

House Bill 2391

Sponsored by COMMITTEE ON ELECTIONS AND RULES (at the request of Oregon Landscape Contractors Association)

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**.

Creates licensing system for landscape maintenance businesses and landscape maintenance contractors. Prohibits unlicensed landscape maintenance contractor and landscape maintenance business activity after July 1, 2006. Makes violation subject to maximum penalty of one year's imprisonment, \$6,250 fine, or both. Provides exception. Makes violators subject to civil penalty not exceeding \$2,000. Makes violation of restrictions involving independent contractors subject to progressive schedule of sanctions.

Expands definition of landscape contractor.

Clarifies misdemeanor classification for unlicensed landscaping activity. Changes reference to violations for which board may seek injunction.

A BILL FOR AN ACT

1
2 Relating to State Landscape Contractors Board; creating new provisions; and amending ORS 671.321,
3 671.520, 671.525, 671.530, 671.540, 671.550, 671.555, 671.565, 671.570, 671.575, 671.580, 671.590,
4 671.603, 671.610, 671.613, 671.625, 671.650, 671.660, 671.690, 671.700, 671.703, 671.707, 671.710,
5 671.955, 671.990 and 701.005.

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

7 **SECTION 1. Sections 2 to 4 of this 2005 Act are added to and made a part of ORS 671.510**
8 **to 671.710.**

9 **SECTION 2. (1) Except as provided in subsection (3) of this section, a person may not**
10 **operate as a landscape maintenance contractor unless the person has a valid landscape**
11 **maintenance contractor license issued under section 3 of this 2005 Act.**

12 **(2) Except as provided in subsection (3) of this section, a person may not represent in**
13 **any manner that the person is a landscape maintenance contractor unless the person has a**
14 **valid landscape maintenance contractor license issued under section 3 of this 2005 Act. The**
15 **prohibition in this subsection includes, but is not limited to:**

16 **(a) Using the title of landscape maintenance contractor or any other title that indicates**
17 **or tends to indicate that the person is a landscape maintenance contractor; and**

18 **(b) Using any sign, card or device that indicates or tends to indicate that the person is**
19 **a landscape maintenance contractor.**

20 **(3) A landscape contractor licensed under ORS 671.560 may perform any work that could**
21 **be performed by a landscape maintenance contractor. The landscape contractor may repre-**
22 **sent that the contractor provides landscape maintenance services.**

23 **(4) Except as provided in subsection (6) of this section, a person may not operate as a**
24 **landscape maintenance business in this state unless the person has a valid landscape main-**
25 **tenance business license issued under section 4 of this 2005 Act.**

26 **(5) Except as provided in subsection (6) of this section, a person may not advertise or**
27 **represent in any manner that the person is a landscape maintenance business unless the**

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 person has a valid landscape maintenance business license issued under section 4 of this 2005
 2 Act. The prohibition in this subsection includes, but is not limited to:

3 (a) Using the title of landscape maintenance business or landscaping maintenance busi-
 4 ness or any other title that indicates or tends to indicate that the person is a landscape
 5 maintenance business; and

6 (b) Using any sign, card or device that indicates or tends to indicate that the person is
 7 a landscape maintenance business.

8 (6) A landscaping business licensed under ORS 671.560 may engage in any activity that a
 9 landscape maintenance business may engage in. The landscaping business may advertise or
 10 otherwise represent that the business provides landscape maintenance services.

11 **SECTION 3.** (1) To obtain a license as a landscape maintenance contractor, except as
 12 provided in ORS 671.590, a person must pass an examination administered by the State
 13 Landscape Contractors Board, pay the required fees and meet experience or training re-
 14 quirements as established by the board by rule.

15 (2) A person renewing a landscape maintenance contractor license and engaged in per-
 16 forming landscape maintenance work must submit the name of the person's employer.

17 (3) A landscape maintenance contractor is authorized to perform landscaping work only
 18 while in the employ of a landscape maintenance business licensed and bonded as required by
 19 ORS 671.510 to 671.710. If the landscape maintenance contractor is the sole proprietor, the
 20 contractor must also obtain a license as a landscape maintenance business.

21 **SECTION 4.** (1) The State Landscape Contractors Board shall issue a landscape mainte-
 22 nance business license to an applicant who complies with this section and satisfies the re-
 23 quirements established by the board by rule.

24 (2) An applicant for a license under this section shall:

25 (a) Apply to the board upon a form furnished by the board.

26 (b) Provide any information the board considers necessary.

27 (c) Pay to the board the fees required by ORS 671.570 and 671.650.

28 (d) Employ at least one person with a landscape maintenance contractor license to su-
 29 pervise the landscape maintenance operation of the business.

30 (e) File with the board the surety bond required under ORS 671.690.

31 (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as
 32 an independent contractor.

33 (g) If renewing a license, submit the names of all employees who are licensed landscape
 34 maintenance contractors.

35 (3) A landscape maintenance business shall, throughout the license period, have in effect
 36 public liability, personal injury and property damage insurance covering the work of the
 37 landscape maintenance business that is subject to ORS 671.510 to 671.710 for an amount not
 38 less than \$100,000. The landscape maintenance business shall provide satisfactory evidence
 39 to the board at the time of application and renewal that the insurance required by this sec-
 40 tion has been procured and is in effect.

41 (4) A landscape maintenance business may use a form of the word "landscape" in the title
 42 of the business only if the title clearly indicates the maintenance nature of the business. For
 43 purposes of this subsection, the term "landscape gardening" does not indicate the mainte-
 44 nance nature of a landscape maintenance business.

45 **SECTION 5.** ORS 671.321 is amended to read:

1 671.321. (1) ORS 671.310 to 671.459, 671.950 and 671.992 do not restrict or otherwise affect the
 2 right of any person to:

3 (a) Practice architecture under ORS 671.010 to 671.220;

4 (b) Practice engineering under ORS 672.002 to 672.325;

5 (c) Engage in the occupation of growing and marketing nursery stock, or use the title
 6 “nurseryman” or “landscape nurseryman”;

7 (d) Operate as a landscape contractor, [or] landscaping business, **landscape maintenance**
 8 **contractor or landscape maintenance business** under ORS 671.510 to 671.710 or use the title
 9 “landscape contractor” or **“landscape maintenance contractor”**;

10 (e) Perform work described under ORS 671.540;

11 (f) Engage in making plans or drawings for the selection, placement or use of plants or other
 12 site features unless the plans or drawings are for the purpose of providing construction details and
 13 specifications not otherwise exempted;

14 (g) Use the title “landscape designer” in connection with activities described under paragraph
 15 (f) of this subsection;

16 (h) Make any plans, drawings or specifications for property owned by that person; or

17 (i) Provide recommendations or written specifications for soil amendments or planting mediums
 18 if the recommendations or specifications are solely for purposes of plant installation and do not
 19 significantly alter the stability of the soil profile or surface drainage patterns.

20 (2) The scope of services described in ORS 671.310 (5) and (6) does not preclude a registered
 21 landscape architect from:

22 (a) Planning the development of land areas and elements used on land areas; or

23 (b) Performing services described in ORS 671.310 (5) and (6) in connection with the settings,
 24 approaches or environment for buildings, structures or facilities in accordance with legally estab-
 25 lished standards for public health, safety and welfare.

26 (3) ORS 671.310 to 671.459, 671.950 and 671.992 do not apply to:

27 (a) The preparation of detailed or shop drawings that a construction contractor is required to
 28 furnish or the administration of construction contracts by a person customarily engaged in con-
 29 tracting work.

30 (b) The preparation of technical submissions or the administration of construction contracts by
 31 employees of a landscape architect or a landscape architecture business when acting under the di-
 32 rect supervision of a registered landscape architect.

33 (c) Employees of the federal government acting within the scope of that employment.

34 **SECTION 6.** ORS 671.520 is amended to read:

35 671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

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

37 [(2)] (1) “Landscape contractor” means any person who for compensation or with the intent to
 38 be compensated [*arranges, undertakes, offers or contracts to undertake, or submits a bid to perform*]
 39 **performs or supervises** activities requiring the art, ability, experience, knowledge, science and
 40 skill to:

41 (a) Plan and install lawns, shrubs, vines, trees and other decorative vegetation including the
 42 preparation of property on which the vegetation is to be installed, and the construction of
 43 ornamental water features and drainage and irrigation systems for decorative vegetation;

44 (b) **Transplant lawns, shrubs, vines, trees or other decorative vegetation; or**

45 [(b)] (c) Plan and install fences, decks, arbors, driveways, walkways and retaining walls.[: or]

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

3 (2) **“Landscape maintenance business” means a business that offers or provides, for**
 4 **compensation or with the intent to be compensated, the services of a landscape maintenance**
 5 **contractor.**

6 (3) **“Landscape maintenance contractor” means a person who for compensation or with**
 7 **the intent to be compensated performs or supervises activities for the upkeep, preservation**
 8 **or renewal of existing shrubs, trees or bedding areas or of pathways of loose material.**

9 [(3)] (4) “Landscaping business” means any business that offers or provides, for compensation
 10 or with the intent to be compensated, the services of a landscape contractor.

11 [(4)] (5) “Licensee” means a person [*or business who*] **that** is licensed under ORS 671.510 to
 12 671.710 as a landscape contractor, **landscaping business, landscape maintenance contractor or**
 13 **landscape maintenance business.**

14 [(5)] (6) “Nursery stock” means nursery stock as defined by ORS 571.005 and as further defined
 15 by the **State Landscape Contractors** Board after public hearing.

16 [(6)] (7) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and
 17 other decorative water-related constructions as identified by board rule.

18 **SECTION 7.** ORS 671.525 is amended to read:

19 671.525. (1) An applicant for a landscaping business license **or landscape maintenance busi-**
 20 **ness license** must qualify as an independent contractor, under ORS 670.600, to be licensed with the
 21 State Landscape Contractors Board.

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

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

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

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

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

33 (3) If a licensee who qualifies for registration under subsection (2)(b) of this section hires one
 34 or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section,
 35 the licensee is subject to penalties under ORS 671.955 and must reapply to the board for registration
 36 in the correct class.

37 (4) The decision of the board that a licensee is an independent contractor applies only when the
 38 licensee is performing [*work of the nature described in ORS 671.520 and 671.530*] **landscaping or**
 39 **landscape maintenance work.**

40 **SECTION 8.** ORS 671.530 is amended to read:

41 671.530. (1) A person may not operate as a landscape contractor in this state without a valid
 42 landscape contractor’s license issued [*pursuant to*] **under** ORS 671.560.

43 (2) A person may not represent in any manner that the person is a landscape contractor unless
 44 the person has a valid landscape contractor’s license issued [*pursuant to*] **under** ORS 671.560. The
 45 prohibition in this subsection includes, but is not limited to:

1 (a) Using the title of landscape contractor, landscape gardener or landscaper or any other title
 2 using a form of the word “landscape” **that indicates or tends to indicate that the person is a**
 3 **landscape contractor**; and

4 (b) Using any [title,] sign, card or device that indicates or tends to indicate that the person is
 5 a landscape contractor.

6 (3) A person may not operate as a landscaping business in this state unless the person has a
 7 valid landscaping business license issued [pursuant to] **under** ORS 671.560.

8 (4) A person may not advertise or represent in any manner that the person is a landscape
 9 business unless the person has a valid landscaping business license issued [pursuant to] **under** ORS
 10 671.560. The prohibition in this subsection includes, but is not limited to:

11 (a) Using the title of landscape business or landscaping business **or any other title that indi-**
 12 **cates or tends to indicate that the person is a landscaping business**; and

13 (b) Using any [title,] sign, card or device that indicates or tends to indicate that the person is
 14 a landscaping business.

15 *[(5) A landscape maintenance business may use a form of the word “landscape” in the title of the*
 16 *business only if the title clearly indicates the maintenance nature of the business. For purposes of this*
 17 *subsection, the term “landscape gardening” does not indicate the maintenance nature of a landscape*
 18 *maintenance business.]*

19 [(6)] (5) A landscape contractor is authorized to perform landscaping work only while in the
 20 employ of a landscaping business licensed and bonded as required by ORS 671.510 to 671.710. If the
 21 landscape contractor is the sole proprietor, the contractor must also obtain a license as a land-
 22 scaping business.

23 **SECTION 9.** ORS 671.540 is amended to read:

24 671.540. [(1)] ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

25 [(a)] (1) Any federal or state agency or any political subdivision performing landscaping **or**
 26 **landscape maintenance** on public property.

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

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

30 [(A)] (a) The work is performed for a customer that in a calendar year receives primarily land-
 31 scape maintenance services from the business;

32 [(B)] (b) The **contract amount or actual** value of all labor, materials or other items supplied
 33 for landscaping work [at a] **on each** job site does not exceed \$500 in a calendar year; and

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

36 (4) **Landscape maintenance work if:**

37 (a) **The contract amount or actual value of all labor, materials or other items supplied**
 38 **for landscape maintenance work on each job site does not exceed \$500 in a calendar year; and**

39 (b) **The landscape maintenance work is of a casual, minor or inconsequential nature, as**
 40 **those terms are defined by the board by rule.**

41 [(d)] (5) Installation of fences, decks, arbors, driveways, walkways or retaining walls when per-
 42 formed by a person or business licensed with the Construction Contractors Board.

43 [(e)] (6) Grading of plots and areas of land performed in conjunction with new or remodeling
 44 construction when performed by a person or business licensed with the Construction Contractors
 45 Board.

1 [(f)] (7) Any owner of property who contracts for landscaping work to be performed by a person
 2 licensed under ORS 671.560 **or for landscape maintenance work to be performed by a person**
 3 **licensed under sections 3 or 4 of this 2005 Act.** This [paragraph] **subsection** does not apply to
 4 a person who, in pursuit of an independent business, performs or contracts for the performance of
 5 landscaping **or landscape maintenance** work with the intent of offering for sale before, upon or
 6 after completion of the landscaping **or landscape maintenance** work, the property upon which the
 7 [landscaping] work is performed.

8 [(g)] (8) Any landscaping work **or landscape maintenance work** performed by a person on
 9 property that the person owns or in which the person has a legal interest. This [paragraph] **sub-**
 10 **section** does not apply to a person who, in pursuit of an independent business, performs or contracts
 11 for the performance of landscaping **or landscape maintenance** work with the intent of offering for
 12 sale before, upon or after completion of the landscaping **or landscape maintenance** work, the
 13 property on which the [landscaping] work is performed.

14 [(h)] (9) A general contractor licensed under ORS chapter 701 who performs landscaping **work**
 15 **or landscape maintenance** work if the total value [of the] **for all** landscaping **work and landscape**
 16 **maintenance work performed by the contractor** is less than \$2,500 per residential dwelling and
 17 the landscaping **work or landscape maintenance** work is performed on residential property for
 18 which the contractor is under contract for the construction of a new dwelling. The State Landscape
 19 Contractors Board shall revise the amount specified in this [paragraph] **subsection** every five years,
 20 beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index **for All**
 21 **Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United**
 22 **States Department of Labor.** This [paragraph] **subsection** does not apply to a general contractor
 23 performing irrigation work unless the work is performed pursuant to a permit issued by the local
 24 building official.

25 [(i)] (10) A general contractor licensed under ORS chapter 701 who performs landscaping **work**
 26 **or landscape maintenance** work on residential property that is directly related to local building
 27 code requirements or occupancy ordinances including, but not limited to, **landscaping work in-**
 28 **volving** the placement of street trees. This [paragraph] **subsection** does not apply to a general
 29 contractor performing irrigation work unless the work is performed pursuant to a permit issued by
 30 the local building official.

31 [(j)] (11) A person engaged in making conceptual plans or drawings for the selection, general
 32 placement or use of plants or other site features, unless the plans or drawings are for sites:

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

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

39 [(k)] (12) A person, other than a licensed landscape contractor, using the title “landscape de-
 40 signer” in connection with making conceptual plans or drawings for the selection, general placement
 41 or use of plants or other site features, provided the person clearly notes on all contracts for ser-
 42 vices, plans and drawings that the implementation of, or consultation about the implementation of,
 43 the plans or drawings may require the services of a professional authorized by law to perform the
 44 implementation or offer the consultation.

45 [(2) As used in this section, “Portland-Salem, OR-WA Consumer Price Index” means the

1 *Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published*
2 *by the Bureau of Labor Statistics of the United States Department of Labor.*]

3 **SECTION 10.** ORS 671.550 is amended to read:

4 671.550. (1) The State Landscape Contractors Board may inquire into and inspect:

5 (a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.710.

6 (b) The financial records of a person [*who it*] **the board** reasonably believes is operating in vi-
7 olation of ORS 671.530 **or section 3 of this 2005 Act**.

8 (c) The services performed or materials furnished by a person [*who it*] **the board** reasonably
9 believes is operating in violation of ORS 671.530 **or section 3 of this 2005 Act**.

10 (2) Except when used for legal action or to determine negligent or improper work under ORS
11 671.703, the information obtained by an inspection authorized by this section is confidential. How-
12 ever, the board shall furnish copies of any inspection to the licensee or other person that is sub-
13 jected to an inspection.

14 **SECTION 11.** ORS 671.555 is amended to read:

15 671.555. (1) The State Landscape Contractors Board may investigate the activities of any person
16 engaged in [*the*] **a landscaping business or landscape maintenance** business to determine compli-
17 ance with ORS 671.510 to 671.710.

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

21 (3) Any inspector authorized by the board to determine compliance with the provisions of ORS
22 671.510 to 671.710 is authorized to require any person who is engaged in any activity regulated by
23 ORS 671.510 to 671.710 to demonstrate proof of compliance with the [*registration*] **licensing** re-
24 quirements of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the
25 property does not demonstrate proof of compliance with the [*license*] **licensing** requirements of ORS
26 671.510 to 671.710, the inspector shall give notice of noncompliance to the person. The notice of
27 noncompliance shall be in writing, shall specifically state that the person is not in compliance with
28 the [*registration*] **licensing** requirements of ORS 671.510 to 671.710 and shall provide that unless the
29 person demonstrates proof of compliance within two days of the date of the notice, the inspector
30 may by order stop all work then being done by the person. The notice of noncompliance shall be
31 served upon the person and shall be served upon or delivered to the owner of each property upon
32 which the person is then performing work under contract. If more than one person is the owner of
33 [*any such*] **a** property, a copy of the notice need be given to only one of [*such*] **those** persons. If after
34 receipt of the notice of noncompliance the person fails within the two-day period specified in the
35 notice to demonstrate proof of compliance with the [*registration*] **licensing** requirements of ORS
36 671.510 to 671.710, the inspector is authorized to order the work stopped by notice in writing served
37 on any persons engaged in the activity. Any person so notified shall stop [*such*] work **that is the**
38 **subject of the notice** until proof of compliance is demonstrated. However, the inspector may not
39 order the work stopped until at least two days after the copies of the notice of noncompliance have
40 been served upon or delivered to the owners.

41 (4) Notwithstanding subsection (3) of this section, the board may order work stopped imme-
42 diately if the landscape contractor **or landscape maintenance contractor** working on a worksite
43 has never [*registered with*] **been licensed by** the board or if the contractor cannot demonstrate that
44 the contractor has [*been registered*] **held a valid license** at any time within the two years imme-
45 diately preceding work on the worksite.

1 (5) The board has the power to administer oaths, issue notices and subpoenas in the name of the
 2 board, compel the attendance of witnesses and the production of evidence, hold hearings and per-
 3 form [such] other acts [as are] reasonably necessary to carry out [its] duties **of the board** under
 4 ORS 671.510 to 671.710.

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

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

9 671.565. Each person applying for a landscaping business license shall pay to the State Land-
 10 scape Contractors Board the fees required by ORS 671.570 and 671.650 and:

11 (1) Employ at least one person with a landscape contractor's license to supervise the landscap-
 12 ing operation of the business and shall submit the names of all employees who are licensed **land-**
 13 **scape** contractors.

14 (2) File with the board the surety bond required [pursuant to] **under** ORS 671.690.

15 (3) Throughout the license period, have in effect public liability, personal injury and property
 16 damage insurance covering the work of that landscaping business [which] **that** is subject to ORS
 17 671.510 to 671.710 for an amount not less than \$100,000. The landscaping business shall provide
 18 satisfactory evidence to the board at the time of application and renewal that the insurance required
 19 by this section has been procured and is in effect.

20 (4) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an
 21 independent contractor.

22 **(5) Submit the names of all employees who are licensed landscape contractors.**

23 **SECTION 13.** ORS 671.570 is amended to read:

24 671.570. Each person applying for a landscape contractor's license shall pay to the State Land-
 25 scape Contractors Board the fee required by ORS 671.650 and:

26 (1) Pass an examination, which shall be offered at least once each six months by the board to
 27 determine the fitness of the applicant for licensing and have:

28 (a) Within 10 years before the day the application for a license is made, at least:

29 (A) Twenty-four months of employment with a landscape contractor; or

30 (B) Twelve months of employment with a landscape contractor and one full year of training in
 31 an area related to landscaping at an accredited school or college; or

32 (b) Proven to the satisfaction of the board by test and experience that the applicant is qualified.

33 (2) Be employed by a landscaping business if performing landscaping work.

34 (3) Pay a nonrefundable examination fee.

35 **(4) Submit the name of the employer if the person is currently performing landscaping**
 36 **work.**

37 **SECTION 14.** ORS 671.575 is amended to read:

38 671.575. (1) A landscaping **business or landscape maintenance** business may not file a lien, file
 39 a claim with the State Landscape Contractors Board or bring or maintain in any court of this state
 40 a suit or action for compensation for the performance of any work or for the breach of any contract
 41 for work [which] **that** is subject to ORS 671.510 to 671.710 and 671.955, unless the [landscaping]
 42 business was:

43 (a) Licensed **to perform the work** under ORS 671.510 to 671.710 and 671.955 at the time the
 44 [landscaping] business bid or entered into the contract for performance of the work; and

45 (b) Licensed continuously while performing the work for which compensation is sought.

1 (2) If the court determines that the landscaping **business or landscape maintenance** business
 2 was not aware of the requirement that the [*contractor be registered*] **business be licensed**, a court
 3 may choose not to apply subsection (1) of this section if the court finds that to do so would result
 4 in a substantial injustice to the unlicensed [*landscaping*] business.

5 (3) If a landscaping **business or landscape maintenance** business falsely swears to information
 6 provided [*under ORS 671.560 or 671.565*] **in an application for licensure by the board** or know-
 7 ingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565 **or section 4 of this 2005**
 8 **Act**, the [*landscaping*] business may not file a lien, file a claim with the State Landscape Contractors
 9 Board or bring or maintain in any court of this state a suit or action for compensation for the per-
 10 formance of any work or for the breach of any contract for work [*which*] **that** is subject to ORS
 11 671.510 to 671.710 and 671.955.

12 **SECTION 15.** ORS 671.580 is amended to read:

13 671.580. A landscape [*contractor's*] **contractor** license issued [*pursuant to*] **under** ORS 671.560
 14 **or a landscape maintenance contractor license issued under section 3 of this 2005 Act** is a
 15 personal privilege and is not transferable.

16 **SECTION 16.** ORS 671.590 is amended to read:

17 671.590. The State Landscape Contractors Board may license without examination any person
 18 who is a landscape contractor **or landscape maintenance contractor** licensed, certified or regis-
 19 tered under the laws of another state, territory of the United States, the District of Columbia or
 20 another country where the requirements on the date the applicant was licensed, certified or regis-
 21 tered were substantially equal to the requirements for [*licensing of landscape contractors*] **obtaining**
 22 **an equivalent license** in this state on the date of application by the person.

23 **SECTION 17.** ORS 671.603 is amended to read:

24 671.603. (1) A landscape contractor, **landscape maintenance contractor** or a person operating
 25 as a landscaping business **or landscape maintenance business** shall notify the State Landscape
 26 Contractors Board of a change of address for the contractor or business that occurs while the con-
 27 tractor or business is licensed by the board or within one year after a license becomes inactive.
 28 The landscape contractor [*or*], **landscape maintenance contractor or person operating as a**
 29 landscaping business **or landscape maintenance business** shall ensure that the board receives
 30 notice of the change of address no later than the 10th day after the change of address occurs.

31 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-
 32 dress of record for a landscape contractor [*or*], **landscape maintenance contractor**, landscaping
 33 business **or landscape maintenance business** is considered delivered to the contractor or business
 34 when deposited in the United States mail and sent registered, certified or post office receipt secured.
 35 Any other communication directed by the board to the last-known address of record for a landscape
 36 contractor [*or*], **landscape maintenance contractor**, landscaping business **or landscape mainte-**
 37 **nance business** is considered delivered to the contractor or business when deposited in the United
 38 States mail, regular mail.

39 **SECTION 18.** ORS 671.610 is amended to read:

40 671.610. (1) In addition to any civil penalty assessed under ORS 671.955, the State Landscape
 41 Contractors Board may suspend, revoke or refuse to issue or renew the license of any person that:

42 (a) Has obtained or attempted to obtain a license under ORS 671.510 to 671.710 by fraud or
 43 material misrepresentation;

44 (b) Has made a material misrepresentation about the quality of any material or service the
 45 person provides;

- 1 (c) Has performed defective work;
- 2 (d) Has furnished defective materials;
- 3 (e) Has made misleading statements when advertising services or materials;
- 4 (f) Has violated a provision of ORS 671.510 to 671.710;
- 5 (g) Has had the bond or deposit required by ORS 671.690 terminated, canceled or reduced or
6 withdrawn; or
- 7 (h) Has violated a voluntary compliance agreement entered into under ORS 646.605 to 646.652.
- 8 (2) The board may suspend the license of or refuse to license a person if the person, or the
9 owner or holder of a direct or indirect interest in the person, is a business or the owner or holder
10 of a direct 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,
13 **landscape maintenance** or construction business activities in this or any other state of the United
14 States;
- 15 (c) Owes any amount to a surety company that has paid money from the surety bond of a land-
16 scaping business **or landscape maintenance business**; or
- 17 (d) Has had a license to operate as a landscaping business **or landscape maintenance business**
18 revoked by [*the landscape contractor licensing agency of*] any state.
- 19 (3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest
20 for purposes of subsection (2) of this section.
- 21 (4) The board may hold the suspension or refusal of a license under subsection (2) of this section
22 in abeyance if the person is adhering to a board-approved plan for restitution of the amount owed.
- 23 (5) An individual who has been a sole proprietor, partner, limited liability company member,
24 limited liability partnership member or corporate officer of a landscaping **business or landscape**
25 **maintenance** business the license of which has been suspended or revoked may be denied a license
26 if the individual knowingly participated in the conduct that led to the suspension or revocation.
- 27 (6) A person whose license is revoked or not renewed [*pursuant to*] **under** this section is not
28 eligible to apply for a license under ORS 671.510 to 671.710 until two years after the effective date
29 of the revocation or of the nonrenewal.
- 30 (7) In addition to the remedies of license denial, suspension, revocation or refusal to renew a
31 license, [*when*] **if** it appears to the board that a person has engaged in, or is engaging in, any act,
32 practice or transaction that violates [*the provisions of this chapter*] **ORS 671.510 to 671.710**, the
33 board may direct the Attorney General to apply to the court for an injunction restraining the person
34 from violating [*the provisions of this chapter*] **ORS 671.510 to 671.710**.
- 35 (8)[*(a)*] The board may suspend, revoke or refuse to reissue a license to a [*landscape contractor*]
36 **landscaping business or landscape maintenance business** if the board determines, after notice
37 and opportunity for a hearing, that the [*contractor*] **business** was working with another [*landscape*
38 *contractor or landscape contractors*] **landscaping business or landscape maintenance business** on
39 the same task and work site where one of the [*contractors*] **landscaping or landscape maintenance**
40 **businesses** is registered exempt under ORS 671.525 (2)(b) and the total number of [*landscape con-*
41 *tractors*] **landscaping or landscape maintenance businesses** working on the task exceeded:
- 42 [(A)] (a) Two sole proprietors;
- 43 [(B)] (b) One partnership;
- 44 [(C)] (c) One corporation; or
- 45 [(D)] (d) One limited liability company.

1 [(b)] (9) The board may assess a civil penalty as provided under ORS 671.955 (4) for a violation
 2 of [paragraph (a) of this subsection] **subsection (8) of this section.**

3 **SECTION 19.** ORS 671.613, as amended by section 315, chapter 794, Oregon Laws 2003, is
 4 amended to read:

5 671.613. (1) The failure of a landscaping business **or landscape maintenance business** to com-
 6 ply with [the provisions of this section and] ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600,
 7 [671.520,] 671.525[,] **and** 671.530 [and 671.575] or to be in conformance with the provisions of ORS
 8 chapter 279, 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension [of the landscaping
 9 business license, revocation of the landscaping business license], **revocation or** refusal to issue or
 10 reissue a landscaping business **or landscape maintenance business** license, assessment of a civil
 11 penalty as set forth in ORS 671.955 or a combination of these sanctions.

12 (2) Any action against a landscaping business **or landscape maintenance business** under this
 13 section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

14 **SECTION 20.** ORS 671.625 is amended to read:

15 671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for
 16 written contracts and billings of [the] landscaping businesses **and landscape maintenance busi-**
 17 **nesses.** The standards shall set forth requirements for information that [must be contained in] con-
 18 tracts and billings **must contain.** The information required shall be any information the board
 19 determines is necessary to provide protection for consumers of the services and materials provided
 20 by landscaping businesses **and landscape maintenance businesses.**

21 (2) Work by a landscaping **business or landscape maintenance** business subject to ORS
 22 671.510 to 671.710 shall only be performed subject to a written contract. Any contract or billing for
 23 [such] work must conform to the standards adopted under subsection (1) of this section.

24 (3) A contract that does not substantially comply with this section may not be enforced by a
 25 landscaping business **or landscape maintenance business** in any court or other proceedings within
 26 this state.

27 **SECTION 21.** ORS 671.650 is amended to read:

28 671.650. (1) The State Landscape Contractors Board shall establish fees, including but not lim-
 29 ited to annual [landscape contractor's] **contractor** license fees and annual [landscaping] business li-
 30 cense fees.

31 (2) The license fee [for] **that the board charges** an out-of-state [landscaping] business operating
 32 in Oregon must be the same as [for] **the license fee that the board charges** an Oregon [land-
 33 scaping] business.

34 **SECTION 22.** ORS 671.660 is amended to read:

35 671.660. (1) The fee for renewal of a license issued under ORS 671.510 to 671.710 shall be paid
 36 annually on or before the last day of the month of the anniversary of issuance.

37 (2) A person who has been previously licensed under ORS 671.510 to 671.710 and whose license
 38 has expired shall not be issued another license except upon written application to the State Land-
 39 scape Contractors Board with the required annual fee. The board may require the person to also
 40 pay a penalty fee.

41 (3) If a license lapses for two years or more, the individual or business must reapply as for ini-
 42 tial issuance of the license.

43 [(4) When a business renews its license the business must submit the names of all employees who
 44 are licensed landscape contractors.]

45 [(5) When a person renews a landscape contractor's license, the person must submit the name of

1 *the employer if the person is currently performing landscaping work.]*

2 **SECTION 23.** ORS 671.690 is amended to read:

3 671.690. (1) An applicant for a license as a landscaping business **or landscape maintenance**
 4 **business** shall file with the State Landscape Contractors Board a surety bond with one or more
 5 corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued
 6 by an insured institution, as defined in ORS 706.008. The amount of the bond or letter of credit shall
 7 be:

8 (a) \$3,000; or

9 (b) \$10,000 for an applicant who constructs fences, decks, arbors, driveways, walkways or re-
 10 taining walls not in conjunction with landscaping work.

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

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

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

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

17 (d) All amounts from the bond or deposit the board orders paid under ORS 671.703.

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

22 (4) The deposit, bond or letter of credit required by this section must be continuously on file
 23 with the board in the amount required by this section and is for the exclusive purpose of payment
 24 of final orders and arbitration awards of the board in accordance with ORS 671.703. Upon termi-
 25 nation or cancellation of the bond, withdrawal of the deposit or reduction of the deposit, bond or
 26 letter of credit to less than the required amount, the licensee shall immediately:

27 (a) File a replacement deposit, bond or letter of credit; or

28 (b) Surrender the license to the board and cease operating as a landscaping business **or land-**
 29 **scape maintenance business.**

30 (5) *[The]* **A** landscaping business **or landscape maintenance business** is responsible for all
 31 *[landscaping and other]* work performed **by a contractor on behalf of the business.**

32 **SECTION 24.** ORS 671.700 is amended to read:

33 671.700. A person having a claim against a landscaping business **or landscape maintenance**
 34 **business** shall give the State Landscape Contractors Board notice of the claim in writing 90 days
 35 before any action on the bond or deposit is commenced.

36 **SECTION 25.** ORS 671.703 is amended to read:

37 671.703. (1) If a person has a claim against a licensed landscaping business **or landscape**
 38 **maintenance business** for negligent or improper work performed by the *[landscaping]* business, or
 39 for alleged breach of contract by the *[landscaping]* business, the person may file the claim with the
 40 State Landscape Contractors Board.

41 (2) Upon receipt of a claim that qualifies under subsection (1) of this section, the board shall
 42 initiate an investigation. Upon completion of the investigation, if the board determines that facts
 43 exist supporting an order for payment, the board may order the *[landscaping]* business to pay the
 44 claim. A party to the claim may request a hearing on the order issued by the board.

45 (3) Subject to subsection (6) of this section, if the resolution of a claim under this section re-

1 quires a hearing, the board may require that the hearing be conducted as a binding arbitration un-
 2 der rules adopted by the board under subsection (5) of this section.

3 (4) The board may use arbitration to resolve a landscaping **or landscape maintenance** dispute
 4 between any parties who agree to follow the rules of the board, including parties to a dispute not
 5 described under subsection (1) of this section.

6 (5) Except as provided in this subsection, rules adopted by the board to regulate arbitration
 7 under subsections (3) and (4) of this section must substantially conform with the provisions of ORS
 8 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740.
 9 The rules may:

10 (a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a
 11 petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

12 (b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510
 13 to 671.710;

14 (c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be
 15 submitted in a form specified by the rule;

16 (d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time
 17 than provided by ORS 36.705 and 36.710; and

18 (e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.710.

19 (6) A party to a claim that is subject to a board order of binding arbitration under subsection
 20 (3) of this section may avoid the arbitration if the party requests to have the claim resolved through
 21 a contested case hearing or files a complaint in a court. A party making a request or filing a
 22 complaint under this subsection is subject to the following provisions:

23 (a) If the party requests to have a claim resolved through a contested case hearing, the party
 24 must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to
 25 the board and to all parties entitled by board rule to receive a copy of the request.

26 (b) If the party files a complaint in a court, the party must, within the time specified in para-
 27 graph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled
 28 by the board rule to receive a copy of the complaint. If the party filing the complaint is the claim-
 29 ant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed
 30 by the [*licensed landscaping*] business against [*whom*] **which** a claim is alleged, the complaint may
 31 be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the
 32 claimant to file a response alleging the elements of the claim. The claimant has the burden of
 33 proving the elements of the claim in any action described in this paragraph.

34 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
 35 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
 36 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
 37 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
 38 tration.

39 (d) If a party makes a timely request under paragraph (a) of this subsection for a contested case
 40 hearing and another party timely files a complaint in compliance with paragraph (b) of this sub-
 41 section, the filing of the complaint supersedes the request for a contested case hearing.

42 (e) A party may not withdraw a request made in compliance with paragraph (a) of this sub-
 43 section unless all parties agree to the withdrawal.

44 (f) The provisions of paragraph (b) of this subsection are in addition to any other requirements
 45 imposed by law regarding the filing of a complaint.

1 (7) An arbitration conducted under subsection (3) or (4) of this section must be held before an
 2 administrative law judge acting as arbitrator. The administrative law judge assigned to act as
 3 arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings
 4 established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator
 5 is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to
 6 ORS 183.645.

7 (8) If a party to a claim under subsection (1) of this section requests a contested case hearing,
 8 the board shall schedule the hearing. If a party requests that the claim be resolved by a court, the
 9 board shall suspend further processing of the claim until the claim is resolved by an appropriate
 10 court.

11 (9) If the claim is submitted for determination by a court, the board may require that the
 12 claimant provide status reports on the pending action. The board may dismiss or close a claim filed
 13 under subsection (1) of this section as established by rule of the board if the claimant fails to submit
 14 status reports on a pending action.

15 (10) The board shall issue a final order or arbitration award in a form that indicates the maxi-
 16 mum amount payable from the deposit, bond or letter of credit. If the landscaping business **or**
 17 **landscape maintenance business** does not pay the claim on or before the 30th day after receiving
 18 the board order or award, the board shall [*order*] **issue an order for** the claim paid out of the de-
 19 posit, bond or letter of credit filed under ORS 671.690.

20 (11) The board may dismiss or close a claim as established by rule of the board if:

21 (a) The claimant does not permit the [*person*] **business** against [*whom*] **which** the claim is filed
 22 to be present at any inspection made by the board; or

23 (b) The board determines that the [*person*] **business** against [*whom*] **which** the claim is filed is
 24 capable of complying with recommendations made by the board relative to the claim, but the
 25 claimant does not permit the [*person*] **business** to comply with the recommendations. The board may
 26 dismiss or close a claim under this paragraph only if the [*person*] **business** was licensed at the time
 27 the work was first performed and is licensed at the time the board makes its recommendations.

28 (12) The board may suspend processing a claim if the board determines that the nature or
 29 complexity of the claim is such that a court is the appropriate forum for the adjudication of the
 30 claim.

31 **SECTION 26.** ORS 671.707 is amended to read:

32 671.707. (1) If a final order of the State Landscape Contractors Board is not paid by the [*regis-*
 33 *trant*] **licensee**, the board shall notify the surety on the [*registrant's*] **licensee's** bond.

34 (2) An order of the board that determines a claim under ORS 671.703 that becomes final by op-
 35 eration of law or on appeal and remains unpaid for 20 days after the order becomes final is an order
 36 in favor of the claimant against the [*registrant*] **licensee** and may be recorded with the county clerk
 37 in any county of this state.

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

42 **SECTION 27.** ORS 671.710 is amended to read:

43 671.710. [(1) *Determinations by the State Landscape Contractors Board or judgments against the*
 44 *surety bond or deposit of a landscape contractor shall be satisfied in the priority listed in paragraphs*
 45 *(a) to (d) of this subsection in any 90-day period. A 90-day period shall begin on the date the first claim*

1 *is filed with the board. A subsequent 90-day period shall begin on the date the first claim is filed with*
 2 *the board after the close of each preceding 90-day period. Within a 90-day period.:*

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

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

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

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

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

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

29 **(4) If the total of all claims against a landscaping business or landscape maintenance**
 30 **business within a 90-day period exceeds the amount of the bond, letter of credit or deposit**
 31 **available for payment of those claims, payment from the bond, letter of credit or deposit**
 32 **shall be apportioned as the board determines, subject to the claim payment priorities estab-**
 33 **lished 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 28.** 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] **under** subsection (5) of this section
 39 or ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board
 40 a civil 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 or landscape maintenance business commits an act described**
 3 **under ORS 671.610 (8)**, the board shall impose penalties and sanctions [*for violation of ORS 671.610*
 4 *(8)*] on both the [*person to whom*] **business to which** the contract is awarded and the [*person who*]
 5 **business 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 or landscape maintenance business**
 12 **license for a fifth offense.**

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

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

18 **SECTION 29. Except as the State Landscape Contractors Board may otherwise provide**
 19 **under ORS 182.462 (5), the board shall deposit moneys received as fees or civil penalties into**
 20 **the account created by the board pursuant to ORS 182.470.**

21 **SECTION 30.** ORS 671.990 is amended to read:

22 671.990. (1) Violation of any of the provisions of ORS 671.010 to 671.220 is subject to the pro-
 23 visions of ORS 671.220.

24 (2) Violation of ORS 671.530 **or section 2 of this 2005 Act** is a **Class A** misdemeanor.

25 **SECTION 31.** ORS 701.005 is amended to read:

26 701.005. As used in this chapter:

27 (1) "Board" means the Construction Contractors Board.

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

34 (3) "General contractor" means a contractor whose business operations require the use of more
 35 than two unrelated building trades or crafts that the contractor supervises or performs in whole or
 36 part, whenever the sum of all contracts on any single property, including materials and labor, ex-
 37 ceeds an amount established by rule by the board. "General contractor" does not include specialty
 38 contractors or limited contractors, as described in ORS 701.085.

39 (4) "Home inspector" means a person who, for a fee, inspects and provides written reports on
 40 the overall physical condition of a residential structure and the appurtenances thereto. "Home in-
 41 spector" does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
 42 tered structures for compliance with the state building code.

43 (5) "Inspector" means a contractor registered with the board who inspects or otherwise provides
 44 services to a property owner or other contractor but does not substantively add to or subtract from
 45 a structure. "Inspector" includes but is not limited to a home inspector certified or licensed under

1 ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection and
 2 backflow prevention device inspector certified under ORS 448.279. "Inspector" does not include city
 3 or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

4 (6) "Large commercial structure" means a structure that is not a residential structure or small
 5 commercial structure.

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

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

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

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

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

17 (a) A person who purchases or owns property and constructs or for compensation arranges for
 18 the construction of one or more residential structures or small commercial structures with the in-
 19 tent of selling the structures;

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

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

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

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

34 (10) "Small commercial structure" means a nonresidential structure that has a ground area of
 35 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the
 36 top surface of the lowest flooring to the highest interior overhead finish of the structure.

37 (11) "Specialty contractor" means a contractor who performs work on a structure, project, de-
 38 velopment or improvement and whose operations as such do not fall within the definition of "general
 39 contractor." "Specialty contractor" includes a person who performs work regulated under ORS
 40 chapter 446.

41 **SECTION 32. Section 2 of this 2005 Act becomes operative July 1, 2006.**