

House Bill 2469

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Accountability)

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**.

Establishes review processes for certain employer determinations made by Department of Revenue and Employment Department based on finding that one or more workers are employees and not independent contractors.

Modifies laws relating to Interagency Compliance Network. Eliminates references to network and substitutes references to specific agencies.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employment; creating new provisions; amending ORS 183.635, 305.410, 657.679, 670.700
3 and 670.705; and declaring an emergency.

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

5 **SECTION 1. Definitions. As used in sections 1 to 6 of this 2011 Act:**

6 (1) **"Employer determination" means:**

7 (a) **A determination by the Employment Department under ORS 657.679 that an employ-**
8 **ing unit is an employer subject to ORS chapter 657 based on a finding that one or more**
9 **workers paid by the employing unit are employees and not independent contractors;**

10 (b) **A determination by the Employment Department under ORS 657.679 that services**
11 **performed by an individual for an employer liable for reimbursement payments in lieu of**
12 **taxes is employment subject to ORS chapter 657 based on a finding that one or more workers**
13 **paid by the employing unit are employees and not independent contractors; or**

14 (c) **A withholding or transit tax assessment issued by the Department of Revenue to a**
15 **person that is based in whole or part on a finding that one or more workers paid by the**
16 **person were employees of the person under the tax laws of this state and not independent**
17 **contractors.**

18 (2) **"Final order" means an employer determination that is no longer subject to judicial**
19 **review.**

20 **SECTION 2. Employer determinations generally; notice of issuance of employer determi-**
21 **nations and of final orders. (1) The Department of Revenue and the Employment Department**
22 **by rule may specify employer determinations that are subject to sections 1 to 6 of this 2011**
23 **Act. An employer determination is subject to sections 1 to 6 of this 2011 Act only if the no-**
24 **tice served on the person identified in the determination so indicates.**

25 (2) **The Department of Revenue and the Employment Department shall promptly give**
26 **notice to all agencies identified in ORS 670.700 (1) whenever:**

27 (a) **An employer determination is issued by the Department of Revenue or the Employ-**
28 **ment Department.**

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) An employer determination issued by the Department of Revenue or the Employment
2 Department becomes a final order.

3 (3) Notices given under this section must identify the person that is the subject of the
4 employer determination.

5 (4) Receipt of a notice under this section does not prevent the Department of Revenue
6 or the Employment Department from issuing an employer determination with respect to the
7 person identified in the notice. If the person requests a hearing within the time allowed un-
8 der section 4 of this 2011 Act on the first employer determination received by the person, the
9 person is deemed to have requested a hearing within the time allowed under section 4 of this
10 2011 Act on the second employer determination. The hearings on the two determinations
11 under section 4 of this 2011 Act shall be consolidated.

12 **SECTION 3. Service of employer determinations; contents.** (1) An employer determi-
13 nation must be served on the person identified in the determination by regular mail at the
14 last-known address for the person.

15 (2) An employer determination must:

16 (a) Indicate that the person identified in the determination may request a hearing in the
17 manner provided by section 4 of this 2011 Act if the person wishes to contest the determi-
18 nation;

19 (b) Indicate that the determination will become a final order if a hearing is not requested
20 within the time allowed by section 4 of this 2011 Act; and

21 (c) Include a statement that explains the binding effect of a final order under section 5
22 of this 2011 Act.

23 **SECTION 4. Hearing on employer determination.** (1) Notwithstanding any other provision
24 of law, an employer determination becomes a final order 20 days after the notice is mailed
25 to the person identified in the determination if the person does not file a written request for
26 a hearing with the department that issued the determination before the expiration of the
27 20-day period.

28 (2) If a request for a hearing on an employer determination is made within the time al-
29 lowed, a hearing shall be conducted in the manner provided for contested cases under ORS
30 chapter 183. The hearing shall be conducted by an administrative law judge assigned from the
31 Office of Administrative Hearings.

32 (3) Notwithstanding ORS 183.482, a petition for judicial review of a decision by an ad-
33 ministrative law judge under this section must be filed within 20 days after the decision is
34 final.

35 **SECTION 5. Binding effect of employer determination.** When an employer determination
36 becomes a final order, the determination is binding on:

37 (1) The person identified in the determination;

38 (2) The Oregon Tax Court; and

39 (3) The Department of Revenue and the Employment Department.

40 **SECTION 6. Exclusivity.** Notwithstanding any other provision of law, sections 1 to 6 of
41 this 2011 Act provide the exclusive means of contesting an employer determination.

42 **SECTION 7.** ORS 183.635 is amended to read:

43 183.635. (1) Except as provided in this section, all agencies must use administrative law judges
44 assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct con-
45 tested case hearings, without regard to whether those hearings are subject to the procedural re-

1 requirements for contested case hearings.

2 (2) The following agencies need not use administrative law judges assigned from the office:

3 (a) Attorney General.

4 (b) Boards of stewards appointed by the Oregon Racing Commission.

5 (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

6 (d) Department of Corrections.

7 (e) Department of Education, State Board of Education and Superintendent of Public Instruction.

8 (f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C.
9 722(c) and disability determination cases under 42 U.S.C. 405.

10 (g) Department of Revenue, **except for hearings conducted under section 4 of this 2011**
11 **Act.**

12 (h) Department of State Police.

13 (i) Employment Appeals Board.

14 (j) Employment Relations Board.

15 (k) Energy Facility Siting Council.

16 (L) Fair Dismissal Appeals Board.

17 (m) Governor.

18 (n) Land Conservation and Development Commission.

19 (o) Land Use Board of Appeals.

20 (p) Local government boundary commissions created pursuant to ORS 199.430.

21 (q) Oregon University System and institutions of higher education listed in ORS 352.002.

22 (r) Oregon Youth Authority.

23 (s) Psychiatric Security Review Board.

24 (t) Public Utility Commission.

25 (u) State Accident Insurance Fund Corporation.

26 (v) State Apprenticeship and Training Council.

27 (w) State Board of Parole and Post-Prison Supervision.

28 (x) State Land Board.

29 (y) State Treasurer.

30 (z) Wage and Hour Commission.

31 (3) The Workers' Compensation Board is exempt from using administrative law judges assigned
32 from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except
33 as specifically provided in this subsection, the Department of Consumer and Business Services must
34 use administrative law judges assigned from the office only for contested cases arising out of the
35 department's powers and duties under:

36 (a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;

37 (b) ORS chapter 455;

38 (c) ORS chapter 674;

39 (d) ORS chapters 706 to 716;

40 (e) ORS chapter 717;

41 (f) ORS chapters 723, 725 and 726; and

42 (g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

43 (4) Notwithstanding any other provision of law, in any proceeding in which an agency is re-
44 quired to use an administrative law judge assigned from the office, an officer or employee of the
45 agency may not conduct the hearing on behalf of the agency.

1 (5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to
 2 use an administrative law judge assigned from the office if:

- 3 (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- 4 (b) Use of an administrative law judge from the office could result in a loss of federal funds.

5 (6) Notwithstanding any other provision of this section, the Department of Environmental
 6 Quality must use administrative law judges assigned from the office only for contested case hearings
 7 conducted under the provisions of ORS 183.413 to 183.470.

8 **SECTION 8.** ORS 305.410 is amended to read:

9 305.410. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Su-
 10 preme Court and to [subsection] **subsections (2) and (5)** of this section, the tax court shall be the
 11 sole, exclusive and final judicial authority for the hearing and determination of all questions of law
 12 and fact arising under the tax laws of this state. For the purposes of this section, and except to the
 13 extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

- 14 (a) ORS chapter 577 relating to Oregon Beef Council contributions.
- 15 (b) ORS 576.051 to 576.455 relating to commodity commission assessments.
- 16 (c) ORS chapter 477 relating to fire protection assessments.
- 17 (d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 743A, 744, 746, 748 and 750 relating to insur-
 18 ance company fees and taxes.
- 19 (e) ORS chapter 473 relating to liquor taxes.
- 20 (f) ORS chapter 583 relating to milk marketing, production or distribution fees.
- 21 (g) ORS chapter 825 relating to motor carrier taxes.
- 22 (h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes.
- 23 (i) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title
 24 39 relating to boat licenses.
- 25 (j) ORS chapter 578 relating to Oregon Wheat Commission assessments.
- 26 (k) ORS chapter 462 relating to racing taxes.
- 27 (L) ORS chapter 657 relating to unemployment insurance taxes.
- 28 (m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.
- 29 (n) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure
 30 of real and personal property tax liens.

31 (o) Sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003, relating to long term care fa-
 32 cility assessments.

33 (2) The tax court and the circuit courts shall have concurrent jurisdiction to try actions or suits
 34 to determine:

- 35 (a) The priority of property tax liens in relation to other liens.
- 36 (b) The validity of any deed, conveyance, transfer or assignment of real or personal property
 37 under ORS 95.060 and 95.070 (1983 Replacement Part) or 95.200 to 95.310 where the Department of
 38 Revenue has or claims a lien or other interest in the property.

39 (3) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme
 40 Court, the tax court shall be the sole, exclusive and final judicial authority for the hearing and de-
 41 termination of all questions of law and fact concerning the authorized uses of the proceeds of bonded
 42 indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

43 (4) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section
 44 and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or
 45 any other court, any matter within the jurisdiction of the tax court.

1 **(5) Employer determinations that are subject to sections 1 to 6 of this 2011 Act are sub-**
 2 **ject to review only as provided in sections 1 to 6 of this 2011 Act.**

3 **SECTION 9.** ORS 657.679 is amended to read:

4 657.679. A determination of the Director of the Employment Department or the authorized rep-
 5 resentative of the director:

6 (1) As to whether an employing unit is an employer subject to this chapter, or

7 (2) That services performed by an individual for an employer liable for reimbursement payments
 8 in lieu of taxes is employment subject to this chapter,

9
 10 shall become final 20 days after written notice of the determination is mailed to the last-known ad-
 11 dress of the employing unit of record with the director unless within such time the employing unit
 12 files an application with the director for a hearing with respect thereto as provided in ORS
 13 657.683, **or as provided in section 4 of this 2011 Act if the determination is subject to section**
 14 **1 to 6 of this 2011 Act.**

15 **SECTION 10.** ORS 670.700 is amended to read:

16 670.700. (1) *[There is established an Interagency Compliance Network consisting of]* **The following**
 17 **agencies shall work together to increase compliance with laws relating to taxation and em-**
 18 **ployment in the manner described in subsection (2) of this section:**

- 19 (a) The Department of Justice;
- 20 (b) The Department of Revenue;
- 21 (c) The Employment Department;
- 22 (d) The Department of Consumer and Business Services;
- 23 (e) The Bureau of Labor and Industries;
- 24 (f) The Construction Contractors Board; **and**
- 25 (g) The State Landscape Contractors Board[; *and*]

26 *[(h) Other state agencies that enter into the intergovernmental agreement as described in subsection*
 27 *(3) of this section].*

28 (2) The *[Interagency Compliance Network established under this section]* **agencies identified in**
 29 **subsection (1) of this section** shall:

- 30 (a) Work to establish consistency in agency determinations relating to the classification of
 31 workers, including but not limited to classification of workers as independent contractors;
- 32 (b) Gather and share information relating to persons who pay workers in cash and who do not
 33 comply with laws relating to taxation or employment;
- 34 (c) Gather and share information relating to the misclassification of workers, including but not
 35 limited to misclassification as independent contractors;
- 36 (d) Develop investigative methods for auditing persons who pay workers in cash, or who mis-
 37 classify workers, and who do not comply with laws relating to taxation or employment;
- 38 (e) Conduct joint audits of persons who pay workers in cash, or who misclassify workers, and
 39 who do not comply with laws relating to taxation or employment;
- 40 (f) Identify opportunities for and obstacles to improving compliance with the laws relating to the
 41 classification of workers, taxation or employment;
- 42 (g) Create a coordinated enforcement process for the laws relating to classification of workers
 43 that is efficient, fair and effective for the public and the regulatory agencies charged with enforcing
 44 laws relating to taxation or employment;
- 45 (h) Engage in public outreach efforts to educate the public generally on the distinctions between

1 independent contractors and employees and on the laws and regulations governing the duties relat-
 2 ing to classification of workers; and

3 (i) Take such other action as the member agencies deem appropriate to improve compliance with
 4 laws relating to taxation or employment that are administered by the member agencies.

5 (3) The agencies identified in subsection [(1)(a) to (g)] (1) of this section [shall] **may** enter into
 6 an intergovernmental agreement for the purpose of coordinating the efforts of the agencies under
 7 this section. Any other agency of state government, as defined in ORS 174.111, that has an interest
 8 in compliance with laws relating to taxation or employment may [become a member of the Interagency
 9 Compliance Network by entering into] **become a party to** the agreement on such terms as may be
 10 prescribed by the agencies identified in subsection [(1)(a) to (g)] (1) of this section.

11 [(4)] Notwithstanding ORS 314.835 or any other law relating to confidentiality of information,
 12 [any agency that is a member of the Interagency Compliance Network may enter into an agreement with
 13 another member agency to provide information to the other agency] **the agreement may provide for**
 14 **the sharing of information between the agencies.** Information provided to an agency under this
 15 [subsection] **agreement** may be used by the agency only for the purpose of enforcing compliance of
 16 laws that are administered by the agency, **and may be introduced as evidence in any proceeding**
 17 **for the enforcement of the laws administered by the agency.**

18 **SECTION 11.** ORS 670.705 is amended to read:

19 670.705. The [member] agencies [of the Interagency Compliance Network] **identified in ORS**
 20 **670.700 (1)** shall prepare a report once every two years that details the activities of the [network]
 21 **agencies under ORS 670.700** during the two-year period. The report shall identify the manner in
 22 which [the] funding for [the network] **activities under ORS 670.700** has been expended, and an es-
 23 timate of the revenue impact of the [network's] activities. The report shall be provided to the Gov-
 24 ernor, and to the Legislative Assembly in the manner provided by ORS 192.245.

25 **SECTION 12.** (1) **Except as provided in subsection (2) of this section, sections 1 to 6 of**
 26 **this 2011 Act and the amendments to statutes by sections 7 to 11 of this 2011 Act become**
 27 **operative January 1, 2012.**

28 (2) **The Department of Revenue and the Employment Department may take any action,**
 29 **including adopting rules, before January 1, 2012, necessary to allow implementation of**
 30 **sections 1 to 6 of this 2011 Act and the amendments to statutes by sections 7 to 11 of this**
 31 **2011 Act on January 1, 2012.**

32 **SECTION 13.** **The section captions used in this 2011 Act are provided only for the con-**
 33 **venience of the reader and do not become part of the statutory law of this state or express**
 34 **any legislative intent in the enactment of this 2011 Act.**

35 **SECTION 14.** **This 2011 Act being necessary for the immediate preservation of the public**
 36 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 37 **on its passage.**

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