

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 426**

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

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

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

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

10 **“(b) ‘Construction contract’ means an express or implied agree-**
11 **ment:**

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

14 **“(B) Relating to the excavation of or other development of or im-**
15 **provement to land.**

16 **“(c) ‘Construction trade labor organization’ means a bona fide labor**
17 **organization that represents employees in the building and con-**
18 **struction trades.**

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

20 **“(A) Any person, including a construction manager, joint venture**
21 **or any combination thereof, the person’s successors, heirs or assigns,**

1 that enters into a construction contract with an owner.

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

7 “(e) ‘Fringe benefit contributions’ means the amount of compen-
8 sation that accompanies or is in addition to an employee’s regular
9 salary or wages, including, but not limited to, payments made to
10 profit-sharing plans, retirement or pension plans, medical insurance,
11 severance pay or holiday, vacation or sick leave plans, but does not
12 include the benefit payments from such plans.

13 “(f) ‘Labor organization’ means an organization, agency or an em-
14 ployee representation committee or plan, in which employees partic-
15 ipate and which exists, in whole or in part, for the purpose of dealing
16 with employers concerning grievances, labor disputes, wages, rates of
17 pay, hours of employment or work conditions.

18 “(g)(A) ‘Owner’ means any person, firm, partnership, corporation,
19 association, company, organization or other entity, or any combina-
20 tion thereof, with an ownership interest, whether the interest or estate
21 is in fee, as vendee under a contract to purchase, as lessee or another
22 interest or estate less than fee that causes:

23 “(i) A building, structure or improvement, new or existing, to be
24 constructed, reconstructed, erected, altered, remodeled, repaired,
25 maintained, moved or demolished; or

26 “(ii) Land to be excavated or otherwise developed or improved.

27 “(B) ‘Owner’ does not mean:

28 “(i) A public agency, as defined in ORS 279C.800; or

29 “(ii) A financial institution that acquires ownership of a property
30 through foreclosure or a deed in lieu of foreclosure, provided that the

1 **financial institution does not undertake, contract for or direct con-**
2 **struction work beyond activities necessary to preserve or secure the**
3 **property.**

4 **“(h) ‘Subcontractor’ means any person that may or may not have**
5 **direct privity with a direct contractor but that is a party to an express**
6 **or implied contract with a direct contractor or with a direct**
7 **contractor’s subcontractors at any tier to perform any portion of work**
8 **within the scope of the direct contractor’s construction contract with**
9 **an owner.**

10 **“(i) ‘Unrepresented employee’ means an employee of a direct con-**
11 **tractor or subcontractor who is:**

12 **“(A) Not represented by a construction trade labor organization**
13 **that has established itself or its affiliates as the collective bargaining**
14 **representative for persons performing work on a project; and**

15 **“(B) Not covered by a collective bargaining agreement that:**

16 **“(i) Contains a grievance procedure that results in a final and**
17 **binding decision; and**

18 **“(ii) Provides a mechanism for recovering unpaid wages and fringe**
19 **benefit contributions on behalf of the employees covered by the**
20 **agreement.**

21 **“(2) An owner that enters into a construction contract with a direct**
22 **contractor shall be jointly and severally liable with the direct con-**
23 **tractor for any unpaid wages, including fringe benefit contributions**
24 **and penalties, owed to any unrepresented employee of the direct con-**
25 **tractor and any unrepresented employee of a subcontractor at any tier**
26 **for labor performed on a project within the scope of the construction**
27 **contract.**

28 **“(3)(a) Any of the following persons may bring a civil action against**
29 **an owner, a direct contractor or a subcontractor in any court of**
30 **competent jurisdiction to recover unpaid wages, including fringe ben-**

1 **efit contributions, interest and penalty wages, damages, attorney fees**
2 **and costs incurred in connection with the action:**

3 **“(A) An unrepresented employee.**

4 **“(B) An authorized third party representative.**

5 **“(b) Notwithstanding ORS chapter 180, the Attorney General may**
6 **accept the assignment of claims under this subsection, bring civil**
7 **actions in the name of the State of Oregon on assigned claims and**
8 **recover costs as provided in this section. The Attorney General may**
9 **adopt rules to implement this paragraph.**

10 **“(c)(A) Prior to commencing a civil action against an owner or a**
11 **direct contractor under this subsection, a person must send written**
12 **notice of the alleged violation by first-class certified mail to the owner**
13 **and direct contractor that sets forth the alleged violation and the na-**
14 **ture of the claim and states that the owner and the direct contractor**
15 **have 21 calendar days from the certified delivery date to correct the**
16 **alleged violation. Such notice does not operate to limit the liability of**
17 **the owner or direct contractor or preclude a person from subsequently**
18 **amending a complaint after the action is commenced to include addi-**
19 **tional parties to the action.**

20 **“(B) A civil action may not be:**

21 **“(i) Initiated until after the time period under subparagraph (A) of**
22 **this paragraph has expired.**

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

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

29 **“(4) Any agreement to waive or release an owner or direct con-**
30 **tractor or to indemnify an owner or direct contractor for liability as-**

1 signed under this section is invalid.

2 “(5)(a) An owner or direct contractor may not avoid liability under
3 this section by claiming that a person performing labor on a project
4 within the scope of a construction contract is an independent con-
5 tractor rather than an employee of a direct contractor or subcontrac-
6 tor unless the person qualifies as an independent contractor under
7 ORS 670.600.

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

13 “(6) Nothing in this section impairs:

14 “(a) The right of an owner or direct contractor to bring an action
15 against a subcontractor to seek recovery of actual and liquidated
16 damages for the amounts paid by the owner or direct contractor for
17 unpaid wages, including fringe benefit contributions, interest and
18 penalty wages, damages, attorney fees and incurred costs associated
19 with an action brought under this section.

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

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

28 “(8) The Commissioner of the Bureau of Labor and Industries may
29 adopt any rules necessary to implement the provisions of this section.

30 SECTION 3. (1) Any subcontractor with which a direct contractor

1 **has entered into a contract to perform a portion of a construction**
2 **project within the scope of a construction contract between the direct**
3 **contractor and an owner shall provide the following records to the**
4 **direct contractor and the owner, upon the request, respectively, of the**
5 **direct contractor or the owner:**

6 **“(a) Certified payroll reports, that, at a minimum, include sufficient**
7 **information for the direct contractor to determine whether a subcon-**
8 **tractor has paid in full all wages earned by unrepresented employees**
9 **who performed work on the project as part of the employees’ total**
10 **compensation.**

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

13 **“(c) The names of all workers who performed work on the con-**
14 **struction project and notation of whether each worker is paid or**
15 **classified as an employee or independent contractor.**

16 **“(d) The name of any subcontractor with which the first-tier sub-**
17 **contractor contracts.**

18 **“(e) The anticipated contract start date and scheduled duration of**
19 **work.**

20 **“(f) An affidavit that attests to whether the subcontractor or any**
21 **of the subcontractor’s current principals have, within the preceding**
22 **five years, participated in any civil, administrative or criminal pro-**
23 **ceeding involving a violation of any law providing for payment of**
24 **wages or imposing a criminal penalty for the violation and the out-**
25 **come of the proceeding, including damages, fees or penalty amounts**
26 **paid to workers or a government agency, if any.**

27 **“(2) A subcontractor shall provide the records described in sub-**
28 **section (1) of this section to an authorized third party representative**
29 **only to the extent that the information contained in the records per-**
30 **tains specifically to the employee on whose behalf the authorized third**

1 party representative is acting and to whatever extent that the sub-
2 contractor would be lawfully required to disclose such records to the
3 employee if the employee was acting on the employee's own behalf
4 under ORS 652.750.

5 “(3) A subcontractor's failure to comply with subsection (1) of this
6 section does not relieve an owner or a direct contractor of the liability
7 prescribed by section 2 of this 2025 Act.

8 “(4) Nothing in this section shall alter an owner's or a direct
9 contractor's obligation to timely pay a subcontractor under ORS
10 chapter 701, except that an owner and a direct contractor may with-
11 hold payment to a subcontractor:

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

14 “(B) In an amount and to the extent that the owner or direct con-
15 tractor has paid, on behalf of the subcontractor, wages owed to the
16 employees of the subcontractor; or

17 “(b) In an amount and to the extent that the owner or direct con-
18 tractor has paid, on behalf of the subcontractor, wages owed to the
19 employees of the subcontractor.

20 “(5) A direct contractor or subcontractor may not disclose per-
21 sonally identifying information about workers who perform work on
22 a construction project except to the extent necessary to comply with
23 federal or state laws.

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

28 “SECTION 4. Sections 2 and 3 of this 2025 Act apply to labor per-
29 formed by workers on a project for a direct contractor or subcontrac-
30 tor on or after the effective date of this 2025 Act.”.

