

House Bill 3466

Sponsored by Representative GREENLICK, Senator BURDICK

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**.

Specifies that amateur athlete is not employee for purpose of certain employment-related provisions.

A BILL FOR AN ACT

1
2 Relating to employment; creating new provisions; and amending ORS 652.210, 652.310, 653.010,
3 653.362 and 656.027.

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 where the work in
19 any 30-day period, without regard to the number of workers employed, involves a total labor cost
20 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 fixed place of business
25 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 **to be a nonsubject worker under this subsection**.

31 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are

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 performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor
 2 must qualify as an independent contractor **to be a nonsubject worker under this subsection.** Any
 3 sole proprietor licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is
 4 conclusively presumed to be an independent contractor.

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

10 (9) Except as provided in subsection (25) of this section, members, including members who are
 11 managers, of limited liability companies, regardless of the nature of the work performed. However,
 12 members, including members who are managers, of limited liability companies with more than one
 13 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 **to be a nonsubject worker under this**
 17 **subsection.**

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

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

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

30 (A) Two corporate officers; or

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

32 (c) When labor or services are performed under contract, the corporation must qualify as an
 33 independent contractor **to be a nonsubject worker under this subsection.**

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

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

37 (13)(a) A person who:

38 (A) Has been declared an amateur athlete under the rules of the United States Olympic Com-
 39 mittee, [or] the Canadian Olympic Committee **or an equivalent national body governing amateur**
 40 **sports, or who is registered with a recognized national governing body, or its state affiliate,**
 41 **that is empowered to sanction and govern amateur sport competitions;** and

42 (B) [Who] Receives no remuneration for performance of services as an athlete other than board,
 43 room, rent, housing, lodging or other reasonable incidental subsistence allowance[.]; or

44 (b) Any amateur sports official who is certified by a recognized Oregon or national certifying
 45 authority, which requires or provides liability and accident insurance for such officials. A roster of

1 recognized Oregon and national certifying authorities will be maintained by the Department of
 2 Consumer and Business Services, from lists of certifying organizations submitted by the Oregon
 3 School Activities Association and the Oregon Park and Recreation Society.

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

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

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

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

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

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

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

21 (a) Ski patrol activities; or

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

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

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

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

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

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

37 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a sub-
 38 stantial ownership interest in a partnership. If all partners are members of the same family and are
 39 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchil-
 40 dren, all such partners may elect to be nonsubject workers. For all other partnerships licensed un-
 41 der ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever
 42 is the greater of the following:

43 (A) Two partners; or

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

45 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS

1 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under
 2 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
 3 independent contractor.

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

11 (A) Two corporate officers; or

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

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

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

24 (A) Two company members; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **SECTION 2.** ORS 652.210 is amended to read:

10 652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

11 (1)(a) "Employee" means any individual who[*otherwise than as a copartner of the employer, as*
12 *an independent contractor or as a participant in a work training program administered under the state*
13 *or federal assistance laws,*] renders personal services wholly or partly in this state to an employer
14 who pays or agrees to pay such individual at a fixed rate. [*However, when services are rendered only*
15 *partly in this state, an individual is not an employee unless the contract of employment of the employee*
16 *has been entered into, or payments thereunder are ordinarily made or to be made, within this state.*]

17 (b) "Employee" does not include:

18 (A) A copartner of the employer;

19 (B) An independent contractor;

20 (C) A participant in a work training program that is administered under state or federal
21 assistance laws;

22 (D) An individual who is an amateur athlete, as described in ORS 656.027 (13)(a), when
23 the individual is performing as an amateur athlete; or

24 (E) An individual who renders services only partly in this state, unless the contract of
25 employment of the employee has been entered into, or payments are to be made, within this
26 state.

27 (2) "Employer" means any person employing one or more employees, including the State of
28 Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-
29 ration or entity and any of their instrumentalities organized and existing under law or charter.
30 "Employer" does not include the federal government.

31 (3) "Rate" with reference to wages means the basis of compensation for services by an employee
32 for an employer and includes compensation based on the time spent in the performance of the ser-
33 vices, on the number of operations accomplished or on the quantity produced or handled.

34 (4) "Unpaid wages" means the difference between the wages actually paid to an employee and
35 the wages required under ORS 652.220 to be paid to the employee.

36 (5) "Wages" means all compensation for performance of service by an employee for an employer,
37 whether paid by the employer or another person, including cash value of all compensation paid in
38 any medium other than cash.

39 **SECTION 3.** ORS 652.310 is amended to read:

40 652.310. As used in ORS 652.310 to 652.414, unless the context requires otherwise:

41 [(1) "Employer" means any person who in this state, directly or through an agent, engages personal
42 services of one or more employees and includes any successor to the business of any employer, or any
43 lessee or purchaser of any employer's business property for the continuance of the same business, so
44 far as such employer has not paid employees in full. "Employer" includes the State of Oregon or any
45 political subdivision thereof or any county, city, district, authority, public corporation or entity and any

1 of their instrumentalities organized and existing under law or charter but does not include:]

2 [(a) The United States.]

3 [(b) Trustees and assignees in bankruptcy or insolvency, and receivers, whether appointed by fed-
4 eral or state courts, and persons otherwise falling under the definition of employers so far as the times
5 or amounts of their payments to employees are regulated by laws of the United States, or regulations
6 or orders made in pursuance thereof.]

7 [(2)] (1)(a) “Employee” means any individual who [otherwise than as copartner of the employer
8 or as an independent contractor] renders personal services wholly or partly in this state to an em-
9 ployer who pays or agrees to pay such individual at a fixed rate, based on the time spent in the
10 performance of such services or on the number of operations accomplished, or quantity produced
11 or handled. [However:]

12 (b) “Employee” does not include:

13 (A) A copartner of the employer;

14 (B) An independent contractor, unless the individual is a musician or technical crew
15 member;

16 (C) An individual who is an amateur athlete, as described in ORS 656.027 (13)(a), when the
17 individual is performing as an amateur athlete; or

18 (D) An individual who renders services only partly in this state, unless the contract of
19 employment of the employee has been entered into, or payments are to be made, within this
20 state.

21 [(a) Where services are rendered by an independent contractor, an individual shall not be an em-
22 ployee under this section unless the individual is a musician or supporting technical person.]

23 [(b) Where services are rendered only partly in this state, an individual shall not be an employee
24 under this section unless the contract of employment of the employee has been entered into, or payments
25 thereunder are ordinarily made or to be made, within this state.]

26 (2)(a) “Employer” means any person who in this state, directly or through an agent, en-
27 gages personal services of one or more employees and includes any successor to the business
28 of any employer, or any lessee or purchaser of any employer’s business property for the
29 continuance of the same business, so far as such employer has not paid employees in full.

30 (b) “Employer” includes the State of Oregon or any political subdivision thereof or any
31 county, city, district, authority, public corporation or entity and any of their instrument-
32 alities organized and existing under law or charter but does not include:

33 (A) The United States.

34 (B) Trustees and assignees in bankruptcy or insolvency, and receivers, whether appointed
35 by federal or state courts, and persons otherwise falling under the definition of employers
36 so far as the times or amounts of their payments to employees are regulated by laws of the
37 United States, or regulations or orders made in pursuance thereof.

38 **SECTION 4.** ORS 653.010 is amended to read:

39 653.010. As used in ORS 653.010 to 653.261, unless the context requires otherwise:

40 (1) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

41 (2)(a) “Employ” includes to suffer or permit to work.

42 (b) [but] “Employ” does not include:

43 (A) Voluntary or donated services performed for no compensation or without expectation or
44 contemplation of compensation as the adequate consideration for the services performed:

45 (i) For a public employer referred to in subsection (3) of this section[,]; [or]

1 **(ii) For** a religious, charitable, educational, public service or similar nonprofit corporation, or-
 2 ganization or institution for community service, religious or humanitarian reasons; or

3 **(iii) [for services performed]** By general or public assistance recipients as part of any work
 4 training program administered under the state or federal assistance laws; **or**

5 **(B) Services performed by an individual who is an amateur athlete, as described in ORS**
 6 **656.027 (13)(a), when the individual is performing as an amateur athlete.**

7 (3)(a) “Employer” means any person who employs another person.

8 **(b) “Employer” includes** *[including]* the State of Oregon or a political subdivision thereof or
 9 any county, city, district, authority, public corporation or entity and any of *[their]* **its** instrument-
 10 alities organized and existing under law or charter.

11 (4) “Minor” means any person under 18 years of age.

12 (5) “Occupation” means any occupation, service, trade, business, industry, or branch or group
 13 of industries or employment or class of employment in which employees are gainfully employed.

14 (6) “Organized camp” means a day or resident camp, whether or not operated for profit, estab-
 15 lished to give campers recreational, creative, religious or educational experience in cooperative
 16 group living wherein the activities are conducted on a closely supervised basis, whether or not the
 17 camp is used primarily by an organized group or by members of the public and whether or not the
 18 activities or facilities are furnished free of charge or for the payment of a fee.

19 (7) “Outside salesperson” means any employee who is employed for the purpose of and who is
 20 customarily and regularly engaged away from the employer’s place or places of business in making
 21 sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any other
 22 nature for the employer do not exceed 30 percent of the hours worked in the workweek by the
 23 nonexempt employees of the employer.

24 (8) “Piece-rate” means a rate of pay calculated on the basis of the quantity of the crop har-
 25 vested.

26 (9) “Salary” means no less than the wage set pursuant to ORS 653.025, multiplied by 2,080 hours
 27 per year, then divided by 12 months.

28 (10) “Wages” means compensation due to an employee by reason of employment, payable in legal
 29 tender of the United States or check on banks convertible into cash on demand at full face value,
 30 subject to such deductions, charges or allowances as are permitted in ORS 653.035.

31 (11) “Work time” includes both time worked and time of authorized attendance.

32 **SECTION 5.** ORS 653.362 is amended to read:

33 653.362. The provisions of ORS 653.305 to 653.370 do not apply to:

34 (1) A person under 18 years of age serving as a referee or assistant referee in a youth or adult
 35 recreational soccer match.

36 **(2) An individual who is an amateur athlete, as described in ORS 656.027 (13)(a), when the**
 37 **individual is performing as an amateur athlete.**

38 **SECTION 6.** Section 7 of this 2017 Act is added to and made a part of ORS 657.043 to
 39 **657.094.**

40 **SECTION 7.** (1) As used in this chapter, “employment” does not include services per-
 41 formed by an individual as an amateur athlete, as described in ORS 656.027 (13)(a).

42 (2) The provisions of subsection (1) of this section do not apply to services performed by
 43 an individual as an amateur athlete for:

44 (a) A nonprofit employing unit;

45 (b) This state;

- 1 **(c) A political subdivision of this state; or**
- 2 **(d) An Indian tribe.**

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