

Enrolled
House Bill 3193

Sponsored by Representative FAHEY; Representatives BONHAM, HELM, HOLVEY, WALLAN

CHAPTER

AN ACT

Relating to wages; creating new provisions; and amending ORS 652.332, 652.414, 701.102, 701.133, 701.143, 701.146 and 701.153.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 652.310 to 652.414.

SECTION 2. (1)(a) If the Commissioner of the Bureau of Labor and Industries receives a valid wage claim filed against a contractor or a business subject to licensing under ORS chapter 701 for unpaid wages, the commissioner shall notify the Construction Contractors Board and the contractor or the business of the claim within 30 days of the commissioner's receipt of the claim.

(b) If wages are found due and the contractor or business fails to pay the unpaid wages upon demand, the commissioner shall serve upon the contractor or business an order of determination as prescribed under ORS 652.332.

(2)(a) If an order issued under ORS 652.332 for the payment of a wage claim described under subsection (1) of this section becomes final, the commissioner shall notify the board of the final order.

(b) The commissioner shall notify the board if the contractor or business fails to pay the amounts due pursuant to the final order within 60 days of the date of the order, unless a motion to stay the order is pending or has been granted by the commissioner under ORS 183.482.

(3) As used in this section, "contractor" has the meaning given that term in ORS 701.005.

SECTION 3. ORS 652.332 is amended to read:

652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has received a wage claim complaint which the commissioner could seek to collect through court action, the commissioner may instead elect to seek collection of such claim through administrative proceedings in the manner provided in this section, subject to the employer's right to request a trial in a court of law. The commissioner may join in a single administrative proceeding any number of wage claims against the same employer. Upon making such election, the commissioner shall serve upon the employer and the wage claimant an order of determination directing the employer to pay to the commissioner the amount of the wage claim and any penalty amounts under ORS 279C.855 (1), 652.150 and 653.055 (1) determined to be owed the wage claimant. Service shall be made in the same manner as service of summons or by certified mail, return receipt requested. The order of determination shall include:

(a) A reference to the particular sections of the statutes or rules involved;

(b) A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such a hearing, and of the employer's right to a trial in a court of law, provided that any request for a contested case hearing or trial in a court of law must be received by the commissioner in writing within 20 days after receipt by the party of the order of determination;

(d) A statement that the employer must, within 20 days after receipt of the order of determination, either pay in full the wage claim and any penalties assessed, or present to the commissioner a written request for a contested case hearing or a trial in a court of law as provided in this section;

(e) A statement that failure to make a written request to the commissioner for a contested case hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver of the right thereto and a waiver of the right to a trial by jury; *[and]*

(f) For an employer that is a contractor or business licensed under ORS chapter 701, a statement that failure to pay in full the wage claim and any penalties assessed within 60 days of the date that an order of determination becomes final under this section will result in notification to the Construction Contractors Board of such failure to pay and the suspension of the contractor's or business's license in accordance with section 11 of this 2019 Act; and

[(f)] (g) A statement that unless the written requests provided for in paragraph (c) of this subsection are received by the commissioner within the time specified for making such requests, the order of determination shall become final.

(2) Upon failure of the employer to pay the amount specified in the order of determination or to request a trial in a court of law within the time specified, and upon failure of any party to request a contested case hearing within the time specified, the order of determination shall become final.

(3) If a party makes a timely request for a contested case hearing, a hearing shall be held in accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the commissioner's designee. The commissioner shall adopt rules for such hearing. In any hearing before the commissioner's designee, the designee is authorized to issue the final order in the case. If the employer makes a timely request for a trial in a court of law, the commissioner may proceed against the employer as provided in ORS 652.330 (1)(b).

(4) Final administrative orders issued in a wage claim proceeding are subject to review by the Court of Appeals as provided in ORS 183.480 and 183.482.

(5) When an order issued under this section becomes final, it may be recorded in the County Clerk Lien Record in any county of this state. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(6) Where the wage claim arose out of work performed by the claimant for the employer on any public works project to which ORS 279C.830 or 279C.840 applies, and a state agency holds sufficient funds as retainage on such project to pay such claim or any portion thereof, the state agency may, at the request of the commissioner, pay to the commissioner from the retainage all or part of the amount due on the claim under the final order.

SECTION 4. ORS 652.414 is amended to read:

652.414. Notwithstanding any other provision of law:

(1) When an employee files a wage claim under this chapter for wages earned and unpaid, and the Commissioner of the Bureau of Labor and Industries determines that the employer against whom the claim was filed has ceased doing business and is without sufficient assets to pay the wage claim and the wage claim cannot otherwise be fully and promptly paid, the commissioner, after determining that the claim is valid, shall pay the claimant, to the extent provided in subsection (2) of this section:

(a) The unpaid amount of wages earned within 60 days before the date of the cessation of business; or

(b) If the claimant filed a wage claim before the cessation of business, the unpaid amount of wages earned within 60 days before the last day the claimant was employed.

(2) The commissioner shall pay the unpaid amount of wages earned as provided in subsection (1) of this section only to the extent of [~~\$4,000~~] **\$10,000** from such funds as may be available pursuant to ORS 652.409 (2).

(3) The commissioner may commence an appropriate action, suit or proceeding to recover from the employer, or other persons or property liable for the unpaid wages, amounts paid from the Wage Security Fund under subsection (1) of this section. In addition to costs and disbursements, the commissioner is entitled to recover reasonable attorney fees at trial and on appeal, together with a penalty of 25 percent of the amount of wages paid from the Wage Security Fund or \$200, whichever amount is the greater. All amounts recovered by the commissioner under this subsection and subsection (4) of this section are appropriated continuously to the commissioner to carry out the provisions of this section.

(4) The commissioner has a lien on the personal property of the employer for the benefit of the fund when the claim is paid under subsection (1) of this section for the amount so paid and the penalty referred to in subsection (3) of this section. The commissioner may cause to be filed a verified written notice of claim of lien with the recording officer of the county in which the employer has its principal place of business no later than 30 days after the date the claim was paid under subsection (1) of this section. The notice of claim of lien shall contain:

(a) A true statement of the sums paid to wage claimants and the amount of the penalty provided for in subsection (3) of this section;

(b) The name of the owner of the personal property to be charged with the lien;

(c) A description of the personal property to be charged with the lien sufficient for identification. If a lien is being claimed against all personal property of the employer, the description is sufficient if it states that all personal property of the employer is covered; and

(d) The date the wage claim was paid.

(5) Liens created by subsection (4) of this section shall be recorded in the same manner as provided for in ORS 87.246 and may be foreclosed in the manner provided for in ORS 87.262.

(6) Liens created by subsection (4) of this section shall have priority over any other liens or security interests perfected after the date the notice of claim is filed with the county recording officer under subsections (4) and (5) of this section.

(7) The commissioner shall promulgate rules to carry out the provisions of this section that include, but are not limited to, prescribing procedures for a timely and cost efficient method for the payment of wage claims from the Wage Security Fund and procedures for prorating wage claims if insufficient funds are available for payment.

(8) Nothing in this section is intended to require the commissioner to pay wage claims for which moneys are not available under ORS 652.409 (2).

SECTION 5. ORS 701.102 is amended to read:

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

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

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

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

(c) An owner, officer or responsible managing individual of the business was an owner, officer or responsible managing individual of another business at the time the other business incurred a construction debt that is owing or at the time of an event that resulted in the revocation or suspension of the other business's construction contractor license; or

(d) The board determines that an owner, officer or responsible managing individual of the business is not fit for licensure, based upon information submitted to the board under ORS 701.046,

submitted in a registration of securities described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

(3) The board may place a contractor on probation if a total of three or more complaints are filed with the board under ORS 701.139 within a 12-month period against the contractor or a former licensed construction contracting business in which the contractor held at least a 10 percent ownership interest, measured as determined by board rule. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the complainants. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding complaints. The board may require a contractor that is placed on probation to take training and pass a test, both as described in ORS 701.122. The board shall take action to terminate the contractor's license if the contractor is unwilling or unable to comply with the conditions of probation.

(4) The board may use the notification of a final order received under section 2 of this 2019 Act for purposes of determining whether to:

(a) Revoke, suspend or refuse to issue a license to a business or an owner, officer or responsible managing individual of the business that failed to pay the amounts due pursuant to the final order;

(b) Notwithstanding the conditions specified for probation in subsection (3) of this section, place a contractor on probation as provided in subsection (3) of this section; and

(c) Require a contractor to pay a higher amount to obtain a surety bond as required by a board condition or rule under ORS 701.068 (5) or (6).

SECTION 6. ORS 701.133 is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed \$100. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees.

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

(5) Notice of a valid wage claim received under section 2 of this 2019 Act satisfies the notice of intent to file a complaint required by subsection (1) of this section.

SECTION 7. ORS 701.143 is amended to read:

701.143. The Construction Contractors Board may not process a complaint against a licensed contractor, including a complaint based upon a court judgment or an arbitration award, unless the complaint is filed with the board in a timely manner as follows:

(1) Except as otherwise provided in this section, if the owner of a new structure files the complaint, the board must receive the complaint no later than the earlier of:

- (a) One year after the date the structure was first occupied; or
- (b) Two years after substantial completion of the structure by the contractor filed against.

(2) Except as otherwise provided in this section, if the owner of an existing structure files the complaint, the board must receive the complaint no later than one year after the date the work was substantially completed by the contractor filed against.

(3) Regardless of whether the complaint involves a new or an existing structure, if the owner of the structure files the complaint and the licensed contractor failed to begin the work, the board must receive the complaint no later than one year after the date the parties entered into the contract.

(4) Regardless of whether the complaint involves a new or an existing structure, if the owner of the structure files the complaint and the licensed contractor failed to substantially complete the work, the board must receive the complaint no later than one year after the date the contractor ceased to work on the structure.

(5) Except as otherwise provided in this section, if a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on a new structure, the board must receive the complaint no later than the earlier of:

- (a) Fourteen months after the date the structure was first occupied; or
- (b) Two years after substantial completion of the structure.

(6) Except as otherwise provided in this section, if a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on an existing structure, the board must receive the complaint no later than 14 months after the date the work on the structure was substantially completed.

(7) If a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on a structure and the subcontractor failed to substantially complete the work, the board must receive the complaint no later than 14 months after the date the subcontractor ceased to work on the structure.

(8) If the licensed contractor's employee, subcontractor or material or equipment supplier files the complaint, the board must receive the complaint no later than one year after the date the contractor incurred the indebtedness.

(9) The filing of a complaint with the Commissioner of the Bureau of Labor and Industries for unpaid wages constitutes the filing of a complaint for purposes of establishing timeliness of the filing of a complaint under this section.

SECTION 8. ORS 701.146 is amended to read:

701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the

surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection [(7)] (8) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection [(7)] (8) of this section.

(7) If a complaint is filed under ORS 701.140 (4), the complainant may recover payment from the bond of the contractor as provided in subsection (4) or (8) of this section or by obtaining a final order issued by the Bureau of Labor and Industries that states an amount of unpaid wages that the licensed contractor owes to the wage claimant.

[(7)] (8) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety.

SECTION 9. ORS 701.153 is amended to read:

701.153. (1) If an order of the Construction Contractors Board determines a complaint against a residential contractor that was filed with the board prior to July 1, 2011, and the order becomes

final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt of an order described in subsection (1) of this section, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order described in subsection (1) of this section in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to a board determination under ORS 701.145 are satisfied in the following priority in any 90-day period:

(A) Board determinations as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.

(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.

(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000.

(7)(a) Notwithstanding subsection (3)(a)(B) of this section, if the board determines that the bond required is a higher amount than the amount required ordinarily of a licensee to file a bond under ORS 701.081, the \$3,000 limit payable from the bond for a nonowner complaint under subsection (3)(a)(B) of this section shall be increased in an amount that is proportional to the increased amount required to file the bond, as determined by the board under ORS 701.068 (5) or (6).

(b) If a complaint filed under ORS 701.140 (4) or a notice received under section 2 of this 2019 Act contributes to the board's determination under ORS 701.068 (5) or (6) that a licensee must file a bond in an amount that is higher than the amount required ordinarily of a licensee, the total amount available for payment of nonowner complaints shall be \$3,000 plus up to 50 percent of the amount of the bond as required by the board that exceeds the bond amount ordinarily required under ORS 701.081 or 701.084.

SECTION 10. Section 11 of this 2019 Act is added to and made a part of ORS chapter 701.

SECTION 11. Upon receipt of the notification provided by the Commissioner of the Bureau of Labor and Industries under section 2 of this 2019 Act stating that a contractor or a business has failed to pay the amounts due as ordered in a final determination order within 60 days of the issuance of the order, the Construction Contractors Board shall, after notice and opportunity for a hearing under ORS chapter 183, suspend the license of the contractor or the business.

SECTION 12. The amendments to ORS 652.332 by section 3 of this 2019 Act apply to wages owed for labor performed on or after the effective date of this 2019 Act.

Passed by House April 4, 2019

Received by Governor:

Repassed by House June 11, 2019

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 23, 2019

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Bev Clarno, Secretary of State