

SENATE AMENDMENTS TO SENATE BILL 426

By COMMITTEE ON JUDICIARY

April 2

1 On page 1 of the printed bill, delete lines 4 through 26 and delete pages 2 and 3 and insert:

2 **“SECTION 1. Sections 2 and 3 of this 2025 Act are added to and made a part of ORS**
3 **chapter 652.**

4 **“SECTION 2. (1) As used in this section and section 3 of this 2025 Act:**

5 **“(a) ‘Authorized third party representative’ means a third party that is authorized by an**
6 **unrepresented employee to assert the rights of the unrepresented employee.**

7 **“(b) ‘Construction contract’ means an express or implied agreement:**

8 **“(A) For the construction, reconstruction, alteration, maintenance, moving or demolition**
9 **of any building, structure or improvement.**

10 **“(B) Relating to the excavation of or other development of or improvement to land.**

11 **“(c) ‘Construction trade labor organization’ means a bona fide labor organization that**
12 **represents employees in the building and construction trades.**

13 **“(d) ‘Direct contractor’ means:**

14 **“(A) Any person, including a construction manager, joint venture or any combination**
15 **thereof, the person’s successors, heirs or assigns, that enters into a construction contract**
16 **with an owner.**

17 **“(B) An owner that enters into a construction contract with more than one contractor**
18 **or subcontractor, if such contract relates to real property other than property for which the**
19 **owner could claim the homestead exemption under ORS 307.286 or that is otherwise used as**
20 **the owner’s principal dwelling.**

21 **“(e) ‘Fringe benefit contributions’ means the amount of compensation that accompanies**
22 **or is in addition to an employee’s regular salary or wages, including, but not limited to,**
23 **payments made to profit-sharing plans, retirement or pension plans, medical insurance,**
24 **severance pay or holiday, vacation or sick leave plans, but does not include the benefit pay-**
25 **ments from such plans.**

26 **“(f) ‘Labor organization’ means an organization, agency or an employee representation**
27 **committee or plan, in which employees participate and which exists, in whole or in part, for**
28 **the purpose of dealing with employers concerning grievances, labor disputes, wages, rates**
29 **of pay, hours of employment or work conditions.**

30 **“(g)(A) ‘Owner’ means any person, firm, partnership, corporation, association, company,**
31 **organization or other entity, or any combination thereof, with an ownership interest,**
32 **whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee**
33 **or another interest or estate less than fee that causes:**

34 **“(i) A building, structure or improvement, new or existing, to be constructed, recon-**
35 **structed, erected, altered, remodeled, repaired, maintained, moved or demolished; or**

1 “(ii) Land to be excavated or otherwise developed or improved.
2 “(B) ‘Owner’ does not mean:
3 “(i) A public agency, as defined in ORS 279C.800; or
4 “(ii) A financial institution that acquires ownership of a property through foreclosure or
5 a deed in lieu of foreclosure, provided that the financial institution does not undertake,
6 contract for or direct construction work beyond activities necessary to preserve or secure
7 the property.
8 “(h) ‘Subcontractor’ means any person that may or may not have direct privity with a
9 direct contractor but that is a party to an express or implied contract with a direct con-
10 tractor or with a direct contractor’s subcontractors at any tier to perform any portion of
11 work within the scope of the direct contractor’s construction contract with an owner.
12 “(i) ‘Unrepresented employee’ means an employee of a direct contractor or subcontractor
13 who is:
14 “(A) Not represented by a construction trade labor organization that has established it-
15 self or its affiliates as the collective bargaining representative for persons performing work
16 on a project; and
17 “(B) Not covered by a collective bargaining agreement that:
18 “(i) Contains a grievance procedure that results in a final and binding decision; and
19 “(ii) Provides a mechanism for recovering unpaid wages and fringe benefit contributions
20 on behalf of the employees covered by the agreement.
21 “(2) An owner that enters into a construction contract with a direct contractor shall be
22 jointly and severally liable with the direct contractor for any unpaid wages, including fringe
23 benefit contributions and penalties, owed to any unrepresented employee of the direct con-
24 tractor and any unrepresented employee of a subcontractor at any tier for labor performed
25 on a project within the scope of the construction contract.
26 “(3)(a) Any of the following persons may bring a civil action against an owner, a direct
27 contractor or a subcontractor in any court of competent jurisdiction to recover unpaid
28 wages, including fringe benefit contributions, interest and penalty wages, damages, attorney
29 fees and costs incurred in connection with the action:
30 “(A) An unrepresented employee.
31 “(B) An authorized third party representative.
32 “(b) Notwithstanding ORS chapter 180, the Attorney General may accept the assignment
33 of claims under this subsection, bring civil actions in the name of the State of Oregon on
34 assigned claims and recover costs as provided in this section. The Attorney General may
35 adopt rules to implement this paragraph.
36 “(c)(A) Prior to commencing a civil action against an owner or a direct contractor under
37 this subsection, a person must send written notice of the alleged violation by first-class
38 certified mail to the owner and direct contractor that sets forth the alleged violation and the
39 nature of the claim and states that the owner and the direct contractor have 21 calendar
40 days from the certified delivery date to correct the alleged violation. Such notice does not
41 operate to limit the liability of the owner or direct contractor or preclude a person from
42 subsequently amending a complaint after the action is commenced to include additional
43 parties to the action.
44 “(B) A civil action may not be:
45 “(i) Initiated until after the time period under subparagraph (A) of this paragraph has

1 expired.

2 “(ii) Brought against an owner or a direct contractor if the owner or direct contractor
3 has corrected the alleged violation within the specified time period under subparagraph (A)
4 of this paragraph.

5 “(d) A civil action under this subsection to recover unpaid wages must be commenced
6 within two years from the date on which the wages and fringe benefit contributions became
7 due.

8 “(4) Any agreement to waive or release an owner or direct contractor or to indemnify
9 an owner or direct contractor for liability assigned under this section is invalid.

10 “(5)(a) An owner or direct contractor may not avoid liability under this section by
11 claiming that a person performing labor on a project within the scope of a construction
12 contract is an independent contractor rather than an employee of a direct contractor or
13 subcontractor unless the person qualifies as an independent contractor under ORS 670.600.

14 “(b) In any action brought under this section, there shall be a rebuttable presumption
15 that a person performing labor on a project within the scope of a construction contract is
16 an employee. The party claiming otherwise may rebut the presumption by establishing that
17 the person qualifies as an independent contractor under ORS 670.600.

18 “(6) Nothing in this section impairs:

19 “(a) The right of an owner or direct contractor to bring an action against a subcontrac-
20 tor to seek recovery of actual and liquidated damages for the amounts paid by the owner or
21 direct contractor for unpaid wages, including fringe benefit contributions, interest and pen-
22 alty wages, damages, attorney fees and incurred costs associated with an action brought
23 under this section.

24 “(b) The right of an owner to bring an action against a direct contractor to seek recovery
25 of actual and liquidated damages for the amounts paid by the owner for unpaid wages, in-
26 cluding fringe benefit contributions, interest and penalty wages, damages, attorney fees and
27 incurred costs associated with an action brought under this section.

28 “(7) Nothing in this section is intended to diminish the rights, privileges or remedies of
29 an employee under a collective bargaining agreement.

30 “(8) The Commissioner of the Bureau of Labor and Industries may adopt any rules nec-
31 essary to implement the provisions of this section.

32 “SECTION 3. (1) Any subcontractor with which a direct contractor has entered into a
33 contract to perform a portion of a construction project within the scope of a construction
34 contract between the direct contractor and an owner shall provide the following records to
35 the direct contractor and the owner, upon the request, respectively, of the direct contractor
36 or the owner:

37 “(a) Certified payroll reports, that, at a minimum, include sufficient information for the
38 direct contractor to determine whether a subcontractor has paid in full all wages earned by
39 unrepresented employees who performed work on the project as part of the employees’ total
40 compensation.

41 “(b) The name, address and phone number of a contact for the subcontractor.

42 “(c) The names of all workers who performed work on the construction project and no-
43 tation of whether each worker is paid or classified as an employee or independent contractor.

44 “(d) The name of any subcontractor with which the first-tier subcontractor contracts.

45 “(e) The anticipated contract start date and scheduled duration of work.

1 “(f) An affidavit that attests to whether the subcontractor or any of the subcontractor’s
2 current principals have, within the preceding five years, participated in any civil, adminis-
3 trative or criminal proceeding involving a violation of any law providing for payment of
4 wages or imposing a criminal penalty for the violation and the outcome of the proceeding,
5 including damages, fees or penalty amounts paid to workers or a government agency, if any.

6 “(2) A subcontractor shall provide the records described in subsection (1) of this section
7 to an authorized third party representative only to the extent that the information contained
8 in the records pertains specifically to the employee on whose behalf the authorized third
9 party representative is acting and to whatever extent that the subcontractor would be law-
10 fully required to disclose such records to the employee if the employee was acting on the
11 employee’s own behalf under ORS 652.750.

12 “(3) A subcontractor’s failure to comply with subsection (1) of this section does not re-
13 lieve an owner or a direct contractor of the liability prescribed by section 2 of this 2025 Act.

14 “(4) Nothing in this section shall alter an owner’s or a direct contractor’s obligation to
15 timely pay a subcontractor under ORS chapter 701, except that an owner and a direct con-
16 tractor may withhold payment to a subcontractor:

17 “(a)(A) Because of the subcontractor’s failure to comply with the request for records
18 under subsection (1) of this section; and

19 “(B) In an amount and to the extent that the owner or direct contractor has paid, on
20 behalf of the subcontractor, wages owed to the employees of the subcontractor; or

21 “(b) In an amount and to the extent that the owner or direct contractor has paid, on
22 behalf of the subcontractor, wages owed to the employees of the subcontractor.

23 “(5) A direct contractor or subcontractor may not disclose personally identifying infor-
24 mation about workers who perform work on a construction project except to the extent
25 necessary to comply with federal or state laws.

26 “(6) As used in this section, ‘principal’ means a person, including an owner or a direct
27 contractor, that commissions a construction project and that is responsible for the project’s
28 scope, standards and objectives.

29 “SECTION 4. Sections 2 and 3 of this 2025 Act apply to labor performed by workers on
30 a project for a direct contractor or subcontractor on or after the effective date of this 2025
31 Act.”.

32
