

# House Bill 2498

Sponsored by Representative HOLVEY (Pre-session 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**.

Adds to test to determine whether person is independent contractor requirement that person not perform services that are within usual course of business of person that hired purported independent contractor.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to determinations of an independent contractor relationship; creating new provisions;  
3 amending ORS 670.600; and prescribing an effective date.

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

5 **SECTION 1.** ORS 670.600 is amended to read:

6 670.600. (1) As used in this section:

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

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

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

10 (2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person  
11 who provides services **to another person** for remuneration and who, in *[the provision of]* **providing**  
12 the services:

13 (a) Is free from direction and control over the means and manner of providing the services,  
14 subject only to the right of the **other** person *[for whom the services are provided]* to specify the de-  
15 sired results;

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

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

20 (d) Is responsible for obtaining other licenses or certificates necessary to provide the  
21 services[.]; **and**

22 (e) **Does not provide services that are within the usual course of the other person's**  
23 **business.**

24 (3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily  
25 engaged in an independently established business if any three of the following requirements are met:

26 (a) The person maintains a business location:

27 (A) That is separate from the business or work location of the **other** person *[for whom the ser-*  
28 *vices are provided]*; or

29 (B) That is in a portion of the person's residence and that portion is used primarily for the  
30 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 (b) The person bears the risk of loss related to the business or the provision of services, as  
2 shown by factors such as:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) [*When the*] **If an** individual provides services through a business entity, such as a corporation  
26 or a limited liability company, the provisions in subsection (2), (3) or (4) of this section may be sat-  
27 isfied by the individual or the business entity.

28 **SECTION 2. The amendments to ORS 670.600 by section 1 of this 2019 Act apply to con-**  
29 **tracts that parties enter into or renew on or after the effective date of this 2019 Act.**

30 **SECTION 3. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
31 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

32