

D R A F T

SUMMARY

Excludes certain direct sales from definition of “employment” for purposes of unemployment insurance taxation. Excludes certain direct sellers from definition of “covered workers” for purposes of workers’ compensation. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to direct sales; creating new provisions; amending ORS 656.027 and
3 657.087; and prescribing an effective date.

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

5 **SECTION 1.** ORS 657.087 is amended to read:

6 657.087. **As used in this chapter**, “employment” does not include service
7 performed:

8 (1) By individuals soliciting contracts for home improvements, including
9 roofing, siding and alterations of private homes [*to the extent that*], if the
10 remuneration consists of commissions[,] or a share of the profit realized on
11 each contract; or

12 (2) By individuals [*to the extent that*] **as direct sellers of other than**
13 **home improvements if the compensation does not include salary or**
14 **wages but** consists of commissions, overrides or a share of the profit real-
15 ized on orders solicited or sales resulting from the [*in-person*] solicitation of
16 orders for [*and*] **or making sales of consumer goods or services in the home**
17 **or elsewhere, other than in a permanent retail establishment.**

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

19 656.027. All workers are subject to this chapter except those nonsubject
20 workers described in the following subsections:

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 (1) A worker employed as a domestic servant in or about a private home.
2 For the purposes of this subsection "domestic servant" means any worker
3 engaged in household domestic service by private employment contract, in-
4 cluding, but not limited to, home health workers.

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

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

9 (A) The employment is not in the course of the trade, business or profes-
10 sion of the employer; or

11 (B) The employment is in the course of the trade, business or profession
12 of a nonsubject employer.

13 (b) For the purpose of this subsection, "casual" refers only to employ-
14 ments where the work in any 30-day period, without regard to the number
15 of workers employed, involves a total labor cost of less than \$500.

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

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

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

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

28 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When
29 labor or services are performed under contract for remuneration, notwith-
30 standing ORS 656.005 (30), the sole proprietor must qualify as an independent
31 contractor. Any sole proprietor licensed under ORS 671.525 or 701.021 and

1 involved in activities subject thereto is conclusively presumed to be an in-
2 dependent contractor.

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

8 (9) Except as provided in subsection (25) of this section, members, in-
9 cluding members who are managers, of limited liability companies, regardless
10 of the nature of the work performed. However, members, including members
11 who are managers, of limited liability companies with more than one mem-
12 ber, while engaged in work performed in direct connection with the con-
13 struction, alteration, repair, improvement, moving or demolition of an
14 improvement on real property or appurtenances thereto, are subject workers.
15 When labor or services are performed under contract, the limited liability
16 company must qualify as an independent contractor.

17 (10) Except as provided in subsection (24) of this section, corporate offi-
18 cers who are directors of the corporation and who have a substantial own-
19 ership interest in the corporation, regardless of the nature of the work
20 performed by such officers, subject to the following limitations:

21 (a) If the activities of the corporation are conducted on land that receives
22 farm use tax assessment pursuant to ORS chapter 308A, corporate officer
23 includes all individuals identified as directors in the corporate bylaws, re-
24 gardless of ownership interest, and who are members of the same family,
25 whether related by blood, marriage or adoption.

26 (b) If the activities of the corporation involve the commercial harvest of
27 timber and all officers of the corporation are members of the same family
28 and are parents, daughters or sons, daughters-in-law or sons-in-law or
29 grandchildren, then all such officers may elect to be nonsubject workers. For
30 all other corporations involving the commercial harvest of timber, the max-
31 imum number of exempt corporate officers for the corporation shall be

1 whichever is the greater of the following:

2 (A) Two corporate officers; or

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

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

6 (11) A person performing services primarily for board and lodging re-
7 ceived from any religious, charitable or relief organization.

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

10 (13) A person who has been declared an amateur athlete under the rules
11 of the United States Olympic Committee or the Canadian Olympic Committee
12 and who receives no remuneration for performance of services as an athlete
13 other than board, room, rent, housing, lodging or other reasonable incidental
14 subsistence allowance, or any amateur sports official who is certified by a
15 recognized Oregon or national certifying authority, which requires or pro-
16 vides liability and accident insurance for such officials. A roster of recog-
17 nized Oregon and national certifying authorities will be maintained by the
18 Department of Consumer and Business Services, from lists of certifying or-
19 ganizations submitted by the Oregon School Activities Association and the
20 Oregon Park and Recreation Society.

21 (14) Volunteer personnel participating in the ACTION programs, organ-
22 ized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known
23 as the Foster Grandparent Program and the Senior Companion Program,
24 whether or not the volunteers receive a stipend or nominal reimbursement
25 for time and travel expenses.

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

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

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

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

4 (16) A person engaged in the transportation of the public for recreational
5 down-river boating activities on the waters of this state pursuant to a federal
6 permit when the person furnishes the equipment necessary for the activity.
7 As used in this subsection, "recreational down-river boating activities"
8 means those boating activities for the purpose of recreational fishing, swim-
9 ming or sightseeing utilizing a float craft with oars or paddles as the pri-
10 mary source of power.

11 (17) A person who receives no wage other than ski passes or other non-
12 cash remuneration for performing volunteer:

13 (a) Ski patrol activities; or

14 (b) Ski area program activities sponsored by a ski area operator, as de-
15 fined in ORS 30.970, or by a nonprofit corporation or organization.

16 (18) A person 19 years of age or older who contracts with a newspaper
17 publishing company or independent newspaper dealer or contractor to dis-
18 tribute newspapers to the general public and perform or undertake any nec-
19 essary or attendant functions related thereto.

20 (19) A person performing foster parent or adult foster care duties pursu-
21 ant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

22 (20) A person performing services on a volunteer basis for a nonprofit,
23 religious, charitable or relief organization, whether or not such person re-
24 ceives meals or lodging or nominal reimbursements or vouchers for meals,
25 lodging or expenses.

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

28 (22) A person who performs service as a caddy at a golf course in an es-
29 tablished program for the training and supervision of caddies under the di-
30 rection of a person who is an employee of the golf course.

31 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021

1 and who have a substantial ownership interest in a partnership. If all part-
2 ners are members of the same family and are parents, spouses, sisters,
3 brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren,
4 all such partners may elect to be nonsubject workers. For all other partner-
5 ships licensed under ORS 671.510 to 671.760 or 701.021, the maximum number
6 of exempt partners shall be whichever is the greater of the following:

7 (A) Two partners; or

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

9 (b) When labor or services are performed under contract for
10 remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as
11 an independent contractor. Any partnership licensed under ORS 671.525 or
12 701.021 and involved in activities subject thereto is conclusively presumed
13 to be an independent contractor.

14 (24)(a) Corporate officers who are directors of a corporation actively li-
15 censed under ORS 671.525 or 701.021 and who have a substantial ownership
16 interest in the corporation, regardless of the nature of the work performed.
17 If all officers of the corporation are members of the same family and are
18 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or
19 sons-in-law or grandchildren, all such officers may elect to be nonsubject
20 workers. For all other corporations licensed under ORS 671.510 to 671.760
21 or 701.021, the maximum number of exempt corporate officers shall be
22 whichever is the greater of the following:

23 (A) Two corporate officers; or

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

25 (b) When labor or services are performed under contract for
26 remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as
27 an independent contractor. Any corporation licensed under ORS 671.525 or
28 701.021 and involved in activities subject thereto is conclusively presumed
29 to be an independent contractor.

30 (25)(a) Limited liability company members who are members of a company
31 actively licensed under ORS 671.525 or 701.021 and who have a substantial

1 ownership interest in the company, regardless of the nature of the work
2 performed. If all members of the company are members of the same family
3 and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-
4 law or sons-in-law or grandchildren, all such members may elect to be non-
5 subject workers. For all other companies licensed under ORS 671.510 to
6 671.760 or 701.021, the maximum number of exempt company members shall
7 be whichever is the greater of the following:

8 (A) Two company members; or

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

10 (b) When labor or services are performed under contract for
11 remuneration, notwithstanding ORS 656.005 (30), the company qualifies as
12 an independent contractor. Any company licensed under ORS 671.525 or
13 701.021 and involved in activities subject thereto is conclusively presumed
14 to be an independent contractor.

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

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

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

23 (a) "Lease" means a contract under which the lessor provides a vehicle
24 to a lessee for consideration.

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

27 (c) "Passenger motor vehicle that is operated as a taxicab" means a ve-
28 hicle 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
31 ends in Oregon; and

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

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

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

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

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

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

14 **(29)(a) A person who solicits contracts for home improvements, in-**
15 **cluding roofing, siding and alterations of private homes, if the person's**
16 **remuneration consists of commissions or a share of the profit realized**
17 **on each contract; or**

18 **(b) A direct seller of other than home improvements if the direct**
19 **seller's compensation does not include salary or wages but consists of**
20 **commissions, overrides or a share of the profit realized on orders so-**
21 **licited or sales resulting from the solicitation of orders for or making**
22 **sales of consumer goods or services in the home or elsewhere, other**
23 **than in a permanent retail establishment.**

24 **SECTION 3. (1) The amendments to ORS 657.087 by section 1 of this**
25 **2013 Act apply to service performed on or after the effective date of**
26 **this 2013 Act.**

27 **(2) The amendments to ORS 656.027 by section 2 of this 2013 Act**
28 **apply to solicitation of contracts and sales on or after the effective**
29 **date of this 2013 Act.**

30 **SECTION 4. This 2013 Act takes effect on the 91st day after the date**
31 **on which the 2013 regular session of the Seventy-seventh Legislative**

1 **Assembly adjourns sine die.**

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