

House Bill 2619

Sponsored by Representative CLEM (at the request of Mark Kemper) (Pre-session filed.)

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 person operating as landscape maintenance business to register with State Landscape Contractors Board. Imposes insurance requirement for landscape maintenance businesses. Provides for board oversight of landscape maintenance businesses. Allows civil penalties for violations, not to exceed \$2,000.

Requires board to make landscape maintenance business registration available by June 1, 2014. Prohibits board from imposing civil penalty or registration sanction for failure to register landscape maintenance business based on work performed before January 1, 2015.

A BILL FOR AN ACT

1
2 Relating to landscape maintenance.

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

4 **SECTION 1. As used in sections 1 to 3 of this 2013 Act:**

5 (1) **"Gardening" means providing care for an area of ground on which herbs, fruits,**
6 **flowers or vegetables are cultivated.**

7 (2) **"Landscape maintenance" means edging, fertilizing, gardening, irrigation scheduling,**
8 **mowing, mulching, pruning other than of trees, raking, small tree management, snow re-**
9 **moval, trimming, water feature maintenance, weeding and any other activities identified by**
10 **State Landscape Contractors Board rules as landscape maintenance activities.**

11 (3) **"Landscape maintenance business" means a business that, for compensation or with**
12 **the intent to be compensated, performs landscape maintenance or arranges, submits a bid**
13 **or otherwise offers or contracts to perform landscape maintenance.**

14 (4) **"Officer" means any of the following persons:**

15 (a) **A president, vice president, secretary, treasurer or director of a corporation.**

16 (b) **A general partner in a limited partnership.**

17 (c) **A manager in a manager-managed limited liability company.**

18 (d) **A member of a member-managed limited liability company.**

19 (e) **A trustee.**

20 (f) **A person qualifying as an officer under board rules. The definition of officer adopted**
21 **by board rule may include persons not listed in this subsection who may exercise substantial**
22 **control over a business.**

23 (5) **"Owner" means a sole proprietor of, general partner in or holder of a controlling in-**
24 **terest in a business, or a person defined as an owner by board rule.**

25 (6) **"Small tree management" means:**

26 (a) **The removal of trees that are not more than 15 feet in height and not more than four**
27 **inches in diameter at ground level; or**

28 (b) **The removal of tree limbs that are not more than 15 feet above ground and not more**

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 than three inches in diameter.

2 **SECTION 2.** (1) Except as provided in subsections (3) and (4) of this section, a person
 3 may not operate as a landscape maintenance business unless the person is registered as a
 4 landscape maintenance business with the State Landscape Contractors Board. The registra-
 5 tion must be in a form approved by the board and include:

6 (a) The names of each owner or officer of the business;

7 (b) The name of the business and a mailing address and telephone number for the busi-
 8 ness;

9 (c) The taxpayer identification number of the business;

10 (d) A certificate of public liability, personal injury and property damage insurance cov-
 11 ering the landscape maintenance work of the business for an amount not less than \$100,000;

12 (e) Evidence satisfactory to the board that the person qualifies as an independent con-
 13 tractor under ORS 670.600; and

14 (f) Evidence satisfactory to the board:

15 (A) That the business does not employ subject workers as defined in ORS 656.005; or

16 (B) That the business is in compliance with ORS 656.017.

17 (2) A registration under this section is not a license issued under ORS 671.510 to 671.760.

18 (3) A business is not required to register under this section if the landscape maintenance
 19 work performed by the business is of a casual, minor or inconsequential nature as those
 20 terms are defined by the board by rule.

21 (4) Registration as a landscape maintenance business is not required for a person:

22 (a) Performing landscape maintenance work on federal property;

23 (b) Performing work on property owned by the person or by the employer of the person;
 24 or

25 (c) Performing work within the scope of a license, certificate of registration or other le-
 26 gal authorization issued by a board, commission or other agency of this state.

27 (5) If any registration information described in subsection (1) of this section changes, the
 28 landscape maintenance business shall notify the board of the change and provide updated
 29 information to the board within 30 days after the change occurs.

30 (6) The board may charge reasonable fees for services provided under sections 1 to 3 of
 31 this 2013 Act, including but not limited to, fees for registration filing or renewal, fees for
 32 updating registration information and late fees.

33 (7) A registered landscape maintenance business must maintain public liability, personal
 34 injury and property damage insurance coverage for the landscape maintenance work of the
 35 business in the amount described in subsection (1)(d) of this section.

36 (8) A person may not use any title or otherwise represent that the person is operating
 37 a landscape maintenance business unless the person has registered with the board or is ex-
 38 empt from registration. A person may not falsely represent that the person is a registered
 39 landscape maintenance business.

40 (9) Except as provided in this subsection, a registration for a landscape maintenance
 41 business is valid until canceled by the business. The board may at any time inquire whether
 42 a business is continuing to engage in landscape maintenance work. The board may for good
 43 cause require a registered landscape maintenance business to provide proof that the business
 44 is complying with the insurance requirement in subsection (7) of this section or require evi-
 45 dence regarding workers' compensation status. The board may suspend, revoke or refuse to

1 issue or renew a registration for a business if:

2 (a) An application for issuance or renewal of a registration is incomplete or contains
3 false information;

4 (b) The business informs the board that the business is no longer engaged in landscape
5 maintenance work;

6 (c) The business is not in compliance with subsection (7) of this section;

7 (d) The business has subject workers and is not in compliance with ORS 656.017;

8 (e) The owner or operator of the business has failed to comply with a board order;

9 (f) The business fails to respond to an inquiry from the board or to cooperate with a
10 board investigation; or

11 (g) The owner or operator of the business has engaged in multiple acts of dishonesty in
12 connection with landscape maintenance activities.

13 (10) The board may impose a civil penalty, not to exceed \$2,000, on a person that:

14 (a) Fails to register a landscape maintenance business as required by the section;

15 (b) Falsifies information in a landscape maintenance business registration;

16 (c) Fails to timely notify the board of a change in registration information as required
17 under subsection (5) of this section;

18 (d) Fails to maintain insurance for a landscape maintenance business as required under
19 subsection (7) of this section; or

20 (e) Violates subsection (8) of this section.

21 **SECTION 3.** (1) The State Landscape Contractors Board may investigate the activities
22 of any person operating a landscape maintenance business to determine compliance with
23 section 2 of this 2013 Act. With the approval of the city or county, the board may conduct
24 investigations with city or county inspectors, provided that the city or county is reimbursed
25 by the board for the costs of such investigations.

26 (2) If the board or an inspector or investigator authorized by the board has reason to
27 suspect that a person owns or operates a landscape maintenance business that is not in
28 compliance with section 2 of this 2013 Act, the board, inspector or investigator may give the
29 person a notice of noncompliance. The notice of noncompliance must be in writing, specif-
30 ically state that the person is suspected of owning or operating a landscape maintenance
31 business that is not in compliance with section 2 of this 2013 Act, state the nature of the
32 suspected noncompliance and provide that unless the person demonstrates proof of compli-
33 ance within two days after the date of the notice, the board may take action against the
34 person for failure to comply with section 2 of this 2013 Act. If the person fails to comply or
35 demonstrate proof of compliance with section 2 of this 2013 Act within two days after re-
36 ceiving a notice of noncompliance, the board may take action against the person to enforce
37 section 2 of this 2013 Act. Action by the board may include, but need not be limited to, is-
38 suing and serving an order requiring the person owning or operating the business to stop all
39 performance of landscape maintenance work by the business until the person has complied
40 or demonstrated compliance with section 2 of this 2013 Act.

41 (3) The board may investigate complaints against businesses registered or required to be
42 registered under section 2 of this 2013 Act. The board may attempt to resolve disputes be-
43 tween consumers and landscape maintenance businesses and may memorialize any dispute
44 settlement in the form of a board order.

45 (4) The board has the power to administer oaths, issue notices and subpoenas in the

1 name of the board, compel the attendance of witnesses and the production of evidence, hold
2 hearings and perform such other acts as are reasonably necessary to carry out its duties
3 under section 2 of this 2013 Act and this section.

4 (5) If any person fails to comply with a subpoena issued under subsection (4) of this
5 section or refuses to testify on matters on which the person may be lawfully interrogated,
6 the board shall compel obedience in the manner provided in ORS 183.440.

7 **SECTION 4.** (1) As used in this section, “landscape maintenance” and “landscape main-
8 tenance business” have the meanings given those terms in section 1 of this 2013 Act.

9 (2) The State Landscape Contractors Board shall make landscape maintenance business
10 registration available no later than June 1, 2014.

11 (3) Notwithstanding sections 2 and 3 of this 2013 Act, the board may not impose any civil
12 penalty or registration sanction for failure to register as a landscape maintenance business
13 based upon landscape maintenance performed before January 1, 2015.

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