

House Bill 3141

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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**.

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 657.087; and prescribing
3 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 performed:

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

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

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

16 656.027. All workers are subject to this chapter except those nonsubject workers described in
17 the following subsections:

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

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

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

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

25 or

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

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

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

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

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

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

11 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are
 12 performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor
 13 must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 or
 14 701.021 and involved in activities subject thereto is conclusively presumed to be an independent
 15 contractor.

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

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

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

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

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

39 (A) Two corporate officers; or

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

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

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

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

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

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

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

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

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

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

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

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

27 (a) Ski patrol activities; or

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

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

33 (19) A person performing foster parent or adult foster care duties pursuant to ORS 412.001 to
34 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

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

38 (21) A person performing services under a property tax work-off program established under ORS
39 310.800.

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

43 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a sub-
44 stantial ownership interest in a partnership. If all partners are members of the same family and are
45 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchil-

1 dren, all such partners may elect to be nonsubject workers. For all other partnerships licensed un-
 2 der ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever
 3 is the greater of the following:

- 4 (A) Two partners; or
- 5 (B) One partner for each 10 partnership employees.

6 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
 7 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under
 8 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
 9 independent contractor.

10 (24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525
 11 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the na-
 12 ture of the work performed. If all officers of the corporation are members of the same family and
 13 are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grand-
 14 children, all such officers may elect to be nonsubject workers. For all other corporations licensed
 15 under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers shall
 16 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 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
 20 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under
 21 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
 22 independent contractor.

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

- 30 (A) Two company members; or
- 31 (B) One company member for each 10 company employees.

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

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

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

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

- 43 (a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consid-
 44 eration.
- 45 (b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 4. This 2013 Act takes effect on the 91st day after the date on which the 2013
28 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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