

Chapter 701

1999 EDITION

Construction Contractors

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GENERAL PROVISIONS

701.005 Definitions. As used in this chapter:

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

(2) “Consultant” means a person registered as a contractor with the board who inspects or otherwise provides services to a property owner or other contractor but who does not substantively add to or subtract from a structure. “Consultant” includes but is not limited to home inspectors certified under ORS 701.350, lead-based paint inspectors licensed under ORS 701.515, and cross connection and backflow prevention device inspectors certified under ORS 448.279.

(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.

(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, as defined in subsection (8) of this section, or limited contractors, as described in ORS 701.085.

(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.

(6) “Residential-only contractor” means a general contractor or specialty contractor who performs work exclusively in connection with residential 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 with the intent of selling the residential structure or structures;

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

(c) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure as an educational experience to learn building techniques and upon completion of the residential structure, the district 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.

(7) "Residential structure" means a residence, including a site-built home, a modular home constructed off-site, a floating home as defined in ORS 830.700, a condominium and a manufactured dwelling, a duplex or multiunit residential building consisting of four units or less. "Residential structure" includes any nonresidential structure with a ground area of 4,000 square feet or less and is not more than 20 feet in height from the top surface of the lowest flooring to the highest interior overhead finish of the building.

(8) "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. [1971 c.740 s.1; 1975 c.721 s.1; 1977 c.537 s.2; 1981 c.618 s.8; 1983 c.616 s.4; 1989 c.762 s.7; 1989 c.928 s.1; 1991 c.181 s.1; 1993 c.18 s.151; 1997 c.814 s.1; 1999 c.325 s.1]

701.007 [1989 c.928 s.3; repealed by 1991 c.79 s.3]

701.010 Application. 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 administrative 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 which might indicate to the public that that 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 shall be 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 such 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.

(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 they are being moved by their owner if such 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 (6)(b) and (c). [1971 c.740 s.20; 1979 c.312 s.1; 1981 c.618 s.9; 1983 c.616 s.5a; 1989 c.928 s.2; 1991 c.181 s.2; 1991 c.463 s.1; 1993 c.18 s.152; 1995 c.644 s.1; 1997 c.814 s.8; 1999 c.32 s.4; 1999 c.325 s.5; 1999 c.402 s.12]

Note: The amendments to 701.010 by section 12, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 4, chapter 32, Oregon Laws 1999, and section 5, chapter 325, Oregon Laws 1999, is set forth for the user's convenience.

701.010. The Construction Contractors Board may adopt rules to make registration optional for persons who offer, bid or undertake to perform work peripheral to construction, as defined by administrative rule of the Construction Contractors Board. The following persons are exempt from registration 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 which might indicate to the public that that person is a contractor.

(5) An owner who contracts for work to be performed by a registered 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 shall be 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 such 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.

(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 they are being moved by their owner if such owner is not a contractor required to be registered 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 (6)(b) and (c).

701.013 Intent relating to certain business license requirements. It is the intent of the Legislative Assembly to reduce the number of city business licenses that construction contractors and landscape contractors are required to obtain in order to conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015 to enable construction contractors and landscape contractors to secure from the metropolitan service district one business license that will permit the conduct of business by such contractors in cities in which the contractors perform a limited amount of work and in which they do not have a principal place of business. Furthermore, it is also the intent of the Legislative Assembly that this section and ORS 701.015 apply only to contractors engaged in the building trades and crafts and to landscape contractors without regard to any subsequent expansion of the jurisdiction of the Construction Contractors Board over other trades and crafts. It is declared to be the policy of this state that, to the maximum extent possible consistent with the requirements of this section and ORS 701.015, the cities within the boundaries of the metropolitan service district be allowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the construction business activity within the participating cities. [1991 c.79 s.1]

Note: 701.013 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.015 Business license requirements in cities and metropolitan service districts; fees; application to landscape contractors; distribution of fees. (1) A contractor or landscape contractor shall pay directly to any city within the boundaries of a metropolitan service district any business license tax imposed by the city when:

(a) The principal place of business of the contractor or the landscape contractor is within the city; or

(b) The principal place of business of the contractor or the landscape contractor is not within the city but the contractor or landscape contractor derives gross receipts of \$250,000 or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

(2) A contractor or landscape contractor who conducts business during any year in any city within the boundaries of the metropolitan service district other than a city to which the contractor or landscape contractor has paid a business license tax for that year may apply for a business license from the metropolitan service district.

(3) When a contractor or landscape contractor obtains a business license from the metropolitan service district under subsection (2) of this section, if a city within the boundaries of the metropolitan service district other than a city to which the contractor or landscape contractor is required to directly pay a business license tax under subsection (1) of this section demands payment of a business license tax by the contractor or landscape contractor, the city shall waive such payment upon presentation of proof by the contractor or landscape contractor that the contractor or landscape contractor has a business license issued by the metropolitan service district. Possession by the contractor or landscape contractor of a current business license issued by the metropolitan service district under subsection (2) of this section shall be proof sufficient to obtain the waiver described in this subsection.

(4) The metropolitan service district shall issue a business license to a contractor or landscape contractor when:

(a) The contractor or landscape contractor presents proof to the district that the contractor or landscape contractor has paid the business license tax imposed by each city within the boundaries of the district to which the contractor or landscape contractor must directly pay a business license tax under subsection (1) of this section; and

(b) The contractor or landscape contractor pays a license fee to the district. The license fee charged under this paragraph shall be twice the average business license tax charged contractors by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(5) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities that are located wholly or partly within the district and that collect a business license tax. In any year, each such city shall receive such share of the license fees as the number of residential building permits that it issued during that year bears to the total number of residential building permits that were issued during that year by all of the cities located wholly or partly within the district. Distribution of moneys under this subsection shall be made at least once in each year. The metropolitan service district shall determine the number of residential building permits issued by cities within the district from statistics and other data published by the State Housing Council.

(6) As used in this section:

(a) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county. The term does not include any franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(b) "Conducting business" means to engage in any activity in pursuit of gain including activities carried on by a person through officers, agents and employees as well as activities carried on by a person on that person's own behalf.

(c) "Landscape contractor" means a person or business who is licensed under ORS 671.510 to 671.710 as a landscape contractor.

(d) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state. [1987 c.581 s.2; 1989 c.1064 ss.1,2; 1991 c.79 s.2; 1999 c.176 s.1]

701.020 Certain cities exempt from application of ORS 701.015. (1) A city that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city shall be exempt from ORS 701.015.

(2) As used in this section, "business license tax" has the meaning given that term in ORS 701.015. [1987 c.581 s.7]

Note: 701.020 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.025 [1989 c.762 s.1; 1989 c.870 ss.3,3a; renumbered 670.600 in 1991]

701.030 [1989 c.762 s.1a; renumbered 670.605 in 1991]

LICENSING

701.035 Applicant required to be independent contractor to be eligible for license; classes of licenses. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor licenses:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt. All partnerships, corporations and limited liability companies must have an identification number issued for federal tax purposes.

(3) If a person who qualifies for a license under subsection (2)(b) of this section hires one or more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to penalties under ORS 701.992 for improper licensing. The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is performing work of the nature described in ORS 701.055 and 701.060. [1989 c.870 s.4; 1995 c.216 s.1; 1999 c.402 s.13]

Note: The amendments to 701.035 by section 13, chapter 402, Oregon Laws 1999, become operative July 1, 2000.

See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.035. (1) An applicant must qualify as an independent contractor, under ORS 670.600, to register with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor registration:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt. All partnerships, corporations and limited liability companies must have an identification number issued for federal tax purposes.

(3) If a registrant who qualifies for registration under subsection (2)(b) of this section hires one or more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the registrant is subject to penalties under ORS 701.992 for improper registration. The registrant must reapply to the board in the correct class.

(4) The decision of the board that a registrant is an independent contractor applies only when the registrant is performing work of the nature described in ORS 701.055 and 701.060.

701.055 Valid license for work required; issuance of building permits to unlicensed contractor prohibited; information notice to property owners about construction responsibilities; evidence of activity; duties. (1) A person shall 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 do such work, offer to undertake such work or submit a bid to do such work only if that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture shall be deemed licensed for the purpose of offering to undertake work as a contractor on a nonresidential structure if any one of the partners or joint venturers whose name appears in the name under which the partnership or joint venture does business 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 not issue a building permit to anyone required to be licensed under this chapter that does not have a current, valid license. Each county, city or the State of Oregon 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 also require that each applicant for such permit file as a condition to issuing the permit a written statement, subscribed by the applicant, that the applicant is licensed under the provisions of this chapter, giving the license number and stating that the license is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, listing the basis for the exemption. The city, county or the State of Oregon 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 the provisions of ORS 701.010 (6), the city, county or State of Oregon shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or State of Oregon shall 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 of Oregon 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 the city, county and State of Oregon building permit offices, at no cost to these offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) Every city and county that requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license file, or have on file, with such city or city and county, a signed statement that such licensee or applicant is licensed under the provisions of this chapter.

(8) It shall be prima facie evidence of doing business as a contractor when 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 (3) if within any one 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 shall be exclusive and no city, county or other political subdivision shall 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. However, nothing in this subsection shall 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 to levy a tax based upon business conducted by any firm within said jurisdiction, or to limit the authority of any city or county with respect to contractors not required to be licensed under this chapter; or

(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.

(11)(a) Every 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 list referred to in paragraph (a) of this subsection shall be delivered to the board within 72 hours after a request made during reasonable working hours.

(12) A contractor shall 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 the provisions of 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 form shall be delivered by a contractor 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 shall not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches, and the contractor may reproduce the form on the contractor's bid proposal.

(14) A contractor shall 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 such contract was initially less than \$2,500, but during the course of performance of 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. [1971 c.740 s.7; 1975 c.721 s.2; 1981 c.618 s.10; 1983 c.616 s.6; 1989 c.430 s.6; 1989 c.624 s.1; 1989 c.928 s.4; 1995 c.771 s.1; 1997 c.785 s.3; 1999 c.35 s.1; 1999 c.325 s.2; 1999 c.402 s.14]

Note: The amendments to 701.055 by section 14, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 1, chapter 35, Oregon Laws 1999, and section 2, chapter 325, Oregon Laws 1999, is set forth for the user's convenience.

701.055. (1) A person shall not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid certificate of registration issued by the Construction Contractors Board. A partnership, corporation or joint venture may do such work, offer to undertake such work or submit a bid to do such work only if that partnership, corporation or joint venture is registered. A partnership or joint venture shall be deemed registered for the purpose of offering to undertake work as a contractor on a nonresidential structure if any one of the partners or joint venturers whose name appears in the name under which the partnership or joint venture does business is registered.

(2) A registered partnership or corporation shall notify the board immediately upon any change in partners or corporate officers. Upon a change in partners, a registered partnership immediately shall register again.

(3) A city, county or the State of Oregon shall not issue a building permit to anyone required to be registered under this chapter that does not have a current, valid certificate of registration. Each county, city or the State of Oregon 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 also require that each applicant for such permit file as a condition to issuing the permit a written statement, subscribed by the applicant, that the applicant is registered under the provisions of this chapter, giving the number of the registration and stating that the registration is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, listing the basis for the exemption. The city, county or the State of Oregon shall list the contractor's registration number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from registration under the provisions of ORS 701.010 (6), the city, county or State of Oregon shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or State of Oregon shall 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 registration no. _____, registration expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be registered 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 registered 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 registered 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 of Oregon 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 the city, county and State of Oregon building permit offices, at no cost to these offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) Every city and county that requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license file, or have on file, with such city or city and county, a signed statement that such licensee or applicant is registered under the provisions of this chapter and stating that the registration is in full force and effect.

(8) It shall be prima facie evidence of doing business as a contractor when 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 (3) if within any one 36-month period that person offers for sale two or more newly built structures on which that work was performed.

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

(10) The provisions of this chapter shall be exclusive and no city, county or other political subdivision shall require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor registered with the board. However, nothing in this subsection shall 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 to levy a tax based upon business conducted by any firm within said jurisdiction, or to limit the authority of any city or county with respect to contractors not required to be registered under this chapter; or

(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.

(11)(a) Every 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) Registration numbers.

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

(12) A contractor shall not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is registered under this chapter or exempt from registration under the provisions of 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 registered contractors. The form shall be delivered by a contractor 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 registration, including a statement that registration 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 shall not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches, and the contractor may reproduce the form on the contractor's bid proposal.

(14) A contractor shall 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 such contract was initially less than \$2,500, but during the course of performance of 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.

701.060 Licensing in another category. (1) Any contractor licensed under this chapter may at any time apply for a license in another category. The Construction Contractors Board may charge a transfer fee not to exceed \$20 for each

additional license.

(2) If a contractor applies for a license pursuant to subsection (1) of this section all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that contractor on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. Such licensure shall be exclusive as provided in ORS 701.055 (10). [1977 c.426 s.2; 1981 c.618 s.11; 1983 c.616 s.7; 1989 c.430 s.2; 1989 c.928 s.5; 1999 c.402 s.15]

Note: The amendments to 701.060 by section 15, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.060. (1) Any contractor registered under this chapter may at any time make application for registration in another category. The Construction Contractors Board may charge a transfer fee not to exceed \$20 for such additional registration.

(2) If a contractor makes application for registration pursuant to subsection (1) of this section all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that contractor on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. Such registration shall be exclusive as provided in ORS 701.055 (10).

701.065 License required to obtain judicial or administrative remedy; exception. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any court of this state for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board:

- (a) At the time the contractor bid or entered into the contract for performance of the work; and
- (b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court shall not apply the provisions of subsection (1) of this section to a lien or claim if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license at any time required under subsection (1) of this section, or had an initial issuance thereof, and:

(A) The contractor was not aware of the requirement that the contractor be licensed, and the contractor submitted a completed application for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a claim of a construction lien or commenced any other claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the board; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor; or

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in such license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a claim of a construction lien and a suit to foreclose the lien, at the time the contractor commenced any other claim subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.115 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a claim of a construction lien and a suit to foreclose the lien, the contractor's license was renewed under ORS 701.115 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a claim of a construction lien, or commence a claim with the board, in arbitration or in any court of this state for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter. [1971 c.740 s.8; 1973 c.832 s.55; 1975 c.654 s.1; 1979 c.874 s.1; 1983 c.616 s.8; 1989 c.870 ss.10,10a; 1989 c.928 s.6; 1997 c.818 s.3; 1999 c.402 s.16]

Note: The amendments to 701.065 by section 16, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any court of this state for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid certificate of registration issued by the board:

- (a) At the time the contractor bid or entered into the contract for performance of the work; and
- (b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court shall not apply the provisions of subsection (1) of this section to a lien or claim if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid certificate of registration at any time required under subsection (1) of this section, or had an initial issuance thereof, and:

(A) The contractor was not aware of the requirement that the contractor be registered, and the contractor submitted a completed application for registration within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a claim of a construction lien or commenced any other claim subject to the provisions of subsection (1) of this section, the contractor was registered with the board; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor; or

(b) The contractor was registered with the board for some but not all of the times required under subsection (1) of this section and had a lapse in such registration and:

(A) The contractor was not aware of the lapse in registration for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for registration renewal with the board;

(B) Except for perfection of a claim of a construction lien and a suit to foreclose the lien, at the time the contractor commenced any other claim subject to the provisions of subsection (1) of this section the contractor's registration was renewed under ORS 701.115 to include the entire time period for which registration was required under subsection (1) of this section; and

(C) For perfection of a claim of a construction lien and a suit to foreclose the lien, the contractor's registration was renewed under ORS 701.115 for the entire time period for which registration was required under subsection (1) of this section, but not later than 90 days following perfection of the lien.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a claim of a construction lien, or commence a claim with the board, in arbitration or in any court of this state for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter.

701.067 Suit for damages for misrepresentation. If any person suffered costs or damages as a result of an individual providing a false or invalid Construction Contractors Board number or otherwise misleading a person with respect to licensure with the board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1989 c.870 s.9; 1995 c.618 s.124; 1999 c.402 s.17]

Note: The amendments to 701.067 by section 17, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.067. If any person suffered costs or damages as a result of an individual providing a false or invalid Construction Contractors Board number or otherwise misleading a person with respect to registration with the board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section.

Note: 701.067 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.070 [1975 c.383 ss.2,3; repealed by 1983 c.616 s.17]

701.075 License application. (1) A person who wishes to obtain a construction contractor license shall submit an application upon 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.
- (c) Social security number.
- (d) Workers' compensation insurance account number if help is hired or traded.
- (e) Unemployment insurance account number if help is hired.
- (f) State withholding tax account number if help is hired.
- (g) Federal employer identification number, if help is hired or if self-employed and participating in a retirement plan.
- (h) The name and address of:
 - (A) Each partner or venturer, if the applicant is a partnership or joint venture.
 - (B) The owner, if the applicant is an individual proprietorship.
 - (C) The corporate officers, if the applicant is a corporation.

(2) 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 shall demonstrate compliance with ORS 701.280 (2) and pass an examination based on the licensure education requirements of ORS 701.280 (2). [1971 c.740 s.9; 1973 c.832 s.56; 1979 c.312 s.2; 1981 c.618 s.12; 1989 c.624 s.2; 1989 c.870 s.2; 1989 c.928 s.7; 1995 c.216 s.6; 1999 c.344 s.1; 1999 c.402 s.18a]

Note: Section 19, chapter 402, Oregon Laws 1999, provides:

Sec. 19. The examination requirement under ORS 701.075 (4) does not apply to a person who registers with the Construction Contractors Board before July 1, 2000. The examination requirement under ORS 701.075 (4) applies to a person seeking initial licensure on or after July 1, 2000, or renewal of a registration or license that has lapsed for more than one year. For purposes of this section, the board shall accept registration or licensure in another state as a substitute for licensure in Oregon. [1999 c.402 s.19]

Note: Section 19, chapter 402, Oregon Laws 1999, becomes operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999.

Note: The amendments to 701.075 by section 18a, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 1, chapter 344, Oregon Laws 1999, is set forth for the user's convenience.

701.075. (1) A person who wishes to register as a contractor shall submit an application upon 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 registration 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.
- (c) Social Security number.
- (d) Workers' compensation insurance account number if help is hired or traded.
- (e) Unemployment insurance account number if help is hired.
- (f) State withholding tax account number if help is hired.
- (g) Federal employer identification number, if help is hired or if self-employed and participating in a retirement plan.
- (h) The name and address of:
 - (A) Each partner or venturer, if the applicant is a partnership or joint venture.
 - (B) The owner, if the applicant is an individual proprietorship.

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

(2) 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.

701.080 Contractor to notify board of address change; effect of mail to last-known address. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case or arbitration directed by the board to the last-known address of record shall be considered 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 delivered when deposited in the United States mail, regular mail. [1979 c.312 s.5; 1983 c.616 s.9; 1989 c.928 s.8; 1997 c.301 s.1; 1999 c.402 s.20]

Note: The amendments to 701.080 by section 20, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.080. It shall be the duty of a contractor to notify the Construction Contractors Board of any change of address while registered and for one year following the date the contractor's registration expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case or arbitration directed by the board to the last-known address of record shall be considered 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 delivered when deposited in the United States mail, regular mail.

701.085 When surety bond required of contractors; conditions of bond; suspension or denial of license when bond liability exceeded. (1) A person who wishes to obtain a license as a contractor or renew a license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in subsections (2) to (5) of this section, conditioned that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.140. Bonds filed under this subsection shall remain in effect for at least one year or until depleted by claims paid under ORS 701.140, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. The aggregate liability of the surety under the bond for claims against the bond shall not exceed the penal sum of the bond no matter how many years the bond is in force. No extension by continuation certificate, reinstatement, reissue or renewal of the bond shall increase the liability of the surety.

(2) A general contractor shall obtain a surety bond in the amount of \$15,000.

(3) A specialty contractor shall obtain a surety bond in the amount of \$10,000.

(4) A consultant shall obtain a surety bond in the amount of \$10,000.

(5) The board may reduce the amount of the surety bond required by this section to \$5,000 for a contractor upon a showing that the contractor does not perform work as a contractor exceeding \$40,000 in gross annual volume and does not enter into contracts that exceed \$5,000. These contractors shall be designated as limited contractors.

(6) If the amount the licensee must pay against the bond under this section exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under this section.

(7) The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under this section. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

(8) The bond required under this section is for the exclusive purpose of payment of final orders and arbitration awards of the board in accordance with this chapter.

(9) Upon determination of a claim under ORS 701.140 against a contractor who holds a bond required under this

section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all claims upon which a final order has been issued.

(10) No suit or action may be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.140 that payment is due on the claim.

(11) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a claim or on the denial of a claim by the surety, the court may award:

(a) Costs;

(b) Reasonable attorney fees to the prevailing party as part of the costs; and

(c) If the surety is ordered to pay a claim on the bond that the surety arbitrarily and capriciously refused to pay upon order of the board, twice the amount of damages against the surety as ordered by the board. [1971 c.740 s.10; 1975 c.383 s.4; 1975 c.721 s.3; 1979 c.874 s.2; 1981 c.618 s.1; 1983 c.616 s.10; 1989 c.430 s.3; 1989 c.624 s.3; 1989 c.928 s.10; 1991 c.181 s.4; 1995 c.771 s.2; 1997 c.301 s.2; 1999 c.325 s.3; 1999 c.344 s.2; 1999 c.402 s.21a]

Note: The amendments to 701.085 by section 21a, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 3, chapter 325, Oregon Laws 1999, and section 2, chapter 344, Oregon Laws 1999, is set forth for the user's convenience.

701.085. (1) A person who wishes to register as a contractor or renew a certificate of registration shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in subsections (2) to (5) of this section, conditioned that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.140. Bonds filed under this subsection shall remain in effect for at least one year or until depleted by claims paid under ORS 701.140, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. The aggregate liability of the surety under the bond for claims against the bond shall not exceed the penal sum of the bond no matter how many years the bond is in force. No extension by continuation certificate, reinstatement, reissue or renewal of the bond shall increase the liability of the surety.

(2) A general contractor shall obtain a surety bond in the amount of \$15,000.

(3) A specialty contractor shall obtain a surety bond in the amount of \$10,000.

(4) A consultant shall obtain a surety bond in the amount of \$10,000.

(5) The board may reduce the amount of the surety bond required by this section to \$5,000 for a contractor upon a showing that the contractor does not perform work as a contractor exceeding \$40,000 in gross annual volume and does not enter into contracts that exceed \$5,000. These contractors shall be designated as limited contractors.

(6) If the amount the registrant must pay against the bond under this section exceeds the amount of the bond, the board shall suspend the certificate of the registrant until the amount owed is paid. The board, as a condition of ending the suspension, may require the registrant to file a bond of an amount up to five times as much as the amount required ordinarily of a registrant under this section.

(7) The board by rule may establish conditions for applicants or persons registered under this chapter under which the applicant or registrant must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or registrant under this section. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

(8) The bond required under this section is for the exclusive purpose of payment of final orders and arbitration awards of the board in accordance with this chapter.

(9) Upon determination of a claim under ORS 701.140 against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all claims upon which a final order has been issued.

(10) No suit or action may be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.140 that payment is due on the claim.

(11) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a claim or on the denial of a claim by the surety, the court may award:

(a) Costs;

(b) Reasonable attorney fees to the prevailing party as part of the costs; and

(c) If the surety is ordered to pay a claim on the bond that the surety arbitrarily and capriciously refused to pay upon order of the board, twice the amount of damages against the surety as ordered by the board.

701.095 [1971 c.740 s.11; 1975 c.721 s.4; 1981 c.618 s.5; repealed by 1987 c.414 s.172]

701.100 Sanction for failure to comply with certain laws. (1) The failure of a contractor to comply with the provisions of this section and ORS 656.021, 657.665, 670.600, 701.035, 701.065 to 701.075, 701.135, 701.240 and 701.250 or to be in conformance with the provisions of ORS chapter 316, 656 or 657 is a basis for suspension of the contractor's license, revocation of the contractor's license, refusal to issue or reissue a contractor's license, assessment of a civil penalty as set forth in ORS 701.992 or a combination of these sanctions.

(2) Any action against a contractor under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

(3) When imposing a sanction for a violation of ORS 701.055 (1), if the Construction Contractors Board does not have evidence that a contractor has worked without a license, and no consumer has suffered damages from the work of the contractor, the civil penalty imposed by the Construction Contractors Board shall not exceed \$1,000. [1989 c.870 s.5; 1991 c.67 s.185; 1991 c.181 s.5; 1995 c.771 s.8; 1999 c.344 s.3; 1999 c.402 s.22]

Note: The amendments to 701.100 by section 22, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 3, chapter 344, Oregon Laws 1999, is set forth for the user's convenience.

701.100. (1) The failure of a contractor to comply with the provisions of this section and ORS 656.021, 657.665, 670.600, 701.035, 701.065 to 701.075, 701.135, 701.240 and 701.250 or to be in conformance with the provisions of ORS chapter 316, 656 or 657 is a basis for suspension of the contractor's registration, revocation of the contractor's registration, refusal to issue or reissue a contractor's registration, assessment of a civil penalty as set forth in ORS 701.992 or a combination of these sanctions.

(2) Any action against a contractor under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

(3) When imposing a sanction for a violation of ORS 701.055 (1), if the Construction Contractors Board does not have evidence that a contractor has worked without registering as required under this chapter and no consumer has suffered damages from the work of the contractor, the civil penalty imposed by the Construction Contractors Board shall not exceed \$1,000.

701.102 Sanction for past unresolved activity. (1) The Construction Contractors Board may suspend a license of or refuse to license any corporation, partnership or individual if any individual who is an owner, shareholder or officer of the business is or was the owner or officer of a business that:

- (a) Owes any amount pursuant to a final order or arbitration award of the board;
- (b) Has an outstanding final judgment of a court that a bond under ORS 701.085 would have been subject to; or
- (c) Owes any amount pursuant to a court order or civil penalty arising from construction business activities in any other state of the United States.

(2) The board may place a contractor on probation if three or more claims are filed against the contractor with the board within a 12-month period. 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. 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. [Formerly 701.137; 1999 c.344 s.8; 1999 c.402 s.23a]

Note: The amendments to 701.102 by section 23a, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 8, chapter 344, Oregon Laws 1999, is set forth for the user's convenience.

701.102. (1) The Construction Contractors Board may suspend the registration of or refuse to register any corporation, partnership or individual if any individual who is an owner, shareholder or officer of the business is or was the owner or officer of a business that:

- (a) Owes any amount pursuant to a final order or arbitration award of the board;
- (b) Has an outstanding final judgment of a court that a bond under ORS 701.085 would have been subject to; or

(c) Owes any amount pursuant to a court order or civil penalty arising from construction business activities in any other state of the United States.

(2) The board may place a contractor on probation if three or more claims are filed against the contractor with the board within a 12-month period. 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. The board shall take action to terminate the contractor's registration if the contractor is unwilling or unable to comply with the conditions of probation.

701.105 Insurance required of licensed contractors. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than:

- (a) \$500,000 for a general contractor.
- (b) \$300,000 for a residential-only specialty contractor.
- (c) \$500,000 for all other specialty contractors.
- (d) \$100,000 for a limited contractor.
- (e) \$300,000 for a consultant.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect. [1971 c.740 s.12; 1975 c.383 s.5; 1979 c.312 s.3; 1983 c.616 s.11; 1989 c.624 s.4; 1989 c.928 s.12; 1991 c.181 s.6; 1999 c.325 s.4; 1999 c.402 s.24a]

Note: The amendments to 701.105 by section 24a, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 4, chapter 325, Oregon Laws 1999, is set forth for the user's convenience.

701.105. (1) Throughout the period of registration, a contractor shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than:

- (a) \$500,000 for a general contractor.
- (b) \$300,000 for a residential-only specialty contractor.
- (c) \$500,000 for all other specialty contractors.
- (d) \$100,000 for a limited contractor.
- (e) \$300,000 for a consultant.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of registration and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

701.115 Term of license; renewal; license identification card. (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, if the applicant has not previously satisfied the examination requirement.

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

(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.

(4) If a contractor applies for renewal not more than one year after the contractor's license lapses, 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. [1971 c.740 s.13; 1975 c.721 s.5; 1983 c.616 s.12; 1989 c.624 s.6; 1989 c.928 s.13; 1993 c.470 s.2; 1997 c.818 s.2; 1999 c.402 s.25]

Note: The amendments to 701.115 by section 25, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.115. (1) A certificate of registration is valid for two years or four years, at the discretion of the registrant, from the date of issuance unless the registration is revoked or suspended as set forth in ORS 701.135. It may be renewed by the same procedure provided for an original registration upon application and furnishing of any additional supplemental information as the Construction Contractors Board may require by rule.

(2) The board shall issue a pocket-card certificate of registration to a contractor registered under this chapter indicating the type of registration.

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

(4) The board may renew a registration that has lapsed provided the contractor applies for renewal not more than one year after the registration lapse. The board may designate the effective date of renewal as the last date on which the registrant was registered.

701.125 Licensing fee. (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. [1971 c.740 s.14; 1973 c.832 s.57; 1975 c.721 s.6; 1983 c.180 s.3; 1999 c.402 s.26]

Note: The amendments to 701.125 by section 26, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

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

(a) For original registration or renewal of registration, a fee as determined by the board under ORS 701.130.

(b) A fee for all changes in the registration, 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.

701.130 How licensing fee determined. (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. The fees shall be subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, 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 determined by the board under subsection (1) of this section shall be effective as set by rule. [1983 c.180 s.2; 1989 c.624 s.5; 1989 c.928 s.14; 1991 c.703 s.38; 1999 c.402 s.27]

Note: The amendments to 701.130 by section 27, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

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 original contractor registration or renewal of contractor registration under ORS 701.125. The fees shall be subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, 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 determined by the board under subsection (1) of this section shall be effective as set by rule.

701.135 Grounds for discipline; civil penalty; injunctions. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or reissue a license and the board may assess a civil penalty as provided in ORS 701.992 if it determines after notice and opportunity for hearing:

- (a) That the licensee or applicant has violated ORS 701.055.
- (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 701.085.
- (c) That the licensee has violated a rule or order of the board.
- (d) That the licensee has knowingly assisted an unlicensed person to act in violation of this chapter.
- (e) 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) That the licensee has knowingly provided false information to the board.
- (g) That the licensee has worked without a construction permit where such permit is required and such work resulted in a claim filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.
- (h) 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) 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) 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) That the licensee or applicant has repeatedly reported bad faith or false claims of nonpayment against contractors or subcontractors.

(2)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for such 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 such suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after such demand, and the administrator shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking the administrator's earlier order. Such 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 which 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 it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which 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 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) of this section. [1971 c.740 s.15; 1975 c.721 s.7; 1979 c.874 s.3; 1981 c.618 s.6; 1987 c.414 s.40b; 1989 c.430 s.7; 1989 c.744 s.4; 1989 c.870 ss.11,11a; 1989 c.928 s.15; 1991 c.67 s.186; 1991 c.181 s.7; 1993 c.446 s.1; 1995 c.216 s.2; 1999 c.344 s.4; 1999 c.402 s.28c; 1999 c.689 s.10]

Note: The amendments to 701.135 by section 28c, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 4, chapter 344, Oregon Laws 1999, and section 10, chapter 689, Oregon Laws 1999, is set forth for the user's convenience.

701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or reissue a certificate of registration and the board may assess a civil penalty as provided in ORS 701.992 if it determines after notice and opportunity for hearing:

- (a) That the registrant or applicant has violated ORS 701.055.
- (b) That the registrant 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 701.085.
- (c) That the registrant has violated a rule or order of the board.
- (d) That the registrant has knowingly assisted an unregistered person to act in violation of this chapter.
- (e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the registrant or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien.
- (f) That the registrant has knowingly provided false information to the board.
- (g) That the registrant has worked without a construction permit where such permit is required and such work resulted in a claim filed with the board. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.
- (h) That the number of registered contractors working together on the same task on the same job site, where one of the contractors is registered 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) Consistent with the provisions of ORS 670.280, that the registrant 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) That the registrant 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) That the registrant or applicant has repeatedly reported bad faith or false claims of nonpayment against contractors or subcontractors.

(2)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for such findings, may suspend or refuse to renew a registration 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 registered as exempt under ORS 701.035; or
- (D) Conduct as a construction contractor that is dishonest or fraudulent.

(b) If the registrant or applicant demands a hearing within 90 days after the date of notice to the registrant or applicant of such suspension or refusal to renew, then a hearing must be granted to the registrant or applicant as soon as practicable after such demand, and the administrator shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking the administrator's earlier order. Such 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 which 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 registrant or applicant.

(3) In addition to all other remedies, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which 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 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) of this section.

701.137 [Subsection (2) enacted as 1989 c.744 s.2; subsection (1) enacted as 1989 c.928 s.9; 1991 c.181 s.8; 1995 c.771 s.3; renumbered 701.102 in 1997]

701.138 Sewer contractor requirements. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to potential customers, prior to an agreement to perform, the following:

- (a) The person's Construction Contractors Board license number and category;
- (b) The applicable bonding and liability coverage; and
- (c) The statement described in ORS 701.055 (3).

(3) Any person licensed under ORS 701.055 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, "building sewer" means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates. [1991 c.598 ss.1,2,5; 1999 c.402 s.29; 1999 c.551 s.15]

Note: The amendments to 701.138 by section 29, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 15, chapter 551, Oregon Laws 1999, is set forth for the user's convenience.

701.138. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to potential customers, prior to an agreement to perform, the following:

- (a) The person's Construction Contractors Board registration number and category;
- (b) The applicable bonding and liability coverage; and
- (c) The statement described in ORS 701.055 (3).

(3) Any person registered under ORS 701.055 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, "building sewer" means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates.

Note: 701.138 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.140 Types of allowable claims. The Construction Contractors Board shall only accept and make determinations for damages against contractors licensed under this chapter. If upon final determination and order by the board a contractor fails to pay a claim determined against the contractor by the board, the board shall notify the surety that payment is due from the bond required under ORS 701.085. Claims that involve contracts for work on nonresidential structures or the appurtenances thereto, except claims by owners of nonresidential property when the total contract is \$25,000 or less, shall be resolved by a court of competent jurisdiction or through arbitration as provided under ORS 701.145. Claims that involve contracts for work on residential structures or the appurtenances thereto and claims by owners of nonresidential property when the total contract is \$25,000 or less may be resolved directly by the board as set forth in this section. The board shall only accept and make determination of the following types of claims:

(1) Claims against a contractor by the owner of a residential structure or other real property for the following in performing any work subject to this chapter:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) Claims against a contractor by the owner of a residential structure or other real property to discharge or to recoup funds expended in discharging a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. The board may reduce any amount adjudged by the board under this section by any amount the claimant owes the contractor. The board shall only determine claims under this subsection if:

- (a) The owner has paid the contractor for that contractor's work subject to this chapter; and
- (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement.

(3) Claims against a licensed subcontractor by a licensed contractor for the following in performing any work subject to this chapter:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) Claims by persons furnishing labor to a contractor.

(5) Claims, as limited by rule of the board, by persons furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board shall not exceed \$150.

(6) Claims against a contractor by anyone who is injured as a result of the contractor's failure to comply with the requirements of ORS 454.605 to 454.755 or rules adopted by the Environmental Quality Commission under ORS 454.625. [1981 c.618 s.4; 1983 c.616 s.13; 1989 c.167 s.1; 1989 c.928 s.16; 1991 c.181 s.9; 1991 c.717 s.1; 1997 c.301 s.3; 1999 c.402 s.30]

Note: The amendments to 701.140 by section 30, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.140. The Construction Contractors Board shall only accept and make determinations for damages against contractors registered under this chapter. If upon final determination and order by the board a contractor fails to pay a claim determined against the contractor by the board, the board shall notify the surety that payment is due from the bond required under ORS 701.085. Claims that involve contracts for work on nonresidential structures or the appurtenances thereto, except claims by owners of nonresidential property when the total contract is \$25,000 or less, shall be resolved by a court of competent jurisdiction or through arbitration as provided under ORS 701.145. Claims that involve contracts for work on residential structures or the appurtenances thereto and claims by owners of nonresidential property when the total contract is \$25,000 or less may be resolved directly by the board as set forth in this section. The board shall only accept and make determination of the following types of claims:

(1) Claims against a contractor by the owner of a residential structure or other real property for the following in performing any work subject to this chapter:

- (a) Negligent work.
- (b) Improper work.

(c) Breach of contract.

(2) Claims against a contractor by the owner of a residential structure or other real property to discharge or to recoup funds expended in discharging a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. The board may reduce any amount adjudged by the board under this section by any amount the claimant owes the contractor. The board shall only determine claims under this subsection if:

(a) The owner has paid the contractor for that contractor's work subject to this chapter; and

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement.

(3) Claims against a registered subcontractor by a registered contractor for the following in performing any work subject to this chapter:

(a) Negligent work;

(b) Improper work; or

(c) Breach of contract.

(4) Claims by persons furnishing labor to a contractor.

(5) Claims, as limited by rule of the board, by persons furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board shall not exceed \$150.

(6) Claims against a contractor by anyone who is injured as a result of the contractor's failure to comply with the requirements of ORS 454.605 to 454.755 or rules adopted by the Environmental Quality Commission under ORS 454.625.

701.145 Procedure for making claims; investigation by board; disciplinary action; arbitration. (1) Any person having a claim against a contractor of the type referred to in ORS 701.140 may file with the Construction Contractors Board a statement of the claim in such form as the board prescribes.

(2) The board may refuse to accept, or refuse at any time to continue processing, a claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution and settlement;

(b) The claimant does not permit the contractor against whom the claim is filed to be present at any inspection made by the board;

(c) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the contractor to comply with the recommendations. However, the board may refuse to accept or further process a claim under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations;

(d) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim; or

(e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(3) The board shall not process a claim, including a claim based upon a court judgment or arbitration award, unless the claim is filed in a timely manner as follows:

(a) If the owner of a new structure files the claim, the board must receive the claim not later than one year after the date the structure was first occupied or two years after completion, whichever comes first.

(b) If the owner of an existing structure files the claim, the board must receive the claim not later than one year after the date the work was substantially completed.

(c) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the contractor failed to begin the work, the board must receive the claim not later than one year after the date the parties entered into the contract.

(d) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the contractor failed to substantially complete the work, the board must receive the claim not later than one year after the date the contractor ceased work on the structure.

(e) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor on a new structure, the board must receive the claim not later than 14 months after the date the structure was first occupied or two years after completion, whichever comes first.

(f) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor on an existing structure, the board must receive the claim not later than 14 months after the work on the structure was substantially completed.

(g) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor, because the subcontractor failed to substantially complete the work, the board must receive the claim not later than 14 months after the date the subcontractor ceased to work on the structure.

(h) If a material or equipment supplier, an employee, or a licensed subcontractor files the claim, the board must receive the claim not later than one year after the date the licensee incurred the indebtedness.

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the licensee, the board may recommend to the licensee such action as the board considers appropriate to compensate the claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) Except for claims by owners of nonresidential property when the total contract is \$25,000 or less and those claims that are settled through binding arbitration under subsection (9) of this section, any person with a claim against a contractor involving nonresidential structures shall bring an action upon the bond required by ORS 701.085, as provided in subsections (6) to (8) of this section, in a court of competent jurisdiction or through binding arbitration in compliance with ORS 36.300 to 36.365. At the option of the claimant, a person having a claim as an owner of nonresidential property when the total contract is \$25,000 or less may elect to bring an action upon the bond in this same manner. In such instances, all other statutes and rules applicable to the processing of claims in accordance with subsections (5) to (8) of this section apply.

(6) Except as set forth in subsection (5) of this section, in order to have access to the bond required by ORS 701.085, the claimant in an action against a contractor involving nonresidential structures must deliver a copy of the complaint to the board and to the surety on the bond by certified mail, return receipt requested, within 90 days of the date the complaint was filed. The surety shall not be joined as a party to the action, but shall have the absolute right to intervene in the action. If notice is so given, except as provided in subsection (8) of this section, the surety that received notice shall be bound by any judgment entered in the action, unless within 30 days of receipt of such notice, the surety delivers to the claimant or the claimant's attorney of record and to the board by certified mail, return receipt requested, or by facsimile machine or form of transmission with an acknowledgement, a notice that the surety is not the surety that should have received the claimant's notice. If the claimant disputes the validity of the surety's notice, or if the surety disputes the validity or timeliness of the delivery of the complaint, the claimant may join the surety as a defendant or the surety may join as a party in the action. If the surety elects to intervene in the action or is joined as a party to the action, it shall be bound by all issues of fact and law determined by the court, which issues shall not then be subject to review by the board. The date the board receives a copy of the complaint shall be the date the board uses to establish the priority of the claim.

(7) If a court issues a judgment against a contractor in an action involving nonresidential structures, the claimant shall deliver a certified copy of the judgment to the board and to the surety within 30 days of the date of entry of the judgment in order to retain a claim against the bond. The entry of a final judgment against the contractor shall fully and finally conclude the contractor's involvement concerning participation in any and all proceedings to determine whether its bond is subject to payment of the claim. The contractor shall not be a party to the administrative process set forth in subsection (8) of this section, which shall proceed with the claimant and surety as the only parties.

(8)(a) Upon receipt of a timely filed copy of the judgment specified in subsection (7) of this section, the board shall issue a proposed order in the amount of the judgment, together with any court costs, interest and attorney fees awarded by the court. The board's determination of the claim shall be limited only to determinations of whether the claim comes within the jurisdiction of the board and is subject to payment by the surety. The proposed order shall be issued in such form as to indicate the surety's maximum liability to the claimant. If there are no exceptions filed to the proposed order within the time period provided therefor after issuance of the proposed order, the proposed order shall become final without any further action required by the board. The surety's right to except to the proposed order based upon a judgment, except where the surety has elected to intervene in the action as set forth in subsection (6) of this section, shall be limited to the following issues:

(A) Whether the claim was timely filed with the board as provided in subsection (3) of this section.

(B) Whether the surety received timely notice as provided in subsections (6) and (7) of this section.

(C) Whether the claim is for work subject to this chapter provided within the State of Oregon.

(D) The extent of the surety's liability to the claimant.

(b) The provisions of ORS 701.150 (4) shall in all events apply and the surety shall be entitled to except to the proposed order as to the specific monetary liability of the surety in connection with all claims then pending. The surety shall not be required to pay any claim under subsection (7) of this section until such time as it receives notice from the board under ORS 701.140 that claims are ready for payment.

(9) With the prior agreement of the claimant and licensee, the board may resolve the claim through binding arbitration under rules adopted by the board generally in conformance with ORS 36.300 to 36.365. The board may also use the arbitration procedure to resolve a construction dispute between any persons who agree to follow the rules of the board.

(10) The board may require claims of less than \$1,000 to be subject to mediation or resolved through binding arbitration. Notwithstanding the provisions of subsection (4) of this section, the board is not required to investigate claims of less than \$1,000.

(11) The board may apply the provisions of subsections (5) to (8) of this section to any arbitration decision as it would to a judgment of a court whether the arbitration decision is rendered by the board or by independent arbitration.

(12) Contested case hearings before the board must be conducted by a hearing officer assigned from the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999. The board may delegate authority to the hearing officer to issue a final order in any matter.

(13) The board by rule may require a deposit not to exceed \$100 for the filing of a claim, the filing of a request for hearing or the filing of exceptions. Such deposit is recoverable by the party.

(14) Sections 2 to 21, chapter 849, Oregon Laws 1999, do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or arbitration, to resolve claims against contractors filed under the provisions of this section. In assigning hearing officers for hearings conducted under the provisions of this section, the chief hearing officer of the Hearing Officer Panel established under section 3, chapter 849, Oregon Laws 1999, shall defer to board requests. [1971 c.740 s.16; 1979 c.874 s.4; 1983 c.616 s.14; 1989 c.167 s.2; 1989 c.928 s.17; 1991 c.181 s.10; 1991 c.717 s.2; 1993 c.470 s.3; 1993 c.471 s.1; 1995 c.771 s.4; 1997 c.301 s.4; 1999 c.331 s.1; 1999 c.344 s.5; 1999 c.402 s.31; 1999 c.849 s.172]

Note 1: The amendments to 701.145 by section 31, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 1, chapter 331, Oregon Laws 1999, section 5, chapter 344, Oregon Laws 1999, and section 172, chapter 849, Oregon Laws 1999, is set forth for the user's convenience.

701.145. (1) Any person having a claim against a contractor of the type referred to in ORS 701.140 may file with the Construction Contractors Board a statement of the claim in such form as the board prescribes.

(2) The board may refuse to accept, or refuse at any time to continue processing, a claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution and settlement;

(b) The claimant does not permit the contractor against whom the claim is filed to be present at any inspection made by the board;

(c) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the contractor to comply with the recommendations. However, the board may refuse to accept or further process a claim under this paragraph only if the contractor was registered at the time the work was first performed and is registered at the time the board makes its recommendations;

(d) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim; or

(e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(3) The board shall not process a claim, including a claim based upon a court judgment or arbitration award, unless the claim is filed in a timely manner as follows:

(a) If the owner of a new structure files the claim, the board must receive the claim not later than one year after the date the structure was first occupied or two years after completion, whichever comes first.

(b) If the owner of an existing structure files the claim, the board must receive the claim not later than one year after the date the work was substantially completed.

(c) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the

contractor failed to begin the work, the board must receive the claim not later than one year after the date the parties entered into the contract.

(d) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the contractor failed to substantially complete the work, the board must receive the claim not later than one year after the date the contractor ceased work on the structure.

(e) If a registered contractor files the claim against a registered contractor performing work as a subcontractor on a new structure, the board must receive the claim not later than 14 months after the date the structure was first occupied or two years after completion, whichever comes first.

(f) If a registered contractor files the claim against a registered contractor performing work as a subcontractor on an existing structure, the board must receive the claim not later than 14 months after the work on the structure was substantially completed.

(g) If a registered contractor files the claim against a registered contractor performing work as a subcontractor, because the subcontractor failed to substantially complete the work, the board must receive the claim not later than 14 months after the date the subcontractor ceased to work on the structure.

(h) If a material or equipment supplier, an employee, or a registered subcontractor files the claim, the board must receive the claim not later than one year after the date the registrant incurred the indebtedness.

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the registrant, the board may recommend to the registrant such action as the board considers appropriate to compensate the claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) Except for claims by owners of nonresidential property when the total contract is \$25,000 or less and those claims that are settled through binding arbitration under subsection (9) of this section, any person with a claim against a contractor involving nonresidential structures shall bring an action upon the bond required by ORS 701.085, as provided in subsections (6) to (8) of this section, in a court of competent jurisdiction or through binding arbitration in compliance with ORS 36.300 to 36.365. At the option of the claimant, a person having a claim as an owner of nonresidential property when the total contract is \$25,000 or less may elect to bring an action upon the bond in this same manner. In such instances, all other statutes and rules applicable to the processing of claims in accordance with subsections (5) to (8) of this section apply.

(6) Except as set forth in subsection (5) of this section, in order to have access to the bond required by ORS 701.085, the claimant in an action against a contractor involving nonresidential structures must deliver a copy of the complaint to the board and to the surety on the bond by certified mail, return receipt requested, within 90 days of the date the complaint was filed. The surety shall not be joined as a party to the action, but shall have the absolute right to intervene in the action. If notice is so given, except as provided in subsection (8) of this section, the surety that received notice shall be bound by any judgment entered in the action, unless within 30 days of receipt of such notice, the surety delivers to the claimant or the claimant's attorney of record and to the board by certified mail, return receipt requested, or by facsimile machine or form of transmission with an acknowledgement, a notice that the surety is not the surety that should have received the claimant's notice. If the claimant disputes the validity of the surety's notice, or if the surety disputes the validity or timeliness of the delivery of the complaint, the claimant may join the surety as a defendant or the surety may join as a party in the action. If the surety elects to intervene in the action or is joined as a party to the action, it shall be bound by all issues of fact and law determined by the court, which issues shall not then be subject to review by the board. The date the board receives a copy of the complaint shall be the date the board uses to establish the priority of the claim.

(7) If a court issues a judgment against a contractor in an action involving nonresidential structures, the claimant shall deliver a certified copy of the judgment to the board and to the surety within 30 days of the date of entry of the judgment in order to retain a claim against the bond. The entry of a final judgment against the contractor shall fully and finally conclude the contractor's involvement concerning participation in any and all proceedings to determine whether its bond is subject to payment of the claim. The contractor shall not be a party to the administrative process set forth in subsection (8) of this section, which shall proceed with the claimant and surety as the only parties.

(8)(a) Upon receipt of a timely filed copy of the judgment specified in subsection (7) of this section, the board shall issue a proposed order in the amount of the judgment, together with any court costs, interest and attorney fees awarded by the court. The board's determination of the claim shall be limited only to determinations of whether the claim comes within the jurisdiction of the board and is subject to payment by the surety. The proposed order shall be

issued in such form as to indicate the surety's maximum liability to the claimant. If there are no exceptions filed to the proposed order within the time period provided therefor after issuance of the proposed order, the proposed order shall become final without any further action required by the board. The surety's right to except to the proposed order based upon a judgment, except where the surety has elected to intervene in the action as set forth in subsection (6) of this section, shall be limited to the following issues:

- (A) Whether the claim was timely filed with the board as provided in subsection (3) of this section.
- (B) Whether the surety received timely notice as provided in subsections (6) and (7) of this section.
- (C) Whether the claim is for work subject to this chapter provided within the State of Oregon.
- (D) The extent of the surety's liability to the claimant.

(b) The provisions of ORS 701.150 (4) shall in all events apply and the surety shall be entitled to except to the proposed order as to the specific monetary liability of the surety in connection with all claims then pending. The surety shall not be required to pay any claim under subsection (7) of this section until such time as it receives notice from the board under ORS 701.140 that claims are ready for payment.

(9) With the prior agreement of the claimant and registrant, the board may resolve the claim through binding arbitration under rules adopted by the board generally in conformance with ORS 36.300 to 36.365. The board may also use the arbitration procedure to resolve a construction dispute between any persons who agree to follow the rules of the board.

(10) The board may require claims of less than \$1,000 to be subject to mediation or resolved through binding arbitration. Notwithstanding the provisions of subsection (4) of this section, the board is not required to investigate claims of less than \$1,000.

(11) The board may apply the provisions of subsections (5) to (8) of this section to any arbitration decision as it would to a judgment of a court whether the arbitration decision is rendered by the board or by independent arbitration.

(12) Contested case hearings before the board must be conducted by a hearing officer assigned from the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999. The board may delegate authority to the hearing officer to issue a final order in any matter.

(13) The board by rule may require a deposit not to exceed \$100 for the filing of a claim, the filing of a request for hearing or the filing of exceptions. Such deposit is recoverable by the party.

(14) Sections 2 to 21, chapter 849, Oregon Laws 1999, do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or arbitration, to resolve claims against contractors filed under the provisions of this section. In assigning hearing officers for hearings conducted under the provisions of this section, the chief hearing officer of the Hearing Officer Panel established under section 3, chapter 849, Oregon Laws 1999, shall defer to board requests.

Note 2: The amendments to 701.145 by section 173, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 174, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

701.145. (1) Any person having a claim against a contractor of the type referred to in ORS 701.140 may file with the Construction Contractors Board a statement of the claim in such form as the board prescribes.

(2) The board may refuse to accept, or refuse at any time to continue processing, a claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution and settlement;

(b) The claimant does not permit the contractor against whom the claim is filed to be present at any inspection made by the board;

(c) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the contractor to comply with the recommendations. However, the board may refuse to accept or further process a claim under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations;

(d) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim; or

(e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(3) The board shall not process a claim, including a claim based upon a court judgment or arbitration award, unless the claim is filed in a timely manner as follows:

(a) If the owner of a new structure files the claim, the board must receive the claim not later than one year after the date the structure was first occupied or two years after completion, whichever comes first.

(b) If the owner of an existing structure files the claim, the board must receive the claim not later than one year after the date the work was substantially completed.

(c) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the contractor failed to begin the work, the board must receive the claim not later than one year after the date the parties entered into the contract.

(d) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the contractor failed to substantially complete the work, the board must receive the claim not later than one year after the date the contractor ceased work on the structure.

(e) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor on a new structure, the board must receive the claim not later than 14 months after the date the structure was first occupied or two years after completion, whichever comes first.

(f) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor on an existing structure, the board must receive the claim not later than 14 months after the work on the structure was substantially completed.

(g) If a licensed contractor files the claim against a licensed contractor performing work as a subcontractor, because the subcontractor failed to substantially complete the work, the board must receive the claim not later than 14 months after the date the subcontractor ceased to work on the structure.

(h) If a material or equipment supplier, an employee, or a licensed subcontractor files the claim, the board must receive the claim not later than one year after the date the licensee incurred the indebtedness.

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the licensee, the board may recommend to the licensee such action as the board considers appropriate to compensate the claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) Except for claims by owners of nonresidential property when the total contract is \$25,000 or less and those claims that are settled through binding arbitration under subsection (9) of this section, any person with a claim against a contractor involving nonresidential structures shall bring an action upon the bond required by ORS 701.085, as provided in subsections (6) to (8) of this section, in a court of competent jurisdiction or through binding arbitration in compliance with ORS 36.300 to 36.365. At the option of the claimant, a person having a claim as an owner of nonresidential property when the total contract is \$25,000 or less may elect to bring an action upon the bond in this same manner. In such instances, all other statutes and rules applicable to the processing of claims in accordance with subsections (5) to (8) of this section apply.

(6) Except as set forth in subsection (5) of this section, in order to have access to the bond required by ORS 701.085, the claimant in an action against a contractor involving nonresidential structures must deliver a copy of the complaint to the board and to the surety on the bond by certified mail, return receipt requested, within 90 days of the date the complaint was filed. The surety shall not be joined as a party to the action, but shall have the absolute right to intervene in the action. If notice is so given, except as provided in subsection (8) of this section, the surety that received notice shall be bound by any judgment entered in the action, unless within 30 days of receipt of such notice, the surety delivers to the claimant or the claimant's attorney of record and to the board by certified mail, return receipt requested, or by facsimile machine or form of transmission with an acknowledgement, a notice that the surety is not the surety that should have received the claimant's notice. If the claimant disputes the validity of the surety's notice, or if the surety disputes the validity or timeliness of the delivery of the complaint, the claimant may join the surety as a defendant or the surety may join as a party in the action. If the surety elects to intervene in the action or is joined as a party to the action, it shall be bound by all issues of fact and law determined by the court, which issues shall not then be subject to review by the board. The date the board receives a copy of the complaint shall be the date the board uses to establish the priority of the claim.

(7) If a court issues a judgment against a contractor in an action involving nonresidential structures, the claimant shall deliver a certified copy of the judgment to the board and to the surety within 30 days of the date of entry of the judgment in order to retain a claim against the bond. The entry of a final judgment against the contractor shall fully and finally conclude the contractor's involvement concerning participation in any and all proceedings to determine whether its bond is subject to payment of the claim. The contractor shall not be a party to the administrative process

set forth in subsection (8) of this section, which shall proceed with the claimant and surety as the only parties.

(8)(a) Upon receipt of a timely filed copy of the judgment specified in subsection (7) of this section, the board shall issue a proposed order in the amount of the judgment, together with any court costs, interest and attorney fees awarded by the court. The board's determination of the claim shall be limited only to determinations of whether the claim comes within the jurisdiction of the board and is subject to payment by the surety. The proposed order shall be issued in such form as to indicate the surety's maximum liability to the claimant. If there are no exceptions filed to the proposed order within the time period provided therefor after issuance of the proposed order, the proposed order shall become final without any further action required by the board. The surety's right to except to the proposed order based upon a judgment, except where the surety has elected to intervene in the action as set forth in subsection (6) of this section, shall be limited to the following issues:

(A) Whether the claim was timely filed with the board as provided in subsection (3) of this section.

(B) Whether the surety received timely notice as provided in subsections (6) and (7) of this section.

(C) Whether the claim is for work subject to this chapter provided within the State of Oregon.

(D) The extent of the surety's liability to the claimant.

(b) The provisions of ORS 701.150 (4) shall in all events apply and the surety shall be entitled to except to the proposed order as to the specific monetary liability of the surety in connection with all claims then pending. The surety shall not be required to pay any claim under subsection (7) of this section until such time as it receives notice from the board under ORS 701.140 that claims are ready for payment.

(9) With the prior agreement of the claimant and licensee, the board may resolve the claim through binding arbitration under rules adopted by the board generally in conformance with ORS 36.300 to 36.365. The board may also use the arbitration procedure to resolve a construction dispute between any persons who agree to follow the rules of the board.

(10) The board may require claims of less than \$1,000 to be subject to mediation or resolved through binding arbitration. Notwithstanding the provisions of subsection (4) of this section, the board is not required to investigate claims of less than \$1,000.

(11) The board may apply the provisions of subsections (5) to (8) of this section to any arbitration decision as it would to a judgment of a court whether the arbitration decision is rendered by the board or by independent arbitration.

(12) Contested case hearings before the board must be conducted by the board or by a hearing officer designated by the board. The board may delegate authority to the hearing officer to issue a final order in any matter.

(13) The board by rule may require a deposit not to exceed \$100 for the filing of a claim, the filing of a request for hearing or the filing of exceptions. Such deposit is recoverable by the party.

701.150 Order of board as judgment; priority of satisfying claims from bond or deposit. (1) If a final Construction Contractors Board order is not paid by the licensee, the board shall notify the surety on the bond.

(2) An order of the board that determines a claim under ORS 701.140 and 701.145 that becomes final by operation of law or on appeal and remains unpaid 10 days after the period of time allowed in this section has expired is an order in favor of the claimant against the person and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(4) Determinations by the board or judgments against the surety bond of a contractor shall be satisfied in the following priority in any 90-day period. A 90-day period shall begin on the date the first claim is filed with the board. A subsequent 90-day period shall begin on the date the first claim is filed with the board after the close of each preceding 90-day period. Within a 90-day period:

(a) Determinations and judgments as a result of claims against a contractor by the owner of a residential structure shall have payment priority to the full extent of the bond over all other types of claims.

(b) If the claims described in paragraph (a) of this subsection do not exhaust the bond, then amounts due as a result of all other types of residential structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants shall not exceed \$2,000.

(c) If judgments and determinations involving residential structures do not exhaust the bond, the judgments and determinations involving nonresidential claims shall be satisfied in the following order, except that the total amount paid from any one bond to nonowner claimants shall not exceed \$2,000:

(A) Labor, including employee benefits.

(B) Claims for breach of contract by a party to the construction contract.

(C) Any court costs, interest and attorney fees the plaintiff may be entitled to recover. The total cost paid from any one bond for court costs, interest and attorney fees shall not exceed \$2,000.

(d) If the total claims filed with the board against a general contractor or a specialty contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for such claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(e) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for such claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for such claims is exhausted, but not later than one year after whichever occurs first:

(A) The date of expiration of the license in force at the time the work was completed or abandoned; or

(B) Cancellation by the surety of the license in force at the time the work was completed or abandoned. [1971 c.740 s.17; 1973 c.832 s.60; 1981 c.618 s.7; 1983 c.616 s.15; 1987 c.414 s.40c; 1989 c.928 s.18; 1991 c.181 s.11; 1997 c.387 s.7; 1999 c.59 s.208; 1999 c.402 s.32]

Note: The amendments to 701.150 by section 32, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 208, chapter 59, Oregon Laws 1999, is set forth for the user's convenience.

701.150. (1) If a final Construction Contractors Board order is not paid by the registrant, the board shall notify the surety on the bond.

(2) An order of the board that determines a claim under ORS 701.140 and 701.145 that becomes final by operation of law or on appeal and remains unpaid 10 days after the period of time allowed in this section has expired is an order in favor of the claimant against the person and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(4) Determinations by the board or judgments against the surety bond of a contractor shall be satisfied in the following priority in any 90-day period. A 90-day period shall begin on the date the first claim is filed with the board. A subsequent 90-day period shall begin on the date the first claim is filed with the board after the close of each preceding 90-day period. Within a 90-day period:

(a) Determinations and judgments as a result of claims against a contractor by the owner of a residential structure shall have payment priority to the full extent of the bond over all other types of claims.

(b) If the claims described in paragraph (a) of this subsection do not exhaust the bond, then amounts due as a result of all other types of residential structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants shall not exceed \$2,000.

(c) If judgments and determinations involving residential structures do not exhaust the bond, the judgments and determinations involving nonresidential claims shall be satisfied in the following order, except that the total amount paid from any one bond to nonowner claimants shall not exceed \$2,000:

(A) Labor, including employee benefits.

(B) Claims for breach of contract by a party to the construction contract.

(C) Any court costs, interest and attorney fees the plaintiff may be entitled to recover. The total cost paid from any one bond for court costs, interest and attorney fees shall not exceed \$2,000.

(d) If the total claims filed with the board against a general contractor or a specialty contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for such claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(e) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for such claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for such claims is exhausted, but not later than one year after whichever occurs first:

(A) The date of expiration of the certificate of registration in force at the time the work was completed or abandoned; or

(B) Cancellation by the surety of the certificate of registration in force at the time the work was completed or abandoned.

701.155 [1973 c.832 s.59; repealed by 1981 c.618 s.18]

701.160 Nonlawyer may represent corporation before board. Notwithstanding ORS 9.320, a corporation that is a party in any proceeding before the Construction Contractors Board or any representative thereof may appear or be represented in the proceeding by an officer of the corporation who is not a member of the Oregon State Bar. [1985 c.599 s.3; 1989 c.928 s.19; 1995 c.480 s.1]

701.170 [1989 c.430 s.4 and 1989 c.928 s.20; repealed by 1993 c.18 s.153 and 1993 c.470 s.5]

701.180 Waiver of arbitration. Notwithstanding the provisions of ORS 36.300 to 36.365, any other provision of law or any contractual provision, failure of a contractor to initiate arbitration proceedings within 30 days after notification by the Construction Contractors Board that a claim under ORS 701.145 has been filed with the Construction Contractors Board, is a waiver of any right to arbitration. [Subsection (1) enacted as 1989 c.430 s.5; subsection (2) enacted as 1989 c.928 s.21; 1991 c.67 s.187; 1991 c.181 s.12]

CONSTRUCTION CONTRACTORS BOARD

701.205 Construction Contractors Board; members; terms; confirmation; vacancies; qualifications. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be contractors who primarily work on residential structures, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of governing bodies of local government. Two of the members shall be general contractors who primarily work on nonresidential structures, and one shall be a specialty contractor who primarily works on nonresidential structures or a limited contractor. One member who is a contractor may be certified as a home inspector.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the six contractor members of the board shall be licensed under this chapter and shall maintain their licenses in good order during their term of office. [Subsection (1) and (2) enacted as 1971 c.740 s.3; subsection (3) enacted as 1971 c.740 s.5; 1975 c.721 s.8; 1977 c.537 s.1; 1981 c.618 s.13; 1987 c.414 s.40; 1989 c.928 s.22; 1991 c.181 s.14; 1993 c.470 s.4; 1997 c.814 s.4; 1999 c.402 s.33]

Note: The amendments to 701.205 by section 33, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.205. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be contractors who primarily work on residential structures, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of governing bodies of local government. Two of the members shall be general contractors who primarily work on nonresidential structures, and one shall be a specialty contractor who primarily works on nonresidential structures or a limited contractor. One member who is a contractor may be certified as a home inspector.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the six contractor members of the board shall be registered under this chapter and shall maintain their registration in good order during their term of office.

701.215 Officers; quorum; compensation and expenses; committee membership. (1) The Construction Contractors Board shall select from among its members a chairperson, a vice chairperson and such other officers for

such terms and with such duties and powers necessary for the performance of their duties as the board determines.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(4) The chairperson of the board shall be a member of any committee created by the board. [1971 c.740 s.6; 1989 c.928 s.23]

701.225 Investigatory powers of board; use of city or county inspectors; conduct of hearings; authority of board to order work stopped. (1) The Construction Contractors Board may investigate the activities of any person engaged in the building and construction industry to determine compliance with this chapter.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector authorized by the board to determine compliance with the provisions of this chapter is authorized to require any person who is engaged in any activity regulated by this chapter to demonstrate proof of compliance with the licensing requirements of this chapter. If a person who is contracting directly with the owner of a structure does not demonstrate proof of compliance with the licensing requirements of this chapter, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of this chapter and shall provide that unless the person demonstrates proof of compliance within 10 days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each structure upon which the person is then performing work under contract, or mailed to all persons who are mortgagees or trust deed beneficiaries of record with respect to the real property upon which each such structure is situated. If more than one person is the owner of any such structure, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the 10-day period specified in the notice to demonstrate proof of compliance with the licensing requirements of this chapter, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least 10 days after the copies of the notice of noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and trust deed beneficiaries specified in this subsection. (4) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

(5) If any person fails to comply with a subpoena issued under subsection (4) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

(6) Notwithstanding the provisions of subsection (3) of this section:

(a) The board may order the work stopped immediately if the contractor is working on a structure and the contractor was not licensed by the board when the work began; or

(b) The board may order the work stopped after 10 days' notice to the persons listed in subsection (3) of this section if the contractor is working on a structure and was licensed by the board when the job began but has let the license lapse. [1971 c.740 s.18; 1975 c.721 s.9; 1987 c.414 s.40d; 1989 c.744 s.3; 1989 c.928 s.26; 1991 c.561 s.1; 1999 c.402 s.34]

Note: The amendments to 701.225 by section 34, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.225. (1) The Construction Contractors Board may investigate the activities of any person engaged in the building and construction industry to determine compliance with this chapter.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector authorized by the board to determine compliance with the provisions of this chapter is authorized to require any person who is engaged in any activity regulated by this chapter to demonstrate proof of compliance with the registration requirements of this chapter. If a person who is contracting directly with the owner of a structure does not demonstrate proof of compliance with the registration requirements of this chapter, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the

person is not in compliance with the registration requirements of this chapter and shall provide that unless the person demonstrates proof of compliance within 10 days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each structure upon which the person is then performing work under contract, or mailed to all persons who are mortgagees or trust deed beneficiaries of record with respect to the real property upon which each such structure is situated. If more than one person is the owner of any such structure, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the 10-day period specified in the notice to demonstrate proof of compliance with the registration requirements of this chapter, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least 10 days after the copies of the notice of noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and trust deed beneficiaries specified in this subsection.

(4) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

(5) If any person fails to comply with a subpoena issued under subsection (4) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

(6) Notwithstanding the provisions of subsection (3) of this section:

(a) The board may order the work stopped immediately if the contractor is working on a structure and the contractor was not registered by the board when the work began; or

(b) The board may order the work stopped after 10 days' notice to the persons listed in subsection (3) of this section if the contractor is working on a structure and was registered by the board when the job began but has let the registration lapse.

701.227 Disqualification from eligibility for certain public contracts; list of disqualified contractors. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall not be considered qualified to hold or participate in a public contract for a public improvement upon receipt of information from a public contracting agency or from any person who supplied labor or materials in connection with a public contract for a public improvement indicating that the contractor or subcontractor has not made payment to persons who supplied labor or materials within 60 days after the date when the payment was received by the contractor or subcontractor and that the payment was not a subject of a good faith dispute as defined in ORS 279.445.

(2) If the board determines after notice and opportunity for hearing that a contractor or a subcontractor did not make payment to persons who supplied labor or materials in connection with a public contract for a public improvement within 60 days after the date when payment was received by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the list of persons who have been determined not to be qualified to hold or participate in a public contract for a public improvement. The board may not place a contractor or subcontractor on the list if the only reason that the contractor or subcontractor did not make payment to a person when payment was due is that the contractor or subcontractor did not receive payment from the public contracting agency, contractor or subcontractor when payment was due. The contractor or subcontractor shall remain on the list for a period of not less than six months from the date when the board received the information under subsection (1) of this section.

(3) If the board determines that the claim made against a contractor or subcontractor was made in bad faith or was false, the person filing the bad faith or false claim shall be placed on the list of persons who have been determined not to be qualified to hold or participate in a public contract for a public improvement.

(4) The board shall create and maintain a list of contractors and subcontractors who have been determined not to be qualified to hold or participate in a public contract for a public improvement under subsection (2) of this section. The list may include any corporation, partnership or other business entity of which the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner or officer of the business. The board shall provide access to the list to all public contracting agencies, contractors and subcontractors. [1999 c.689 s.9]

701.230 Board to provide names of unlicensed contractors to other state agencies. At least once each month, the Construction Contractors Board shall provide to investigative units of the Department of Revenue, Department of Consumer and Business Services and Employment Department the name and address of each person who acts as a

contractor in violation of this chapter or who knowingly assists an unlicensed person to act in violation of this chapter. [1983 c.616 s.2; 1989 c.928 s.27; 1999 c.402 s.35]

Note: The amendments to 701.230 by section 35, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.230. At least once each month, the Construction Contractors Board shall provide to investigative units of the Department of Revenue, Department of Consumer and Business Services and Employment Department the name and address of each person who acts as a contractor in violation of this chapter or who knowingly assists an unregistered person to act in violation of this chapter.

701.235 Rulemaking; rules to substitute letter of credit for bond. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, establishing language for surety bonds and processing requirements for different types of claims described in this chapter.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state in lieu of the bond requirements prescribed in ORS 701.085. [1971 c.740 s.19; 1989 c.928 s.28; 1991 c.181 s.13]

701.240 Board to provide names of licensed contractors to other state agencies. (1) The Construction Contractors Board shall supply the Department of Revenue and the Employment Department with a partial or complete list of licensees as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, social security or federal employer identification number of each licensee or such other information as the department or division may by rule require. [1989 c.870 s.6; 1999 c.402 s.36]

Note: The amendments to 701.240 by section 36, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.240. (1) The Construction Contractors Board shall supply the Department of Revenue and the Employment Department with a partial or complete list of registrants as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, social security or federal employer identification number of each registrant or such other information as the department or division may by rule require.

701.245 [1971 c.740 s.23; 1975 c.721 s.10; repealed by 1979 c.31 s.1]

701.250 Board to provide licensee's status on request; fee. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more licensees.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices. [1989 c.870 s.7; 1999 c.402 s.37]

Note: The amendments to 701.250 by section 37, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.250. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more registrants.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices.

701.252 Board to maintain record of grievances against registered contractors; types of grievances. The Construction Contractors Board shall maintain and make available to the public a record of grievances made to the board against contractors that are registered under this chapter. The board shall separately record:

- (1) Inquiries for which no investigation has taken place;
- (2) Claims that are being processed but upon which action has not been completed;

- (3) Claims that have been voluntarily settled by the contractor and the claimant;
- (4) Claims that have resulted in a final order of the board to dismiss the claim; and
- (5) Claims that have resulted in a final order of the board to require payment to the claimant. [1999 c.174 s.2]

701.255 Funds retained for collection of civil penalties. The Construction Contractors Board may retain 20 percent annually from the funds collected under ORS 701.992. The amount retained under this section shall be continuously appropriated for the board's costs of collection of civil penalties imposed by order of the board. [1989 c.928 s.29; 1995 c.771 s.5]

701.260 Appeal committee; membership; duties. (1) From within its membership, the Construction Contractors Board shall appoint three members, including one of the public members or the elected official, as an appeal committee. The board may appoint one or more appeal committees. At least one residential contractor shall be appointed to any committee that hears appeals involving residential complaints.

(2) An appeal committee shall hear appeals on proposed orders and on petitions for reconsideration and rehearing and motions for stays that were originally appealed to the board as proposed orders.

(3) The Construction Contractors Board shall not consider an appeal of a decision of an appeal committee. However, the full board may act as an appeal committee. The parties affected by a decision of an appeal committee shall retain the right to appeal the decision to the Court of Appeals. [1989 c.928 s.24; 1993 c.470 s.1; 1993 c.742 s.53]

701.270 [1989 c.928 s.25; repealed by 1993 c.470 s.5 and 1993 c.742 s.11]

701.280 Construction Contractors Training Board; training requirements; exemption. (1) The Construction Contractors Board shall appoint an advisory board to be called the Construction Contractors Training Board. The advisory board shall assist in the development of the education standards required under subsections (2) and (4) of this section. Members of the advisory board shall be representatives of contractor associations or other contractor organizations, except that one member shall represent education. Members of the advisory board shall not be entitled to compensation.

(2) The Construction Contractors Board shall require by rule that applicants for licensure under this chapter provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(3) In adopting rules pursuant to this section, the Construction Contractors Board shall take into consideration the availability of training programs in areas of the state and shall encourage training providers to use the most up-to-date technology. The board shall not prohibit private organizations from providing the training services required under this section, provided the training meets any educational standards established by the board. The board periodically shall review the qualifications of private training organizations and instructors to determine compliance with the educational standards. The board shall develop and make available to the public a list of public and private training providers that the board deems qualified to provide the training required under this section.

(4) As a requirement for renewing a license, the Construction Contractors Board shall require by rule that contractors who have been licensed with the board for fewer than two years provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(5) In addition to the requirements of subsection (2) of this section, the Construction Contractors Board shall require competency testing substantially similar to nationally recognized certification programs for any person applying for certification as a home inspector under ORS 701.350. The board shall also adopt continuing education requirements for individuals certified as home inspectors.

(6) A person who has complied with the licensing requirements of ORS 446.395 is exempt from requirements specified pursuant to subsections (1) to (4) of this section.

(7) If a contractor suspended for violation of ORS 701.135 (1)(h) has not completed the educational requirements of this section, the suspended licensee must complete those requirements before being reinstated. [1991 c.732 ss.2,3,4; 1995 c.216 s.5; 1997 c.814 s.5; 1999 c.173 s.1; 1999 c.402 s.38]

Note: The amendments to 701.280 by section 38, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 1, chapter 173, Oregon Laws 1999, is set forth for the user's convenience.

701.280. (1) The Construction Contractors Board shall appoint an advisory board to be called the Construction

Contractors Training Board. The advisory board shall assist in the development of the education standards required under subsections (2) and (4) of this section. Members of the advisory board shall be representatives of contractor associations or other contractor organizations, except that one member shall represent education. Members of the advisory board shall not be entitled to compensation.

(2) The Construction Contractors Board shall require by rule that applicants for registration under this chapter provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(3) In adopting rules pursuant to this section, the Construction Contractors Board shall take into consideration the availability of training programs in areas of the state and shall encourage training providers to use the most up-to-date technology. The board shall not prohibit private organizations from providing the training services required under this section, provided the training meets any educational standards established by the board. The board periodically shall review the qualifications of private training organizations and instructors to determine compliance with the educational standards. The board shall develop and make available to the public a list of public and private training providers that the board deems qualified to provide the training required under this section.

(4) As a requirement for renewing a certificate of registration, the Construction Contractors Board shall require by rule that contractors who have been registered with the board for fewer than two years provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(5) In addition to the requirements of subsection (2) of this section, the Construction Contractors Board shall require competency testing substantially similar to nationally recognized certification programs for any person applying for certification as a home inspector under ORS 701.350. The board shall also adopt continuing education requirements for individuals certified as home inspectors.

(6) A person who has complied with the licensing requirements of ORS 446.395 is exempt from requirements specified pursuant to subsections (1) to (4) of this section.

(7) If a contractor suspended for violation of ORS 701.135 (1)(h) has not completed the educational requirements of this section, the suspended registrant must complete those requirements before being reinstated.

701.285 Report to Governor; limit on delegation by board. (1) The Construction Contractors Board shall report to the Governor.

(2) The duties, powers and functions vested by law in the Construction Contractors Board shall be performed solely by the board. [Formerly 456.752]

Note: 701.285 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.290 Construction industry fraud investigation, prevention and prosecution. The Construction Contractors Board shall enter into an interagency agreement with the Oregon State Police to address fraud in the construction industry. The agreement shall provide for:

(1) Coordinating major fraud investigations with local, state and federal law enforcement, the insurance industry and the judicial system.

(2) Participating in investigation teams for statewide response to construction contractor fraud.

(3) Establishing a central intelligence gathering unit for construction contractor fraud information and dissemination.

(4) Evaluating construction contractor fraud patterns through a computer database.

(5) Utilizing support organizations for construction contractor fraud information sharing and training.

(6) Conducting public education and construction contractor fraud prevention activities in communities statewide through local police offices and support organizations.

(7) Training in construction contractor fraud for law enforcement, the insurance industry and prosecutors.

(8) Coordinating with state and federal prosecutors an effective method of prosecuting construction contractor fraud and construction contractor fraud related cases.

(9) Maintaining a cooperative working relationship with support organizations through attendance and participation in appropriate meetings, training and establishing acceptable goals and objectives to address construction contractor fraud.

(10) Assessing the potential impact of a suspected case of construction contractor fraud and a perpetrator in relation to an investigation's anticipated expenditure to ensure a balance.

- (11) Supervising case assignment, management, preparation and report contents.
- (12) Maintaining on-scene supervision.
- (13) Requesting assistance from the district attorney's office having authority over investigations.
- (14) Supervising evidence procedures.
- (15) Hiring supervisors to coordinate and assist the district attorney with major case trial preparations. [1995 c.560 s.1]

Note: 701.290 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.300 [1989 c.928 s.11; repealed by 1991 c.181 s.16]

HOME INSPECTORS

701.350 Home inspectors; certification; rules; fees. (1) An individual shall 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 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.

(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, which fees shall not exceed the following:

- (a) \$50 for application;
- (b) \$50 for examination; and
- (c) \$75 for annual license renewal. [1997 c.690 s.6; 1997 c.814 ss.3,3a; 1999 c.402 s.39]

Note: The amendments to 701.350 by section 39, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.350. (1) An individual shall 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 registered by the board.

(2) A business entity shall not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business entity is registered 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.

(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, which fees shall not exceed the following:

- (a) \$50 for application;
- (b) \$50 for examination; and
- (c) \$75 for annual license renewal.

701.355 Home inspector prohibited from undertaking repair work on structure within one year of inspecting the structure. A business entity certified as a home inspector with the Construction Contractors Board under this chapter shall not 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. [1997 c.814 s.7]

RETAINAGE

701.410 Definitions. As used in ORS 279.400, 279.435, 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(1) “Construction” includes:

(a) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling in and other preparation of land for the making and placement of building, structure or superstructure;

(b) Creation or making of a building, structure or superstructure; and

(c) Alteration, partial construction and repairs done in and upon a building, structure or superstructure.

(2) “Contractor” includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(3) “Owner” includes a person who is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and who enters into an agreement with a contractor for the construction.

(4) “Retainage” means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

(5) “Subcontractor” includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans. [1975 c.772 s.1; 1987 c.158 s.148; 1999 c.59 s.209]

Note: 701.410 to 701.440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.420 Partial payment; retainage; effect; interest; notice of completion; payment by contractor and owner.

(1) Partial payment shall be allowed and made on contracts for construction. Except as provided in ORS 701.430 (2), an amount equal to not more than five percent of the contract price of the work completed may be withheld by an owner, contractor or subcontractor as retainage. Partial payment allowed under this subsection shall not be construed as acceptance or approval of some of the work or as a waiver of any defects therein.

(2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due the contractor or subcontractor. Except as provided in ORS 701.430 (2), the interest shall commence 30 days after the work under the contract for construction for which the final payment is due has been completed and accepted and shall run until the date when final payment is tendered to the contractor or subcontractor. The contractor or subcontractor shall notify the party to whom the contractor or subcontractor is responsible for the performance of construction work under the contract when the contractor or subcontractor considers the work that the contractor or subcontractor contracted to perform to be complete and that party shall, within 15 days after receiving the notice, either accept the work or notify the contractor or subcontractor of work yet to be performed on the contract. If the party to whom the contractor or subcontractor is responsible for the performance of construction work under the contract does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required under this subsection shall commence 30 days after the end of the 15-day period.

(3) When a contractor pays a subcontractor in full, including the amount withheld as retainage, the owner with whom that contractor has the contract shall pay the contractor, out of the amount that is withheld by the owner from that contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The contractor shall notify the owner when the contractor pays a subcontractor in full under this section and the owner shall, within 15 days after receiving the notice, pay the contractor the amount due the contractor under this subsection. Interest on the amount due the contractor at the rate of one percent per month shall commence 30 days after the owner receives notice of full payment to the subcontractor. [1975 c.772 s.2]

Note: See note under 701.410.

701.430 Performance bond; terms; effect of not obtaining bond. (1) Except as provided in subsection (2) of this section, a contractor or subcontractor may execute and deliver to the owner, contractor or subcontractor before the

commencement of construction for which the contractor or subcontractor will be responsible for performing a good and sufficient bond in a sum equal to the contract price for the faithful performance of the contract. The term of the bond required under this subsection shall extend to include the period during which claims of lien or notices of other encumbrances based on the construction performed under the contract may be filed under applicable law. The bond must be approved by the owner, contractor or subcontractor entitled to withhold retainage. A faithful performance bond delivered under this section shall include, but not be limited to, provisions to the effect that:

- (a) The obligations of the contract shall be faithfully performed;
- (b) Payment shall promptly be made to all persons supplying labor or materials to the contractor or subcontractor for prosecution of the work provided in the contract;
- (c) All contributions due the Industrial Accident Fund and the State Unemployment Compensation Fund from the contractor or subcontractor in connection with the performance of the contract shall promptly be made; and
- (d) All sums required to be deducted and retained from the wages of employees of the contractor or subcontractor pursuant to the Personal Income Tax Act of 1969, shall be paid over to the Department of Revenue.

(2) When a contractor or subcontractor does not obtain the bond required under subsection (1) of this section, the owner, contractor or subcontractor may withhold that percentage of the contract price of the work completed as retainage that is agreed to by the parties to the contract. The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due a contractor or subcontractor who was unable to obtain the bond required under subsection (1) of this section. The interest shall commence 10 days after the date on which claims of lien or notices of other encumbrances based on the construction performed under the contract must be properly filed under applicable law. For purposes of this subsection, "final payment due a contractor or subcontractor" means the amount withheld as retainage minus the total dollar amount of liens and other encumbrances resulting from the failure of the contractor or subcontractor to faithfully perform the obligations of the contract and properly filed within the time allowed under applicable law. [1975 c.772 s.3]

Note: See note under 701.410.

701.435 Deposits in lieu of cash retainage. (1) When a contractor on a public contract deposits bonds or securities under ORS 279.420 (3), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit the accumulated retainage in an interest-bearing account under ORS 279.420 (4), the contractor, within 30 days following payment of the final amount due for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor's proportional share of the interest earnings that accrued to the contractor as a result of that election. A subcontractor's share of the total amount of interest earnings under this subsection shall be determined by the proportion which the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

- (a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and
- (b) The amount of interest earnings due the subcontractor exceeds \$100.

(3) If the contractor incurs additional costs as a result of the exercise of the options described in subsections (1) and (2) of this section, the contractor may recover such costs from the subcontractor by reduction of the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- (a) Bills, certificates, notes or bonds of the United States.
- (b) Other obligations of the United States or its agencies.
- (c) Obligations of any corporation wholly owned by the federal government.
- (d) Indebtedness of the Federal National Mortgage Association. [1977 c.767 s.2; 1983 c.690 s.16]

Note: See note under 701.410.

701.440 Applicability to federal projects. ORS 279.400 and 701.410 to 701.430 do not apply when the owner is the United States or any agency thereof or when the construction is paid for, in whole or in part, with federal moneys. [1975 c.772 s.6]

Note: See note under 701.410.

LEAD POISONING AND HAZARD REDUCTION

701.500 Legislative findings. The Legislative Assembly finds that:

(1) The federal government regulates lead poisoning and lead hazard reduction through:

(a)(A) The Lead-Based Paint Poisoning Prevention Act;

(B) The Lead Contamination Control Act of 1988;

(C) The Safe Drinking Water Act;

(D) The Resource Conservation and Recovery Act of 1976; and

(E) The Residential Lead-Based Paint Hazard Reduction Act of 1992; and

(b) Implementing regulations of:

(A) The Department of Housing and Urban Development;

(B) The Environmental Protection Agency;

(C) The Occupational Safety and Health Administration; and

(D) The Centers for Disease Control.

(2) In 1992, Congress passed the federal Residential Lead-Based Paint Hazard Reduction Act, which requires that:

(a) States provide for the accreditation of lead-based paint activities training programs, the certification of persons completing such training programs and the licensing of lead-based paint activities contractors pursuant to standards to be developed by the Environmental Protection Agency.

(b) Effective October 28, 1995, sellers and landlords of residential housing constructed before 1978 notify buyers and tenants of known lead-based paint hazards.

(3) Lead affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses and women of childbearing age. Lead poisoning is one of the most common and preventable pediatric health problems today. [1995 c.795 s.2]

701.505 Definitions for ORS 431.920 and 701.500 to 701.515. For the purposes of ORS 431.920 and 701.500 to 701.515:

(1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 CFR 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(2) "Accredited Training Program" means a training program that has been accredited by the Health Division to provide training for individuals engaged in lead-based paint activities.

(3) "Certified" means an action by the Health Division verifying the successful completion of a training program accredited by the Health Division and any other requirements.

(4) "Discipline" means a specific type or category of lead-based paint activity.

(5) "Evaluation" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.

(6) "Inspection" has the meaning given that term in P.L. 102-550, section 1004, 40 CFR 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(7) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.

(8) "Lead-based paint activities" has the meaning given that term in 40 CFR 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(9) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

(10) "Licensed" means a person who has been certified by the Health Division in one or more disciplines and has

completed the requirements of the Construction Contractors Board.

(11) "Registered" means a person or business that has met the requirements for registration under this chapter. [1995 c.795 s.3]

701.510 License required to engage in lead-based paint activity. (1) No person shall perform lead-based paint activities in this state unless the person is licensed in the appropriate lead-based paint discipline under ORS 701.515.

(2) No person required by subsection (1) of this section to obtain a license shall fail to comply with the provisions of ORS 431.920 and 701.500 to 701.515 or any rules adopted pursuant thereto.

(3) No person registered to conduct a lead-based paint activities business may employ any individual to perform lead-based paint activities who is not licensed in the appropriate lead-based paint discipline under ORS 701.515. [1995 c.795 s.4]

701.515 Licensing and business registration system; fees. (1) In accordance with any applicable provisions of ORS 183.310 to 183.550, the Construction Contractors Board by rule shall establish a system to license persons and individuals in lead-based paint disciplines required to be licensed under ORS 701.510. Such licensing shall include disciplines and requirements described in 40 CFR 745.225. Such a system shall include but not be limited to provisions:

(a) Prescribing the form and content of the times and procedures for submitting applications for license issuance or renewal.

(b) Prescribing the fees for original issuance and renewal of the license in amounts that do not exceed the cost of administering the program.

(c) Prescribing those actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a license.

(2) In accordance with any applicable provisions of ORS 183.310 to 183.550, the Construction Contractors Board by rule shall establish a system to register businesses that employ persons or individuals in lead-based paint disciplines required to be licensed under ORS 701.510. Such registration shall include the requirements described in 40 CFR 745.226. Such a system shall include but not be limited to provisions:

(a) Prescribing the form and content of the times and procedures for submitting applications for registration or renewal.

(b) Prescribing the fees for original registration and renewal of the registration in amounts that do not exceed the cost of administering the program.

(c) Prescribing those actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a license.

(3) The Construction Contractors Board may impose the following licensing fees:

(a) Lead abatement contractor, up to \$50 per year;

(b) Lead inspection contractor, up to \$50 per year;

(c) Lead supervisor or lead contractor, up to \$50 per year;

(d) Lead inspector or assessor, up to \$50 per year; and

(e) Lead worker, up to \$25 per year. [1995 c.795 s.5]

701.900 Short title. Chapter 928, Oregon Laws 1989, shall be known as the Construction Contractors Licensing Act. [1989 c.928 s.31; 1999 c.402 s.40]

Note: The amendments to 701.900 by section 40, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.900. Chapter 928, Oregon Laws 1989, shall be known as the Construction Contractors Registration Act.

Note: Legislative Counsel has substituted "chapter 928, Oregon Laws 1989," for the words "this Act" in section 31, chapter 928, Oregon Laws 1989, compiled as 701.900. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1989 Comparative Section Table located in Volume 18 of ORS.

PENALTIES

701.990 Criminal penalties. (1) Violation of ORS 701.055 (1) is a Class B misdemeanor.

(2) The intentional use of a contractor's registration number without the authorization of the registered contractor is a Class B misdemeanor.

(3) Use of a contractor's registration number, with or without the authorization of the registered contractor, with the intent to deceive the public is a Class B misdemeanor. [1971 c.740 s.22; 1999 c.344 s.7]

701.992 Civil penalties; enforcement. (1) Except as provided in subsection (4) of this section, any person who violates any provision of this chapter or any rule adopted thereunder 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 183.090.

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

(4) Penalties shall be imposed for violation of ORS 701.135 (1)(h) on both the person to whom the contract is awarded and the person who awards the contract as follows:

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

(b) A fine 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 of the person's license for three years for a fourth 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. [1971 c.740 s.21; 1979 c.874 s.5; 1981 c.618 s.14; 1983 c.616 s.16; 1983 c.696 s.27; 1991 c.734 s.90; 1995 c.216 s.4; 1995 c.771 s.6; 1999 c.402 s.41]

Note: The amendments to 701.992 by section 41, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

701.992. (1) Except as provided in subsection (4) of this section, any person who violates any provision of this chapter or any rule adopted thereunder 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 183.090.

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

(4) Penalties shall be imposed for violation of ORS 701.135 (1)(h) on both the person to whom the contract is awarded and the person who awards the contract as follows:

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

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

(c) Suspension of registration for six months for a third offense; and

(d) Revocation of registration for three years for a fourth offense.

(5) The board shall provide by rule a process and criteria that must be met for restoration of certification that has been revoked.

(6) If at any time following restoration of registration 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 registration shall be permanently revoked.