

House Bill 4089

Sponsored by Representative TRAN, Senator NERON MISLIN, Representatives MUNOZ, CHAICHI, RIEKE SMITH, SMITH G, Senator MANNING JR; Representatives ANDERSEN, BOWMAN, EVANS, FRAGALA, GAMBA, HUDSON, ISADORE, JAVADI, MCDONALD, MCLAIN, NELSON, SOSA, WISE, Senators CAMPOS, GELSER BLOUIN, GOLDEN, JAMA, PATTERSON (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act expands the crime of theft of services and changes some crimes relating to contractor licenses. (Flesch Readability Score: 60.1).

Specifically includes in the crime of theft of services the nonpayment of compensation of employees and independent contractors.

Provides that a prosecution for theft of services constituting wage theft does not preclude other forms of relief.

Directs specified state agencies to report wage theft to the Attorney General or district attorney.

Punishes the use of an unlicensed labor contractor by a maximum penalty of five years' imprisonment, \$125,000 fine, or both.

Punishes the use of an unlicensed contractor, or the use of a contractor's license number to deceive the public, by a maximum penalty of five years' imprisonment, \$125,000 fine, or both.

A BILL FOR AN ACT

Relating to criminal offenses related to work; creating new provisions; and amending ORS 164.125, 443.004, 658.991 and 701.990.

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

SECTION 1. ORS 164.125 is amended to read:

164.125. (1) A person commits the crime of theft of services if:

(a) With intent to avoid payment therefor, the person obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; *[or]*

(b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, the person uses or diverts to the use of the person or a third person such labor, equipment or facilities with intent to derive for the person or the third person a commercial benefit to which the person or the third person is not entitled[.]; **or**

(c) The person is an employer and:

(A) Fails to pay the agreed-upon wage, salary or other compensation of an employee or independent contractor for work performed;

(B) Pays less than the full amount of agreed-upon wages, salary or other compensation owed to an employee or independent contractor for work performed;

(C) Pays an employee a wage below the minimum wage established by federal, state or local law;

(D) Fails to pay overtime wages to an employee as required by law;

(E) Requires an employee or independent contractor to perform work without compensation;

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.

(F) Withholds or diverts any portion of wages, tips, gratuities, commissions or service fees owed to an employee or independent contractor without legal or contractual justification;

(G) As a condition of employment, requires an employee or independent contractor to return, directly or indirectly, any portion of wages, salary or other compensation, unless the deduction or withholding is permitted under ORS 652.610 (3); or

(H) Makes a deduction from the wages or compensation of an employee or independent contractor without express written consent or lawful authorization.

[(2) As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. "Communication service" includes, but is not limited to, use of telephone, computer and cable television systems.]

[(3)] (2) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained with intent to avoid payment therefor. Obtaining the use of any communication system the use of which is available only for compensation, including but not limited to telephone, computer and cable television systems, or obtaining the use of any services of a public utility nature, without payment or offer to pay for such use is prima facie evidence that the obtaining of the use of such system or the use of such services was gained with intent to avoid payment therefor.

[(4)] (3) The value of single theft transactions may be added together if the thefts were committed:

(a) Against multiple victims by a similar means within a 30-day period; or

(b) Against the same victim, or two or more persons who are joint owners, within a 180-day period.

[(5)] (4) Theft of services is:

(a) A Class C misdemeanor if the aggregate total value of services that are the subject of the theft is less than \$100;

(b) A Class A misdemeanor if the aggregate total value of services that are the subject of the theft is \$100 or more and less than \$1,000;

(c) A Class C felony if the aggregate total value of services that are the subject of the theft is \$1,000 or more; and

(d) A Class B felony if the aggregate total value of services that are the subject of the theft is \$10,000 or more.

(5) The value of services that are the subject of theft under subsection (1)(c) of this section is the value of the labor or professional services provided without compensation, and specifically shall be determined as follows:

(a) For theft of services described in subsection (1)(c)(B) of this section, the difference between the amount paid to the employee or independent contractor and the agreed-upon wages, salary or other compensation.

(b) For theft of services described in subsection (1)(c)(C) of this section, the difference between the wage paid and the applicable state or local minimum wage, whichever is greater.

(c) For theft of services described in subsection (1)(c)(F) of this section, the amount of

1 withheld or diverted wages, tips, gratuities, commissions or service fees.

2 (d) For theft of services described in subsection (1)(c)(G) of this section, the amount of
3 the returned wages, salary or other compensation.

4 (6) As used in this section:

5 (a) "Communication service" includes, but is not limited to, use of telephone, computer
6 and cable television systems.

7 (b) "Employer" includes a person who enters into a contract with an independent con-
8 tractor for the performance of work.

9 (c) "Services" includes, but is not limited to, labor, professional services, toll facilities,
10 transportation, communications service, entertainment, the supplying of food, lodging or
11 other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for
12 use, and the supplying of commodities of a public utility nature such as gas, electricity,
13 steam and water.

14 **SECTION 2.** A criminal prosecution under ORS 164.125 (1)(c) does not preclude any em-
15 ployee, independent contractor, authorized third party representative or the Commissioner
16 of the Bureau of Labor and Industries from commencing a civil action or administrative
17 proceeding to seek wages, compensation, penalties, damages or other remedies as provided
18 by law.

19 **SECTION 3.** If the Bureau of Labor and Industries, the Employment Department, the
20 Department of Consumer and Business Services or the Department of Revenue identify a
21 pattern of conduct that may constitute theft of services under ORS 164.125 (1)(c), the agency
22 shall refer the matter for investigation to the Attorney General or the district attorney of
23 the county in which the conduct occurred.

24 **SECTION 4.** ORS 658.991 is amended to read:

25 658.991. (1) Violation of ORS 658.005 to 658.245 or 658.250 is a Class C misdemeanor.

26 (2) Violation of ORS 658.452 is a Class A misdemeanor.

27 (3) Any person who intentionally defaces, alters or changes a license or permit to act as a labor
28 contractor, or who uses the license or permit of another or knowingly permits that person's license
29 or permit to be used by another, or who acts as a labor contractor without a valid license or permit
30 under ORS 658.405 to 658.511, commits a Class A misdemeanor.

31 (4) Any person who willfully swears or affirms falsely under ORS 658.415 (1), (2) or (3) in regard
32 to any matter concerning which an oath or affirmation is required, or who solicits or induces an-
33 other person to do so, whether or not the matter sworn to or affirmed is material, commits a Class
34 A misdemeanor.

35 (5) Violation of ORS 658.440 (1)(f), (g) or (h), (2)(c) or (3)(a), (b), (c), (e), (f) or (g) is a Class C
36 misdemeanor.

37 (6) Any person who violates the provisions of ORS 658.410 (1) or 658.417 (1) commits a Class C
38 felony if:

39 (a) The person has previously been convicted of violating the provisions of ORS 658.410 (1) or
40 658.417 (1);

41 (b) The person's license to act as a labor contractor has been suspended, revoked or denied; or

42 (c) The person is acting in violation of an outstanding order of any court of competent juris-
43 diction arising out of the enforcement of ORS 658.405 to 658.511.

44 (7) Any person who uses the services of an unlicensed labor contractor and who knows,
45 or should have known, that the contractor is violating ORS 658.410 commits a Class C felony.

SECTION 5. ORS 701.990 is amended to read:

701.990. (1) Violation of ORS 701.021 is a Class A misdemeanor.

(2) A person who uses the services of a contractor and who knows, or should have known, that the contractor is violating ORS 701.021 commits a Class C felony.

[(2)] **(3)** The intentional use of a contractor's license number without the authorization of the licensed contractor is a Class A misdemeanor.

[(3)] **(4) The** use of a contractor's license number, with or without the authorization of the licensed contractor, with the intent to deceive the public is a [*Class A misdemeanor*] **Class C felony.**

(5) The authorization by a licensed contractor for another person to use the contractor's license number with the intent to deceive the public is a Class C felony.

SECTION 6. ORS 443.004 is amended to read:

443.004. (1)(a) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181A.195 on:

(A) An employee of a residential facility or an adult foster home;

(B) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

(C) A home care worker or personal support worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

(b) The department or the authority shall complete the criminal records check under paragraph (a) of this subsection not more than once during an 18-month period unless the department or the authority:

(A) Receives credible evidence of a new criminal conviction;

(B) Receives credible evidence to substantiate a complaint of abuse or neglect;

(C) Is required by federal law to conduct more frequent criminal records checks;

(D) Is notified that a subject individual has changed positions or duties for which there are different criminal records check requirements; or

(E) Determines, under criteria set forth in rules adopted by the department or the authority, that it would be burdensome for a subject individual to wait for a new criminal records check.

(2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.

(b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

(3) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of an individual, other than a mental health or substance abuse treatment provider, who has been convicted:

(a) Of a crime described in ORS 163.095, 163.107, 163.115, 163.118, 163.125, 163.145, 163.149,

1 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275,
 2 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125
 3 [(5)(c)] (4)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022,
 4 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

5 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
 6 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
 7 five years immediately preceding employment in any capacity of an individual, other than a mental
 8 health or substance abuse treatment provider, having contact with a recipient of support services,
 9 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
 10 dent is 65 years of age or older;

11 (c) Of a crime listed in ORS 163A.005;

12 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
 13 stance;

14 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
 15 (d) of this subsection; or

16 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a
 17 crime described in paragraphs (a) to (e) of this subsection.

18 (4) If the criminal background check conducted by a home health agency or in-home care agency
 19 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
 20 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
 21 home health agency or in-home care agency may not employ the individual.

22 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
 23 pacity having contact with a recipient of support services or a resident of a residential facility or
 24 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
 25 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
 26 scribed in ORS 163.095, 163.107, 163.115, 163.375, 163.405, 163.411 or 163.427.

27 (6) Upon the request of a mental health or substance abuse treatment provider, the department
 28 or authority shall maintain a record of the results of any fitness determination made under ORS
 29 181A.195 (10). The department or authority may disclose the record only to a person the provider
 30 specifically authorizes, by a written release, to receive the information.

31 (7) If the department or authority has a record of substantiated abuse committed by an employee
 32 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 33 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 34 notify, in writing, the employer and the employee or potential employee and may conduct a fitness
 35 determination in accordance with this section and ORS 181A.195.

36 (8) As used in this section:

37 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

38 (b) "Home care worker" has the meaning given that term in ORS 410.600.

39 (c) "Home health agency" has the meaning given that term in ORS 443.014.

40 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

41 (e) "Mental health or substance abuse treatment provider" means:

42 (A) A peer support specialist;

43 (B) An employee of a residential treatment facility or a residential treatment home that is li-
 44 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

45 (C) An individual who provides treatment or services for persons with substance use disorders;

1 or

2 (D) An individual who provides mental health treatment or services.

3 (f) "Peer support specialist" has the meaning given that term in ORS 414.025.

4 (g) "Personal support worker" has the meaning given that term in ORS 410.600.

5 (h) "Residential facility" has the meaning given that term in ORS 443.400.

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