

Senate Bill 635

Sponsored by Senator METSGER

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**.

Limits nonsubject worker status of foster care providers for purposes of workers' compensation statutes to foster parents and persons providing adult foster care services in their own residence.

A BILL FOR AN ACT

1
2 Relating to nonsubject workers for purposes of workers' compensation statutes; amending ORS
3 656.027.

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

5 **SECTION 1.** ORS 656.027 is amended to read:

6 656.027. All workers are subject to this chapter except those nonsubject workers described in
7 the following subsections:

8 (1) A worker employed as a domestic servant in or about a private home. For the purposes of
9 this subsection "domestic servant" means any worker engaged in household domestic service by
10 private employment contract, including, but not limited to, home health workers.

11 (2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or
12 about the private home of the person employing the worker.

13 (3)(a) A worker whose employment is casual and either:

14 (A) The employment is not in the course of the trade, business or profession of the employer;

15 or

16 (B) The employment is in the course of the trade, business or profession of a nonsubject em-
17 ployer.

18 (b) For the purpose of this subsection, "casual" refers only to employments where the work in
19 any 30-day period, without regard to the number of workers employed, involves a total labor cost
20 of less than \$500.

21 (4) A person for whom a rule of liability for injury or death arising out of and in the course of
22 employment is provided by the laws of the United States.

23 (5) A worker engaged in the transportation in interstate commerce of goods, persons or property
24 for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business
25 in this state.

26 (6) Firefighter and police employees of any city having a population of more than 200,000 that
27 provides a disability and retirement system by ordinance or charter.

28 (7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor
29 or services are performed under contract, the sole proprietor must qualify as an independent con-
30 tractor.

31 (b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS 701.035. When

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 labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30),
2 the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under
3 ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively
4 presumed to be an independent contractor.

5 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work
6 performed in direct connection with the construction, alteration, repair, improvement, moving or
7 demolition of an improvement on real property or appurtenances thereto. When labor or services
8 are performed under contract, the partnership must qualify as an independent contractor.

9 (9) Except as provided in subsection (25) of this section, members, including members who are
10 managers, of limited liability companies, regardless of the nature of the work performed. However,
11 members, including members who are managers, of limited liability companies with more than one
12 member, while engaged in work performed in direct connection with the construction, alteration,
13 repair, improvement, moving or demolition of an improvement on real property or appurtenances
14 thereto, are subject workers. When labor or services are performed under contract, the limited li-
15 ability company must qualify as an independent contractor.

16 (10) Except as provided in subsection (24) of this section, corporate officers who are directors
17 of the corporation and who have a substantial ownership interest in the corporation, regardless of
18 the nature of the work performed by such officers, subject to the following limitations:

19 (a) If the activities of the corporation are conducted on land that receives farm use tax assess-
20 ment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors
21 in the corporate bylaws, regardless of ownership interest, and who are members of the same family,
22 whether related by blood, marriage or adoption.

23 (b) If the activities of the corporation involve the commercial harvest of timber and all officers
24 of the corporation are members of the same family and are parents, daughters or sons, daughters-
25 in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers.
26 For all other corporations involving the commercial harvest of timber, the maximum number of ex-
27 empt corporate officers for the corporation shall be whichever is the greater of the following:

28 (A) Two corporate officers; or

29 (B) One corporate officer for each 10 corporate employees.

30 (c) When labor or services are performed under contract, the corporation must qualify as an
31 independent contractor.

32 (11) A person performing services primarily for board and lodging received from any religious,
33 charitable or relief organization.

34 (12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

35 (13) A person who has been declared an amateur athlete under the rules of the United States
36 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for
37 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-
38 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-
39 cognized Oregon or national certifying authority, which requires or provides liability and accident
40 insurance for such officials. A roster of recognized Oregon and national certifying authorities will
41 be maintained by the Department of Consumer and Business Services, from lists of certifying or-
42 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-
43 creation Society.

44 (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic
45 Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the

1 Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimburse-
2 ment for time and travel expenses.

3 (15) A person who has an ownership or leasehold interest in equipment and who furnishes,
4 maintains and operates the equipment. As used in this subsection "equipment" means:

5 (a) A motor vehicle used in the transportation of logs, poles or piling.

6 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

7 (c) A motor vehicle operated as a taxicab as defined in ORS 825.017.

8 (16) A person engaged in the transportation of the public for recreational down-river boating
9 activities on the waters of this state pursuant to a federal permit when the person furnishes the
10 equipment necessary for the activity. As used in this subsection, "recreational down-river boating
11 activities" means those boating activities for the purpose of recreational fishing, swimming or
12 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

13 (17) A person who performs volunteer ski patrol activities who receives no wage other than
14 noncash remuneration.

15 (18) A person 19 years of age or older who contracts with a newspaper publishing company or
16 independent newspaper dealer or contractor to distribute newspapers to the general public and
17 perform or undertake any necessary or attendant functions related thereto.

18 (19) A person performing foster parent [*or adult foster care*] duties [*pursuant to ORS chapter 411,*
19 *418, 430 or 443*] **or a person performing adult foster care services in the residence of the**
20 **person performing the adult foster care services.**

21 (20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or
22 relief organization, whether or not such person receives meals or lodging or nominal reimbursements
23 or vouchers for meals, lodging or expenses.

24 (21) A person performing services under a property tax work-off program established under ORS
25 310.800.

26 (22) A person who performs service as a caddy at a golf course in an established program for
27 the training and supervision of caddies under the direction of a person who is an employee of the
28 golf course.

29 (23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035
30 and who have a substantial ownership interest in a partnership. If all partners are members of the
31 same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-
32 in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other part-
33 nerships registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum
34 number of exempt partners shall be whichever is the greater of the following:

35 (A) Two partners; or

36 (B) One partner for each 10 partnership employees.

37 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
38 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered un-
39 der ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclu-
40 sively presumed to be an independent contractor.

41 (24)(a) Corporate officers who are directors of a corporation actively registered under ORS
42 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corpo-
43 ration, regardless of the nature of the work performed. If all officers of the corporation are members
44 of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law
45 or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other

1 corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maxi-
2 mum number of exempt corporate officers shall be whichever is the greater of the following:

3 (A) Two corporate officers; or

4 (B) One corporate officer for each 10 corporate employees.

5 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
6 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered un-
7 der ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclu-
8 sively presumed to be an independent contractor.

9 (25)(a) Limited liability company members who are members of a company actively registered
10 under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in
11 the company, regardless of the nature of the work performed. If all members of the company are
12 members of the same family and are parents, spouses, sisters, brothers, daughters or sons,
13 daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject
14 workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under ORS
15 chapter 701, the maximum number of exempt company members shall be whichever is the greater
16 of the following:

17 (A) Two company members; or

18 (B) One company member for each 10 company employees.

19 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
20 656.005 (30), the company qualifies as an independent contractor. Any company registered under
21 ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively
22 presumed to be an independent contractor.

23 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer
24 match whose services are retained on a match-by-match basis.

25 (27) A person performing language translator or interpreter services that are provided for others
26 through an agent or broker.

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