

B-Engrossed
House Bill 3279

Ordered by the House June 29
Including House Amendments dated April 21 and June 29

Sponsored by Representatives LININGER, SANCHEZ, Senator MANNING JR; Representatives ALONSO LEON, BARKER, GORSEK, GREENLICK, KENY-GUYER, OLSON, VIAL, Senators DEMBROW, PROZANSKI

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.

Modifies definition of "labor contractor" to include property services contractor. Requires Commissioner of Bureau of Labor and Industries to establish procedures for licensing of property services contractors. Requires commissioner to adopt rules for property services contractors to provide training to employees with respect to sexual harassment, discrimination and whistleblower protection.

A BILL FOR AN ACT

1
2 Relating to the regulation of property services contractors; creating new provisions; and amending
3 ORS 658.405, 658.412, 658.415, 658.419, 658.453 and 658.511.

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

5 **SECTION 1.** ORS 658.405 is amended to read:

6 658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires
7 otherwise:

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

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

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

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

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

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

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

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

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

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

26 (E) The Employment Department;

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 (F) A crew leader;
- 2 (G) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
- 3 services with each other, provided the work is performed on land owned or leased by the individuals;
- 4 (H) An educational institution that is recognized as such by the Department of Education;
- 5 (I) A labor union;
- 6 (J) A local joint apprenticeship committee formed under ORS 660.135; or
- 7 (K) A staffing agency whose primary purpose is to provide workers to the client employers of
- 8 the agency under the terms of a client agreement, if the agency provides workers' compensation
- 9 coverage for all employees as required by ORS chapter 656 and pays employment and income taxes
- 10 in accordance with applicable law.

11 (3) "Crew leader" means the member of a group of workers who acts as spokesman for the

12 group, travels with the group from another state into Oregon and performs the same work along

13 with other group members. A crew leader may transport workers from their local place of residence

14 to their place of employment so long as the crew leader does not perform this service for a profit.

15 (4)(a) "Farm labor contractor" includes any person that:

16 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers

17 to perform labor for another person to work in forestation or reforestation of lands, including but

18 not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and

19 seedlings, the clearing, piling and disposal of brush and slash and other related activities;

20 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers

21 to perform labor for another person in the production or harvesting of farm products;

22 (C) Recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear

23 grass, salal or ferns from public lands for sale or market prior to processing or manufacture;

24 (D) Recruits, solicits, supplies or employs workers on behalf of an employer engaged in these

25 activities;

26 (E) In connection with the recruitment or employment of workers to work in these activities,

27 furnishes board or lodging for such workers;

28 (F) Bids or submits prices on contract offers for those activities; or

29 (G) Enters into a subcontract with another for any of those activities.

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

31 (A) Farmers, including owners or lessees of land intended to be used for the production of tim-

32 ber, their permanent employees, advertising media, platoon leaders or individuals engaged in the

33 solicitation or recruitment of persons for dayhaul work in connection with the growing, production

34 or harvesting of farm products;

35 (B) The Employment Department;

36 (C) A crew leader;

37 (D) An individual who performs work, other than recruiting, supplying, soliciting or employing

38 workers to perform labor for another, alone or only with the assistance of the individual's spouse,

39 son, daughter, brother, sister, mother or father;

40 (E) Individuals who perform labor pursuant to an agreement for exchanging their own labor or

41 services with each other, provided the work is performed on land owned or leased by the individuals;

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

43 (G) A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits,

44 supplies, solicits or employs workers only for the farmer's own operations, and has farmworkers

45 living in the camp who are employed by another on no more than an incidental basis, and the farmer

1 receives no remuneration by virtue of such incidental employment; or

2 (H) A labor union.

3 (5) "Labor contractor" means a construction labor contractor, [or] a farm labor contractor or
4 a property services contractor.

5 (6)(a) "Property services contractor" includes any person that:

6 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs
7 workers to perform labor for another person to provide services that include janitorial ser-
8 vices;

9 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs
10 workers on behalf of an employer to provide services that include janitorial services; or

11 (C) Enters into a subcontract with another for any of the activities described in subpar-
12 agraph (A) or (B) of this paragraph.

13 (b) "Property services contractor" does not include:

14 (A) The Employment Department;

15 (B) A crew leader;

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

19 (D) An educational institution that is recognized as such by the Department of Educa-
20 tion; or

21 (E) A labor union.

22 **SECTION 2.** Sections 3 and 4 of this 2017 Act are added to and made a part of ORS 658.405
23 to 658.503.

24 **SECTION 3.** (1) The Commissioner of the Bureau of Labor and Industries shall establish,
25 by rule, procedures for the licensing of property services contractors.

26 (2) Rules adopted under this section must require that a property services contractor
27 provide the following information to the commissioner:

28 (a) The total number of employees employed by the property services contractor who
29 perform janitorial services.

30 (b) The physical address of the work location or locations at which janitorial services are
31 provided by an employee of the property services contractor.

32 (c) Demographic data that is voluntarily provided by employees relating to race, sex,
33 sexual orientation, national origin, marital status and age.

34 **SECTION 4.** Rules adopted under section 3 of this 2017 Act shall require that a property
35 services contractor provide professional training through or approved by the Bureau of La-
36 bor and Industries to managers, supervisors and employees:

37 (1) To prevent sexual assault and sexual harassment in the workplace.

38 (2) To prevent discrimination in the workplace and promote cultural competency.

39 (3) To educate the workforce regarding protection for employees who report a violation
40 of a state or federal law, rule or regulation.

41 **SECTION 5.** ORS 658.412 is amended to read:

42 658.412. The Commissioner of the Bureau of Labor and Industries may not issue a license to
43 operate as a labor contractor until an applicant for a license has successfully passed a qualifying
44 examination designed to test the applicant's ability, knowledge and proficiency to conduct and
45 manage the business of a labor contractor. **The examination must also test the applicant's**

1 **knowledge of an employer's responsibility to prevent sexual assault and sexual harassment.**

2 The commissioner shall prescribe by rule the requirements for and the manner of testing the com-
3 petency of license applicants.

4 **SECTION 6.** ORS 658.415 is amended to read:

5 658.415. (1) A person may not act as a labor contractor unless the person has first been licensed
6 by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503. Any
7 person may file an application for a license to act as a labor contractor at any office of the Bureau
8 of Labor and Industries. The application shall be sworn to by the applicant and shall be written
9 on a form prescribed by the commissioner. The form shall include, but not be limited to, questions
10 asking:

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

13 (b) Information on all motor vehicles to be used by the applicant in operations as a labor con-
14 tractor including license number and state of licensure, vehicle number and the name and address
15 of vehicle owner for all vehicles used.

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

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

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

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

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

32 (3) **Except as provided in subsection (6) of this section,** each applicant shall submit with the
33 application and shall continually maintain thereafter, until excused, proof of financial ability to
34 promptly pay the wages of employees and other obligations specified in this section. The proof re-
35 quired in this subsection shall be in the form of a corporate surety bond of a company licensed to
36 do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of
37 this subsection, it shall be deemed sufficient compliance if the labor contractor procures a savings
38 account at a bank or savings and loan institution in the name of the commissioner as trustee for the
39 employees of the labor contractor and others as their interests may appear and delivers proof of the
40 account and the ability to withdraw the funds to the commissioner under the terms of a bond ap-
41 proved by the commissioner. The amount of the bond and the security behind the bond, or the cash
42 deposit, shall be based on the maximum number of employees the labor contractor employs at any
43 time during the year. The bond or cash deposit shall be:

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

45 (b) \$30,000, or such lesser sum as may be authorized by the commissioner under ORS 658.416,

1 if the labor contractor employs 21 or more employees.

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

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

16 **(6) A property services contractor is not required to file proof of financial ability under**
17 **subsection (3) of this section if:**

18 **(a) The property services contractor provides proof of general liability insurance cover-**
19 **age in an amount that the commissioner determines by rule is adequate; and**

20 **(b) The commissioner finds that the property services contractor, within the preceding**
21 **two years, has not:**

22 **(A) Violated ORS chapter 652 or 653; or**

23 **(B) Committed an unlawful employment practice under ORS chapter 659A.**

24 [(6)] (7) Each application must be accompanied by the fee established under ORS 658.413.

25 [(7)] (8) Any person who uses the services of a labor contractor who has failed to comply with
26 any of the provisions of this section or ORS 658.419 shall:

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

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

31 [(8)] (9) Any person who suffers any loss of wages from the employer of the person or any other
32 loss specified in subsection [(16)] (17) of this section shall have a right of action in the name of the
33 person against the surety upon the bond or against the deposit with the commissioner. The right
34 of action:

35 (a) Is assignable and must be included with an assignment of a wage claim, of any other appro-
36 priate claim or of a judgment thereon.

37 (b) May not be included in any action against the labor contractor but must be exercised inde-
38 pendently after first procuring a judgment or other form of adequate proof of liability established
39 by rule and procedure under subsection [(14)] (15) of this section establishing the labor contractor's
40 liability for the claim.

41 [(9)(a)] (10)(a) The surety company or the commissioner shall make prompt and periodic pay-
42 ments on the labor contractor's liability up to the extent of the total sum of the bond or deposit.

43 (b) Payment shall be made based upon priority of wage claims over advances made by the con-
44 struction property owner, the grower or producer of agricultural commodities or the owner or lessee
45 of land intended to be used for the production of timber, for advances made to or on behalf of the

1 labor contractor.

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

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

6 [(10)] (11) A person may not bring any action against the surety company or the commissioner
7 on the bond or against the commissioner as the trustee for the beneficiaries of the labor contractor
8 under any deposit made pursuant to this section or ORS 658.419 unless the person has first ex-
9 hausted the procedures contained in subsections [(8) and (12)] (9) and (13) of this section or in ORS
10 658.419 and contends that the surety company or the commissioner still has funds that are applicable
11 to the person's judgment or acknowledgment.

12 [(11)] (12) The commissioner may not be prevented from accepting assignments of wage claims
13 and enforcing liability against the surety on the bond or from applying the deposit to just wage
14 claims filed with the commissioner.

15 [(12)] (13) All claims against the bond or deposit shall be unenforceable unless request for pay-
16 ment of a judgment or other form of adequate proof of liability or a notice of the claim has been
17 made by certified mail to the surety or the commissioner within six months from the end of the pe-
18 riod for which the bond or deposit was executed and made.

19 [(13)] (14) If the commissioner has received no notice as provided in subsection [(12)] (13) of this
20 section within six months after a labor contractor is no longer required to provide and maintain a
21 surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit
22 under the control of the commissioner to the person who is entitled thereto upon receiving appro-
23 priate proof of such entitlement.

24 [(14)] (15) The commissioner shall adopt rules reasonably necessary for administration and
25 enforcement of the provisions of this section and ORS 658.419.

26 [(15)] (16) Every labor contractor required by this section or ORS 658.419 to furnish a surety
27 bond or make a deposit in lieu of a surety bond shall keep conspicuously posted upon the premises
28 where employees working under the contractor are employed a notice, in both English and any other
29 language used by the labor contractor to communicate with workers, specifying the contractor's
30 compliance with the requirements of this section and ORS 658.419 and specifying the name and
31 Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been
32 made with the commissioner together with the address of the commissioner.

33 [(16)] (17) The bond or deposit referred to in subsection (3) of this section shall be payable to
34 the commissioner and shall be conditioned upon:

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

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

39 [(17)] (18) The commissioner may not issue a license until the applicant executes a written
40 statement that shall be subscribed and sworn to and that shall contain the following declaration:

41 _____
42
43 With regards to any action filed against me concerning my activities as a labor contractor, I
44 appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept ser-
45 vice of summons when I am not present in the jurisdiction in which such action is commenced or

1 have in any other way become unavailable to accept service.

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4 [(18)] (19) A person who cosigns with a labor contractor for a bond required by subsection (3)
5 of this section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages
6 above the amount of the bond solely because the person cosigned for the bond.

7 [(19)] (20) The court may award reasonable attorney fees to the prevailing party in any action
8 to enforce the provisions of this section or ORS 658.419.

9 **SECTION 7.** ORS 658.511 is amended to read:

10 658.511. Nothing in ORS 658.405 to 658.503 affects whether a person is an employee of a **prop-**
11 **erty services contractor, of a** construction labor contractor or of a user of services provided by
12 **a property services contractor or** a construction labor contractor for purposes of a wage claim
13 under ORS chapters 652 and 653 or ORS 658.415.

14 **SECTION 8.** ORS 658.419 is amended to read:

15 658.419. (1) Notwithstanding the provisions of ORS 658.415 (3), (4), [(8), (9) and (16)] (9), (10) and
16 (17), an agricultural association or a private nonprofit corporation described in ORS 658.410 (2)(f)(B)
17 shall submit with the application for a license to act as a farm labor contractor and shall contin-
18 ually maintain thereafter, until excused, a corporate surety bond of a company licensed to do such
19 business in Oregon, a cash deposit or a deposit the equivalent of cash, in a form approved by and
20 payable to the Commissioner of the Bureau of Labor and Industries, in the amount of \$30,000.

21 (2) Any person who suffers any loss of wages from the employer of the person or any other loss
22 due to activities of the agricultural association or the private nonprofit corporation as a farm labor
23 contractor shall have a right of action against the surety upon the bond or against the deposit with
24 the commissioner. The right of action is assignable and may not be included in any action against
25 the agricultural association or the private nonprofit corporation but shall be exercised independ-
26 ently after first procuring adequate proof of liability as provided by the commissioner by rule.

27 (3) The surety company or the commissioner shall make prompt and periodic payments on the
28 agricultural association's or the private nonprofit corporation's liability up to the extent of the total
29 sum of the bond or deposit. Payments shall be made in the following manner:

- 30 (a) Payment based upon priority of wage claims over other liabilities;
31 (b) Payment in full of all sums due to each person who presents adequate proof of the claim; and
32 (c) If there are insufficient funds to pay in full the person next entitled to payment in full, pay-
33 ment in part to the person.

34 **SECTION 9.** ORS 658.453 is amended to read:

35 658.453. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
36 of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

- 37 (a) A labor contractor who, without the license required by ORS 658.405 to 658.503, recruits,
38 solicits, supplies or employs a worker.
39 (b) A labor contractor who fails to comply with ORS 658.415 [(15)] (16).
40 (c) A labor contractor who fails to comply with ORS 658.440 (1), (2)(c) or (3).
41 (d) Any person who violates ORS 658.452.
42 (e) A labor contractor who fails to comply with ORS 658.417 (1).
43 (f) Any person who uses an unlicensed labor contractor without complying with ORS 658.437.

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

45 (3) All penalties recovered under this section shall be paid into the State Treasury and credited

1 to the Farmworker Housing Development Account of the Oregon Housing Fund.

2 (4) After filing a complaint with the commissioner, in addition to any other penalty provided by
3 law, a worker has a right of action against a labor contractor who violates ORS 658.417 (1) or (2),
4 658.440 or 658.452 without exhausting any alternative administrative remedies. The action may not
5 be commenced later than two years after the date of the violation giving rise to the right of action.
6 The amount of damages recoverable for each violation under this subsection is actual damages or
7 \$1,000, whichever amount is greater. In any such action the court may award to the prevailing
8 party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

9 **SECTION 10. Notwithstanding any other law limiting expenditures, the limitation on**
10 **expenditures established by section 2, chapter __, Oregon Laws 2017 (Enrolled House Bill**
11 **5016), for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses**
12 **from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery**
13 **funds and federal funds, collected or received by the Bureau of Labor and Industries, is in-**
14 **creased by \$156,267 for the purpose of carrying out the provisions of sections 3 and 4 of this**
15 **2017 Act and the amendments to ORS 658.412 and 658.415 by sections 5 and 6 of this 2017 Act.**

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