

Senate Bill 202

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Commissioner of the Bureau of Labor and Industries Dan Gardner)

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 farm labor contractors to provide workers' compensation insurance for workers. Requires applicant for farm labor contractor license to provide proof of existence of workers' compensation insurance.

A BILL FOR AN ACT

1
2 Relating to farm labor contractor duties; creating new provisions; and amending ORS 658.411,
3 658.415, 658.417, 658.440, 658.453 and 658.475.

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

5 **SECTION 1.** ORS 658.415 is amended to read:

6 658.415. (1) A person may not act as a farm labor contractor unless the person has first been
7 licensed by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503.
8 Any person may file an application for a license to act as a farm labor contractor at any office of
9 the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall
10 be written on a form prescribed by the commissioner. The form shall include, but not be limited to,
11 questions asking:

12 (a) The applicant's name, Oregon address and all other temporary and permanent addresses the
13 applicant uses or knows will be used in the future.

14 (b) Information on all motor vehicles to be used by the applicant in operations as a farm labor
15 contractor including license number and state of licensure, vehicle number and the name and ad-
16 dress of vehicle owner for all vehicles used.

17 (c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 within
18 the preceding three years, or in this or any other jurisdiction had such a license denied, revoked
19 or suspended within the preceding three years.

20 (d) The names and addresses of all persons financially interested, whether as partners, share-
21 holders, associates or profit-sharers, in the applicant's proposed operations as a farm labor con-
22 tractor, together with the amount of their respective interests, and whether or not, to the best of
23 the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to
24 658.503 within the preceding three years, or had such a license denied, revoked or suspended within
25 the preceding three years in this or any other jurisdiction.

26 (2) Each applicant shall furnish satisfactory proof with the application:

27 (a) Of the existence of a policy of insurance in an amount adequate under rules issued by the
28 commissioner for vehicles to be used to transport workers. For the purpose of this [subsection]
29 **paragraph**, the certificate of an insurance producer licensed in Oregon is satisfactory [evidence]
30 **proof** of adequate insurance.

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 **(b) Of the existence of workers' compensation insurance as provided in ORS 658.440 (1)(j).**
 2 **The commissioner may adopt rules concerning satisfactory proof of adequate workers' com-**
 3 **ensation insurance.**

4 (3) Each applicant shall submit with the application and shall continually maintain thereafter,
 5 until excused, proof of financial ability to promptly pay the wages of employees and other obli-
 6 gations specified in this section. The proof required in this subsection shall be in the form of a
 7 corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a
 8 deposit the equivalent of cash. For the purposes of this subsection, it shall be deemed sufficient
 9 compliance if the farm labor contractor procures a savings account at a bank or savings and loan
 10 institution in the name of the commissioner as trustee for the employees of the farm labor contrac-
 11 tor and others as their interests may appear and delivers [*the evidence*] **proof** of the account and the
 12 ability to withdraw the funds to the commissioner under the terms of a bond approved by the com-
 13 missioner. The amount of the bond and the security behind the bond, or the cash deposit, shall be
 14 based on the maximum number of employees the contractor employs at any time during the year.
 15 The bond or cash deposit shall be:

16 (a) \$10,000 if the contractor employs no more than 20 employees; or

17 (b) \$30,000, or such lesser sum as may be authorized by the commissioner under ORS 658.416,
 18 if the contractor employs 21 or more employees.

19 (4) In the event that a single business entity licensed as a farm labor contractor has more than
 20 one natural person who, as an owner or employee of the business entity, engages in activities that
 21 require the persons to be licensed individually as farm labor contractors, and each such person en-
 22 gages in such activities solely for that business entity, the commissioner may provide by rule for
 23 lower aggregate bonding requirements for the business entity and its owners and employees. If there
 24 is an unsatisfied judgment of a court or final decision of an administrative agency against a license
 25 applicant, the subject of which is any matter that would be covered by the bond or deposit referred
 26 to in subsection (3) of this section, the commissioner may not issue a license to the applicant until
 27 the judgment or decision is satisfied. As a condition of licensing any such applicant, the commis-
 28 sioner may require the applicant to submit proof of financial ability required by subsection (3) of this
 29 section in an amount up to three times that ordinarily required of a license applicant.

30 (5) All corporate surety bonds filed under this section or ORS 658.419 shall be executed to cover
 31 liability for the period for which the license is issued. During the period for which it is executed,
 32 [*no*] **the** bond may **not** be canceled or otherwise terminated.

33 (6) Each application must be accompanied by the fee established under ORS 658.413.

34 (7) Any person who uses the services of a farm labor contractor who has failed to comply with
 35 any of the provisions of this section or ORS 658.419 shall:

36 (a) Be personally and jointly and severally liable to any employee as far as the employee has
 37 not been paid wages in full for the work done for that person.

38 (b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the
 39 wages due under this section.

40 (8) Any person who suffers any loss of wages from the employer of the person or any other loss
 41 specified in subsection (16) of this section shall have a right of action in the name of the person
 42 against the surety upon the bond or against the deposit with the commissioner. The right of action:

43 (a) Is assignable and must be included with an assignment of a wage claim, of any other appro-
 44 priate claim or of a judgment thereon.

45 (b) May not be included in any suit or action against the farm labor contractor but must be

1 exercised independently after first procuring a judgment or other form of adequate proof of liability
2 established by rule and procedure under subsection (14) of this section establishing the farm labor
3 contractor's liability for the claim.

4 (9)(a) The surety company or the commissioner shall make prompt and periodic payments on the
5 farm labor contractor's liability up to the extent of the total sum of the bond or deposit.

6 (b) Payment shall be made based upon priority of wage claims over advances made by the
7 grower or producer of agricultural commodities or the owner or lessee of land intended to be used
8 for the production of timber, for advances made to or on behalf of the farm labor contractor.

9 (c) Payment shall be made in full of all sums due to each person who presents adequate proof
10 of the claim.

11 (d) Payment shall be made in part if there are insufficient funds to pay in full the person next
12 entitled to payment in full.

13 (10) A person may not bring any suit or action against the surety company or the commissioner
14 on the bond or against the commissioner as the trustee for the beneficiaries of the farm labor con-
15 tractor under any deposit made pursuant to this section or ORS 658.419 unless the person has first
16 exhausted the procedures contained in subsections (8) and (12) of this section or in ORS 658.419 and
17 contends that the surety company or the commissioner still has funds that are applicable to the
18 person's judgment or acknowledgment.

19 (11) The commissioner may not be prevented from accepting assignments of wage claims and
20 enforcing liability against the surety on the bond or from applying the deposit to just wage claims
21 filed with the commissioner.

22 (12) All claims against the bond or deposit shall be unenforceable unless request for payment
23 of a judgment or other form of adequate proof of liability or a notice of the claim has been made
24 by certified mail to the surety or the commissioner within six months from the end of the period for
25 which the bond or deposit was executed and made.

26 (13) If the commissioner has received no notice as provided in subsection (12) of this section
27 within six months after a farm labor contractor is no longer required to provide and maintain a
28 surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit
29 under the control of the commissioner to the person who is entitled thereto upon receiving appro-
30 priate proof of such entitlement.

31 (14) The commissioner shall adopt rules reasonably necessary for administration and enforce-
32 ment of the provisions of this section and ORS 658.419.

33 (15) Every farm labor contractor required by this section or ORS 658.419 to furnish a surety
34 bond or make a deposit in lieu thereof shall keep conspicuously posted upon the premises where
35 employees working under the contractor are employed a notice, in both English and any other lan-
36 guage used by the farm labor contractor to communicate with workers, specifying the contractor's
37 compliance with the requirements of this section and ORS 658.419 and specifying the name and
38 Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been
39 made with the commissioner together with the address of the commissioner.

40 (16) The bond or deposit referred to in subsection (3) of this section shall be payable to the
41 commissioner and shall be conditioned upon:

42 (a) Payment in full of all sums due on wage claims of employees.

43 (b) Payment by the farm labor contractor of all sums due to the grower or producer of agricul-
44 tural commodities or the owner or lessee of land intended to be used for the production of timber
45 for advances made to or on behalf of the farm labor contractor.

1 (17) *[No license shall be issued]* **The commissioner may not issue a license** until the applicant
 2 executes a written statement that shall be subscribed and sworn to and that shall contain the fol-
 3 lowing declaration:

4
 5
 6 With regards to any action filed against me concerning my activities as a farm labor contractor,
 7 I appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept
 8 service of summons when I am not present in the jurisdiction in which such action is commenced
 9 or have in any other way become unavailable to accept service.

11
 12 (18) A person who cosigns with a farm labor contractor for a bond required by subsection (3)
 13 of this section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages
 14 above the amount of the bond solely because the person cosigned for the bond.

15 (19) The court may award reasonable attorney fees to the prevailing party in any action to en-
 16 force the provisions of this section or ORS 658.419.

17 **SECTION 2.** ORS 658.417 is amended to read:

18 658.417. In addition to the regulation otherwise imposed upon farm labor contractors pursuant
 19 to ORS 658.405 to 658.503, a person who acts as a farm labor contractor with regard to the fore-
 20 station or reforestation of lands shall:

21 (1) Obtain a special indorsement from the Commissioner of the Bureau of Labor and Industries
 22 on the license required by ORS 658.410 that authorizes the person to act as a farm labor contractor
 23 with regard to the forestation or reforestation of lands.

24 (2) Pay the fee established under ORS 658.413.

25 *[(3) Provide workers' compensation insurance for each individual who performs manual labor in*
 26 *forestation or reforestation activities regardless of the business form of the contractor and regardless*
 27 *of any contractual relationship that may be alleged to exist between the contractor and the workers*
 28 *notwithstanding any provision of ORS chapter 656, unless workers' compensation insurance is other-*
 29 *wise provided.]*

30 **SECTION 3.** ORS 658.440 is amended to read:

31 658.440. (1) Each person acting as a farm labor contractor shall:

32 (a) Carry a labor contractor's license at all times and exhibit it upon request to any person with
 33 whom the contractor intends to deal in the capacity of a farm labor contractor.

34 (b) File immediately at the United States post office serving the labor contractor's address, as
 35 noted on the face of the license, a correct change of address if the contractor permanently changes
 36 address, and notify the Commissioner of the Bureau of Labor and Industries each time an address
 37 change is made.

38 (c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other
 39 things of value entrusted to the labor contractor by any person for that purpose.

40 (d) Comply with the terms and provisions of all legal and valid agreements or contracts entered
 41 into in the contractor's capacity as a farm labor contractor.

42 (e) File with the Bureau of Labor and Industries, as required by rule, information relating to
 43 work agreements between the farm labor contractor and farmers and between the farm labor con-
 44 tractor and workers or information concerning changes in the circumstances under which the li-
 45 cense was issued.

1 (f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever
 2 occurs first, a written statement in the English language and any other language used by the farm
 3 labor contractor to communicate with the workers that contains a description of:

4 (A) The method of computing the rate of compensation.

5 (B) The terms and conditions of any bonus offered, including the manner of determining when
 6 the bonus is earned.

7 (C) The terms and conditions of any loan made to the worker.

8 (D) The conditions of any housing, health and child care services to be provided.

9 (E) The terms and conditions of employment, including the approximate length of season or pe-
 10 riod of employment and the approximate starting and ending dates thereof.

11 (F) The terms and conditions under which the worker is furnished clothing or equipment.

12 (G) The name and address of the owner of all operations where the worker will be working as
 13 a result of being recruited, solicited, supplied or employed by the farm labor contractor.

14 (H) The existence of a labor dispute at the worksite.

15 (I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503,
 16 the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner
 17 of the Bureau of Labor and Industries, in plain and simple language in a form specified by the
 18 commissioner.

19 (g) At the time of hiring and prior to the worker performing any work for the farm labor con-
 20 tractor, execute a written agreement between the worker and the farm labor contractor containing
 21 the terms and conditions described in paragraph (f)(A) to (I) of this subsection. The written agree-
 22 ment shall be in the English language and any other language used by the farm labor contractor to
 23 communicate with the workers.

24 (h) Furnish to the worker each time the worker receives a compensation payment from the farm
 25 labor contractor, a written statement itemizing the total payment and amount and purpose of each
 26 deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is
 27 done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C.
 28 351-401) or related federal or state law, a written statement of any applicable prevailing wage.

29 (i) Provide to the commissioner a certified true copy of all payroll records for work done as a
 30 farm labor contractor when the contractor pays employees directly. The records shall be submitted
 31 in such form and at such times and shall contain such information as the commissioner, by rule,
 32 may prescribe.

33 **(j)(A) If the person is a farm labor contractor engaged in the forestation or reforestation**
 34 **of lands, provide workers' compensation insurance for each individual who performs manual**
 35 **labor in forestation or reforestation activities regardless of the business form of the con-**
 36 **tractor and regardless of any contractual relationship that may be alleged to exist between**
 37 **the contractor and the workers notwithstanding ORS 656.027, unless workers' compensation**
 38 **insurance is otherwise provided; or**

39 **(B) If the person is a farm labor contractor but is not engaged in the forestation or**
 40 **reforestation of lands, provide workers' compensation insurance to the extent required under**
 41 **ORS chapter 656, unless workers' compensation insurance is otherwise provided.**

42 (2) If the farm labor contractor:

43 (a) Employs workers, the contractor shall substantially comply with the provisions of ORS
 44 654.174 relating to field sanitation, and its implementing [*regulations*] **rules** as adopted by the De-
 45 partment of Consumer and Business Services.

1 (b) Owns or controls housing furnished to workers in connection with the recruitment or em-
2 ployment of workers, the contractor shall ensure that the housing substantially complies with any
3 applicable law relating to the health, safety or habitability of the housing.

4 (c) Recruits or solicits any worker to travel from one place to another for the purpose of
5 working at a time prior to the availability of [such] **the** employment, the contractor shall furnish to
6 [any such] **the** worker, at no charge, lodging and an adequate supply of food until employment be-
7 gins, in compliance with rules adopted by the Bureau of Labor and Industries. If employment does
8 not begin within 30 days from the date the farm labor contractor represented employment would
9 become available, the contractor shall refund to [any such] **the** worker all sums paid by the worker
10 to the contractor and provide the worker, in cash or other form of payment authorized by ORS
11 652.110, the costs of transportation, including meals and lodging in transit, to return the worker to
12 the place from which the worker was induced to travel or the costs of transportation, including
13 meals and lodging in transit, to another worksite selected by the worker, whichever is less. For the
14 purposes of this paragraph, "recruits or solicits" does not include the mere provision of housing or
15 employment to persons who have not otherwise been recruited or solicited by the farm labor con-
16 tractor or an agent of the farm labor contractor prior to their arrival at the place of housing or
17 employment. Workers who arrive at the place of employment prior to the date they were instructed
18 by the contractor to arrive are not entitled to the benefits of this subsection until the date they
19 were instructed to arrive.

20 (3) A person acting as a farm labor contractor, or applying for a license to act as a farm labor
21 contractor, may not:

22 (a) Make any misrepresentation, false statement or willful concealment in the application for a
23 license.

24 (b) Willfully make or cause to be made to any person any false, fraudulent or misleading repre-
25 sentation, or publish or circulate any false, fraudulent or misleading information concerning the
26 terms, condition or existence of employment at any place or by any person.

27 (c) Solicit or induce, or cause to be solicited or induced, the violation of an existing contract
28 of employment.

29 (d) Knowingly employ an alien not legally present or legally employable in the United States.

30 (e) Assist an unlicensed person to act in violation of ORS 658.405 to 658.503.

31 (f) By force, intimidation or threat of procuring dismissal or deportation or by any other manner
32 whatsoever, induce any worker employed or in a subcontracting relationship to the farm labor con-
33 tractor to give up any part of the compensation to which the worker is entitled under the contract
34 of employment or under federal or state wage laws.

35 (g) Solicit or induce, or cause to be solicited or induced, the travel of a worker from one place
36 to another by representing to a worker that employment for the worker is available at the destina-
37 tion when employment for the worker is not available within 30 days after the date the work was
38 represented as being available.

39 **SECTION 4.** ORS 658.411 is amended to read:

40 658.411. (1) The employee of a farm labor contractor who is licensed under ORS 658.405 to
41 658.503 may be licensed as a farm labor contractor subject to an employee indorsement if the em-
42 ployee continuously meets all of the following conditions:

43 (a) The employee's employer has filed with the Commissioner of the Bureau of Labor and In-
44 dustries a signed statement, in a form required by the commissioner, agreeing to sponsor the appli-
45 cation and to notify the commissioner promptly upon termination of the employment of the employee;

1 (b) The employee engages in activities that would require licensing as a farm labor contractor
 2 solely on behalf of the employer;

3 (c) The employee does not personally employ any workers and is not responsible for paying any
 4 workers;

5 (d) The employer maintains proof of financial responsibility;

6 (e) The employer's license remains in good standing; and

7 (f) The employee meets all of the conditions for licensing as a farm labor contractor, except as
 8 provided in this section.

9 (2) A farm labor contractor subject to an employee indorsement acting in compliance with sub-
 10 section (1) of this section need not:

11 (a) Provide proof of financial responsibility under ORS 658.415 (3).

12 (b) **Comply with ORS 658.440 (1)(j).**

13 *[(3) A farm labor contractor subject to an employee indorsement acting in compliance with sub-*
 14 *section (1) of this section need not comply with ORS 658.417 (3).]*

15 *[(4)]* (3) The license of a farm labor contractor subject to an employee indorsement shall state
 16 the conditions contained in subsection (1) of this section on its face[,] and shall state that a farm
 17 labor contractor subject to an employee indorsement who operates out of compliance with these
 18 restrictions is an unlicensed farm labor contractor.

19 *[(5)]* (4) A farm labor contractor who employs another farm labor contractor is personally,
 20 jointly and severally liable for any damages, attorney fees or costs awarded against the employee
 21 for the actions of the farm labor contractor employee undertaken within the scope of employment,
 22 or for actions of the employee that the employee takes under color of an employee's license subject
 23 to an employee indorsement that are known, or reasonably should have been known, by the em-
 24 ployer. In the case of a farm labor contractor that is a corporation, both the corporation and the
 25 licensed majority shareholder or shareholders are so liable.

26 **SECTION 5.** ORS 658.453 is amended to read:

27 658.453. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
 28 of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

29 (a) A farm labor contractor who, without the license required by ORS 658.405 to 658.503, re-
 30 cruits, solicits, supplies or employs a worker.

31 (b) A farm labor contractor who fails to comply with ORS 658.415 (15).

32 (c) A farm labor contractor who fails to comply with ORS 658.440 (1), (2)(c) or (3).

33 (d) Any person who violates ORS 658.452.

34 (e) A farm labor contractor who fails to comply with ORS 658.417 (1) *[or (3)]*.

35 (f) Any person who uses an unlicensed farm labor contractor without complying with ORS
 36 658.437.

37 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

38 (3) All penalties recovered under this section shall be paid into the State Treasury and credited
 39 to the Farmworker Housing Development Account of the Oregon Housing Fund.

40 (4) After filing a complaint with the commissioner, in addition to any other penalty provided by
 41 law, a worker has a right of action against a farm labor contractor who violates subsection (1)(c),
 42 (d) or (e) of this section or ORS 658.440 (2)(a) or (b) without exhausting any alternative administra-
 43 tive remedies. The action may not be commenced later than two years after the date of the violation
 44 giving rise to the right of action. The amount of damages recoverable for each violation under this
 45 subsection is actual damages or \$1,000, whichever amount is greater. In any such action the court

1 may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees
 2 at trial and appeal.

3 **SECTION 6.** ORS 658.475 is amended to read:

4 658.475. The Commissioner of the Bureau of Labor and Industries, or any other person, may
 5 bring [*suit in any court of competent jurisdiction*] **an action in circuit court** to enjoin any person
 6 from using the services of an unlicensed farm labor contractor or to enjoin any person acting as a
 7 farm labor contractor in violation of ORS 658.405 to 658.503, or rules promulgated pursuant thereto,
 8 from committing future violations. The court may award to the prevailing party costs and dis-
 9 bursements and a reasonable attorney fee. In addition, the amount of damages recoverable from a
 10 person acting as a farm labor contractor with regard to the forestation or reforestation of lands who
 11 violates ORS 658.410[, 658.417 (3)] or 658.440 (1)(i) **or (j)** or (3)(e) is actual damages or \$500, which-
 12 ever amount is greater.

13 **SECTION 7. (1) The amendments to ORS 658.415 by section 1 of this 2007 Act apply only**
 14 **to an applicant for a farm labor contractor license, including an applicant for the renewal**
 15 **of a farm labor contractor license, who files an application on or after the effective date of**
 16 **this 2007 Act.**

17 **(2) The amendments to ORS 658.411, 658.417, 658.440, 658.453 and 658.475 by sections 2 to**
 18 **6 of this 2007 Act apply to:**

19 **(a) A person acting as a farm labor contractor without a valid farm labor contractor li-**
 20 **cence on or after the effective date of this 2007 Act.**

21 **(b) A person who has a valid farm labor contractor license on the effective date of this**
 22 **2007 Act only after the license expires under ORS 658.435 or is revoked.**

23