

House Bill 2157

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for State Landscape Contractors Board)

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 applicant for landscape contracting business license that is nonexempt independent contractor to provide workers' compensation insurance coverage for employees of landscape contracting business.

Requires applicant for landscape contracting business license that is exempt independent contractor and enters into contract with worker leasing company or temporary service provider to ensure that workers supplied to business by leasing company or service provider are covered by workers' compensation insurance.

Requires landscape contracting business that is nonexempt independent contractor to maintain in effect workers' compensation insurance coverage for landscape contracting business.

Requires landscape contracting business that is exempt independent contractor and enters into contract with worker leasing company or temporary service provider to ensure that workers' compensation insurance is maintained in effect for workers supplied to business by leasing company or service provider.

Requires independent contractor that applies for landscape contracting business license and is subject to workers' compensation insurance requirement to include proof of compliance with requirement.

Makes violation of workers' compensation insurance requirement subject to civil penalty, not to exceed \$2,000. Makes violation of workers' compensation requirement or proof of coverage requirement grounds for suspension, revocation or refusal of license.

Changes required content for landscape contracting business license application submitted by independent contractor. Changes requirement for providing State Landscape Contractors Board with requested information during licensing period.

A BILL FOR AN ACT

1
2 Relating to landscape contracting businesses; creating new provisions; and amending ORS 671.565
3 and 671.610.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS 671.510**
6 **to 671.760.**

7 **SECTION 2. (1) An applicant for a landscape contracting business license that qualifies**
8 **under ORS 671.525 to be classified as a nonexempt independent contractor must provide**
9 **workers' compensation insurance coverage for all employees of the landscape contracting**
10 **business.**

11 **(2) An applicant for a landscape contracting business license that qualifies under ORS**
12 **671.525 to be classified as an exempt independent contractor, and that has entered into a**
13 **contract with a worker leasing company or temporary service provider for the supplying of**
14 **workers to the landscaping business, must ensure that all leasing company or service pro-**
15 **vider employees supplied for use by the business are covered by workers' compensation in-**
16 **surance. As used in this subsection, "worker leasing company" and "temporary service**
17 **provider" have the meanings given those terms under ORS 656.850.**

18 **SECTION 3. (1) A landscape contracting business that qualifies under ORS 671.525 to be**
19 **classified as a nonexempt independent contractor must maintain workers' compensation in-**

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 **insurance coverage in effect for all employees of the landscape contracting business.**

2 **(2) A landscape contracting business licensee that qualifies under ORS 671.525 to be**
 3 **classified as an exempt independent contractor, and that has entered into a contract with a**
 4 **worker leasing company or temporary service provider for the supplying of workers to the**
 5 **landscaping business, must ensure that workers' compensation insurance coverage is main-**
 6 **tained in effect for all leasing company or service provider employees supplied for use by the**
 7 **business. As used in this subsection, "worker leasing company" and "temporary service**
 8 **provider" have the meanings given those terms under ORS 656.850.**

9 **SECTION 4.** ORS 671.565 is amended to read:

10 671.565. (1) Each person applying for a landscape contracting business license must:

11 (a) Pay to the State Landscape Contractors Board the applicable landscape contracting business
 12 license fee established by the board under ORS 671.650.

13 (b) Have a landscape construction professional license or employ at least one person with a
 14 landscape construction professional license to supervise the landscaping operation of the business.

15 (c) Submit the names of all employees who are licensed landscape construction professionals.

16 (d) File with the board a form of security acceptable under ORS 671.690.

17 (e) File with the board a certificate of public liability, personal injury and property damage in-
 18 surance covering the work of the landscape contracting business that is subject to ORS 671.510 to
 19 671.760 for an amount not less than \$100,000.

20 (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an in-
 21 dependent contractor[.] **and the class of independent contractor described in ORS 671.525 for**
 22 **which the applicant qualifies.**

23 **(2)(a) If an applicant for licensing under this section qualifies to be classified as a non-**
 24 **exempt independent contractor, the applicant shall provide the employer identification num-**
 25 **ber of the applicant and evidence satisfactory to the board that the applicant provides**
 26 **workers' compensation insurance coverage for all employees of the landscape contracting**
 27 **business.**

28 **(b) If an applicant for licensing under this section qualifies to be classified as an exempt**
 29 **independent contractor and has entered into a contract with a worker leasing company or**
 30 **temporary service provider for the supplying of workers to the landscape contracting busi-**
 31 **ness, the applicant shall provide evidence satisfactory to the board that the applicant has**
 32 **ensured the maintenance of workers' compensation insurance coverage for all leasing com-**
 33 **pany or service provider employees supplied for use by the business. As used in this para-**
 34 **graph, "worker leasing company" and "temporary service provider" have the meanings given**
 35 **those terms in ORS 656.850.**

36 [(2)] (3) At the time of application for a license, for renewal of a license in active status or for
 37 return of a license to active status, the [*landscape contracting business*] **applicant** shall provide ev-
 38 idence satisfactory to the board that the public liability, personal injury and property damage in-
 39 surance required by [*subsection (1)(e) of*] this section **and any workers' compensation required**
 40 **of the applicant under section 2 or 3 of this 2011 Act** is in effect. During a license period, the
 41 [*landscape contracting business*] **licensee** shall provide, to the extent required by the board, satis-
 42 factory evidence of continued public liability, personal injury and property damage insurance cov-
 43 erage **and, if required under section 3 of this 2011 Act, workers' compensation insurance**
 44 **coverage.**

45 **SECTION 5.** ORS 671.610 is amended to read:

1 671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape
 2 Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape con-
 3 struction professional or landscape contracting business that does any of the following:

4 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material
 5 misrepresentation.

6 (b) Makes a material misrepresentation about the quality of any material or service the person
 7 provides.

8 (c) Performs defective work.

9 (d) Furnishes defective materials.

10 (e) Makes misleading statements when advertising services or materials.

11 (f) Violates a provision of ORS 671.510 to 671.760.

12 (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-
 13 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS
 14 671.690.

15 (h) Fails to maintain public liability, personal injury and property damage insurance as required
 16 by ORS 671.565 throughout a licensing period.

17 (i) **Fails to comply with section 2 or 3 of this 2011 Act.**

18 (j) **Fails to provide evidence of workers' compensation coverage as described in ORS**
 19 **671.565.**

20 [(i)] (k) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

21 [(j)] (L) Performs work for which a permit is required under the state building code without
 22 obtaining the required permit, if the work results in the filing of a claim with the board.

23 [(k)] (m) Violates a rule or order of the board.

24 [(L)] (n) Refuses to comply with a subpoena issued by the board.

25 [(m)] (o) Fails to pay in full any amount owed to a claimant under a final order of the board
 26 or an arbitration award, or under a judgment rendered in this or any other state.

27 [(n)] (p) Does not make payment, including any interest due, for labor or materials contracted
 28 for by the person pursuant to a contract for a public improvement within 90 days after the date the
 29 person receives payment from a public contracting agency or, if the person is a subcontractor, from
 30 the contractor.

31 [(o)] (q) Engages in conduct as a landscape construction professional or landscape contracting
 32 business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

33 [(p)] (r) Fails to comply with the requirements of ORS 652.120.

34 [(q)] (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365,
 35 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325
 36 or 164.415, provided that the facts supporting the conviction and all intervening circumstances make
 37 the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS
 38 670.280.

39 (2) The board may suspend or refuse to renew the license of a landscape construction profes-
 40 sional or landscape contracting business without prior hearing if, after investigating and setting
 41 forth in writing the facts supporting the action, the board determines that continued activity by the
 42 landscape construction professional or landscape contracting business poses an imminent threat of
 43 serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew un-
 44 der this subsection include, but are not limited to:

45 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

1 (b) The lack of public liability, personal injury or property damage insurance required under
 2 ORS 671.565;

3 (c) **The lack of workers' compensation insurance that is required of the licensee under**
 4 **section 3 of this 2011 Act;**

5 [(c)] (d) The hiring of employees while licensed as exempt under ORS 671.525;

6 [(d)] (e) Conduct as a landscape construction professional or a landscape contracting business
 7 that is dishonest;

8 [(e)] (f) Operation of a landscape contracting business that does not employ at least one licensed
 9 landscape construction professional; or

10 [(f)] (g) The failure to notify the board of any unpaid court judgment, arbitration award or ad-
 11 ministrative agency final order as required by ORS 671.563.

12 (3) A person whose license is suspended or refused renewal under subsection (2) of this section
 13 may request a hearing within 90 days after receiving the notice of the suspension or refusal to re-
 14 new. Except as provided in this subsection, the board shall give a contested case hearing requested
 15 under this subsection priority over other hearings and schedule the hearing for the earliest practi-
 16 cable date. If a citation is issued to the person and the order of suspension or refusal to renew will
 17 terminate by its terms if a court renders a final judgment regarding the citation in favor of the
 18 person, the person may request that the board hold the requested contested case hearing in abey-
 19 ance until after the court has rendered a final judgment.

20 (4) A person whose license is revoked under this section is not eligible to apply for a license
 21 under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

22 (5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting
 23 business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board deter-
 24 mines, after notice and opportunity for a hearing, that the landscape contracting business was
 25 working with other landscape contracting businesses on the same task and work site where one of
 26 the landscape contracting businesses is licensed as an exempt independent contractor under ORS
 27 671.525 (2)(b) and the total number of landscape contracting businesses working on the task ex-
 28 ceeded:

- 29 (a) Two sole proprietors;
- 30 (b) One partnership;
- 31 (c) One corporation; or
- 32 (d) One limited liability company.

33 (6) The board shall provide by rule a process and criteria that must be met for restoration of
 34 a license that has not been permanently revoked.

35 **SECTION 6. Section 2 of this 2011 Act applies to license applications filed with the State**
 36 **Landscape Contractors Board on or after the effective date of this 2011 Act. However, section**
 37 **2 of this 2011 Act does not require a worker leasing company or temporary service provider**
 38 **to alter any rights or duties of the leasing company or service provider under a contract**
 39 **entered into before the effective date of this 2011 Act.**

40 **SECTION 7. Section 3 of this 2011 Act applies to a landscape contracting business that**
 41 **uses worker leasing company or temporary service provider employees on or after the ef-**
 42 **fective date of this 2011 Act under a contract entered into before, on or after the effective**
 43 **date of this 2011 Act. However, section 3 of this 2011 Act does not require a worker leasing**
 44 **company or temporary service provider to alter any rights or duties of the leasing company**
 45 **or service provider under a contract entered into before the effective date of this 2011 Act.**

