

# House Bill 4058

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

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes requirement that nonprofit corporation meet certain requirements for at least five years before filing application for issuance of labor contractor license.

Exempts property services contractors from requirement to submit payroll records to Commissioner of the Bureau of Labor and Industries.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to requirements for labor contractors; creating new provisions; amending ORS 658.410 and  
3 658.440; and declaring an emergency.

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

5 **SECTION 1.** ORS 658.410 is amended to read:

6 658.410. (1) Except as provided by ORS 658.425 and subsection (3) of this section, a person may  
7 not act as a labor contractor without a valid license in the person's possession issued to the person  
8 by the Commissioner of the Bureau of Labor and Industries. Except as provided in subsection (3)  
9 of this section, a person may not act as a farm labor contractor with regard to the forestation or  
10 reforestation of lands unless the person possesses a valid farm labor contractor's license with the  
11 indorsement required by ORS 658.417 (1). The Bureau of Labor and Industries shall make rules for  
12 the issuance of duplicate licenses in the event of the loss or destruction of original licenses.

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

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

16 (b) To two or more natural persons operating as a partnership or as a limited liability partner-  
17 ship under their own names or under an assumed business name registered with the Office of Sec-  
18 retary of State.

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

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

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

27 (f) To a private nonprofit corporation authorized to do business in Oregon by the Office of Sec-  
28 retary of State and designated by the Internal Revenue Service as exempt under section 501(c)(3)

**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 of the Internal Revenue Code, provided:

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

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

6 (B) *[For at least five years before the corporation files an application for a labor contractor*  
7 *license,]* The corporation *[has been]* is:

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

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

10 (iii) Designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Inter-  
11 nal Revenue Code.

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

14 (3) The majority shareholder or majority shareholders of a corporation or limited liability com-  
15 pany are not required to be licensed under this section if the corporation or limited liability com-  
16 pany:

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

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

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

22 **SECTION 2.** ORS 658.440 is amended to read:

23 658.440. (1) Each person acting as a labor contractor shall:

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

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

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

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

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

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

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

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

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

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

1 (E) The terms and conditions of employment, including the approximate length of season or pe-  
 2 riod of employment and the approximate starting and ending dates thereof.

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

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

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

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

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

16 (h) Furnish to the worker, each time the worker receives a compensation payment from the la-  
 17 bor contractor, a written statement itemizing the total payment and amount and purpose of each  
 18 deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is  
 19 done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C.  
 20 351-401) or related federal or state law, a written statement of any applicable prevailing wage.

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

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

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

34 (2) If the labor contractor:

35 (a) Employs workers, the labor contractor shall substantially comply with the provisions of ORS  
 36 654.174 relating to field sanitation, and its implementing rules as adopted by the Department of  
 37 Consumer and Business Services.

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

41 (c) Recruits or solicits any worker to travel from one place to another for the purpose of  
 42 working at a time prior to the availability of the employment, the labor contractor shall furnish to  
 43 the worker, at no charge, lodging and an adequate supply of food until employment begins, in com-  
 44 pliance with rules adopted by the Bureau of Labor and Industries. If employment does not begin  
 45 within 30 days from the date the labor contractor represented employment would become available,

1 the labor contractor shall refund to the worker all sums paid by the worker to the labor contractor  
2 and provide the worker, in cash or other form of payment authorized by ORS 652.110, the costs of  
3 transportation, including meals and lodging in transit, to return the worker to the place from which  
4 the worker was induced to travel or the costs of transportation, including meals and lodging in  
5 transit, to another worksite selected by the worker, whichever is less. For the purposes of this  
6 paragraph, "recruits or solicits" does not include the mere provision of housing or employment to  
7 persons who have not otherwise been recruited or solicited by the labor contractor or an agent of  
8 the labor contractor prior to their arrival at the place of housing or employment. Workers who ar-  
9 rive at the place of employment prior to the date they were instructed by the labor contractor to  
10 arrive are not entitled to the benefits of this subsection until the date they were instructed to ar-  
11 rive.

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

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

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

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

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

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

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

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

31 **SECTION 3. ORS 658.511 is added to and made a part of ORS 658.405 to 658.503.**

32 **SECTION 4. This 2018 Act being necessary for the immediate preservation of the public**  
33 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**  
34 **on its passage.**