

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808  
LANDSCAPE CONTRACTORS BOARD

**FILED**

02/23/2023 12:43 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Allows more discretion on processing claims with an arbitration or mediation clause.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/21/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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Filed By:  
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**NEED FOR THE RULE(S)**

To allow the Board more discretion to process claims when the contract regarding that claim has an arbitration or mediation clause and the terms included in the consumer advisory language required by OAR 808-002-0020(2)(k) are not met.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

LCB office at 2111 Front Street NE, Ste 2-101, Salem, OR 97301 or by phone at (503) 967-6291 or by email at LCB.info@lcb.oregon.gov

**STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE**

The amendment of this rule will not affect racial equity in this state.

**FISCAL AND ECONOMIC IMPACT:**

The fiscal and economic impact will be low and only apply to those claims where the contract included an arbitration or mediation clause to arbitrate or mediation outside of the LCB claim process and did not meet the consumer advisory language required by OAR 808-002-0020(2)(k).

**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No other agency will be affected by the rule. The effect on small businesses will include only those LCB licensees who have a claim filed and where the contract included an arbitration or mediation clause to arbitrate or mediate outside of

the LCB claim process and did not meet the consumer advisory language required by OAR 808-002-0020(2)(k) - estimate is approximately 2-4 per year; the expected cost to a small business required to comply with the rule will be less than \$100 to go through the LCB mediation process and is only figured in time to respond to the claim and attend any on-site meeting; and there will be no cost for professional services, equipment, labor or administration costs to those small businesses.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several Board members are small business owners.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board acts as its own Rule Advisory Committee.

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AMEND: 808-004-0440

RULE SUMMARY: Update rule to allow the Board discretion in processing claims with an arbitration or mediation clause.

CHANGES TO RULE:

808-004-0440

Contracts With Mediation or Arbitration Agreements ¶

(1)(a) If a claim is received in the LCB office that is based upon a previously signed contract that contains an agreement by the parties to privately mediate or arbitrate disputes arising out of the contract, (in a binding process - meaning the disputants are forgoing access to all other dispute resolution processes including that provided by the LCB) disputes arising out of the previously signed contract, and the previously signed contract's terms included the consumer advisory language required by OAR 808-002-0020(2)(k), then the specific terms of the private binding mediation or arbitration agreement supersede agency rules except as provided in this rule. Unless the contract requires related to the agency's claims process and the agency may not accept the claim because the parties have contracted to entirely forgo access to the agency process.¶

(b) If the required binding private mediation or private arbitration by the agency, the agency will take the following action:¶

(1) Has yet to commence, and the claimant still wishes to pursue a claim with the agency, the agency shall must inform the claimant by written notice that the agency will not accept the claim unless it receives, within 60 days of the date of the notice:¶

(a) A written waiver of mediation or arbitration under the contract and prior to the commencement of any private binding mediation or arbitration process, a written waiver of the private binding mediation or arbitration requirement, set forth in the contract that was previously signed by the claimant and respondent;¶

(b) Documentation showing that the claimant or respondent initiated mediation under the contract to resolve the same facts and issues raised, signed by the claimant and the respondent.¶

(c) If the LCB receives, within 60 days of the date of its notice, and prior to the commencement of any private binding mediation or arbitration process, a written waiver of the private binding mediation or arbitration process documented in the contract previously signed by the claimant and respondent, and the waiver is signed by the claimant and the respondent, then the LCB may accept the claim into the LCB claim and the mediation failed; or¶

(e) Documentation showing the claimant or Respondent has already initiated process.¶

(2)(a) If a claim is received in the LCB office that is based upon a previously signed contract containing an agreement by the parties to privately mediate or privately arbitrate (in a non-binding process - meaning the parties do not intend to entirely forgo access to other legal processes including the agency claims process) disputes arising out of the previously signed contract, and the previously signed contract's terms included the consumer advisory language required by OAR 808-002-0020(2)(k), then even though the non-binding private mediation or private arbitration under the contract.¶

(2) The agency may accept a claim agreement will continue to supersede agency rules until waived, completed or abandoned as set forth below, the agency may accept the claim into the claims process, but will must suspend the processing of the claim if respondent or claimant has initiated mediation or arbitration under the contract, until arbitration or the mediation process is complete.¶

(3) The agency will not pending the result of the private non-binding process.¶

(b) If the required private non-binding mediation or arbitration process has yet to commence, and the claimant still wishes to pursue a claim with the agency, the agency must inform the claimant by written notice that the agency will not accept the claim unless it receives, within 60 days of the date of the notice and prior to the commencement of any private non-binding mediation or arbitration process, a written waiver of the private non-binding mediation or arbitration requirement, set forth in the contract that was previously signed by the claimant and respondent, signed by the claimant and the respondent.¶

(c) If the LCB receives, within 60 days of the date of the notice and prior to the commencement of any private non-binding mediation or arbitration process, a written waiver of the private non-binding mediation or arbitration process documented in the contract previously signed by the claimant and respondent, and the waiver is signed by the claimant and the respondent, then the LCB may accept the claims based on a contract that includes a requirement of binding arbitration unless the claimant provides a written waiver or arbitration signed by the claimant and respondent into the LCB claims process.¶

(d) If the non-binding private mediation or private arbitration has already commenced, and the claimant is seeking to file a claim with the LCB provides documentation that the previously contracted for non-binding private mediation or private arbitration was initiated in an attempt to resolve the same facts and issues raised in the claim sought to be filed with the LCB, and the non-binding private mediation or private arbitration failed, then the LCB may begin processing the claim.¶

(3) If a claim is received, that is based upon a previously signed contract that contains an agreement by the parties to privately mediate or privately arbitrate (in a binding or non-binding process) disputes arising out of the contract - but the contract's terms do not include the consumer advisory language required by OAR 808-002-0020(2)(k) - then the agency may:¶

(a) bring an Enforcement Action, pursuant to ORS 671.625(3) and OAR 808-002-0020(2)(k), against the landscape contracting business. The Enforcement Action may (i) seek to obtain a ruling finding that the previously signed contract is unenforceable against the consumer pursuant to ORS 671.625(3), and (ii) may seek to assess a civil penalty for violation of the requirements of OAR 808-002-0020(2)(k); ORS 671.610(1)(f), (1)(m) and (q); ORS 671.997(1) and (3); and¶

(b) accept the claim, but suspend the processing of the claim, pending the results of the agency Enforcement Action.¶

(4) Upon the effective date of the 2023 rule amendments, the provisions of this rule will apply to:¶

(a) all claims that remain open at the Board, and¶

(b) all claims received after the effective date of the 2023 rule amendments.¶

(5) The 2023 amendments to this rule will not apply to claims cases closed prior to the effective date of this rule.

Statutory/Other Authority: ORS 183, ORS 670.310, ORS 671.670

Statutes/Other Implemented: ORS 671.703