is amended to read:

701.992. **(1)** Except as provided in subsections (4) and (5) of this section, any person who violates any provision of this chapter or any rule adopted by the Construction Contractors Board shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$5,000 for each offense.

(2) Civil penalties under this section *[shall]* **must** be imposed as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

[(4) The board shall impose sanctions for violation of ORS 701.098 (1)(h) on both the person to whom the contract is awarded and the person who awards the contract as follows:]

(4) The board shall impose sanctions for a violation of ORS 701.098 (1)(k) on the person to whom a contract is awarded and the person who awards the contract, and sanctions on a contractor for a violation of ORS 701.117 (2), as follows:

(a) A penalty not less than \$500 nor more than \$1,000 for the first offense;

(b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;

(c) Suspension of the person's license for six months for a third offense;

(d) Suspension of the person's license for three years for a fourth offense; and

(e) Revocation of the person's license for a fifth offense.

(5) The board may impose a civil penalty not to exceed \$100 for each violation of ORS 87.007 **(3).**

SECTION 8. **(1) Section 2 of this 2023 Act and the amendments to ORS 701.046, 701.063, 701.098, 701.117 and 701.992 by sections 3 to 7 of this 2023 Act become operative on January 1, 2024.**

(2) The Construction Contractors Board may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable

the board, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the board by section 2 of this 2023 Act and the amendments to ORS 701.046, 701.063, 701.098, 701.117 and 701.992 by sections 3 to 7 of this 2023 Act.

SECTION 9. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate February 13, 2023

Received by Governor:

Repassed by Senate June 15, 2023

.....M.,....., 2023

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2023

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Rob Wagner, President of Senate

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Tina Kotek, Governor

Passed by House May 25, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

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Dan Rayfield, Speaker of House

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Secretary of State