

# House Bill 3209

Sponsored by Representatives SPRENGER, WILLIAMSON; Representative MCLANE

## 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**.

Removes from coverage as subject worker member or manager of limited liability company who holds direct or indirect ownership interest in limited liability company, including through one or more holding companies, regardless of work that member or manager performs for limited liability company.

## A BILL FOR AN ACT

1  
2 Relating to subject workers for purposes of workers' compensation; amending ORS 656.027 and  
3 657.046.

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

5 **SECTION 1.** ORS 656.027 is amended to read:

6 656.027. All workers are subject to this chapter except those nonsubject workers described in  
7 the following subsections:

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

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

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

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

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

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

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

23 (5) A worker engaged in the transportation in interstate commerce of goods, persons or property  
24 for hire by rail, water, aircraft or motor vehicle, and whose employer [*has no*] **does not have a** fixed  
25 place of business in this state.

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are  
 2 performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor  
 3 must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 or  
 4 701.021 and involved in activities subject thereto is conclusively presumed to be an independent  
 5 contractor.

6 (8) Except as provided in subsection [(23)] (24) of this section, partners who are not engaged in  
 7 work performed in direct connection with the construction, alteration, repair, improvement, moving  
 8 or demolition of an improvement on real property or appurtenances thereto. When labor or services  
 9 are performed under contract, the partnership must qualify as an independent contractor.

10 (9) Except as provided in subsection [(25)] (26) of this section, members, including members who  
 11 are managers, of limited liability companies, regardless of the nature of the work performed. How-  
 12 ever, members, including members who are managers, of limited liability companies with more than  
 13 one member, while engaged in work performed in direct connection with the construction, alteration,  
 14 repair, improvement, moving or demolition of an improvement on real property or appurtenances  
 15 thereto, are subject workers. When labor or services are performed under contract, the limited li-  
 16 ability company must qualify as an independent contractor.

17 **(10) A member of a limited liability company, including a member who is a manager, if**  
 18 **the member or manager has a direct or indirect ownership interest in the limited liability**  
 19 **company, including through one or more holding companies, regardless of the nature of the**  
 20 **work that the member or manager performs for the limited liability company.**

21 [(10)] (11) Except as provided in subsection [(24)] (25) of this section, corporate officers who are  
 22 directors of the corporation and who have a substantial ownership interest in the corporation, re-  
 23 gardless of the nature of the work performed by such officers, subject to the following limitations:

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

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

33 (A) Two corporate officers; or

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

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

37 [(11)] (12) A person performing services primarily for board and lodging received from any reli-  
 38 gious, charitable or relief organization.

39 [(12)] (13) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and  
 40 656.075.

41 [(13)] (14) A person who has been declared an amateur athlete under the rules of the United  
 42 States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration  
 43 for performance of services as an athlete other than board, room, rent, housing, lodging or other  
 44 reasonable incidental subsistence allowance, or any amateur sports official who is certified by a  
 45 recognized Oregon or national certifying authority, which requires or provides liability and accident

1 insurance for such officials. A roster of recognized Oregon and national certifying authorities will  
2 be maintained by the Department of Consumer and Business Services, from lists of certifying or-  
3 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-  
4 creation Society.

5 [(14)] (15) Volunteer personnel participating in the ACTION programs, organized under the Do-  
6 mestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and  
7 the Senior Companion Program, whether or not the volunteers receive a stipend or nominal re-  
8 imbursement for time and travel expenses.

9 [(15)] (16) A person who has an ownership or leasehold interest in equipment and who furnishes,  
10 maintains and operates the equipment. As used in this subsection "equipment" means:

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

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

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

15 [(16)] (17) A person engaged in the transportation of the public for recreational down-river  
16 boating activities on the waters of this state pursuant to a federal permit when the person furnishes  
17 the equipment necessary for the activity. As used in this subsection, "recreational down-river boat-  
18 ing activities" means those boating activities for the purpose of recreational fishing, swimming or  
19 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

20 [(17)] (18) A person who receives no wage other than ski passes or other noncash remuneration  
21 for performing volunteer:

22 (a) Ski patrol activities; or

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

25 [(18)] (19) A person 19 years of age or older who contracts with a newspaper publishing com-  
26 pany or independent newspaper dealer or contractor to distribute newspapers to the general public  
27 and perform or undertake any necessary or attendant functions related thereto.

28 [(19)] (20) A person performing foster parent or adult foster care duties pursuant to [ORS  
29 412.001 to 412.161 and 412.991 or] ORS chapter [411,] 418, 430 or 443.

30 [(20)] (21) A person performing services on a volunteer basis for a nonprofit, religious, charitable  
31 or relief organization, whether or not such person receives meals or lodging or nominal reimburse-  
32 ments or vouchers for meals, lodging or expenses.

33 [(21)] (22) A person performing services under a property tax work-off program established under  
34 ORS 310.800.

35 [(22)] (23) A person who performs service as a caddy at a golf course in an established program  
36 for the training and supervision of caddies under the direction of a person who is an employee of  
37 the golf course.

38 [(23)(a)] (24)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have  
39 a substantial ownership interest in a partnership. If all partners are members of the same family and  
40 are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grand-  
41 children, all such partners may elect to be nonsubject workers. For all other partnerships licensed  
42 under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be which-  
43 ever is the greater of the following:

44 (A) Two partners; or

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

1 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS  
 2 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under  
 3 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an  
 4 independent contractor.

5 [(24)(a)] **(25)(a)** Corporate officers who are directors of a corporation actively licensed under  
 6 ORS 671.525 or 701.021 and who have a substantial ownership interest in the corporation, regardless  
 7 of the nature of the work performed. If all officers of the corporation are members of the same  
 8 family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law  
 9 or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations  
 10 licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers  
 11 shall be whichever is the greater of the following:

12 (A) Two corporate officers; or

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

14 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS  
 15 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under  
 16 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an  
 17 independent contractor.

18 [(25)(a)] **(26)(a)** Limited liability company members who are members of a company actively li-  
 19 censed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the company,  
 20 regardless of the nature of the work performed. If all members of the company are members of the  
 21 same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-  
 22 in-law or grandchildren, all such members may elect to be nonsubject workers. For all other com-  
 23 panies licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt company  
 24 members shall be whichever is the greater of the following:

25 (A) Two company members; or

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

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

31 [(26)] **(27)** A person serving as a referee or assistant referee in a youth or adult recreational  
 32 soccer match whose services are retained on a match-by-match basis.

33 [(27)] **(28)** A person performing language translator or interpreter services that are provided for  
 34 others through an agent or broker.

35 [(28)] **(29)** A person who operates, and who has an ownership or leasehold interest in, a pas-  
 36 senger motor vehicle that is operated as a taxicab or for nonemergency medical transportation.  
 37 As used in this subsection:

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

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

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

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

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

44 (C)(i) Carries passengers for hire when the destination and route traveled may be controlled by  
 45 a passenger and the fare is calculated on the basis of any combination of an initial fee, distance

1 traveled or waiting time; or

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

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

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

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

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

10 **SECTION 2.** ORS 657.046 is amended to read:

11 657.046. (1) As used in this chapter, "employment" does not include service performed in the  
12 operation of a passenger motor vehicle that is operated as a taxicab or a passenger motor vehicle  
13 that is operated for nonemergency medical transportation, by a person who has an ownership or  
14 leasehold interest in the passenger motor vehicle, for an entity that is operated by a board of  
15 owner-operators elected by the members of the entity.

16 (2) As used in this section:

17 (a) "Leasehold" has the meaning given that term in ORS 656.027 [(28)] (29).

18 (b) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

19 (A) Has a passenger seating capacity of at least three persons and not more than seven persons;

20 (B) On a route that begins or ends in Oregon, is used primarily to transport persons;

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

24 (ii) Is in use under a contract to provide specific service to a third party to transport designated  
25 passengers to locations selected by the third party; and

26 (D) Is not used more than secondarily or incidentally for errand services or to transport prop-  
27 erty, instead of or in addition to transporting passengers.

28 (c) "Passenger motor vehicle that is operated for nonemergency medical transportation" means  
29 a vehicle that:

30 (A) Has a passenger seating capacity of at least three persons and not more than seven persons;

31 (B) On a route that begins or ends in Oregon, is used primarily to transport persons;

32 (C) Provides medical transportation services under contract with or on behalf of a mass transit  
33 or transportation district; and

34 (D) Is not used more than secondarily or incidentally for errand services or to transport prop-  
35 erty, instead of or in addition to transporting passengers.

36 (3) The provisions of this section do not apply to service performed for:

37 (a) A nonprofit employing unit;

38 (b) This state;

39 (c) A political subdivision of this state; or

40 (d) An Indian tribe.

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