

Requested by Representative ELMER

**PROPOSED MINORITY REPORT AMENDMENTS TO  
A-ENGROSSED SENATE BILL 426**

1 On page 1 of the printed A-engrossed bill, delete lines 6 through 14 and  
2 delete pages 2 through 5 and insert:

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

5 **“(a)(A) ‘Authorized third party representative’ means a third party,  
6 other than a labor organization, that is authorized by an unrepre-  
7 sented employee to assert the rights of the unrepresented employee.**

8 **“(B) ‘Authorized third party representative’ includes a person, such  
9 as an attorney, family member or designated representative, with  
10 whom the unrepresented employee has entered into an agreement to  
11 assist the unrepresented employee in recovering unpaid wages.**

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

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

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

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

21 **“(d) ‘Direct contractor’ means any person, including a construction**

1 manager, joint venture or any combination thereof, the person's suc-  
2 cessors, heirs or assigns, that enters into a construction contract with  
3 one or more contractors or subcontractors.

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

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

15 “(g) ‘Subcontractor’ means any person that may or may not have  
16 direct privity with a direct contractor but that is a party to an express  
17 or implied contract with a direct contractor or with a direct  
18 contractor’s subcontractors at any tier to perform any portion of work  
19 within the scope of the direct contractor’s construction contract.

20 “(h) ‘Unrepresented employee’ means an employee of a direct con-  
21 tractor or subcontractor who is:

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

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

26 “(i) Contains a grievance procedure that results in a final and  
27 binding decision; and

28 “(ii) Provides a mechanism for recovering unpaid wages and fringe  
29 benefit contributions on behalf of the employees covered by the  
30 agreement.

1       **“(2) A direct contractor that enters into a construction contract**  
2 **with a subcontractor shall be jointly and severally liable with the**  
3 **subcontractor for any unpaid wages, including fringe benefit contri-**  
4 **butions, owed to any unrepresented employee of the subcontractor at**  
5 **any tier for labor performed on a project within the scope of the con-**  
6 **struction contract.**

7       **“(3)(a) Any of the following persons may bring a civil action against**  
8 **a direct contractor or a subcontractor in any court of competent ju-**  
9 **risdiction to recover unpaid wages, including fringe benefit contribu-**  
10 **tions, interest, damages, attorney fees and costs incurred in**  
11 **connection with the action:**

12       **“(A) An unrepresented employee.**

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

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

19       **“(c)(A) Prior to commencing a civil action against a direct con-**  
20 **tractor under this subsection, a person must send written notice of the**  
21 **alleged violation by first-class certified mail to the direct contractor**  
22 **that sets forth the alleged violation and the nature of the claim and**  
23 **states that the direct contractor has 21 calendar days from the certi-**  
24 **fied delivery date to correct the alleged violation. Such notice does not**  
25 **operate to limit the liability of the direct contractor or preclude a**  
26 **person from subsequently amending a complaint after the action is**  
27 **commenced to include additional parties to the action.**

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

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

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

4       “(iii) Brought against a direct contractor if the person claiming  
5 unpaid wages and the person’s employer have entered into a written  
6 agreement that:

7       “(I) Provides for arbitration of claims to recover unpaid wages;

8       “(II) Provides for the prevailing party to be awarded attorney fees  
9 and costs in the arbitration proceeding;

10       “(III) Requires the person claiming unpaid wages to request arbi-  
11 tration within 15 days after the claim for unpaid wages arises;

12       “(IV) Allows the employer 12 days to respond to the request for  
13 arbitration; and

14       “(V) Provides for the arbitration proceeding to occur promptly after  
15 the employer responds to the request for arbitration.

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

19       “(4) Any agreement by an unrepresented employee or an authorized  
20 third party representative to waive or release a direct contractor or  
21 to indemnify a direct contractor for liability assigned under this sec-  
22 tion is invalid.

23       “(5)(a) A direct contractor may not avoid liability under this section  
24 by claiming that a person performing labor on a project within the  
25 scope of a construction contract is an independent contractor rather  
26 than an employee of a direct contractor or subcontractor unless the  
27 person qualifies as an independent contractor under ORS 670.600.

28       “(b) In any action brought under this section, there shall be a  
29 rebuttable presumption that a person performing labor on a project  
30 within the scope of a construction contract is an employee. The party

1 **claiming otherwise may rebut the presumption by establishing that**  
2 **the person qualifies as an independent contractor under ORS 670.600.**

3 **“(6) Nothing in this section impairs the right of a direct contractor**  
4 **to bring an action against a subcontractor to seek recovery of actual**  
5 **and liquidated damages for the amounts paid by the direct contractor**  
6 **for unpaid wages, including fringe benefit contributions, interest,**  
7 **damages, attorney fees and incurred costs associated with an action**  
8 **brought under this section.**

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

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

14 **“SECTION 3. (1) Any subcontractor with which a direct contractor**  
15 **has entered into a contract to perform a portion of a construction**  
16 **project shall provide the following records to the direct contractor**  
17 **upon the request of the direct contractor:**

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

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

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

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

30 **“(e) The anticipated contract start date and scheduled duration of**

1 **work.**

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

9 **“(2) A subcontractor shall provide the records described in sub-**  
10 **section (1) of this section to an authorized third party representative**  
11 **only to the extent that the information contained in the records per-**  
12 **tains specifically to the employee on whose behalf the authorized third**  
13 **party representative is acting and to whatever extent that the sub-**  
14 **contractor would be lawfully required to disclose such records to the**  
15 **employee if the employee was acting on the employee’s own behalf**  
16 **under ORS 652.750.**

17 **“(3) A subcontractor’s failure to comply with subsection (1) of this**  
18 **section does not relieve a direct contractor of the liability prescribed**  
19 **by section 2 of this 2025 Act.**

20 **“(4) Nothing in this section shall alter a direct contractor’s obli-**  
21 **gation to timely pay a subcontractor under ORS chapter 701, except**  
22 **that a direct contractor may withhold payment to a subcontractor:**

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

25 **“(B) In an amount and to the extent that the direct contractor has**  
26 **paid, on behalf of the subcontractor, wages owed to the employees of**  
27 **the subcontractor; or**

28 **“(b) In an amount and to the extent that the direct contractor has**  
29 **paid, on behalf of the subcontractor, wages owed to the employees of**  
30 **the subcontractor.**

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

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

8       “SECTION 4. (1) The Construction Contractors Board shall enter  
9       into an interagency agreement with the Bureau of Labor and Indus-  
10      tries for the purpose of assisting with enforcement activities relating  
11      to construction labor contractors licensed under ORS 658.405 to 658.511  
12      who fail to pay wages to workers.

13      “(2) The interagency agreement under this section shall include, at  
14      a minimum, provisions for:

15      “(a) Good faith collaboration between the board and the bureau to  
16      enable the board and the bureau to carry out their respective duties  
17      under the law or under the agreement; and

18      “(b) The sharing of information pertaining to violations of state  
19      laws related to wages, hours, terms and conditions of employment.

20      “SECTION 5. (1) The Department of Justice, in conjunction with  
21      an advisory committee of the Department of Justice Crime Victim and  
22      Survivor Services Division, shall study the extent to which unpaid  
23      wages may be connected to human trafficking in this state.

24      “(2) No later than September 15, 2026, the department shall report  
25      its findings from the study conducted under this section, in the man-  
26      ner provided in ORS 192.245, to the interim committees of the Legis-  
27      lative Assembly related to the judiciary.

28      “SECTION 6. Section 5 of this 2025 Act is repealed on January 2,  
29      2027.

30      “SECTION 7. Sections 2 and 3 of this 2025 Act apply to labor per-

1 **formed by workers on a project for a direct contractor or subcontrac-**  
2 **tor on or after the effective date of this 2025 Act.”.**

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