

House Bill 2069

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows landscaping business to arrange for construction work on certain projects involving both construction contracting and landscaping work.

Allows State Landscape Contractors Board to place landscaping business license or landscape contractor license in inactive status. States responsibilities and restrictions for inactive licensees.

Changes definitions for landscape contractor, licensee and nursery stock. Changes exemptions from landscape contracting laws.

Expands grounds for levying of civil penalties. Allows board to place landscaping business and associated landscape contractor on probation if board receives three or more claims against landscaping business.

Expands board authority to suspend or refuse to renew license. Authorizes board to require continuing education for landscape contractors.

Changes bond amount for landscaping businesses working on certain projects. Requires landscaping businesses to increase bond amount as necessary for compliance.

Limits amount paid from landscaping business's bond, letter of credit or deposit for nonowner claims.

A BILL FOR AN ACT

1
2 Relating to landscaping; creating new provisions; and amending ORS 447.060, 671.520, 671.540,
3 671.565, 671.603, 671.610, 671.615, 671.617, 671.670, 671.690, 671.710, 671.955 and 701.010.

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

5 **SECTION 1. Sections 2 to 8 of this 2005 Act are added to and made a part of ORS 671.510**
6 **to 671.710.**

7 **SECTION 2. A landscaping business may arrange for construction work on a project that**
8 **involves both construction contracting work and landscape contracting work without ob-**
9 **taining a construction contractor license under ORS chapter 701 if:**

10 (1) **The landscaping business arranges for one or more construction contractors licensed**
11 **under ORS chapter 701 to perform all project work that requires the services of a con-**
12 **struction contractor;**

13 (2) **The total value of all construction contractor work performed on the project, other**
14 **than work within the scope of a landscaping business license, does not exceed \$50,000;**

15 (3) **The landscaping business files a bond, letter of credit or deposit in the amount of**
16 **\$15,000; and**

17 (4) **The landscaping business does not advertise itself as a construction contractor.**

18 **SECTION 3. (1) If a licensed landscaping business is not operating as a landscaping**
19 **business, the State Landscape Contractors Board may, upon request, place the license of the**
20 **landscaping business in inactive status.**

21 (2) **A landscaping business in inactive status remains subject to board jurisdiction and is**
22 **required to comply with the requirements for a landscaping business other than the security**
23 **requirement under ORS 671.690 and the insurance requirements under ORS 671.565.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) A landscaping business that is in inactive status may not:

2 (a) Perform work as a landscaping business;

3 (b) Offer or provide for the performance of landscaping work as a landscaping business;

4 or

5 (c) Obtain a building permit for work involving landscaping work by the business.

6 (4) A landscaping business license may not be placed or maintained in inactive status
7 more than once during a licensing period.

8 **SECTION 4.** (1) If a landscape contractor is not operating as a landscape contractor, the
9 State Landscape Contractors Board may, upon request, place the license of the landscape
10 contractor in inactive status.

11 (2) A landscape contractor in inactive status remains subject to board jurisdiction, li-
12 censing requirements and fees.

13 (3) A landscape contractor that is in inactive status may not perform or supervise work
14 as a landscape contractor.

15 (4) A landscape contractor license may not be placed or maintained in inactive status
16 more than once during a licensing period.

17 **SECTION 5.** (1) The State Landscape Contractors Board may issue an order placing a
18 landscaping business, or any landscape contractor that is employed by the landscaping busi-
19 ness or is a landscaping business owner or officer as defined in section 8 of this 2005 Act,
20 on probation if three or more claims are filed against the landscaping business's bond, letter
21 of credit or deposit within a 12-month period.

22 (2) The board may place a landscaping business or landscape contractor on probation
23 under this section only if the board determines after investigation of the complaints that a
24 significant likelihood exists that continued activity by the landscaping business or landscape
25 contractor without board supervision will result in additional claims against the landscaping
26 business.

27 (3) The board may require as a condition of probation imposed under this section that
28 the landscape contractor take a board-approved education course in one or more subjects
29 relating to landscape contracting.

30 (4) The board may require as a condition of probation imposed under this section that
31 the owner or officer of the landscaping business take a board-approved education course in
32 one or more subjects relating to landscaping business or general business practices.

33 (5) The board may take action to suspend, revoke or refuse to renew the license of the
34 landscaping business or landscape contractor if the contractor or business fails to fulfill the
35 terms of the probation.

36 **SECTION 6.** In addition to any other remedy available, if the State Landscape Contrac-
37 tors Board believes that a person has engaged in, is engaging in or is about to engage in any
38 act, practice or transaction that violates ORS 671.510 to 671.710, the board may direct the
39 Attorney General to apply to the court for an injunction to restrain the person from engag-
40 ing in the act, practice or transaction.

41 **SECTION 7.** Except as the State Landscape Contractors Board may otherwise provide
42 under ORS 182.462 (5), the board shall deposit moneys received as fees or civil penalties into
43 the account created by the board pursuant to ORS 182.470.

44 **SECTION 8.** (1) As used in this section:

45 (a) "Landscaping business debt" means an amount owed under:

1 (A) A final order or arbitration award issued by the State Landscape Contractors Board
2 for a claim filed under ORS 671.703; or

3 (B) A judgment or civil penalty arising from landscaping business activities in any state.

4 (b) "Landscaping business license" means a license issued within the United States to
5 engage in a landscaping business.

6 (c) "Officer" means any of the following persons:

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

8 (B) A general partner in a limited partnership.

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

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

11 (E) A trustee.

12 (F) A person qualifying as an officer under board rules. The definition of officer adopted
13 by board rule may include persons not listed in this paragraph who may exercise substantial
14 control over a business.

15 (d) "Owner" means a sole proprietor of, general partner in or holder of a controlling in-
16 terest in a business, or a person defined as an owner by board rule.

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

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

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

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

24 (3) The board may suspend or refuse to issue a landscaping business license if:

25 (a) The business owes a landscaping business debt or has had a landscaping business li-
26 cense revoked;

27 (b) An owner or officer of the landscaping business owes a landscaping business debt or
28 has had a landscaping business license revoked; or

29 (c) An owner or officer of the landscaping business was an owner or officer of another
30 business at the time the other business incurred a landscaping business debt that is owing
31 or at the time of an event that resulted in the revocation of the other business's landscaping
32 business license.

33 (4) The board may hold the suspension or refusal of a license under subsection (3) of this
34 section in abeyance if the person owing a landscaping business debt is adhering to a board-
35 approved plan for restitution of the amount owed.

36 **SECTION 9.** ORS 447.060 is amended to read:

37 447.060. (1) *[Nothing in]* ORS 447.010 to 447.156 *[and 447.992 prevents]* **do not prevent** a person
38 from:

39 (a) Engaging in plumbing work when not so engaged for hire.

40 (b) Using the services of regular employees in performing plumbing work for the benefit of
41 property owned, leased or operated by *[such]* **the** employer.

42 (c) Using the services of an employee or contractor of a utility company, energy service provider
43 or water supplier to install an approved low-flow showerhead or faucet aerator in existing plumbing
44 fixtures. The devices installed under this paragraph are exempt from the certification, permit and
45 inspection requirements of this chapter and ORS chapter 693.

1 (2) For purposes of subsection (1) of this section, a “regular employee” means a person who is
 2 subject to the provisions of ORS 316.162 to 316.219 and who has completed a withholding exemptions
 3 certificate required by the provisions of ORS 316.162 to 316.219.

4 (3) A [*licensee under ORS 671.560 (2)*] **landscaping business licensed under ORS 671.560** is not
 5 required to be registered under ORS 447.010 to 447.156 [*and 447.992*] to install backflow [*prevention*
 6 *devices*] **assemblies** for irrigation systems and ornamental water features if the installer is licensed
 7 as required by ORS 671.615 **and is an owner or employee of the landscaping business**. The [*ex-*
 8 *emptions*] **registration exemption** established under this subsection [*do*] **does** not exempt the [*per-*
 9 *son*] **landscaping business** from the inspection and permit requirements of this chapter.

10 (4) This section applies to any person, including but not limited to, individuals, corporations,
 11 associations, firms, partnerships, joint stock companies, public and municipal corporations, political
 12 subdivisions, this state, [*and any agencies thereof, and*] the federal government and [*any agencies*
 13 *thereof*] **state or federal agencies**.

14 **SECTION 10.** ORS 671.520 is amended to read:

15 671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

16 [(1) “Board” means the State Landscape Contractors Board.]

17 [(2)] (1) “Landscape contractor” means any person who for compensation or with the intent to
 18 be compensated [*arranges, undertakes, offers or contracts to undertake, or submits a bid to perform*]
 19 **performs or supervises** activities requiring the art, ability, experience, knowledge, science and
 20 skill to:

21 (a) Plan [*and*] **or** install lawns, shrubs, vines, trees [*and other decorative vegetation including the*
 22 *preparation of*] **or nursery stock;**

23 (b) **Prepare** property on which [*the vegetation*] **lawns, shrubs, vines, trees or nursery stock**
 24 is to be installed[, *and the construction of*];

25 (c) **Construct or repair** ornamental water features, [*and*] drainage [*and*] **systems or** irrigation
 26 systems [*for decorative vegetation*]; **or**

27 [(b)] (d) Plan [*and*] **or** install fences, decks, arbors, **patios, landscape edging**, driveways, walk-
 28 ways [*and*] **or** retaining walls.[: *or*]

29 [(c) *Do any part or any combination of any activity described in paragraphs (a) and (b) of this*
 30 *subsection.*]

31 [(3) “Landscaping business” means any business that offers or provides, for compensation or with
 32 the intent to be compensated, the services of a landscape contractor.]

33 [(4) “Licensee” means a person or business who is licensed under ORS 671.510 to 671.710 as a
 34 landscape contractor.]

35 (2) **“Landscaping business” means a business that for compensation or with the intent**
 36 **to be compensated arranges for or submits a bid or otherwise offers or contracts to provide**
 37 **the services of a landscape contractor.**

38 (3) **“Licensee” means a person that is licensed under ORS 671.510 to 671.710 as a land-**
 39 **scape contractor or landscaping business.**

40 [(5)] (4) “Nursery stock” means nursery stock:

41 (a) As defined by ORS 571.005 [*and*] **other than stock grown for commercial resale or**
 42 **reforestation; or**

43 (b) As [*further*] defined by the **State Landscape Contractors Board** [*after public hearing*] **by**
 44 **rule.**

45 [(6)] (5) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and

1 other decorative water-related constructions as identified by **the board by rule.**

2 **SECTION 11.** ORS 671.540 is amended to read:

3 671.540. [(1)] ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

4 [(a)] (1) Any federal or state agency or any political subdivision performing landscaping **work**
5 on public property.

6 [(b)] (2) Any landscape architect registered [pursuant to] **under** ORS 671.310 to 671.459 and
7 practicing as provided [therein] **under ORS 671.310 to 671.459.**

8 [(c)] (3) Landscaping work performed by a landscape maintenance business if:

9 [(A)] (a) The **landscaping** work is performed for a customer that in a calendar year receives
10 primarily landscape maintenance services from the business;

11 [(B)] (b) The value of all labor, materials or other items supplied for landscaping work at a job
12 site does not exceed \$500 in a calendar year; and

13 [(C)] (c) The landscaping work is of a casual, minor or inconsequential nature, as those terms
14 are defined by the State Landscape Contractors Board by rule.

15 [(d)] (4) Installation of fences, decks, arbors, driveways, walkways or retaining walls [when] **if**
16 performed by a person or business licensed with the Construction Contractors Board.

17 [(e)] (5) **Rough** grading of plots and areas of land performed in conjunction with new or re-
18 modeling construction [when] **if** performed by a person or business licensed with the Construction
19 Contractors Board.

20 [(f)] (6) Any owner of property who contracts for landscaping work to be performed by a person
21 licensed under ORS 671.560. [This paragraph] **The exception provided by this subsection** does not
22 apply to a person who, in pursuit of an independent business, performs or contracts for the per-
23 formance of landscaping work with the intent of offering for sale before, upon or after completion
24 of the landscaping work[,] the property upon which the landscaping work is performed.

25 [(g)] (7) Any landscaping work performed by a person on property that the person owns or in
26 which the person has a legal interest. [This paragraph] **The exception provided by this subsection**
27 does not apply to a person who, in pursuit of an independent business, performs or contracts for the
28 performance of landscaping work with the intent of offering for sale before, upon or after completion
29 of the landscaping work[,] the property on which the landscaping work is performed.

30 [(h)] (8) A general contractor licensed under ORS chapter 701 who performs landscaping work
31 if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping
32 work is performed on residential property for which the contractor is under contract for the con-
33 struction of a new dwelling. **The exception provided by this subsection does not apply to the**
34 **performance of irrigation work by a general contractor.** The State Landscape Contractors
35 Board shall revise the amount specified in this [paragraph] **subsection** every five years, beginning
36 in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index[. *This paragraph*
37 *does not apply to a general contractor performing irrigation work unless the work is performed pur-*
38 *suant to a permit issued by the local building official.*] **for All Urban Consumers for All Items as**
39 **published by the Bureau of Labor Statistics of the United States Department of Labor.**

40 [(i)] (9) A general contractor licensed under ORS chapter 701 who performs landscaping work
41 on residential property that is directly related to local building code requirements or occupancy
42 ordinances including, but not limited to, the placement of street trees. [This paragraph does not ap-
43 ply to a general contractor performing irrigation work unless the work is performed pursuant to a
44 permit issued by the local building official.] **The exception provided by this subsection does not**
45 **apply to the performance of irrigation work by a general contractor.**

1 [(j)] **(10)** A person engaged in making [conceptual] plans or drawings for the selection, [general]
 2 placement or use of plants or other site features, unless the plans or drawings are for [sites:] **the**
 3 **purpose of providing construction details and specifications.**

4 [(A) That include natural drainage channels, streams, wetlands, marshes or other sensitive natural
 5 areas regulated by the local, state or federal government or that encroach on designated buffer zones
 6 for those areas; or]

7 [(B) Where slopes of 10 percent or greater comprise at least 25 percent of the total site area or
 8 directly contribute storm water to natural drainage channels, streams, wetlands, marshes or other
 9 sensitive natural areas regulated by the local, state or federal government.]

10 [(k) A person, other than a licensed landscape contractor, using the title “landscape designer” in
 11 connection with making conceptual plans or drawings for the selection, general placement or use of
 12 plants or other site features, provided the person clearly notes on all contracts for services, plans and
 13 drawings that the implementation of, or consultation about the implementation of, the plans or drawings
 14 may require the services of a professional authorized by law to perform the implementation or offer the
 15 consultation.]

16 [(2) As used in this section, “Portland-Salem, OR-WA Consumer Price Index” means the
 17 Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published
 18 by the Bureau of Labor Statistics of the United States Department of Labor.]

19 **(11) Use by a person other than a landscape contractor of the title “landscape designer”**
 20 **when engaged in making plans or drawings described in subsection (10) of this section.**

21 **(12) A person providing recommendations or written specifications for soil amendments**
 22 **or planting media if the recommendations or specifications are solely for the purpose of plant**
 23 **installation.**

24 **SECTION 12.** ORS 671.565 is amended to read:

25 671.565. (1) Each person applying for a landscaping business license shall:

26 (a) Pay to the State Landscape Contractors Board the [fees required by ORS 671.570 and 671.650
 27 and:] **applicable landscaping business license fee established by the board under ORS 671.650.**

28 [(1)] (b) Employ at least one person with a landscape [contractor’s] **contractor** license to su-
 29 pervise the landscaping operation of the business. [and shall]

30 (c) Submit the names of all employees who are licensed contractors.

31 [(2)] (d) File with the board [the surety bond required pursuant to] **a form of security accept-**
 32 **able under** ORS 671.690.

33 [(3)] (e) [Throughout the license period, have in effect public] **File with the board a certificate**
 34 **of public** liability, personal injury and property damage insurance covering the work of [that] **the**
 35 landscaping business [which] **that** is subject to ORS 671.510 to 671.710 for an amount not less than
 36 \$100,000. [The landscaping business shall provide satisfactory evidence to the board at the time of ap-
 37 plication and renewal that the insurance required by this section has been procured and is in effect.]

38 [(4)] (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as
 39 an independent contractor.

40 **(2) At the time of application for a license, for renewal of a license in active status or**
 41 **for return of a license to active status, the landscaping business shall provide evidence sat-**
 42 **isfactory to the board that the public liability, personal injury and property damage insur-**
 43 **ance required by subsection (1)(e) of this section is in effect. During a license period, the**
 44 **landscaping business shall provide, to the extent required by the board, satisfactory evidence**
 45 **of continued public liability, personal injury and property damage insurance coverage.**

SECTION 13. ORS 671.603 is amended to read:

671.603. (1) A landscape contractor or person operating as a landscaping business shall notify the State Landscape Contractors Board of a change of address for the contractor or business that occurs while the contractor or business is licensed by the board or within one year after a license [*becomes inactive*] **expires**. The landscape contractor or landscaping business shall ensure that the board receives notice of the change of address no later than the 10th day after the change of address occurs.

(2) Initial notice of a contested case or arbitration directed by the board to the last-known address of record for a landscape contractor or landscaping business is considered delivered to the contractor or business when deposited in the United States mail and sent registered, certified or post office receipt secured. Any other communication directed by the board to the last-known address of record for a landscape contractor or landscaping business is considered delivered to the contractor or business when deposited in the United States mail, regular mail.

SECTION 14. ORS 671.610 is amended to read:

671.610. (1) In addition to any civil penalty assessed under ORS 671.955, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of [*any person that*] **a landscape contractor or landscaping business that does any of the following:**

(a) [*Has obtained or attempted*] **Obtains or attempts** to obtain a license under ORS 671.510 to 671.710 by fraud or material misrepresentation.[:]

(b) [*Has made*] **Makes** a material misrepresentation about the quality of any material or service the person provides.[:]

(c) [*Has performed*] **Performs** defective work.[:]

(d) [*Has furnished*] **Furnishes** defective materials.[:]

(e) [*Has made*] **Makes** misleading statements when advertising services or materials.[:]

(f) [*Has violated*] **Violates** a provision of ORS 671.510 to 671.710.[:]

[(g) *Has had the bond or deposit required by ORS 671.690 terminated, canceled or reduced or withdrawn; or*]

(g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termination, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS 671.690.

(h) Fails to maintain public liability, personal injury and property damage insurance as required by ORS 671.565 throughout a licensing period.

[(h)] (i) [*Has violated*] **Violates** a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

(j) Performs work for which a permit is required under the state building code without obtaining the required permit, if the work results in the filing of a claim with the board.

(k) Violates a rule or order of the board.

(L) Refuses to comply with a subpoena issued by the board.

(m) Fails to pay in full any amount owed to a claimant under a final order of the board or an arbitration award, or under a judgment rendered in this or any other state.

(n) Does not make payment, including any interest due, for labor or materials contracted for by the person pursuant to a contract for a public improvement within 90 days after the date the person receives payment from a public contracting agency or, if the person is a subcontractor, from the contractor.

(o) Engages in conduct as a landscape contractor or landscaping business that is dis-

1 **honest or fraudulent or that the board finds injurious to the welfare of the public.**

2 **(p) Fails to comply with the requirements of ORS 652.120.**

3 **(q) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365,**
 4 **163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075,**
 5 **164.325 or 164.415, provided that the facts supporting the conviction and all intervening cir-**
 6 **cumstances make the determination to suspend, revoke or refuse to issue or renew the li-**
 7 **cence consistent with ORS 670.280.**

8 *[(2) The board may suspend the license of or refuse to license a person if the person, or the owner*
 9 *or holder of a direct or indirect interest in the person, is a business or the owner or holder of a direct*
 10 *or indirect interest in a business that:]*

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

12 *[(b) Owes any amount pursuant to a court order or civil penalty arising from landscaping or con-*
 13 *struction business activities in this or any other state of the United States;]*

14 *[(c) Owes any amount to a surety company that has paid money from the surety bond of a land-*
 15 *scaping business; or]*

16 *[(d) Has had a license to operate as a landscaping business revoked by the landscape contractor*
 17 *licensing agency of any state.]*

18 *[(3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest*
 19 *for purposes of subsection (2) of this section.]*

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

22 *[(5) An individual who has been a sole proprietor, partner, limited liability company member, lim-*
 23 *ited liability partnership member or corporate officer of a landscaping business the license of which*
 24 *has been suspended or revoked may be denied a license if the individual knowingly participated in the*
 25 *conduct that led to the suspension or revocation.]*

26 **(2) The board may suspend or refuse to renew the license of a landscape contractor or**
 27 **landscaping business without prior hearing if, after investigating and setting forth in writing**
 28 **the facts supporting the action, the board determines that continued activity by the land-**
 29 **scape contractor or landscaping business poses an imminent threat of serious harm to the**
 30 **public welfare. Facts sufficient to support a suspension or refusal to renew under this sub-**
 31 **section include, but are not limited to:**

32 **(a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;**

33 **(b) The lack of public liability, personal injury or property damage insurance required**
 34 **under ORS 671.565;**

35 **(c) The hiring of employees while registered as exempt under ORS 671.525;**

36 **(d) Conduct as a landscape contractor or a landscaping business that is dishonest; or**

37 **(e) Operation of a landscaping business that does not employ at least one licensed land-**
 38 **scape contractor.**

39 **(3) A person whose license is suspended or refused renewal under subsection (2) of this**
 40 **section may request a hearing within 90 days after receiving the notice of the suspension or**
 41 **refusal to renew. Except as provided in this subsection, the board shall give a contested case**
 42 **hearing requested under this subsection priority over other hearings and schedule the hear-**
 43 **ing for the earliest practicable date. If a citation is issued to the person and the order of**
 44 **suspension or refusal to renew will terminate by its terms if a court renders a final judgment**
 45 **regarding the citation in favor of the person, the person may request that the board hold the**

1 **requested contested case hearing in abeyance until after the court has rendered a final**
 2 **judgment.**

3 [(6)] (4) A person whose license is revoked [*or not renewed pursuant to*] **under** this section is
 4 not eligible to apply for a license under ORS 671.510 to 671.710 until two years after the effective
 5 date of the revocation [*or of the nonrenewal*].

6 [(7) *In addition to the remedies of license denial, suspension, revocation or refusal to renew a li-*
 7 *cence, when it appears to the board that a person has engaged in, or is engaging in, any act, practice*
 8 *or transaction that violates the provisions of this chapter, the board may direct the Attorney General*
 9 *to apply to the court for an injunction restraining the person from violating the provisions of this*
 10 *chapter.*]

11 [(8)(a) *The board may suspend, revoke or refuse to reissue a license to a landscape contractor if*
 12 *the board determines, after notice and opportunity for a hearing, that the contractor was working with*
 13 *another landscape contractor or landscape contractors on the same task and work site where one of the*
 14 *contractors is registered exempt under ORS 671.525 (2)(b) and the total number of landscape contrac-*
 15 *tors working on the task exceeded.*]

16 **(5) The board may suspend, revoke or refuse to reissue the license of a landscaping**
 17 **business, and may impose a civil penalty, all as provided under ORS 671.955 (4), if the board**
 18 **determines, after notice and opportunity for a hearing, that the landscaping business was**
 19 **working with other landscaping businesses on the same task and work site where one of the**
 20 **landscaping businesses is registered as an exempt independent contractor under ORS 671.525**
 21 **(2)(b) and the total number of landscaping businesses working on the task exceeded:**

- 22 [(A)] (a) Two sole proprietors;
- 23 [(B)] (b) One partnership;
- 24 [(C)] (c) One corporation; or
- 25 [(D)] (d) One limited liability company.

26 [(b) *The board may assess a civil penalty as provided under ORS 671.955 (4) for a violation of*
 27 *paragraph (a) of this subsection.*]

28 **SECTION 15.** ORS 671.615 is amended to read:

29 671.615. The State Landscape Contractors Board may license a landscape contractor to install
 30 backflow [*prevention devices*] **assemblies** for irrigation systems and ornamental water features. The
 31 board, by rule, shall establish qualifications for issuance of a license under this section. A landscape
 32 contractor may install a backflow [*prevention device*] **assembly** only if the landscape contractor is
 33 licensed under this section. A landscape contractor installing a backflow [*prevention device*] **as-**
 34 **sembly** may tap into the potable water supply only at a point after the connection between the
 35 water system and the customer, as that connection is defined in ORS 448.115.

36 **SECTION 16.** ORS 671.617 is amended to read:

37 671.617. The State Landscape Contractors Board shall consult with the State Plumbing Board
 38 in developing any written and practical examinations for backflow [*prevention device*] **assembly** in-
 39 staller licenses.

40 **SECTION 17.** ORS 671.670 is amended to read:

41 671.670. (1) In accordance with any applicable provision of ORS chapter 183, the State Land-
 42 scape Contractors Board may [*promulgate*] **adopt** rules **the board considers reasonable** for the
 43 administration and enforcement of ORS 671.510 to 671.710 and [671.990 (2)] **671.955**.

44 **(2) The board, by rule, may establish continuing education requirements for landscape**
 45 **contractors. The board may establish a system to approve programs for continuing education**

1 **credit and may charge appropriate fees. The board may sponsor continuing education pro-**
 2 **grams and charge fees for program attendance.**

3 **(3) The board, by rule, may establish standards of professional conduct for landscape**
 4 **contractors and landscaping businesses.**

5 **SECTION 18.** ORS 671.690 is amended to read:

6 671.690. (1) An applicant for a license as a landscaping business shall file with the State Land-
 7 scape Contractors Board a surety bond with one or more corporate sureties authorized to do busi-
 8 ness in this state, or an irrevocable letter of credit issued by an insured institution, as defined in
 9 ORS 706.008. The amount of the bond or letter of credit shall be:

10 (a) \$3,000; *[or]*

11 (b) \$10,000 for an applicant who:

12 **(A) Constructs fences, decks, arbors, patios, landscape edging,** driveways, walkways or re-
 13 taining walls *[not in conjunction with landscaping work]; or*

14 **(B) Charges more than \$10,000, but less than \$25,000, for a landscape job; or**

15 **(c) \$15,000 for an applicant who:**

16 **(A) Contracts with a construction contractor under section 2 of this 2005 Act; or**

17 **(B) Charges \$25,000 or more for a landscape job.**

18 (2) The bond or letter of credit required under subsection (1) of this section shall be conditioned
 19 that the applicant pays:

20 (a) All taxes and contributions due to the State of Oregon;

21 (b) All persons furnishing labor or material, or renting or supplying equipment to the business;

22 (c) All amounts that may be adjudged against the business by reason of negligent or improper
 23 work or breach of contract in performing any work subject to ORS 671.510 to 671.710; and

24 (d) All amounts from the bond, **letter of credit** or deposit the board orders paid under ORS
 25 671.703.

26 (3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the
 27 landscaping business may file with the board, under the same terms and conditions as when a bond
 28 is filed, a deposit in cash or negotiable securities acceptable to the board.

29 (4) The *[deposit, bond or letter of credit]* **bond, letter of credit or deposit** required by this sec-
 30 tion must be continuously on file with the board in the amount required by this section and is for
 31 the exclusive purpose of payment of final orders and arbitration awards of the board in accordance
 32 with ORS 671.703. Upon termination or cancellation of the bond, withdrawal of the deposit or re-
 33 duction of the *[deposit, bond or letter of credit]* **bond, letter of credit or deposit** to less than the
 34 required amount, the licensee shall immediately:

35 (a) File a replacement *[deposit, bond or letter of credit]* **bond, letter of credit or deposit;** or

36 (b) Surrender the license to the board and cease operating as a landscaping business.

37 **(5) If the cost of a project makes, or foreseeably will make, a licensee subject to a higher**
 38 **bond or letter of credit requirement under subsection (1) of this section, the licensee shall**
 39 **immediately file additional bonds, letters of credit or deposits to meet the higher require-**
 40 **ments.**

41 *[(5)]* **(6) The landscaping business is responsible for all *[landscaping and other]* work**
 42 ***[performed]* that is subject to ORS 671.510 to 671.710.**

43 **SECTION 19.** ORS 671.710 is amended to read:

44 671.710. *[(1) Determinations by the State Landscape Contractors Board or judgments against the*
 45 *surety bond or deposit of a landscape contractor shall be satisfied in the priority listed in paragraphs*

1 (a) to (d) of this subsection in any 90-day period. A 90-day period shall begin on the date the first claim
 2 is filed with the board. A subsequent 90-day period shall begin on the date the first claim is filed with
 3 the board after the close of each preceding 90-day period. Within a 90-day period.]:

4 **(1) Determinations by the State Landscape Contractors Board or judgments against the**
 5 **surety bond, letter of credit or deposit of a landscaping business for claims filed during a**
 6 **90-day period shall be satisfied in the priority listed in subsections (2) to (4) of this section.**
 7 **The payment of a claim filed during a 90-day period has priority over any claim filed during**
 8 **a subsequent 90-day period. A 90-day period begins on the date the first claim is filed with**
 9 **the board. A subsequent 90-day period begins on the date the first claim is filed with the**
 10 **board after the close of the preceding 90-day period.**

11 [(a)] **(2) Determinations and judgments as a result of claims [against a landscape contractor] filed**
 12 **within the 90-day period against a landscaping business** by owners of property upon which
 13 landscaping work was performed, or was contracted to perform, [shall] have payment priority to the
 14 full extent of the bond, **letter of credit** or deposit over all other claims **filed within that 90-day**
 15 **period.**

16 [(b) *If the total of all claims against a landscape contractor does not exhaust the bond or deposit,*
 17 *then amounts due as a result of all other claims filed within that 90-day period may be satisfied from*
 18 *the bond or deposit.*]

19 [(c) *If the total of all claims against a landscape contractor exceeds the amount of the bond or de-*
 20 *posit available for such claims, the bond or deposit shall be apportioned as the board determines,*
 21 *subject to the priorities established under this section.*]

22 [(d) *If the total of all claims against a landscape contractor does not exceed the amount of the bond*
 23 *or deposit available for such claims, all amounts due as a result of claims filed within the 90-day period*
 24 *shall have priority over all claims filed after the 90-day period until the amount of the bond or deposit*
 25 *available for such claims is exhausted.*]

26 **(3) If the total of all claims against a landscaping business by owners of property under**
 27 **subsection (2) of this section does not exhaust the bond, letter of credit or deposit, amounts**
 28 **due as a result of all other claims filed within that 90-day period may be satisfied from the**
 29 **remainder of the bond, letter of credit or deposit.**

30 **(4) If the total of all claims against a landscaping business within a 90-day period exceeds**
 31 **the amount of the bond, letter of credit or deposit available for payment of those claims,**
 32 **payment from the bond, letter of credit or deposit shall be apportioned as the board deter-**
 33 **mines, subject to the claim payment priorities established under this section.**

34 [(2)] **(5) The bond, letter of credit or deposit [shall] may not be used to satisfy claims filed**
 35 **more than one year following the date the work was completed.**

36 **SECTION 20.** ORS 671.955 is amended to read:

37 671.955. (1) Except as provided in subsection (4) of this section, a person who violates any pro-
 38 vision of ORS 671.510 to 671.710 or a rule adopted pursuant to subsection (5) of this section or ORS
 39 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board a civil
 40 penalty in an amount determined by the board of not more than \$2,000 for each offense.
 41 [Notwithstanding ORS 670.335, except as the board may otherwise provide under ORS 182.462 (5), the
 42 board shall deposit moneys received as fees or civil penalties into the account created by the board
 43 pursuant to ORS 182.470.]

44 (2) The board shall impose civil penalties under this section as provided in ORS 183.745.

45 (3) The provisions of this section are in addition to and not in lieu of any other penalty or

1 sanction provided by law.

2 (4) **If a landscaping business commits an act described under ORS 671.610 (5)**, the board
 3 shall impose penalties and sanctions [*for violation of ORS 671.610 (8)*] on both the [*person to whom*]
 4 **landscaping business to which** the contract is awarded and the [*person who*] **landscaping busi-**
 5 **ness that** awards the contract as follows:

6 (a) A civil penalty of not less than \$500 nor more than \$1,000 for [*the*] a first offense;

7 (b) A civil penalty of not less than \$1,000 nor more than \$2,000 for [*the*] a second offense;

8 (c) Suspension of license **or refusal to reissue license** for six months for a third offense;
 9 [*and*]

10 (d) Revocation of license for three years for a fourth offense[.]; **and**

11 **(e) Permanent revocation of the landscaping business’s license for a fifth offense.**

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

14 [*(6) If at any time following restoration of a license revoked under subsection (4)(d) of this section,*
 15 *the person is again found to have violated ORS 671.610 (8), the board shall revoke the person’s license*
 16 *permanently.*]

17 **SECTION 21.** ORS 701.010 is amended to read:

18 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
 19 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
 20 ministrative rule of the Construction Contractors Board. The following persons are exempt from
 21 licensure under this chapter:

22 (1) A person who is constructing, altering, improving or repairing personal property.

23 (2) A person who is constructing, altering, improving or repairing a structure located within the
 24 boundaries of any site or reservation under the jurisdiction of the federal government.

25 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-
 26 ricate them into, or consume them, in the performance of the work of a contractor.

27 (4) A person working on one structure or project, under one or more contracts, when the ag-
 28 gregate price of all of that person’s contracts for labor, materials and all other items is less than
 29 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
 30 to a person who advertises or puts out any sign or card or other device that might indicate to the
 31 public that the person is a contractor.

32 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection
 33 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,
 34 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,
 35 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or
 36 after completion. It is prima facie evidence that there was an intent of offering the structure for sale
 37 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-
 38 ture constructed, remodeled or repaired does not occupy the structure after its completion.

39 (6) A person performing work on a property that person owns or performing work as the owner’s
 40 employee, whether the property is occupied by the owner or not, or a person performing work on
 41 that person’s residence, whether or not that person owns the residence. This subsection does not
 42 apply to a person performing work on a structure owned by that person or the owner’s employee if
 43 the work is performed, in the pursuit of an independent business, with the intent of offering the
 44 structure for sale before, upon or after completion.

45 (7) A person licensed in one of the following trades or professions when operating within the

1 scope of that license:

2 (a) An architect licensed by the State Board of Architect Examiners.

3 (b) A registered professional engineer licensed by the State Board of Examiners for Engineering
4 and Land Surveying.

5 (c) A water well contractor licensed by the Water Resources Department.

6 (d) A sewage disposal system installer licensed by the Department of Environmental Quality.

7 (e) A landscaping business licensed under ORS 671.510 to 671.710 that:

8 (A) Constructs fences, decks, arbors, **patios, landscape edging**, driveways, walkways or re-
9 taining walls [*when:*]

10 [(A) *Performed*] in conjunction with landscaping work; or

11 [(B) *Not performed in conjunction with landscaping work and that has filed a bond under ORS*
12 *671.690 (1)(b).*]

13 (B) **Arranges for the performance of construction work on a project described in section**
14 **2 of this 2005 Act.**

15 (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood
16 destroying organisms for the transfer of real estate.

17 (g) An appraiser certified or licensed under ORS chapter 674 by the Appraiser Certification and
18 Licensure Board.

19 (8) A person who performs work subject to this chapter as an employee of a contractor.

20 (9) A manufacturer of a manufactured home constructed under standards established by the
21 federal government.

22 (10) A person involved in the movement of:

23 (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet
24 in width.

25 (b) Structures not in excess of 16 feet in width when the structures are being moved by their
26 owner if the owner is not a contractor required to be licensed under this chapter.

27 (11) A commercial lending institution or surety company that arranges for the completion, repair
28 or remodeling of a structure. As used in this subsection, "commercial lending institution" means
29 any bank, mortgage banking company, trust company, savings bank, savings and loan association,
30 credit union, national banking association, federal savings and loan association, insurance company
31 or federal credit union maintaining an office in this state.

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

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

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

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

40 **SECTION 22. (1) Section 5 of this 2005 Act applies only if the third or a subsequent claim**
41 **against the landscaping business's bond, letter of credit or deposit within a 12-month period**
42 **is filed on or after the effective date of this 2005 Act.**

43 **(2) The amendments to ORS 671.610 by section 14 of this 2005 Act apply only to acts or**
44 **failures by a landscape contractor or landscaping business that occur or continue on or after**
45 **the effective date of this 2005 Act. For purposes of applying this subsection to ORS 671.610**

1 (1)(q), an act or failure means the basis for the conviction.

2 (3) The amendments to ORS 671.710 by section 19 of this 2005 Act apply to all claims paid
3 on or after the effective date of this 2005 Act.

4
