

House Bill 3030

Sponsored by Representative GARRETT; Representatives BARKER, BERGER, OLSON, SCHAUFLER

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**.

Exempts certain individuals providing volunteer golf course marshal services from minimum wage standards and mandatory workers' compensation coverage.

A BILL FOR AN ACT

1
2 Relating to volunteer golf course marshals; amending ORS 653.020 and 656.027.

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

4 **SECTION 1.** ORS 653.020 is amended to read:

5 653.020. ORS 653.010 to 653.261 do not apply to any of the following employees:

6 (1) An individual employed in agriculture if:

7 (a) Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate
8 basis in an operation which has been, and is customarily and generally recognized as having been
9 paid, on a piece-rate basis in the region of employment and is employed by an employer who did not,
10 during any calendar quarter during the preceding year use more than 500 piece-rate-work-days of
11 agricultural labor;

12 (b) Such individual is the parent, spouse, child or other member of the employer's immediate
13 family;

14 (c) Such individual:

15 (A) Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an
16 operation which has been, and is customarily and generally recognized as having been, paid on a
17 piece-rate basis in the region of employment;

18 (B) Commutes daily from a permanent residence to the farm on which the individual is so em-
19 ployed; and

20 (C) Has been employed in agricultural labor less than 13 weeks during the preceding calendar
21 year;

22 (d) Such individual, other than an individual described in paragraph (c) of this subsection:

23 (A) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate
24 basis in an operation which has been, and is customarily and generally recognized as having been,
25 paid on a piece-rate basis in the region of employment; and

26 (B) Is paid at the same piece-rate as employees over 16 years of age on the same farm; or

27 (e) Such employee is principally engaged in the range production of livestock and earns a salary
28 and is paid on a salary basis.

29 (2) An individual employed in domestic service on a casual basis in or about a family home.

30 (3) An individual engaged in administrative, executive or professional work who:

31 (a) Performs predominantly intellectual, managerial or creative tasks;

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) Exercises discretion and independent judgment; and
2 (c) Earns a salary and is paid on a salary basis.
3 (4) An individual employed by the United States.
4 (5) An individual who is employed by an institution whose function is primary or secondary ed-
5 ucation, and in which the individual is an enrolled student.
6 (6) An individual engaged in the capacity of an outside salesperson or taxicab operator.
7 (7) An individual domiciled at a place of employment for the purpose of being available for
8 emergency or occasional duties for time other than that spent performing these duties, provided that
9 when the individual performs emergency or occasional duties, the individual must be paid no less
10 than the wage specified in ORS 653.025.
11 (8) An individual paid for specified hours of employment, the only purpose of which is to be
12 available for recall to duty.
13 (9) An individual domiciled at multiunit accommodations designed to provide other people with
14 temporary or permanent lodging, for the purpose of maintenance, management or assisting in the
15 management of same.
16 (10) An individual employed on a seasonal basis at:
17 (a) An organized camp operated for profit that generates gross annual income of less than
18 \$500,000; or
19 (b) A nonprofit organized camp.
20 (11) An individual employed at a nonprofit conference ground or center operated for educational,
21 charitable or religious purposes.
22 (12) An individual who performs services as a volunteer firefighter, as defined in ORS 652.050.
23 (13) An individual who performs child care services in the home of the individual or in the home
24 of the child.
25 (14) An individual employed in domestic service employment in or about a family home to pro-
26 vide companionship services for individuals who, because of age or infirmity, are unable to care for
27 themselves.
28 (15) An individual who performs service as a caddy at a golf course in an established program
29 for the training and supervision of caddies under the direction of a person who is an employee of
30 the golf course.
31 **(16) An individual who volunteers as a golf course marshal if:**
32 **(a) The services the individual provides are limited to monitoring starting times and**
33 **speed of play and informing golfers of golf course etiquette;**
34 **(b) The individual is not allowed to provide volunteer golf course marshal services for**
35 **more than 30 hours in a calendar week; and**
36 **(c) The individual receives no wage other than golf passes for providing the volunteer golf**
37 **course marshal services.**
38 [(16)] (17) An individual employed as a resident manager by an adult foster home that is licensed
39 pursuant to ORS 443.705 to 443.825 and who is domiciled at the adult foster home.
40 [(17)] (18) An individual residing in a mobile home park or manufactured dwelling park designed
41 to provide other people with temporary or permanent lodging, for the purpose of maintenance,
42 management or in assisting in the management of same.
43 [(18)] (19) An individual who volunteers as a campground host and who resides in a campground
44 owned by a public agency that provides temporary accommodations for travelers, whether under
45 public or private management, and who provides information and emergency assistance.

1 [(19)] **(20)** An individual who:

2 (a) Is registered with the National Ski Patrol or a similar nonprofit ski patrol organization as
3 a nonprofessional ski patroller and who receives no wage other than passes authorizing access to
4 and use of a ski area, as defined in ORS 30.970, for performing ski patrol services, including but not
5 limited to services related to preserving the safety of and providing information to skiers or
6 snowboarders; or

7 (b) Receives no wage other than passes authorizing access to and use of a ski area, as defined
8 in ORS 30.970, for performing services directly related to the organizing or conducting of skiing or
9 snowboarding races or other similar competitions that are:

10 (A) Sponsored and organized by a nonprofit corporation, as defined in ORS 65.001; and

11 (B) Held in a ski area, as defined in ORS 30.970.

12 **SECTION 2.** ORS 656.027 is amended to read:

13 656.027. All workers are subject to this chapter except those nonsubject workers described in
14 the following subsections:

15 (1) A worker employed as a domestic servant in or about a private home. For the purposes of
16 this subsection “domestic servant” means any worker engaged in household domestic service by
17 private employment contract, including, but not limited to, home health workers.

18 (2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or
19 about the private home of the person employing the worker.

20 (3)(a) A worker whose employment is casual and either:

21 (A) The employment is not in the course of the trade, business or profession of the employer;

22 or

23 (B) The employment is in the course of the trade, business or profession of a nonsubject em-
24 ployer.

25 (b) For the purpose of this subsection, “casual” refers only to employments where the work in
26 any 30-day period, without regard to the number of workers employed, involves a total labor cost
27 of less than \$500.

28 (4) A person for whom a rule of liability for injury or death arising out of and in the course of
29 employment is provided by the laws of the United States.

30 (5) A worker engaged in the transportation in interstate commerce of goods, persons or property
31 for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business
32 in this state.

33 (6) Firefighter and police employees of any city having a population of more than 200,000 that
34 provides a disability and retirement system by ordinance or charter.

35 (7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor
36 or services are performed under contract, the sole proprietor must qualify as an independent con-
37 tractor.

38 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are
39 performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor
40 must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 or
41 701.021 and involved in activities subject thereto is conclusively presumed to be an independent
42 contractor.

43 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work
44 performed in direct connection with the construction, alteration, repair, improvement, moving or
45 demolition of an improvement on real property or appurtenances thereto. When labor or services

1 are performed under contract, the partnership must qualify as an independent contractor.

2 (9) Except as provided in subsection (25) of this section, members, including members who are
 3 managers, of limited liability companies, regardless of the nature of the work performed. However,
 4 members, including members who are managers, of limited liability companies with more than one
 5 member, while engaged in work performed in direct connection with the construction, alteration,
 6 repair, improvement, moving or demolition of an improvement on real property or appurtenances
 7 thereto, are subject workers. When labor or services are performed under contract, the limited li-
 8 ability company must qualify as an independent contractor.

9 (10) Except as provided in subsection (24) of this section, corporate officers who are directors
 10 of the corporation and who have a substantial ownership interest in the corporation, regardless of
 11 the nature of the work performed by such officers, subject to the following limitations:

12 (a) If the activities of the corporation are conducted on land that receives farm use tax assess-
 13 ment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors
 14 in the corporate bylaws, regardless of ownership interest, and who are members of the same family,
 15 whether related by blood, marriage or adoption.

16 (b) If the activities of the corporation involve the commercial harvest of timber and all officers
 17 of the corporation are members of the same family and are parents, daughters or sons, daughters-
 18 in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers.
 19 For all other corporations involving the commercial harvest of timber, the maximum number of ex-
 20 empt corporate officers for the corporation shall be whichever is the greater of the following:

21 (A) Two corporate officers; or

22 (B) One corporate officer for each 10 corporate employees.

23 (c) When labor or services are performed under contract, the corporation must qualify as an
 24 independent contractor.

25 (11) A person performing services primarily for board and lodging received from any religious,
 26 charitable or relief organization.

27 (12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

28 (13) A person who has been declared an amateur athlete under the rules of the United States
 29 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for
 30 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-
 31 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-
 32 cognized Oregon or national certifying authority, which requires or provides liability and accident
 33 insurance for such officials. A roster of recognized Oregon and national certifying authorities will
 34 be maintained by the Department of Consumer and Business Services, from lists of certifying or-
 35 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-
 36 creation Society.

37 (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic
 38 Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the
 39 Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimburse-
 40 ment for time and travel expenses.

41 (15) A person who has an ownership or leasehold interest in equipment and who furnishes,
 42 maintains and operates the equipment. As used in this subsection "equipment" means:

43 (a) A motor vehicle used in the transportation of logs, poles or piling.

44 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

45 (c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is

1 required under ORS 825.100 or 825.104 to possess a certificate or permit or to be registered.

2 (16) A person engaged in the transportation of the public for recreational down-river boating
 3 activities on the waters of this state pursuant to a federal permit when the person furnishes the
 4 equipment necessary for the activity. As used in this subsection, “recreational down-river boating
 5 activities” means those boating activities for the purpose of recreational fishing, swimming or
 6 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

7 (17) A person who receives no wage other than ski passes or other noncash remuneration for
 8 performing volunteer:

9 (a) Ski patrol activities; or

10 (b) Ski area program activities sponsored by a ski area operator, as defined in ORS 30.970, or
 11 by a nonprofit corporation or organization.

12 (18) A person 19 years of age or older who contracts with a newspaper publishing company or
 13 independent newspaper dealer or contractor to distribute newspapers to the general public and
 14 perform or undertake any necessary or attendant functions related thereto.

15 (19) A person performing foster parent or adult foster care duties pursuant to ORS 412.001 to
 16 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

17 (20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or
 18 relief organization, whether or not such person receives meals or lodging or nominal reimbursements
 19 or vouchers for meals, lodging or expenses.

20 (21) A person performing services under a property tax work-off program established under ORS
 21 310.800.

22 (22) A person who performs service as a caddy at a golf course in an established program for
 23 the training and supervision of caddies under the direction of a person who is an employee of the
 24 golf course.

25 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a sub-
 26 stantial ownership interest in a partnership. If all partners are members of the same family and are
 27 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchil-
 28 dren, all such partners may elect to be nonsubject workers. For all other partnerships licensed un-
 29 der ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever
 30 is the greater of the following:

31 (A) Two partners; or

32 (B) One partner for each 10 partnership employees.

33 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
 34 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under
 35 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
 36 independent contractor.

37 (24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525
 38 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the na-
 39 ture of the work performed. If all officers of the corporation are members of the same family and
 40 are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grand-
 41 children, all such officers may elect to be nonsubject workers. For all other corporations licensed
 42 under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers shall
 43 be whichever is the greater of the following:

44 (A) Two corporate officers; or

45 (B) One corporate officer for each 10 corporate employees.

1 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
 2 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under
 3 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
 4 independent contractor.

5 (25)(a) Limited liability company members who are members of a company actively licensed un-
 6 der ORS 671.525 or 701.021 and who have a substantial ownership interest in the company, regard-
 7 less of the nature of the work performed. If all members of the company are members of the same
 8 family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law
 9 or grandchildren, all such members may elect to be nonsubject workers. For all other companies
 10 licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt company members
 11 shall be whichever is the greater of the following:

12 (A) Two company members; or

13 (B) One company member for each 10 company employees.

14 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
 15 656.005 (30), the company qualifies as an independent contractor. Any company licensed under ORS
 16 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an in-
 17 dependent contractor.

18 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer
 19 match whose services are retained on a match-by-match basis.

20 (27) A person performing language translator or interpreter services that are provided for others
 21 through an agent or broker.

22 (28) A person who operates, and who has an ownership or leasehold interest in, a passenger
 23 motor vehicle that is operated as a taxicab or for nonemergency medical transportation. As used in
 24 this subsection:

25 (a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consid-
 26 eration.

27 (b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

28 (c) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

29 (A) Has a passenger seating capacity that does not exceed seven persons;

30 (B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

31 (C)(i) Carries passengers for hire when the destination and route traveled may be controlled by
 32 a passenger and the fare is calculated on the basis of any combination of an initial fee, distance
 33 traveled or waiting time; or

34 (ii) Is in use under a contract to provide specific service to a third party to transport designated
 35 passengers or to provide errand services to locations selected by the third party.

36 (d) "Passenger motor vehicle that is operated for nonemergency medical transportation" means
 37 a vehicle that:

38 (A) Has a passenger seating capacity that does not exceed seven persons;

39 (B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

40 (C) Provides medical transportation services under contract with or on behalf of a mass transit
 41 or transportation district.

42 **(29) An individual who volunteers as a golf course marshal if:**

43 **(a) The services the individual provides are limited to monitoring starting times and**
 44 **speed of play and informing golfers of golf course etiquette;**

45 **(b) The individual is not allowed to provide volunteer golf course marshal services for**

1 **more than 30 hours in a calendar week; and**

2 **(c) The individual receives no wage other than golf passes for providing the volunteer golf**
3 **course marshal services.**

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