

House Bill 3612

Sponsored by Representatives JOHNSON, SHEEHAN, DOHERTY; Representatives BOONE, CANNON, DEMBROW, ESQUIVEL, HUFFMAN, PARRISH, ROBLAN, SPRENGER, THOMPSON, WAND, WINGARD (at the request of Associated General Contractors)

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**.

Allows entity that is classified by Construction Contractors Board as exempt commercial contractor to provide board with proof of personal health insurance coverage for proprietor or each partner, corporate officer or member of limited liability company as alternative to procuring and maintaining workers' compensation coverage.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to construction contractor workers' compensation coverage; amending ORS 656.027 and
3 701.035; and declaring an emergency.

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

5 **SECTION 1.** ORS 701.035 is amended to read:

6 701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
7 eligible for a license with the Construction Contractors Board.

8 (2) The board shall establish two classes of independent contractor:

9 (a) The nonexempt class is composed of the following entities:

10 (A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more
11 employees; and

12 (B) Partnerships, corporations and limited liability companies with more than two partners,
13 corporate officers or members, if any of the partners, corporate officers or members are not part of
14 the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-
15 law or sons-in-law or grandchildren.

16 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
17 limited liability companies that do not qualify as nonexempt.

18 (3) If a person who is licensed as exempt under subsection (2)(b) of this section hires one or
19 more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the
20 person is subject to penalties under ORS 701.992 for improper licensing. If a person who is licensed
21 as exempt under subsection (2)(b) of this section hires one or more employees, the person is also
22 subject to licensing sanctions under ORS 701.098. The person must reapply to the board in the
23 correct class.

24 (4) The decision of the board that a person is an independent contractor applies only when the
25 person is performing work of the nature described in ORS 701.021.

26 (5) A person that is within the exempt class described in subsection (2)(b) of this section and is
27 licensed as a commercial contractor shall:

28 (a) Procure and maintain workers' compensation insurance as authorized by ORS 656.128[.]; **or**

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) Provide the board with proof of personal health insurance coverage for the proprietor**
 2 **or for each partner, corporate officer or member of the limited liability company.**

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

4 656.027. All workers are subject to this chapter except those nonsubject workers described in
 5 the following subsections:

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

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

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

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

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

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

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

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

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

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

29 (b) Sole proprietors **who are** actively licensed under ORS 671.525[*or 701.021.*], **actively licensed**
 30 **under ORS 701.021 and classified as nonexempt under ORS 701.035 or actively licensed under**
 31 **ORS 701.021, subject to ORS 701.035 (5) and not providing health insurance as described in**
 32 **ORS 701.035 (5)(b).** When labor or services are performed under contract for remuneration,
 33 notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor.
 34 Any sole proprietor licensed under ORS 671.525 or 701.021 and involved in activities subject thereto
 35 is conclusively presumed to be an independent contractor.

36 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work
 37 performed in direct connection with the construction, alteration, repair, improvement, moving or
 38 demolition of an improvement on real property or appurtenances thereto. When labor or services
 39 are performed under contract, the partnership must qualify as an independent contractor.

40 (9) Except as provided in subsection (25) of this section, members, including members who are
 41 managers, of **a** limited liability [*companies*] **company**, regardless of the nature of the work per-
 42 formed. However, members, including members who are managers, of **a** limited liability [*companies*]
 43 **company** with more than one member, [*while engaged in work performed in direct connection with*
 44 *the construction, alteration, repair, improvement, moving or demolition of an improvement on real*
 45 *property or appurtenances thereto,*] are subject workers **if the company is actively licensed under**

1 **ORS 701.021 and classified as nonexempt under ORS 701.035 or actively licensed under ORS**
 2 **701.021, subject to ORS 701.035 (5) and not providing health insurance as described in ORS**
 3 **701.035 (5)(b).** When labor or services are performed under contract, the limited liability company
 4 must qualify as an independent contractor.

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

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

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

17 (A) Two corporate officers; or

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

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

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

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

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

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

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

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

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

41 (c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is
 42 required under ORS 825.100 or 825.104 to possess a certificate or permit or to be registered.

43 (16) A person engaged in the transportation of the public for recreational down-river boating
 44 activities on the waters of this state pursuant to a federal permit when the person furnishes the
 45 equipment necessary for the activity. As used in this subsection, "recreational down-river boating

1 activities” means those boating activities for the purpose of recreational fishing, swimming or
 2 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

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

5 (a) Ski patrol activities; or

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

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

11 (19) A person performing foster parent or adult foster care duties pursuant to ORS 412.001 to
 12 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

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

16 (21) A person performing services under a property tax work-off program established under ORS
 17 310.800.

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

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

27 (A) Two partners; or

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

29 **(b) Partners who have a substantial ownership interest in a partnership that is actively**
 30 **licensed under ORS 701.021, classified as exempt under ORS 701.035 and not subject to ORS**
 31 **701.035 (5). If all partners are members of the same family and are parents, spouses, sisters,**
 32 **brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such**
 33 **partners may elect to be nonsubject workers. A partnership classified as exempt under ORS**
 34 **701.035 and not subject to ORS 701.035 (5) that has a partner who is not a family member**
 35 **described in this paragraph is subject to the two partner limit created under ORS 701.035 (2).**

36 **(c) Partners who have a substantial ownership interest in a partnership that is actively**
 37 **licensed under ORS 701.021, is subject to ORS 701.035 (5) and provides health insurance as**
 38 **described in ORS 701.035 (5)(b).**

39 [*b*] (d) When labor or services are performed under contract for remuneration, notwithstanding
 40 ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed
 41 under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to
 42 be an independent contractor.

43 (24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525
 44 [*or 701.021*] and who have a substantial ownership interest in the corporation, regardless of the na-
 45 ture of the work performed. If all officers of the corporation are members of the same family and

1 are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grand-
 2 children, all such officers may elect to be nonsubject workers. For all other corporations licensed
 3 under ORS 671.510 to 671.760 [or 701.021], the maximum number of exempt corporate officers shall
 4 be whichever is the greater of the following:

5 (A) Two corporate officers; or

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

7 **(b) Corporate officers who are directors of a corporation that is actively licensed under**
 8 **ORS 701.021, classified as exempt under ORS 701.035 and not subject to ORS 701.035 (5), and**
 9 **who have a substantial ownership interest in the corporation, regardless of the nature of the**
 10 **work performed. If all officers of the corporation are members of the same family and are**
 11 **parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or**
 12 **grandchildren, all such officers may elect to be nonsubject workers. A corporation classified**
 13 **as exempt under ORS 701.035 and not subject to ORS 701.035 (5) that has an officer who is**
 14 **not a family member described in this paragraph is subject to the two officer limit created**
 15 **under ORS 701.035 (2).**

16 **(c) Corporate officers who are directors of a corporation that is actively licensed under**
 17 **ORS 701.021, is subject to ORS 701.035 (5) and provides health insurance as described in ORS**
 18 **701.035 (5)(b), and who have a substantial ownership interest in the corporation, regardless**
 19 **of the nature of the work performed.**

20 [(b)] **(d)** When labor or services are performed under contract for remuneration, notwithstanding
 21 ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed
 22 under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to
 23 be an independent contractor.

24 (25)(a) Limited liability company members who are members of a company actively licensed un-
 25 der ORS 671.525 [or 701.021] and who have a substantial ownership interest in the company, re-
 26 gardless of the nature of the work performed. If all members of the company are members of the
 27 same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-
 28 in-law or grandchildren, all such members may elect to be nonsubject workers. For all other com-
 29 panies licensed under ORS 671.510 to 671.760 [or 701.021], the maximum number of exempt company
 30 members shall be whichever is the greater of the following:

31 (A) Two company members; or

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

33 **(b) Limited liability company members who are members of a company that is actively**
 34 **licensed under ORS 701.021, classified as exempt under ORS 701.035 and not subject to ORS**
 35 **701.035 (5), and who have a substantial ownership interest in the company, regardless of the**
 36 **nature of the work performed. If all members of the company are members of the same**
 37 **family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or**
 38 **sons-in-law or grandchildren, all such members may elect to be nonsubject workers. A lim-**
 39 **ited liability company classified as exempt under ORS 701.035 and not subject to ORS 701.035**
 40 **(5) that has a company member who is not a family member described in this paragraph is**
 41 **subject to the two company member limit created under ORS 701.035 (2).**

42 **(c) Limited liability company members who are members of a company that is actively**
 43 **licensed under ORS 701.021, is subject to ORS 701.035 (5) and provides health insurance as**
 44 **described in ORS 701.035 (5)(b), and who have a substantial ownership interest in the com-**
 45 **pany, regardless of the nature of the work performed.**

1 [(b)] (d) When labor or services are performed under contract for remuneration, notwithstanding
2 ORS 656.005 (30), the company qualifies as an independent contractor. Any company 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 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer
6 match whose services are retained on a match-by-match basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
30 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
31 **on its passage.**

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