

## CHAPTER 672

AN ACT

SB 580

Relating to landscaping; creating new provisions; and amending ORS 671.520, 671.555, 671.565, 671.570, 671.603, 671.625, 671.676, 671.690, 671.695 and 671.997.

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

**SECTION 1.** Sections 2 to 5 of this 2015 Act are added to and made a part of ORS 671.510 to 671.760.

**SECTION 2.** (1) As used in this section, “sports field” means one or more areas of a property that total more than 30,000 square feet of artificial turf and are designed to be used primarily for sport or other athletic activities.

(2) Notwithstanding ORS 701.005 and 701.021, except as provided in this section, a landscape contracting business may prepare a site for, install and repair artificial turf at an outdoor location. This section does not authorize a landscape contracting business to prepare a site for, install or repair artificial turf at a sports field.

**SECTION 3.** (1) A person may file complaints against a licensed landscape contracting business with both the Construction Contractors Board and the State Landscape Contractors Board regarding the same work if:

(a) The landscape contracting business holds a license as a construction contractor issued under ORS chapter 701; and

(b) The complaint to the Construction Contractors Board qualifies for filing under ORS chapter 701 and the complaint to the State Landscape Contractors Board qualifies for filing under ORS 671.510 to 671.760.

(2) Subsection (1) of this section does not expand the authority of the Construction Contractors Board or State Landscape Contractors Board to resolve a complaint or pay a claim. A determination by either board regarding a complaint or claim is not binding on the other board. The total amount paid to a person described in subsection (1) of this section by the boards may not exceed the damages sustained by the person. The State Landscape Contractors Board may require a person who files a complaint against a landscape contracting business to inform the board of any complaint the person files with the Construction Contractors Board against the business.

**SECTION 4.** Notwithstanding ORS 701.005 or 701.021, a landscape contracting business that arranges for, undertakes or submits a bid to undertake a project that the business is authorized to perform under ORS 671.510 to 671.760

may subcontract with a general or specialty contractor licensed under ORS chapter 701 for the contractor to perform work within the scope of the contractor’s license endorsement on the project.

**SECTION 5.** A landscape construction professional may prepare plans and drawings for a landscape irrigation system, including, but not limited to, plans and drawings that identify the positioning, number, type and model of pumps, piping, valves, sprinklers, nozzles emitters, filters, controllers and other components for the system, if the landscape construction professional:

(1) Holds a license issued by the State Landscape Contractors Board that authorizes the landscape construction professional to install irrigation systems; and

(2) Has any other specialized qualifications required by the board by rule.

**SECTION 6.** ORS 671.520 is amended to read: 671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

(1) “Landscape construction professional” means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

(a) Plan or install lawns, shrubs, vines, trees or nursery stock;

(b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;

(c) [*Construct*] **Install, maintain or repair** ornamental water features[,] **and landscape** drainage systems [*or irrigation systems*];

(d) Maintain irrigation systems with the use of compressed air **and as otherwise provided by the State Landscape Contractors Board by rule;** [*or*]

(e) **Install or repair landscape irrigation systems as provided by the board by rule; or**

[*e*] (f) Plan, [*or*] **install, maintain or repair** fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

(2) “Landscape contracting business” means a business that for compensation or with the intent to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of activities described in subsection (1) of this section.

(3) “Licensee” means a person that is licensed under ORS 671.510 to 671.760 as a landscape construction professional or landscape contracting business.

(4) “Nursery stock” means nursery stock:

(a) As defined by ORS 571.005 other than stock grown for commercial resale or reforestation; or

(b) As defined by the [*State Landscape Contractors*] board by rule.

(5) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions as identified by the board by rule.

**SECTION 7.** ORS 671.555 is amended to read:

671.555. (1) The State Landscape Contractors Board may investigate the activities of any person engaged in the landscape contracting business to determine compliance with ORS 671.510 to 671.760.

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

(3) Any inspector or investigator authorized by the board to determine compliance with ORS 671.510 to 671.760 may require any person who is engaged in any activity regulated by ORS 671.510 to 671.760 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator may give notice of noncompliance to the person.

(4) ~~[The]~~ **A** notice of noncompliance **given under subsection (3) of this section** shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of ORS 671.510 to 671.760 and shall provide that unless the person demonstrates proof of compliance within two days of the date of the notice, the inspector or investigator may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons.

(5) If after receipt of ~~[the]~~ **a** notice of noncompliance **under subsection (3) of this section** the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator may order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector or investigator may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

~~[(4)]~~ **(6)** Notwithstanding subsection ~~[(3)]~~ **(5)** of this section, the board may order landscaping work stopped immediately if the landscape contracting business working on a worksite cannot demonstrate that the business has been licensed by the board at any time within the two years immediately preceding work on the worksite. **The administrator or any employee of the board may issue an order under this subsection on behalf of the board.**

~~[(5)]~~ **(7)** The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and per-

form such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.760.

~~[(6)]~~ **(8)** If any person fails to comply with a subpoena issued under subsection ~~[(5)]~~ **(7)** of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

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

671.565. (1) Each person applying for a landscape contracting business license must:

(a) Pay to the State Landscape Contractors Board the applicable landscape contracting business license fee established by the board under ORS 671.650.

(b) Have a landscape construction professional license or employ at least one person with a landscape construction professional license to supervise the landscaping operation of the business.

(c) Submit the names of all employees who are licensed landscape construction professionals.

(d) File with the board a form of security acceptable under ORS 671.690.

(e) File with the board a certificate of public liability, personal injury and property damage insurance covering the work of the landscape contracting business that is subject to ORS 671.510 to 671.760 for an amount not less than ~~[\$100,000]~~ **\$500,000**.

(f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor and the class of independent contractor described in ORS 671.525 for which the applicant qualifies.

(2)(a) If an applicant for licensing under this section qualifies to be classified as a nonexempt independent contractor, the applicant shall provide the employer identification number of the applicant and evidence satisfactory to the board that the applicant provides workers' compensation insurance coverage for all employees of the landscape contracting business.

(b) If an applicant for licensing under this section qualifies to be classified as an exempt independent contractor and has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscape contracting business, the applicant shall provide evidence satisfactory to the board that the applicant has verified the maintenance of workers' compensation insurance coverage for all leasing company or service provider employees supplied for use by the business. As used in this paragraph, "worker leasing company" and "temporary service provider" have the meanings given those terms in ORS 656.850.

(3) At the time of application for a license, for renewal of a license in active status or for return of a license to active status, the applicant shall provide evidence satisfactory to the board that the public liability, personal injury and property damage insurance required by this section and any workers' compensation required of the applicant under ORS

671.527 or 671.562 is in effect. During a license period, the licensee shall provide, to the extent required by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage and, if required under ORS 671.562, workers' compensation insurance coverage.

**SECTION 9.** ORS 671.570 is amended to read:

671.570. (1) Each person applying for a landscape construction professional license must:

- (a) Pay a nonrefundable application fee.
- (b) Pay an examination fee.

(c) Pay to the State Landscape Contractors Board the landscape construction professional license fee required by ORS 671.650.

(d) Pass an examination, which the board shall offer at least once each six months, to determine the fitness of the applicant for licensing and within 10 years before the day the application for a license is made:

(A) Have at least 24 months of employment with a landscape contracting business; or

(B) Have at least 12 months of employment with a landscape contracting business and one full year of training in an area related to landscaping at an accredited school or college.

(e) Be employed by, or own, a landscape contracting business if performing landscaping work.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules allowing a person who does not meet the education and experience requirements in subsection (1)(d) of this section to substitute other education and experience that demonstrate the fitness of the person for licensing as a landscape construction professional.

**(3) Notwithstanding ORS 192.310, upon request of the applicant, the board shall make an examination that the board offers under subsection (1)(d) of this section available in a format in which instructions and questions stated in the English language are immediately followed by a Spanish language translation of those instructions and questions.**

**SECTION 10.** ORS 671.603 is amended to read:

671.603. (1) A landscape construction professional or person operating as a landscape contracting business shall notify the State Landscape Contractors Board of a change of address for the professional or business that occurs while the professional or business is licensed by the board or within one year after a license expires. The landscape construction professional or landscape contracting business shall ensure that the board receives notice of the change of address no later than the [10th] **30th** 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 construction professional or landscape contracting business is considered delivered to the professional 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 construction professional or landscape contracting business is considered delivered to the professional or business when deposited in the United States mail, regular mail.

**SECTION 11.** ORS 671.625 is amended to read:

671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for written contracts and billings of the landscape contracting businesses. The standards shall set forth requirements for information that must be contained in contracts and billings. The information required shall be any information the board determines is necessary to provide protection for consumers of the services and materials provided by landscape contracting businesses.

(2) Work by a landscape contracting business subject to ORS 671.510 to 671.760 **for which the business charges \$2,000 or more for a landscape job, as defined in board rule**, shall only be performed subject to a written contract. Any contract or billing for such work must conform to the standards adopted under subsection (1) of this section.

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

**SECTION 12.** ORS 671.676 is amended to read:

671.676. (1) The State Landscape Contractors Board shall adopt rules establishing continuing education requirements for landscape construction professionals. [*The board may not require landscape construction professionals to take more than 10 hours of continuing education every year.*] **A continuing education requirement adopted by the board must equal or exceed:**

(a) **Sixteen hours of continuing education during a two-year period for a landscape construction professional who has six years or less of experience as an active licensee on the beginning date of the period; or**

(b) **Eight hours of continuing education during a two-year period for a landscape construction professional who has more than six years of experience as an active licensee on the beginning date of the period.**

(2) The board may approve programs for purposes of continuing education for landscape construction professionals and determine the number of hours to be credited to the programs. The board shall ensure that continuing education opportunities for landscape construction professionals are readily available.

(3) Programs approved by the board for continuing education purposes must be designed to directly contribute to the professional competency of landscape construction professionals. Approved programs may include, but need not be limited to:

(a) Professional development programs and technical meetings of professional associations for landscape contracting businesses or for related industries such as pesticide application or irrigation auditing;

(b) University or college courses related to landscaping or horticulture;

(c) Professional staff training programs by associations of landscape construction professionals; and

(d) Online or other forms of educational programs.

(4) The board may adopt rules establishing grounds for obtaining a waiver of the continuing education requirements for landscape construction professionals. The board may not allow a waiver for *[more than two consecutive years]* **consecutive two-year periods** except for a waiver due to military service, retirement, disability, absence from the state, inactive status or extreme hardship.

**SECTION 13.** ORS 671.690 is amended to read:

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

(a) \$3,000 for an applicant, unless the applicant is described *[in paragraph (b), (c) or (d)]* **under paragraphs (b) to (e)** of this subsection.

(b) \$10,000 for an applicant who, not in conjunction with the performance of landscaping work, constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls, unless the applicant is made subject to paragraph (d) **or (e)** of this subsection by work on other **landscape jobs, as defined by board rule**, performed by the applicant.

(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a landscape job.

(d) \$15,000 for an applicant who charges \$25,000 or more, **but less than \$50,000**, for a landscape job.

(e) **\$20,000 for an applicant who charges \$50,000 or more for a landscape job.**

(2) The bond or letter of credit shall be conditioned that the applicant pays:

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

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

(c) All amounts that may be adjudged against the landscape contracting business by reason of negligent or improper work or breach of contract in performing any work subject to ORS 671.510 to 671.760; and

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

(3) In addition to providing the applicant with coverage for the activities described in ORS 671.520

(1), the bond or letter of credit must provide the applicant with coverage for:

(a) Backflow assembly testing services provided by employees of the landscape contracting business who are certified under ORS 448.279;

(b) The installation, repair or maintenance by the landscape contracting business of backflow assemblies for irrigation systems and ornamental water features as described in ORS 447.060; *[and]*

(c) The installation by the landscape contracting business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940[.]; **and**

**(d) The removal or pruning of a tree, removal of limbs or stumps and tree or limb guying.**

(4) In lieu of the surety bond or letter of credit, the applicant may file with the board, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the board.

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

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

(b) Surrender the license to the board and cease operating as a landscape contracting business.

(6) If the cost of a project makes, or foreseeably will make, a licensee subject to a higher bond or letter of credit requirement under subsection (1) of this section, the licensee shall immediately file additional bonds, letters of credit or deposits to meet the higher requirements.

(7) The landscape contracting business is responsible for all work subject to ORS 671.510 to 671.760 that is performed or contracted for by the business.

**SECTION 14.** ORS 671.695 is amended to read:

671.695. A claim against a licensed landscape contracting business is payable from the bond, letter of credit or deposit required of the landscape contracting business under ORS 671.690 only if the claim arises from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.760. The claim must be of one or more of the following types:

(1) A claim against the landscape contracting business by the property owner or the owner's agent for any of the following:

(a) Negligent work.

(b) Improper work.

(c) Breach of **an oral or written** contract.

(2) A claim against the landscape contracting business by the property owner or the owner's agent to discharge, or to recoup funds expended in dis-

charging, a lien established under ORS 87.010 to 87.060 or 87.075 to 87.093. The State Landscape Contractors Board may reduce a claim described in this subsection by any amount the claimant owes the landscape contracting business. The board shall process claims described in this subsection only if:

(a) The owner paid the landscape contracting business for work subject to ORS 671.510 to 671.760; and

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

(3) A claim against a licensed subcontractor by a licensed landscape contracting business or by a construction contractor licensed under ORS chapter 701, for any of the following:

(a) Negligent work.

(b) Improper work.

(c) Breach of **an oral or written** contract.

(4) A claim by a person furnishing labor to a landscape contracting business.

(5) A claim, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to the landscape contracting business. The minimum limit set by the board may not be more than \$150.

(6) A claim by a subcontractor against the landscape contracting business for unpaid labor or materials arising out of a contract.

**SECTION 15.** ORS 671.997 is amended to read:

671.997. (1) *[Except as provided in subsection (4) of this section,] The State Landscape Contractors Board may impose a civil penalty against* a person who violates any provision of ORS 671.510 to 671.760 or a rule adopted pursuant to ORS 670.310, 670.605 or 671.670 *[shall forfeit and pay to the State Landscape Contractors Board a civil penalty in an amount determined by the board of not more than \$2,000 for each offense]. The board shall determine the amount of the civil penalty, not to exceed \$2,000 for each offense.*

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

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

*[(4) If a landscape contracting business commits an act described under ORS 671.610 (5), the board shall impose penalties and sanctions on both the landscape contracting business to which the contract is awarded and the landscape contracting business that awards the contract as follows:]*

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

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

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

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

*[(e) Permanent revocation of the landscape contracting business's license for a fifth offense.]*

**(4)(a) If a landscape contracting business commits an act described under ORS 671.610 (5), the board may assess civil penalties or impose license sanctions under this subsection on the landscape contracting business to which the contract is awarded, the landscape contracting business that awards the contract, or both.**

**(b) Notwithstanding subsection (1) of this section, a civil penalty imposed on a landscape contracting business for a first offense of committing an act described under ORS 671.610 (5) may not exceed \$1,000.**

**(c) In addition to any civil penalty assessed by the board, if a landscape contracting business has two or more prior offenses for committing acts described under ORS 671.610 (5), the board may impose license sanctions on the landscape contracting business. The license sanctions:**

**(A) For a third offense may not exceed the suspension of, or refusal to reissue, a license for six months;**

**(B) For a fourth offense may not exceed revocation of the license for three years; or**

**(C) For a fifth or subsequent offense may provide for permanent revocation of the license.**

**SECTION 16.** (1) Section 5 of this 2015 Act and the amendments to ORS 671.520 by section 6 of this 2015 Act apply to activities performed on or after the effective date of this 2015 Act.

(2) The amendments to ORS 671.565 by section 8 of this 2015 Act apply to applications for issuance, renewal or return of a license that the board receives on or after the effective date of this 2015 Act.

(3) The amendments to ORS 671.603 by section 10 of this 2015 Act apply to changes of address occurring 10 days prior to the effective date of this 2015 Act or later.

(4) The amendments to ORS 671.625 by section 11 of this 2015 Act apply to work performed on or after the effective date of this 2015 Act.

(5) The amendments to ORS 671.676 by section 12 of this 2015 Act apply to continuing education requirements imposed for periods that commence on or after the effective date of this 2015 Act.

(6) The amendments to ORS 671.690 by section 13 of this 2015 Act apply to bonds or letters of credit:

**(a) Filed with a license application that the board receives on or after the effective date of this 2015 Act; or**

**(b) Filed as a replacement or additional bond on or after the effective date of this 2015 Act.**

(7) The amendments to ORS 671.997 by section 15 of this 2015 Act apply to civil penalties or license sanctions that the board imposes on or after the effective date of this 2015 Act for

**an offense committed before, on or after the effective date of this 2015 Act.**

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