

House Bill 2573

Sponsored by Representative TOMEI (at the request of Renee Moog)

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**.

Requires employer of agricultural worker to give worker written notice if worker's labor does not constitute "employment" for purposes of unemployment insurance.

A BILL FOR AN ACT

1
2 Relating to agricultural labor that is not employment for purposes of unemployment insurance; cre-
3 ating new provisions; and amending ORS 657.045.

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

5 **SECTION 1.** ORS 657.045 is amended to read:

6 657.045. (1) **As used in this chapter**, "employment" does not include agricultural labor unless
7 such labor is performed [*after December 31, 1977,*] for an employing unit [*who*] **that**:

8 (a) During any calendar quarter in the current calendar year or the preceding calendar year
9 paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or

10 (b) On each of 20 days during the current calendar year or the preceding calendar year, each
11 day being in a different calendar week, employed in agricultural labor for some portion of the day
12 (whether or not at the same moment of time) 10 or more individuals.

13 (2) Notwithstanding subsection (1)(a) and (b) of this section, "employment" does not include
14 services performed before January 1, 1993, by an individual who is an alien admitted to the United
15 States to perform agricultural labor pursuant to sections 214(c) and 101(a) (15) (H) of the Immi-
16 gration and Nationality Act.

17 (3) **As used in this section**, "agricultural labor" does not include services performed for the
18 state or a political subdivision but does include all services performed:

19 (a) On a farm, in the employ of any person, in connection with cultivating the soil, or in con-
20 nection with raising or harvesting any agricultural or horticultural commodity, including the rais-
21 ing, shearing, feeding, caring for, training and management of livestock, bees, poultry and
22 fur-bearing animals and wildlife.

23 (b) In the employ of the owner or tenant or other operator of a farm, in connection with the
24 operation, management, conservation, improvement or maintenance of [*such*] **the** farm and its tools
25 and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane,
26 if the major part of [*such*] **the** services is performed on a farm.

27 (c) In connection with the production or harvesting of any commodity defined as an agricultural
28 commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection
29 with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals,
30 reservoirs or waterways not owned or operated for profit used exclusively for supplying and storing
31 water for farming purposes.

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 (d) In the employ of the operator or group of operators of a farm or farms (or a cooperative
 2 organization of which *[such]* **the** operator or operators are members) in handling, planting, drying,
 3 packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or
 4 to a carrier for transportation to market, in its unmanufactured state, any agricultural or
 5 horticultural commodity, but only if *[such]* **the** operator or group of operators produced more than
 6 one-half of the commodity, as measured by volume, weight or other customary means, with respect
 7 to which *[such]* **the** service is performed.

8 (4) Subsection (3)(d) of this section does not apply to service performed in connection with:

9 (a) Commercial canning, commercial freezing or brining of cherries;

10 (b) Any agricultural or horticultural commodity after its delivery to a terminal market for dis-
 11 tribution for consumption; or

12 (c) Any activity enumerated in subsection (3)(d) of this section when performed for an employer
 13 also engaged in any activity enumerated in paragraph (a) or (b) of this subsection.

14 (5) "Farms," as used in this section, includes stock, dairy, poultry, fruit, fur-bearing animal,
 15 Christmas tree and truck farms, plantations, orchards, ranches, nurseries, ranges, greenhouses or
 16 other similar structures used primarily for the raising of agricultural or horticultural commodities.

17 (6) For the purpose of this section, service in connection with the raising of forestry-type
 18 seedlings is agricultural labor when performed in a nursery.

19 (7)(a) For purposes of this chapter, *[and for services performed after December 31, 1977,]* any in-
 20 dividual who is a member of a crew furnished by a crew leader to perform agricultural labor for any
 21 other person shall be treated as an employee of *[such]* **the** crew leader if:

22 (A) *[Such]* **The** crew leader holds a valid certificate of registration under the federal Migrant
 23 and Seasonal Agricultural Worker Protection Act; or

24 (B)(i) Substantially all the members of *[such]* **the** crew operate or maintain mechanized equip-
 25 ment *[which]* **that** is provided by *[such]* **the** crew leader; and

26 *[(C)]* (ii) *[Such]* **The** individual is not an employee of *[such]* **the** other persons under the usual
 27 common law rules applicable in determining the employer-employee relationship.

28 (b) Any individual who is furnished by a crew leader to perform agricultural labor for any other
 29 person and who is not treated as an employee of *[such]* **the** crew leader under paragraph (a) of this
 30 subsection shall be an employee of *[such]* **the** other person and *[such]* **the** other person shall be
 31 treated as having paid cash remuneration to *[such]* **the** individual in an amount equal to the amount
 32 of cash remuneration paid to *[such]* **the** individual by the crew leader, either on behalf of the crew
 33 leader or on behalf of *[such]* **the** other person, for agricultural labor performed for *[such]* **the** other
 34 person.

35 (c) For purposes of this subsection, *[the term]* "crew leader" means an individual who:

36 (A) Furnishes individuals to perform agricultural labor for any other person;

37 (B) Pays, either on behalf of the crew leader or on behalf of *[such]* **the** other person, the indi-
 38 viduals so furnished by the crew leader for the agricultural labor performed by them; and

39 (C) Has not entered into a written agreement with *[such]* **the** other person under which *[such]*
 40 **the** individual is designated as an employee of *[such]* **the** other person.

41 **(8) When an individual performs agricultural labor for an employing unit but, under this**
 42 **section, that labor does not constitute "employment" for purposes of this chapter, the em-**
 43 **ploying unit shall, at the time of hire, give the individual written notice that the individual's**
 44 **agricultural labor does not constitute employment for purposes of this chapter.**

45 **SECTION 2. The amendments to ORS 657.045 by section 1 of this 2007 Act apply only to**

1 **individuals hired to perform agricultural labor on or after the effective date of this 2007 Act.**

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