

Enrolled House Bill 4058

Sponsored by Representatives RESCHKE, SALINAS, STARK; Representatives BARKER, DOHERTY, EVANS, GOMBERG, HOLVEY, MARSH, MCKEOWN, MEEK, NEARMAN, NOBLE, OLSON, PILUSO, Senators BEYER, DEMBROW, GELSER, JOHNSON, KNOPP, MANNING JR, OLSEN, ROBLAN, TAYLOR, THOMSEN (Presession filed.)

CHAPTER

AN ACT

Relating to requirements for labor contractors; creating new provisions; amending ORS 658.405, 658.410, 658.411, 658.412, 658.415, 658.428, 658.440 and 658.501; and declaring an emergency.

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

SECTION 1. ORS 658.405 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(E) The Employment Department;

(F) A crew leader;

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

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

(I) A labor union;

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

(K) A staffing agency whose primary purpose is to provide workers to the client employers of the agency under the terms of a client agreement, if the agency provides workers' compensation coverage for all employees as required by ORS chapter 656 and pays employment and income taxes in accordance with applicable law.

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

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

(A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another person to work in forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities;

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

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

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

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

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

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

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

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

(B) The Employment Department;

(C) A crew leader;

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

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

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

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

(H) A labor union.

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

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

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

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

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

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

(A) The Employment Department;

(B) [A crew leader] **Employees of a property services contractor who is licensed under ORS 658.405 to 658.503;**

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

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

(E) A labor union.

SECTION 2. ORS 658.410 is amended to read:

658.410. (1) Except as provided by ORS 658.425 and subsection (3) of this section, a person may not act as a labor contractor without a valid license in the person's possession issued to the person by the Commissioner of the Bureau of Labor and Industries. Except as provided in subsection (3) of this section, a person may not act as a farm labor contractor with regard to the forestation or reforestation of lands unless the person possesses a valid farm labor contractor's license with the indorsement required by ORS 658.417 (1). The Bureau of Labor and Industries shall make rules for the issuance of duplicate licenses in the event of the loss or destruction of original licenses.

(2) Labor contractor licenses may be issued by the commissioner only as follows:

(a) To a natural person operating as a sole proprietor under the person's own name or under an assumed business name registered with the Office of Secretary of State.

(b) To two or more natural persons operating as a partnership or as a limited liability partnership under their own names or under an assumed business name registered with the Office of Secretary of State.

(c) Except as provided in subsection (3) of this section, to the majority shareholder or majority shareholders of a corporation or a limited liability company that is licensed to operate as a labor contractor.

(d) Except as provided in subsection (3) of this section, to a corporation or a limited liability company whose majority shareholder or majority shareholders are also licensed to operate as a labor contractor and that is authorized to do business in Oregon by the Office of Secretary of State.

(e) To a cooperative corporation authorized to do business in Oregon by the Office of Secretary of State.

(f) To a private nonprofit corporation authorized to do business in Oregon by the Office of Secretary of State and designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code, provided:

(A)(i) The purpose of the corporation is to provide education or training; and

(ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited, supplied or employed only for the purpose of educating or training the workers in construction, in the forestation or reforestation of lands or in the production or harvesting of farm products; or

(B) For at least five years before the corporation files an application for a labor contractor license, the corporation has been:

(i) Authorized to do business in Oregon by the Office of Secretary of State;

(ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and

(iii) Designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code.

(g) For a farm labor contractor license only, to an agricultural association that is authorized to do business in Oregon by the Office of Secretary of State.

(h) For a property services contractor license only:

(A) To any of the business entities described in paragraphs (b) to (f) of this subsection, provided that each entity includes with the application for a license under ORS 658.415 the names and addresses of one or more individuals who are responsible, financially and otherwise, for fulfilling the entity's obligations consistent with the provisions of ORS 658.405 to 658.503.

(B) To a private nonprofit corporation authorized to do business in Oregon by the Office of Secretary of State and designated by the Internal Revenue Service as exempt under sec-

tion 501(c)(3) of the Internal Revenue Code provided that the corporation is primarily engaged in recruiting, soliciting, supplying or employing workers.

(3) The majority shareholder or majority shareholders of a corporation or limited liability company are not required to be licensed under this section if the corporation or limited liability company:

(a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States Securities and Exchange Commission; or

(B) Has 10 or more shareholders and demonstrates to the satisfaction of the commissioner that the corporation or limited liability company is adequately capitalized; and

(b) Is authorized to do business in Oregon by the Office of Secretary of State.

SECTION 3. ORS 658.411 is amended to read:

658.411. (1) An employee of a labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions:

(a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the commissioner promptly upon termination of the employment of the employee;

(b) The employee engages in activities that would require licensing as a labor contractor solely on behalf of the employer;

(c) The employee does not personally employ any workers and is not responsible for paying any workers;

(d) The employer maintains proof of financial responsibility;

(e) The employer's license remains in good standing; and

(f) The employee meets all of the conditions for licensing as a labor contractor, except as provided in this section.

(2) A labor contractor subject to an employee indorsement acting in compliance with subsection (1) of this section need not:

(a) Provide proof of financial responsibility under ORS 658.415 (3).

(b) Comply with ORS 658.440 (1)(j).

(c) Provide any of the following information that is of a personal nature if the labor contractor subject to an employee indorsement is an employee of a property services contractor:

(A) A social security number;

(B) A home address and telephone number;

(C) Personal financial information; and

(D) Personal income tax or property tax information.

(3) The license of a labor contractor subject to an employee indorsement shall state the conditions contained in subsection (1) of this section on its face and shall state that a labor contractor subject to an employee indorsement who operates out of compliance with these restrictions is an unlicensed labor contractor.

(4) A labor contractor who employs another labor contractor is personally, jointly and severally liable for any damages, attorney fees or costs awarded against the employee for the actions of the labor contractor employee undertaken within the scope of employment, or for actions of the employee that the employee takes under color of an employee's license subject to an employee indorsement that are known, or reasonably should have been known, by the employer. In the case of a labor contractor that is a corporation, both the corporation and the licensed majority shareholder or shareholders are so liable.

SECTION 4. ORS 658.412 is amended to read:

658.412. (1) The Commissioner of the Bureau of Labor and Industries may not issue a license to operate as a labor contractor until an applicant for a license has successfully passed a qualifying examination designed to test the applicant's ability, knowledge and proficiency to conduct and

manage the business of a labor contractor. The examination must also test the applicant's knowledge of an employer's responsibility to prevent sexual assault and sexual harassment. The commissioner shall prescribe by rule the requirements for and the manner of testing the competency of license applicants.

(2) In prescribing requirements for testing applicants for a property services contractor license, the commissioner may establish a process to administer the examination in-person, through an online electronic medium or in any other manner as the commissioner may specify.

SECTION 5. ORS 658.415 is amended to read:

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

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

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

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

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

(2) Each applicant shall furnish satisfactory proof with the application **of the existence of:**

(a) [*Of the existence of*] A policy of insurance in an amount adequate under rules issued by the commissioner for vehicles to be used to transport workers. [*For the purpose of this paragraph, the certificate of an insurance producer licensed in Oregon is*] Satisfactory proof of adequate insurance[.] **includes:**

(A) The certificate of an insurance producer licensed in Oregon.

(B) For property services contractors only, documentation that provides the insurance policy number, the amount of coverage under the policy and the name of the insurance producer.

(b) [*Of the existence of*] Workers' compensation insurance as provided in ORS 658.440 (1)(j). The commissioner may adopt rules concerning satisfactory proof of adequate workers' compensation insurance.

(3) Except as provided in subsection (6) of this section, each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay the wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of this subsection, it shall be deemed sufficient compliance if the labor contractor procures a savings account at a bank or savings and loan institution in the name of the commissioner as trustee for the employees of the labor contractor and others as their interests may appear and delivers proof of the account and the ability to withdraw the funds to the commissioner under the terms of a bond approved by the commissioner. The amount of the bond and the security behind the bond, or the

cash deposit, shall be based on the maximum number of employees the labor contractor employs at any time during the year. The bond or cash deposit shall be:

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

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

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

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

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

(a) The property services contractor provides proof of general liability insurance coverage in an amount that the commissioner determines by rule is adequate; and

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

(A) Violated ORS chapter 652 or 653; or

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

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

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

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

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

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

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

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

(10)(a) The surety company or the commissioner shall make prompt and periodic payments on the labor contractor's liability up to the extent of the total sum of the bond or deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 658.428 is amended to read:

658.428. (1) Rules adopted under ORS 658.427 shall require that a property services contractor provide professional training through or approved by the Bureau of Labor and Industries to [*managers, supervisors and*] employees **of the property services contractor who perform janitorial services, and to employees who manage or supervise those employees, in order to:**

[1] (a) [*To*] Prevent sexual assault and sexual harassment in the workplace.

[2] (b) [*To*] Prevent discrimination in the workplace and promote cultural competency.

[3] (c) [*To*] Educate the workforce regarding protection for employees who report a violation of a state or federal law, rule or regulation.

(2) A property services contractor shall provide the training as follows:

(a) At least once during the year in which a property services contractor license is first issued to a property services contractor;

(b) For new employees, within 90 days of the employee's initial hiring date; and

(c) At least once every two years after the renewal of a license.

SECTION 7. ORS 658.440 is amended to read:

658.440. (1) Each person acting as a labor contractor shall:

(a) Carry a labor contractor's license at all times and exhibit it upon request to any person with whom the labor contractor intends to deal in the capacity of a labor contractor.

(b) File immediately at the United States post office serving the labor contractor's address, as noted on the face of the license, a correct change of address if the labor contractor permanently changes address, and notify the Commissioner of the Bureau of Labor and Industries each time an address change is made.

(c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other things of value entrusted to the labor contractor by any person for that purpose.

(d) Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the labor contractor's capacity as a labor contractor.

(e) File with the Bureau of Labor and Industries, as required by rule, information relating to work agreements between the labor contractor and construction property owners or farmers and between the labor contractor and workers or information concerning changes in the circumstances under which the license was issued.

(f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement in the English language and any other language used by the labor contractor to communicate with the workers that contains a description of:

(A) The method of computing the rate of compensation.

(B) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.

(C) The terms and conditions of any loan made to the worker.

(D) The conditions of any housing, health and child care services to be provided.

(E) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.

(F) The terms and conditions under which the worker is furnished clothing or equipment.

(G) The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the labor contractor.

(H) The existence of a labor dispute at the worksite.

(I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner.

(g) At the time of hiring and prior to the worker performing any work for the labor contractor, execute a written agreement between the worker and the labor contractor containing the terms and conditions described in paragraph (f)(A) to (I) of this subsection. The written agreement shall be in the English language and any other language used by the labor contractor to communicate with the workers.

(h) Furnish to the worker, each time the worker receives a compensation payment from the labor contractor, a written statement itemizing the total payment and amount and purpose of each deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. 351-401) or related federal or state law, a written statement of any applicable prevailing wage.

(i) **Except for a person acting as a property services contractor**, provide to the commissioner a certified true copy of all payroll records for work done as a labor contractor when the contractor pays employees directly. The records shall be submitted in such form and at such times and shall contain such information as the commissioner, by rule, may prescribe.

(j)(A) If the person is a farm labor contractor engaged in the forestation or reforestation of lands, provide workers' compensation insurance for each individual who performs manual labor in forestation or reforestation activities regardless of the business form of the contractor and regardless of any contractual relationship that may be alleged to exist between the contractor and the workers notwithstanding ORS 656.027, unless workers' compensation insurance is otherwise provided; or

(B) If the person is a farm labor contractor but is not engaged in the forestation or reforestation of lands, provide workers' compensation insurance to the extent required under ORS chapter 656, unless workers' compensation insurance is otherwise provided.

(k) If the person is a property services contractor, provide time and pay records, as defined in ORS 652.750, to the commissioner or an employee of the property services contractor who requests the records, no later than 45 days after receipt of the request. A property services contractor that fails to comply with the requirements of this paragraph is subject to civil penalty under ORS 652.900.

(2) If the labor contractor:

(a) Employs workers, the labor contractor shall substantially comply with the provisions of ORS 654.174 relating to field sanitation, and its implementing rules as adopted by the Department of Consumer and Business Services.

(b) Owns or controls housing furnished to workers in connection with the recruitment or employment of workers, the labor contractor shall ensure that the housing substantially complies with any applicable law relating to the health, safety or habitability of the housing.

(c) Recruits or solicits any worker to travel from one place to another for the purpose of working at a time prior to the availability of the employment, the labor contractor shall furnish to the worker, at no charge, lodging and an adequate supply of food until employment begins, in compliance with rules adopted by the Bureau of Labor and Industries. If employment does not begin within 30 days from the date the labor contractor represented employment would become available, the labor contractor shall refund to the worker all sums paid by the worker to the labor contractor and provide the worker, in cash or other form of payment authorized by ORS 652.110, the costs of transportation, including meals and lodging in transit, to return the worker to the place from which the worker was induced to travel or the costs of transportation, including meals and lodging in transit, to another worksite selected by the worker, whichever is less. For the purposes of this paragraph, "recruits or solicits" does not include the mere provision of housing or employment to persons who have not otherwise been recruited or solicited by the labor contractor or an agent of the labor contractor prior to their arrival at the place of housing or employment. Workers who arrive at the place of employment prior to the date they were instructed by the labor contractor to arrive are not entitled to the benefits of this subsection until the date they were instructed to arrive.

(3) A person acting as a labor contractor, or applying for a license to act as a labor contractor, may not:

(a) Make any misrepresentation, false statement or willful concealment in the application for a license.

(b) Willfully make or cause to be made to any person any false, fraudulent or misleading representation, or publish or circulate any false, fraudulent or misleading information concerning the terms, condition or existence of employment at any place or by any person.

(c) Solicit or induce, or cause to be solicited or induced, the violation of an existing contract of employment.

(d) Knowingly employ an alien not legally present or legally employable in the United States.

(e) Assist an unlicensed person to act in violation of ORS 658.405 to 658.503.

(f) By force, intimidation or threat of procuring dismissal or deportation or by any other manner whatsoever, induce any worker employed or in a subcontracting relationship to the labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

(g) Solicit or induce, or cause to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date the work was represented as being available.

SECTION 8. ORS 658.501 is amended to read:

658.501. (1) ORS 658.405 to 658.503 apply to all transactions, acts and omissions of labor contractors and users of labor contractors that are within the constitutional power of the state to regulate, and not preempted by federal law, including but not limited to the recruitment of workers in this state to perform work outside this state, the recruitment of workers outside of this state to perform work in whole or in part within this state, the housing of workers in this state for work in another state, the housing of workers from another state in connection with work to be performed in this state, the transportation of workers through this state and the payment, terms and conditions, disclosure and record keeping required with respect to work performed outside this state by workers recruited in this state.

(2) The provisions of ORS 658.405 to 658.503 apply only to labor contractors and employees of labor contractors who perform those services for which a labor contractor license is required.

SECTION 9. A civil action under ORS 658.453 (4) or 658.475 may be commenced against a property services contractor on or after July 1, 2018.

SECTION 10. Section 9 of this 2018 Act and ORS 658.511 are added to and made a part of ORS 658.405 to 658.503.

SECTION 11. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Passed by House February 19, 2018

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 27, 2018

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2018

Approved:

.....M,....., 2018

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2018

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Dennis Richardson, Secretary of State