

House Bill 3394

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

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**.

Includes services performed in agricultural labor as "employment" subject to Employment Department Law.

A BILL FOR AN ACT

1
2 Relating to unemployment insurance for services performed in agricultural labor; creating new pro-
3 visions; and amending ORS 657.045 and 657.870.

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) "Employment" does not include agricultural labor unless such labor is performed after
7 December 31, 1977, for an employing unit who:]

8 [(a) During any calendar quarter in the current calendar year or the preceding calendar year paid
9 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 day
11 being in a different calendar week, employed in agricultural labor for some portion of the day (whether
12 or not at the same moment of time) 10 or more individuals.]

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

17 [(3)] (2) **As used in this section,** "agricultural labor" does not include services performed for
18 the 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 farm and its tools and
25 equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if
26 the major part of such 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 operator or operators are members) in handling, planting, drying, pack-
3 ing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a
4 carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural
5 commodity, but only if such operator or group of operators produced more than one-half of the
6 commodity, as measured by volume, weight or other customary means, with respect to which such
7 service is performed.

8 [(4)] (3) Subsection [(3)(d)] (2)(d) of this section does not apply to service performed in con-
9 nection with:

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

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

13 (c) Any activity enumerated in subsection [(3)(d)] (2)(d) of this section when performed for an
14 employer also engaged in any activity enumerated in paragraph (a) or (b) of this subsection.

15 [(5)] (4) "Farms," as used in this section, includes stock, dairy, poultry, fruit, fur-bearing animal,
16 Christmas tree and truck farms, plantations, orchards, ranches, nurseries, ranges, greenhouses or
17 other similar structures used primarily for the raising of agricultural or horticultural commodities.

18 [(6)] (5) For the purpose of this section, service in connection with the raising of forestry-type
19 seedlings is agricultural labor when performed in a nursery.

20 [(7)(a)] (6)(a) For purposes of this chapter, [and for services performed after December 31, 1977,]
21 any individual who is a member of a crew furnished by a crew leader to perform agricultural labor
22 for any other person shall be treated as an employee of such crew leader if:

23 (A)(i) Such crew leader holds a valid certificate of registration under the federal Migrant and
24 Seasonal Agricultural Worker Protection Act; or

25 [(B)] (ii) Substantially all the members of such crew operate or maintain mechanized equipment
26 which is provided by such crew leader; and

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

29 (b) Any individual who is furnished by a crew leader to perform agricultural labor for any other
30 person and who is not treated as an employee of such crew leader under paragraph (a) of this sub-
31 section shall be an employee of such other person and such other person shall be treated as having
32 paid cash remuneration to such individual in an amount equal to the amount of cash remuneration
33 paid to such individual by the crew leader, either on behalf of the crew leader or on behalf of such
34 other person, for agricultural labor performed for such other 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 other person, the individuals
38 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 other person under which such indi-
40 vidual is designated as an employee of such other person.

41 **SECTION 2.** ORS 657.870 is amended to read:

42 657.870. (1) If title IX of the federal Social Security Act becomes inoperative by Act of Congress
43 or by decision of the United States Supreme Court, payments of contributions and payment of ben-
44 efits provided in this chapter shall cease.

45 (2) If the provisions of the Act of October 20, 1976, P.L. 94-566 (26 U.S.C. 3306) requiring benefit

1 coverage for service performed in agricultural labor as provided in ORS 657.045 [(1)(a) and (b) and
2 (7)] (6) and 657.105 (2) become inoperative by Act of Congress or by decision of the United States
3 Supreme Court, payments of contributions and payment of benefits pursuant to the statutes cited in
4 this subsection shall cease.

5 **SECTION 3. The amendments to ORS 657.045 and 657.870 by sections 1 and 2 of this 2007**
6 **Act apply only to claims for unemployment insurance benefits filed by agricultural workers**
7 **on or after the effective date of this 2007 Act.**

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