

Enrolled
House Bill 2977

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project, Oregon Coalition to Stop Wage Theft)

CHAPTER

AN ACT

Relating to construction labor contractors; creating new provisions; amending ORS 166.715, 658.015, 658.405, 658.407, 658.410, 658.411, 658.412, 658.415, 658.416, 658.417, 658.418, 658.420, 658.425, 658.430, 658.435, 658.437, 658.440, 658.445, 658.450, 658.452, 658.453, 658.465, 658.475, 658.489, 658.501, 658.503 and 658.991; and declaring an emergency.

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

SECTION 1. ORS 658.405 is amended to read:

658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires otherwise:

(1) "Agricultural association" means a nonprofit or cooperative association of farmers, growers or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor solely on behalf of members of the association.

[(2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.]

(2)(a) "Construction labor contractor" includes any person that:

(A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in construction;

(B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers on behalf of an employer engaged in construction; or

(C) Enters into a subcontract with another for any of the activities described in subparagraph (A) or (B) of this paragraph.

(b) "Construction labor contractor" does not include:

(A) A person that has a construction contract with an owner of real property where the construction work is performed;

(B) A person that has obtained building permits to perform construction work;

(C) A person that supplies building materials or machinery, other than manual tools or hand-operated power tools, for a construction project;

(D) An owner of real property engaged in the solicitation or recruitment of persons to perform construction work on the owner's property;

(E) The Employment Department;

(F) A crew leader;

(G) Individuals who perform labor pursuant to an agreement for exchanging their own labor or services with each other, provided the work is performed on land owned or leased by the individuals;

(H) An educational institution that is recognized as such by the Department of Education;

(I) A labor union;

(J) A local joint apprenticeship committee formed under ORS 660.135; or

(K) A staffing agency whose primary purpose is to provide workers to the client employers of the agency under the terms of a client agreement, if the agency provides workers' compensation coverage for all employees as required by ORS chapter 656 and pays employment and income taxes in accordance with applicable law.

(3) "Crew leader" means the member of a group of workers who [(a)] acts as spokesman for the group, [(b)] travels with the group from another state into Oregon and [(c)] performs the same work along with other group members. A crew leader may transport workers from their local place of residence to their place of employment so long as the crew leader does not perform this service for a profit.

(4)(a) "Farm labor contractor" [means any person who,] **includes any person that:**

(A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another **person** to work in forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities [or];

(B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another person in the production or harvesting of farm products; [or who]

(C) Recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing or manufacture; [or who]

(D) Recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities; [or who,]

(E) In connection with the recruitment or employment of workers to work in these activities, furnishes board or lodging for such workers; [or who]

(F) Bids or submits prices on contract offers for those activities; or [who]

(G) Enters into a subcontract with another for any of those activities. [However,]

(b) "Farm labor contractor" does not include:

[(a)] **(A)** Farmers, including owners or lessees of land intended to be used for the production of timber, their permanent employees, advertising media, platoon leaders or individuals engaged in the solicitation or recruitment of persons for dayhaul work in connection with the growing, production or harvesting of farm products;

[(b)] **(B)** The Employment Department;

[(c)] **(C)** A crew leader;

[(d)] **(D)** An individual who performs work, other than recruiting, supplying, soliciting or employing workers to perform labor for another, alone or only with the assistance of the individual's spouse, son, daughter, brother, sister, mother or father;

[(e)] **(E)** Individuals who perform labor pursuant to an agreement for exchanging their own labor or services with each other, provided the work is performed on land owned or leased by the individuals;

[(f)] **(F)** An educational institution that is recognized as such by the Department of Education; [or]

[(g)] **(G)** A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits, supplies, solicits or employs workers only for the farmer's own operations, and has farmworkers living in the camp who are employed by another on no more than an incidental basis, and the farmer receives no remuneration by virtue of such incidental employment[.]; **or**

(H) A labor union.

(5) "Labor contractor" means a construction labor contractor or a farm labor contractor.

SECTION 2. ORS 658.015 is amended to read:

658.015. (1) ORS 658.005 to 658.245 do not apply to [farm] labor contractors subject to ORS 658.405 to 658.503.

(2) ORS 658.005 to 658.245 do not apply to any nonprofit organization or corporation organized for the purpose of economic adjustment, civic betterment and the giving of professional guidance and placement to its members, when all of the following requirements are met:

(a) None of its directors, officers or employees are deriving any profit beyond a nominal salary for services performed on its behalf.

(b) Membership dues and fees are used solely for the maintenance of the organization or corporation.

(c) No fee is charged for employment services.

(d) On request of the Commissioner of the Bureau of Labor and Industries, the organization or corporation files with the commissioner, on or before the first day of April of each year, a copy of its constitution or articles of incorporation and its bylaws, together with a sworn statement setting forth its place of business; the names and addresses of its officers, directors and employees, the salaries they receive and the services they actually perform; and the various benefits furnished to its members.

(3) As used in subsection (2) of this section:

(a) "Civic betterment" means the promotion of the common good and general welfare of the people of this state or any political subdivision therein.

(b) "Economic adjustment" means the promotion of a program by which individuals are helped to acquire new professional skills, add to their existing professional skills or change their type of profession.

(4) ORS 658.005 to 658.245 do not apply to a bona fide labor organization of workers or a nonprofit organization or corporation that has been formed in good faith for the regulation, promotion and advancement of the general professional interests of its members and that incidentally maintains a placement service principally engaged in securing employment for such members.

SECTION 3. ORS 658.407 is amended to read:

658.407. The Commissioner of the Bureau of Labor and Industries shall administer and enforce ORS 658.405 to 658.503, and in so doing shall:

(1) Investigate and attempt to adjust equitably controversies between [farm] labor contractors and their workers with respect to claims arising under ORS 658.415 (3) or 658.419.

(2) Take appropriate action to establish the liability or lack thereof of the [farm] labor contractor for wages of the employees of the [farm] labor contractor and if appropriate proof exists of liability for wages the commissioner shall pay the same or such part thereof as the commissioner has funds on deposit or cause the surety company to forthwith pay the entire liability or such part thereof as the sums due under the bond will permit.

(3) Adopt appropriate rules to administer ORS 658.405 to 658.503.

SECTION 4. ORS 658.410 is amended to read:

658.410. (1) Except as provided by ORS 658.425 and subsection (3) of this section, a person may not act as a [farm] labor contractor without a valid license in the person's possession issued to the person by the Commissioner of the Bureau of Labor and Industries. Except as provided in subsection (3) of this section, a person may not act as a farm labor contractor with regard to the forestation or reforestation of lands unless the person possesses a valid farm labor contractor's license with the indorsement required by ORS 658.417 (1). The Bureau of Labor and Industries shall make rules for the issuance of duplicate licenses in the event of the loss or destruction of original licenses.

(2) [Farm] Labor contractor licenses may be issued by the commissioner only as follows:

(a) To a natural person operating as a sole proprietor under the person's own name or under an assumed business name registered with the Office of Secretary of State.

(b) To two or more natural persons operating as a partnership or as a limited liability partnership under their own names or under an assumed business name registered with the Office of Secretary of State.

(c) Except as provided in subsection (3) of this section, to the majority shareholder or majority shareholders of a corporation or a limited liability company that is licensed to operate as a [farm] labor contractor.

(d) Except as provided in subsection (3) of this section, to a corporation or a limited liability company whose majority shareholder or majority shareholders are also licensed to operate as a [farm] labor contractor and that is authorized to do business in Oregon by the Office of Secretary of State.

(e) To a cooperative corporation authorized to do business in Oregon by the Office of Secretary of State.

(f) To a private nonprofit corporation authorized to do business in Oregon by the Office of Secretary of State and designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code, provided:

(A)(i) The purpose of the corporation is to provide education or training; and

(ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited, supplied or employed only for the purpose of educating or training the workers **in construction**, in the forestation or reforestation of lands or in the production or harvesting of farm products; or

(B) For at least five years before the corporation files an application for a [farm] labor contractor license, the corporation has been:

(i) Authorized to do business in Oregon by the Office of Secretary of State;

(ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and

(iii) Designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code.

(g) **For a farm labor contractor license only**, to an agricultural association that is authorized to do business in Oregon by the Office of Secretary of State.

(3) The majority shareholder or majority shareholders of a corporation or limited liability company are not required to be licensed under this section if the corporation or limited liability company:

(a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States Securities and Exchange Commission; or

(B) Has 10 or more shareholders and demonstrates to the satisfaction of the commissioner that the corporation or limited liability company is adequately capitalized; and

(b) Is authorized to do business in Oregon by the Office of Secretary of State.

SECTION 5. ORS 658.411 is amended to read:

658.411. (1) [The] **An** employee of a [farm] labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a [farm] labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions:

(a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the commissioner promptly upon termination of the employment of the employee;

(b) The employee engages in activities that would require licensing as a [farm] labor contractor solely on behalf of the employer;

(c) The employee does not personally employ any workers and is not responsible for paying any workers;

(d) The employer maintains proof of financial responsibility;

(e) The employer's license remains in good standing; and

(f) The employee meets all of the conditions for licensing as a [farm] labor contractor, except as provided in this section.

(2) A [farm] labor contractor subject to an employee indorsement acting in compliance with subsection (1) of this section need not:

(a) Provide proof of financial responsibility under ORS 658.415 (3).

(b) Comply with ORS 658.440 (1)(j).

(3) The license of a [farm] labor contractor subject to an employee indorsement shall state the conditions contained in subsection (1) of this section on its face and shall state that a [farm] labor contractor subject to an employee indorsement who operates out of compliance with these restrictions is an unlicensed [farm] labor contractor.

(4) A [farm] labor contractor who employs another [farm] labor contractor is personally, jointly and severally liable for any damages, attorney fees or costs awarded against the employee for the actions of the [farm] labor contractor employee undertaken within the scope of employment, or for actions of the employee that the employee takes under color of an employee's license subject to an employee indorsement that are known, or reasonably should have been known, by the employer. In the case of a [farm] labor contractor that is a corporation, both the corporation and the licensed majority shareholder or shareholders are so liable.

SECTION 6. ORS 658.412 is amended to read:

658.412. [No] **The Commissioner of the Bureau of Labor and Industries may not issue a license to operate as a [farm] labor contractor [shall be issued]** until an applicant for a license has successfully passed a qualifying examination designed to test the applicant's ability, knowledge and proficiency to conduct and manage the business of a [farm] labor contractor. The commissioner [of the Bureau of Labor and Industries, by rule,] shall prescribe **by rule** the requirements for and the manner of testing the competency of license applicants.

SECTION 7. ORS 658.415 is amended to read:

658.415. (1) A person may not act as a [farm] labor contractor unless the person has first been licensed by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503. Any person may file an application for a license to act as a [farm] labor contractor at any office of the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall be written on a form prescribed by the commissioner. The form shall include, but not be limited to, questions asking:

(a) The applicant's name, Oregon address and all other temporary and permanent addresses the applicant uses or knows will be used in the future.

(b) Information on all motor vehicles to be used by the applicant in operations as a [farm] labor contractor including license number and state of licensure, vehicle number and the name and address of vehicle owner for all vehicles used.

(c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or in this or any other jurisdiction had [such] a **labor contract** license denied, revoked or suspended within the preceding three years.

(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates or profit-sharers, in the applicant's proposed operations as a [farm] labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or had [such] a **labor contractor** license denied, revoked or suspended within the preceding three years in this or any other jurisdiction.

(2) Each applicant shall furnish satisfactory proof with the application:

(a) Of the existence of a policy of insurance in an amount adequate under rules issued by the commissioner for vehicles to be used to transport workers. For the purpose of this paragraph, the certificate of an insurance producer licensed in Oregon is satisfactory proof of adequate insurance.

(b) Of the existence of workers' compensation insurance as provided in ORS 658.440 (1)(j). The commissioner may adopt rules concerning satisfactory proof of adequate workers' compensation insurance.

(3) Each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay the wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of this subsection, it shall be deemed sufficient compliance if the [farm] labor contractor procures a savings account at a bank or savings and loan

institution in the name of the commissioner as trustee for the employees of the [farm] labor contractor and others as their interests may appear and delivers proof of the account and the ability to withdraw the funds to the commissioner under the terms of a bond approved by the commissioner. The amount of the bond and the security behind the bond, or the cash deposit, shall be based on the maximum number of employees the **labor** contractor employs at any time during the year. The bond or cash deposit shall be:

(a) \$10,000 if the **labor** contractor employs no more than 20 employees; or

(b) \$30,000, or such lesser sum as may be authorized by the commissioner under ORS 658.416, if the **labor** contractor employs 21 or more employees.

(4) In the event that a single business entity licensed as a [farm] labor contractor has more than one natural person who, as an owner or employee of the business entity, engages in activities that require the persons to be licensed individually as [farm] labor contractors, and each [such] person engages in [such] **those** activities solely for that business entity, the commissioner may provide by rule for lower aggregate bonding requirements for the business entity and its owners and employees. If there is an unsatisfied judgment of a court or final decision of an administrative agency against a license applicant, the subject of which is any matter that would be covered by the bond or deposit referred to in subsection (3) of this section, the commissioner may not issue a license to the applicant until the judgment or decision is satisfied. As a condition of licensing any such applicant, the commissioner may require the applicant to submit proof of financial ability required by subsection (3) of this section in an amount up to three times that ordinarily required of a license applicant.

(5) All corporate surety bonds filed under this section or ORS 658.419 shall be executed to cover liability for the period for which the license is issued. During the period for which it is executed, the bond may not be canceled or otherwise terminated.

(6) Each application must be accompanied by the fee established under ORS 658.413.

(7) Any person who uses the services of a [farm] labor contractor who has failed to comply with any of the provisions of this section or ORS 658.419 shall:

(a) Be personally and jointly and severally liable to any employee as far as the employee has not been paid wages in full for the work done for that person.

(b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the wages due under this section.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss specified in subsection (16) of this section shall have a right of action in the name of the person against the surety upon the bond or against the deposit with the commissioner. The right of action:

(a) Is assignable and must be included with an assignment of a wage claim, of any other appropriate claim or of a judgment thereon.

(b) May not be included in any [suit or] action against the [farm] labor contractor but must be exercised independently after first procuring a judgment or other form of adequate proof of liability established by rule and procedure under subsection (14) of this section establishing the [farm] labor contractor's liability for the claim.

(9)(a) The surety company or the commissioner shall make prompt and periodic payments on the [farm] labor contractor's liability up to the extent of the total sum of the bond or deposit.

(b) Payment shall be made based upon priority of wage claims over advances made by **the construction property owner**, the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber, for advances made to or on behalf of the [farm] labor contractor.

(c) Payment shall be made in full of all sums due to each person who presents adequate proof of the claim.

(d) Payment shall be made in part if there are insufficient funds to pay in full the person next entitled to payment in full.

(10) A person may not bring any [suit or] action against the surety company or the commissioner on the bond or against the commissioner as the trustee for the beneficiaries of the [farm] labor contractor under any deposit made pursuant to this section or ORS 658.419 unless the person has

first exhausted the procedures contained in subsections (8) and (12) of this section or in ORS 658.419 and contends that the surety company or the commissioner still has funds that are applicable to the person's judgment or acknowledgment.

(11) The commissioner may not be prevented from accepting assignments of wage claims and enforcing liability against the surety on the bond or from applying the deposit to just wage claims filed with the commissioner.

(12) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been made by certified mail to the surety or the commissioner within six months from the end of the period for which the bond or deposit was executed and made.

(13) If the commissioner has received no notice as provided in subsection (12) of this section within six months after a [farm] labor contractor is no longer required to provide and maintain a surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(14) The commissioner shall adopt rules reasonably necessary for administration and enforcement of the provisions of this section and ORS 658.419.

(15) Every [farm] labor contractor required by this section or ORS 658.419 to furnish a surety bond or make a deposit in lieu [thereof] of a **surety bond** shall keep conspicuously posted upon the premises where employees working under the contractor are employed a notice, in both English and any other language used by the [farm] labor contractor to communicate with workers, specifying the contractor's compliance with the requirements of this section and ORS 658.419 and specifying the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner together with the address of the commissioner.

(16) The bond or deposit referred to in subsection (3) of this section shall be payable to the commissioner and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees.

(b) Payment by the [farm] labor contractor of all sums due to **the construction property owner**, the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber for advances made to or on behalf of the [farm] labor contractor.

(17) The commissioner may not issue a license until the applicant executes a written statement that shall be subscribed and sworn to and that shall contain the following declaration:

With regards to any action filed against me concerning my activities as a [farm] labor contractor, I appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.

(18) A person who cosigns with a [farm] labor contractor for a bond required by subsection (3) of this section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages above the amount of the bond solely because the person cosigned for the bond.

(19) The court may award reasonable attorney fees to the prevailing party in any action to enforce the provisions of this section or ORS 658.419.

SECTION 8. ORS 658.416 is amended to read:

658.416. If the Commissioner of the Bureau of Labor and Industries finds that an applicant has operated as an Oregon licensed [farm] labor contractor without an employee indorsement for at least two years in compliance with ORS 658.405 to 658.503 and with any other laws pertaining to the conduct of [farm] labor contractors, and that no valid claims for unpaid wages have been made against the applicant, then the commissioner may reduce the amount of the bond or deposit that

would otherwise be required pursuant to ORS 658.415 (3) to an amount determined by the commissioner, but in no event less than the following:

(1) If the commissioner finds that the **labor** contractor has so operated for a period of at least five years, \$20,000;

(2) If the commissioner finds that the **labor** contractor has so operated for at least four years, \$22,500;

(3) If the commissioner finds that the **labor** contractor has so operated for at least three years, \$25,000; or

(4) If the commissioner finds that the **labor** contractor has so operated for at least two years, \$27,500.

SECTION 9. ORS 658.417 is amended to read:

658.417. In addition to the regulation otherwise imposed upon *[farm]* labor contractors pursuant to ORS 658.405 to 658.503, a person who acts as a farm labor contractor with regard to the forestation or reforestation of lands shall:

(1) Obtain a special indorsement from the Commissioner of the Bureau of Labor and Industries on the license required by ORS 658.410 that authorizes the person to act as a farm labor contractor with regard to the forestation or reforestation of lands.

(2) Pay the fee established under ORS 658.413.

SECTION 10. ORS 658.418 is amended to read:

658.418. Upon written application from a *[farm]* labor contractor, the Commissioner of the Bureau of Labor and Industries may exempt the *[farm]* labor contractor from the provisions of ORS 658.440 (1)(i) and, for a *[farm]* labor contractor engaged in forestation or reforestation of lands, from the provisions of ORS 658.415 (3) for the license year if the commissioner finds that the *[farm]* labor contractor *[meets all of the following requirements]*:

(1) *[The farm labor contractor]* Operates as a sole proprietor[.];

(2) *[The farm labor contractor]* Engages in activities pursuant to contracts for less than \$25,000[.]; **and**

(3) *[The farm labor contractor]* Employs two or fewer individuals in the performance of work on all contracts performed in the license year.

SECTION 11. ORS 658.420 is amended to read:

658.420. (1) The Commissioner of the Bureau of Labor and Industries shall conduct an investigation of each applicant's character, competence and reliability, and of any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a *[farm]* labor contractor.

(2) The commissioner shall issue a license within 15 days after the day on which the application therefor was received in the office of the commissioner if the commissioner is satisfied as to the applicant's character, competence and reliability.

(3) Any individual may protest the issuance of a license to any applicant at any time, and the commissioner shall give the individual an opportunity to state the reasons for the objection.

SECTION 12. ORS 658.425 is amended to read:

658.425. (1) The office of the Bureau of Labor and Industries in which an application is filed shall issue to the applicant a temporary permit valid for not more than 60 days, if the following conditions are satisfied:

(a) The application is complete on its face.

(b) The applicant has furnished satisfactory evidence of adequate insurance under rules issued by the Commissioner of the Bureau of Labor and Industries.

(c) The applicant has paid in advance the fee established under ORS 658.413.

(d) The applicant or any person financially interested in the applicant's proposed operation as a *[farm]* labor contractor, whether as a partner, shareholder, associate, profitsharer or otherwise, has not been denied a license in a jurisdiction other than Oregon or under ORS 658.405 to 658.503 within the preceding three years, nor has had such a license revoked or suspended in Oregon or any other jurisdiction within the preceding three years, as appears of record with the commissioner.

(2) Any temporary permit expires immediately if the commissioner rejects the application of the person holding that permit.

(3) For the purposes of ORS 658.415 (1)(c) and (d) and subsection (1)(d) of this section, the refusal by the commissioner to renew a license shall be considered as the revocation of that license on the date of its expiration.

SECTION 13. ORS 658.430 is amended to read:

658.430. Each **labor contractor** license shall bear on its face such information as is prescribed by rules of the Bureau of Labor and Industries, including but not limited to:

(1) The name and address of the licensee and a statement that the license is not valid after the expiration date.

(2) The number, date of issuance and expiration date of the license.

(3) A statement that the license shall not be transferred or assigned.

SECTION 14. ORS 658.435 is amended to read:

658.435. (1) Each **labor contractor** license shall expire one year following the date of its issuance unless sooner revoked by the Commissioner of the Bureau of Labor and Industries.

(2) Applications for renewal of the license shall be made 30 days prior to the expiration date by payment of the fee established under ORS 658.413, but the commissioner may require any person seeking renewal to file a new application under ORS 658.415 (1) and (2) and may conduct a new investigation of the applicant's character, competence and reliability, and of any other matter relating to the manner by which the applicant proposes to conduct and has conducted operations as a [farm] labor contractor.

SECTION 15. ORS 658.437 is amended to read:

658.437. (1) Prior to beginning work on any contract or other agreement the [farm] labor contractor shall:

(a) Display the license or temporary permit to the person to whom workers are to be provided, or the person's agent; and

(b) Provide the person to whom workers are to be provided, or the person's agent with a copy of the license or temporary permit.

(2) Prior to allowing work to begin on any contract or agreement with a [farm] labor contractor, the person to whom workers are to be provided, or the person's agent shall:

(a) Examine the license or temporary permit of the [farm] labor contractor; and

(b) Retain a copy of the license or temporary permit provided by the [farm] labor contractor pursuant to subsection (1)(b) of this section.

SECTION 16. ORS 658.440 is amended to read:

658.440. (1) Each person acting as a [farm] labor contractor shall:

(a) Carry a labor contractor's license at all times and exhibit it upon request to any person with whom the **labor** contractor intends to deal in the capacity of a [farm] labor contractor.

(b) File immediately at the United States post office serving the labor contractor's address, as noted on the face of the license, a correct change of address if the **labor** contractor permanently changes address, and notify the Commissioner of the Bureau of Labor and Industries each time an address change is made.

(c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other things of value entrusted to the labor contractor by any person for that purpose.

(d) Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the **labor** contractor's capacity as a [farm] labor contractor.

(e) File with the Bureau of Labor and Industries, as required by rule, information relating to work agreements between the [farm] labor contractor and **construction property owners or farmers** and between the [farm] labor contractor and workers or information concerning changes in the circumstances under which the license was issued.

(f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement in the English language and any other language used by the [farm] labor contractor to communicate with the workers that contains a description of:

- (A) The method of computing the rate of compensation.
 - (B) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.
 - (C) The terms and conditions of any loan made to the worker.
 - (D) The conditions of any housing, health and child care services to be provided.
 - (E) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.
 - (F) The terms and conditions under which the worker is furnished clothing or equipment.
 - (G) The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the *[farm]* labor contractor.
 - (H) The existence of a labor dispute at the worksite.
 - (I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner.
- (g) At the time of hiring and prior to the worker performing any work for the *[farm]* labor contractor, execute a written agreement between the worker and the *[farm]* labor contractor containing the terms and conditions described in paragraph (f)(A) to (I) of this subsection. The written agreement shall be in the English language and any other language used by the *[farm]* labor contractor to communicate with the workers.
- (h) Furnish to the worker, each time the worker receives a compensation payment from the *[farm]* labor contractor, a written statement itemizing the total payment and amount and purpose of each deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. 351-401) or related federal or state law, a written statement of any applicable prevailing wage.
- (i) Provide to the commissioner a certified true copy of all payroll records for work done as a *[farm]* labor contractor when the contractor pays employees directly. The records shall be submitted in such form and at such times and shall contain such information as the commissioner, by rule, may prescribe.
- (j)(A) If the person is a farm labor contractor engaged in the forestation or reforestation of lands, provide workers' compensation insurance for each individual who performs manual labor in forestation or reforestation activities regardless of the business form of the contractor and regardless of any contractual relationship that may be alleged to exist between the contractor and the workers notwithstanding ORS 656.027, unless workers' compensation insurance is otherwise provided; or
- (B) If the person is a farm labor contractor but is not engaged in the forestation or reforestation of lands, provide workers' compensation insurance to the extent required under ORS chapter 656, unless workers' compensation insurance is otherwise provided.
- (2) If the *[farm]* labor contractor:
- (a) Employs workers, the **labor** contractor shall substantially comply with the provisions of ORS 654.174 relating to field sanitation, and its implementing rules as adopted by the Department of Consumer and Business Services.
 - (b) Owns or controls housing furnished to workers in connection with the recruitment or employment of workers, the **labor** contractor shall ensure that the housing substantially complies with any applicable law relating to the health, safety or habitability of the housing.
 - (c) Recruits or solicits any worker to travel from one place to another for the purpose of working at a time prior to the availability of the employment, the **labor** contractor shall furnish to the worker, at no charge, lodging and an adequate supply of food until employment begins, in compliance with rules adopted by the Bureau of Labor and Industries. If employment does not begin within 30 days from the date the *[farm]* labor contractor represented employment would become available, the **labor** contractor shall refund to the worker all sums paid by the worker to the **labor**

contractor and provide the worker, in cash or other form of payment authorized by ORS 652.110, the costs of transportation, including meals and lodging in transit, to return the worker to the place from which the worker was induced to travel or the costs of transportation, including meals and lodging in transit, to another worksite selected by the worker, whichever is less. For the purposes of this paragraph, "recruits or solicits" does not include the mere provision of housing or employment to persons who have not otherwise been recruited or solicited by the [farm] labor contractor or an agent of the [farm] labor contractor prior to their arrival at the place of housing or employment. Workers who arrive at the place of employment prior to the date they were instructed by the labor contractor to arrive are not entitled to the benefits of this subsection until the date they were instructed to arrive.

(3) A person acting as a [farm] labor contractor, or applying for a license to act as a [farm] labor contractor, may not:

(a) Make any misrepresentation, false statement or willful concealment in the application for a license.

(b) Willfully make or cause to be made to any person any false, fraudulent or misleading representation, or publish or circulate any false, fraudulent or misleading information concerning the terms, condition or existence of employment at any place or by any person.

(c) Solicit or induce, or cause to be solicited or induced, the violation of an existing contract of employment.

(d) Knowingly employ an alien not legally present or legally employable in the United States.

(e) Assist an unlicensed person to act in violation of ORS 658.405 to 658.503.

(f) By force, intimidation or threat of procuring dismissal or deportation or by any other manner whatsoever, induce any worker employed or in a subcontracting relationship to the [farm] labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

(g) Solicit or induce, or cause to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date the work was represented as being available.

SECTION 17. ORS 658.445 is amended to read:

658.445. The Commissioner of the Bureau of Labor and Industries may revoke, suspend or refuse to renew a license to act as a labor contractor upon the commissioner's own motion or upon complaint by any individual, if:

(1) The licensee or agent has violated or failed to comply with any provision of ORS 658.405 to 658.503 and 658.991 (2) and (3); or

(2) The conditions under which the license was issued have changed or no longer exist; or

(3) The licensee's character, reliability or competence makes the licensee unfit to act as a [farm] labor contractor.

SECTION 18. ORS 658.450 is amended to read:

658.450. (1) All proceedings relating to the issuance, revocation, suspension, renewal or refusal to renew a license to act as a [farm] labor contractor shall be conducted under ORS chapter 183.

(2) All rules of the Bureau of Labor and Industries under ORS 658.405 to 658.503 shall be issued in compliance with ORS chapter 183.

SECTION 19. ORS 658.452 is amended to read:

658.452. [No farm] A labor contractor or employer [shall] **may not** discharge or in any other manner discriminate against any employee because:

(1) The employee has made a claim against the [farm] labor contractor or employer for compensation for the employee's own personal services.

(2) The employee has caused to be instituted any proceedings under or related to ORS 658.405 to 658.503.

(3) The employee has testified or is about to testify in any such proceedings.

(4) The employee has discussed or consulted with anyone concerning the employee's rights under ORS 658.405 to 658.503.

SECTION 20. ORS 658.453 is amended to read:

658.453. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

(a) A [farm] labor contractor who, without the license required by ORS 658.405 to 658.503, recruits, solicits, supplies or employs a worker.

(b) A [farm] labor contractor who fails to comply with ORS 658.415 (15).

(c) A [farm] labor contractor who fails to comply with ORS 658.440 (1), (2)(c) or (3).

(d) Any person who violates ORS 658.452.

(e) A [farm] labor contractor who fails to comply with ORS 658.417 (1).

(f) Any person who uses an unlicensed [farm] labor contractor without complying with ORS 658.437.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered under this section shall be paid into the State Treasury and credited to the Farmworker Housing Development Account of the Oregon Housing Fund.

(4) After filing a complaint with the commissioner, in addition to any other penalty provided by law, a worker has a right of action against a [farm] labor contractor who violates [subsection (1)(c), (d) or (e) of this section or ORS 658.440 (2)(a) or (b)] **ORS 658.417 (1) or (2), 658.440 or 658.452** without exhausting any alternative administrative remedies. The action may not be commenced later than two years after the date of the violation giving rise to the right of action. The amount of damages recoverable for each violation under this subsection is actual damages or \$1,000, whichever amount is greater. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

SECTION 21. ORS 658.465 is amended to read:

658.465. (1) Any person who knowingly uses the services of an unlicensed [farm] labor contractor shall be personally, jointly and severally liable with the person acting as a [farm] labor contractor to the same extent and in the same manner as provided in ORS 658.453 (4).

(2) [No] A surety insurer [shall] **may not** provide any bond, undertaking, recognizance or other obligation for the purpose of securing or guaranteeing any act, duty or obligation, or the refraining from any act with respect to a contract using the services of a [farm] labor contractor unless the [farm] labor contractor has a valid license issued pursuant to ORS 658.405 to 658.503 at the time of issuance of the bond, undertaking, recognizance or other obligation.

SECTION 22. ORS 658.475 is amended to read:

658.475. The Commissioner of the Bureau of Labor and Industries, or any other person, may bring an action in circuit court to enjoin any person from using the services of an unlicensed [farm] labor contractor or to enjoin any person acting as a [farm] labor contractor in violation of ORS 658.405 to 658.503, or rules promulgated pursuant thereto, from committing future violations. The court may award to the prevailing party costs and disbursements and a reasonable attorney fee. In addition, the amount of damages recoverable from a person acting as a [farm] labor contractor who violates ORS 658.410 or 658.440 (1)(i) or (j) or (3)(e) is actual damages or \$2,000, whichever amount is greater.

SECTION 23. ORS 658.489 is amended to read:

658.489. (1) If a person acting as a [farm] labor contractor fails, neglects or refuses to make prompt payment of a claim for labor or services furnished by a person in connection with a contract or agreement as such claim becomes due, the person with whom the **labor** contractor has made the contract or agreement may pay such claim to the person furnishing the labor or services or, upon demand, may pay such claim to the Bureau of Labor and Industries for the benefit of persons furnishing labor and charge the amount of the payment against funds due or to become due the **labor** contractor by reason of such contract or agreement.

(2) The payment of a claim in the manner authorized in this section shall not relieve the **labor** contractor or the **labor** contractor's surety from obligation with respect to any unpaid claims.

SECTION 24. ORS 658.501 is amended to read:

658.501. ORS 658.405 to 658.503 apply to all transactions, acts and omissions of [farm] labor contractors and users of [farm] labor contractors that are within the constitutional power of the state to regulate, and not preempted by federal law, including but not limited to the recruitment of workers in this state to perform work outside this state, the recruitment of workers outside of this state to perform work in whole or in part within this state, the housing of workers in this state for work in another state, the housing of workers from another state in connection with work to be performed in this state, the transportation of workers through this state and the payment, terms and conditions, disclosure and record keeping required with respect to work performed outside this state by workers recruited in this state.

SECTION 25. ORS 658.503 is amended to read:

658.503. In any action arising out of the activities of an unlicensed [farm] labor contractor within this state who is not in the state or is otherwise unavailable for service of process in this state, the unlicensed [farm] labor contractor may be served by mailing a certified true copy of the summons and complaint to:

- (1) The Commissioner of the Bureau of Labor and Industries;
- (2) The last-known address, if any, of the unlicensed [farm] labor contractor; and
- (3) Any other address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

SECTION 26. ORS 658.991 is amended to read:

- 658.991. (1) Violation of ORS 658.005 to 658.245 or 658.250 is a Class C misdemeanor.
- (2) Violation of ORS 658.452 is a Class A misdemeanor.
- (3) Any person who intentionally defaces, alters or changes a license or permit to act as a [farm] labor contractor, or who uses the license or permit of another or knowingly permits that person's license or permit to be used by another, or who acts as a [farm] labor contractor without a valid license or permit under ORS 658.405 to 658.503, commits a Class A misdemeanor.
- (4) Any person who willfully swears or affirms falsely under ORS 658.415 (1), (2) or (3) in regard to any matter concerning which an oath or affirmation is required, or who solicits or induces another person to do so, whether or not the matter sworn to or affirmed is material, commits a Class A misdemeanor.
- (5) Violation of ORS 658.440 (1)(f), (g) or (h), (2)(c) or (3)(a), (b), (c), (e), (f) or (g) is a Class C misdemeanor.
- (6) Any person who violates the provisions of ORS 658.410 (1) or 658.417 (1) commits a Class C felony if:
- (a) The person has previously been convicted of violating the provisions of ORS 658.410 (1) or 658.417 (1);
 - (b) The person's license to act as a [farm] labor contractor has been suspended, revoked or denied; or
 - (c) The person is acting in violation of an outstanding order of any court of competent jurisdiction arising out of the enforcement of ORS 658.405 to 658.503.

SECTION 27. ORS 166.715 is amended to read:

166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

- (1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.
- (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.
- (3) "Investigative agency" means the Department of Justice or any district attorney.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct that constitutes an incident of racketeering activity may be used to establish a pattern of racketeering activity without regard to whether the conduct previously has been the subject of a criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within the jurisdiction of the juvenile court.

(5) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(6) "Racketeering activity" includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

- (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;
- (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;
- (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing governmental administration;
- (D) ORS 162.405 to 162.425, relating to abuse of public office;
- (E) ORS 162.455, relating to interference with legislative operation;
- (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;
- (G) ORS 163.160 to 163.205, relating to assault and related offenses;
- (H) ORS 163.225 and 163.235, relating to kidnapping;
- (I) ORS 163.275, relating to coercion;
- (J) ORS 163.665 to 163.693, relating to sexual conduct of children;
- (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;
- (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- (M) ORS 164.345 to 164.365, relating to criminal mischief;
- (N) ORS 164.395 to 164.415, relating to robbery;
- (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;
- (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;
- (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- (R) ORS 165.540 and 165.555, relating to communication crimes;
- (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;
- (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;
- (U) ORS 171.990, relating to legislative witnesses;
- (V) ORS 260.575 and 260.665, relating to election offenses;
- (W) ORS 314.075, relating to income tax;

(X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and the directories developed under ORS 180.425 and 180.477;

(Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS 411.990 (2) and (3);

(Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

(AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined in ORS 463.015;

(BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS chapter 471 relating to licenses issued under the Liquor Control Act;

(CC) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;

(DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

(EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

(FF) ORS 658.452 or 658.991 (2) to (4), relating to [farm] labor contractors;

(GG) ORS chapter 706, relating to banking law administration;

(HH) ORS chapter 714, relating to branch banking;

(II) ORS chapter 716, relating to mutual savings banks;

(JJ) ORS chapter 723, relating to credit unions;

(KK) ORS chapter 726, relating to pawnbrokers;

(LL) ORS 166.382 and 166.384, relating to destructive devices;

(MM) ORS 165.074;

(NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;

(OO) ORS chapter 496, 497 or 498, relating to wildlife;

(PP) ORS 163.355 to 163.427, relating to sexual offenses;

(QQ) ORS 166.015, relating to riot;

(RR) ORS 166.155 and 166.165, relating to intimidation;

(SS) ORS chapter 696, relating to real estate and escrow;

(TT) ORS chapter 704, relating to outfitters and guides;

(UU) ORS 165.692, relating to making a false claim for health care payment;

(VV) ORS 162.117, relating to public investment fraud;

(WW) ORS 164.170 or 164.172;

(XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

(YY) ORS 164.886;

(ZZ) ORS 167.312 and 167.388;

(AAA) ORS 164.889;

(BBB) ORS 165.800; or

(CCC) ORS 163.263, 163.264 or 163.266.

(b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

(7) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(A) ORS chapter 462, relating to racing;

(B) ORS 167.108 to 167.164, relating to gambling; or

(C) ORS 82.010 to 82.170, relating to interest and usury.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under federal or state law.

(8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions from what the statute was when this section was enacted, the reference shall extend to and include amendments to the statute.

SECTION 28. Nothing in ORS 658.405 to 658.503 affects whether a person is an employee of a construction labor contractor or of a user of services provided by a construction labor contractor for purposes of a wage claim under ORS chapters 652 and 653 or ORS 658.415.

SECTION 29. Section 28 of this 2013 Act and the amendments to ORS 166.715, 658.015, 658.405, 658.407, 658.410, 658.411, 658.412, 658.415, 658.416, 658.417, 658.418, 658.420, 658.425, 658.430, 658.435, 658.437, 658.440, 658.445, 658.450, 658.452, 658.453, 658.465, 658.475, 658.489, 658.501, 658.503 and 658.991 by sections 1 to 27 of this 2013 Act become operative on July 1, 2015.

SECTION 30. Notwithstanding section 29 of this 2013 Act, the Commissioner of the Bureau of Labor and Industries may take any action before the operative date established by section 29 of this 2013 Act that is necessary to enable the commissioner to exercise, on and after the operative date, all the duties, functions and powers conferred on the commissioner by this 2013 Act.

SECTION 31. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House June 13, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 25, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Kate Brown, Secretary of State