

Requested by Representative LININGER

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3279**

1 On page 1 of the printed bill, delete line 3 and insert “ORS 658.405,  
2 658.412, 658.415, 658.419, 658.453 and 658.511.”.

3 Delete lines 5 through 29 and delete pages 2 through 4 and insert:

4 **“SECTION 1.** ORS 658.405 is amended to read:

5 “658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless  
6 the context requires otherwise:

7 “(1) ‘Agricultural association’ means a nonprofit or cooperative associ-  
8 ation of farmers, growers or ranchers that is incorporated under applicable  
9 state law and that acts as a farm labor contractor solely on behalf of mem-  
10 bers 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  
13 or employs workers to perform labor for another in construction;

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

16 “(C) Enters into a subcontract with another for any of the activities de-  
17 scribed in subparagraph (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  
20 property where the construction work is performed;

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

1 work;

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

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

6 “(E) The Employment Department;

7 “(F) A crew leader;

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

11 “(H) An educational institution that is recognized as such by the De-  
12 partment of Education;

13 “(I) A labor union;

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

15 “(K) A staffing agency whose primary purpose is to provide workers to  
16 the client employers of the agency under the terms of a client agreement, if  
17 the agency provides workers’ compensation coverage for all employees as  
18 required by ORS chapter 656 and pays employment and income taxes in ac-  
19 cordance with applicable law.

20 “(3) ‘Crew leader’ means the member of a group of workers who acts as  
21 spokesman for the group, travels with the group from another state into  
22 Oregon and performs the same work along with other group members. A crew  
23 leader may transport workers from their local place of residence to their  
24 place of employment so long as the crew leader does not perform this service  
25 for a profit.

26 “(4)(a) ‘Farm labor contractor’ includes any person that:

27 “(A) For an agreed remuneration or rate of pay, recruits, solicits, supplies  
28 or employs workers to perform labor for another person to work in fore-  
29 station or reforestation of lands, including but not limited to the planting,  
30 transplanting, tubing, precommercial thinning and thinning of trees and

1 seedlings, the clearing, piling and disposal of brush and slash and other re-  
2 lated activities;

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

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

9 “(D) Recruits, solicits, supplies or employs workers on behalf of an em-  
10 ployer engaged in these activities;

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

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

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

15 “(b) ‘Farm labor contractor’ does not include:

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

21 “(B) The Employment Department;

22 “(C) A crew leader;

23 “(D) An individual who performs work, other than recruiting, supplying,  
24 soliciting or employing workers to perform labor for another, alone or only  
25 with the assistance of the individual’s spouse, son, daughter, brother, sister,  
26 mother or father;

27 “(E) Individuals who perform labor pursuant to an agreement for ex-  
28 changing their own labor or services with each other, provided the work is  
29 performed on land owned or leased by the individuals;

30 “(F) An educational institution that is recognized as such by the Depart-

1 ment of Education;

2 “(G) A farmer who operates a farmworker camp, regulated under ORS  
3 658.750, who recruits, supplies, solicits or employs workers only for the  
4 farmer’s own operations, and has farmworkers living in the camp who are  
5 employed by another on no more than an incidental basis, and the farmer  
6 receives no remuneration by virtue of such incidental employment; or

7 “(H) A labor union.

8 “(5) ‘Labor contractor’ means a construction labor contractor, [or] a farm  
9 labor contractor **or a property services contractor.**

10 “(6)(a) ‘Property services contractor’ includes any person that:

11 “(A) For an agreed remuneration or rate of pay, recruits, solicits,  
12 supplies or employs workers to perform labor for another person to  
13 provide services that include janitorial services;

14 “(B) For an agreed remuneration or rate of pay, recruits, solicits,  
15 supplies or employs workers on behalf of an employer to provide ser-  
16 vices that include janitorial services; or

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

19 “(b) ‘Property services contractor’ does not include:

20 “(A) The Employment Department;

21 “(B) A crew leader;

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

25 “(D) An educational institution that is recognized as such by the  
26 Department of Education; or

27 “(E) A labor union.

28 “SECTION 2. Sections 3 and 4 of this 2017 Act are added to and  
29 made a part of ORS 658.405 to 658.503.

30 “SECTION 3. (1) The Commissioner of the Bureau of Labor and

1 **Industries shall establish, by rule, procedures for the licensing of**  
2 **property services contractors.**

3 **“(2) Rules adopted under this section must require that a property**  
4 **services contractor provide the following information to the commis-**  
5 **sioner:**

6 **“(a) The total number of employees employed by the property ser-**  
7 **vices contractor who perform janitorial services.**

8 **“(b) The physical address of the work location or locations at which**  
9 **janitorial services are provided by an employee of the property services**  
10 **contractor.**

11 **“(c) Demographic data that is voluntarily provided by employees**  
12 **relating to race, sex, sexual orientation, national origin, marital status**  
13 **and age.**

14 **“SECTION 4. Rules adopted under section 3 of this 2017 Act shall**  
15 **require that a property services contractor provide professional train-**  
16 **ing through or approved by the Bureau of Labor and Industries to**  
17 **managers, supervisors and employees:**

18 **“(1) To prevent sexual assault and sexual harassment in the**  
19 **workplace.**

20 **“(2) To prevent discrimination in the workplace and promote cul-**  
21 **tural competency.**

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

24 **“SECTION 5. ORS 658.412 is amended to read:**

25 **“658.412. The Commissioner of the Bureau of Labor and Industries may**  
26 **not issue a license to operate as a labor contractor until an applicant for a**  
27 **license has successfully passed a qualifying examination designed to test the**  
28 **applicant’s ability, knowledge and proficiency to conduct and manage the**  
29 **business of a labor contractor. The examination must also test the**  
30 **applicant’s knowledge of an employer’s responsibility to prevent sexual**

1 **assault and sexual harassment.** The commissioner shall prescribe by rule  
2 the requirements for and the manner of testing the competency of license  
3 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  
6 has first been licensed by the Commissioner of the Bureau of Labor and In-  
7 dustries under ORS 658.405 to 658.503. Any person may file an application  
8 for a license to act as a labor contractor at any office of the Bureau of Labor  
9 and Industries. The application shall be sworn to by the applicant and shall  
10 be written on a form prescribed by the commissioner. The form shall include,  
11 but not be limited to, questions asking:

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

14 “(b) Information on all motor vehicles to be used by the applicant in op-  
15 erations as a labor contractor including license number and state of  
16 licensure, vehicle number and the name and address of vehicle owner for all  
17 vehicles used.

18 “(c) Whether or not the applicant was ever denied a license under ORS  
19 658.405 to 658.503 within the preceding three years, or in this or any other  
20 jurisdiction had a labor contract license denied, revoked or suspended within  
21 the preceding three years.

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

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

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

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

8       “(3) **Except as provided in subsection (6) of this section**, each appli-  
9 cant shall submit with the application and shall continually maintain  
10 thereafter, until excused, proof of financial ability to promptly pay the wages  
11 of employees and other obligations specified in this section. The proof re-  
12 quired in this subsection shall be in the form of a corporate surety bond of  
13 a company licensed to do such business in Oregon, a cash deposit or a de-  
14 posit the equivalent of cash. For the purposes of this subsection, it shall be  
15 deemed sufficient compliance if the labor contractor procures a savings ac-  
16 count at a bank or savings and loan institution in the name of the commis-  
17 sioner as trustee for the employees of the labor contractor and others as  
18 their interests may appear and delivers proof of the account and the ability  
19 to withdraw the funds to the commissioner under the terms of a bond ap-  
20 proved by the commissioner. The amount of the bond and the security behind  
21 the bond, or the cash deposit, shall be based on the maximum number of  
22 employees the labor contractor employs at any time during the year. The  
23 bond or cash deposit shall be:

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

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

28       “(4) In the event that a single business entity licensed as a labor con-  
29 tractor has more than one natural person who, as an owner or employee of  
30 the business entity, engages in activities that require the persons to be li-

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

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

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

19 **“(a) The property services contractor provides proof of general li-  
20 ability insurance coverage in an amount that the commissioner de-  
21 termines by rule is adequate; and**

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

24 **“(A) Violated ORS chapter 652 or 653; or**

25 **“(B) Committed an unlawful employment practice under ORS  
26 chapter 659A.**

27 “[6] (7) Each application must be accompanied by the fee established  
28 under ORS 658.413.

29 “[7] (8) Any person who uses the services of a labor contractor who has  
30 failed to comply with any of the provisions of this section or ORS 658.419



1 shall:

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

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

7 “[~~(8)~~] **(9)** Any person who suffers any loss of wages from the employer of  
8 the person or any other loss specified in subsection [~~(16)~~] **(17)** of this section  
9 shall have a right of action in the name of the person against the surety  
10 upon the bond or against the deposit with the commissioner. The right of  
11 action:

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

14 “(b) May not be included in any action against the labor contractor but  
15 must be exercised independently after first procuring a judgment or other  
16 form of adequate proof of liability established by rule and procedure under  
17 subsection [~~(14)~~] **(15)** of this section establishing the labor contractor’s li-  
18 ability for the claim.

19 “[~~(9)(a)~~] **(10)(a)** The surety company or the commissioner shall make  
20 prompt and periodic payments on the labor contractor’s liability up to the  
21 extent of the total sum of the bond or deposit.

22 “(b) Payment shall be made based upon priority of wage claims over ad-  
23 vances made by the construction property owner, the grower or producer of  
24 agricultural commodities or the owner or lessee of land intended to be used  
25 for the production of timber, for advances made to or on behalf of the labor  
26 contractor.

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

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

1       “[(10)] **(11)** A person may not bring any action against the surety company  
2 or the commissioner on the bond or against the commissioner as the trustee  
3 for the beneficiaries of the labor contractor under any deposit made pursuant  
4 to this section or ORS 658.419 unless the person has first exhausted the  
5 procedures contained in subsections [(8) and (12)] **(9) and (13)** of this section  
6 or in ORS 658.419 and contends that the surety company or the commissioner  
7 still has funds that are applicable to the person’s judgment or acknowledg-  
8 ment.

9       “[(11)] **(12)** The commissioner may not be prevented from accepting as-  
10 signments of wage claims and enforcing liability against the surety on the  
11 bond or from applying the deposit to just wage claims filed with the com-  
12 missioner.

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

18       “[(13)] **(14)** If the commissioner has received no notice as provided in  
19 subsection [(12)] **(13)** of this section within six months after a labor con-  
20 tractor is no longer required to provide and maintain a surety bond or de-  
21 posit, the commissioner shall terminate and surrender any bond or any  
22 deposit under the control of the commissioner to the person who is entitled  
23 thereto upon receiving appropriate proof of such entitlement.

24       “[(14)] **(15)** The commissioner shall adopt rules reasonably necessary for  
25 administration and enforcement of the provisions of this section and ORS  
26 658.419.

27       “[(15)] **(16)** Every labor contractor required by this section or ORS 658.419  
28 to furnish a surety bond or make a deposit in lieu of a surety bond shall keep  
29 conspicuously posted upon the premises where employees working under the  
30 contractor are employed a notice, in both English and any other language

1 used by the labor contractor to communicate with workers, specifying the  
2 contractor's compliance with the requirements of this section and ORS  
3 658.419 and specifying the name and Oregon address of the surety on the  
4 bond or a notice that a deposit in lieu of the bond has been made with the  
5 commissioner together with the address of the commissioner.

6 “[~~(16)~~] (17) The bond or deposit referred to in subsection (3) of this section  
7 shall be payable to the commissioner and shall be conditioned upon:

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

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

13 “[~~(17)~~] (18) The commissioner may not issue a license until the applicant  
14 executes a written statement that shall be subscribed and sworn to and that  
15 shall contain the following declaration:

16 “ \_\_\_\_\_  
17 With regards to any action filed against me concerning my activities as  
18 a labor contractor, I appoint the Commissioner of the Bureau of Labor and  
19 Industries as my lawful agent to accept service of summons when I am not  
20 present in the jurisdiction in which such action is commenced or have in any  
21 other way become unavailable to accept service.

22 “ \_\_\_\_\_  
23 “[~~(18)~~] (19) A person who cosigns with a labor contractor for a bond re-  
24 quired by subsection (3) of this section or by ORS 658.419 is not personally  
25 or jointly and severally liable for unpaid wages above the amount of the  
26 bond solely because the person cosigned for the bond.

27 “[~~(19)~~] (20) The court may award reasonable attorney fees to the prevail-  
28 ing party in any action to enforce the provisions of this section or ORS  
29 658.419.

30 “**SECTION 7.** ORS 658.511 is amended to read:

1 “658.511. Nothing in ORS 658.405 to 658.503 affects whether a person is  
2 an employee of a **property services contractor, of a** construction labor  
3 contractor or of a user of services provided by a **property services con-**  
4 **tractor or** a construction labor contractor for purposes of a wage claim  
5 under ORS chapters 652 and 653 or ORS 658.415.

6 **“SECTION 8.** ORS 658.419 is amended to read:

7 “658.419. (1) Notwithstanding the provisions of ORS 658.415 (3), (4), [(8),  
8 (9) and (16)] **(9), (10) and (17)**, an agricultural association or a private  
9 nonprofit corporation described in ORS 658.410 (2)(f)(B) shall submit with the  
10 application for a license to act as a farm labor contractor and shall contin-  
11 ually maintain thereafter, until excused, a corporate surety bond of a com-  
12 pany licensed to do such business in Oregon, a cash deposit or a deposit the  
13 equivalent of cash, in a form approved by and payable to the Commissioner  
14 of the Bureau of Labor and Industries, in the amount of \$30,000.

15 “(2) Any person who suffers any loss of wages from the employer of the  
16 person or any other loss due to activities of the agricultural association or  
17 the private nonprofit corporation as a farm labor contractor shall have a  
18 right of action against the surety upon the bond or against the deposit with  
19 the commissioner. The right of action is assignable and may not be included  
20 in any action against the agricultural association or the private nonprofit  
21 corporation but shall be exercised independently after first procuring ade-  
22 quate proof of liability as provided by the commissioner by rule.

23 “(3) The surety company or the commissioner shall make prompt and pe-  
24 riodic payments on the agricultural association’s or the private nonprofit  
25 corporation’s liability up to the extent of the total sum of the bond or de-  
26 posit. Payments shall be made in the following manner:

27 “(a) Payment based upon priority of wage claims over other liabilities;

28 “(b) Payment in full of all sums due to each person who presents adequate  
29 proof of the claim; and

30 “(c) If there are insufficient funds to pay in full the person next entitled

1 to payment in full, payment in part to the person.

2 **“SECTION 9.** ORS 658.453 is amended to read:

3 “658.453. (1) In addition to any other penalty provided by law, the Com-  
4 missioner of the Bureau of Labor and Industries may assess a civil penalty  
5 not to exceed \$2,000 for each violation by:

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

8 “(b) A labor contractor who fails to comply with ORS 658.415 [(15)] **(16)**.

9 “(c) A labor contractor who fails to comply with ORS 658.440 (1), (2)(c)  
10 or (3).

11 “(d) Any person who violates ORS 658.452.

12 “(e) A labor contractor who fails to comply with ORS 658.417 (1).

13 “(f) Any person who uses an unlicensed labor contractor without com-  
14 plying with ORS 658.437.

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

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

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

30