

Enrolled House Bill 2200

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

CHAPTER

AN ACT

Relating to construction contractors; creating new provisions; amending ORS 454.715, 701.005, 701.010, 701.055, 701.075, 701.102, 701.115, 701.125, 701.130, 701.135, 701.350, 701.355 and 701.992; and repealing ORS 701.280.

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

SECTION 1. Sections 2 to 4 of this 2005 Act are added to and made a part of ORS chapter 701.

SECTION 2. (1) The Construction Contractors Board, by rule, shall impose training requirements for individuals and businesses seeking to be licensed under this chapter. The training required by the board must relate to business practices and laws affecting construction contractors. The board shall adopt standards for programs that provide training that meets the requirements of this subsection.

(2) In establishing training requirements under subsection (1) of this section, the board shall take into consideration the availability of training programs within the state and shall encourage training providers to use the most up-to-date technology. The board shall recognize and grant credit for training provided by private organizations if the training program meets the standards established by the board under subsection (1) of this section. The board periodically shall review the qualifications of private organizations and instructors to determine compliance with the program standards. The board shall develop and make available to the public a list of public and private programs that provide training that meets the training requirements established by the board under subsection (1) of this section.

(3) The board, by rule, shall approve a test for applicants for licensing under ORS 701.075. The test shall measure the applicant’s knowledge regarding business practices and laws that are the subject of the training required under subsection (1) of this section.

(4) Subsections (1) and (3) of this section do not apply to an applicant for licensing as a licensed developer.

SECTION 3. (1) As used in this section, “responsible managing individual” means an individual who:

(a)(A) Is an owner; or

(B) Is an employee of a business, designated by the owner, who exercises management or supervisory authority over the construction activities of the business; and

(b)(A) Has successfully completed the training and testing required for licensing under section 2 of this 2005 Act within a period identified by the Construction Contractors Board by rule;

- (B) Has demonstrated experience required by the board by rule; or
- (C) Has complied with the licensing requirements of ORS 446.395.
- (2) A business licensed under this chapter must at all times have at least one responsible managing individual.

(3) Subsection (2) of this section does not apply to a licensed developer.

SECTION 4. (1) As used in ORS 701.102 and section 3 of this 2005 Act, “owner” means:

(a) A sole proprietor of, partner in or holder of a controlling interest in a business; or

(b) A person defined as an owner by Construction Contractors Board rule.

(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section. The rules may not define an owner in a manner that includes an investor who has no right to manage a business, including but not limited to:

(a) A person who is solely a minority shareholder in a corporation;

(b) A member of a manager-managed limited liability company; or

(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership.

SECTION 5. ORS 454.715 is amended to read:

454.715. Subject to ORS chapter 183, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

(1) A material misrepresentation or false statement in the application for the license.

(2) Failure to comply with the applicable provisions of this chapter.

(3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services.

(4) The licensee was licensed by the Construction Contractors Board at the time of licensing under ORS 454.695 and the license issued by the board was revoked or suspended [for a failure to comply with] as provided under ORS 701.100 or 701.102 and rules adopted [thereunder] by the board.

SECTION 6. ORS 701.005 is amended to read:

701.005. As used in this chapter:

(1) “Board” means the Construction Contractors Board.

(2) “Construction debt” means an amount owed under:

(a) A final order or arbitration award issued by the board; or

(b) A judgment or civil penalty arising from construction activities within the United States.

[2] (3) “Contractor” means a person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. “Contractor” includes general contractors, residential-only contractors and specialty contractors as defined in this section.

[3] (4) “General contractor” means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. “General contractor” does not include specialty contractors or limited contractors, as described in ORS 701.085.

[4] (5) “Home inspector” means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. “Home inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

[5] (6) “Inspector” means a contractor registered with the board who inspects or otherwise provides services to a property owner or other contractor but does not substantively add to or subtract from a structure. “Inspector” includes but is not limited to a home inspector certified [or licensed] under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross

connection and backflow prevention device inspector certified under ORS 448.279. "Inspector" does not include city or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

[(6)] (7) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.

[(7)] (8) "Licensed developer" means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:

(a) Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;

(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and

(c) Does not perform any construction work on the property.

(9) "Officer" means any of the following persons:

(a) A president, vice president, secretary, treasurer or director of a corporation.

(b) A general partner in a limited partnership.

(c) A manager in a manager-managed limited liability company.

(d) A member of a member-managed limited liability company.

(e) A trustee.

(f) A person defined as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

[(8)] (10) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:

(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;

(b) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure;

(c) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure; or

(d) Any person except a landscape contractor, nurseryman, gardener or person engaged in the commercial harvest of forest products who is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

[(9)] (11) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.

[(10)] (12) "Small commercial structure" means a nonresidential structure that has a ground area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure.

[(11)] (13) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS chapter 446.

SECTION 7. ORS 701.010 is amended to read:

701.010. The Construction Contractors Board may adopt rules to make licensure optional for persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-

ministrative rule of the [*Construction Contractors*] board. The following persons are exempt from licensure under this chapter:

- (1) A person who is constructing, altering, improving or repairing personal property.
- (2) A person who is constructing, altering, improving or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.
- (3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a contractor.
- (4) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person's contracts for labor, materials and all other items is less than \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor.
- (5) An owner who contracts for work to be performed by a licensed contractor. This subsection does not apply to a person who, in the pursuit of an independent business, constructs, remodels, repairs or for compensation and with the intent to sell the structure, arranges to have constructed, remodeled or repaired a structure with the intent of offering the structure for sale before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.
- (6) A person performing work on a property that person owns or performing work as the owner's employee, whether the property is occupied by the owner or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person or the owner's employee if the work is performed, in the pursuit of an independent business, with the intent of offering the structure for sale before, upon or after completion.
- (7) A person licensed in one of the following trades or professions when operating within the scope of that license:
 - (a) An architect licensed by the State Board of Architect Examiners.
 - (b) A registered professional engineer licensed by the State Board of Examiners for Engineering and Land Surveying.
 - (c) A water well contractor licensed by the Water Resources Department.
 - (d) A sewage disposal system installer licensed by the Department of Environmental Quality.
 - (e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks, arbors, driveways, walkways or retaining walls when:
 - (A) Performed in conjunction with landscaping work; or
 - (B) Not performed in conjunction with landscaping work and that has filed a bond under ORS 671.690 (1)(b).
 - (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood destroying organisms for the transfer of real estate.
 - (g) An appraiser certified or licensed under ORS chapter 674 by the Appraiser Certification and Licensure Board.
- (8) A person who performs work subject to this chapter as an employee of a contractor.
- (9) A manufacturer of a manufactured home constructed under standards established by the federal government.
- (10) A person involved in the movement of:
 - (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet in width.
 - (b) Structures not in excess of 16 feet in width when the structures are being moved by their owner if the owner is not a contractor required to be licensed under this chapter.
- (11) A commercial lending institution or surety company that arranges for the completion, repair or remodeling of a structure. As used in this subsection, "commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association,

credit union, national banking association, federal savings and loan association, insurance company or federal credit union maintaining an office in this state.

(12) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when performing work on a structure that the real estate licensee manages under a contract.

(13) Units of government other than those specified in ORS 701.005 [(8)(b)] (10)(b) and (c).

(14) A qualified intermediary in a property exchange that qualifies under section 1031 of the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary is not performing construction activities.

(15) A business that supplies personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor.

SECTION 8. ORS 701.055 is amended to read:

701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid license issued by the Construction Contractors Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

(3) A city, county or the State of Oregon [shall] **may** not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state [shall] **may** not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____.

(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" that shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(6) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(8) It is prima facie evidence of doing business as a contractor if a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in ORS 701.005 [(2)] (3) if within any 36-month period that person offers for sale two or more newly built structures on which that work was performed.

(9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.

(10) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not limit or abridge the authority of any city or county to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city or county;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the service of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter.

(11)(a) A contractor shall maintain a list that includes the following information about all subcontractors or other contractors performing work on a project for that contractor:

(A) Names and addresses.

(B) License numbers.

(b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the board within 72 hours after a board request made during reasonable working hours.

(12) A contractor [*shall*] **may** not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS 701.010.

(13) A consumer notification form designed to specifically inform a property owner what the property owner should do to protect themselves in a residential repair, remodel or construction project shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall deliver the form to the property owner when the contractor submits a bid or proposal for work on a residential structure. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.

(14) A contractor may not perform work subject to this section for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,500. If the price of a contract was initially less than \$2,500, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,500. Failure to have a written contract will not void the contract.

(15) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work.

SECTION 9. ORS 701.075 is amended to read:

701.075. (1) An applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application shall include, but not be limited to, *[at least]* the following information regarding the applicant:

(a) Classification of the license being sought.

[(b) A list of unsatisfied judgments resulting from bond claims and litigation involving the applicant or its principals within the prior five years.]

(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) Social Security number.

(d) Workers' compensation insurance account number, if *[help is hired or traded]* **the applicant is required to have workers' compensation insurance.**

(e) Unemployment insurance account number, if *[help is hired]* **the applicant is required to have unemployment insurance.**

(f) State withholding tax account number, if *[help is hired]* **the applicant is required to withhold state income tax.**

(g) Federal employer identification number, if *[help is hired or if self-employed and participating in a retirement plan]* **the applicant is required to have a federal employer identification number.**

(h) The name and address of:

[(A) Each partner, venturer or member, if the applicant is a partnership, joint venture or limited liability company.]

(A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.

(B) The general partner, if the applicant is a limited partnership.

(C) Each joint venturer, if the applicant is a joint venture.

[(B)] (D) The owner, if the applicant is [an individual] a sole proprietorship.

[(C)] (E) The [corporate] officers, if the applicant is a corporation.

(F) The manager and each member, if the applicant is a manager-managed limited liability company.

(G) Each member, if the applicant is a member-managed limited liability company.

(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) The general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

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

(2) 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 section 3 of this 2005 Act.

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

(3) Subsection (2)(a) of this section does not apply to a licensed developer.

[2] (4) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

[3] *The board shall adopt by rule an application form that requires an applicant to indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor.*

[4] *Prior to licensure, an applicant must demonstrate compliance with the licensure education requirements described in ORS 701.280 (1) and pass an examination based on the requirements.*

[5] *Prior to licensure, an applicant shall submit proof satisfactory to the board that the applicant has the legal capacity to contract.*

[6] *Notwithstanding subsection (4) of this section, the examination requirement for licensure does not apply to a person registered with the board prior to July 1, 2000, unless the person's license has lapsed more than two years prior to the application date.*

[7] *A business licensed under this chapter must at all times have at least one owner or employee who:]*

[(a) Has passed an examination under subsection (4) of this section; or]

[(b) Is exempt under subsection (6) of this section from examination and was, at any time prior to July 1, 2000, an owner of the business or an employee designated by an owner to exercise management or supervisory authority over the construction activities of the business.]

[(8) Subsections (4), (6) and (7) of this section do not apply to a licensed developer.]

SECTION 10. ORS 701.102 is amended to read:

701.102. *[(1) The Construction Contractors Board may suspend the license of or refuse to license a person if the person, or the owner or holder of a direct or indirect interest in the person, is a business or the owner or holder of a direct or indirect interest in a business that:]*

[(a) Owes any amount pursuant to a final order or arbitration award of the board;]

[(b) Owes any amount under final judgment of a court or civil penalty arising from construction business activities in Oregon or any other state of the United States; or]

[(c) Has had a license to operate as a construction contractor revoked by a construction contractor licensing agency of any state.]

[(2) The board may hold the suspension or refusal of a license under subsection (1) of this section in abeyance if the person is adhering to a board-approved plan for restitution of the amount owed.]

[(3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest for purposes of subsection (1) of this section. The rules may not define direct or indirect interest in a manner that includes the interest of an investor who has no right to manage a business, including but not limited to, the interest of:]

[(a) A person who is solely a minority shareholder in a corporation;]

[(b) A member of a manager-managed limited liability company; or]

[(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership.]

(1) As used in this section, “construction contractor license” means a license issued within the United States to engage in the business of construction contracting.

(2) The Construction Contractors Board may suspend or refuse to issue a license required under this chapter to a business if:

(a) The business owes a construction debt or has had a construction contractor license revoked or suspended;

(b) An owner or officer of the business owes a construction debt or has had a construction contractor license revoked or suspended; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a construction debt that is owing or at the time of an event that resulted in the revocation or suspension of the other business’s construction contractor license.

[4] (3) The board may place a contractor on probation if a total of three or more claims are filed with the board within a 12-month period against the contractor or a former licensed construction [company] **contracting business** in which the contractor held at least a 10 percent ownership interest, measured as determined by board rule. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the claimants. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding claims. The board may require a contractor that is placed on probation to take [any education and training described under ORS 701.280 and to pass an examination on subjects relating to business practices and laws affecting construction contractors] **training and pass a test, both as described in section 2 of this 2005 Act.** The board shall take action to terminate the contractor’s license if the contractor is unwilling or unable to comply with the conditions of probation.

SECTION 11. ORS 701.115 is amended to read:

701.115. (1) A license is valid for two years [or four years, at the discretion of the applicant,] from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.135. [Upon application, a license may be renewed by the same procedure provided for an original license if the applicant:]

[a) Submits any additional supplemental information or completes any required education as the Construction Contractors Board may require by rule; and]

[b) Passes the examination required in ORS 701.075 (4), if the applicant has not previously satisfied the examination requirement and is not exempt under ORS 701.075 (6) or (8).]

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

(2) 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 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 [renewal] fee **for the license renewal application.**

(4) If a contractor applies for renewal not more than one year after the contractor’s license lapses, upon the contractor’s compliance with the requirements of subsection [(1)] (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 701.085 or the insurance requirement of ORS 701.105. An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, ob-

taining 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 *[period]* **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 12. ORS 701.125 is amended to read:

701.125. *[(1)]* Each applicant shall pay to the Construction Contractors Board:

[(a) For the original application for or renewal of a contractor license, a fee as determined by the board under ORS 701.130.]

[(b) A fee for all changes in the contractor license, as prescribed by the board, other than those due to clerical errors.]

[(2) The board shall set the fees referred to in subsection (1) of this section so that the moneys received are adequate to administer the provisions of this chapter pursuant to ORS 701.130.]

(1) For an application for the issuance or renewal of a contractor license, an application fee as determined by the board under ORS 701.130.

(2) For an application for changes to a contractor license, other than changes due to clerical errors by the board, an application fee established by board rule.

SECTION 13. ORS 701.130 is amended to read:

701.130. (1) Before July 1 of each year, the Construction Contractors Board shall determine the *[amount of the fee an applicant must pay for a contractor license or renewal of contractor license under ORS 701.125.]* **amounts of the fees to be charged for applications under ORS 701.125 for the issuance or renewal of contractor licenses.** The *[fees shall be]* **fee amounts** are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to *[adopting the fees and]* **adoption. The fee amounts** shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The *[fees and charges]* **fee amounts** established under this section *[shall]* **may** not exceed the cost of administering the regulatory program of the board *[pertaining to the purpose for which the fee or charge is established]* **under this chapter**, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board.

(2) The *[amount of the fee]* **amounts of the fees** determined by the board under subsection (1) of this section shall be effective as set by rule.

SECTION 14. ORS 701.135 is amended to read:

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

(a) That the licensee or applicant has violated ORS 701.055 **or section 3 of this 2005 Act.**

[(b) That the licensee or applicant has failed to pay in full any final judgment on claims adjudged by the board or by a court of competent jurisdiction referred to in ORS 701.102.]

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

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

[(e)] **(d)** 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.

[(f)] **(e)** That the licensee has knowingly provided false information to the board.

[(g)] **(f)** That the licensee has worked without a construction permit where *[such]* **a** permit is required and *[such]* **the** work resulted in a claim **being** filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

[(h)] **(g)** That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the following:

(A) Two sole proprietors;

- (B) One partnership;
- (C) One corporation; or
- (D) One limited liability company.

[(i)] **(h)** Consistent with the provisions of ORS 670.280, that the licensee or applicant has been convicted of one of the following crimes:

- (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) Theft by extortion.

[(j)] **(i)** 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 person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

[(k)] **(j)** That the licensee or applicant has repeatedly reported bad faith or false claims of non-payment against contractors or subcontractors.

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

(2)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for [such] **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 701.085;
- (B) Lack of liability insurance required by ORS 701.105;
- (C) Hiring employees while licensed as exempt under ORS 701.035; or
- (D) Conduct as a construction contractor that is dishonest or fraudulent.

(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 an order pursuant to the hearing as required by ORS chapter 183 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.

(3) In addition to all other remedies, [when] **if** it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction [which] **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 [shall] **may** not issue for failure to maintain the list provided for in ORS 701.055 (11) unless the court determines that the failure is intentional.

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

(5) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(g) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual, as defined in section 3 of this 2005 Act, for the contractor business has successfully completed the training and testing described in section 2 of this 2005 Act.

SECTION 15. ORS 701.350 is amended to read:

701.350. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the individual is certified as a home inspector under this section by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business [*entity shall*] **may** not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business [*entity*] is licensed by the [*Construction Contractors*] board under this chapter and has an owner or an employee who is certified as a home inspector under this section.

(3) [*The Construction Contractors Board shall adopt education, training and examination requirements for certification of home inspectors.*] **The board shall require that an applicant for certification as a home inspector pass a test demonstrating the competency of the applicant to act as a home inspector. The board, by rule, may accept the results of competency testing by a nationally recognized certification program for home inspectors. The board, by rule, may adopt additional requirements for the issuance or renewal of a home inspector certificate, including but not limited to training and continuing education requirements.**

(4) The [*Construction Contractors*] board by rule shall adopt procedures for the issuance, renewal and revocation of home inspector certification.

(5) The board by rule may adopt fees necessary for the administration of this section. The fees [*shall*] **may** not exceed the following:

- (a) \$50 for application;
- (b) \$50 for [*examination*] **testing**; and
- (c) \$75 for annual [*license*] **certificate** renewal.

(6) This section does not apply to a person acting within the scope of a license or certificate issued to the person by the Appraiser Certification and Licensure Board under ORS chapter 674.

SECTION 15a. If House Bill 2075 becomes law, section 15 of this 2005 Act (amending ORS 701.350) is repealed and ORS 701.350, as amended by section 1, chapter 114, Oregon Laws 2005 (Enrolled House Bill 2075), is amended to read:

701.350. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the individual is certified as a home inspector under this section by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business [*entity shall*] **may** not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business [*entity*] is licensed by the [*Construction Contractors*] board under this chapter and has an owner or an employee who is certified as a home inspector under this section.

(3) The [*Construction Contractors*] board shall adopt[:]

- [(a) *Education, training and examination requirements for certification of home inspectors; and*]
- [(b)] minimum standards of practice and professional conduct.

(4) **The board shall require that an applicant for certification as a home inspector pass a test demonstrating the competency of the applicant to act as a home inspector. The board, by rule, may accept the results of competency testing by a nationally recognized certification program for home inspectors. The board, by rule, may adopt additional requirements for the issuance or renewal of a home inspector certificate, including but not limited to training and continuing education requirements.**

[(4)] (5) The [*Construction Contractors*] board by rule shall adopt procedures for the issuance, renewal and revocation of home inspector certification.

[(5)] (6) The board by rule may adopt fees necessary for the administration of this section. The fees [*shall*] **may** not exceed the following:

- (a) \$50 for application;
- (b) \$50 for [*examination*] **testing**; and
- (c) \$75 for annual [*license*] **certificate** renewal.

[(6)] (7) This section does not apply to a person acting within the scope of a license or certificate issued to the person by the Appraiser Certification and Licensure Board under ORS chapter 674.

SECTION 16. ORS 701.355 is amended to read:

701.355. A business [entity] licensed as a [home inspector with the Construction Contractors Board] **contractor under this chapter and providing home inspector services by a home inspector certified under ORS 701.350** may not **undertake**, offer to undertake or offer to submit a bid to undertake work to repair a structure inspected by an owner or employee of the business [entity] within the 12 months following the inspection.

SECTION 17. ORS 701.992 is amended to read:

701.992. (1) Except as provided in subsections (4) and [(7)] (5) of this section, any person who violates any provision of this chapter or any rule adopted [thereunder] **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 [Construction Contractors] board of not more than \$5,000 for each offense.

(2) Civil penalties under this section shall 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) [Civil penalties shall be imposed] **The board shall impose sanctions** for violation of ORS 701.135 [(1)(h)] (1)(g) on both the person to whom the contract is awarded and the person who awards the contract 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; [and]
- (d) [Revocation] **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 shall provide by rule a process and criteria that must be met for restoration of a license that has been revoked.]

[(6) If at any time following restoration of a license of a person who has violated ORS 701.135 (1)(h), the person is found to have again violated ORS 701.135 (1)(h), the person's license shall be permanently revoked.]

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

SECTION 18. ORS 701.280 is repealed.

SECTION 19. (1) The amendments to ORS 701.115, 701.125 and 701.130 by sections 11, 12 and 13 of this 2005 Act apply to the issuance, renewal or changing of licenses for which applications are filed on or after the effective date of this 2005 Act. If an application is filed before the effective date of this 2005 Act and remains pending on the effective date of this 2005 Act, the Construction Contractors Board may charge the applicant the applicable license, renewal or change fee that was in effect on the date the application was filed.

(2) Subject to any approval of fees under ORS 701.130 occurring after the effective date of this 2005 Act, the board may charge a fee for an application for issuance or renewal of a license under ORS 701.125 that is equal in amount to the fee for issuance or renewal of a license under ORS 701.125 in effect immediately prior to the effective date of this 2005 Act.

(3) Subject to any board rule adopted after the effective date of this 2005 Act that imposes a fee for an application to change a license, the board may charge a fee for an application to change a license under ORS 701.125 that is equal in amount to the fee for changing a license under ORS 701.125 in effect immediately prior to the effective date of this 2005 Act.

(4) ORS 701.135 (5) applies to the restoration or reissuance of a license on or after the effective date of this 2005 Act regardless of the suspension or revocation date.

(5) The amendments to ORS 701.992 (4)(d) by section 17 of this 2005 Act do not affect any license revocation occurring before the effective date of this 2005 Act.

Passed by House May 12, 2005

Repassed by House June 20, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 15, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State