

House Bill 3507

Sponsored by Representative CHAICHI

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**.

Prescribes manner in which Commissioner of Bureau of Labor and Industries shall classify status of individual as employee or independent contractor for purposes of wage and hour laws and employment discrimination laws.

Modifies criteria under which person is considered to be customarily engaged in independently established business for purposes of statutory definition of independent contractor.

Creates rebuttable presumption that individual who performs services for remuneration for hiring entity is employee when employment status of individual is at issue.

A BILL FOR AN ACT

1
2 Relating to worker classification; creating new provisions; and amending ORS 670.600 and 670.605.

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

4 **SECTION 1. For purposes of classifying an individual's status as an employee or an in-**
5 **dependent contractor as necessary for purposes of administering the wage and hour laws**
6 **under ORS chapters 652 and 653 and the employment discrimination statutes under ORS**
7 **chapter 659A, the Commissioner of the Bureau of Labor and Industries shall classify the in-**
8 **dividual by determining whether the individual meets the criteria of an independent con-**
9 **tractor, as defined in ORS 670.600.**

10 **SECTION 2. Notwithstanding any other provision of law, in any proceeding where a**
11 **question of fact regarding the classification of an individual as an employee or an independ-**
12 **ent contractor is at issue, there is a rebuttable presumption that the individual is an em-**
13 **ployee whenever another individual or entity engages the individual to perform services or**
14 **labor in exchange for remuneration. An individual or entity that engages an individual to**
15 **perform such services or labor may overcome the presumption by demonstrating by a pre-**
16 **ponderance of the evidence that the individual is an independent contractor.**

17 **SECTION 3. ORS 670.600 is amended to read:**

18 670.600. (1) As used in this section:

19 (a) "Individual" means a natural person.

20 (b) "Person" has the meaning given that term in ORS 174.100.

21 (c) "Services" means labor or services.

22 (2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person
23 who provides services for remuneration and who, in the provision of the services:

24 (a) Is free from direction and control over the means and manner of providing the services,
25 subject only to the right of the person for whom the services are provided to specify the desired
26 results;

27 (b) Except as provided in subsection (4) of this section, is customarily engaged in an independ-
28 ently established business;

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 (c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license
2 is required under ORS chapter 671 or 701; and

3 (d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

4 (3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily
5 engaged in an independently established business if [*any three*] **all** of the following requirements are
6 met:

7 (a) The person maintains a business location:

8 (A) That is separate from the business or work location of the person for whom the services are
9 provided; or

10 (B) That is in a portion of the person's residence and that portion is used primarily for the
11 business.

12 (b) The person bears the risk of loss related to the business or the provision of services as
13 shown by factors such as:

14 (A) The person enters into fixed-price contracts;

15 (B) The person is required to correct defective work;

16 (C) The person warrants the services provided; or

17 (D) The person negotiates indemnification agreements or purchases liability insurance, per-
18 formance bonds or errors and omissions insurance.

19 (c) The person provides contracted services for two or more different persons within a 12-month
20 period, or the person routinely engages in business advertising, solicitation or other marketing ef-
21 forts reasonably calculated to obtain new contracts to provide similar services.

22 (d) The person makes a significant investment in the business, through means such as:

23 (A) Purchasing tools or equipment necessary to provide the services;

24 (B) Paying for the premises or facilities where the services are provided; or

25 (C) Paying for licenses, certificates or specialized training required to provide the services.

26 (e) The person has the authority to hire other persons to provide or to assist in providing the
27 services and has the authority to fire those persons.

28 (4) Subsection (2)(b) of this section does not apply if the person files a Schedule F as part of an
29 income tax return and the person provides farm labor or farm services that are reportable on
30 Schedule C of an income tax return.

31 (5) For purposes of determining whether an individual provides services as an independent con-
32 tractor:

33 (a) The creation or use of a business entity, such as a corporation or a limited liability company,
34 by an individual for the purpose of providing services does not, by itself, establish that the individual
35 provides services as an independent contractor.

36 (b) When the individual provides services through a business entity, such as a corporation or a
37 limited liability company, the provisions in subsection (2), (3) or (4) of this section may be satisfied
38 by the individual or the business entity.

39 **SECTION 4.** ORS 670.605 is amended to read:

40 670.605. (1) In accordance with ORS chapter 183, those agencies responsible for the adminis-
41 tration of ORS 671.510 to 671.760 and ORS chapters 316, 656, 657 and 701, **the wage and hour laws**
42 **under ORS chapters 652 and 653, and the employment discrimination laws under ORS chapter**
43 **659A**, jointly shall adopt rules to carry out the provisions of ORS 670.600.

44 (2) The agencies responsible for the administration of ORS 671.510 to 671.760 and ORS chapters
45 316, 656, 657 and 701, **the wage and hour laws under ORS chapters 652 and 653, and the em-**

1 **ployment discrimination laws under ORS chapter 659A**, shall cooperate as necessary in their
2 compliance and enforcement activities to ensure among the agencies the consistent interpretation
3 and application of ORS 670.600.

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