Laws Relating to
Workers' Compensation and Safe Employment
in Oregon

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1999-2001

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Workers' Compensation and Safe Employment

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1999 - 2001

Workers' Compensation Law
Chapter 656 Oregon Revised Statutes

Oregon Safe Employment Act
Chapter 654 Oregon Revised Statutes

Civil Penalties; Administrative Procedures and Rules
Chapter 183 Oregon Revised Statutes

Civil Rights; Unlawful Employment
Chapter 659 Oregon Revised Statutes

Operation of Farmworker Camps
Chapter 658.705-658.850 Oregon Revised Statutes

Issued by:

Oregon Department of Consumer & Business Services
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OCCUPATIONAL SAFETY & HEALTH continued

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	Consultation	(541) 388-6068
Eugene:	Enforcement	(541) 686-7562
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Medford:	Enforcement	(541) 776-6030
	Consultation	(541) 776-6016
Pendleton:	Enforcement	(541) 276-9175
	Consultation	(541) 276-2353
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	Consultation	(503) 229-6193
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Hearings support	(503) 378-3308
Managing attorney	(503) 378-4283
Medford Administrative Law Judges	(541) 776-6217
Portland Administrative Law Judges	(503) 378-3308
Presiding Administrative Law Judge	(503) 378-3308
Salem Administrative Law Judges	(503) 378-3308

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Information	(503) 947-7810
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Compliance	(503) 947-7815
Dispute Resolution	(503) 947-7816
Operations	(503) 947-7810

History of workers' compensation and safe employment laws

The 1913 Oregon Legislative Assembly gave Oregon its first workers' compensation law, which became effective July 1, 1914. This law set up a State Industrial Accident Commission (SIAC), consisting of three commissioners as trustees of the Industrial Accident Fund. Employers in hazardous occupations had to decide whether to be part of the fund. Contributors to the fund could not be sued, because suits were brought against the commission. Non-contributors, on the other hand, had no common law defenses, and the Employer Liability Act made them vulnerable to unlimited damages for worker injuries or illnesses. Employers in nonhazardous occupations could opt to contribute to the fund and get the benefits.

In 1965 the legislature overhauled the law, effective January 1, 1966. All employers came under the Workmens' Compensation Law, which became effective January 1, 1968. Employers could buy the fund's insurance, self-insure, or insure with private insurance companies. The SIAC was renamed Workmens' Compensation Board and the insurance function was given to a State Compensation Department, the forerunner of the State Accident Insurance Fund (SAIF) and SAIF Corporation.

The federal Occupational Safety and Health Act of 1970 gave rise to the Oregon Safe Employment Act in 1973. Its purpose was to ensure "safe and healthful working conditions for every working man and woman in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payment and human suffering, which is created by occupational injury and disease."

The 1977 legislature reshuffled workers' compensation administration and created a Workers' Compensation Department headed by a director appointed by the governor. The Workers' Compensation Board, continuing under gubernatorial appointment, supervised a Hearings Division that settled contested cases under both workers' compensation law and the Oregon Safe Employment Act.

The 1987 legislature made substantial changes to workers' compensation law. Chapter 884, Oregon Law 1987, heavily amended and enhanced current law, and the Workers' Compensation Department became a division of the new Department of Insurance & Finance.

In 1990, based on recommendations of a Labor/Management Task Force appointed by the governor, the legislature made substantial changes in the law in special session; Chapter 2, Oregon Laws 1990, Special Session (SB 1197), significantly amended and added to the Workers' Compensation Law.

The 1993 legislative session made only minor changes to the Oregon workers' compensation system. These included HB 2282, which addressed the regulation of employee leasing companies, and HB 2285, which dealt with Oregon's 24-Hour Health Plan, a pilot project that combined group health coverage with the medical portion of workers' compensation. HB 3069 amended the public records law to restrict access to claims history information in certain circumstances when the information could be used to discriminate against injured workers.

In 1995, the most significant changes to the workers' compensation system came with SB 369. After many drafts and rewrites, the bill emerged as an 80-page reform of the workers'

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compensation system. SB 369 was designed, in part, to restate and clarify many of the 1990 reforms that had been reversed or overturned through case law. Additional provisions were addressed by SB 369 and the Department of Insurance & Finance was reorganized and renamed the Department of Consumer & Business Services.

In 1997, HB 2971 revised ORS 656.262 as it affects the issuance of notices of acceptance and the processing of new compensable conditions.

In 1999, the legislature passed HB 2830, which requires Oregon OSHA to revise its method for scheduling workplace inspections and provide notice to certain employers of an increased likelihood of inspection.

The 1999 legislative session saw relatively minor changes to the Oregon workers' compensation system. However, SB 460 repealed most sunsets placed by SB 369 in 1995. One exception to the sunset repeal is the exclusive-remedy provision. With limited exception, workers' compensation is the sole remedy for covered workers with injuries and illnesses that arise out of and in the course of their employment. The legislature directed the Workers' Compensation Division to commission a study on the effects, as well as the costs and savings, of the major contributing cause and combined condition provisions on the Oregon workers' compensation system. The sunset is extended until December 31, 2004.

Significant laws passed in 1999 affecting workers' compensation

HB 2021 Ensures that medical providers will receive payment for medical services until they are notified by insurers that workers with disabling claims are medically stationary. HB 2021 also prohibits an insurer or agent offering workers' compensation insurance from quoting projected net insurance premiums that are not guaranteed in the insurance policy.
Effective date: October 23, 1999.

HB 2022 Changes workers' compensation benefits for spouses and some children of fatally injured workers: increases remarriage allowance to 36 times the monthly benefit; eliminates reduction in benefits for children of deceased workers who had remarried; equalizes benefits for PTD and fatal claims for beneficiaries in full-time education; and eliminates $5 weekly beneficiary payment for PTD claims.
Effective date: October 23, 1999.

HB 2450 Allows the director of the Department of Consumer and Business Services to establish a process for up to two construction trades unions to receive authorization to bargain collectively agreements for workers' compensation benefits. By administrative rule, the director will create the process for prospective unions to meet the eligibility criteria, while ensuring the collective bargaining agreements do not diminish any injured worker's entitlement to compensation under the workers' compensation system. This bill is established as a pilot project; eligibility for such agreements will end January 1, 2002. HB 2450 requires status and project reports to the Seventy-First Legislative Assembly.
Effective date: October 23, 1999.

HB 2525 Pilot program for a centralized hearing panel within Oregon Employment Department. Many state agencies (including DCBS) must use hearings officers assigned from the panel to conduct contested-case hearings. Exempts hearings held under ORS 656.740.
Effective date: August 1, 1999.

HB 3055 Requires insurers to include only the duration of temporary disability compensation on the notice of closure. The bill also allows the assigned claims agent under ORS 656.740 to employ legal counsel of its choice for representation, as authorized by the attorney general to act as a special assistant attorney general. The bill also amends the Insurance Code to require insurers to give written notice to employers of their right to appeal the results of a premium audit. It provides that such appeal must be filed within 60 days of the final premium audit billing in addition to any other requirements of rules adopted by the director. Also specifies certain activities prohibited by Workers' Compensation Board members.
Effective date: October 23, 1999.

HB 3629 Directs the Center for Research on Occupational and Environmental Toxicology (CROET) of the Oregon Health Sciences University to provide a report to the Emergency Board, assisting the Legislative Assembly in their assessment of the need for modifying the criteria for compensability in workers' compensation claims for hepatitis B and C.
Effective date: October 23, 1999.

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SB 213 In order to maintain a sufficient Workers' Benefit Fund balance, and to reduce volatility in assessments rates, a permanent change to a 12-month fund balance is adopted.
Effective date: October 23, 1999.

SB 220 Transfers the responsibility for closing all workers' compensation claims and for reclassifying nondisabling claims to workers' compensation insurers and self-insured employers.
Effective date: October 23, 1999.

SB 221 Eliminates WCD's responsibility for the certification of workers' compensation claims examiners, claims examiner training programs and continuing education courses.
Effective date: October 23, 1999.

SB 222 Permits the director broader latitude in the appointment of members of the workers' compensation Advisory Committee on Medical Care.
Effective date: October 23, 1999.

SB 223 Repeals the requirement that the director establish utilization and treatment standards for all medical service categories.
Effective date: October 23, 1999.

SB 280 Authorizes the director of the Department of Consumer and Business Services to license one or more rating organizations for workers' compensation insurance under the Insurance Code. Specifies services to be provided by the workers' compensation rating organization.
Effective date: June 9, 1999.

SB 288 Eliminates the 75 percent reimbursement of workers' compensation premium for rehabilitation facilities from the Workers' Benefit Fund.
Effective date: July 1, 1999.

SB 289 Streamlines the hearing and appeal process when subjectivity is an issue.
Effective date: October 23, 1999.

SB 460 Repeals most sunsets except: exclusive remedy provisions will be extended until December 31, 2004; permanent disability benefits will be raised to a level close to the national median; certain vocational assistance benefits will be stayed pending completion of the dispute resolution process; and continues to allow workers to treat with their attending physician when a managed care organization contract terminates. Increases PPD benefits.
Effective date: October 23, 1999.

SB 591 Eliminates the "same industry" requirement to be included in a self-insured employer group. Emergency clause, effective upon passage.
Effective date: June 18, 1999.

SB 592 Requires the director of the Department of Consumer and Business Services to use rulemaking to establish workers' compensation premium assessments.
Effective date: October 23, 1999.

SB 654 Requires the governor to appoint a chairperson of the Workers' Compensation Board to manage and supervise the board and the Hearings Division.
Effective date: October 23, 1999.

SB 728 Moves jurisdiction to the Workers' Compensation Board when there is a dispute over the need for proposed medical service caused by an accepted condition.
Effective date: October 23, 1999.

SB 729 Eliminates two-year aggregate maximum for receipt of temporary partial disability payments.
Effective date: October 23, 1999.

Significant laws passed in 1999 affecting OR-OSHA

SB 211 Allows Oregon OSHA to serve citation for violation of occupational safety and health law on employer's registered agent. During the 1981 legislative session, the word "director" was mistakenly substituted for the word "employer."
Effective date: October 23, 1999.

SB 212 Repeals requirement that Oregon OSHA review and report to legislature about employers who must communicate to employees about hazardous substances in the workplace. The statute was enacted in 1985 when the federal Hazard Communication Standard regarding employee exposure to hazardous substances applied only to the manufacturing industry. The standard adopted by Oregon OSHA in 1987 applies to all employees, thereby making the requirements of this statute unnecessary.
Effective date: October 23, 1999.

HB 2320 Establishes privilege to prevent compulsory disclosure of employer's safety and health consultation reports in administrative proceeding.
Effective date: October 23, 1999.

HB 2402 Exempts corporate farms from occupational safety and health requirements when the farm's only employees are family members.
Effective date: October 23, 1999.

HB 2477 Increases maximum amount that can be credited to the Workers' Memorial Scholarship Account from civil penalties from $100,000 to $250,000. Only the interest earned on the account is used to pay for the establishment and administration of the scholarship program which Oregon OSHA administers. Annual interest accrued prior to the passage of this bill was approximately $5,000. Since established in 1991, the advisory committee has reviewed 67 qualified applications and awarded 18 scholarships.
Effective date: October 23, 1999.

HB 2830 Provides that OR-OSHA will schedule inspections by predominantly focusing resources on the most unsafe places of employment. By its use of the term "predominantly," and by specific reference approving random inspections, it is clear that Oregon OSHA will not exclude any category of workplaces from inspections. This bill creates a balance between focusing resources on the worst workplaces and ensuring safety and health in all workplaces.

The bill specifies that Oregon OSHA will notify employers in the most unsafe places of employment that they have an increased likelihood of inspection. The purpose of this notice is to urge these employers to increase their safety efforts. This notification is not a prerequisite to inspections. Oregon OSHA will promulgate administrative rules to provide for this notice.

The bill specifies that employers may designate attorneys to act as their representatives during inspections. The provision gives no new legal status to lawyers in the inspection process. They would act, not as lawyers, but as employer representatives. If the designated attorney is unavailable, the inspection will nonetheless proceed.

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Citations must be issued within 180 days. The bill changes the starting date for the calculation of the 180-day period from an indefinite date to a definite date. It will clarify exactly when this period runs.
Effective date: October 23, 1999.

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The following pages contain direct reproductions of officially published Oregon laws relating to and administered by the Workers' Compensation and OR-OSHA divisions of the Department of Consumer and Business Services. Portions of these codifications of laws were enacted by the 1999 legislature.

Applicable rules and regulations are promulgated by the department and filed with the office of the Secretary of State. Copies of this book may be obtained by using the order form at the back of this book, by writing the Workers' Compensation Division, Department of Consumer & Business Services, 350 Winter Street NE, Rm. 27, Salem, Oregon 97301-3879, or by calling (503) 947-7627.

Chapter 656

1999 EDITION

Workers' Compensation

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656.033 Coverage for participants in work experience or school directed professional training programs

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656.037 Exemption from coverage for persons engaged in certain real estate activities

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Note: The name of the Department of Human Resources has been changed to the Department of Human Services and the title of the Director of Human Resources to the Director of Human Services. The name and title changes become operative on July 1, 2000. See sections 10 and 11, chapter 421, Oregon Laws 1999. References to the department and the director in this chapter use the name and the title that become operative on July 1, 2000.

GENERAL PROVISIONS

656.001 Short title. This chapter may be cited as the Workers' Compensation Law. [1965 c.285 s.1; 1977 c.109 s.1]

656.002 [Amended by 1957 c.718 s.1; 1959 c.448 s.1; 1965 c.285 s.4; 1967 c.341 s.2; 1969 c.125 s.1; 1969 c.247 s.1; 1973 c.497 s.1; 1973 c.620 s.1; repealed by 1975 c.556 s.1 (656.003, 656.005 enacted in lieu of 656.002)]

656.003 Application of definitions to construction of chapter. Except where the context otherwise requires, the definitions given in this chapter govern its construction. [1975 c.556 s.2 (enacted in lieu of 656.002)]

656.004 [Repealed by 1981 c.535 s.28, (656.012 enacted in lieu of 656.004)]

656.005 Definitions. (1) “Average weekly wage” means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2) “Beneficiary” means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

(a) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(b) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers' Compensation Board.

(4) “Carrier-insured employer” means an employer who provides workers' compensation coverage with a guaranty contract insurer.

(5) “Child” includes a posthumous child, a child legally adopted prior to the injury, a child toward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support. An invalid dependent child is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. For purposes of this chapter, an invalid dependent child is considered to be a child under 18 years of age.

(6) “Claim” means a written request for compensation from a subject worker or someone on the worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

(7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

(A) No injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.

(b) “Compensable injury” does not include:

(A) Injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker's personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker's consumption of alcoholic beverages or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.

(c) A “disabling compensable injury” is an injury which entitles the worker to compensation for disability or death. An injury is not disabling if no temporary benefits are due and payable, unless there is a reasonable expectation that permanent disability will result from the injury.

(d) A “nondisabling compensable injury” is any injury which requires medical services only.

(8) “Compensation” includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pursuant to this chapter.

(9) “Department” means the Department of Consumer and Business Services.

(10) “Dependent” means any of the following-named relatives of a worker whose death results from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term “dependent.”

(11) “Director” means the Director of the Department of Consumer and Business Services.

(12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the healing arts in any country or in any state, territory or possession of the United States within the limits of the license of the licentiate.

(b) Except as otherwise provided for workers subject to a managed care contract, “attending physician” means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury and who is:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

(c) “Consulting physician” means a doctor or physician who examines a worker or the worker's medical record to advise the attending physician regarding treatment of a worker's compensable injury.

(13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.

(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of a temporary service provider is not the employer of temporary workers provided by the temporary service provider.

(c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning for that term provided in ORS 656.850.

(14) “Guaranty contract insurer” and “insurer” mean the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state or an assigned claims agent selected by the director under ORS 656.054.

(15) “Consumer and Business Services Fund” means the fund created by ORS 705.145.

(16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

(17) “Medically stationary” means that no further material improvement would reasonably be expected from medical treatment, or the passage of time.

(18) “Noncomplying employer” means a subject employer who has failed to comply with ORS 656.017.

(19) “Objective findings” in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. “Objective findings” does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

(20) “Palliative care” means medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not

include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition.

(21) “Party” means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of such employer.

(22) “Payroll” means a record of wages payable to workers for their services and includes commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. However, “payroll” does not include overtime pay, vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices. Bonus pay is limited to payments which are not anticipated under the contract of employment and which are paid at the sole discretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe working practices is only for the purpose of calculations based on payroll to determine premium for workers' compensation insurance, and does not affect any other calculation or determination based on payroll for the purposes of this chapter.

(23) “Person” includes partnership, joint venture, association, limited liability company and corporation.

(24) “Preexisting condition” means any injury, disease, congenital abnormality, personality disorder or similar condition that contributes or predisposes a worker to disability or need for treatment and that precedes the onset of an initial claim for an injury or occupational disease, or that precedes a claim for worsening pursuant to ORS 656.273.

(25) “Self-insured employer” means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out by ORS 656.407.

(26) “State Accident Insurance Fund Corporation” and “corporation” mean the State Accident Insurance Fund Corporation created under ORS 656.752.

(27) “Subject employer” means an employer who is subject to this chapter as provided by ORS 656.023.

(28) “Subject worker” means a worker who is subject to this chapter as provided by ORS 656.027.

(29) “Wages” means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and includes the amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips reported, whichever amount is greater. The State Accident Insurance Fund Corporation may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the premium of the employer.

(30) “Worker” means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed

officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an inmate or ward of a state institution or as part of the eligibility requirements for a general or public assistance grant.

(31) “Independent contractor” has the meaning for that term provided in ORS 670.600. [1975 c.556 ss.2 to 19 (enacted in lieu of 656.002); 1977 c.109 s.2; 1977 c.804 s.1; 1979 c.839 s.26; 1981 c.535 s.30; 1981 c.723 s.3; 1981 c.854 s.2; 1983 c.740 s.242; 1985 c.212 s.1; 1985 c.507 s.1; 1985 c.770 s.1; 1987 c.373 s.31; 1987 c.457 s.1; 1987 c.713 s.3; 1987 c.884 s.25; 1989 c.762 s.3; 1990 c.2 s.3; 1993 c.739 s.23; 1993 c.744 s.18; 1995 c.93 s.31; 1995 c.332 s.1; 1997 c.491 s.5]

656.006 Effect on employers' liability law. This chapter does not abrogate the rights of the employee under the present employers' liability law, in all cases where the employee, under this chapter is given the right to bring suit against the employer of the employee for an injury.

656.008 Extension of laws relating to workers' compensation to federal lands and projects within state. Where not inconsistent with the Constitution and laws of the United States, the laws of this state relating to workers' compensation and the duties and powers of the Department of Consumer and Business Services hereby are extended to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the State of Oregon and to all projects, buildings, constructions, improvements and all property belonging to the United States within the exterior boundaries of the State of Oregon in the same way and to the same extent as if said premises and property were under the exclusive jurisdiction of the State of Oregon. [Amended by 1977 c.804 s.2]

656.010 Treatment by spiritual means. Nothing in this chapter shall be construed to require a worker who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical treatment nor shall such worker or the dependents of the worker be deprived of any compensation payments to which the worker would have been entitled if medical or surgical treatment were employed, and the employer or insurance carrier may pay for treatment by prayer or spiritual means. [1965 c.285 s.41c]

656.012 Findings and policy. (1) The Legislative Assembly finds that:

(a) The performance of various industrial enterprises necessary to the enrichment and economic well-being of all the citizens of this state will inevitably involve injury to some of the workers employed in those enterprises;

(b) The method provided by the common law for compensating injured workers involves long and costly litigation, without commensurate benefit to either the

injured workers or the employers, and often requires the taxpayer to provide expensive care and support for the injured workers and their dependents; and

(c) An exclusive, statutory system of compensation will provide the best societal measure of those injuries that bear a sufficient relationship to employment to merit incorporation of their costs into the stream of commerce.

(2) In consequence of these findings, the objectives of the Workers' Compensation Law are declared to be as follows:

(a) To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents;

(b) To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable;

(c) To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable;

(d) To encourage maximum employer implementation of accident study, analysis and prevention programs to reduce the economic loss and human suffering caused by industrial accidents; and

(e) To provide the sole and exclusive source and means by which subject workers, their beneficiaries and anyone otherwise entitled to receive benefits on account of injuries or diseases arising out of and in the course of employment shall seek and qualify for remedies for such conditions.

(3) In recognition that the goals and objectives of this Workers' Compensation Law are intended to benefit all citizens, it is declared that the provisions of this law shall be interpreted in an impartial and balanced manner. [1981 c.535 s.29 (enacted in lieu of 656.004); 1995 c.332 s.4; amendments by 1995 c.332 s.4a repealed by 1999 c.6 s.1]

Note: The amendments to 656.012 by section 3, chapter 6, Oregon Laws 1999, become operative December 31, 2004. See section 5, chapter 6, Oregon Laws 1999. The text that is operative on and after December 31, 2004, is set forth for the user's convenience.

656.012. (1) The Legislative Assembly finds that:

(a) The performance of various industrial enterprises necessary to the enrichment and economic well-being of all the citizens of this state will inevitably involve injury to some of the workers employed in those enterprises; and

(b) The method provided by the common law for compensating injured workers involves long and costly litigation, without commensurate benefit to either the injured workers or the employers, and often requires the taxpayer to provide expensive care and support for the injured workers and their dependents.

(2) In consequence of these findings, the objectives of the Workers' Compensation Law are declared to be as follows:

(a) To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents;

(b) To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable;

(c) To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable; and

(d) To encourage maximum employer implementation of accident study, analysis and prevention programs to reduce the economic loss and human suffering caused by industrial accidents.

(3) In recognition that the goals and objectives of this Workers' Compensation Law are intended to benefit all citizens, it is declared that the provisions of this law shall be interpreted in an impartial and balanced manner.

Note: See notes under 656.202.

656.016 [1965 c.285 s.5; 1967 c.341 s.3; repealed by 1975 c.556 s.20 (656.017 enacted in lieu of 656.016)]

COVERAGE

656.017 Employer required to pay compensation and perform other duties; state not authorized to be direct responsibility employer. (1) Every employer subject to this chapter shall maintain assurance with the Director of the Department of Consumer and Business Services that subject workers of the employer and their beneficiaries will receive compensation for compensable injuries as provided by this chapter and that the employer will perform all duties and pay other obligations required under this chapter, by qualifying:

(a) As a carrier-insured employer; or

(b) As a self-insured employer as provided by ORS 656.407.

(2) Notwithstanding ORS chapter 278, this state shall provide compensation insurance for its employees through the State Accident Insurance Fund Corporation.

(3) Any employer required by the statutes of this state other than this chapter or by the rules, regulations, contracts or procedures of any agency of the federal government, this state or a political subdivision of this state to provide or agree to provide workers' compensation coverage, either directly or through bond requirements, may provide such coverage by any method provided in this section. [1975 c.556 s.21 (enacted in lieu of 656.016); 1977 c.659 s.1; 1979 c.815 s.1; 1981 c.854 s.3; 1985 c.731 s.30]

656.018 Effect of providing coverage; exclusive remedy. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1) is exclusive

and in place of all other liability arising out of injuries, diseases, symptom complexes or similar conditions arising out of and in the course of employment that are sustained by subject workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such conditions or claims resulting therefrom, specifically including claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such conditions, except as specifically provided otherwise in this chapter.

(b) This subsection shall not apply to claims for indemnity or contribution asserted by a railroad, as defined in ORS 824.020, or by a corporation, individual or association of individuals which is subject to regulation pursuant to ORS chapter 757 or 759.

(c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary to the provisions of paragraph (a) of this subsection entered into after July 19, 1977, are void.

(2) The rights given to a subject worker and the beneficiaries of the subject worker under this chapter for injuries, diseases, symptom complexes or similar conditions arising out of and in the course of employment are in lieu of any remedies they might otherwise have for such injuries, diseases, symptom complexes or similar conditions against the worker's employer under ORS 654.305 to 654.335 or other laws, common law or statute, except to the extent the worker is expressly given the right under this chapter to bring suit against the employer of the worker for an injury, disease, symptom complex or similar condition.

(3) The exemption from liability given an employer under this section is also extended to the employer's insurer, the self-insured employer's claims administrator, the Department of Consumer and Business Services, and the contracted agents, employees, officers and directors of the employer, the employer's insurer, the self-insured employer's claims administrator and the department, except that the exemption from liability shall not apply:

(a) Where the injury, disease, symptom complex or similar condition is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection;

(b) Where the worker and the person otherwise exempt under this subsection are not engaged in the furtherance of a common enterprise or the accomplishment of the same or related objectives; or

(c) Where the injury, disease, symptom complex or similar condition is proximately caused by failure of the employer to comply with the notice posted pursuant to ORS 654.082.

(4) The exemption from liability given an employer under this section applies to a worker leasing company and the client to whom workers are provided when the worker leasing company and the client comply with ORS 656.850 (3).

(5)(a) The exemption from liability given an employer under this section applies to a temporary service provider, as that term is used in ORS 656.850, and also extends to the client to whom workers are provided when the temporary service provider complies with ORS 656.017.

(b) The exemption from liability given a client under paragraph (a) of this subsection is also extended to the client's insurer, the self-insured client's claims administrator, the department, and the contracted agents, employees, officers and directors of the client, the client's insurer, the self-insured client's claims administrator and the department, except that the exemption from liability shall not apply:

(A) When the injury, disease, symptom complex or similar condition is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection;

(B) When the worker and the person otherwise exempt under this subsection are not engaged in the furtherance of a common enterprise or the accomplishment of the same or related objectives; or

(C) When the injury, disease, symptom complex or similar condition is proximately caused by failure of the client to comply with the notice posted pursuant to ORS 654.082.

(6) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers or their beneficiaries in excess of the compensation required to be paid under this chapter.

(7) The exclusive remedy provisions and limitation on liability provisions of this chapter apply to all injuries and to diseases, symptom complexes or similar conditions of subject workers arising out of and in the course of employment whether or not they are determined to be compensable under this chapter. [1965 c.285 s.6; 1975 c.115 s.1; 1977 c.514 s.1; 1977 c.804 s.3a; 1987 c.447 s.110; 1989 c.600 s.1; 1993 c.628 s.6; 1995 c.332 s.5; amendments by 1995 c.332 s.5a repealed by 1999 c.6 s.1; 1995 c.733 s.76; 1997 c.275 ss.6,7; 1997 c.491 ss.1,2]

Note: The amendments to 656.018 by section 4, chapter 6, Oregon Laws 1999, become operative December 31, 2004. See section 5, chapter 6, Oregon Laws 1999. The text that is operative on and after December 31, 2004, is set forth for the user's convenience.

656.018. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1) is exclusive and in place of all other liability arising out of compensable injuries to the subject workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such injuries or claims resulting therefrom, specifically including claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such injuries, except as specifically provided otherwise in this chapter.

(b) This subsection shall not apply to claims for indemnity or contribution asserted by a railroad, as defined in ORS 824.020, or by a corporation, individual or association of individuals which is subject to regulation pursuant to ORS chapter 757 or 759.

(c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary to the provisions of paragraph (a) of this subsection entered into after July 19, 1977, are void.

(2) The rights given to a subject worker and the beneficiaries of the subject worker for compensable injuries under this chapter are in lieu of any remedies they might otherwise have for such injuries against the worker's employer under ORS 654.305 to 654.335 or other laws, common law or statute, except to the extent the worker is expressly given the right under this chapter to bring suit against the employer of the worker for an injury.

(3) The exemption from liability given an employer under this section is also extended to the employer's insurer, the self-insured employer's claims administrator, the Department of Consumer and Business Services, and the contracted agents, employees, officers and directors of the employer, the employer's insurer, the self-insured employer's claims administrator and the department, except that the exemption from liability shall not apply:

(a) Where the injury is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection;

(b) Where the worker and the person otherwise exempt under this subsection are not engaged in the furtherance of a common enterprise or the accomplishment of the same or related objectives; or

(c) Where the injury is proximately caused by failure of the employer to comply with the notice posted pursuant to ORS 654.082.

(4) The exemption from liability given an employer under this section applies to a worker leasing company and the client to whom workers are provided when the worker leasing company and the client comply with ORS 656.850 (3).

(5)(a) The exemption from liability given an employer under this section applies to a temporary service provider, as that term is used in ORS 656.850, and also extends to the client to whom workers are provided when the temporary service provider complies with ORS 656.017.

(b) The exemption from liability given a client under paragraph (a) of this subsection is also extended to the client's insurer, the self-insured client's claims administrator, the department, and the contracted agents, employees, officers and directors of the client, the client's insurer, the self-insured client's claims administrator and the department, except that the exemption from liability shall not apply:

(A) When the injury, disease, symptom complex or similar condition is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection;

(B) When the worker and the person otherwise exempt under this subsection are not engaged in the furtherance of a common enterprise or the accomplishment of the same or related objectives; or

(C) When the injury, disease, symptom complex or similar condition is proximately caused by failure of the client to comply with the notice posted pursuant to ORS 654.082.

(6) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers or their beneficiaries in excess of the compensation required to be paid under this chapter.

Note: See notes under 656.202.

656.020 Damage actions by workers against noncomplying employers; defenses outlawed. Actions for damages may be brought by an injured worker or the legal representative of the injured worker against any employer who has failed to comply with ORS 656.017 or is in default under ORS 656.560. Except for the provisions of ORS 656.578 to 656.593 and this section, such noncomplying employer is liable as the noncomplying employer would have been if this chapter had never been enacted. In such actions, it is no defense for the employer to show that:

(1) The injury was caused in whole or in part by the negligence of a fellow-servant of the injured worker.

(2) The negligence of the injured worker, other than a willful act committed for the purpose of sustaining the injury, contributed to the accident.

(3) The injured worker had knowledge of the danger or assumed the risk that resulted in the injury. [1965 c.285 s.7]

656.021 Person performing work under ORS chapter 701 as subject employer. Notwithstanding ORS 656.029 (1), a person who is licensed pursuant to ORS 701.075 and is acting under a contract to perform work described by ORS chapter 701 shall be considered the subject employer for all individuals employed by that person. [1989 c.870 s.13; 1999 c.402 s.7]

Note: The amendments to 656.021 by section 7, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, is set forth for the user's convenience.

656.021 Notwithstanding ORS 656.029 (1), a person who is registered pursuant to ORS 701.075 and is acting under a contract to perform work described by ORS chapter 701 shall be considered the subject employer for all individuals employed by that person.

656.022 [Repealed by 1965 c.285 s.95]

656.023 Who are subject employers. Every employer employing one or more subject workers in the state is subject to this chapter. [1965 c.285 s.8]

656.024 [Amended by 1959 c.448 s.2; repealed by 1965 c.285 s.95]

656.025 Individuals engaged in commuter ridesharing not subject workers; conditions. (1) For the purpose of this chapter, an individual is not a subject worker while commuting in a voluntary commuter ridesharing arrangement unless:

(a) The worker is reimbursed for travel expenses incurred therein;

(b) The worker receives payment for commuting time from the employer; or

(c) The employer makes an election to provide coverage for the worker pursuant to ORS 656.039.

(2) As used in this section "voluntary commuter ridesharing arrangement" means a carpool or vanpool arrangement in which participation is not required as a condition of employment and in which not more than 15 persons are transported to and from their places of employment, in a single daily round trip where the driver also is on the way to or from the driver's place of employment. [1981 c.227 s.4]

656.026 [Amended by 1957 c.440 s.1; 1959 c.448 s.3; repealed by 1965 c.285 s.95]

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

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

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

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

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

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

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

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

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

(6) Workers of any city having a population of more than 200,000 that provides by ordinance or charter compensation equivalent to compensation under this chapter except for the provisions of ORS 656.802 to 656.807.

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

(b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS 701.035. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under ORS 671.525 or

licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

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

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

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

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

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

(A) Two corporate officers; or

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

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

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

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

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national

certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

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

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

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

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

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

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

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

(19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411, 418, 430 or 443.

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

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

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

(23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships

registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

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

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

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

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

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

(A) Two company members; or

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

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor. [1965 c.285 s.9; 1971 c.386 s.1; 1977 c.683 s.1; 1977 c.817 s.2; 1977 c.835 s.7; 1979 c.821 s.1; 1981 c.225 s.1; 1981 c.444 s.1; 1981 c.535 s.3; 1981 c.839 s.1; 1983 c.341 s.1; 1983 c.541 s.1; 1983 c.579 s.3; 1985

c.431 s.1; 1985 c.706 s.2; 1987 c.94 s.168; 1987 c.414 s.161; 1987 c.800 s.2; 1989 c.762 s.4; 1990 c.2 s.4; 1991 c.469 s.1; 1991 c.707 s.1; 1993 c.18 s.138a; 1993 c.494 s.2; 1993 c.777 s.10; 1995 c.93 s.32; 1995 c.216 ss.3, 3a; 1995 c.332 s.6; 1997 c.337 s.1; 1999 c.314 s.91; 1999 c.402 s.8]

Note: The amendments to 656.027 by section 8, chapter 402, Oregon Laws 1999, become operative July 1, 2000. See section 43, chapter 402, Oregon Laws 1999. The text that is operative until July 1, 2000, including amendments by section 91, chapter 314, Oregon Laws 1999, is set forth for the user's convenience.

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

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

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

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

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

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

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

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

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

(6) Workers of any city having a population of more than 200,000 that provides by ordinance or charter compensation equivalent to compensation under this chapter except for the provisions of ORS 656.802 to 656.807.

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

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

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or

appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

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

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

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

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

(A) Two corporate officers; or

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

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

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

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

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

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

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

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

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

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

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

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

(19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411, 418, 430 or 443.

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

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

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

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

(A) Two partners; or

(B) One partner for each 10 partnership employees.

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

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations registered under ORS 671.510 to 671.710 or ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

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

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

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

(A) Two company members; or

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

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

656.028 [Amended by 1959 c.448 s.4; repealed by 1965 c.285 s.95]

656.029 Obligation of person letting contract to provide coverage for workers under contract; exceptions; effect of failure to provide coverage. (1) If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance

coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(2) If a person to whom the contract is awarded is exempt from coverage under ORS 656.027, and that person engages individuals who are not exempt under ORS 656.027 in the performance of the contract, that person shall provide workers' compensation insurance coverage for all such individuals. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person to whom the contract is awarded, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(3) As used in this section:

(a) “Person” includes partnerships, joint ventures, associations, corporations, limited liability companies, governmental agencies and sole proprietorships.

(b) “Sole proprietorship” means a business entity or individual who performs labor without the assistance of others. [1979 c.864 s.2; 1981 c.725 s.1; 1981 c.854 s.4; 1983 c.397 s.1; 1983 c.579 s.2a; 1985 c.706 s.1; 1989 c.762 s.5; 1995 c.93 s.34; 1995 c.332 s.6a]

656.030 [Repealed by 1959 c.448 s.14]

656.031 Coverage for municipal volunteer personnel. (1) All municipal personnel, other than those employed full-time, part-time, or substitutes therefor, shall, for the purpose of this chapter, be known as volunteer personnel and shall not be considered as workers unless the municipality has filed the election provided by this section.

(2) The county, city or other municipality utilizing volunteer personnel as specified in subsection (1) of this section may elect to have such personnel considered as subject workers for purposes of this chapter. Such election shall be made by filing a written application to the insurer, or in the case of a self-insured employer, the Director of the Department of Consumer and Business Services, that includes a resolution of the governing body declaring its intent to cover volunteer personnel as provided in subsection (1) of this section and a description of the work to be performed by such personnel. The application shall also state the estimated total number of volunteer personnel on a roster for each separate category for which coverage is elected. The county, city or other municipality shall notify the insurer, or

in the case of self-insurers, the director, of changes in the estimated total number of volunteers.

(3) Upon receiving the written application the insurer or self-insured employer may fix assumed wage rates for the volunteer personnel, which may be used only for purposes of computations under this chapter, and shall require the regular payment of premiums or assessments based upon the estimated total numbers of such volunteers carried on the roster for each category being covered. The self-insured employer shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The county, city or municipality shall maintain separate official membership rosters for each category of volunteers. A certified copy of the official membership roster shall be furnished the insurer or director upon request. Persons covered under this section are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their employment as volunteer personnel, if the duties being performed are among those:

(a) Described on the application of the county, city or municipality; and

(b) Required of similar full-time paid employees.

(5) The filing of claims for benefits under this section is the exclusive remedy of a volunteer or a beneficiary of the volunteer for injuries compensable under this chapter against the state, its political subdivisions, their officers, employees, or any employer, regardless of negligence. [Formerly 656.088; amended by 1969 c.527 s.1; 1977 c.72 s.1; 1979 c.815 s.2; 1981 c.854 s.5; 1981 c.874 s.1]

656.032 [Amended by 1959 c.451 s.1; repealed by 1965 c.285 s.95]

656.033 Coverage for participants in work experience or school directed professional training programs. (1) All persons participating as trainees in a work experience program or school directed professional education project of a school district as defined in ORS 332.002 in which such persons are enrolled, including mentally retarded persons in training programs, are considered as workers of the district subject to this chapter for purposes of this section. Trainees placed in a work experience program with their resident school district as the training employer shall be subject workers under this section when the training and supervision are performed by noninstructional personnel.

(2) A school district conducting a work experience program or school directed professional education project shall submit a written statement to the insurer, or in the case of self-insurers, the Director of the Department of Consumer and Business Services, that includes a description of the work to be performed by such persons and an estimate of the total number of persons enrolled.

(3) The premium cost for coverage under this section shall be based on an assumed hourly wage which is approved by the Director of the Department of Consumer and Business Services. Such assumed wage is to be used only for

calculation purposes under this chapter and without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991. A self-insured district shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The school district shall furnish the insurer, or in the case of self-insurers, the director, with an estimate of the total number of persons enrolled in its work experience program or school directed professional education project and shall notify the insurer or director of any significant changes therein. Persons covered under this section are entitled to the benefits of this chapter. However, such persons are not entitled to benefits under ORS 656.210 or 656.212. They are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program or school directed professional education project, provided the duties being performed are among those:

(a) Described on the application of the school district; and

(b) Required of similar full-time paid employees.

(5) The filing of claims for benefits under this section is the exclusive remedy of a trainee or a beneficiary of the trainee for injuries compensable under this chapter against the state, its political subdivisions, the school district board, its members, officers and employees, or any employer, regardless of negligence.

(6) The provisions of this section shall be inapplicable to any trainee who has earned wages for such employment.

(7) As used in this section, “school directed professional education project” means an on-campus or off-campus project supervised by school personnel and which is an assigned activity of a local professional education program approved pursuant to operating procedures of the State Board of Education. A school directed professional education project must be of a practicum experience nature, performed outside of a classroom environment and extending beyond initial instruction or demonstration activities. Such projects are limited to logging, silvicultural thinning, slash burning, fire fighting, stream enhancement, woodcutting, reforestation, tree surgery, construction, printing and manufacturing involving formed metals.

(8) Notwithstanding subsection (1) of this section, a school district may elect to make trainees subject workers under this chapter for school directed professional education projects not enumerated in subsection (7) of this section by making written request to the district's insurer, or in the case of a self-insured district, the director, with coverage to begin no sooner than the date the request is received by the insurer or director. The request for coverage shall include a description of the work to be performed under the project and an estimate of the number of participating trainees. The insurer or director shall accept a request that meets the criteria of this section. [1967 c.374 s.2; 1979 c.814 s.2a; 1979 c.815 s.3; 1981 c.874 s.2; 1987 c.489 s.1; 1989 c.491 s.63; 1991 c.534 s.1; 1995 c.343 s.52]

656.034 [Amended by 1959 c.441 s.1; 1959 c.448 s.5; repealed by 1965 c.285 s.95]

656.035 Status of workers in separate occupations of employer. If an employer is engaged in an occupation in which the employer employs one or more subject workers and is also engaged in a separate occupation in which there are no subject workers, the employer is not subject to this chapter as to that separate occupation, nor are the workers wholly engaged in that occupation subject to this chapter. [1965 c.285 s.10]

656.036 [Amended by 1957 c.441 s.2; 1959 c.448 s.6; repealed by 1965 c.285 s.95]

656.037 Exemption from coverage for persons engaged in certain real estate activities. A person contracting to pay remuneration for professional real estate activity as defined in ORS chapter 696 to a qualified real estate agent, as defined in ORS 316.209, is not an employer of that qualified real estate agent under the Workers' Compensation Law. A qualified real estate agent is not entitled to benefits under the Workers' Compensation Law unless such individual has obtained coverage for such benefits pursuant to ORS 656.128. [1983 c.597 s.5]

656.038 [Repealed by 1965 c.285 s.95]

656.039 Employer may elect to provide coverage for workers not subject to law; procedure; cancellation. (1) An employer of one or more persons defined as nonsubject workers or not defined as subject workers may elect to make them subject workers. If the employer is or becomes a carrier-insured employer, the election shall be made by filing written notice thereof with the insurer with a copy to the Director of the Department of Consumer and Business Services. The effective date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

(2) Any election under subsection (1) of this section may be canceled by written notice thereof to the insurer or, in the case of a self-insured employer, by notice thereof to the director. The cancellation is effective at 12 midnight ending the day the notice is received by the insurer or the director, unless a later date is specified in the notice. The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director.

(3) When necessary the insurer or the director shall fix assumed minimum or maximum wages for persons made subject workers under this section.

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to a guaranty contract insurer for coverage. An insurer other than the State Accident Insurance

Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool. [1965 c.285 s.11; 1975 c.556 s.22; 1979 c.839 s.1; 1981 c.854 s.6; 1983 c.816 s.1; 1985 c.212 s.2]

656.040 [Amended by 1959 c.448 s.7; repealed by 1965 c.285 s.95]

656.041 City or county may elect to provide coverage for jail inmates. (1) As used in this section, unless the context requires otherwise:

(a) "Authorized employment" means the employment of an inmate on work authorized by the governing body of a city or county.

(b) "Inmate" means a person sentenced by any court or legal authority, whether in default of the payment of a fine or committed for a definite number of days, to serve sentence in a city or county jail or other place of incarceration except state and federal institutions. "Inmate" includes a person who performs community service pursuant to ORS 137.128, whether or not the person is incarcerated.

(2) A city or county may elect to have inmates performing authorized employment considered as subject workers of the city or county for purposes of this chapter. Such election shall be made by a written application to the insurer, or in the case of a self-insured employer, the Director of the Department of Consumer and Business Services, that includes a resolution of the governing body declaring its intent to cover inmates as provided in this section and a description of the work to be performed by such inmates. The application shall also state the estimated total number of inmates for which coverage is requested. The county or city shall notify the insurer or director of changes in the estimated total number of inmates performing authorized employment.

(3) Upon receiving the written application the insurer or self-insured employer may fix assumed wage rates for the inmates, which may be used only for purposes of computations under this chapter, and shall require the regular payment of premiums or assessments based upon the estimated total number of such inmates for which coverage is requested. The self-insured employer shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The city or county shall maintain a separate list of inmates performing authorized employment. A certified copy of the list shall be furnished the insurer or director upon request. Inmates covered under this section are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their participation in the authorized employment, provided the duties being performed are among those described on the application of the city or county.

(5) The filing of claims for benefits under this section is the exclusive remedy of an inmate or a beneficiary of the inmate for injuries compensable under this chapter against a city or county and its officers and employees, regardless of negligence. [1967 c.472 ss.2, 3; 1977 c.807 s.1; 1979 c.815 s.4; 1981 c.854 s.7; 1981 c.874 s.3; 1983 c.706 s.2]

656.042 [Amended by 1959 c.448 s.8; repealed by 1965 c.285 s.95]

656.043 Governmental agency paying wages responsible for providing coverage. Except as otherwise provided in ORS 656.029 to 656.033 and 656.041, but notwithstanding any other provision of law, the state or any city, county, district, or agency thereof, that pays the wages of a subject worker is responsible for providing workers' compensation insurance coverage for that worker. [1987 c.414 s.183]

656.044 SAIF Corporation may insure liability under Longshoremen's and Harbor Workers' Compensation Act; procedure; cancellation. (1) The State Accident Insurance Fund Corporation may insure Oregon employers against their liability for compensation under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 to 950) or any Act amendatory or supplementary thereto or in lieu thereof, as fully as any private insurance carrier.

(2) The State Accident Insurance Fund Corporation may, from time to time, fix rates of contributions to be paid by such employers. These rates shall be based upon the costs of inspection and other administration, the hazard of the occupation and the accident experience of the employers. The State Accident Insurance Fund Corporation may require a minimum annual premium, contributions, assessments and fees from such employers.

(3) All claims for compensation and other costs arising from such insurance shall be paid from the Industrial Accident Fund.

(4) The State Accident Insurance Fund Corporation or any employer may cancel any insurance coverage issued under this section by giving notice as required by the Longshoremen's and Harbor Workers' Compensation Act, or the rules or regulations made in pursuance thereof. [Amended by 1965 c.285 s.13; 1981 c.876 s.2]

656.046 Coverage of persons in college work experience and professional education programs. (1) All persons registered at a college and participating as unpaid trainees in a work experience program who are subject to the direction of noncollege-employed supervisors, and those trainees participating in college directed professional education projects, are considered workers of the college subject to this chapter for purposes of this section. However, trainees who are covered by the Federal Employees Compensation Act shall not be subject to the provisions of this section.

(2) A college conducting a work experience program or college directed professional education project shall submit a written statement to the insurer, or in

the case of self-insurers, to the Director of the Department of Consumer and Business Services, that includes a description of the work to be performed by such persons and an estimate of the total number of persons enrolled in the program or project.

(3) Persons covered under this section are entitled to the benefits of this chapter. However, such persons are not entitled to benefits under ORS 656.210 or 656.212. They are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program or college directed professional education project, provided the duties being performed are among those:

(a) Described on the application of the college; and

(b) Required of similar full-time paid employees.

(4) The filing of claims for benefits under this section is the exclusive remedy of a trainee or a beneficiary of the trainee for injuries compensable under this chapter against the state, its political subdivisions, the college district board, members, officers and employees of the board or any employer, regardless of negligence.

(5) A college may elect to make trainees subject to this chapter for college directed professional education projects not enumerated in subsection (8) of this section or for work experience programs under the direction of college-employed supervisors by filing a written request with the insurer of the college, or in the case of self-insured colleges, with the director. Coverage under such election shall become effective no sooner than the date of receipt by the insurer. The coverage request shall include a description of the work to be performed and an estimate of the number of participating trainees. The insurer or director shall accept a request that meets the criteria of this section.

(6) The provisions of this section shall be inapplicable to any trainee who has earned wages for such employment.

(7) As used in this section, "college" means any community college district or community college service district as defined in ORS chapter 341.

(8) As used in this section, "college directed professional education project" means an assigned on-campus or off-campus project that is a component of a program approved by the college board or the operating procedures of the State Board of Education and involves work that provides practical experience beyond the initial instruction and demonstration phases, performed outside of the college classroom or laboratory environment and requiring substantial hands-on participation by trainees. Such projects are further limited to logging, silvicultural thinning, slash burning, fire fighting, stream enhancement, woodcutting, reforestation, tree surgery, construction, printing and manufacturing involving formed metals. [1991 c.534 s.3; 1993 c.18 s.139; 1995 c.343 s.53]

656.052 Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply; joint and several liability of corporation, officers and directors. (1) No person shall engage

as a subject employer unless and until the person has provided coverage pursuant to ORS 656.017 for subject workers the person employs.

(2) Whenever the Director of the Department of Consumer and Business Services has reason to believe that any person has violated subsection (1) of this section, the director shall serve upon the person a proposed order declaring the person to be a noncomplying employer and containing the amount, if any, of civil penalty to be assessed pursuant to ORS 656.735 (1).

(3) If any person fails to comply with ORS 656.017 after an order declaring the person to be a noncomplying employer has become final by operation of law or on appeal, the circuit court of the county in which the person resides or in which the person employs workers shall, upon the commencement of a suit by the director for that purpose, permanently enjoin the person from employing subject workers without complying with ORS 656.017. Upon the filing of such a suit, the court shall set a day for hearing and shall cause notice thereof to be served upon the noncomplying employer. The hearing shall be not less than five days from the service of the notice.

(4) The court may award reasonable attorney fees to the director if the director prevails in an action under subsection (3) of this section. The court may award reasonable attorney fees to a defendant who prevails in an action under subsection (3) of this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [Amended by 1957 c.574 s.2; 1965 c.285 s.14; 1967 c.341 s.4; 1973 c.447 s.1; 1987 c.234 s.1; 1990 c.2 s.5; 1995 c.332 s.6b; 1995 c.696 s.43]

656.054 Claim of injured worker of noncomplying employer; procedure for disputing acceptance of claim; notice of proposed penalty; recovery of costs from noncomplying employer; restrictions. (1) A compensable injury to a subject worker while in the employ of a noncomplying employer is compensable to the same extent as if the employer had complied with this chapter. The Director of the Department of Consumer and Business Services shall refer the claim for such an injury to an assigned claims agent within 60 days of the date the director has notice of the claim. At the time of referral of the claim, the director shall notify the employer in writing regarding the referral of the claim and the employer's right to object to the claim. A claim for compensation made by such a worker shall be processed by the assigned claims agent in the same manner as a claim made by a worker employed by a carrier-insured employer, except that the time within which the first installment of compensation is to be paid, pursuant to ORS 656.262 (4), shall not begin to run until the director has referred the claim to the assigned claims agent. At any time within which the claim may be accepted or denied as provided in ORS 656.262, the employer may request a hearing to object to the claim. If an order becomes final holding the claim to be compensable, the employer is liable for all costs imposed by this chapter, including reasonable attorney fees to be paid to the

worker's attorney for services rendered in connection with the employer's objection to the claim.

(2) Whenever a subject worker suffers a compensable injury while in the employ of a noncomplying employer, the director shall, after an order closing the claim has become final, serve upon the employer a notice of proposed penalty to be assessed pursuant to ORS 656.735 (3).

(3) In addition to, and not in lieu of, any civil penalties assessed pursuant to ORS 656.735, all costs to the Workers' Benefit Fund incurred under subsection (1) of this section shall be a liability of the noncomplying employer. Such costs include compensation, disputed claim settlements pursuant to ORS 656.289 and claim disposition agreements pursuant to ORS 656.236, whether or not the noncomplying employer agrees and executes such documents, reasonable administrative costs and claims processing costs provided by contract, attorney fees related to compensability issues and any attorney fees awarded to the claimant, but do not include assessments for reserves in the Workers' Benefit Fund. The director shall recover such costs from the employer. The director periodically shall pay the assigned claims agent from the Workers' Benefit Fund for any costs the assigned claims agent incurs under this section in accordance with the terms of the contract. When the director prevails in any action brought pursuant to this subsection, the director is entitled to recover from the noncomplying employer court costs and attorney fees incurred by the director.

(4) Periodically, or upon the request of a noncomplying employer in a particular claim, the director shall audit the files of the State Accident Insurance Fund Corporation and any assigned claims agents to validate the amount reimbursed pursuant to subsection (3) of this section. The conditions for granting or denying of reimbursement shall be specified in the contract with the assigned claims agent. The contract at least shall provide for denial of reimbursement if, upon such audit, any of the following are found to apply:

(a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the director.

(5) The State Accident Insurance Fund Corporation and any assigned claims agent may appeal any disapproval of reimbursement made by the director under this section pursuant to ORS 183.310 to 183.550 and such procedural rules as the director may prescribe.

(6) Claims of injured workers of noncomplying employers may be assigned and reassigned by the director for claims processing regardless of the date of the worker's injury.

(7) In selecting an assigned claims agent, the director must consider the assigned claims agent's ability to deliver timely and appropriate benefits to injured workers, the ability to control both claims cost and administrative cost and such other factors as the director considers appropriate.

(8) If no qualified entity agrees to be an assigned claims agent, the director may require one or more of the three highest premium producing insurers to be assigned claims agents. Notwithstanding any other provision of law, the director's selection of assigned claims agents shall be made at the sole discretion of the director. Such selections shall not be subject to review by any court or other administrative body.

(9) Any assigned claims agent, except the State Accident Insurance Fund, may employ legal counsel of its choice for representation under this section, provided the counsel selected is authorized by the Attorney General to act as a special assistant attorney general.

(10) As used in this section, "assigned claims agent" means an insurer, casualty adjuster or a third party administrator with whom the director contracts to manage claims of injured workers of noncomplying employers. [Amended by 1959 c.448 s.9; 1965 c.285 s.15; 1967 c.341 s.5; 1971 c.72 s.1; 1973 c.447 s.2; 1979 c.839 s.2; 1981 c.854 s.8; 1983 c.816 s.2; 1987 c.234 s.2; 1987 c.250 s.3; 1991 c.679 s.1; 1995 c.332 s.7; 1995 c.641 s.17; 1999 c.1020 s.1]

Note: See notes under 656.202.

Note: Section 9, chapter 332, Oregon Laws 1995, provides:

Sec. 9. The amendments to ORS 656.054 by section 7 of this 1995 Act do not remove the authority of the Director of the Department of Consumer and Business Services to audit files of the State Accident Insurance Fund Corporation for claims against noncomplying employers assigned to the State Accident Insurance Fund Corporation prior to the effective date of this 1995 Act [June 7, 1995]. [1995 c.332 s.9]

656.056 Subject employers must post notice of manner of compliance. (1) All subject employers shall display in a conspicuous manner about their works, and in a sufficient number of places reasonably to inform their workers of the fact, printed notices furnished by the Director of the Department of Consumer and Business Services stating that they are subject to this chapter and the manner of their compliance with this chapter.

(2) No employer who is not currently a subject employer shall post or permit to remain on or about the place of business or premises of the employer any notice that the employer is subject to, and complying with, this chapter. [Amended by 1965 c.285 s.16]

656.070 Definitions for ORS 656.027 and 656.075. As used in ORS 656.027, 656.075 and this section:

(1) "Newspaper" has the meaning for that term provided in ORS 193.010.

(2) "Newspaper carrier" means an individual age 18 years or younger who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and performs or undertakes any necessary or attendant functions related thereto, but receives no salary or wages, other than sales incentives or bonuses, for the performance of those duties from the newspaper publishing company or independent newspaper dealer or contractor. "Newspaper carrier" includes any individual appointed or utilized on a temporary basis by a newspaper carrier, a newspaper publishing company or independent newspaper dealer or contractor to perform any or all of the duties of a newspaper carrier. [1977 c.835 s.3; 1981 c.535 s.52]

656.075 Exemption from coverage for newspaper carriers; casualty insurance and other requirements. An individual qualifies for the exemption provided in ORS 656.027 only if the newspaper publishing company or independent newspaper dealer or contractor utilizing the individual:

(1) Encourages any minor so utilized to remain in school and attend classes;

(2) Encourages any minor so utilized to not allow newspaper carrier duties to interfere with any school activities of the individual; and

(3) Provides accident insurance coverage for the individual while the individual is engaged in newspaper carrier duties that is at least equal to the following:

(a) $250,000 unallocated hospital and medical benefits;

(b) $10 per week lost time benefits for a period of 52 weeks; and

(c) $5,000 accidental death and dismemberment benefit.

(4) Provides the individual with a clear, written explanation or description of the amount and the terms and conditions of the insurance coverage required by this section, including a specific statement that the insurance coverage is in lieu of benefits under the Workers' Compensation Law. [1977 c.835 s.4; 1981 c.535 s.53]

656.082 [Repealed by 1965 c.285 s.95]

656.084 [Amended by 1959 c.448 s.10; repealed by 1965 c.285 s.95a]

656.086 [Repealed by 1965 c.285 s.95]

656.088 [Amended by 1955 c.320 s.1; 1965 c.285 s.17; renumbered 656.031]

656.090 [Amended by 1953 c.673 s.2; 1959 c.448 s.11; repealed by 1965 c.285 s.97]

656.120 [1969 c.527 s.3; repealed by 1979 c.815 s.9]

656.122 [Repealed by 1965 c.285 s.95]

656.124 [Amended by 1957 c.554 s.1; repealed by 1965 c.285 s.95]

656.126 Coverage while temporarily in or out of state; judicial notice of other state's laws; agreements between states relating to conflicts of jurisdiction; limitation on compensation for claims in this state and other jurisdictions. (1) If a worker employed in this state and subject to this chapter temporarily leaves the state incidental to that employment and receives an accidental injury arising out of and in the course of employment, the worker, or beneficiaries of the worker if the injury results in death, is entitled to the benefits of this chapter as though the worker were injured within this state.

(2) Any worker from another state and the employer of the worker in that other state are exempted from the provisions of this chapter while that worker is temporarily within this state doing work for the employer:

(a) If that employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than Oregon so as to cover that worker's employment while in this state;

(b) If the extraterritorial provisions of this chapter are recognized in that other state; and

(c) If employers and workers who are covered in this state are likewise exempted from the application of the workers' compensation insurance or similar laws of the other state.

The benefits under the workers' compensation insurance Act or similar laws of the other state, or other remedies under a like Act or laws, are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the worker while working for that employer in this state.

(3) A certificate from the duly authorized officer of the Department of Consumer and Business Services or similar department of another state certifying that the employer of the other state is insured therein and has provided extraterritorial coverage insuring workers while working within this state is prima facie evidence that the employer carries that workers' compensation insurance.

(4) Whenever in any appeal or other litigation the construction of the laws of another jurisdiction is required, the courts shall take judicial notice thereof.

(5) The Director of the Department of Consumer and Business Services shall have authority to enter into agreements with the workers' compensation agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of workers hired in such other state and injured while temporarily in Oregon, or hired

in Oregon and injured while temporarily in another state, or where the jurisdiction is otherwise uncertain, shall be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements.

(6) When a worker has a claim under the workers' compensation law of another state, territory, province or foreign nation for the same injury or occupational disease as the claim filed in Oregon, the total amount of compensation paid or awarded under such other workers' compensation law shall be credited against the compensation due under Oregon workers' compensation law. The worker shall be entitled to the full amount of compensation due under Oregon law. If Oregon compensation is more than the compensation under another law, or compensation paid the worker under another law is recovered from the worker, the insurer shall pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law. [Amended by 1955 c.723 s.1; 1957 c.474 s.1; 1977 c.804 s.4; 1989 c.684 s.1; 1995 c.332 s.10; 1997 c.234 s.1]

656.128 Sole proprietors, limited liability company members, partners, independent contractors may elect coverage by insurer; cancellation. (1) Any person who is a sole proprietor, or a member, including a member who is a manager, of a limited liability company, or a member of a partnership, or an independent contractor pursuant to ORS 670.600, may make written application to an insurer to become entitled as a subject worker to compensation benefits. Thereupon, the insurer may accept such application and fix a classification and an assumed monthly wage at which such person shall be carried on the payroll as a worker for purposes of computations under this chapter.

(2) When the application is accepted, such person thereupon is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever the status of the person as an employer of subject workers changes. Any subject worker employed by such a person after the effective date of the election of the person shall, upon being employed, be considered covered automatically by the same guaranty contract that covers such person.

(3) No claim shall be allowed or paid under this section, except upon corroborative evidence in addition to the evidence of the claimant.

(4) Any person subject to this chapter as a worker as provided in this section may cancel such election by giving written notice to the insurer. The cancellation shall become effective at 12 midnight ending the day of filing the notice with the insurer. [Amended by 1957 c.440 s.2; 1959 c.448 s.12; 1965 c.285 s.18; 1969 c.400 s.1; 1975 c.556 s.23; 1981 c.854 s.9; 1981 c.876 s.3; 1993 c.777 s.11; 1995 c.93 s.33; 1995 c.332 s.11]

656.130 [Amended by 1957 c.574 s.3; repealed by 1959 c.448 s.14]

656.132 Coverage of minors. (1) A minor working at an age legally permitted under the laws of this state is considered sui juris for the purpose of this chapter. No other person shall have any cause of action or right to compensation for an injury to

such minor worker, except as expressly provided in this chapter, but in the event of a lump-sum payment becoming due under this chapter to such minor worker, the control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

(2) If an employer subject to this chapter in good faith employed a minor under the age permitted by law, believing the minor to be of lawful age, and the minor sustains an injury or suffers death in such employment, the minor is conclusively presumed to have accepted the provisions of this chapter. The Director of the Department of Consumer and Business Services may determine conclusively the good faith of such employer unless the employer possessed at the time of the accident resulting in such injury or death a certificate from some duly constituted authority of this state authorizing the employment of the minor in the work in which the minor was then engaged. Such certificate is conclusive evidence of the good faith of such employer.

(3) If the employer holds no such certificate and the director finds that the employer did not employ such minor in good faith, the minor is entitled to the benefits of this chapter, but the employer shall pay to the Consumer and Business Services Fund by way of penalty a sum equal to 25 percent of the amount paid out or set apart under such statutes on account of the injury or death of such minor, but such penalty shall be not less than $100 nor exceed $500. [Amended by 1959 c.448 s.13; 1985 c.212 s.3]

656.135 Coverage of deaf school, blind school work experience trainees. (1) As used in this section "school" means the Oregon State School for the Deaf or the Oregon State School for the Blind.

(2) All persons participating as trainees in a work experience program of a school in which such persons are enrolled are considered as workers of the school subject to this chapter for purposes of this section.

(3) On behalf of a school conducting a work experience program, the Department of Education shall submit a written statement to the State Accident Insurance Fund Corporation that includes a description of the work to be performed by such persons.

(4) Upon receiving the written statement, the corporation may fix assumed wage rates for the persons enrolled in the work experience program, without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991, which may be used only for purposes of computations under this chapter.

(5) The Department of Education shall furnish the corporation with a list of the names of those enrolled in work experience programs in the schools and shall notify the corporation of any changes therein. Only those persons whose names appear on such list prior to their personal injury by accident are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program, provided the duties being performed are among those:

(a) Described on the application of the department; and

(b) Required of similar full-time paid employees.

(6) The filing of claims for benefits under this section is the exclusive remedy of a trainee or beneficiary of the trainee for injuries compensable under this chapter against the state, the school, the department, its officers and employees, or any employer, regardless of negligence.

(7) The provisions of this section shall be inapplicable to any trainee who is earning wages for such employment. [1969 c.406 s.2]

656.138 Coverage of apprentices, trainees participating in related instruction classes. (1) All persons registered as apprentices or trainees and participating in related instruction classes conducted by a school district, community college district or education service district in accordance with the requirements of ORS chapter 660 or section 50, title 29, United States Code as of September 13, 1975, are considered as workers of the school district, community college district or education service district subject to this chapter.

(2) A school district, community college district or education service district conducting related instruction classes shall submit a written statement to the insurer, or in the case of self-insurers, the Director of the Department of Consumer and Business Services, that includes a description of the related instruction to be given to such apprentices or trainees and an estimate of the total number of persons enrolled.

(3) Upon receiving the written statement, the insurer, or in the case of self-insurers, the director, may fix assumed wage rates for those apprentices or trainees participating in related instruction classes, which may be used only for the purposes of computations under this chapter.

(4) The State Apprenticeship and Training Council shall furnish the insurer, or in the case of self-insurers, the director, and the school district, community college district or education service district with an estimate of the total number of apprentices or trainees approved by it for participation in related instruction classes subject to coverage under this section and any significant changes in the estimated total. Apprentices and trainees as provided in subsection (1) of this section are entitled to benefits under this chapter.

(5) The filing of claims for benefits under the authority of this section is the exclusive remedy of apprentices or trainees or their beneficiaries for injuries compensable under this chapter against the state, its political subdivisions, the school district, community college district or education service district, their members, officers and employees, or any employer, regardless of negligence.

(6) This section does not apply to any apprentice or trainee who has earned wages for performing such duties. [1971 c.634 s.2; 1975 c.775 s.1; 1979 c.815 s.5]

656.140 Coverage of persons operating equipment for hire. (1) Any person, or persons operating as partners, who have an ownership or leasehold interest in equipment and are engaged in the business of operating such equipment for hire,

may elect to cover themselves under the Workers' Compensation Law by filing with an insurer a written application to become entitled as subject workers to the benefits of the Workers' Compensation Law.

(2) As used in this section “equipment” means:

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

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

(c) A backhoe or other similar equipment used for digging and filling ditches or trenches.

(d) A tractor.

(e) Any other motor vehicle or heavy equipment of a kind commonly operated for hire.

(3) The insurer may accept such application and fix a classification and an assumed monthly wage at which such person, or persons operating as partners, shall be carried on the payroll as workers for purposes of computations under this chapter.

(4) When the application is accepted, such person, or persons operating as partners, become subject workers. Thereupon, such person, or persons operating as partners, shall be subject to this chapter as a subject employer notwithstanding ORS 656.023 and shall be entitled to benefits as subject workers.

(5) No claim shall be allowed or paid under this section, except upon corroborative evidence in addition to the evidence of the claimant.

(6) Any person, or persons operating as partners, electing coverage under this section, have the same duties and responsibilities of any other subject employer in the event they hire one or more subject workers.

(7) The rights given to a person, or persons operating as partners, and their beneficiaries pursuant to this section for injuries compensable under this chapter are in lieu of any remedies they might otherwise have for such injuries against the person for whom services are being performed. [1969 c.463 s.2; 1975 c.556 s.24; 1981 c.854 s.10; 1981 c.876 s.4]

656.152 [Amended by 1957 c.718 s.2; repealed by 1965 c.285 s.95]

656.154 Injury due to negligence or wrong of a person not in the same employ as injured worker; remedy against such person. If the injury to a worker is due to the negligence or wrong of a third person not in the same employ, the injured worker, or if death results from the injury, the spouse, children or other dependents, as the case may be, may elect to seek a remedy against such third person. [Amended by 1959 c.504 s.1; 1975 c.152 s.1; 1985 c.212 s.4]

656.156 Intentional injuries. (1) If injury or death results to a worker from the deliberate intention of the worker to produce such injury or death, neither the worker nor the widow, widower, child or dependent of the worker shall receive any payment whatsoever under this chapter.

(2) If injury or death results to a worker from the deliberate intention of the employer of the worker to produce such injury or death, the worker, the widow, widower, child or dependent of the worker may take under this chapter, and also have cause for action against the employer, as if such statutes had not been passed, for damages over the amount payable under those statutes. [Amended by 1965 c.285 s.20]

656.160 Effect of incarceration on receipt of compensation. (1) Notwithstanding any other provision of this chapter, an injured worker is not eligible to receive compensation under ORS 656.210 or 656.212 for periods of time during which the worker is incarcerated for the commission of a crime.

(2) As used in this section, an individual is not "incarcerated" if the individual is on parole or work release status. [1990 c.2 s.50]

656.170 Validity of provisions of certain collective bargaining agreements; alternative dispute resolution systems; exclusive medical service provider lists; authority of director. (1) In a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance or activities limited to rock, sand, gravel, cement and asphalt operations, heavy duty mechanics, surveying or construction inspection, and a union that is the recognized or certified exclusive bargaining representative, a provision establishing either of the following is valid and binding:

(a) An alternative dispute resolution system governing disputes between employees, employers and their insurers that supplements or replaces all or part of the dispute resolution processes of this chapter, including but not limited to provisions:

(A) Establishing any limitations on the liability of the employer while determinations regarding the compensability of an injury are being made;

(B) Describing the method for resolving disputes involving compensability of injuries under the alternative dispute resolution system and the amount of compensation due for a compensable injury and for medical and legal services;

(C) Relating to the payment of compensation for injuries incurred when the collective bargaining agreement is terminated or when an injured worker is no longer subject to the agreement; and

(D) Establishing arbitration and mediation procedures; or

(b) The use of a list of medical service providers that the parties may agree is the exclusive source of all medical treatment provided under this chapter.

(2) Any decision, order or award of compensation issued under an agreed upon alternative dispute resolution system adopted under subsection (1)(a) of this section is subject to review in the same manner as provided for the review of an order of an Administrative Law Judge pursuant to the provisions of this chapter.

(3) Nothing in this section allows a collective bargaining agreement that diminishes the entitlement of an employee to compensation as provided in this chapter. The portion of an agreement that violates this subsection is void.

Notwithstanding any other provision of law, original jurisdiction over the compliance of a proposed collective bargaining agreement with this subsection is with the Director of the Department of Consumer and Business Services. The director shall determine the compliance of the agreement with this subsection prior to the agreement becoming operative. The decision of the director is subject to review as provided under ORS 183.310 to 183.550 and no other review of the director's decision shall be allowed. [1999 c.841 s.2]

656.172 Applicability of and criteria for establishing program under ORS 656.170. (1) ORS 656.170 applies only to:

(a) An employer incurring or projecting an annual workers' compensation insurance premium in Oregon of at least $250,000 or an employer that paid an annual workers' compensation insurance premium in Oregon of at least $250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect.

(b) An employer who qualifies as a self-insured employer under ORS 656.407 and 656.430 that is incurring or projecting annual workers' compensation costs of at least $250,000 or who has had annual workers' compensation costs of at least $250,000 in one of the three years prior to the year in which the collective bargaining agreement takes effect.

(c) A group of employers who combine for the purpose of obtaining workers' compensation insurance as provided by ORS 737.316 and incur or project annual workers' compensation premiums of at least $1 million.

(d) A group of employers who qualify as a self-insured employer group under ORS 656.430 and incur or project annual workers' compensation costs of at least $1 million.

(e) Employers covered by a wrap-up insurance policy provided by an owner or general contractor and authorized by ORS 737.602 and 737.604 or chapter 548, Oregon Laws 1991, or chapter 7, Oregon Laws 1993, and that requires payment of annual workers' compensation premiums of $1 million or more for coverage of those employees covered by the wrap-up insurance policy.

(2) An employer or group of employers may not establish or continue a program established under ORS 656.170 until:

(a) The employer has provided the Director of the Department of Consumer and Business Services with the following:

(A) Upon original application and whenever the collective bargaining agreement is renegotiated, a copy of the collective bargaining agreement and an estimate of the number of employees covered by the collective bargaining agreement;

(B) Upon original application and annually thereafter, a valid license when that license is required as a condition of doing business in Oregon;

(C) Upon original application and annually thereafter, a signed, sworn statement that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement;

(D) Upon original application and annually thereafter, the name, address and telephone number of the contact person of the employer or group of employers; and

(E) A statement from the insurer or self-insured employer that the insurer or self-insured employer is willing to insure the risk under the terms of the collective bargaining agreement; and

(b) The director has approved the proposed program.

(3) A collective bargaining representative may not establish or continue to participate in a program established under ORS 656.170 until:

(a) The collective bargaining representative has provided the following to the director:

(A) Upon original application and annually thereafter, a copy of the most recent LM-2 or LM-3 filing with the United States Department of Labor, and a signed, sworn statement that the document is a true and correct copy; and

(B) Upon original application and annually thereafter, the name, address and telephone number of the contact person for the collective bargaining representative; and

(b) The director has approved the proposed program.

(4) When an employer, group of employers or a collective bargaining representative has met the eligibility requirements of this section, the director shall issue a letter to the employer, group of employers or collective bargaining representative indicating that such eligibility has been established. [1999 c.841 s.3]

656.174 Rulemaking authority; required rules. The Director of the Department of Consumer and Business Services shall adopt rules necessary for the implementation of the provisions of ORS 656.170 and 656.172. The rules must include, but are not limited to procedures for:

(1) Establishing and operating an alternative dispute resolution system;

(2) Resolution of disputes involving multiple claims when one or more of the claims are not subject to the collective bargaining agreement; and

(3) Providing benefits to injured workers whose compensable claims are covered under an alternative dispute resolution system after the expiration of the collective bargaining agreement or termination of any arrangement for the provision of benefits under ORS 656.170 and 656.172. [1999 c.841 s.4]

Note: Section 5, chapter 841, Oregon Laws 1999, provides:

Sec. 5. (1) Notwithstanding sections 2 and 3 of this 1999 Act [656.170 and 656.172], prior to January 1, 2002, the Director of the Department of Consumer and Business Services may issue letters of eligibility to only two qualified unions for participation in an alternative dispute resolution system authorized under section 2 of this 1999 Act [656.170]. Letters of eligibility shall be issued in order of the date the original application for eligibility is received by the Department of Consumer and Business Services. The director may not issue letters of eligibility after January 1, 2002.

(2) All employers, groups of employers and unions participating in an alternative dispute resolution system authorized under section 2 of this 1999 Act [656.170] shall report the status and progress of the system to the Seventy-first Legislative Assembly no later than January 31, 2001. Reports shall be made to the President of the Senate and to the Speaker of the House of Representatives or to their designees. [1999 c.841 s.5]

APPLICABILITY PROVISIONS

656.202 Compensation payable to subject worker in accordance with law in effect at time of injury; exceptions; notice regarding payment. (1) If any subject worker sustains a compensable injury, the worker or the beneficiaries of the worker, if the injury results in death, shall receive compensation as provided in this chapter, regardless of whether the worker was employed by a complying or noncomplying employer.

(2) Except as otherwise provided by law, payment of benefits for injuries or deaths under this chapter shall be continued as authorized, and in the amounts provided for, by the law in force at the time the injury giving rise to the right to compensation occurred.

(3) When compensation is paid to a claimant or other payment is made to the provider of service pursuant to this chapter, the insurer or self-insured employer shall notify the payment recipient in writing of the specific purpose of the payment. When applicable, the notice shall indicate the time period for which the payment is made and the reimbursable expenses or other bills and charges covered. If any portion of the claim is denied, the notice shall identify that portion of the claimed amounts that is not being paid.

(4) Notwithstanding subsections (1) to (3) of this section, the amendments to ORS 656.325 by section 4, chapter 723, Oregon Laws 1981, and ORS 656.335 (1993 Edition) apply to all workers regardless of the date of injury.

(5) This section does not apply to vocational assistance benefits.

(6) Notwithstanding subsection (2) of this section, the increase in benefits to the surviving spouse of an injured worker made by the amendment to ORS 656.204 (2)(c) (1993 Edition) by section 1, chapter 108, Oregon Laws 1985, applies to a surviving spouse who remarries after September 20, 1985, regardless of the date of injury or death of the worker.

(7) Notwithstanding subsection (2) of this section, the increase in benefits to the surviving spouse of an injured worker made by the amendments to ORS 656.204 (3)(a) and (b) (1997 Edition) by section 2, chapter 927, Oregon Laws 1999, applies to a surviving spouse who remarries on or after October 23, 1999, regardless of the date of injury or death of the worker. [Amended by 1953 c.669 s.4; 1953 c.670 s.4; 1957 c.718 s.3; 1959 c.450 s.1; 1965 c.285 s.21; 1977 c.430 s.6; 1981 c.770 s.1; subsection (4) enacted as 1981 c.723 s.8; 1985 c.108 s.3; 1985 c.600 s.6; 1985 c.706 s.6; 1985 c.770 s.6; 1995 c.332 s.12; 1999 c.927 s.1]

(Implementation of 1990 Laws)

Note: Section 54, chapter 2, Oregon Laws 1990, provides:

Sec. 54. (1) Except for amendments to ORS 656.027, 656.211, 656.214 (2) and 656.790, this 1990 Act becomes operative July 1, 1990, and notwithstanding ORS 656.202, this 1990 Act applies to all claims existing or arising on and after July 1, 1990, regardless of date of injury, except as specifically provided in this section.

(2) Any matter regarding a claim which is in litigation before the Hearings Division, the board, the Court of Appeals or the Supreme Court under this chapter, and regarding which matter a request for hearing was filed before May 1, 1990, and a hearing was convened before July 1, 1990, shall be determined pursuant to the law in effect before July 1, 1990.

(3) Amendments by this 1990 Act to ORS 656.214 (5), the amendments to ORS 656.268 (4), (5), (6), (7) and (8), ORS 656.283 (7), 656.295, 656.319, 656.325, 656.382 and 656.726 shall apply to all claims which become medically stationary after July 1, 1990. [1990 c.2 s.54]

(Implementation of 1995 Laws)

Note: Section 66, chapter 332, Oregon Laws 1995, provides:

Sec. 66. (1) Notwithstanding any other provision of law, chapter 332, Oregon Laws 1995, applies to all claims or causes of action existing or arising on or after June 7, 1995, regardless of the date of injury or the date a claim is presented, and chapter 332, Oregon Laws 1995, is intended to be fully retroactive unless a specific exception is stated in chapter 332, Oregon Laws 1995.

(2) The amendments to ORS 656.204 and 656.265 by sections 13 and 29, chapter 332, Oregon Laws 1995, and the amendments to ORS 656.210 (2)(a) by section 15, chapter 332, Oregon Laws 1995, apply only to injuries occurring on or after June 7, 1995.

(3) Sections 8 and 9, chapter 332, Oregon Laws 1995, and the amendments to ORS 656.054, 656.248 and 656.622 by sections 7, 26 and 49, chapter 332, Oregon Laws 1995, become operative January 1, 1996.

(4) The amendments to ORS 656.268 (4), (5), (6) and (9), 656.319 (4) and 656.726 (3)(f) by sections 30, 39 and 55, chapter 332, Oregon Laws 1995, shall apply only to claims that become medically stationary on or after June 7, 1995.

(5)(a) The amendments to statutes by chapter 332, Oregon Laws 1995, and new sections added to ORS chapter 656 by chapter 332, Oregon Laws 1995, do not apply to any matter for which an order or decision has become final on or before June 7, 1995.

(b) Notwithstanding paragraph (a) of this subsection, the amendments to ORS 656.262 (6) creating new paragraph (c) and the amendments to the subsection

designated (10) by section 28, chapter 332, Oregon Laws 1995, apply to all claims without regard to any previous order or closure.

(6) The amendments to statutes by chapter 332, Oregon Laws 1995, and new sections added to ORS chapter 656 by chapter 332, Oregon Laws 1995, do not extend or shorten the procedural time limitations with regard to any action on a claim taken prior to June 7, 1995.

(7) The amendments to ORS 656.506 by section 63, chapter 332, Oregon Laws 1995, first become operative October 1, 1995. [1995 c.332 s.66; 1999 c.6 s.2]

(Implementation of 1997 Laws)

Note: Section 2, chapter 605, Oregon Laws 1997, provides:

Sec. 2. Notwithstanding any other provision of law to the contrary, the amendments to ORS 656.262 by section 1 of this Act apply to all claims or causes of action existing or arising on or after the effective date of this Act [July 25, 1997], regardless of the date of injury or the date a claim is presented, and this Act is intended to be fully retroactive. [1997 c.605 s.2]

Note: Section 6, chapter 639, Oregon Laws 1997, provides:

Sec. 6. Notwithstanding any other provision of law, the amendments to ORS 656.593 by section 4 of this Act apply to all claims or causes of action existing on or arising on or after the effective date of this Act [July 25, 1997], regardless of the date of injury or the date a claim is presented, and the amendments to ORS 656.593 by section 4 of this Act are intended to be fully retroactive. [1997 c.639 s.6]

COMPENSATION AND MEDICAL BENEFITS

656.204 Death. If death results from the accidental injury, payments shall be made as follows:

(1) The cost of burial, including transportation of the body, shall be paid, not to exceed 10 times the average weekly wage in any case.

(2)(a) If the worker is survived by a spouse, monthly benefits shall be paid in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs.

(b) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 10 percent of the average weekly wage for each child of the deceased who is substantially dependent on the spouse for support, until such child becomes 18 years of age.

(c) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 25 percent of the average weekly wage for each child

of the deceased who is not substantially dependent on the spouse for support, until such child becomes 18 years of age.

(d) If a surviving spouse receiving monthly payments dies, leaving a child who is entitled to compensation on account of the death of the worker, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall be paid to each such child until the child becomes 18 years of age or the child's entitlement to benefits under subsection (8) of this section ceases, whichever is later.

(e) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.

(f) In no event shall the total monthly benefits provided for in this subsection exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will be reduced proportionally.

(3)(a) Upon remarriage, a surviving spouse shall be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payments for each child shall continue as before.

(b) If, after the date of the subject worker's death, the surviving spouse cohabits with another person for an aggregate period of more than one year and a child has resulted from the relationship, the surviving spouse shall be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payment for any child who is entitled to compensation on account of the death of the worker shall continue as before.

(4)(a) If the worker leaves neither wife nor husband, but a child under 18 years of age, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall be paid to each such child until the child becomes 18 years of age.

(b) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.

(c) In no event shall the total benefits provided for in this subsection exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will be reduced proportionally.

(5)(a) If the worker leaves a dependent other than a surviving spouse or a child, a monthly payment shall be made to each dependent equal to 50 percent of the average monthly support actually received by such dependent from the worker during the 12 months next preceding the occurrence of the accidental injury. If a dependent is under the age of 18 years at the time of the accidental injury, the payment to the dependent shall cease when such dependent becomes 18 years of age. The payment to any dependent shall cease under the same circumstances that would have terminated the dependency had the injury not happened.

(b) If the dependent who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.

(c) In no event shall the total benefits provided for in this subsection exceed 4.35 times 10 percent of the average weekly wage. If the sum of the individual benefits

exceeds this maximum, the benefit for each dependent will be reduced proportionally.

(6) If a child is an invalid at the time the child otherwise becomes ineligible for benefits under this section, the payment to the child shall continue while the child remains an invalid. If a person is entitled to payment because the person is an invalid, payment shall terminate when the person ceases to be an invalid.

(7) If, at the time of the death of a worker, the child of the worker or dependent has become 17 years of age but is under 18 years of age, the child or dependent shall receive the payment provided in this section for a period of one year from the date of the death. However, if after such period the child is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.

(8)(a) Benefits under this section which are to be paid as provided in this subsection shall be paid for the child or dependent until the child or dependent becomes 19 years of age. If, however, the child or dependent is attending higher education or begins attending higher education within six months of the date the child or dependent leaves high school, benefits shall be paid until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier.

(b) As used in this subsection, "attending higher education" means regularly attending community college, college or university, or regularly attending a course of vocational or technical training designed to prepare the participant for gainful employment. A child or dependent enrolled in an educational course load of less than one-half of that determined by the educational facility to constitute "full-time" enrollment is not "attending higher education."

(9) As used in this section, "average weekly wage" has the meaning for that term provided in ORS 656.211. [Amended by 1957 c.453 s.1; 1965 c.285 s.22; 1967 c.286 s.1; 1969 c.521 s.1; 1971 c.415 s.1; 1973 c.497 s.2; 1974 s.s. c.41 s.4; 1981 c.535 s.4; 1981 c.874 s.15; 1985 c.108 s.1; 1987 c.235 s.1; 1991 c.473 s.1; 1995 c.332 s.13; 1999 c.927 s.2]

Note: See notes under 656.202.

Note: Section 59, chapter 332, Oregon Laws 1995, provides:

Sec. 59. (1) Surviving spouses without children, whose entitlement to benefits under ORS 656.204 is based on an injury before September 20, 1985, shall have their benefits supplemented from the Retroactive Reserve. The total benefits payable, comprising the benefits in effect on the date of injury plus the Retroactive Reserve supplement, shall be equal to the total benefits payable under the formula prescribed for surviving spouses without children, whose entitlement to benefits is based on an injury occurring on September 20, 1985.

(2) The provisions of this section apply to benefits for periods beginning on and after the effective date of this 1995 Act [June 7, 1995]. [1995 c.332 s.59]

656.206 Permanent total disability. (1) As used in this section:

(a) Notwithstanding ORS 656.225, "permanent total disability" means the loss, including preexisting disability, of use or function of any scheduled or unscheduled portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation. As used in this section, a gainful occupation is one that pays wages equal to or greater than the state mandated hourly minimum wage. As used in this section, a suitable occupation is one that the worker has the ability and the training or experience to perform, or an occupation that the worker is able to perform after rehabilitation.

(b) "Wages" means wages as determined under ORS 656.210.

(2) When permanent total disability results from the injury, the worker shall receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of $50, whichever amount is lesser.

(3) The worker has the burden of proving permanent total disability status and must establish that the worker is willing to seek regular gainful employment and that the worker has made reasonable efforts to obtain such employment.

(4) When requested by the Director of the Department of Consumer and Business Services, a worker who receives permanent total disability benefits shall file on a form provided by the director, a sworn statement of the worker's gross annual income for the preceding year along with such other information as the director considers necessary to determine whether the worker regularly performs work at a gainful and suitable occupation.

(5) Each insurer shall reexamine periodically each permanent total disability claim for which the insurer has current payment responsibility to determine whether the worker is currently permanently incapacitated from regularly performing work at a gainful and suitable occupation. Reexamination shall be conducted every two years or at such other more frequent interval as the director may prescribe. Reexamination shall include such medical examinations, reports and other records as the insurer considers necessary or the director may require. [Amended by 1953 c.670 s.4; 1955 c.553 s.1; 1957 c.452 s.1; 1959 c.517 s.1; 1965 c.285 s.22a; 1969 c.500 s.2; 1973 c.614 s.2; 1974 s.s. c.41 s.5; 1975 c.506 s.1; 1977 c.430 s.1; 1981 c.874 s.12; 1983 c.816 s.3; 1995 c.332 s.14; 1999 c.313 s.13; 1999 c.927 s.3]

656.207 [1959 c.589 s.2; repealed by 1965 c.285 s.95]

656.208 Death during permanent total disability. (1) If the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a spouse or any dependents listed in ORS 656.204, payment shall be made in the same manner and in the same amounts as provided in ORS 656.204.

(2) If any surviving spouse to whom the provisions of this section apply remarries, the payments on account of a child or children shall continue to be made to the child or children the same as before the remarriage. [Amended by 1957 c.453

s.2; 1959 c.450 s.2; 1965 c.285 s.22b; 1969 c.521 s.2; 1971 c.415 s.2; 1973 c.497 s.3; 1975 c.497 s.2; 1985 c.108 s.2]

656.209 Offsetting permanent total disability benefits against social security benefits. (1) With the authorization of the Department of Consumer and Business Services, the amount of any permanent total disability benefits payable to an injured worker shall be reduced by the amount of any disability benefits the worker receives from federal social security.

(a) If the benefit amount to which the worker is entitled pursuant to this chapter exceeds the worker's federal disability benefit limitation determined pursuant to 42 U.S.C. 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such manner as to lower the amount the worker would have received pursuant to this chapter had such reduction not been made.

(b) If the benefit amount to which the worker is entitled pursuant to this chapter is less than the worker's federal disability benefit limitation determined pursuant to 42 U.S.C. 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such manner as to lower the amount of combined benefits the worker receives below the federal benefit limitation.

(2) No reduction of permanent total disability benefits shall be made pursuant to this section unless authorized by the department.

(3) No reduction of benefits shall be authorized pursuant to this section except upon actual receipt of federal social security disability benefits by the injured worker.

(4) The effective date of the operation of any offset provided in this section shall be the date established in the authorization provided in subsection (1) of this section, whether the authorization was issued prior to or subsequent to May 8, 1979. [1977 c.430 s.5; 1979 c.117 s.3]

656.210 Temporary total disability; payment during medical treatment. (1) When the total disability is only temporary, the worker shall receive during the period of that total disability compensation equal to 66-2/3 percent of wages, but not more than 100 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of $50 a week, whichever amount is lesser. Notwithstanding the limitation imposed by this subsection, an injured worker who is not otherwise eligible to receive an increase in benefits for the fiscal year in which compensation is paid shall have the benefits increased each fiscal year by the percentage which the applicable average weekly wage has increased since the previous fiscal year.

(2)(a) For the purpose of this section, the weekly wage of workers shall be ascertained by multiplying the daily wage the worker was receiving by the number of days per week that the worker was regularly employed.

(b) For the purpose of this section:

(A) The benefits of a worker who incurs an injury shall be based on the wage of the worker at the time of injury.

(B) The benefits of a worker who incurs an occupational disease shall be based on the wage of the worker at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease. If the worker is not working at the time that there is medical verification that the worker is unable to work because of the disability caused by the occupational disease, the benefits shall be based on the wage of the worker at the worker's last regular employment.

(c) As used in this subsection, “regularly employed” means actual employment or availability for such employment. For workers not regularly employed and for workers with no remuneration or whose remuneration is not based solely upon daily or weekly wages, the Director of the Department of Consumer and Business Services, by rule, may prescribe methods for establishing the worker's weekly wage.

(3) No disability payment is recoverable for temporary total or partial disability suffered during the first three calendar days after the worker leaves work or loses wages as a result of the compensable injury unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. If the worker leaves work or loses wages on the day of the injury due to the injury, that day shall be considered the first day of the three-day period.

(4) When an injured worker with an accepted disabling compensable injury is required to leave work for a period of four hours or more to receive medical consultation, examination or treatment with regard to the compensable injury, the worker shall receive temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent, until such time as the worker is determined to be medically stationary. However, benefits under this subsection are not payable if wages are paid for the period of absence by the employer. [Amended by 1955 c.713 s.1; 1957 c.452 s.2; 1959 c.517 s.2; 1965 c.285 s.22c; 1969 c.183 s.1; 1969 c.500 s.1; 1971 c.204 s.1; 1973 c.614 s.1; 1974 s.s. c.41 s.6; 1975 c.507 s.1; 1975 c.663 s.1; 1985 c.507 s.3; 1987 c.521 s.1; 1987 c.713 s.7; 1995 c.332 s.15]

Note: See notes under 656.202.

656.211 “Average weekly wage” defined. As used in ORS 656.210 (1), “average weekly wage” means the average weekly wage of workers in covered employment in Oregon, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which compensation is paid and as computed by the Employment Department as of May 15 of each year. [1973 c.614 s.4; 1990 c.2 s.6]

Note: See notes under 656.202.

656.212 Temporary partial disability. When the disability is or becomes partial only and is temporary in character:

(1) No disability payment is recoverable for temporary disability suffered during the first three calendar days after the worker leaves work or loses wages as a result of the compensable injury. If the worker leaves work or loses wages on the day of the injury due to the injury, that day shall be considered the first day of the three-day period.

(2) The payment of temporary total disability pursuant to ORS 656.210 shall cease and the worker shall receive that proportion of the payments provided for temporary total disability which the loss of wages bears to the wage used to calculate temporary total disability pursuant to ORS 656.210. [Amended by 1953 c.672 s.2; 1995 c.332 s.16; amendments by 1995 c.332 s.16a repealed by 1999 c.6 s.1; 1999 c.538 s.1]

Note: See notes under 656.202.

656.214 Permanent partial disability. (1) As used in this section:

(a) "Loss" includes permanent and complete or partial loss of use.

(b) "Permanent partial disability" means the loss of either one arm, one hand, one leg, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, or any other injury known in surgery to be permanent partial disability.

(2) When permanent partial disability results from an injury, the criteria for the rating of disability shall be the permanent loss of use or function of the injured member due to the industrial injury. The worker shall receive $454 for each degree stated against such disability in subsections (2) to (4) of this section as follows:

(a) For the loss of one arm at or above the elbow joint, 192 degrees, or a proportion thereof for losses less than a complete loss.

(b) For the loss of one forearm at or above the wrist joint, or the loss of one hand, 150 degrees, or a proportion thereof for losses less than a complete loss.

(c) For the loss of one leg, at or above the knee joint, 150 degrees, or a proportion thereof for losses less than a complete loss.

(d) For the loss of one foot, 135 degrees, or a proportion thereof for losses less than a complete loss.

(e) For the loss of a great toe, 18 degrees, or a proportion thereof for losses less than a complete loss; of any other toe, four degrees, or a proportion thereof for losses less than a complete loss.

(f) For partial or complete loss of hearing in one ear, that percentage of 60 degrees which the loss bears to normal monaural hearing.

(g) For partial or complete loss of hearing in both ears, that proportion of 192 degrees which the combined binaural hearing loss bears to normal combined binaural hearing. For the purpose of this paragraph, combined binaural hearing loss shall be calculated by taking seven times the hearing loss in the less damaged ear plus the hearing loss in the more damaged ear and dividing that amount by eight. In the case

of individuals with compensable hearing loss involving both ears, either the method of calculation for monaural hearing loss or that for combined binaural hearing loss shall be used, depending upon which allows the greater award of disability.

(h) For partial or complete loss of vision of one eye, that proportion of 100 degrees which the loss of monocular vision bears to normal monocular vision. For the purposes of this paragraph, the term “normal monocular vision” shall be considered as Snellen 20/20 for distance and Snellen 14/14 for near vision with full sensory field.

(i) For partial loss of vision in both eyes, that proportion of 300 degrees which the combined binocular visual loss bears to normal combined binocular vision. In all cases of partial loss of sight, the percentage of said loss shall be measured with maximum correction. For the purpose of this paragraph, combined binocular visual loss shall be calculated by taking three times the visual loss in the less damaged eye plus the visual loss in the more damaged eye and dividing that amount by four. In the case of individuals with compensable visual loss involving both eyes, either the method of calculation for monocular visual loss or that for combined binocular visual loss shall be used, depending upon which allows the greater award of disability.

(j) For the loss of a thumb, 48 degrees, or a proportion thereof for losses less than a complete loss.

(k) For the loss of a first finger, 24 degrees, or a proportion thereof for losses less than a complete loss; of a second finger, 22 degrees, or a proportion thereof for losses less than a complete loss; of a third finger, 10 degrees, or a proportion thereof for losses less than a complete loss; of a fourth finger, 6 degrees, or a proportion thereof for losses less than a complete loss.

(3) The loss of one phalange of a thumb, including the adjacent epiphyseal region of the proximal phalange, is considered equal to the loss of one-half of a thumb. The loss of one phalange of a finger, including the adjacent epiphyseal region of the middle phalange, is considered equal to the loss of one-half of a finger. The loss of two phalanges of a finger, including the adjacent epiphyseal region of the proximal phalange of a finger, is considered equal to the loss of 75 percent of a finger. The loss of more than one phalange of a thumb, excluding the epiphyseal region of the proximal phalange, is considered equal to the loss of an entire thumb. The loss of more than two phalanges of a finger, excluding the epiphyseal region of the proximal phalange of a finger, is considered equal to the loss of an entire finger. A proportionate loss of use may be allowed for an uninjured finger or thumb where there has been a loss of effective opposition.

(4) A proportionate loss of the hand may be allowed where disability extends to more than one digit, in lieu of ratings on the individual digits.

(5) In all cases of injury resulting in permanent partial disability, other than those described in subsections (2) to (4) of this section, the criteria for rating of disability shall be the permanent loss of earning capacity due to the compensable injury. Earning capacity is to be calculated using the standards specified in ORS 656.726 (4)(f). The number of degrees of disability shall be a maximum of 320 degrees

determined by the extent of the disability compared to the worker before such injury and without such disability.

(6) For injuries for which the disability is determined pursuant to subsection (5) of this section, the worker shall receive an amount equal to:

(a) When the number of degrees stated against the disability is equal to or less than 64, $137.80 times the number of degrees.

(b) When the number of degrees stated against the disability is more than 64 but equal to or less than 160, $137.80 times 64 plus $243.80 times the number of degrees in excess of 64.

(c) When the number of degrees stated against the disability is more than 160, $137.80 times 64 plus $243.80 times 96 plus $662.50 times the number of degrees in excess of 160.

(7) All permanent disability contemplates future waxing and waning of symptoms of the condition. The results of waxing and waning of symptoms may include, but are not limited to, loss of earning capacity, periods of temporary total or temporary partial disability, or inpatient hospitalization. [Amended by 1953 c.669 s.4; 1955 c.716 s.1; 1957 c.449 s.1; 1965 c.285 s.22d; 1967 c.529 s.1; 1971 c.178 s.1; 1977 c.557 s.1; 1979 c.839 s.27; 1981 c.535 s.27; 1985 c.506 s.3; 1987 c.884 s.36; 1990 c.2 s.7; 1995 c.332 s.17; 1999 c.6 s.7; 1999 c.876 s.2]

Note: See notes under 656.202.

(Benefits, January 1, 1992, to December 31, 1995)

Note: Section 2, chapter 745, Oregon Laws 1991, provides:

Sec. 2. (1) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (2), for injuries occurring during the period beginning January 1, 1992, and ending December 31, 1995, the worker shall receive an amount equal to 71 percent of the average weekly wage times the number of degrees stated against the disability as provided in ORS 656.214 (2) to (4). However, as annual changes in the average weekly wage occur, the amount of the average weekly wage used in calculation of the benefit amount pursuant to this subsection shall not be more than five percent larger than the amount used in the previous year.

(2)(a) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (5), for injuries occurring during the period beginning January 1, 1992, and ending December 31, 1995, the worker shall receive an amount equal to:

(A) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is equal to or less than 96, 24 percent of the average weekly wage times the number of degrees.

(B) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is more than 96 but equal to or less than 192, 24 percent of the average

weekly wage times 96 plus 28 percent of the average weekly wage times the number of degrees in excess of 96.

(C) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is more than 192, 24 percent of the average weekly wage times 96 plus 28 percent of the average weekly wage times 96 plus 71 percent of the average weekly wage times the number of degrees in excess of 192.

(b) However, as annual changes in the average weekly wage occur, the amount of the average weekly wage used in calculation of the benefit amount pursuant to this subsection shall not be more than five percent larger than the amount used in the previous year.

(3) Benefits referred to in this section shall be paid on the basis of the benefit amount in effect on the date of injury.

(4) As used in this section, "average weekly wage" has the meaning for that term provided in ORS 656.211. [1991 c.745 s.2; 1995 c.332 s.18]

(Benefits, January 1, 1996, to December 31, 1997)

Note: Section 20, chapter 332, Oregon Laws 1995, provides:

Sec. 20. (1) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (2), for injuries occurring during the period beginning January 1, 1996, and ending December 31, 1997, the worker shall receive $420 for each degree stated against the disability as provided in ORS 656.214 (2) to (4).

(2) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (5), for injuries occurring during the period beginning January 1, 1996, and ending December 31, 1997, the worker shall receive an amount equal to:

(a) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is equal to or less than 64, $130 times the number of degrees.

(b) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is more than 64 but equal to or less than 160, $130 times 64 plus $230 times the number of degrees in excess of 64.

(c) When the number of degrees stated against the disability as provided in ORS 656.214 (5) is more than 160, $130 times 64 plus $230 times 96 plus $625 times the number of degrees in excess of 160.

(3) Benefits referred to in this section shall be paid on the basis of the benefit amount in effect on the date of injury. [1995 c.332 s.20; 1997 c.380 s.1]

(Benefits, January 1, 1998, to October 23, 1999)

Note: Section 3, chapter 380, Oregon Laws 1997, provides:

Sec. 3. (1) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (2), for injuries occurring during the period beginning January 1, 1998, and ending on the effective date of this 1999 Act [October 23, 1999], the worker shall receive $454 for each degree stated against the disability as provided in ORS 656.214 (2) to (4).

(2) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (6), for injuries occurring during the period beginning January 1, 1998, and ending on the effective date of this 1999 Act, the worker shall receive an amount equal to:

(a) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is equal to or less than 64, $137.80 times the number of degrees.

(b) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is more than 64 but equal to or less than 160, $137.80 times 64 plus $243.80 times the number of degrees in excess of 64.

(c) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is more than 160, $137.80 times 64 plus $243.80 times 96 plus $662.50 times the number of degrees in excess of 160.

(3) Benefits referred to in this section shall be paid on the basis of the benefit amount in effect on the date of injury. [1997 c.380 s.3; 1999 c.6 s.6]

(Benefits, January 1, 2000, to December 31, 2004)

Note: Section 9, chapter 6, Oregon Laws 1999, provides:

Sec. 9. (1) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (2), for injuries occurring during the period beginning January 1, 2000, and ending December 31, 2004, the worker shall receive $511.29 for each degree stated against the disability as provided in ORS 656.214 (2) to (4).

(2) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (6), for injuries occurring during the period beginning January 1, 2000, and ending December 31, 2004, the worker shall receive an amount equal to:

(a) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is equal to or less than 64, $153.00 times the number of degrees.

(b) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is more than 64 but equal to or less than 160, $267.44 times 64 plus $153.00 times the number of degrees in excess of 64.

(c) When the number of degrees stated against the disability as provided in ORS 656.214 (6) is more than 160, $153.00 times 64 plus $267.44 times 96 plus $709.79 times the number of degrees in excess of 160.

(3) Benefits referred to in this section shall be paid on the basis of the benefit amount in effect on the date of injury. [1999 c.6 s.9]

656.215 [1987 c.884 s.36b; 1990 c.2 s.8; repealed by 1991 c.745 s.3]

656.216 Permanent partial disability; method of payment; effect of prior receipt of temporary disability payments. (1) Compensation for permanent partial disability may be paid monthly at 4.35 times the rate per week as provided for compensation for temporary total disability at the time the determination is made. In no case shall such payments be less than $108.75 per month.

(2) If a worker, who is entitled to compensation for a permanent disability, has received compensation for a temporary disability by reason of the same injury, compensation for such permanent disability shall be in addition to the payments which the worker has received on account of such temporary disability. [Amended by 1967 c.529 s.2; 1973 c.459 s.1; 1974 s.s. c.41 s.7]

656.218 Continuance of permanent partial disability payments to survivors; effect of death prior to final claim disposition; burial allowance. (1) In case of the death of a worker entitled to compensation, whether eligibility therefor or the amount thereof have been determined, payments shall be made for the period during which the worker, if surviving, would have been entitled thereto.

(2) If the worker's death occurs prior to issuance of a notice of closure under ORS 656.268, the insurer or the self-insured employer shall determine compensation for permanent partial disability, if any.

(3) If the worker has filed a request for a hearing pursuant to ORS 656.283 and death occurs prior to the final disposition of the request, the persons described in subsection (5) of this section shall be entitled to pursue the matter to final determination of all issues presented by the request for hearing.

(4) If the worker dies before filing a request for hearing, the persons described in subsection (5) of this section shall be entitled to file a request for hearing and to pursue the matter to final determination as to all issues presented by the request for hearing.

(5) The payments provided in this section shall be made to the persons who would have been entitled to receive death benefits if the injury causing the disability had been fatal. In the absence of persons so entitled, a burial allowance may be paid not to exceed the lesser of either the unpaid award or the amount payable by ORS 656.204.

(6) This section does not entitle any person to double payments on account of the death of a worker and a continuation of payments for permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal. [Amended by 1959 c.450 s.3; 1973 c.355 s.1; 1975 c.497 s.3; 1981 c.854 s.11; 1987 c.884 s.16; 1999 c.313 s.4]

656.220 [Amended by 1957 c.718 s.4; 1965 c.285 s.24; repealed by 1975 c.505 s.1]

656.222 Compensation for additional accident. Should a further accident occur to a worker who is receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, the award of compensation for such further accident shall be made with regard to the combined effect of the injuries of the worker and past receipt of money for such disabilities.

656.224 [Amended by 1953 c.674 s.13; repealed by 1959 c.517 s.5]

656.225 Compensability of certain preexisting conditions. In accepted injury or occupational disease claims, disability solely caused by or medical services solely directed to a worker's preexisting condition are not compensable unless:

(1) In occupational disease or injury claims other than those involving a preexisting mental disorder, work conditions or events constitute the major contributing cause of a pathological worsening of the preexisting condition.

(2) In occupational disease or injury claims involving a preexisting mental disorder, work conditions or events constitute the major contributing cause of an actual worsening of the preexisting condition and not just of its symptoms.

(3) In medical service claims, the medical service is prescribed to treat a change in the preexisting condition as specified in subsection (1) or (2) of this section, and not merely as an incident to the treatment of a compensable injury or occupational disease. [1995 c.332 s.3]

656.226 Cohabitants and children entitled to compensation. In case an unmarried man and an unmarried woman have cohabited in this state as husband and wife for over one year prior to the date of an accidental injury received by one or the other as a subject worker, and children are living as a result of that relation, the surviving cohabitant and the children are entitled to compensation under this chapter the same as if the man and woman had been legally married. [Amended by 1983 c.816 s.4]

656.228 Payments directly to beneficiary or custodian. (1) If compensation is payable for the benefit of a beneficiary other than the injured worker, the insurer or the self-insured employer may segregate any additional compensation payable on account of that beneficiary and make payment directly to the beneficiary, if sui juris; otherwise, to the guardian or person having custody of the beneficiary.

(2) Compensation paid to an injured worker who is a minor prior to receipt of notice by the insurer or the self-insured employer from the parent or guardian of the minor that the parent or guardian claims the compensation shall discharge the obligation to pay compensation to the extent of such payment. [Amended by 1957 c.477 s.1; 1965 c.285 s.25; 1981 c.854 s.12]

656.230 Lump sum award payments with approval of director. (1) Where a worker has been awarded compensation for permanent partial disability, and the

award has become final by operation of law or waiver of the right to appeal its adequacy, the insurer shall upon the worker's application pay all or any part of the remaining unpaid award to the worker in a lump sum, unless the insurer disagrees with payment, in which case the insurer, within 14 days, will refer the matter to the Director of the Department of Consumer and Business Services to determine whether all or part of the lump sum should be paid. The director's decision shall be final and not subject to review. Any remaining balance shall be paid pursuant to ORS 656.216.

(2) In all cases where the award for permanent partial disability does not exceed $6,000, the insurer or the self-insured employer shall pay all of the award to the worker in a lump sum. [Amended by 1957 c.574 s.4; 1959 c.449 s.1; 1965 c.285 s.23a; 1973 c.221 s.1; 1981 c.854 s.13; 1983 c.816 s.15; 1995 c.332 s.22]

656.232 Payments to aliens residing outside of United States. (1) If a beneficiary is an alien residing outside of the United States or its dependencies, payment of the sums due such beneficiary may, in the discretion of the Director of the Department of Consumer and Business Services, be made to the consul general of the country in which such beneficiary resides on behalf of the beneficiary. The receipt of the consul general to the director for the amounts thus paid shall be a full and sufficient receipt for the payment of the funds thus due the beneficiary.

(2) If a beneficiary is an alien residing outside of the United States or its dependencies, the director may, in lieu of awarding such beneficiary compensation in the amount provided by this chapter, award such beneficiary such lesser sum by way of compensation which, according to the conditions and costs of living in the place of residence of such beneficiary will, in the opinion of the director, maintain the beneficiary in a like degree of comfort as a beneficiary of the same class residing in this state and receiving the full compensation authorized by this chapter. The director shall determine the amount of compensation benefits upon the basis of the rate of exchange between the United States and any foreign country as determined by the Federal Reserve Bank as of January 1 and July 1 of the year when paid.

(3) All benefit rights shall be canceled upon the commencement of a state of war between the United States and the country of a beneficiary's domicile.

656.234 Compensation not assignable nor to pass by operation of law; certain benefits subject to child support obligations. (1) No moneys payable under this chapter on account of injuries or death are subject to assignment prior to their receipt by the beneficiary entitled thereto, nor shall they pass by operation of law. All such moneys and the right to receive them are exempt from seizure on execution, attachment or garnishment, or by the process of any court.

(2) Notwithstanding any other provision of this section:

(a) Moneys payable pursuant to ORS 656.210 and 656.212 are subject to an order to enforce child support obligations, and spousal support when there is a current support obligation for a joint child of the obligated parent and the person to whom spousal support is owed, pursuant to ORS 25.378; and

(b) Moneys payable pursuant to ORS 656.206, 656.214, 656.236 and 656.289 (4) are subject to an order to enforce child support obligations pursuant to ORS 25.378.

(3) Notwithstanding the provisions of ORS 25.378 and 25.414, the amount of child support obligation subject to enforcement shall not exceed:

(a) One-fourth of moneys paid under ORS 656.210 and 656.212 or the amount of the current support to be paid as continuing support, whichever is less, or, if there is no current support obligation and the withholding is for arrearages only, 15 percent of the moneys paid under ORS 656.210 and 656.212 or the amount previously paid as current support, whichever is less;

(b) One-fourth of moneys paid under ORS 656.206, 656.214 and 656.236; or

(c) One-fourth of the net proceeds paid to the worker in a disputed claim settlement under ORS 656.289 (4).

(4) Notwithstanding any other provision of this section, when withholding is only for arrearages assigned to this or another state, the Department of Human Services may set a lesser amount to be withheld if the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support. [Amended by 1967 c.468 s.1; 1989 c.520 s.2; 1991 c.758 s.3; 1993 c.48 s.1; 1993 c.798 s.22; 1995 c.272 s.2]

656.236 Compromise and release of claim matters except for medical benefits; approval by board; approval by director for certain reserve reimbursements; restriction on charging costs to workers; restriction on joinder as parties for responsibility determinations. (1)(a) The parties to a claim, by agreement, may make such disposition of any or all matters regarding a claim, except for medical services, as the parties consider reasonable, subject to such terms and conditions as the Workers' Compensation Board may prescribe. For the purposes of this section, “matters regarding a claim” includes the disposition of a beneficiary's independent claim for compensation under this chapter. Unless otherwise specified, a disposition resolves all matters and all rights to compensation, attorney fees and penalties potentially arising out of claims, except medical services, regardless of the conditions stated in the agreement. Any such disposition shall be filed for approval with the board. If the worker is not represented by an attorney, the worker may, at the worker's request, personally appear before the board. Submission of a disposition shall stay all other proceedings and payment obligations, except for medical services, on that claim. The disposition shall be approved in a final order unless:

(A) The board finds the proposed disposition is unreasonable as a matter of law;

(B) The board finds the proposed disposition is the result of an intentional misrepresentation of material fact; or

(C) Within 30 days of submitting the disposition for approval, the worker, the insurer or self-insured employer requests the board to disapprove the disposition.

(b) Notwithstanding paragraph (a)(C) of this subsection, a disposition may provide for waiver of the provisions of that subparagraph if the worker was represented by an attorney at the time the worker signed the disposition.

(2) Notwithstanding any other provision of this chapter, an order approving disposition of a claim pursuant to this section is not subject to review. However, an order disapproving a disposition is subject to review pursuant to ORS 656.298. The board shall file with the Department of Consumer and Business Services a copy of each disposition that the board approves. If the board does not approve a disposition the board shall enter an order setting aside the disposition.

(3) Unless the terms of the disposition expressly provide otherwise, no payments, except for medical services, pursuant to a disposition are payable until the board approves the disposition. The Court of Appeals or Supreme Court shall remand to the board cases in which proposed dispositions are submitted to the court for approval.

(4) If a worker is represented by an attorney in the negotiation of a disposition under this section, the insurer or self-insured employer shall pay to the attorney a fee prescribed by the board.

(5) Except as otherwise provided in this chapter, none of the cost of workers' compensation to employers under this chapter, or in the court review of any claim therefor, shall be charged to a subject worker.

(6) Any claim in which the parties enter into a disposition under this section shall not be eligible for reimbursement of expenditures authorized by law from the Workers' Benefit Fund without the prior approval of the Director of the Department of Consumer and Business Services.

(7) Insurers or self-insured employers who are parties to an approved claim disposition agreement under this section shall not be joined as parties in subsequent proceedings under this chapter to determine responsibility for payment for any matter for which disposition is made by the agreement. Insurers or self-insured employers may be joined as parties in subsequent proceedings under this chapter to determine responsibility for medical services for claim conditions for which disposition is made by an approved claim disposition agreement, but no order in any subsequent proceedings may alter the obligations of an insurer or self-insured employer set forth in an approved claims disposition agreement, except as those obligations concern medical services.

(8) No release by a worker or beneficiary of any rights under this chapter is valid, except pursuant to a claim disposition agreement under this section or a release pursuant to ORS 656.593.

(9) Notwithstanding ORS 656.005 (21), as used in this section, “party” does not include a noncomplying employer. [1965 c.285 s.28; 1985 c.212 s.5; 1987 c.250 s.4; 1990 c.2 s.9; 1995 c.332 s.24; 1995 c.641 s.18; 1997 c.639 s.5]

656.240 Deduction of benefits from sick leave payments paid to employees. Notwithstanding any other law, an employer, with the consent of the worker, may deduct from any sick leave payments made to an individual amounts equal to

benefits received by the individual under this chapter with respect to the same injury that gave rise to the sick leave. However, the deduction of sick leave shall not exceed an amount determined by taking the worker's daily wage for the period less daily time loss benefits received under this chapter divided by the worker's daily wage. [1969 c.398 s.2; 1983 c.816 s.5]

656.242 [Amended by 1959 c.589 s.1; repealed by 1965 c.285 s.95]

656.244 [Amended by 1959 c.378 s.1; repealed by 1965 c.285 s.95]

656.245 Medical services to be provided; limitations; use of generic drugs; services by providers not members of managed care organizations; authorizing temporary disability compensation and making finding of impairment for disability rating purposes by certain providers; review of disputed claims for medical service. (1)(a) For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.

(b) Compensable medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services. A pharmacist or dispensing physician shall dispense generic drugs to the worker in accordance with ORS 689.515. The duty to provide such medical services continues for the life of the worker.

(c) Notwithstanding any other provision of this chapter, medical services after the worker's condition is medically stationary are not compensable except for the following:

(A) Services provided to a worker who has been determined to be permanently and totally disabled.

(B) Prescription medications.

(C) Services necessary to administer prescription medication or monitor the administration of prescription medication.

(D) Prosthetic devices, braces and supports.

(E) Services necessary to monitor the status, replacement or repair of prosthetic devices, braces and supports.

(F) Services provided pursuant to an accepted claim for aggravation under ORS 656.273.

(G) Services provided pursuant to an order issued under ORS 656.278.

(H) Services that are necessary to diagnose the worker's condition.

(I) Life-preserving modalities similar to insulin therapy, dialysis and transfusions.

(J) With the approval of the insurer or self-insured employer, palliative care that the worker's attending physician referred to in ORS 656.005 (12)(b)(A) prescribes and that is necessary to enable the worker to continue current employment or a vocational training program. If the insurer or self-insured employer does not approve, the attending physician or the worker may request approval from the Director of the Department of Consumer and Business Services for such treatment. The director may order a medical review by a physician or panel of physicians pursuant to ORS 656.327 (3) to aid in the review of such treatment. The decision of the director is subject to the contested case and review provisions of ORS 183.310 to 183.550.

(K) With the approval of the director, curative care arising from a generally recognized, nonexperimental advance in medical science since the worker's claim was closed that is highly likely to improve the worker's condition and that is otherwise justified by the circumstances of the claim. The decision of the director is subject to the contested case and review provisions of ORS 183.310 to 183.550.

(L) Curative care provided to a worker to stabilize a temporary and acute waxing and waning of symptoms of the worker's condition.

(d) When the medically stationary date in a disabling claim is established by the insurer or self-insured employer and is not based on the findings of the attending physician, the insurer or self-insured employer is responsible for reimbursement to affected medical service providers for otherwise compensable services rendered until the insurer or self-insured employer provides written notice to the attending physician of the worker's medically stationary status.

(e) Except for services provided under a managed care contract, out-of-pocket expense reimbursement to receive care from the attending physician shall not exceed the amount required to seek care from an appropriate attending physician of the same specialty who is in a medical community geographically closer to the worker's home. For the purposes of this paragraph, all physicians within a metropolitan area are considered to be part of the same medical community.

(2)(a) The worker may choose an attending doctor or physician within the State of Oregon. The worker may choose the initial attending physician and may subsequently change attending physician two times without approval from the director. If the worker thereafter selects another attending physician, the insurer or self-insured employer may require the director's approval of the selection and, if requested, the director shall determine with the advice of one or more physicians, whether the selection by the worker shall be approved. The decision of the director is subject to a contested case review under ORS 183.310 to 183.550. The worker also may choose an attending doctor or physician in another country or in any state or territory or possession of the United States with the prior approval of the insurer or self-insured employer.

(b) A medical service provider who is not a member of a managed care organization is subject to the following provisions:

(A) A medical service provider who is not qualified to be an attending physician may provide compensable medical service to an injured worker for a period of 30

days from the date of injury or occupational disease or for 12 visits, whichever first occurs, without the authorization of an attending physician. Thereafter, medical service provided to an injured worker without the written authorization of an attending physician is not compensable.

(B) A medical service provider who is not an attending physician cannot authorize the payment of temporary disability compensation. Except as otherwise provided in this chapter, only the attending physician at the time of claim closure may make findings regarding the worker's impairment for the purpose of evaluating the worker's disability.

(3) Notwithstanding any other provision of this chapter, the director, by rule, upon the advice of the committee created by ORS 656.794 and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment the director finds to be unscientific, unproven, outmoded or experimental. The decision of the director is subject to a contested case review under ORS 183.310 to 183.550.

(4) Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for medical services required by this chapter to be provided to injured workers:

(a) Those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract. Workers subject to the contract include those who are receiving medical treatment for an accepted compensable injury or occupational disease, regardless of the date of injury or medically stationary status, on or after the effective date of the contract. If the managed care organization determines that the change in provider would be medically detrimental to the worker, the worker shall not become subject to the contract until the worker is found to be medically stationary, the worker changes physicians or the managed care organization determines that the change in provider is no longer medically detrimental, whichever event first occurs. A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in the managed care organization, or upon the third day after the notice was sent by regular mail by the insurer or self-insured employer, whichever event first occurs. A worker shall not be subject to a contract after it expires or terminates without renewal. A worker may continue to treat with the attending physician under an expired or terminated managed care organization contract if the physician agrees to comply with the rules, terms and conditions regarding services performed under any subsequent managed care organization contract to which the worker is subject. A worker shall not be subject to a contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical area. Each such contract must comply with the certification standards provided in ORS 656.260. However, a worker may receive immediate emergency medical treatment that is compensable from a medical service provider who is not a member of the managed care organization. Insurers or self-insured employers who contract with a managed care organization for medical services shall give notice to the workers of eligible

medical service providers and such other information regarding the contract and manner of receiving medical services as the director may prescribe. Notwithstanding any provision of law or rule to the contrary, a worker of a noncomplying employer is considered to be subject to a contract between the State Accident Insurance Fund Corporation as a processing agent or the assigned claims agent and a managed care organization.

(b)(A) For initial or aggravation claims filed after June 7, 1995, the insurer or self-insured employer may require an injured worker, on a case-by-case basis, immediately to receive medical services from the managed care organization.

(B) If the insurer or self-insured employer gives notice that the worker is required to receive treatment from the managed care organization, the insurer or self-insured employer must guarantee that any reasonable and necessary services so received, that are not otherwise covered by health insurance, will be paid as provided in ORS 656.248, even if the claim is denied, until the worker receives actual notice of the denial or until three days after the denial is mailed, whichever event first occurs. The worker may elect to receive care from a primary care physician who agrees to the conditions of ORS 656.260 (4)(g). However, guarantee of payment is not required by the insurer or self-insured employer if this election is made.

(C) If the insurer or self-insured employer does not give notice that the worker is required to receive treatment from the managed care organization, the insurer or self-insured employer is under no obligation to pay for services received by the worker unless the claim is later accepted.

(D) If the claim is denied, the worker may receive medical services after the date of denial from sources other than the managed care organization until the denial is reversed. Reasonable and necessary medical services received from sources other than the managed care organization after the date of claim denial must be paid as provided in ORS 656.248 by the insurer or self-insured employer if the claim is finally determined to be compensable.

(5) Notwithstanding any other provision of this chapter, the director, by rule, shall authorize nurse practitioners certified by the Oregon State Board of Nursing and physician assistants licensed by the Board of Medical Examiners for the State of Oregon who practice in areas served by Type A or Type B rural hospitals described in ORS 442.470 to authorize the payment of temporary disability compensation for injured workers for a period not to exceed 30 days from the date of the first visit on the claim. In addition, the director, by rule, may authorize such practitioners and assistants who practice in areas served by a Type C rural hospital described in ORS 442.470 to authorize such payment.

(6) Subject to the provisions of ORS 656.704, if a claim for medical services is disapproved, the injured worker, insurer or self-insured employer may request administrative review by the director pursuant to ORS 656.260 or 656.327. [1965 c.285 s.23; 1979 c.839 s.32; 1981 c.535 s.31; 1981 c.854 s.14; 1985 c.739 s.4; 1987 c.884 s.24; 1990 c.2 s.10; 1995 c.332 s.25; amendments by 1995 c.332 s.25a

repealed by 1999 c.6 s.1; 1999 c.6 s.10; 1999 c.582 s.12; 1999 c.868 s.1; 1999 c.926 s.1]

Note: See notes under 656.202 and second note under 656.260.

656.246 [Repealed by 1965 c.285 s.95]

656.248 Medical service fee schedules; basis of fees; application to service provided by managed care organization; resolution of fee disputes. (1) The Director of the Department of Consumer and Business Services, in compliance with ORS 183.310 to 183.550 and 656.794, shall promulgate rules for developing and publishing fee schedules for medical services provided under this chapter. These schedules shall represent the reimbursement generally received for the services provided. Where applicable, and to the extent the director determines practicable, these fee schedules shall be based upon any one or all of the following:

(a) The current procedural codes and relative value units of the Department of Health and Human Services Medicare Fee Schedules for all medical service provider services included therein;

(b) The average rates of fee schedules of the Oregon health insurance industry;

(c) A reasonable rate of markup for the sale of medical devices or other medical services;

(d) A commonly used and accepted medical service fee schedule; or

(e) The actual cost of providing medical services.

(2) Medical fees equal to or less than the fee schedules published under this section shall be paid when the vendor submits a billing for medical services. In no event shall that portion of a medical fee be paid that exceeds the schedules.

(3) In no event shall a provider charge more than the provider charges to the general public.

(4) If no fee has been established for a given service or procedure the director may, in compliance with ORS 183.310 to 183.550 and 656.794, promulgate a reasonable rate, which shall be the same within any given area for all primary health care providers to be paid for that service or procedure.

(5) At the request of the director and in the method and manner prescribed by rule, all providers of health insurance, as defined by ORS 731.162, shall cooperate and consult with the director in providing information reasonably necessary and available to develop the fee schedules prescribed under subsection (1) of this section. A provider shall not be required to provide information or data that the provider deems proprietary or confidential. However, the information provided shall be considered proprietary and shall not be released by the director. The director shall not require such information from a health insurance provider more than once per year and shall reimburse the provider's costs for providing the required information.

(6) Notwithstanding subsection (1) or (2) of this section, such rates or fees provided in subsections (1) and (2) of this section shall be adequate to insure at all

times to the injured workers the standard of services and care intended by this chapter.

(7) The director shall update the schedule required by subsection (1) of this section annually. As appropriate and applicable, the update shall be based upon:

(a) A statistically valid survey by the director of medical service fees or markups;

(b) That information provided to the director by any person or state agency having access to medical service fee information;

(c) That information provided to the director pursuant to subsection (5) of this section; or

(d) The annual percentage increase or decrease in the physician's services component of the national Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor.

(8) The director is specifically prohibited from adopting or administering rules which treat manipulation, when performed by an osteopathic physician, as anything other than a separate therapeutic procedure which is paid in addition to other services or office visits.

(9) The director may, by rule, establish a fee schedule for reimbursement for specific hospital services based upon the actual cost of providing the services.

(10) A medical service provider is not authorized to charge a fee for preparing or submitting a medical report form required by the director under this chapter.

(11) Notwithstanding any other provision of this section, fee schedules for medical services and hospital services shall apply to those services performed by a managed care organization certified pursuant to ORS 656.260, unless otherwise provided in the managed care contract.

(12) When a dispute exists between an injured worker, insurer or self-insured employer and a medical service provider regarding either the amount of the fee or nonpayment of bills for compensable medical services, notwithstanding any other provision of this chapter, the injured worker, insurer, self-insured employer or medical service provider shall request administrative review by the director. The decision of the director is subject to review as provided in ORS 183.310 to 183.550.

(13) The director may exclude hospitals defined in ORS 442.470 from imposition of a fee schedule authorized by this section upon a determination of economic necessity. [Amended by 1965 c.285 s.26; 1969 c.611 s.1; 1971 c.329 s.1; 1981 c.535 s.5; 1983 c.816 s.6; 1985 c.107 s.1; 1985 c.739 s.5; 1987 c.884 s.42; 1990 c.2 s.14; 1995 c.332 s.26; 1999 c.233 s.1]

Note: See notes under 656.202.

656.250 Limitation on compensability of physical therapist services. A physical therapist shall not provide compensable services to injured workers governed by this chapter except as allowed by a governing managed care organization contract or as authorized by the worker's attending physician. [1993 c.211 s.6]

656.252 Medical report regulation; duties of attending physician; disclosure of information; notice of changing attending physician; copies of medical service billings to be furnished to worker. (1) In order to ensure the prompt and correct reporting and payment of compensation in compensable injuries, the Director of the Department of Consumer and Business Services shall make rules governing audits of medical service bills and reports by attending and consulting physicians and other personnel of all medical information relevant to the determination of a claim to the injured worker's representative, the worker's employer, the employer's insurer and the Department of Consumer and Business Services. Such rules shall include, but not necessarily be limited to:

(a) Requiring attending physicians to make the insurer or self-insured employer a first report of injury within a specified time after the first service rendered.

(b) Requiring attending physicians to submit follow-up reports within specified time limits or upon the request of an interested party.

(c) Requiring examining physicians to submit their reports, and to whom, within a specified time.

(d) Such other reporting requirements as the director may deem necessary to insure that payments of compensation be prompt and that all interested parties be given information necessary to the prompt determination of claims.

(e) Requiring insurers and self-insured employers to audit billings for all medical services, including hospital services.

(2) The attending physician shall do the following:

(a) Advise the insurer or self-insured employer of the anticipated date for release of the injured worker to return to employment, the anticipated date that the worker will be medically stationary, and the next appointment date. Except when the attending physician has previously indicated that temporary disability will not exceed 14 days, the insurer or self-insured employer may request a medical report every 15 days, and the attending physician shall forward such reports.

(b) Advise the insurer or self-insured employer within five days of the date the injured worker is released to return to work. Under no circumstances shall the physician notify the insurer or employer of the worker's release to return to work without notifying the worker at the same time.

(c) After a claim has been closed, advise the insurer or self-insured employer within five days after the treatment is resumed or the reopening of a claim is recommended. The attending physician under this paragraph need not be the same attending physician who released the worker when the claim was closed.

(3) In promulgating the rules regarding medical reporting the director may consult and confer with physicians and members of medical associations and societies.

(4) No person who reports medical information to a person referred to in subsection (1) of this section, in accordance with department rules, shall incur any legal liability for the disclosure of such information.

(5) Whenever an injured worker changes attending physicians, the newly selected attending physician shall so notify the responsible insurer or self-insured

employer not later than five days after the date of the change or the date of first treatment. Every attending physician who refers a worker to a consulting physician promptly shall notify the responsible insurer or self-insured employer of the referral.

(6) A provider of medical services, including hospital services, that submits a billing to the insurer or self-insured employer shall also submit a copy of the billing to the worker for whom the service was performed after receipt from the injured worker of a written request for such a copy. [1967 c.626 ss.2, 5; 1979 c.839 s.3; 1981 c.535 s.6; 1981 c.874 s.17; 1987 c.884 s.3; 1995 c.332 s.26a]

656.254 Medical report forms; procedure for declaring health care practitioner ineligible for workers' compensation reimbursement. (1) The Director of the Department of Consumer and Business Services shall establish medical report forms, in duplicate snap-outs where applicable, to be used by insurers, self-insured employers and physicians, including in such forms information necessary to establish facts required in the determination of the claim.

(2) The director shall establish sanctions for the enforcement of medical reporting requirements. Such sanctions may include, but are not limited to, forfeiture of fees and penalty not to exceed $1,000 for each occurrence.

(3) In accordance with the provisions of ORS 183.310 to 183.550, if the director finds that a health care practitioner has:

(a) Been found, pursuant to ORS 656.327, to have failed to comply with rules adopted pursuant to this chapter regarding the performance of medical services for injured workers or to have provided medical treatment that is excessive, inappropriate or ineffectual, the director may impose a sanction that includes forfeiture of fees and a penalty not to exceed $1,000 for each occurrence. If the failure to comply or perform is repeated and willful, the director may declare the health care practitioner ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years.

(b) Had the health care practitioner's license revoked or suspended by the practitioner's professional licensing board for a violation of that profession's ethical standards, the director may declare the health care practitioner ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years or the period the practitioner's license is suspended or revoked, whichever period is the longer.

(c) Engaged in any course of conduct demonstrated to be dangerous to the health or safety of a workers' compensation claimant, the director may impose a sanction that includes forfeiture of fees and a penalty not to exceed $1,000 for each occurrence. If the conduct is repeated and willful, the director may declare the health care practitioner ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years.

(4) Any declaration that a health care practitioner is ineligible to receive reimbursement under this chapter shall not otherwise interfere with or impair treatment of any person by the health care practitioner.

(5) ORS 656.735 (5) to (7) and 656.740 also apply to orders and penalties assessed under this section. [1967 c.626 ss.3, 4; 1975 c.556 s.40; 1979 c.839 s.30; 1981 c.854 s.15; 1987 c.233 s.1; 1987 c.884 s.27; 1995 c.94 s.2; 1997 c.249 s.200]

656.256 Considerations for rules regarding certain rural hospitals. Whenever the Workers' Compensation Division of the Department of Consumer and Business Services adopts any rule affecting a type A or B rural hospital, the division shall take into consideration the risk assessment formula set forth in ORS 442.520 (2). [1991 c.947 s.19]

656.258 Vocational assistance service payments. The insurer or self-insured employer shall pay a vocational assistance provider for all vocational assistance services, including the cost of an evaluation to determine whether a worker is eligible for vocational assistance, that are performed at the request of the insurer or self-insured employer. Within 60 days after receiving a billing, the insurer or self-insured employer shall pay for all vocational assistance services performed, including those services performed in good faith without knowledge that the worker's eligibility to receive vocational assistance has been terminated or that the worker has withdrawn or is otherwise ineligible for vocational assistance. [1985 c.600 s.18]

656.260 Certification procedure for managed health care provider; peer review, quality assurance, service utilization and contract review; confidentiality of certain information; immunity from liability; rules; medical service dispute resolution. (1) Any health care provider or group of medical service providers may make written application to the Director of the Department of Consumer and Business Services to become certified to provide managed care to injured workers for injuries and diseases compensable under this chapter. However, nothing in this section authorizes an organization that is formed, owned or operated by an insurer or employer other than a health care provider to become certified to provide managed care.

(2) Each application for certification shall be accompanied by a reasonable fee prescribed by the director. A certificate is valid for such period as the director may prescribe unless sooner revoked or suspended.

(3) Application for certification shall be made in such form and manner and shall set forth such information regarding the proposed plan for providing services as the director may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all individuals who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in this state.

(b) A description of the times, places and manner of providing services under the plan.

(c) A description of the times, places and manner of providing other related optional services the applicants wish to provide.

(d) Satisfactory evidence of ability to comply with any financial requirements to insure delivery of service in accordance with the plan which the director may prescribe.

(4) The director shall certify a health care provider or group of medical service providers to provide managed care under a plan if the director finds that the plan:

(a) Proposes to provide services that meet quality, continuity and other treatment standards prescribed by the director and will provide all medical and health care services that may be required by this chapter in a manner that is timely, effective and convenient for the worker.

(b) Subject to any other provision of law, does not discriminate against or exclude from participation in the plan any category of medical service providers and includes an adequate number of each category of medical service providers to give workers adequate flexibility to choose medical service providers from among those individuals who provide services under the plan. However, nothing in the requirements of this paragraph shall affect the provisions of ORS 441.055 relating to the granting of medical staff privileges.

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(d) Provides adequate methods of peer review, service utilization review, quality assurance, contract review and dispute resolution to ensure appropriate treatment or to prevent inappropriate or excessive treatment, to exclude from participation in the plan those individuals who violate these treatment standards and to provide for the resolution of such medical disputes as the director considers appropriate. A majority of the members of each peer review, quality assurance, service utilization and contract review committee shall be physicians licensed to practice medicine by the Board of Medical Examiners. As used in this paragraph:

(A) “Peer review” means evaluation or review of the performance of colleagues by a panel with similar types and degrees of expertise. Peer review requires participation of at least three physicians prior to final determination.

(B) “Service utilization review” means evaluation and determination of the reasonableness, necessity and appropriateness of a worker's use of medical care resources and the provision of any needed assistance to clinician or member, or both, to ensure appropriate use of resources. “Service utilization review” includes prior authorization, concurrent review, retrospective review, discharge planning and case management activities.

(C) “Quality assurance” means activities to safeguard or improve the quality of medical care by assessing the quality of care or service and taking action to improve it.

(D) “Dispute resolution” includes the resolution of disputes arising under peer review, service utilization review and quality assurance activities between insurers, self-insured employers, workers and medical and health care service providers, as required under the certified plan.

(E) “Contract review” means the methods and processes whereby the managed care organization monitors and enforces its contracts with participating providers

for matters other than matters enumerated in subparagraphs (A), (B) and (C) of this paragraph.

(e) Provides a program involving cooperative efforts by the workers, the employer and the managed care organizations to promote workplace health and safety consultative and other services and early return to work for injured workers.

(f) Provides a timely and accurate method of reporting to the director necessary information regarding medical and health care service cost and utilization to enable the director to determine the effectiveness of the plan.

(g) Authorizes workers to receive compensable medical treatment from a primary care physician who is not a member of the managed care organization, but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, to be furnished by another provider that the worker may require and if that primary care physician agrees to comply with all the rules, terms and conditions regarding services performed by the managed care organization. Nothing in this paragraph is intended to limit the worker's right to change primary care physicians prior to the filing of a workers' compensation claim. As used in this paragraph, “primary care physician” means a physician who is qualified to be an attending physician referred to in ORS 656.005 (12)(b)(A) and who is a family practitioner, a general practitioner or an internal medicine practitioner.

(h) Provides a written explanation for denial of participation in the managed care organization plan to any licensed health care provider that has been denied participation in the managed care organization plan.

(i) Complies with any other requirement the director determines is necessary to provide quality medical services and health care to injured workers.

(5) The director shall refuse to certify or may revoke or suspend the certification of any health care provider or group of medical service providers to provide managed care if the director finds that:

(a) The plan for providing medical or health care services fails to meet the requirements of this section.

(b) Service under the plan is not being provided in accordance with the terms of a certified plan.

(6) Any issue concerning the provision of medical services to injured workers subject to a managed care contract and service utilization review, quality assurance, dispute resolution, contract review and peer review activities as well as authorization of medical services to be provided by other than an attending physician pursuant to ORS 656.245 (2)(b) shall be subject solely to review by the director or the director's designated representatives, or as otherwise provided in this section. Data generated by or received in connection with these activities, including written reports, notes or records of any such activities, or of the director's review thereof, shall be confidential, and shall not be disclosed except as considered necessary by the director in the administration of this chapter. The director may report professional misconduct to an appropriate licensing board.

(7) No data generated by service utilization review, quality assurance, dispute resolution or peer review activities and no physician profiles or data used to create physician profiles pursuant to this section or the director's review thereof shall be used in any action, suit or proceeding except to the extent considered necessary by the director in the administration of this chapter. The confidentiality provisions of this section shall not apply in any action, suit or proceeding arising out of or related to a contract between a managed care organization and a health care provider whose confidentiality is protected by this section.

(8) A person participating in service utilization review, quality assurance, dispute resolution or peer review activities pursuant to this section shall not be examined as to any communication made in the course of such activities or the findings thereof, nor shall any person be subject to an action for civil damages for affirmative actions taken or statements made in good faith.

(9) No person who participates in forming consortiums, collectively negotiating fees or otherwise solicits or enters into contracts in a good faith effort to provide medical or health care services according to the provisions of this section shall be examined or subject to administrative or civil liability regarding any such participation except pursuant to the director's active supervision of such activities and the managed care organization. Before engaging in such activities, the person shall provide notice of intent to the director in a form prescribed by the director.

(10) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(11) In consultation with the committees referred to in ORS 656.790 and 656.794, the director shall adopt such rules as may be necessary to carry out the provisions of this section.

(12) As used in this section, ORS 656.245, 656.248 and 656.327, “medical service provider” means a person duly licensed to practice one or more of the healing arts in any country or in any state or territory or possession of the United States.

(13) Notwithstanding ORS 656.005 (12) or subsection (4)(b) of this section, a managed care organization contract may designate any medical service provider or category of providers as attending physicians.

(14) If a worker, insurer, self-insured employer or the attending physician is dissatisfied with an action of the managed care organization regarding the provision of medical services pursuant to this chapter, peer review, service utilization review or quality assurance activities, that person or entity must first apply to the director for administrative review of the matter before requesting a hearing before the director. Such application must be made not later than the 60th day after the date the managed care organization has completed and issued its final decision.

(15) Upon a request for administrative review, the director shall create a documentary record sufficient for judicial review. The director shall complete administrative review and issue a proposed order within a reasonable time. The proposed administrative order of the director pursuant to this section shall become

final and not subject to further review unless a written request for a hearing is filed with the director within 30 days of the mailing of the order to all parties.

(16) At the contested case hearing, the administrative order may be modified only if it is not supported by substantial evidence in the record or reflects an error of law. No new medical evidence or issues shall be admitted. The dispute may also be remanded to the managed care organization for further evidence taking, correction or other necessary action if the director determines the record has been improperly, incompletely or otherwise insufficiently developed. Decisions by the director regarding medical disputes are subject to review under ORS 183.310 to 183.550.

(17) Any person who is dissatisfied with an action of a managed care organization other than regarding the provision of medical services pursuant to this chapter, peer review, service utilization review or quality assurance activities may request a contested case hearing before the director pursuant to ORS 183.310 to 183.550. The decision of the director is final if an appeal is not made to the Court of Appeals within 60 days of the mailing of the order.

(18) Notwithstanding any other provision of law, original jurisdiction over contract review disputes is with the director. The director may resolve the matter by issuing an order subject to review under ORS 183.310 to 183.550, or the director may determine that the matter in dispute would be best addressed in another forum and so inform the parties.

(19) The director shall conduct such investigations, audits and other administrative oversight in regard to managed care as the director deems necessary to carry out the purposes of this chapter. [1990 c.2 s.12; 1995 c.332 s.27; amendments by 1995 c.332 s.27a repealed by 1999 c.6 s.1; 1997 c.639 ss.1,2]

Note: See notes under 656.202.

Note: Section 13, chapter 2, Oregon Laws 1990, provides:

Sec. 13. Section 12 of this 1990 Act [656.260] and the new subsection (5) added to ORS 656.245 by section 10 of this 1990 Act do not apply to a worker who is receiving medical treatment for an accepted injury or occupational disease on the operative date of this section until the worker is found to be medically stationary or the worker changes physician, whichever event first occurs. [1990 c.2 s.13]

PROCEDURE FOR OBTAINING COMPENSATION

656.262 Processing of claims and payment of compensation; payment by employer; acceptance and denial of claim; reporting claims; penalty for unreasonable payment delay; cooperation by worker and attorney in claim investigation. (1) Processing of claims and providing compensation for a worker shall be the responsibility of the insurer or self-insured employer. All employers shall assist their insurers in processing claims as required in this chapter.

(2) The compensation due under this chapter shall be paid periodically, promptly and directly to the person entitled thereto upon the employer's receiving notice or knowledge of a claim, except where the right to compensation is denied by the insurer or self-insured employer.

(3)(a) Employers shall, immediately and not later than five days after notice or knowledge of any claims or accidents which may result in a compensable injury claim, report the same to their insurer. The report shall include:

(A) The date, time, cause and nature of the accident and injuries.

(B) Whether the accident arose out of and in the course of employment.

(C) Whether the employer recommends or opposes acceptance of the claim, and the reasons therefor.

(D) The name and address of any health insurance provider for the injured worker.

(E) Any other details the insurer may require.

(b) Failure to so report subjects the offending employer to a charge for reimbursing the insurer for any penalty the insurer is required to pay under subsection (11) of this section because of such failure. As used in this subsection, “health insurance” has the meaning for that term provided in ORS 731.162.

(4)(a) The first installment of temporary disability compensation shall be paid no later than the 14th day after the subject employer has notice or knowledge of the claim, if the attending physician authorizes the payment of temporary disability compensation. Thereafter, temporary disability compensation shall be paid at least once each two weeks, except where the Director of the Department of Consumer and Business Services determines that payment in installments should be made at some other interval. The director may by rule convert monthly benefit schedules to weekly or other periodic schedules.

(b) Notwithstanding any other provision of this chapter, if a self-insured employer pays to an injured worker who becomes disabled the same wage at the same pay interval that the worker received at the time of injury, such payment shall be deemed timely payment of temporary disability payments pursuant to ORS 656.210 and 656.212 during the time the wage payments are made.

(c) Notwithstanding any other provision of this chapter, when the holder of a public office is injured in the course and scope of that public office, full official salary paid to the holder of that public office shall be deemed timely payment of temporary disability payments pursuant to ORS 656.210 and 656.212 during the time the wage payments are made. As used in this subsection, “public office” has the meaning for that term provided in ORS 260.005.

(d) Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the worker's attending physician verification of the worker's inability to work resulting from the claimed injury or disease and the physician cannot verify the worker's inability to work, unless the worker has been unable to receive treatment for reasons beyond the worker's control.

(e) If a worker fails to appear at an appointment with the worker's attending physician, the insurer or self-insured employer shall notify the worker by certified mail that temporary disability benefits may be suspended after the worker fails to appear at a rescheduled appointment. If the worker fails to appear at a rescheduled appointment, the insurer or self-insured employer may suspend payment of temporary disability benefits to the worker until the worker appears at a subsequent rescheduled appointment.

(f) If the insurer or self-insured employer has requested and failed to receive from the worker's attending physician verification of the worker's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician are not compensable until the attending physician submits such verification.

(g) Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the worker's attending physician ceases to authorize temporary disability or for any period of time not authorized by the attending physician. No authorization of temporary disability compensation by the attending physician under ORS 656.268 shall be effective to retroactively authorize the payment of temporary disability more than 14 days prior to its issuance.

(h) The worker's disability may be authorized only by a person described in ORS 656.005 (12)(b)(B) or 656.245 (5) for the period of time permitted by those sections. The insurer or self-insured employer may unilaterally suspend payment of temporary disability benefits to the worker at the expiration of the period until temporary disability is reauthorized by an attending physician.

(i) The insurer or self-insured employer may unilaterally suspend payment of all compensation to a worker enrolled in a managed care organization if the worker continues to seek care from an attending physician not authorized by the managed care organization more than seven days after the mailing of notice by the insurer or self-insured employer.

(5) Payment of compensation under subsection (4) of this section or payment, in amounts not to exceed $500 per claim, for medical services for nondisabling claims, may be made by the subject employer if the employer so chooses. The making of such payments does not constitute a waiver or transfer of the insurer's duty to determine entitlement to benefits. If the employer chooses to make such payment, the employer shall report the injury to the insurer in the same manner that other injuries are reported. However, an insurer shall not modify an employer's experience rating or otherwise make charges against the employer for any medical expenses paid by the employer pursuant to this subsection.

(6)(a) Written notice of acceptance or denial of the claim shall be furnished to the claimant by the insurer or self-insured employer within 90 days after the employer has notice or knowledge of the claim. Once the claim is accepted, the insurer or self-insured employer shall not revoke acceptance except as provided in this section. The insurer or self-insured employer may revoke acceptance and issue a denial at any time when the denial is for fraud, misrepresentation or other illegal activity by the worker. If the worker requests a hearing on any revocation of

acceptance and denial alleging fraud, misrepresentation or other illegal activity, the insurer or self-insured employer has the burden of proving, by a preponderance of the evidence, such fraud, misrepresentation or other illegal activity. Upon such proof, the worker then has the burden of proving, by a preponderance of the evidence, the compensability of the claim. If the insurer or self-insured employer accepts a claim in good faith, in a case not involving fraud, misrepresentation or other illegal activity by the worker, and later obtains evidence that the claim is not compensable or evidence that the insurer or self-insured employer is not responsible for the claim, the insurer or self-insured employer may revoke the claim acceptance and issue a formal notice of claim denial, if such revocation of acceptance and denial is issued no later than two years after the date of the initial acceptance. If the worker requests a hearing on such revocation of acceptance and denial, the insurer or self-insured employer must prove, by a preponderance of the evidence, that the claim is not compensable or that the insurer or self-insured employer is not responsible for the claim. Notwithstanding any other provision of this chapter, if a denial of a previously accepted claim is set aside by an Administrative Law Judge, the Workers' Compensation Board or the court, temporary total disability benefits are payable from the date any such benefits were terminated under the denial. Pending acceptance or denial of a claim, compensation payable to a claimant does not include the costs of medical benefits or burial expenses. The insurer shall also furnish the employer a copy of the notice of acceptance.

(b) The notice of acceptance shall:

(A) Specify what conditions are compensable.

(B) Advise the claimant whether the claim is considered disabling or nondisabling.

(C) Inform the claimant of the Expedited Claim Service and of the hearing and aggravation rights concerning nondisabling injuries, including the right to object to a decision that the injury of the claimant is nondisabling by requesting reclassification pursuant to ORS 656.277.

(D) Inform the claimant of employment reinstatement rights and responsibilities under ORS chapter 659.

(E) Inform the claimant of assistance available to employers from the Reemployment Assistance Program under ORS 656.622.

(F) Be modified by the insurer or self-insured employer from time to time as medical or other information changes a previously issued notice of acceptance.

(c) An insurer's or self-insured employer's acceptance of a combined or consequential condition under ORS 656.005 (7), whether voluntary or as a result of a judgment or order, shall not preclude the insurer or self-insured employer from later denying the combined or consequential condition if the otherwise compensable injury ceases to be the major contributing cause of the combined or consequential condition.

(d) An injured worker who believes that a condition has been incorrectly omitted from a notice of acceptance, or that the notice is otherwise deficient, first must communicate in writing to the insurer or self-insured employer the worker's

objections to the notice. The insurer or self-insured employer has 30 days from receipt of the communication from the worker to revise the notice or to make other written clarification in response. A worker who fails to comply with the communication requirements of this paragraph may not allege at any hearing or other proceeding on the claim a de facto denial of a condition based on information in the notice of acceptance from the insurer or self-insured employer. Notwithstanding any other provision of this chapter, the worker may initiate objection to the notice of acceptance at any time.

(7)(a) After claim acceptance, written notice of acceptance or denial of claims for aggravation or new medical conditions shall be furnished to the claimant by the insurer or self-insured employer within 90 days after the insurer or self-insured employer receives written notice of such claims. New medical condition claims must clearly request formal written acceptance of the condition and are not made by the receipt of a medical claim billing for the provision of, or requesting permission to provide, medical treatment for the new condition. The worker must clearly request formal written acceptance of any new medical condition from the insurer or self-insured employer. The insurer or self-insured employer is not required to accept each and every diagnosis or medical condition with particularity, so long as the acceptance tendered reasonably apprises the claimant and medical providers of the nature of the compensable conditions. Notwithstanding any other provision of this chapter, the worker may initiate a new medical condition claim at any time.

(b) Once a worker's claim has been accepted, the insurer or self-insured employer must issue a written denial to the worker when the accepted injury is no longer the major contributing cause of the worker's combined condition before the claim may be closed.

(c) When an insurer or self-insured employer determines that the claim qualifies for claim closure, the insurer or self-insured employer shall issue at claim closure an updated notice of acceptance that specifies which conditions are compensable. The procedures specified in subsection (6)(d) of this section apply to this notice. Any objection to the updated notice or appeal of denied conditions shall not delay claim closure pursuant to ORS 656.268. If a condition is found compensable after claim closure, the insurer or self-insured employer shall reopen the claim for processing regarding that condition.

(8) The assigned claims agent in processing claims under ORS 656.054 shall send notice of acceptance or denial to the noncomplying employer.

(9) If an insurer or any other duly authorized agent of the employer for such purpose, on record with the Director of the Department of Consumer and Business Services denies a claim for compensation, written notice of such denial, stating the reason for the denial, and informing the worker of the Expedited Claim Service and of hearing rights under ORS 656.283, shall be given to the claimant. A copy of the notice of denial shall be mailed to the director and to the employer by the insurer. The worker may request a hearing pursuant to ORS 656.319.

(10) Merely paying or providing compensation shall not be considered acceptance of a claim or an admission of liability, nor shall mere acceptance of such

compensation be considered a waiver of the right to question the amount thereof. Payment of permanent disability benefits pursuant to a notice of closure, reconsideration order or litigation order, or the failure to appeal or seek review of such an order or notice of closure, shall not preclude an insurer or self-insured employer from subsequently contesting the compensability of the condition rated therein, unless the condition has been formally accepted.

(11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due. Notwithstanding any other provision of this chapter, the director shall have exclusive jurisdiction over proceedings regarding solely the assessment and payment of the additional amount described in this subsection. The entire additional amount shall be paid to the worker if the worker is not represented by an attorney. If the worker is represented by an attorney, the worker shall be paid one-half the additional amount and the worker's attorney shall receive one-half the additional amount, in lieu of an attorney fee. The director's action and review thereof shall be subject to ORS 183.310 to 183.550 and such other procedural rules as the director may prescribe.

(b) When the director does not have exclusive jurisdiction over proceedings regarding the assessment and payment of the additional amount described in this subsection, the provision for attorney fees provided in this subsection shall apply in the other proceeding.

(12) The insurer may authorize an employer to pay compensation to injured workers and shall reimburse employers for compensation so paid.

(13) Insurers and self-insured employers shall report every claim for disabling injury to the director within 21 days after the date the employer has notice or knowledge of such injury.

(14) Injured workers have the duty to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers shall submit to and shall fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. Injured workers who are represented by an attorney shall have the right to have the attorney present during any personal or telephonic interview or deposition. However, if the attorney is not willing or available to participate in an interview at a time reasonably chosen by the insurer or self-insured employer within 14 days of the request for interview and the insurer or self-insured employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable and is preventing the worker from complying within 14 days of the request for interview, the insurer or self-insured employer shall notify the director. If the director determines that the attorney's unwillingness or unavailability is unreasonable, the director shall assess a civil penalty against the attorney of not more than $1,000.

(15) If the director finds that a worker fails to reasonably cooperate with an investigation involving an initial claim to establish a compensable injury or an aggravation claim to reopen the claim for a worsened condition, the director shall

suspend all or part of the payment of compensation after notice to the worker. If the worker does not cooperate for an additional 30 days after the notice, the insurer or self-insured employer may deny the claim because of the worker's failure to cooperate. The obligation of the insurer or self-insured employer to accept or deny the claim within 90 days is suspended during the time of the worker's noncooperation. After such a denial, the worker shall not be granted a hearing or other proceeding under this chapter on the merits of the claim unless the worker first requests and establishes at an expedited hearing under ORS 656.291 that the worker fully and completely cooperated with the investigation, that the worker failed to cooperate for reasons beyond the worker's control or that the investigative demands were unreasonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the Administrative Law Judge shall affirm the denial, and the worker's claim for injury shall remain denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investigative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order the reinstatement of interim compensation if appropriate and remand the claim to the insurer or self-insured employer to accept or deny the claim. [1965 c.285 s.30; 1969 c.399 s.1; 1973 c.620 s.2; 1975 c.556 s.41; 1981 c.535 s.7; 1981 c.854 s.16; 1981 c.874 s.4; 1983 c.809 s.1; 1983 c.816 s.7; 1985 c.600 s.7; 1987 c.884 s.19; 1990 c.2 s.15; 1995 c.332 s.28; 1995 c.641 s.4; 1997 c.605 s.1; 1997 c.639 s.7; 1999 c.313 s.5]

Note: See notes under 656.202.

656.263 To whom notices sent under ORS 656.262, 656.265, 656.268 to 656.289, 656.295 to 656.325 and 656.382 to 656.388. All notices of proceedings required to be sent under ORS 656.262, 656.265, 656.268 to 656.289, 656.295 to 656.325, 656.382 to 656.388 and this section shall be sent to the employer and the insurer, if any. [1967 c.97 s.2; 1975 c.556 s.42]

656.264 Compensable injury, claim and other reports. (1) Insurers and self-insured employers shall report to the Director of the Department of Consumer and Business Services compensable injuries, claims disposition and payments made by them under this chapter.

(2) The director may require insurers and self-insured employers to report other information as required to carry out this chapter.

(3) The director may prescribe the interval and the form of such reports and establish sanctions for the enforcement of reporting requirements. [1975 c.556 s.39; 1981 c.854 s.17]

656.265 Notice of accident from worker. (1) Notice of an accident resulting in an injury or death shall be given immediately by the worker or a dependent of the worker to the employer, but not later than 90 days after the accident. The employer shall acknowledge forthwith receipt of such notice.

(2) The notice need not be in any particular form. However, it shall be in writing and shall apprise the employer when and where and how an injury has occurred to a worker. A report or statement secured from a worker, or from the doctor of the worker and signed by the worker, concerning an accident which may involve a compensable injury shall be considered notice from the worker and the employer shall forthwith furnish the worker a copy of any such report or statement.

(3) Notice shall be given to the employer by mail, addressed to the employer at the last-known place of business of the employer, or by personal delivery to the employer or to a foreman or other supervisor of the employer. If for any reason it is not possible to so notify the employer, notice may be given to the Director of the Department of Consumer and Business Services and referred to the insurer or self-insured employer.

(4) Failure to give notice as required by this section bars a claim under this chapter unless the notice is given within one year after the date of the accident and:

(a) The employer had knowledge of the injury or death; or

(b) The worker died within 180 days after the date of the accident.

(5) The issue of failure to give notice must be raised at the first hearing on a claim for compensation in respect to the injury or death.

(6) The director shall promulgate and prescribe uniform forms to be used by workers in reporting their injuries to their employers. These forms shall be supplied by all employers to injured workers upon request of the injured worker or some other person on behalf of the worker. The failure of the worker to use a specified form shall not, in itself, defeat the claim of the worker if the worker has complied with the requirement that the claim be presented in writing. [1965 c.285 s.30a; 1971 c.386 s.2; 1981 c.854 s.18; 1995 c.332 s.29]

656.266 Burden upon worker to prove compensability and nature and extent of disability. The burden of proving that an injury or occupational disease is compensable and of proving the nature and extent of any disability resulting therefrom is upon the worker. The worker cannot carry the burden of proving that an injury or occupational disease is compensable merely by disproving other possible explanations of how the injury or disease occurred. [1987 c.713 s.2]

656.268 Claim closure; termination of temporary total disability benefits; reconsideration of closure; procedure, penalty and attorney fee on reconsideration; medical arbiter to make findings of impairment for reconsideration; credit or offset for fraudulently obtained or overpaid benefits. (1) One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker. The insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the Department of Consumer and Business Services, and determine the extent of the worker's permanent disability, provided the worker is not enrolled and actively engaged in training according to rules adopted by the director pursuant to ORS 656.340 and 656.726, when:

(a) The worker has become medically stationary and there is sufficient information to determine permanent impairment;

(b) The accepted injury is no longer the major contributing cause of the worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because the accepted injury is no longer the major contributing cause of the worker's combined or consequential condition or conditions, and there is sufficient information to determine permanent impairment, the likely impairment and adaptability that would have been due to the current accepted condition shall be estimated; or

(c) Without the approval of the attending physician, the worker fails to seek medical treatment for a period of 30 days or the worker fails to attend a closing examination, unless the worker affirmatively establishes that such failure is attributable to reasons beyond the worker's control.

(2) If the worker is enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately reduced by any sums earned during the training.

(3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors shall be furnished to the worker and to the employer, if requested by the worker or employer.

(4) Temporary total disability benefits shall continue until whichever of the following events first occurs:

(a) The worker returns to regular or modified employment;

(b) The attending physician advises the worker and documents in writing that the worker is released to return to regular employment;

(c) The attending physician advises the worker and documents in writing that the worker is released to return to modified employment, such employment is offered in writing to the worker and the worker fails to begin such employment; or

(d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under ORS 656.262 (4) or other provisions of this chapter.

(5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's disability in closure of the claim shall be pursuant to the standards prescribed by the Director of the Department of Consumer and Business Services. The insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the worker's attorney if the worker is represented, and to the director. The notice must inform:

(A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissatisfied with the terms of the notice;

(B) The worker of the amount of any further compensation, including permanent disability compensation to be awarded; of the duration of temporary total or temporary partial disability compensation; of the right of the worker to request reconsideration by the director under this section within 60 days of the date of the

notice of claim closure; of the aggravation rights; and of such other information as the director may require; and

(C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204 and 656.208.

(b) If the worker has returned to work but the insurer or self-insured employer has not issued a notice of closure, the worker may request closure. Within 10 days of receipt of a written request from the worker, the insurer or self-insured employer shall issue a notice of closure if the requirements of this section have been met or a notice of refusal to close if the requirements of this section have not been met. A notice of refusal to close shall advise the worker of the decision not to close; of the right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to close the claim; of the right to be represented by an attorney; and of such other information as the director may require.

(c) If a worker objects to the notice of closure, the worker first must request reconsideration by the director under this section. The request for reconsideration must be made within 60 days of the date of the notice of closure.

(d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing on the claim and if a finding is made at the hearing that the notice of closure or refusal to close was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all compensation determined to be then due the claimant.

(e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director orders an increase by 25 percent or more of the amount of compensation to be paid to the worker for either a scheduled or unscheduled permanent disability and the worker is found upon reconsideration to be at least 20 percent permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all compensation determined to be then due the claimant. If the increase in compensation results from new information obtained through a medical arbiter examination or from the adoption of a temporary emergency rule, the penalty shall not be assessed.

(6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be held on each notice of closure. At the reconsideration proceeding, the worker or the insurer or self-insured employer may correct information in the record that is erroneous and may submit any medical evidence that should have been but was not submitted by the attending physician at the time of claim closure. If the director determines that a claim was not closed in accordance with subsection (1) of this section, the director may rescind the closure.

(b) If necessary, the director may require additional medical or other information with respect to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

(c) In any reconsideration proceeding under this section in which the worker was represented by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney, out of the additional compensation awarded, an amount equal to 10 percent of any additional compensation awarded to the worker.

(d) The reconsideration proceeding shall be completed within 18 working days from the date the reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit within the department. The deadline of 18 working days may be postponed by an additional 60 calendar days if within the 18 working days the department mails notice of review by a medical arbiter. If an order on reconsideration has not been mailed on or before 18 working days from the date the reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days where a notice for medical arbiter review was timely mailed or the director postponed the reconsideration pursuant to paragraph (b) of this subsection, or within such additional time as provided in subsection (7) of this section when reconsideration is postponed further because the worker has failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and any further proceedings shall occur as though an order on reconsideration affirming the notice of closure was mailed on the date the order was due to issue.

(e) The period for completing the reconsideration proceeding described in paragraph (d) of this subsection begins upon receipt by the director of a worker's request for reconsideration pursuant to subsection (5)(c) of this section. The insurer may fully participate in the reconsideration proceeding.

(f) Any medical arbiter report may be received as evidence at a hearing even if the report is not prepared in time for use in the reconsideration proceeding.

(g) If any party objects to the reconsideration order, the party may request a hearing under ORS 656.283 within 30 days from the date of the reconsideration order.

(7)(a) If the basis for objection to a notice of closure issued under this section is disagreement with the impairment used in rating of the worker's disability, the director shall refer the claim to a medical arbiter appointed by the director.

(b) If neither party requests a medical arbiter and the director determines that insufficient medical information is available to determine disability, the director may refer the claim to a medical arbiter appointed by the director.

(c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

(d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the director in consultation with the Board of Medical Examiners for the State of Oregon and the committee referred to in ORS 656.790.

(e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform such tests as may be reasonable and necessary to establish the worker's impairment.

(B) If the director determines that the worker failed to attend the examination without good cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall postpone the reconsideration proceedings for up to 60 days from the date of the determination that the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this or any prior opening of the claim until such time as the worker attends and cooperates with the examination or the request for reconsideration is withdrawn. Any additional evidence regarding good cause must be submitted prior to the conclusion of the 60-day postponement period.

(C) At the conclusion of the 60-day postponement period, if the worker has not attended and cooperated with a medical arbiter examination or established good cause, there shall be no further opportunity for the worker to attend a medical arbiter examination for this claim closure. The reconsideration record shall be closed, and the director shall issue an order on reconsideration based upon the existing record.

(D) All disability benefits suspended pursuant to this subsection, including all disability benefits awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Compensation Board or upon court review, shall not be due and payable to the worker.

(f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall be paid by the insurer or self-insured employer.

(g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the director for reconsideration of the notice of closure.

(h) After reconsideration, no subsequent medical evidence of the worker's impairment is admissible before the director, the Workers' Compensation Board or the courts for purposes of making findings of impairment on the claim closure.

(i)(A) When the basis for objection to a notice of closure issued under this section is a disagreement with the impairment used in rating the worker's disability, and the director determines that the closure was not made pursuant to this section, the director is not required to appoint a medical arbiter prior to the completion of the reconsideration proceeding.

(B) If the worker's condition has substantially changed since the notice of closure, upon the consent of all the parties to the claim, the director shall postpone the proceeding until the worker's condition is appropriate for claim closure under subsection (1) of this section.

(8) No hearing shall be held on any issue that was not raised and preserved before the director at reconsideration. However, issues arising out of the reconsideration order may be addressed and resolved at hearing.

(9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726, any permanent disability payments due under the closure shall be suspended, and the worker shall receive temporary disability compensation while the worker is enrolled and actively engaged in the training. When the worker ceases to be enrolled and actively engaged in the training,

the insurer or self-insured employer shall again close the claim pursuant to this section if the worker is medically stationary or if the worker's accepted injury is no longer the major contributing cause of the worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the duration of temporary total or temporary partial disability compensation. Permanent disability compensation shall be redetermined for unscheduled disability only. If the worker has returned to work or the worker's attending physician has released the worker to return to regular or modified employment, the insurer or self-insured employer shall again close the claim. This notice of closure may be appealed only in the same manner as are other notices of closure under this section.

(10) If the attending physician has approved the worker's return to work and there is a labor dispute in progress at the place of employment, the worker may refuse to return to that employment without loss of reemployment rights or any vocational assistance provided by this chapter.

(11) Any notice of closure made under this section may include necessary adjustments in compensation paid or payable prior to the notice of closure, including disallowance of permanent disability payments prematurely made, crediting temporary disability payments against current or future permanent or temporary disability awards or payments and requiring the payment of temporary disability payments which were payable but not paid.

(12) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker from that insurer or self-insured employer when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data used for ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the director.

(13)(a) An insurer or self-insured employer may offset any compensation payable to the worker to recover an overpayment from a claim with the same insurer or self-insured employer. When overpayments are recovered from temporary disability or permanent total disability benefits, the amount recovered from each payment shall not exceed 25 percent of the payment, without prior authorization from the worker.

(b) An insurer or self-insured employer may suspend and offset any compensation payable to the beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the death of the worker.

(14) Conditions that are direct medical sequelae to the original accepted condition shall be included in rating permanent disability of the claim unless they have been specifically denied. [1965 c.285 s.31; 1973 c.620 s.3; 1973 c.634 s.2;

1977 c.804 s.5; 1977 c.862 s.1; 1979 c.839 s.4; 1981 c.535 s.7a; 1981 c.854 s.19; 1981 c.874 s.13; 1985 c.425 s.1; 1985 c.600 s.8; 1987 c.884 s.10; 1990 c.2 s.16; 1991 c.502 s.1; 1995 c.332 s.30; 1997 c.111 s.1; 1997 c.382 s.1; 1999 c.313 s.1; 1999 c.1020 s.3]

Note: Section 16, chapter 313, Oregon Laws 1999, provides:

Sec. 16. (1) The Director of the Department of Consumer and Business Services shall phase out the claim closure activities of the Department of Consumer and Business Services in a manner that minimizes disruption for workers, insurers and self-insured employers to the greatest extent practicable.

(2) The director may:

(a) After providing reasonable written notice, require insurers and self-insured employers to assume claim closure responsibilities by a date certain for all claims or specific kinds of claims.

(b) Take other reasonable steps as may be necessary to implement this section and the amendments to ORS 656.206, 656.218, 656.262, 656.268, 656.270, 656.273, 656.277, 656.283, 656.295, 656.307, 656.726, 657.170 and 659.455 by sections 1 to 10 and 13 to 15 of this 1999 Act.

(3) Notwithstanding subsection (2) of this section, the director shall cease all claim closure activities and insurers and self-insured employers shall assume the responsibility for closing all workers' compensation claims not later than June 30, 2001. [1999 c.313 s.16]

Note: See notes under 656.202.

656.270 Contents of notice required on closure. Each closure made pursuant to ORS 656.268 shall contain a notice in capital letters and boldfaced type that informs the parties of the proper manner in which to proceed if they are dissatisfied with the closure. The notice shall include information on the rights and duties of the parties to obtain reconsideration and hearing on the closure, the right of the worker to consult with the ombudsman for injured workers and of the right of the worker to be represented by an attorney. The notice also may include such other relevant information as the Director of the Department of Consumer and Business Services prescribes. [1971 c.155 s.2; 1977 c.804 s.6; 1979 c.839 s.5; 1990 c.2 s.17; 1999 c.313 s.6]

656.271 [1965 c.285 s.32; 1969 c.171 s.1; repealed by 1973 c.620 s.4 (656.273 enacted in lieu of 656.271)]

656.272 [Repealed by 1965 c.285 s.95]

656.273 Aggravation for worsened conditions; procedure; limitations; additional compensation. (1) After the last award or arrangement of compensation, an injured worker is entitled to additional compensation for worsened conditions resulting from the original injury. A worsened condition resulting from the original injury is established by medical evidence of an actual worsening of the compensable condition supported by objective findings. However, if the major contributing cause of the worsened condition is an injury not occurring within the course and scope of employment, the worsening is not compensable. A worsened condition is not established by either or both of the following:

(a) The worker's absence from work for any given amount of time as a result of the worker's condition from the original injury; or

(b) Inpatient treatment of the worker at a hospital for the worker's condition from the original injury.

(2) To obtain additional medical services or disability compensation, the injured worker must file a claim for aggravation with the insurer or self-insured employer. In the event the insurer or self-insured employer cannot be located, is unknown, or has ceased to exist, the claim shall be filed with the Director of the Department of Consumer and Business Services.

(3) A claim for aggravation must be in writing in a form and format prescribed by the director and signed by the worker or the worker's representative. The claim for aggravation must be accompanied by the attending physician's report establishing by written medical evidence supported by objective findings that the claimant has suffered a worsened condition attributable to the compensable injury.

(4)(a) The claim for aggravation must be filed within five years after the first notice of closure made under ORS 656.268; or

(b) The claim for aggravation must be filed within five years after the date of injury, provided that the claim has been classified as nondisabling for more than one year after the date of injury or more than 60 days after the date of first classification by the insurer or self-insured employer, whichever is later.

(5) The director may order the claimant, the insurer or self-insured employer to pay for such medical opinion.

(6) A claim submitted in accordance with this section shall be processed by the insurer or self-insured employer in accordance with the provisions of ORS 656.262, except that the first installment of compensation due under ORS 656.262 shall be paid no later than the 14th day after the subject employer has notice or knowledge of medically verified inability to work resulting from a compensable worsening under subsection (1) of this section.

(7) A request for hearing on any issue involving a claim for aggravation must be made to the Workers' Compensation Board in accordance with ORS 656.283.

(8) If the worker submits a claim for aggravation of an injury or disease for which permanent disability has been previously awarded, the worker must establish that the worsening is more than waxing and waning of symptoms of the condition contemplated by the previous permanent disability award. [1973 c.620 s.5 (enacted in lieu of 656.271); 1975 c.497 s.1; 1977 c.804 s.7; 1979 c.839 s.6; 1981 c.854

s.20; 1987 c.884 s.23; 1989 c.171 s.76; 1990 c.2 s.18; 1995 c.332 s.31; 1999 c.313 s.2]

656.274 [Repealed by 1965 c.285 s.95]

656.275 [1963 c.20 s.2; repealed by 1965 c.285 s.95]

656.276 [Repealed by 1965 c.285 s.95]

656.277 Request for reclassification of nondisabling claim; nondisabling claim procedure. (1) A request for reclassification by the worker of an accepted nondisabling injury that the worker believes was or has become disabling must be submitted to the insurer or self-insured employer. The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request if the request is received within one year after the date of acceptance. A notice of such classification shall be mailed to the worker and the worker's attorney if the worker is represented. The worker may ask the Director of the Department of Consumer and Business Services to review the classification by the insurer or self-insured employer by submitting a request for review within 60 days of the mailing of the classification notice by the insurer or self-insured employer. If any party objects to the classification of the director, the party may request a hearing under ORS 656.283 within 30 days from the date of the director's order.

(2) A request by the worker that an accepted nondisabling injury was or has become disabling shall be made pursuant to ORS 656.273 as a claim for aggravation if made more than one year after the date of acceptance.

(3) A claim for a nondisabling injury shall not be reported to the director by the insurer or self-insured employer except:

(a) When a notice of claim denial is filed;

(b) When the status of the claim is as described in subsection (1) or (2) of this section; or

(c) When otherwise required by the director. [1990 c.2 s.48; 1995 c.332 s.32; 1999 c.313 s.3]

Note: 656.277 was added to and made a part of ORS chapter 656 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

656.278 Board has continuing authority to alter earlier action on claim; limitations. (1) Except as provided in subsection (6) of this section, the power and jurisdiction of the Workers' Compensation Board shall be continuing, and it may, upon its own motion, from time to time modify, change or terminate former findings, orders or awards if in its opinion such action is justified in those cases in which:

(a) There is a worsening of a compensable injury that requires either inpatient or outpatient surgery or other treatment requiring hospitalization. In such cases, the board may authorize the payment of temporary disability compensation from the time the worker is actually hospitalized or undergoes outpatient surgery until the worker's condition becomes medically stationary, as determined by the board; or

(b) The date of injury is earlier than January 1, 1966. In such cases, in addition to the payment of temporary disability compensation, the board may authorize payment of medical benefits.

(2) Benefits provided under subsection (1) of this section do not include vocational assistance benefits under ORS 656.340.

(3) An order or award made by the board during the time within which the claimant has the right to request a hearing on aggravation under ORS 656.273 is not an order or award, as the case may be, made by the board on its own motion.

(4) The claimant has no right to appeal any order or award made by the board on its own motion, except when the order diminishes or terminates a former award. The employer may appeal from an order which increases the award.

(5) The insurer or self-insured employer may voluntarily reopen any claim to provide benefits or grant additional medical or hospital care to the claimant.

(6) The provisions of this section do not authorize the board, on its own motion, to modify, change or terminate former findings or orders:

(a) That a claimant incurred no injury or incurred a noncompensable injury; or

(b) Approving disposition of a claim under ORS 656.236 or 656.289 (4).

[Amended by 1955 c.718 s.1; 1957 c.559 s.1; 1965 c.285 s.33; 1981 c.535 s.32; 1985 c.212 s.6; 1987 c.884 s.37; 1990 c.2 s.19; 1995 c.332 s.33]

656.280 [Amended by 1965 c.285 s.41b; renumbered 656.325]

656.282 [Amended by 1957 c.455 s.1; repealed by 1965 c.285 s.95]

656.283 Hearing rights and procedure; modification of vocational assistance actions; impeachment evidence; use of standards for evaluation of disability. (1) Subject to ORS 656.319, any party or the Director of the Department of Consumer and Business Services may at any time request a hearing on any matter concerning a claim, except matters for which a procedure for resolving the dispute is provided in another statute, including ORS 656.245, 656.248, 656.260, 656.327 and subsection (2) of this section.

(2)(a) The Legislative Assembly finds that vocational rehabilitation of injured workers requires a high degree of cooperation between all of the participants in the vocational assistance process. Based on this finding, the Legislative Assembly concludes that disputes regarding eligibility for and extent of vocational assistance services should be resolved through nonadversarial procedures to the greatest extent possible consistent with constitutional principles. The director is hereby charged with the duty of creating a procedure for resolving vocational assistance disputes in the manner provided in this subsection.

(b) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding vocational assistance, the worker must apply to the director for administrative review of the matter. Such application must be made not later than the 60th day after the date the worker was notified of the action. The director shall complete the review within a reasonable time. If the worker's dissatisfaction is resolved by agreement of the parties, the agreement shall be reduced to writing, and the director and the parties shall review the agreement and either approve or disapprove it. If the worker's dissatisfaction is not resolved by agreement of the parties, the director shall resolve the matter in a written order containing findings of fact and conclusions of law. The order shall be based on a record sufficient to permit review under paragraph (c) of this subsection. For purposes of this subsection, the term “parties” does not include a noncomplying employer.

(c) Director approval of an agreement resolving a vocational assistance matter shall be subject to reconsideration by the director under limitations prescribed by the director, but shall not be subject to review by any other forum. When the director issues an order after review under paragraph (b) of this subsection, the order shall be subject to review only by the director. At the contested case hearing, the decision of the director's administrative review shall be modified only if it:

(A) Violates a statute or rule;

(B) Exceeds the statutory authority of the agency;

(C) Was made upon unlawful procedure; or

(D) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(d) An appeal of the director's administrative review under paragraph (b) of this subsection must be made within 60 days of the review issue date. Judicial review of the order shall be pursuant to ORS 183.310 to 183.550.

(3) A request for hearing may be made by any writing, signed by or on behalf of the party and including the address of the party, requesting the hearing, stating that a hearing is desired, and mailed to the Workers' Compensation Board.

(4) The board shall refer the request for hearing to an Administrative Law Judge for determination as expeditiously as possible. The hearing shall be scheduled for a date not more than 90 days after receipt by the board of the request for hearing. The hearing shall not be postponed except in extraordinary circumstances beyond the control of the requesting party.

(5) At least 10 days' prior notice of the time and place of hearing shall be given to all parties in interest by mail. Hearings shall be held in the county where the worker resided at the time of the injury or such other place selected by the Administrative Law Judge.

(6) A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the order of the Administrative Law Judge. Transcription shall be in written form as provided by ORS 656.295 (3).

(7) Except as otherwise provided in this section and rules of procedure established by the board, the Administrative Law Judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and

may conduct the hearing in any manner that will achieve substantial justice. Neither the board nor an Administrative Law Judge may prevent a party from withholding impeachment evidence until the opposing party's case in chief has been presented, at which time the impeachment evidence may be used. Impeachment evidence consisting of medical or vocational reports not used during the course of a hearing must be provided to any opposing party at the conclusion of the presentation of evidence and before closing arguments are presented. Impeachment evidence other than medical or vocational reports that is not presented as evidence at hearing is not subject to disclosure. Evaluation of the worker's disability by the Administrative Law Judge shall be as of the date of issuance of the reconsideration order pursuant to ORS 656.268. Any finding of fact regarding the worker's impairment must be established by medical evidence that is supported by objective findings. The Administrative Law Judge shall apply to the hearing of the claim such standards for evaluation of disability as may be adopted by the director pursuant to ORS 656.726. Evidence on an issue regarding a notice of closure that was not submitted at the reconsideration required by ORS 656.268 is not admissible at hearing, and issues that were not raised by a party to the reconsideration may not be raised at hearing unless the issue arises out of the reconsideration order itself. However, nothing in this section shall be construed to prevent or limit the right of a worker, insurer or self-insured employer to present the reconsideration record at hearing to establish by a preponderance of that evidence that the standards adopted pursuant to ORS 656.726 for evaluation of the worker's permanent disability were incorrectly applied in the reconsideration order pursuant to ORS 656.268. If the Administrative Law Judge finds that the claim has been closed prematurely, the Administrative Law Judge shall issue an order rescinding the notice of closure.

(8) Any party shall be entitled to issuance and service of subpoenas under the provisions of ORS 656.726 (2)(c). Any party or representative of the party may serve such subpoenas.

(9) After a party requests a hearing and before the hearing commences, the board, by rule, may require the requesting party, if represented by an attorney, to notify the Administrative Law Judge in writing that the attorney has conferred with the other party and that settlement has been achieved, subject to board approval, or that settlement cannot be achieved. [1965 c.285 s.34; 1979 c.839 s.7; 1981 c.535 s.33; 1981 c.860 ss.1, 5; 1985 c.600 s.9; 1987 c.884 s.11; 1990 c.2 s.20; 1995 c.332 s.34; 1999 c.313 s.7]

Note: See notes under 656.202.

656.284 [Amended by 1953 c.671 s.2; 1955 c.718 s.2; 1959 c.450 s.4; repealed by 1965 c.285 s.95]

656.285 Protection of witnesses at hearings. ORCP 36 C shall apply to workers' compensation cases, except that the Administrative Law Judge shall make the determinations and orders required of the court in ORCP 36 C, and in addition

attorney fees shall not be declared as a matter of course but only in cases of harassment or hardship. [1973 c.652 s.1; 1977 c.358 s.11; 1979 c.284 s.187]

656.287 Use of vocational reports in determining loss of earning capacity at hearing. (1) Where there is an issue regarding loss of earning capacity, reports from vocational consultants employed by governmental agencies, insurers or self-insured employers, or from private vocational consultants, regarding job opportunities, the fitness of claimant to perform certain jobs, wage levels, or other information relating to claimant's employability shall be admitted into evidence at compensation hearings, provided such information is submitted to claimant 10 days prior to hearing and that upon demand from the adverse party the person preparing such report shall be made available for testimony and cross-examination.

(2) The Workers' Compensation Board shall establish rules to govern the admissibility of reports from vocational experts, including guidelines to establish the competency of vocational experts. [1973 c.581 ss.1, 2; 1985 c.600 s.10]

656.288 [Amended by 1957 c.288 s.1; repealed by 1965 c.285 s.95]

656.289 Orders of Administrative Law Judge; review; disposition of claim when compensability disputed; approval of director required for reimbursement of certain expenditures. (1) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the Administrative Law Judge shall promptly and not later than 30 days after the hearing determine the matter and make an order in accordance with the Administrative Law Judge's determination.

(2) A copy of the order shall be sent forthwith by mail to the Director of the Department of Consumer and Business Services and to all parties in interest.

(3) The order is final unless, within 30 days after the date on which a copy of the order is mailed to the parties, one of the parties requests a review by the Workers' Compensation Board under ORS 656.295. When one party requests a review by the board, the other party or parties shall have the remainder of the 30-day period and in no case less than 10 days in which to request board review in the same manner. The 10-day requirement may carry the period of time allowed for requests for board reviews beyond the 30th day. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.295.

(4)(a) Notwithstanding ORS 656.236, in any case where there is a bona fide dispute over compensability of a claim, the parties may, with the approval of an Administrative Law Judge, the board or the court, by agreement make such disposition of the claim as is considered reasonable.

(b) Insurers or self-insured employers who are parties to an approved disputed claim settlement under this subsection shall not be joined as parties in subsequent proceedings under this chapter to determine responsibility for payment for claim conditions for which settlement has been made.

(c) Notwithstanding ORS 656.005 (21), as used in this subsection, “party” does not include a noncomplying employer, except where a noncomplying employer has

submitted a disputed claim settlement with a claimant for approval before the claim has been referred to an assigned claims agent by the director. Upon approval of the disputed claim settlement, the Administrative Law Judge, the board or the court shall mail to the director a copy of the disputed claim settlement.

(5) Any claim in which the parties enter into a disposition under subsection (4) of this section shall not be eligible for reimbursement of expenditures from the Workers' Benefit Fund without the prior approval of the director. [1965 c.285 s.35; 1969 c.212 s.1; 1977 c.804 s.9; 1983 c.809 s.3; 1990 c.2 s.21; 1995 c.332 s.35; 1995 c.641 s.19]

656.290 [Amended by 1955 c.718 s.3; repealed by 1965 c.285 s.95]

656.291 Expedited Claim Service; jurisdiction; procedure; representation. (1) The Workers' Compensation Board, by rule, shall establish an Expedited Claim Service to provide for prompt, informal disposition of claims.

(2) The board shall assign to the service those claims:

(a) For which a hearing has been requested when the only matters unresolved do not include compensability of the claim and the amount in controversy is $1,000 or less; or

(b) For which the only matters unresolved are attorney fees or penalties.

(3)(a) The amount in controversy shall be deemed less than $1,000 if the party requesting hearing so indicates, the other party does not disagree and the Administrative Law Judge does not conclude, based on the evidence, that the amount in controversy exceeds $1,000. In a case assigned pursuant to subsection (2)(a) of this section, if the Administrative Law Judge finds that the amount in controversy exceeds $1,000, the Administrative Law Judge shall refer the case for disposition under the ordinary hearing process.

(b) Cases assigned to the Expedited Claim Service pursuant to subsection (2)(a) of this section shall be heard within 30 days of the request for hearing, and an order shall be issued within 10 days of the close of the hearing.

(c) No hearing shall be held in cases assigned to the Expedited Claim Service pursuant to subsection (2)(b) of this section unless the Administrative Law Judge finds that the dispute cannot be decided on stipulated facts.

(4) The board, by rule, shall establish the procedures for disposition of claims by the Expedited Claim Service to insure fair and just treatment of workers in all such proceedings.

(5) Notwithstanding ORS 9.320 or any provision of this chapter, an individual who is not an attorney may represent oneself or other persons who consent to such representation at any proceeding before the Expedited Claim Service.

(6) Any compromises, agreements, admissions, stipulations, statements of fact that are made or other such action taken by the representative is binding on those represented to the same extent as if done by an attorney. A person so represented may not thereafter claim that any such proceeding or meeting was legally defective because the person was not represented by an attorney.

(7) An individual who is not an attorney may not represent a claimant for a fee at any proceeding under this chapter.

(8) As used in this subsection, “attorney” has the meaning for that term provided in ORS 9.005. [1987 c.884 s.18]

656.292 [Amended by 1965 c.285 s.38; renumbered 656.301]

656.294 [Amended by 1965 c.285 s.37; renumbered 656.304]

656.295 Board review of Administrative Law Judge orders; application of standards for evaluation of disability. (1) The request for review by the Workers' Compensation Board of an order of an Administrative Law Judge need only state that the party requests a review of the order.

(2) The requests for review shall be mailed to the board and copies of the request shall be mailed to all parties to the proceeding before the Administrative Law Judge.

(3) When review has been requested, the record of such oral proceedings at the hearings before the Administrative Law Judge as may be necessary for purposes of the review shall be transcribed at the expense of the board. The original transcript shall be certified to be true, accurate and complete by the transcriber. A list of all exhibits received by the Administrative Law Judge shall be furnished to the parties in interest along with a copy of the transcribed record.

(4) Notice of the review shall be given to the parties by mail. The board shall set a date for review as expeditiously as possible. Review shall be scheduled for a date not later than 90 days after receipt by the board of the request for review. Review shall not be postponed except in extraordinary circumstances beyond the control of the requesting party.

(5) The review by the board shall be based upon the record submitted to it under subsection (3) of this section and such oral or written argument as it may receive. Evaluation of the worker's disability by the board shall be as of the date of issuance of the reconsideration order pursuant to ORS 656.268. Any finding of fact regarding the worker's impairment must be established by medical evidence that is supported by objective findings. If the board finds that the claim has been closed prematurely, the board shall issue an order rescinding the notice of closure. The board shall apply to the review of the claim such standards for the evaluation of disability as may be adopted by the Director of the Department of Consumer and Business Services pursuant to ORS 656.726. Nothing in this section shall be construed to prevent or limit the right of a worker, insurer or self-insured employer to present evidence to establish by a preponderance of the evidence that the standards adopted pursuant to ORS 656.726 for evaluation of the worker's permanent disability were incorrectly applied in the reconsideration order pursuant to ORS 656.268. However, if the board determines that a case has been improperly, incompletely or otherwise insufficiently developed or heard by the Administrative Law Judge, it may remand

the case to the Administrative Law Judge for further evidence taking, correction or other necessary action.

(6) The board may affirm, reverse, modify or supplement the order of the Administrative Law Judge and make such disposition of the case as it determines to be appropriate. It shall make its decision within 30 days after the review.

(7) The order of the board shall be filed and a copy thereof sent by mail to the director and to the parties.

(8) An order of the board is final unless within 30 days after the date of mailing of copies of such order to the parties, one of the parties appeals to the Court of Appeals for judicial review pursuant to ORS 656.298. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.298. [1965 c.285 s.35a; 1977 c.804 s.10; 1987 c.884 s.12; 1990 c.2 s.22; 1991 c.293 s.1; 1999 c.313 s.8]

Note: See notes under 656.202.

656.298 Court of Appeals review of board orders. (1) Any party affected by an order of the Workers' Compensation Board may, within the time limit specified in ORS 656.295, request judicial review of the order by the Court of Appeals.

(2) The name and style of the proceedings shall be “In the Matter of the Compensation of (name of the worker).”

(3) The judicial review shall be commenced by serving a copy of a petition for judicial review on the board and on the parties who appeared in the review proceedings, and by filing with the clerk of the Court of Appeals the original petition for judicial review with proof of service indorsed thereon. The petition for judicial review shall state:

(a) The name of the person appealing and of all other parties.

(b) The date the order appealed from was filed.

(c) A statement that the order is being appealed to the Court of Appeals.

(d) A brief statement of the relief requested and the reasons the relief should be granted.

(4) Within 10 days after service of a petition for judicial review on a party under subsection (3) of this section, such party may also request judicial review in the same manner.

(5) The following requirements of subsection (3) of this section are jurisdictional and may not be waived or extended:

(a) Service of the petition for judicial review on all parties identified in the petition for judicial review as adverse parties or, if the petition for judicial review does not identify adverse parties, on all parties who have appeared in the proceeding before the board.

(b) Filing of the original petition for judicial review with the Court of Appeals within the time limits imposed by ORS 656.295 (8) and by subsection (4) of this section.

(6) Within 30 days after service of a petition for judicial review on the board, the board shall forward to the clerk of the Court of Appeals:

(a) The original copy of the transcribed record prepared under ORS 656.295.

(b) All exhibits.

(c) Copies of all decisions and orders entered during the hearing and review proceedings.

(7) The review by the Court of Appeals shall be on the entire record forwarded by the board. Review shall be as provided in ORS 183.482 (7) and (8).

(8) Review under this section shall be given precedence on the docket over all other cases, except those given equal status by statute. [1965 c.285 s.36; 1977 c.804 s.11; 1987 c.884 s.12a; 1997 c.389 s.1]

656.301 [Formerly 656.292; repealed by 1977 c.804 s.55]

656.304 When acceptance of compensation precludes hearing. A claimant may accept and cash any check given in payment of any award or compensation without affecting the right to a hearing, except that the right of hearing on any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on the claimant's own application under ORS 656.230. This section shall not be construed as a waiver of the necessity of complying with ORS 656.283 to 656.298. [Formerly 656.294]

656.307 Determination of issues regarding responsibility for compensation payment; mediation or arbitration procedure. (1)(a) Where there is an issue regarding:

(A) Which of several subject employers is the true employer of a claimant worker;

(B) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(C) Responsibility between two or more employers or their insurers involving payment of compensation for one or more accidental injuries; or

(D) Joint employment by two or more employers,

the Director of the Department of Consumer and Business Services shall, by order, designate who shall pay the claim, if the employers and insurers admit that the claim is otherwise compensable. Payments shall begin in any event as provided in ORS 656.262 (4).

(b) At the time of claim closure, all parties to an order issued pursuant to paragraph (a) of this subsection shall have reconsideration and appeal rights.

(2) The director then shall request the Workers' Compensation Board chairperson to appoint an Administrative Law Judge to determine the responsible paying party. The proceedings shall be conducted in the same manner as any other hearing and any further appeal shall be conducted pursuant to ORS 656.295 and 656.298.

(3) When a determination of the responsible paying party has been made, the director shall direct any necessary monetary adjustment between the parties involved. Any monetary adjustment not reimbursed by an insurer or self-insured employer shall be recovered from the Consumer and Business Services Fund. Any stipulation or agreement under subsection (6) of this section shall not obligate the Consumer and Business Services Fund for reimbursement without prior approval of the Director of the Department of Consumer and Business Services.

(4) No self-insured employer or an insurer shall be joined in any proceeding under this section regarding its responsibility for any claim subject to ORS 656.273 unless the issue is entitled to hearing on application of the worker.

(5) The claimant shall be joined in any proceeding under this section as a necessary party, but may elect to be treated as a nominal party. If the claimant appears at any such proceeding and actively and meaningfully participates through an attorney, the Administrative Law Judge may require that a reasonable fee for the claimant's attorney be paid by the employer or insurer determined by the Administrative Law Judge to be the party responsible for paying the claim.

(6)(a) Notwithstanding subsection (2) of this section, parties to a responsibility proceeding under this section may agree to resolution of the dispute by mediation or arbitration by a private party. Any settlement stipulation, arbitration decision or other resolution of matters in dispute resulting from mediation or arbitration proceedings shall be filed with the Hearings Division and shall be given the same force and effect as an order of an Administrative Law Judge made pursuant to subsection (2) of this section. However, any such settlement stipulation, arbitration decision or other resolution is binding on the parties and is not subject to review by the director, an Administrative Law Judge, the board or any court or other administrative body, unless required pursuant to paragraph (d) of this subsection or subsection (3) of this section.

(b) For purposes of this subsection, mediation is a process of discussion and negotiation, with the mediator playing a central role in seeking a consensus among the parties. Such consensus may be reflected in a final mediation settlement stipulation, signed by all the parties and fully binding upon the parties with the same effect as a final order of an Administrative Law Judge, when the signed mediation settlement stipulation is filed with the Hearings Division of the Workers' Compensation Board.

(c) For purposes of this subsection, arbitration is an agreement to submit the matter to a binding decision by an arbitrator, through a process mutually agreed upon in advance. Once all the parties have agreed in writing to proceed with arbitration, no party may withdraw from the arbitration process except as provided in the written arbitration agreement.

(d) A mediation settlement stipulation may include matters beyond the responsibility issues. If other matters are included, the settlement agreement shall be submitted to the Hearings Division of the Workers' Compensation Board for review and approval, under this chapter, as to such additional matters beyond the responsibility issues.

(e) Any arbitration decision shall be limited to a decision as to responsibility and, where appropriate, the payment of associated costs and attorney fees. The arbitrator's decision shall have the same effect as a final order of an Administrative Law Judge when the signed decision is filed with the Hearings Division.

(f) When the parties have reported to the Hearings Division that they have agreed upon a mediation or arbitration process, the hearing shall be deferred for 90 days to allow the mediation or arbitration process to occur. Once 90 days have passed, the matter shall again be docketed for hearing unless the parties advise the Hearings Division in writing that progress has been made and request an extension of time of up to 90 days, which extension of time shall be granted as a matter of right. Once the second 90 days have passed, the matter shall again be docketed for hearing, and the hearing shall proceed before an Administrative Law Judge as though there had been no mediation or arbitration process, unless the parties present a mediation settlement stipulation or signed arbitration decision before the hearing begins.

(g) All parties must agree in writing to pursue mediation or arbitration and must agree upon the selection of the mediator or arbitrator. The mediator or arbitrator shall not be an employee of any insurer or self-insured employer that is a party to the proceedings. The mediator or arbitrator must be an attorney admitted to practice law in the State of Oregon. The mediator or arbitrator may serve as a mediator or arbitrator, even if the mediator or arbitrator separately represents any insurer or self-insured employer in other proceedings, provided that all parties are advised of such representation and consent in writing that the mediator or arbitrator may so serve despite such other representation. Such written consent supersedes any legal ethics restrictions otherwise provided for in law or regulation.

(h) If the claimant is represented by an attorney, the other parties must arrange for payment of a reasonable attorney fee for the claimant's attorney's services during the mediation or arbitration. Any mediation or arbitration agreement shall specify the terms of the fee arrangement.

(i) If the claimant is not represented by an attorney, the mediation process cannot include any issue other than responsibility. A nonrepresented claimant must be advised in writing of the following before the mediation or arbitration proceeds:

(A) The claimant's right to refuse to participate in mediation or arbitration proceedings and to, instead, proceed to a hearing before an Administrative Law Judge;

(B) The present rate of temporary total disability benefits for each alleged date of injury;

(C) The present rate of unscheduled and scheduled permanent partial disability benefits for each alleged date of injury;

(D) The estimated date of expiration of aggravation rights for each alleged date of injury; and

(E) The claimant's right to be represented by counsel of the claimant's choice at no expense to the claimant.

(j) Notwithstanding any other provision of law, any insurer or self-insured employer may be represented by a certified claims examiner rather than by an attorney in any mediation or arbitration hereunder. Any separate insured for the same insurer shall be represented by a separate claims examiner, if the insured has a continuing financial exposure as to the claim; where no continuing financial exposure exists, a single certified claims examiner may represent more than one insured for the same insurer in the mediation or arbitration proceeding.

(k) Any other procedures as to mediation or arbitration shall be subject to agreement among the parties. The Workers' Compensation Board may adopt rules as to the process for deferral and docketing of hearings where mediation or arbitration occurs, the filing of arbitration decisions as orders of the Hearings Division, the filing of mediation settlement stipulations regarding responsibility as orders of the Hearings Division, and review and approval of mediation settlement stipulations that extend beyond the issues of responsibility and associated attorney fees and costs. The Workers' Compensation Board shall not enact rules that restrict the mediation or arbitration process except to the extent provided within this section. [1965 c.285 s.39; 1971 c.70 s.1; 1979 c.839 s.8; 1987 c.713 s.5; 1995 c.332 s.36; 1997 c.43 s.1; 1999 c.313 s.9; 1999 c.876 s.3]

656.308 Responsibility for payment of claims; effect of new injury; denial of responsibility; procedure for joining employers and insurers; attorney fees; limitation on filing claims subject to settlement agreement. (1) When a worker sustains a compensable injury, the responsible employer shall remain responsible for future compensable medical services and disability relating to the compensable condition unless the worker sustains a new compensable injury involving the same condition. If a new compensable injury occurs, all further compensable medical services and disability involving the same condition shall be processed as a new injury claim by the subsequent employer. The standards for determining the compensability of a combined condition under ORS 656.005 (7) shall also be used to determine the occurrence of a new compensable injury or disease under this section.

(2)(a) Any insurer or self-insured employer who disputes responsibility for a claim shall so indicate in or as part of a denial otherwise meeting the requirements of ORS 656.262 issued in the 90 days allowed for processing of the claim. The denial shall advise the worker to file separate, timely claims against other potentially responsible insurers or self-insured employers, including other insurers for the same employer, in order to protect the right to obtain benefits on the claim. The denial may list the names and addresses of other insurers or self-insured employers. Such denials shall be final unless the worker files a timely request for hearing pursuant to ORS 656.319. All such requests for hearing shall be consolidated into one proceeding.

(b) No insurer or self-insured employer, including other insurers for the same employer, shall be joined to any workers' compensation hearing unless the worker has first filed a timely, written claim against that insurer or self-insured employer, or

the insurer or self-insured employer has consented to issuance of an order designating a paying agent pursuant to ORS 656.307. An insurer or self-insured employer against whom a claim is filed may contend that responsibility lies with another insurer or self-insured employer, including another insurer for the same employer, regardless of whether the worker has filed a claim against that insurer or self-insured employer.

(c) Upon written notice by an insurer or self-insured employer filed not more than 28 days or less than 14 days before the hearing, the Administrative Law Judge shall dismiss that party from the proceeding if the record does not contain substantial evidence to support a finding of responsibility against that party. The Administrative Law Judge shall decide such motions and inform the parties not less than seven days prior to the hearing, or postpone the hearing.

(d) Notwithstanding ORS 656.382 (2), 656.386 and 656.388, a reasonable attorney fee shall be awarded to the injured worker for the appearance and active and meaningful participation by an attorney in finally prevailing against a responsibility denial. Such a fee shall not exceed $1,000 absent a showing of extraordinary circumstances.

(3) A worker who is a party to an approved disputed claim settlement agreement under ORS 656.289 (4) may not subsequently file a claim against an insurer or a self-insured employer who is a party to the agreement with regard to claim conditions settled in the agreement even if other insurers or employers disclaim responsibility for those claim conditions. A worker who is a party to an approved claim disposition agreement under ORS 656.236 (1) may not subsequently file a claim against an insurer or a self-insured employer who is a party to the agreement with regard to any matter settled in the agreement even if other insurers or employers disclaim responsibility for those claim conditions, unless the claim in the subsequent proceeding is limited to a claim for medical services for claim conditions settled in the agreement. [1990 c.2 s.49; 1995 c.332 s.37]

656.310 Presumption concerning notice of injury and self-inflicted injuries; reports as evidence. (1) In any proceeding for the enforcement of a claim for compensation under this chapter, there is a rebuttable presumption that:

(a) Sufficient notice of injury was given and timely filed; and

(b) The injury was not occasioned by the willful intention of the injured worker to commit self-injury or suicide.

(2) The contents of medical, surgical and hospital reports presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein; so, also, shall such reports presented by the insurer or self-insured employer, provided that the doctor rendering medical and surgical reports consents to submit to cross-examination. This subsection shall also apply to medical or surgical reports from any treating or examining doctor who is not a resident of Oregon, provided that the claimant, self-insured employer or the insurer shall have a reasonable time, but no less than 30 days after receipt of notice that the report will be offered in evidence at a hearing, to cross-examine such doctor by deposition or by written

interrogatories to be settled by the Administrative Law Judge. [1965 c.285 s.40; 1969 c.447 s.1; 1981 c.854 s.21]

656.312 [Amended by 1953 c.428 s.2; 1965 c.285 s.44; renumbered 656.578]

656.313 Stay of compensation pending request for hearing or review; procedure for denial of claim for medical services; reimbursement. (1)(a) Filing by an employer or the insurer of a request for hearing on a reconsideration order before the Hearings Division, a request for Workers' Compensation Board review or court appeal or request for review of an order of the Director of the Department of Consumer and Business Services regarding vocational assistance stays payment of the compensation appealed, except for:

(A) Temporary disability benefits that accrue from the date of the order appealed from until closure under ORS 656.268, or until the order appealed from is itself reversed, whichever event first occurs;

(B) Permanent total disability benefits that accrue from the date of the order appealed from until the order appealed from is reversed;

(C) Death benefits payable to a surviving spouse prior to remarriage, to children or dependents that accrue from the date of the order appealed from until the order appealed from is reversed; and

(D) Vocational benefits for services for vocational evaluation and help in directly obtaining employment as provided by ORS 656.340 (7) and for services related to the development of plans for return to work, as provided by ORS 656.340 (9). No plan for return to work may be implemented until the vocational order on appeal has become final.

(b) If ultimately found payable under a final order, benefits withheld under this subsection shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed from through the date of payment. The board shall expedite review of appeals in which payment of compensation has been stayed under this section.

(2) If the board or court subsequently orders that compensation to the claimant should not have been allowed or should have been awarded in a lesser amount than awarded, the claimant shall not be obligated to repay any such compensation which was paid pending the review or appeal.

(3) If an insurer or self-insured employer denies the compensability of all or any portion of a claim submitted for medical services, the insurer or self-insured employer shall send notice of the denial to each provider of such medical services and to any provider of health insurance for the injured worker. After receiving notice of the denial, a medical service provider may submit medical reports and bills for the disputed medical services to the provider of health insurance for the injured worker. The health insurance provider shall pay all such bills in accordance with the limits, terms and conditions of the policy. If the injured worker has no health insurance, such bills may be submitted to the injured worker. A provider of disputed medical services shall make no further effort to collect disputed medical service bills

from the injured worker until the issue of compensability of the medical services has been finally determined.

(4)(a) When the compensability issue has been finally determined or when disposition or settlement of the claim has been made pursuant to ORS 656.236 or 656.289 (4), the insurer or self-insured employer shall notify each affected service provider and health insurance provider of the results of the disposition or settlement.

(b) If the services are determined to be compensable, the insurer or self-insured employer shall reimburse each health insurance provider for the amount of claims paid by the health insurance provider pursuant to this section. Such reimbursement shall be in addition to compensation or medical benefits the worker receives. Medical service reimbursement shall be paid directly to the health insurance provider.

(c) If the services are settled pursuant to ORS 656.289 (4), the insurer or self-insured employer shall reimburse, out of the settlement proceeds, each medical service provider for billings received by the insurer or self-insured employer on and before the date on which the terms of settlement are agreed as specified in the settlement document that are not otherwise partially or fully reimbursed.

(d) Reimbursement under this section shall be made only for medical services related to the claim that would be compensable under this chapter if the claim were compensable and shall be made at one-half the amount provided under ORS 656.248. In no event shall reimbursement made to medical service providers exceed 40 percent of the total present value of the settlement amount, except with the consent of the worker. If the settlement proceeds are insufficient to allow each medical service provider the reimbursement amount authorized under this subsection, the insurer or self-insured employer shall reduce each provider's reimbursement by the same proportional amount. Reimbursement under this section shall not prevent a medical service provider or health insurance provider from recovering the balance of amounts owing for such services directly from the worker.

(5) As used in this section, “health insurance” has the meaning for that term provided in ORS 731.162. [1965 c.285 s.41; 1979 c.673 s.1; 1981 c.535 s.8; 1981 c.854 s.22; 1983 c.809 s.2; 1990 c.2 s.23; 1993 c.521 s.1; 1995 c.332 s.38; amendments by 1995 c.332 s.38a repealed by 1999 c.6 s.1; 1999 c.6 s.11]

Note: See notes under 656.202.

656.314 [Amended by 1965 c.285 s.45; renumbered 656.580]

656.316 [Amended by 1953 c.428 s.2; 1965 c.285 s.46; renumbered 656.583]

656.318 [Amended by 1965 c.285 s.47; renumbered 656.587]

656.319 Time within which hearing must be requested. (1) With respect to objection by a claimant to denial of a claim for compensation under ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

(a) A request for hearing is filed not later than the 60th day after the mailing of the denial to the claimant; or

(b) The request is filed not later than the 180th day after mailing of the denial and the claimant establishes at a hearing that there was good cause for failure to file the request by the 60th day after mailing of the denial.

(2) Notwithstanding subsection (1) of this section, a hearing shall be granted even if a request therefor is filed after the time specified in subsection (1) of this section if the claimant can show lack of mental competency to file the request within that time. The period for filing under this subsection shall not be extended more than five years by lack of mental competency, nor shall it extend in any case longer than one year after the claimant regains mental competency.

(3) With respect to subsection (2) of this section, lack of mental competency shall apply only to an individual suffering from such mental disorder, mental illness or nervous disorder as is required for commitment or voluntary admission to a treatment facility pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380 and the rules of the Mental Health and Developmental Disability Services Division.

(4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such objections shall not be granted unless a request for hearing is filed within 30 days after the copies of the reconsideration order were mailed to the parties.

(5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after copies of the notice of refusal to close were mailed to the parties.

(6) A hearing for failure to process or an allegation that the claim was processed incorrectly shall not be granted unless the request for hearing is filed within two years after the alleged action or inaction occurred. [1965 c.285 s.41a; 1969 c.206 s.1; 1975 c.497 s.4; 1983 c.819 s.1; 1987 c.884 s.14; 1990 c.2 s.24; 1995 c.332 s.39]

Note: See notes under 656.202.

656.320 [Amended by 1953 c.428 s.2; 1965 c.285 s.48; renumbered 656.591]

656.322 [Amended by 1953 c.428 s.2; 1955 c.656 s.1; 1959 c.644 s.1; 1965 c.285 s.49; renumbered 656.593]

656.324 [Amended by 1965 c.285 s.50; renumbered 656.595]

656.325 Required medical examination; claimant's duty to reduce disability; suspension or reduction of benefits; cessation of temporary total

disability benefits. (1)(a) Any worker entitled to receive compensation under this chapter is required, if requested by the Director of the Department of Consumer and Business Services, the insurer or self-insured employer, to submit to a medical examination at a time reasonably convenient for the worker as may be provided by the rules of the director. However, no more than three examinations may be requested except after notification to and authorization by the director. If the worker refuses to submit to any such examination, or obstructs the same, the rights of the worker to compensation shall be suspended with the consent of the director until the examination has taken place, and no compensation shall be payable during or for account of such period. The provisions of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

(b) The insurer or self-insured employer shall pay the costs of the medical examination and related services which are reasonably necessary to allow the worker to submit to any examination requested under this section. As used in this subsection, “related services” includes, but is not limited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost wages for the period during which the worker is absent if the worker does not receive benefits pursuant to ORS 656.210 (4) during the period of absence. A claim for “related services” described in this section shall be made in the manner prescribed by the director.

(2) For any period of time during which any worker commits insanitary or injurious practices which tend to either imperil or retard recovery of the worker, or refuses to submit to such medical or surgical treatment as is reasonably essential to promote recovery, or fails to participate in a program of physical rehabilitation, the right of the worker to compensation shall be suspended with the consent of the director and no payment shall be made for such period. The period during which such worker would otherwise be entitled to compensation may be reduced with the consent of the director to such an extent as the disability has been increased by such refusal.

(3) A worker who has received an award for unscheduled permanent total or unscheduled partial disability should be encouraged to make a reasonable effort to reduce the disability; and the award shall be subject to periodic examination and adjustment in conformity with ORS 656.268.

(4) When the employer of an injured worker, or the employer's insurer determines that the injured worker has failed to follow medical advice from the attending physician or has failed to participate in or complete physical restoration or vocational rehabilitation programs prescribed for the worker pursuant to this chapter, the employer or insurer may petition the director for reduction of any benefits awarded the worker. Notwithstanding any other provision of this chapter, if the director finds that the worker has failed to accept treatment as provided in this subsection, the director may reduce any benefits awarded the worker by such amount as the director considers appropriate.

(5) Notwithstanding ORS 656.268:

(a) An insurer or self-insured employer shall cease making payments pursuant to ORS 656.210 and shall commence making payment of such amounts as are due

pursuant to ORS 656.212 when an injured worker refuses wage earning employment prior to claim determination and the worker's attending physician, after being notified by the employer of the specific duties to be performed by the injured worker, agrees that the injured worker is capable of performing the employment offered.

(b) If the worker has been terminated for violation of work rules or other disciplinary reasons, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence payments pursuant to ORS 656.212 when the attending physician approves employment in a modified job that would have been offered to the worker if the worker had remained employed, provided that the employer has a written policy of offering modified work to injured workers.

(c) If the worker is a person present in the United States in violation of federal immigration laws, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence payments pursuant to ORS 656.212 when the attending physician approves employment in a modified job whether or not such a job is available.

(6) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283. [Formerly 656.280; 1977 c.804 s.12; 1977 c.868 s.4; 1979 c.839 s.29; 1981 c.535 s.10; 1981 c.723 s.4; 1981 c.854 s.23; 1983 c.816 s.8; 1985 c.770 s.7; 1987 c.884 s.43; 1989 c.598 s.1; 1990 c.2 s.25; 1995 c.332 s.40]

Note: See notes under 656.202.

656.326 [Amended by 1965 c.285 s.51; renumbered 656.597]

656.327 Medical review of treatment of worker; findings; review; costs. (1)(a) If an injured worker, an insurer or self-insured employer or the Director of the Department of Consumer and Business Services believes that the medical treatment, not subject to ORS 656.260, that the injured worker has received, is receiving, will receive or is proposed to receive is excessive, inappropriate, ineffectual or in violation of rules regarding the performance of medical services, the injured worker, insurer or self-insured employer shall request review of the treatment by the director and so notify the parties.

(b) Unless the director issues an order finding that no bona fide medical services dispute exists, the director shall review the matter as provided in this section. Appeal of an order finding that no bona fide medical services dispute exists shall be made directly to the Workers' Compensation Board within 30 days after issuance of the order. The board shall set aside or remand the order only if the board finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding in the order when the record, reviewed as a whole, would permit a reasonable person to make that finding. The decision of the board is not subject to review by any other court or administrative agency.

(c) The insurer or self-insured employer shall not deny the claim for medical services nor shall the worker request a hearing on any issue that is subject to the

jurisdiction of the director under this section until the director issues an order under subsection (2) of this section.

(2) The director shall review medical information and records regarding the treatment. The director may cause an appropriate medical service provider to perform reasonable and appropriate tests, other than invasive tests, upon the worker and may examine the worker. Notwithstanding ORS 656.325 (1), the worker may refuse a test without sanction. Review of the medical treatment shall be completed and the director shall issue an order within 60 days of the request for review. The director shall create a documentary record sufficient for purposes of judicial review. If the worker, insurer, self-insured employer or medical service provider is dissatisfied with that order, the dissatisfied party may request a contested case hearing before the director pursuant to ORS 183.310 to 183.550. At the contested case hearing, the administrative order may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues shall be admitted. If the director issues an order declaring medical treatment to be not compensable, the worker is not obligated to pay for such treatment. Review of the director's order shall be by the Court of Appeals pursuant to ORS 183.310 to 183.550.

(3) Upon request of either party, the director may delegate to a physician or a panel of physicians the review of medical treatment under this section. At least one member of any such panel shall be a practitioner of the healing art of the medical service provider whose treatment is being reviewed. No member of any such panel shall be a physician whose treatment is the subject of review. The panel shall be chosen in such manner as the director may prescribe, in consultation with the committee referred to in ORS 656.790. The physician or panel shall submit findings to the director within the time limits as prescribed by the director.

(4) The physician or the panel of physicians and the medical arbiter or panel of medical arbiters appointed pursuant to ORS 656.268 acting pursuant to the authority of the director are agents of the Department of Consumer and Business Services and are subject to the provisions of ORS 30.260 to 30.300. The findings of the physician or panel of physicians, the medical arbiter or panel of medical arbiters, all of the records and all communications to or before a panel or arbiter are privileged and are not discoverable or admissible in any proceeding other than those proceedings under this chapter. No member of a panel or a medical arbiter shall be examined or subject to administrative or civil liability regarding participation in or the findings of the panel or medical arbiter or any matter before the panel or medical arbiter other than in proceedings under this chapter.

(5) The costs of review of medical treatment by the physician or panel of physicians pursuant to this section and costs incurred by the worker in attending any examination required under this section, including child care, transportation, lodging and meals, shall be paid by the insurer or self-insured employer. [1987 c.884 s.29; 1990 c.2 s.26; 1995 c.332 s.41]

656.329 [1987 c.884 s.33; repealed by 1995 c.94 s.1]

656.330 [1977 c.868 s.2; repealed by 1985 c.660 s.2 and 1985 c.770 s.5]

656.331 Contact, medical examination of worker represented by attorney prohibited without prior written notice; rules. (1) Notwithstanding any other provision of this chapter, if an injured worker is represented by an attorney and the attorney has given written notice of such representation:

(a) The Director of the Department of Consumer and Business Services, the insurer or self-insured employer shall not request the worker to submit to an independent medical examination without giving prior or simultaneous written notice to the worker's attorney.

(b) An insurer or self-insured employer shall not contact the worker without giving prior or simultaneous written notice to the worker's attorney if the contact affects the denial, reduction or termination of the worker's benefits.

(2) The director shall adopt rules necessary to carry out the provisions of subsection (1)(b) of this section. [1985 c.706 s.8]

656.335 [1981 c.723 s.7; 1985 c.600 s.3; 1985 c.770 s.7a; repealed by 1995 c.332 s.68]

656.340 Vocational assistance procedure; eligibility criteria; service providers. (1)(a) The insurer or self-insured employer shall cause vocational assistance to be provided to an injured worker who is eligible for assistance in returning to work.

(b) For this purpose the insurer or self-insured employer shall contact a worker with a claim for a disabling compensable injury or claim for aggravation for evaluation of the worker's eligibility for vocational assistance within five days of:

(A) Having knowledge of the worker's likely eligibility for vocational assistance, from a medical or investigation report, notification from the worker, or otherwise; or

(B) The time the worker is medically stationary, if the worker has not returned to the worker's regular employment or other suitable employment with the employer at the time of injury or aggravation and the worker is not receiving vocational assistance.

(c) Eligibility may be redetermined by the insurer or self-insured employer upon receipt of new information that would change the eligibility determination.

(2) Contact under subsection (1) of this section shall include informing the worker about reemployment rights, the responsibility of the worker to request reemployment, and wage subsidy and job site modification assistance and the provisions of the preferred worker program pursuant to rules adopted by the Director of the Department of Consumer and Business Services.

(3) Within five days after notification that the attending physician has released a worker to return to work, the insurer or self-insured employer shall inform the worker about the opportunity to seek reemployment or reinstatement under ORS

659.415 and 659.420. The insurer shall inform the employer of the worker's reemployment rights, wage subsidy and the job site modification assistance and the provisions of the preferred worker program.

(4) As soon as possible, and not more than 30 days after the contact required by subsection (1) of this section, the insurer or self-insured employer shall cause an individual certified by the director to provide vocational assistance to determine whether the worker is eligible for vocational assistance. The insurer or self-insured employer shall notify the worker of the decision regarding the worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the worker is not eligible, the worker may apply to the director for review of the decision as provided in ORS 656.283 (2). A worker determined ineligible upon evaluation under subsection (1)(b)(B) of this section, or because the worker's eligibility has fully and finally expired under standards prescribed by the director, may not be found eligible thereafter unless that eligibility determination is rejected by the director under ORS 656.283 (2) or the worker's condition worsens so as to constitute an aggravation claim under ORS 656.273. A worker is not entitled to vocational assistance benefits when possible eligibility for such benefits arises from a worsening of the worker's condition that occurs after the expiration of the worker's aggravation rights under ORS 656.273.

(5) The objectives of vocational assistance are to return the worker to employment which is as close as possible to the worker's regular employment at a wage as close as possible to the weekly wage currently being paid for employment which was the worker's regular employment even though the wage available following employment may be less than the wage prescribed by subsection (6) of this section. As used in this subsection and subsection (6) of this section, “regular employment” means the employment the worker held at the time of the injury or the claim for aggravation under ORS 656.273, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of the aggravation, the employment the worker held on the last day of work prior to the aggravation.

(6)(a) A worker is eligible for vocational assistance if the worker will not be able to return to the previous employment or to any other available and suitable employment with the employer at the time of injury or aggravation, and the worker has a substantial handicap to employment.

(b) As used in this subsection:

(A) A “substantial handicap to employment” exists when the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment.

(B) “Suitable employment” means:

(i) Employment of the kind for which the worker has the necessary physical capacity, knowledge, skills and abilities;

(ii) Employment that is located where the worker customarily worked or is within reasonable commuting distance of the worker's residence; and

(iii) Employment that produces a weekly wage within 20 percent of that currently being paid for employment that was the worker's regular employment as defined in subsection (5) of this section. The director shall adopt rules providing methods of calculating the weekly wage currently being paid for the worker's regular employment for use in determining eligibility and for providing assistance to eligible workers. If the worker's regular employment was seasonal or temporary, the worker's wage shall be averaged based on a combination of the worker's earned income and any unemployment insurance payments. Only earned income evidenced by verifiable documentation such as federal or state tax returns shall be used in the calculation. Earned income does not include fringe benefits or reimbursement of the worker's employment expenses.

(7) Vocational evaluation, help in directly obtaining employment and training shall be available under conditions prescribed by the director. The director may establish other conditions for providing vocational assistance, including those relating to the worker's availability for assistance, participation in previous assistance programs connected with the same claim and the nature and extent of assistance that may be provided. Such conditions shall give preference to direct employment assistance over training.

(8) An insurer or self-insured employer may utilize its own staff or may engage any other individual certified by the director to perform the vocational evaluation required by subsection (4) of this section.

(9) The director shall adopt rules providing:

(a) Standards for and methods of certifying individuals and authorizing vocational assistance providers qualified by education, training, experience and plan of operation to provide vocational assistance to injured workers;

(b) Conditions and procedures under which the certification of an individual or the authorization of a vocational assistance provider to provide vocational assistance services may be suspended or revoked for failure to maintain compliance with the certification or authorization standards;

(c) Standards for the nature and extent of services a worker may receive, for plans for return to work and for determining when the worker has returned to work; and

(d) Procedures, schedules and conditions relating to the payment for services performed by a vocational assistance provider, which shall be based on payment for specific services performed and not fees for services performed on an hourly basis. Fee schedules shall reflect a reasonable rate for direct worker purchases and for all vocational assistance providers and shall be the same within suitable geographic areas.

(10) Insurers and self-insured employers shall maintain records and make reports to the director of vocational assistance actions at such times and in such manner as the director may prescribe. Such requirements shall be for the purpose of assisting the Department of Consumer and Business Services in monitoring compliance with this section to insure that workers receive timely and appropriate vocational assistance. The director shall minimize to the greatest extent possible the number,

extent and kinds of reports required. The director shall compile a list of the organizations or agencies authorized to provide vocational assistance. A current list shall be distributed by the director to all insurers and self-insured employers. The insurer shall send the list to each worker with the notice of eligibility.

(11) When a worker is eligible to receive vocational assistance, the worker and the insurer or self-insured employer shall attempt to agree on the choice of a vocational assistance provider. If the worker agrees, the insurer or self-insured employer may utilize its own staff to provide vocational assistance. If they are unable to agree on a vocational assistance provider, the insurer or self-insured employer shall notify the director and the director shall select a provider. Any change in the choice of vocational assistance provider is subject to the approval of the director.

(12) Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary disability compensation for a maximum of 16 months, subject to extension to 21 months by order of the director for good cause shown. The costs related to vocational assistance training programs may be paid for periods longer than 21 months, but in no event may temporary disability benefits be paid for a period longer than 21 months.

(13) As used in this section, "vocational assistance provider" means a public or private organization or agency which provides vocational assistance to injured workers.

(14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the same type or extent of assistance.

(b) Training shall not be provided to an eligible worker solely because the worker cannot obtain employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of this section unless such training will enable the worker to find employment which will produce a wage significantly closer to that prescribed in subsection (6) of this section.

(c) Nothing in this section shall be interpreted to expand the availability of training under this section.

(15) A physical capacities evaluation shall be performed in conjunction with vocational assistance or determination of eligibility for such assistance at the request of the insurer or self-insured employer or worker. Such request shall be made to the attending physician. The attending physician, within 20 days of the request, shall perform a physical capacities evaluation or refer the worker for such evaluation or advise the insurer or self-insured employer and the worker in writing that the injured worker is incapable of participating in a physical capacities evaluation. [1981 c.535 s.2; 1985 c.600 s.11; 1987 c.884 s.15; 1990 c.2 s.27; 1995 c.332 s.42; amendments by 1995 c.332 s.42a repealed by 1999 c.6 s.1]

Note: See notes under 656.202.

LEGAL REPRESENTATION

656.382 Penalties and attorney fees payable by insurer or employer in processing claim. (1) If an insurer or self-insured employer refuses to pay compensation due under an order of an Administrative Law Judge, board or court, or otherwise unreasonably resists the payment of compensation, except as provided in ORS 656.385, the employer or insurer shall pay to the claimant or the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer or insurer, and the Administrative Law Judge, board or court finds that the compensation awarded to a claimant should not be disallowed or reduced, the employer or insurer shall be required to pay to the claimant or the attorney of the claimant a reasonable attorney fee in an amount set by the Administrative Law Judge, board or the court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

(3) If upon reaching a decision on a request for hearing initiated by an employer it is found by the Administrative Law Judge that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the Administrative Law Judge may order the employer to pay to the claimant such penalty not exceeding $750 and not less than $100 as may be reasonable in the circumstances. [1965 c.285 s.42; 1981 c.854 s.24; 1983 c.568 s.1; 1987 c.884 s.34; 1990 c.2 s.28; 1995 c.332 s.42b]

Note: See notes under 656.202.

656.384 [Formerly 656.582; 1977 c.290 s.4; 1977 c.804 s.13; repealed by 1987 c.250 s.1]

656.385 Attorney fees in cases regarding certain medical service or vocational rehabilitation matters; penalties. (1) In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.260, 656.327 or 656.340, where a claimant finally prevails in a contested case order by the Director of the Department of Consumer and Business Services, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, after a contested case hearing request by the claimant, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, the director may require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant or claimant's attorney.

(2) If an insurer or self-insured employer refuses to pay compensation due under ORS 656.245, 656.260, 656.327 or 656.340 pursuant to a final contested case order of the director, order of the court or otherwise unreasonably resists the payment of such compensation, the insurer or self-insured employer shall pay to the claimant or the attorney of the claimant a reasonable attorney fee as provided in subsection (3)

of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(3) If a request for a contested case hearing, review on appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an insurer or self-insured employer, and the director or court finds that the compensation awarded under ORS 656.245, 656.260, 656.327 or 656.340 to a claimant should not be disallowed or reduced, the insurer or self-insured employer shall be required to pay to the claimant or the attorney of the claimant a reasonable attorney fee in an amount set by the director or the court for legal representation by an attorney for the claimant at the contested case hearing, review on appeal or cross-appeal.

(4) If upon reaching a final contested case decision where such contested case was initiated by an insurer or self-insured employer it is found by the director that the insurer or self-insured employer initiated the contested case hearing for the purpose of delay or other vexatious reason or without reasonable ground, the director may order the insurer or self-insured employer to pay to the claimant such penalty not exceeding $750 and not less than $100 as may be reasonable in the circumstances.

(5) Notwithstanding any other provision in ORS 656.382 or 656.386, an Administrative Law Judge or the Workers' Compensation Board may not award penalties or attorney fees for matters arising under the review jurisdiction of the director. Penalties and attorney fees awarded pursuant to this section by the director or the courts shall be paid for by the employer or insurer in addition to compensation found to be due to the claimant. [1995 c.332 s.42d]

656.386 Recovery of attorney fees in appeal on denied claim; attorney fees in other cases. (1)(a) In all cases involving denied claims where a claimant finally prevails against the denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, a reasonable attorney fee shall be allowed.

(b) For purposes of this section, a “denied claim” is:

(A) A claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation;

(B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 30 days; or

(C) A claim for an aggravation or new medical condition, made pursuant to ORS 656.262 (7)(a), which the insurer or self-insured employer does not respond to within 90 days.

(c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's failure to pay compensation for a previously accepted injury or condition in timely fashion. Attorney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

(2) In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter. [Formerly 656.588; 1977 c.804 s.14; 1981 c.854 s.25; 1983 c.568 s.2; 1990 c.2 s.29; 1991 c.312 s.1; 1995 c.332 s.43; 1997 c.605 s.3]

Note: Section 3, chapter 312, Oregon Laws 1991, provides:

Sec. 3. The amendments to ORS 656.386 by section 1 of this 1991 Act apply to all claims for which an order relating to the issue on which attorney fees are sought has not become final on or before the effective date of this 1991 Act [June 19, 1991], regardless of the date of injury. [1991 c.312 s.3]

656.388 Approval of attorney fees required; fee schedule; report of legal service costs. (1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before an Administrative Law Judge or the Workers' Compensation Board, as the case may be, in respect to any claim or award for compensation to or on account of any person, shall be valid unless approved by the Administrative Law Judge or board, or if proceedings on appeal from the order of the board with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be approved or allowed for representation of the claimant before the managed care organization or Director of the Department of Consumer and Business Services except for representation at the contested case hearing.

(2) Any claim for payment to a claimant's attorney by the claimant so approved shall, in the manner and to the extent fixed by the Administrative Law Judge, board or such court, be a lien upon compensation.

(3) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter.

(4) The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant in connection with the same proceeding under ORS 656.268.

(5) Insurers and self-insured employers shall make an annual report to the Director of the Department of Consumer and Business Services reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the director prescribes. [Formerly 656.590; 1983 c.568 s.3; 1987 c.884 s.35; 1990 c.2 s.30; 1995 c.332 s.44]

656.390 Frivolous appeals, hearing requests or motions; expenses and attorney fee. (1) Notwithstanding ORS 656.236, if either party requests a hearing before the Hearings Division, requests review of an Administrative Law Judge's decision before the Workers' Compensation Board, appeals for review of the claim to the Court of Appeals or to the Supreme Court, or files a motion for reconsideration of the decision of the Court of Appeals or the Supreme Court, and the Administrative Law Judge, board or court finds that the appeal or motion for reconsideration was frivolous or was filed in bad faith or for the purpose of harassment, the Administrative Law Judge, board or court may impose an appropriate sanction upon the attorney who filed the request for hearing, request for review, appeal or motion. The sanction may include an order to pay to the other party the amount of the reasonable expenses incurred by reason of the request for hearing, request for review, appeal or motion, including a reasonable attorney fee.

(2) As used in this section, “frivolous” means the matter is not supported by substantial evidence or the matter is initiated without reasonable prospect of prevailing. [1987 c.884 s.31; 1995 c.332 s.45]

656.401 [1965 c.285 s.74; 1967 c.359 s.699; repealed by 1975 c.556 s.25 (656.403 enacted in lieu of 656.401)]

656.402 [Renumbered 656.712]

SELF-INSURED AND CARRIER-INSURED EMPLOYERS; INSURERS AND GUARANTY CONTRACTS

656.403 Obligations of self-insured employer. (1) A self-insured employer directly assumes the responsibility for providing compensation due subject workers and their beneficiaries under this chapter.

(2) The claims of subject workers and their beneficiaries resulting from injuries while employed by a self-insured employer shall be handled in the manner provided by this chapter. A self-insured employer is subject to the rules of the Director of the Department of Consumer and Business Services with respect to such claims.

(3) Security deposited by a self-insured employer shall not relieve any such employer from full and primary responsibility for claims administration and payment of compensation under this chapter. This subsection applies to a self-insured employer even though the self-insured employer insures or reinsures all or any portion of risks under this chapter with an insurance company authorized to do

business in this state or with any other insurer with whom insurance can be placed or secured pursuant to ORS 744.305 to 744.405 (1985 Replacement Part).

(4) When a self-insured employer is a worker leasing company required to be licensed pursuant to ORS 656.850 and 656.855, the company also shall comply with the worker leasing company regulatory provisions of ORS chapters 656 and 737 and with such rules as may be adopted pursuant to ORS 656.726 and 731.244 for the supervision and regulation of worker leasing companies. [1975 c.556 s.26 (enacted in lieu of 656.401); 1981 c.854 s.26; 1993 c.628 s.7]

656.404 [Repealed by 1959 c.449 s.5]

656.405 [1965 c.285 s.75 (1); 1967 c.359 s.700; repealed by 1975 c.556 s.54]

656.406 [Renumbered 656.714]

656.407 Qualifications of insured employers. (1) An employer shall establish proof with the Director of the Department of Consumer and Business Services that the employer is qualified either:

(a) As a carrier-insured employer by causing a guaranty contract issued by a guaranty contract insurer to be filed with the director; or

(b) As a self-insured employer by establishing proof that the employer has an adequate staff qualified to process claims promptly and has the financial ability to make certain the prompt payment of all compensation and other payments that may become due to the director under this chapter.

(2) Except as provided in subsection (3) of this section, a self-insured employer shall establish proof of financial ability by depositing in a depository, designated by the director, money, government securities or other surety which the director may, by rule, determine acceptable. The money, securities or other surety shall be in an amount reasonably sufficient to insure payment of compensation and other payments that may become due to the director but not less than the employer's normal expected annual claim liabilities and in no event less than $100,000. In arriving at the amount of money, securities or other surety required under this subsection, the director may take into consideration the financial ability of the employer to pay compensation and other payments and probable continuity of operation. The money, securities or other surety so deposited shall be held by the director to secure the payment of compensation for injuries to subject workers of the employer and to secure other payments that may become due from the employer to the director under this chapter. Moneys so deposited shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The amount of security may be increased or decreased from time to time by the director.

(3)(a) A city or county that wishes to be exempt from subsection (2) of this section may make written application therefor to the director. The application shall include a copy of the city's or county's most recent annual audit as filed with the

Secretary of State under ORS 297.405 to 297.740, information regarding the establishment of a loss reserve account for the payment of compensation to injured workers and such other information as the director may require. The director shall approve the application and the city or county shall be exempt from subsection (2) of this section if the director finds that:

(A) The city or county has been a self-insured employer in compliance with subsection (2) of this section for more than three consecutive years prior to making the application referred to in this subsection as an independently self-insured employer and not as part of a self-insured group.

(B) The city or county has in effect a loss reserve account:

(i) That is actuarially sound and that is adequately funded as determined by an annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director pursuant to this chapter. A copy of the annual audit shall be filed with the director. Upon a finding that there is probable cause to believe that the loss reserve account is not actuarially sound, the director may require a city or county to obtain an independent actuarial audit of the loss reserve account. The requirements of this subsection are in addition to and not in lieu of any other audit or reporting requirement otherwise prescribed by or pursuant to law.

(ii) That is dedicated to and may be expended only for the payment of compensation and amounts due the director by the city or county under this chapter.

(b) The director shall have the first lien and priority right to the full amount of the loss reserve account required to pay the present discounted value of all present and future claims under this chapter.

(c) The city or county shall notify the director no later than 60 days prior to any action to discontinue the loss reserve account. The city or county shall advise the director of the city's or county's plans to submit the surety deposits required in subsection (2) of this section, or obtain coverage as a carrier-insured employer prior to the date the loss reserve account ceases to exist. If the city or county elects to discontinue self-insurance, it shall submit such surety as the director may require to insure payment of all compensation and amounts due the director for the period the city or county was self-insured.

(d) In order to requalify as a self-insured employer, the city or county must deposit prior to discontinuance of the loss reserve account such surety as is required by the director pursuant to subsection (2) of this section.

(e) Notwithstanding ORS 656.440, if prior to the date of discontinuance of the loss reserve account the director has not received the surety deposits required in subsection (2) of this section, the city's or county's certificate of self-insurance is automatically revoked as of that date. [1975 c.556 s.27; 1979 c.839 s.28; 1981 c.854 s.27; 1985 c.212 s.7; 1989 c.966 s.67; 1991 c.648 s.1; 1993 c.18 s.140]

656.408 [Renumbered 656.716]

656.409 [1965 c.285 s.75(2), (3); repealed by 1975 c.556 s.54]

656.410 [Amended by 1965 c.285 s.54; renumbered 656.726]

656.411 [1975 c.556 s.28; 1979 c.348 s.1; repealed by 1981 c.854 s.1]

656.412 [Amended by 1965 c.285 s.52; renumbered 656.732]

656.413 [1965 c.285 s.76(1), (2); repealed by 1975 c.556 s.54]

656.414 [Renumbered 656.718]

656.415 [1975 c.556 s.30; repealed by 1981 c.854 s.1]

656.416 [Amended by 1965 c.285 s.53; renumbered 656.722]

656.417 [1965 c.285 s.76 (3), (8); 1967 c.341 s.6; repealed by 1975 c.556 s.54]

656.418 [Repealed by 1965 c.285 s.95]

656.419 Guaranty contracts. (1) A guaranty contract issued by an insurer shall provide that the insurer agrees to assume, without monetary limit, the liability of the employer, arising during the period the guaranty contract is in effect, for prompt payment of all compensation for compensable injuries that may become due under this chapter to subject workers and their beneficiaries.

(2) A guaranty contract issued by a guaranty contract insurer shall be filed with the Director of the Department of Consumer and Business Services by the insurer within 30 days after workers' compensation coverage of the employer is effective. The filing shall be in such form and manner as the director may prescribe. A guaranty contract shall contain:

(a) The name and address of the employer;

(b) A description of the occupation in which the employer is engaged or proposes to engage;

(c) The effective date of the workers' compensation coverage;

(d) A specific statement that a named sole proprietor, partner, member of a limited liability company or corporate officer is covered by the contract by reason of an election to be covered, if such is the case, and, if coverage extends to any other person by reason of an election of the employer of the person, a statement of that fact; and

(e) Such other information as the director may from time to time require.

(3) Workers' compensation coverage is effective when the application of the subject employer for coverage together with any required fees or premium are received and accepted by an authorized representative of an insurer.

(4) If the name or address of an insured employer is changed, the insurer shall, within 30 days after the date the change is received by the insurer, file a change-of-

name or change-of-address notice with the director setting forth the correct name and address of the employer.

(5) Coverage of an employer under a guaranty contract continues until canceled or terminated as provided by ORS 656.423 or 656.427. [1975 c.556 s.29; 1977 c.405 s.7; 1981 c.854 s.28; 1987 c.237 s.1; 1995 c.93 s.35; 1995 c.332 s.46]

656.420 [Renumbered 656.758]

656.421 [1965 c.285 s.76(4), (5), (6), (7); repealed by 1975 c.556 s.54]

656.422 [Amended by 1959 c.450 s.5; repealed by 1965 c.285 s.95]

656.423 Cancellation of coverage by employer; notice required; exception. (1) An insured employer may cancel coverage with the insurer by giving the insurer at least 30 days' written notice, unless a shorter period is permitted by subsection (3) of this section.

(2) Cancellation of coverage is effective at 12 midnight 30 days after the date the cancellation notice is received by an authorized representative of the insurer, unless a later date is specified.

(3) An employer may cancel coverage effective less than 30 days after written notice is received by an agent of the insurer by providing other coverage or by becoming a self-insured employer. A cancellation under this subsection is effective immediately upon the effective date of the other coverage or the effective date of certification as a self-insured employer.

(4) The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the Director of the Department of Consumer and Business Services. [1975 c.556 s.31; 1981 c.854 s.29]

656.424 [Renumbered 656.734]

656.425 [1965 c.285 s.76a; repealed by 1975 c.556 s.54]

656.426 [Amended by 1965 c.285 s.68b; renumbered 656.702]

656.427 Termination of guaranty contract or surety bond liability by insurer. (1) An insurer that issues a guaranty contract or a surety bond to an employer under this chapter may terminate liability on its contract or bond, as the case may be, by giving the employer and the Director of the Department of Consumer and Business Services written notice of termination. A notice of termination shall state the effective date and hour of termination.

(2) An insurer may terminate liability under this section as follows:

(a) If the termination is for reasons other than those set forth in paragraph (b) of this subsection, it is effective at 12 midnight not less than 30 days after the date the notice is received by the director.

(b) If the termination is based on the insurer's decision not to offer insurance to employers within a specific premium category, it is effective not sooner than 90 days after the date the notice is received by the director.

(3) Notice under this section shall be given by mail, addressed to the employer at the last-known address of the employer. If the employer is a partnership, notice may be given to any of the partners. If the employer is a limited liability company, notice may be given to any manager, or in a member managed limited liability company, to any of the members. If the employer is a corporation, notice may be given to any agent or officer of the corporation under whom legal process may be served.

(4) Termination shall in no way limit liability that was incurred under the guaranty contract or surety bond prior to the effective date of the termination.

(5) If, before the effective date of a termination under this section, the employer gives notice to the insurer that it has not obtained coverage from another insurer and intends to become insured under the assigned risk plan established under ORS 656.730, the insurer shall insure that continuing coverage is provided to the employer under the plan without further application by the employer, transferring the risk to the plan as of the effective date of termination. If the insurer is a servicing carrier under the plan, it shall continue to provide coverage for the employer as a servicing carrier, at least until another servicing carrier is provided for the employer in the normal course of administering the plan. If the insurer is not a servicing carrier, it shall apply to the plan for coverage on the employer's behalf. Nothing in this section is intended to limit the authority of administrators of the plan to require the employer to provide deposits or to make payments consistent with plan requirements. However, the rules of the plan shall allow any deposit requirements imposed by the plan to be deferred for as long as one year. [1975 c.556 s.32; 1981 c.854 s.30; 1981 c.874 s.5; 1981 c.876 s.6; 1985 c.212 s.8; 1990 c.1 s.1; 1995 c.93 s.36; 1995 c.332 s.46a]

656.428 [Amended by 1957 c.440 s.3; repealed by 1965 c.285 s.95]

656.429 [1965 c.285 s.77; repealed by 1975 c.556 s.54]

656.430 Certification of self-insured employer; employer groups; insurance policy requirements; revocation of certification; rules. (1) Upon determining that an employer has qualified as a self-insured employer under ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a certificate to that effect to the employer.

(2) Coverage of a self-insured employer is effective on the date of certification unless a later date is specified in the certificate.

(3) Two or more entities shall not be included in the certification of one employer unless in each entity the same person, or group of persons, or corporation

owns a majority interest. If an entity owns a majority interest in another entity which in turn owns the majority interest in another entity, all entities so related may be combined regardless of the number of entities in succession.

(4) In the term "majority interest," as used in this section, "majority" means more than 50 percent.

(5) If an entity other than a partnership:

(a) Has issued voting stock, "majority interest" means a majority of the issued voting stock;

(b) Has not issued voting stock, "majority interest" means a majority of the members; or

(c) Has not issued voting stock and has no members, "majority interest" means a majority of the board of directors or comparable governing body.

(6) If the entity is a partnership, majority interest shall be determined in accordance with the participation of each general partner in the profits of the partnership.

(7) Notwithstanding any other provision of this section, the director may certify five or more subject employers as a self-insured employer group, which shall be considered an employer for purposes of this chapter, if:

(a) The director finds that the employers as a group meet the requirements of ORS 656.407 (1)(b) and (2);

(b) The director determines that:

(A) If the employers as a group have insurance coverage with a retention of $100,000 or more, the employers have a combined net worth of $1 million or more; or

(B) If the employers as a group have insurance coverage with a retention of less than $100,000, the employers have a combined net worth at least equal to the proportion of $1 million that the retention bears to $100,000;

(c) The director finds that the grouping is likely to improve accident prevention and claims handling for the employer;

(d) Each employer executes and files with the designated entity a written agreement, in such form as the director may prescribe, in which:

(A) The employer agrees to be jointly and severally liable for the payment of any compensation and other amounts due to the Department of Consumer and Business Services under this chapter incurred by a member of the group; or

(B) The employer, if a city, county, special district described and listed in ORS 198.010 or 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized under ORS 570.505 to 570.575, intergovernmental agency created under ORS 225.050, school district as defined in ORS 255.005 (8), public housing authority created under ORS chapter 456 or regional council of governments created under ORS chapter 190, agrees to be individually liable for the payment of any compensation and other amounts due to the department under this chapter incurred by the employer during the period of group self-insurance;

(e) The director finds that the employer group is organized as a corporation or cooperative pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity

created under ORS 190.003 to 190.125 and the bylaws require the governing group to obtain fidelity bonds;

(f) The director finds that the employer group has designated an entity within or for the group responsible for centralized claims processing, payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require; and

(g) The employer has presented a method approved by the director to notify the department of:

(A) The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

(B) Whether an employer who terminates membership in the group continues to be a subject employer.

(8) A self-insured employer must have excess insurance coverage appropriate for the employer's potential liability under this chapter with an insurer authorized to do business in this state. A self-insured employer certified prior to November 1, 1981, must have excess insurance coverage appropriate for the employer's potential liability under this chapter either with an insurer authorized to do business in this state or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be submitted at the time application is made for self-insured certification in the form of an insurance binder providing the appropriate coverage effective the date of certification. The policy providing such coverage must be filed with the director not later than 30 days after the date the coverage is effective. Any changes in the insurer or the coverage must be filed with the department not later than 30 days after the effective date of the change. With respect to such coverage:

(a) The policy must include a provision, approved by the director, for reimbursement to the department of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the policy limitations on amounts and limits of liability to the insured employer; and

(b) The period of coverage must be continuous and remain in effect until the certification is revoked or canceled.

(9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured employer after giving 30 days' written notice if the employer:

(a) Fails to comply with subsection (8) of this section; or

(b) In the case of an employer described in subsection (7) of this section, fails to comply with that subsection.

(10) A self-insured employer must have an occupational safety and health loss control program as required by ORS 654.097.

(11) The director, by rule shall:

(a) Prescribe methods for determining and approving net worth.

(b) Prescribe the types and approve the retention and limitation levels of excess insurance policies.

(c) Establish reporting requirements.

(d) Prescribe information to be submitted in applications for self-insured employer certifications.

(e) Prescribe the form and manner of reporting commencement or termination in a self-insured employer group.

(f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

(g) Prescribe such other requirements as the director considers necessary so that employers certified as self-insured employers will meet the financial responsibilities under this chapter.

(12) For the purpose of certification as a self-insured employer group, cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005 (8), public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190 shall be considered by the director to be of the same industry. [1975 c.556 s.33; 1979 c.845 s.1; 1981 c.535 s.38; 1983 c.816 s.9; 1985 c.739 s.6; 1987 c.94 s.107; 1987 c.800 s.1; 1987 c.884 s.58; 1989 c.602 s.1; 1993 c.817 s.2; 1999 c.280 s.1]

656.431 [1965 c.285 s.78; 1973 c.620 s.6; repealed by 1975 c.556 s.54]

656.432 [1977 c.659 s.2; 1979 c.815 s.8; repealed by 1981 c.854 s.1]

656.434 Certification effective until canceled or revoked; revocation of certificate. (1) A certification issued under ORS 656.430 remains in effect until:

(a) Revoked by the Director of the Department of Consumer and Business Services as provided by this section and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) The director may revoke the certification of a self-insured employer if:

(a) The employer fails to comply with ORS 656.407 or 656.430; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

(3) When the certification of a self-insured employer is revoked, or when an employer terminates in a self-insured employer group, that employer must immediately comply with ORS 656.017 (1). If the employer fails to so comply, notwithstanding ORS 656.052 (3), the director immediately may file suit in the circuit court of the county in which the employer resides or employs workers. Upon filing of such a suit, the court shall set a date for hearing and shall cause notice thereof to be served on the employer. The hearing shall be not less than five nor more than 15 days from the date of service of the notice. Upon commencement of the suit, the circuit court shall enjoin the employer from further employing workers until the employer complies with ORS 656.017 (1). [1975 c.556 s.34; 1979 c.845 s.2; 1981 c.535 s.39]

656.440 Notice of certificate revocation; appeal; effective date; termination. (1) Before revocation of certification under ORS 656.434 becomes effective, the Director of the Department of Consumer and Business Services shall give the employer notice that the certification will be revoked stating the grounds for the revocation. The notice shall be served on the employer in the manner provided by ORS 656.427 (3). The revocation shall become effective within 10 days after receipt of such notice by the employer unless within such period of time the employer corrects the grounds for the revocation or appeals in writing to the Department of Consumer and Business Services.

(2) If the employer appeals, the director shall set a date for a hearing, which date shall be within 20 days after receiving the appeal request, and shall give the employer at least five days' notice of the time and place of the hearing. A record of the hearing shall be kept but it need not be transcribed unless requested by the employer; and the cost of transcription shall be charged to the employer. Within five days after the hearing, the director shall either affirm or disaffirm the revocation and give the employer written notice thereof by registered or certified mail.

(3) If revocation is affirmed on review by the director, the revocation is effective five days after the employer receives notice of the affirmance unless within such period of time the employer corrects the grounds for the revocation or petitions for judicial review of the affirmance pursuant to ORS 183.310 to 183.550.

(4) If the revocation is affirmed following judicial review, the revocation is effective five days after entry of the final decree of affirmance, unless within such period the employer corrects the grounds for the revocation. [1975 c.556 s.35; 1977 c.804 s.15]

656.442 [1967 c.341 s.7; repealed by 1975 c.556 s.54]

656.443 Procedure upon default by employer. (1) If an employer defaults in payment of compensation or other payments due to the Director of the Department of Consumer and Business Services under this chapter, the director may, on notice to the employer and any insurer providing a guaranty contract or surety bond to such employer, use money or interest and dividends on securities, sell securities or institute legal proceedings on any surety bond or guaranty contract deposited or filed with the director to the extent necessary to make such payments.

(2) Prior to any default by the employer, the employer is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer is canceled or terminated, or the coverage of a carrier-insured employer is canceled or terminated, the security deposited or the guaranty contract filed with the director shall remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured or a carrier-insured employer. The security or contract shall be maintained in such amount as is necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by such security

or contract, and to assure the payment of claims for aggravation and claims under ORS 656.278 based on such accidental injuries. At the expiration of the 62 months' period, or such other period as the director may consider proper, the director may accept in lieu of any such security or contract a policy of paid-up insurance in a form approved by the director. [1975 c.556 s.36; 1981 c.854 s.31; 1987 c.373 s.32]

656.444 [1967 c.341 s.9; repealed by 1975 c.556 s.54]

656.446 [1967 c.341 s.10; repealed by 1975 c.556 s.54]

656.447 Sanctions against insurer for failure to comply with contracts, orders or rules. (1) The Director of the Department of Consumer and Business Services may suspend or revoke the authorization of a guaranty contract insurer to issue guaranty contracts if the director, after notice to the company and giving the company an opportunity to be heard and present evidence, finds that:

(a) The company has failed to comply with its obligations under any such contract; or

(b) The company has failed to comply with the orders of the director or the provisions of this chapter or any rule promulgated pursuant thereto.

(2) A suspension or revocation shall not affect the liability of any such company on any guaranty contract in force prior to the suspension or revocation. [1975 c.556 s.37; 1977 c.430 s.2; 1987 c.373 s.33]

656.451 [1975 c.585 s.6; 1981 c.854 s.32; 1987 c.373 s.34; 1987 c.884 s.59; 1989 c.654 s.1; 1991 c.640 s.1; renumbered 654.097]

656.452 [Amended by 1965 c.285 s.54a; renumbered 656.632]

656.454 [Renumbered 656.634]

656.455 Self-insured employers required to keep records of compensation claims; location and inspection; expenses of audits and inspections. (1) Every self-insured employer shall maintain a place of business in this state where the employer shall keep complete records of all claims for compensation made to the employer under this chapter or a self-insured employer may, under the conditions prescribed by ORS 731.475 (3), keep such records in this state at places operated by service companies. The records shall be retained in, and may be removed from, this state or disposed of, in accordance with the rules of the Director of the Department of Consumer and Business Services adopted pursuant to ORS 731.475. Such records shall be available to the director for examination and audit at all reasonable times upon notice by the director to the employer.

(2) With the permission of the director, a self-insured employer may keep all claims records and process claims from a location outside of the state. The director

shall by rule prescribe the conditions and procedure for obtaining permission of the director. The director may revoke permission for failure of the employer to comply with the rules. If the permission of an employer is revoked by the director, the employer shall be allowed 60 days after the order of revocation becomes final to comply with subsection (1) of this section. The expenses of the director to examine and audit the records of a self-insured employer outside of this state shall be paid by the employer.

(3) Notwithstanding subsection (1) of this section, a self-insured employer may not have at any one time more than three locations where claims are processed or records are maintained. [1975 c.585 s.8; 1989 c.630 s.2]

656.456 [Amended by 1955 c.323 s.2; 1957 c.63 s.1; 1959 c.178 s.1; 1961 c.697 s.1; 1965 c.285 s.62; renumbered 656.636]

656.458 [Repealed by 1965 c.285 s.95]

656.460 [Amended by 1953 c.674 s.13; 1959 c.517 s.3; 1963 c.323 s.1; 1965 c.285 s.64; renumbered 656.638]

656.462 [Amended by 1953 c.674 s.13; repealed by 1965 c.285 s.95]

656.464 [Amended by 1953 c.674 s.13; 1957 c.574 s.5; 1959 c.449 s.2; 1965 c.285 s.66b; renumbered 656.642]

656.466 [Amended by 1953 c.674 s.13; 1959 c.449 s.3; 1965 c.285 s.67g; renumbered 656.644]

656.468 [Amended by 1953 c.674 s.13; 1965 c.285 s.66; renumbered 656.640]

656.470 [Repealed by 1953 c.674 s.13]

656.472 [Amended by 1953 c.674 s.13; 1957 c.574 s.6; 1959 c.449 s.4; 1965 c.285 s.68a; renumbered 656.602]

656.474 [Amended by 1953 c.674 s.13; 1965 c.285 s.68c; renumbered 656.604]

CHARGES AGAINST EMPLOYERS AND WORKERS

656.502 Definition of fiscal year. As used in ORS 656.502 to 656.526, “fiscal year” means the period of time commencing on July 1 and ending on the succeeding June 30.

656.504 Rates, charges, fees and reports by employers insured by SAIF Corporation. (1) Every employer insured by the State Accident Insurance Fund Corporation shall pay to the State Accident Insurance Fund Corporation on or before the 15th day of each month, for insurance coverage, a percentage of the employer's total payroll for the preceding calendar month of subject workers according to and at the rates promulgated by the State Accident Insurance Fund Corporation under ORS 656.508 and shall forward to the State Accident Insurance Fund Corporation on or before the 15th day of each month a signed statement showing the employer's total payroll for the preceding calendar month, the kind of work performed, the number of workers and the number of days worked. The State Accident Insurance Fund Corporation may establish other reporting periods and payment-due dates and in lieu of payment based upon a percentage of total payroll may promulgate rates to be paid by employers insured with the State Accident Insurance Fund Corporation utilizing a certain number of cents for each work-hour worked by workers in such employer's employ. Each such employer shall also pay an annual fee, deposit and minimum premium in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe, to the Industrial Accident Fund for each calendar year. Each such employer may be required to pay a registration fee in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe. The State Accident Insurance Fund Corporation may vary the amount of these fees and minimum premium by employer groupings, accept them in lieu of the other premiums which are based on the employer's payroll, and may adjust the period of application from a calendar year to a fiscal year.

(2) The State Accident Insurance Fund Corporation may provide for a short rate premium applicable to employers who cancel their coverage with the State Accident Insurance Fund Corporation prior to the expiration of the coverage period using a standard short rate table. [Amended by 1957 c.441 s.3; 1959 c.450 s.6; 1965 c.285 s.69; 1967 c.341 s.8; 1979 c.348 s.2; 1981 c.535 s.11; 1981 c.854 s.33]

656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of premiums and assessments. (1) In every case where an employer fails or refuses to file any report of payroll required by ORS 656.504 and fails or refuses to pay the premiums and assessments due on such unreported payroll the State Accident Insurance Fund Corporation shall have authority to estimate such payroll and make a demand for premiums and assessments due thereon.

(2) If the report required and the premiums and assessments due thereon are not made within 30 days from the mailing of such demand the employer shall be in default as provided in ORS 656.560, and the corporation may have and recover judgment or file liens for such estimated premiums and assessments or the actual premium and assessment, whichever is greater. [1953 c.679 s.2; 1979 c.348 s.3; 1981 c.854 s.34]

656.506 Assessments for programs; setting assessment amount; determination by director of benefit level. (1) As used in this section:

(a) “Employee” means a subject worker as defined in ORS 656.005 (28).

(b) “Employer” means a subject employer as defined in ORS 656.005 (27).

(2) Every employer shall retain from the moneys earned by all employees an amount determined by the Director of the Department of Consumer and Business Services for each hour or part of an hour the employee is employed and pay the money retained in the manner and at such intervals as the Director of the Department of Consumer and Business Services shall direct.

(3) In addition to all moneys retained under subsection (2) of this section, the director shall assess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The assessment shall be paid in such manner and at such intervals as the director may direct.

(4) Moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash balances, shall be deposited by the Department of Consumer and Business Services into the Workers' Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the needs of the Workers' Benefit Fund for the expenditures of the department in carrying out its functions and duties pursuant to subsection (7) of this section and ORS 656.622, 656.625, 656.628 and 656.630. Factors to be considered in making such adjustment of the assessments shall include, but not be limited to, the cash balance as determined by the director and estimated expenditures and revenues of the Workers' Benefit Fund.

(5) It is the intent of the Legislative Assembly that the department set rates for the collection of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period for which the rates shall be effective, the cash balance shall be an amount approximating 12 months of projected expenditures from the Workers' Benefit Fund in regard to its functions and duties under subsection (7) of this section and ORS 656.622, 656.625, 656.628 and 656.630, in a manner that minimizes the volatility of the rates assessed. The department may set the assessment rate at a higher level if the department determines that a higher rate is necessary to avoid unintentional program or benefit reductions in the time period immediately following the period for which the rate is being set.

(6) Every employer required to pay the assessments referred to in this section shall make and file a quarterly report of employee hours worked and amounts due under this section upon a combined quarterly report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue at the times and in the manner prescribed in ORS 316.168 and 316.171.

(7) There is established a Retroactive Program for the purpose of providing increased benefits to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries. However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Program for claimants

whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for computing benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable under this subsection shall be in such amount as the director considers appropriate. The director annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined by the director that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers shall be payable in the first instance by the insurer or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Program benefits, such benefits shall be payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Workers' Benefit Fund by the director. [Amended by 1955 c.323 s.1; 1965 c.285 s.70; 1971 c.768 s.1; 1973 c.55 s.1; 1974 s.s. c.41 s.8; 1977 c.143 s.2; 1979 c.845 s.5; 1983 c.391 s.1; 1985 c.739 s.1; 1990 c.2 s.31; 1993 c.760 s.1; 1995 c.332 s.63; 1995 c.527 s.1; 1995 c.641 s.20; 1999 c.118 s.1]

Note: See notes under 656.202 and second note under 656.790.

656.507 [1953 c.679 s.1; 1959 c.450 s.7; repealed by 1965 c.285 s.95]

656.508 Authority to fix premium rates for employers. (1) The State Accident Insurance Fund Corporation shall classify occupations or industries with respect to their degree of hazard and fix premium rates upon each of the occupations or industries sufficient to provide adequate funds to carry out the purposes of this chapter and the duties of the State Accident Insurance Fund Corporation.

(2) The State Accident Insurance Fund Corporation may annually, and at such other times as it deems necessary, readjust, increase or decrease the premium rates of employers insured with the State Accident Insurance Fund Corporation. Any such readjustment, increase or decrease shall be made and become effective on such dates as the State Accident Insurance Fund Corporation may determine. The State Accident Insurance Fund Corporation shall notify the employer of the rate.

(3) The State Accident Insurance Fund Corporation may establish a uniform system of rate modification conforming to recognized insurance principles including schedule rating and experience rating, premium discount and retrospective rating. [Amended by 1957 c.41 s.1; 1957 c.386 s.1; 1963 c.587 s.1; 1965 c.285 s.71; 1977 c.405 s.8; 1981 c.854 s.35]

656.509 [1973 c.614 s.6; 1974 c.41 s.9; repealed by 1974 c.41 s.9]

656.510 [Amended by 1957 c.440 s.4; 1963 c.214 s.1; 1965 c.546 s.1; repealed by 1965 c.285 s.95 and 1965 c.546 s.4]

656.512 [Amended by 1957 c.440 s.5; repealed by 1965 c.285 s.95]

656.514 [Amended by 1965 c.546 s.2; repealed by 1965 c.285 s.95 and 1965 c.546 s.4]

656.516 [Amended by 1953 c.674 s.13; 1957 c.453 s.3; 1959 c.517 s.4; 1963 c.323 s.2; 1965 c.546 s.3; repealed by 1965 c.285 s.95 and 1965 c.546 s.4]

656.518 [Amended by 1957 c.440 s.6; repealed by 1965 c.285 s.95]

656.520 [Amended by 1957 c.574 s.7; repealed by 1965 c.285 s.95]

656.522 [Amended by 1965 c.285 s.71a; repealed by 1981 c.854 s.1 and 1981 c.876 s.1]

656.524 [Amended by 1979 c.562 s.29; repealed by 1981 c.854 s.1 and 1981 c.876 s.1]

656.526 Distribution of dividends from surplus in Industrial Accident Fund. (1) Periodically, the State Accident Insurance Fund Corporation shall determine the total liability existing against the Industrial Accident Fund.

(2) If, after the determination required by subsection (1) of this section, the State Accident Insurance Fund Corporation finds the Industrial Accident Fund, aside from the reserves deemed actuarially necessary according to recognized insurance principles, contains a surplus, the State Accident Insurance Fund Corporation in its discretion may, after providing for any payments to the state, taxes or other dispositions of surplus provided by law, declare a dividend to be paid to, or credited to the accounts of, employers who were insured by the State Accident Insurance Fund Corporation during all or part of the period for which the dividend is declared. Any dividend so declared shall give due consideration to the solvency of the Industrial Accident Fund, not be unfairly discriminatory and not be promised in advance of such declaration.

(3) An employer in default when the dividend is declared shall not be eligible to receive payment or the credit provided by subsection (2) of this section. [Amended by 1953 c.674 s.13; 1955 c.323 s.3; 1957 c.574 s.8; 1965 c.285 s.72; 1967 c.252 s.1; 1969 c.589 s.1; 1971 c.385 s.3; 1971 c.725 s.1; 1981 c.854 s.36; 1982 s.s.3 c.2 s.3; 1999 c.424 s.1]

656.530 [1969 c.536 s.2; 1971 c.768 s.2; 1975 c.556 s.43; 1981 c.535 s.23; 1990 c.2 s.32; 1991 c.93 s.10; 1995 c.641 s.7; repealed by 1999 c.273 s.1]

Note: Section 2, chapter 273, Oregon Laws 1999, provides:

Sec. 2. Transfer of funds to eligible rehabilitation facilities. (1)(a) There is transferred to the Department of Human Services for the biennium beginning July 1, 1999, out of the Workers' Benefit Fund, the amount of $8,906,000 for services provided by rehabilitation facilities that meet the criteria described in subsection (2) of this section.

(b) Distributions from this transfer shall be based upon a plan developed collaboratively by representatives from the Department of Human Services, the Oregon Department of Administrative Services, the Legislative Fiscal Office and the affected provider community. The distribution plan must be approved by the Legislative Assembly and shall propose a long term solution to the problem created by the loss of premium refunds resulting from the repeal of ORS 656.530 by section 1 of this 1999 Act. This solution may include the use of state, federal or other available funds. If the Legislative Assembly does not approve a distribution plan for the biennium beginning July 1, 2001, funds shall be distributed in accordance with the distribution plan for the biennium beginning July 1, 1999.

(2) As used in this section, “rehabilitation facility” means a not-for-profit facility that is approved by the Department of Human Services and that is established and operated by a private organization, agency or institution to provide vocational training, employment opportunity and employment for disabled or severely handicapped individuals, and that was qualified to receive payments pursuant to ORS 656.530 (1997 Edition) on January 1, 1999. “Rehabilitation facility” does not include a facility established or operated by this state or a political subdivision within this state. Distribution of the moneys transferred under subsection (1) of this section shall be based upon formulas agreed upon by the Department of Consumer and Business Services and the Department of Human Services.

(3) A rehabilitation facility qualified to receive payments pursuant to ORS 656.530 (1997 Edition) as of January 1, 1999, and eligible for a payment under this section for the biennium beginning July 1, 1999, shall receive an amount equal to or greater than the amount the rehabilitation facility would be eligible to receive under the formulas agreed upon by the Department of Consumer and Business Services and the Department of Human Services under subsection (2) of this section. This amount shall not be less than the three-year average of premium refunds for the years 1995, 1996 and 1997 as reported to the Department of Human Services by the Department of Consumer and Business Services as of January 1, 1999.

(4) Notwithstanding the provisions of ORS 656.530 (1997 Edition), refunds of premiums paid pursuant to ORS 656.530 (1997 Edition) shall include only those portions of premiums paid pursuant to any guaranty contract for coverage periods prior to July 1, 1999. [1999 c.273 s.2]

656.532 [1987 c.884 s.40; repealed by 1993 c.760 s.4]

656.535 [1973 c.669 s.2; repealed by 1973 c.669 s.4]

656.536 Premium charges for coverage of reforestation cooperative workers based on prevailing wage; manner of determining prevailing wage. (1) The premiums charged by an insurer for coverage under this chapter for members of a workers' cooperative engaged primarily in reforestation work and all computations for benefits payable to such individuals under this chapter shall be based on the prevailing rate of wage paid to individuals performing the same work in the same locality as members of the workers' cooperative.

(2) Each time a cooperative contracts for services, the cooperative shall determine the prevailing rate of wage of each job category involved in performance of the contract. The determination of the prevailing rate of wage shall be filed with the insurer and used during the term of the contract. If a dispute arises between the workers' cooperative and the insurer concerning the propriety of the prevailing rate of wage determination by the workers' cooperative, the Director of the Department of Consumer and Business Services shall determine the appropriate prevailing rate of wage.

(3) The determination of the prevailing rate of wage shall be based on the best evidence available concerning wages paid to employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative. If no such work is being performed in the same locality at the time the workers' cooperative engages in a contract for services, the best evidence available from the latest such contract for services for the same work under similar conditions in the nearest locality shall be used by the workers' cooperative to determine the prevailing rate of wage.

(4) Notwithstanding any other provision of this section, in no case shall the prevailing rate of wage used for the purpose of this section be less than the rate of wage specified in the contract for services as the minimum wage to be paid for services performed under the contract. If no such minimum wage requirement is specified in the contract for services, the most recent such contract for services for the same work under similar conditions in the nearest locality which specifies minimum wages shall be used to determine the prevailing rate of wage.

(5) As used in this section:

(a) “Prevailing rate of wage” means the average wage paid to employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative.

(b) “Workers' cooperative” means an enterprise:

(A) Formed pursuant to ORS chapter 62.

(B) The membership of which is limited to individuals who maintain and operate the enterprise.

(C) The members of which each have equal voting power in the control of the enterprise.

(D) The profits of which are distributed to each member on the basis of the quantity or value of the services performed by that individual as a member of the cooperative.

(E) Which makes no dividend or financial or monetary return or any other payment based on capital investment except as provided in subparagraph (D) of this paragraph or at a strictly limited rate of interest agreed upon at the time the capital is invested.

(F) Receives not less than 80 percent of its gross income from engaging in reforestation work and related activity, including but not limited to tree planting, brush clearing, precommercial thinning, trail building, trail maintenance, fire fighting, timber stand examinations, cone picking, tubing, conifer release and roadside brush clearing. [1981 c.279 s.2]

656.538 [1983 c.816 s.11; 1987 c.373 ss.35, 35a; 1987 c.884 s.21; 1990 c.2 s.33; repealed by 1993 c.760 s.4]

ENFORCEMENT OF PREMIUM PAYMENTS

656.552 Deposit of cash or bond to secure payment of employer's premiums. (1) If the State Accident Insurance Fund Corporation finds it necessary for the protection of the Industrial Accident Fund, it may require any employer insured with the State Accident Insurance Fund Corporation, except political subdivisions of the state, to deposit and keep on deposit with the State Accident Insurance Fund Corporation a sum equal to the premiums due the State Accident Insurance Fund Corporation upon the estimated payroll of the employer for a period of not to exceed six months.

(2) The State Accident Insurance Fund Corporation may, in its discretion and in lieu of such deposit, accept a bond to secure payment of premiums to become due the Industrial Accident Fund. The deposit or posting of the bond shall not relieve the employer from making premium payments to the Industrial Accident Fund based on the actual payroll of the employer, as provided by ORS 656.504.

(3) If an employer ceases to be insured by the State Accident Insurance Fund Corporation, the State Accident Insurance Fund Corporation shall, upon receipt of all payments due the Industrial Accident Fund, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section. [Amended by 1959 c.450 s.8; 1965 c.285 s.81; 1981 c.854 s.37]

656.554 Injunction against employer failing to comply with deposit requirements. (1) If an employer fails to comply with ORS 656.552, the circuit court of the county in which the employer resides or in which the employer employs workers shall, upon the commencement of a suit by the State Accident Insurance Fund Corporation for that purpose, enjoin the employer from further employing workers under this chapter until the employer has complied with ORS 656.552.

(2) Upon filing of a suit for such purpose by the State Accident Insurance Fund Corporation, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

656.556 Liability of person letting a contract for amounts due from contractor. If any person lets a contract and the person to whom the contract was let, while performing the contract, engages as an employer subject to this chapter at the plant of the person letting the contract, upon premises owned, leased or controlled by such person or upon premises where such person is conducting business, the person letting the contract shall be liable to the Industrial Accident Fund for the payment of all premiums, fees and assessments which may be due such fund on account of the performance of the contract or any subcontract thereunder. [Amended by 1965 c.285 s.73; 1981 c.854 s.38]

656.558 [Amended by 1965 c.285 s.66a; renumbered 656.646]

656.560 Default in payment of premiums, fees, assessments or deposit; remedies. (1) When any payment of premiums, fees and assessments required by this chapter to be made by an employer insured with the State Accident Insurance Fund Corporation on the account of the employer or on account of workers employed by that employer becomes due, interest at the rate of one percent per month or fraction thereof shall be added to the amount of such payment commencing with the first day of the month following the date upon which such payment became due.

(2) If any employer insured with the State Accident Insurance Fund Corporation fails to make and maintain the deposit provided in ORS 656.552 or fails to make payment of premiums, fees and assessments required within 30 days after a written demand by the State Accident Insurance Fund Corporation, such employer is in default and is also subject to a penalty of 10 percent of the amount then due. The written demand shall be mailed to the employer at the last-known address of the employer by registered or certified mail. A copy of the demand shall at the same time be sent to the Director of the Department of Consumer and Business Services.

(3) The amount at any time due, together with interest thereon, and penalty for nonpayment thereof, may be collected by the State Accident Insurance Fund Corporation in the same action.

(4) Every employer in default, as provided in this section, upon receipt of notice thereof, shall display such notice of default by posting it in a place accessible to the workers in such manner as to inform the workers of such default. [Amended by 1965 c.285 s.73a; 1969 c.248 s.1; 1971 c.73 s.1; 1975 c.556 s.44; 1981 c.854 s.39]

656.562 Moneys due Industrial Accident Fund as preferred claims; moneys due department as taxes due state. (1) All premiums, fees, assessments, interest charges, penalties or amounts due the Industrial Accident Fund from any employer

under this chapter and all judgments recovered by the State Accident Insurance Fund Corporation against any employer under this chapter shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, proceedings for the administration of estates and receiverships involving the employer liable therefor or the property of such employer.

(2) All assessments, interest charges, penalties or amounts due the Department of Consumer and Business Services shall be considered taxes due the State of Oregon. [Amended by 1979 c.839 s.11; 1981 c.854 s.40]

656.564 Lien for amounts due from employer on real property, improvements and equipment on or with which labor is performed by workers of employer. (1) A lien hereby is created in favor of the insurer upon all real property within this state and any structure or improvement thereon and upon any mine, lode, deposit, mining claim, or any road, tramway, trail, flume, ditch, pipeline, building, or other structure or equipment on or pertaining thereto, upon which labor is performed by the workers of any employer subject to this chapter in a sum equal to the amount at any time due from such employer to the insurer on account of labor performed thereon by the workers of such employer, together with interest and penalty.

(2) The insurer shall also have a lien on all lumber, sawlogs, spars, piles, ties or other timber, and upon all other manufactured articles of whatsoever kind or nature, and upon all machinery, tools and equipment of the employer used in connection with the employment on which contributions, premiums or assessments are due, in a sum equal to the amount at any time due from any employer subject to this chapter on account of labor performed by the workers of such employer, together with interest and penalty.

(3) In order to avail itself of the lien created by this section, the insurer shall, within 60 days after the employer is in default, as provided in ORS 656.560, file with the county clerk of the county within which such property is then situated a statement in writing describing the property upon which a lien is claimed and stating the amount of the lien claimed by the insurer. If a lien is claimed on real property not then owned by the employer, the statement must be filed within 60 days from the completion of the work.

(4) The insurer shall, within six months from the filing of the statement, commence a suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

(5) The lien created by this section shall be prior to all other liens and encumbrances, except labor liens and liens for taxes and other amounts due the State of Oregon. [Amended by 1979 c.815 s.6; 1981 c.535 s.40]

656.566 Lien on property of employer for amounts due. (1) If any employer liable for the payment of premiums, fees and assessments to the Industrial Accident Fund is placed in default as provided by ORS 656.560, the amount due the fund, including interest and penalty, is a lien in favor of the State Accident Insurance Fund

Corporation upon all property, whether real or personal, belonging to such employer.

(2) The lien attaches upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the demand, after deducting all just credits and offsets, and the default of such employer. The county clerk shall record the claim of lien in a book kept for that purpose, which record shall be indexed as deeds and other conveyances are required by law to be indexed, and for which the county clerk shall receive the same fees as are allowed by law for recording deeds and other instruments.

(3) The employer against whose property the lien has been filed may cause the property to be released by filing with the county clerk of the county wherein the lien is recorded a bond in a sum double the amount claimed in the lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest, to be approved by the circuit judge of the district in which the lien is filed, or in the event of absence from the county in which the lien is filed, then by the county judge of said county, running to the State Accident Insurance Fund Corporation and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the State Accident Insurance Fund Corporation against the employer or that may be found to be a lien upon or against the property of such employer. The clerk shall issue to such employer a certificate stating that the bond is substituted in lieu of the property of the employer and that the lien on the property is forever released and discharged. A marginal entry of the release and bond shall be made in the lien docket containing the original record of statement of claim. If the State Accident Insurance Fund Corporation establishes the validity of its lien by a suit to foreclose the lien, it shall be entitled to judgment or decree against the sureties upon the bond.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property. Unless a suit is instituted by the State Accident Insurance Fund Corporation to foreclose such lien within two years from the date of filing, the lien shall expire.

(5) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of notice of claim of lien, except taxes and labor liens. [Amended by 1981 c.854 s.41]

RECOVERY AGAINST THIRD PERSONS AND NONCOMPLYING EMPLOYERS

656.576 “Paying agency” defined. As used in ORS 656.578 to 656.595, “paying agency” means the self-insured employer or insurer paying benefits to the worker or beneficiaries. [1965 c.285 s.44a; 1981 c.854 s.42]

656.578 Workers' election whether to sue third person or noncomplying employer for damages. If a worker of a noncomplying employer receives a compensable injury in the course of employment, or if a worker receives a compensable injury due to the negligence or wrong of a third person (other than those exempt from liability under ORS 656.018), entitling the worker under ORS 656.154 to seek a remedy against such third person, such worker or, if death results from the injury, the other beneficiaries shall elect whether to recover damages from such employer or third person. If a worker leaves beneficiaries who are minors, the right of election shall be exercised by their surviving parent, if any; otherwise, such election shall be exercised by the guardian. [Formerly 656.312]

656.580 Payment of compensation notwithstanding cause of action for damages; lien on cause of action for compensation paid. (1) The worker or beneficiaries of the worker, as the case may be, shall be paid the benefits provided by this chapter in the same manner and to the same extent as if no right of action existed against the employer or third party, until damages are recovered from such employer or third party.

(2) The paying agency has a lien against the cause of action as provided by ORS 656.591 or 656.593, which lien shall be preferred to all claims except the cost of recovering such damages. [Formerly 656.314]

656.582 [Renumbered 656.384]

656.583 Paying agency may compel election and prompt action. (1) The paying agency may require the worker or other beneficiaries or the legal representative of a deceased worker to exercise the right of election provided in ORS 656.578 by serving a written demand by registered or certified mail or by personal service upon such worker, beneficiaries or legal representative.

(2) Unless such election is made within 60 days from the receipt or service of such demand and unless, after making such election, an action against such third person is instituted within such time as is granted by the paying agency, the worker, beneficiaries or legal representative is deemed to have assigned the cause of action to the paying agency. The paying agency shall allow the worker, the beneficiaries or legal representative of the worker at least 90 days from the making of such election to institute such action. In any case where an insurer of a third person is also the insurer of the employer, notice of this fact must be given in writing by the insurer to the injured worker and to the Director of the Department of Consumer and Business Services within 10 days after the occurrence of any accident which may result in the assertion of the claim against the third person by the injured worker. [Formerly 656.316; 1981 c.854 s.43]

656.584 [Amended by 1965 c.285 s.68d; renumbered 656.624]

656.586 [Renumbered 656.720]

656.587 Paying agency must join in any compromise. Any compromise by the worker or other beneficiaries or the legal representative of the deceased worker of any right of action against an employer or third party is void unless made with the written approval of the paying agency or, in the event of a dispute between the parties, by order of the Workers' Compensation Board. [Formerly 656.318; 1990 c.2 s.34]

656.588 [Amended by 1957 c.558 s.1; 1965 c.285 s.42a; renumbered 656.386]

656.590 [Amended by 1965 c.285 s.42b; renumbered 656.388]

656.591 Election not to bring action operates as assignment of cause of action. (1) An election made pursuant to ORS 656.578 not to proceed against the employer or third person operates as an assignment to the paying agency of the cause of action, if any, of the worker, the beneficiaries or legal representative of the deceased worker, against the employer or third person, and the paying agency may bring action against such employer or third person in the name of the injured worker or other beneficiaries.

(2) Any sum recovered by the paying agency in excess of the expenses incurred in making such recovery and the amount expended by the paying agency for compensation, first aid or other medical, surgical or hospital service, together with the present worth of the monthly payments of compensation to which such worker or other beneficiaries may be entitled under this chapter, shall be paid such worker or other beneficiaries. [Formerly 656.320]

656.593 Procedure when worker elects to bring action; release of liability and lien of paying agency in certain cases. (1) If the worker or the beneficiaries of the worker elect to recover damages from the employer or third person, notice of such election shall be given the paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages recovered from an employer or third person by the worker or beneficiaries shall be subject to a lien of the paying agency for its share of the proceeds as set forth in this section. When the proceeds are paid in a series of payments, each payment shall be distributed proportionately to each recipient according to the formula provided in this section, unless otherwise agreed by the parties. The total proceeds shall be distributed as follows:

(a) Costs and attorney fees incurred shall be paid, such attorney fees in no event to exceed the advisory schedule of fees established by the Workers' Compensation Board for such actions.

(b) The worker or the beneficiaries of the worker shall receive at least 33-1/3 percent of the balance of such recovery.

(c) The paying agency shall be paid and retain the balance of the recovery, but only to the extent that it is compensated for its expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of its reasonably to be expected future expenditures for compensation and other costs of the worker's claim under this chapter. Such other costs include expenditures of the Department of Consumer and Business Services from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve and the Workers' Benefit Fund in reimbursement of the costs of the paying agency. Such other costs also include assessments for the Workers' Benefit Fund, and include any compensation which may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery shall be paid to the worker or the beneficiaries of the worker forthwith. Any conflict as to the amount of the balance which may be retained by the paying agency shall be resolved by the board.

(2) The amount retained by the worker or the beneficiaries of the worker shall be in addition to the compensation or other benefits to which such worker or beneficiaries are entitled under this chapter.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency is authorized to accept such a share of the proceeds as may be just and proper and the worker or the beneficiaries of the worker shall receive the amount to which the worker would be entitled for a recovery under subsections (1) and (2) of this section. Any conflict as to what may be a just and proper distribution shall be resolved by the board.

(4) As used in this section, “paying agency” includes the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund in reimbursement of the costs of another paying agency for vocational assistance and the costs of claims of noncomplying employers.

(5) The department shall be repaid for its expenditures from the proceeds recovered by the paying agency in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. All moneys received by the department under this section shall be deposited in the same fund from which the paying agency's costs originally had been reimbursed.

(6) Prior to and instead of the distribution of proceeds as described in subsection (1) of this section, when the worker or the beneficiaries of the worker are entitled to receive payment pursuant to a judgment or a settlement in the third party action in the amount of $1 million or more, the worker or the beneficiaries of the worker may elect to release the paying agency from all further liability on the workers' compensation claim, thereby canceling the lien of the paying agency as to the present value of its reasonably expected future expenditures for workers'

compensation and other costs of the worker's claim, if all of the following conditions are met as part of the claim release:

(a) The worker or the beneficiaries of the worker are represented by an attorney.

(b) The release of the claim is presented in writing and is filed with the Workers' Compensation Board, with a copy served on the paying agency, including the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve.

(c) The claim release specifies that the worker or the beneficiaries of the worker understand that the claim release means that no further benefits of any nature whatsoever shall be paid to the worker or the beneficiaries of the worker.

(d) The release of the claim is accompanied by a settlement stipulation with the paying agency, outlining terms of reimbursement to the paying agency, covering its incurred expenditures for compensation, first aid or other medical, surgical or hospital service and for expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve, to the date the release becomes final or the order of the board becomes final. If the payment of such incurred expenditures is in dispute, the release of the claim shall be accompanied by a written submission of the dispute by the worker or the beneficiaries of the worker to the board for resolution of the dispute by order of the board under procedures allowing for board resolution under ORS 656.587, in which case the release of the claim shall not be final until such time as the order of the board becomes final. In such a case, the only issue to be decided by the board is the amount of incurred expenses by the paying agent.

(e) If a service, item or benefit has been provided but a bill for that service, item or benefit has not been received by the paying agency before the release or order becomes final, the reimbursement payment shall cover the bill pursuant to the following process:

(A) The paying agency may maintain a contingency fund in an amount reasonably sufficient to cover reimbursement for the billing.

(B) If a dispute arises as to reimbursement for any bill first received by the paying agency not later than 180 days after the date the release or order became final, the dispute shall be resolved by order of the board.

(C) Any amount remaining in the contingency fund after the 180-day period shall be paid to the worker or the beneficiaries of the worker.

(D) Any billing for a service, item or benefit that is first received by the paying agency more than 180 days after the date the release or order became final is unenforceable by the person who issued the bill.

(f) The settlement or judgment proceeds are available for payment or actually have been paid out and are available in a trust fund or similar account, or are available through a legally enforceable structured settlement agreement if sufficient funds are available to make payment to the paying agency.

(g) The agreed-upon payment to the paying agency, or the payment to the paying agency ordered by the board, is made within 30 days of the filing of the

withdrawal of the claim with the board or within 30 days after the board has entered a final order resolving any dispute with the paying agency.

(7) When a release of further liability on a claim, as provided in subsection (6) of this section, has been filed, and when payment to the paying agency has been made, the effect of the release is that the worker or beneficiaries of the worker shall have no further right to seek benefits pursuant to the original claim, or any independent workers' compensation claim regarding the same circumstances, and the claim shall not be reasserted, refiled or reestablished through any legal proceeding. [Formerly 656.322; 1977 c.804 s.16; 1979 c.839 s.12; 1981 c.540 s.1; 1985 c.600 s.12; 1987 c.373 s.35b; 1993 c.445 s.1; 1995 c.332 s.47; 1995 c.641 s.8; 1997 c.639 s.4]

Note: See notes under 656.202.

656.595 Precedence of cause of action; compensation paid or payable not to be an issue. (1) Any action brought against a third party or employer, as provided in this chapter, shall have precedence over all other civil cases.

(2) In any third party action brought pursuant to this chapter, the fact that the injured worker or the beneficiaries of the injured worker are entitled to or have received benefits under this chapter shall not be pleaded or admissible in evidence.

(3) A challenge of the right to bring such third party action shall be made by supplemental pleadings only and such challenge shall be determined by the court as a matter of law. [Formerly 656.324]

656.596 Damage recovery as offset against compensation; recovery procedure; notice to paying agent. (1) If no workers' compensation claim has been filed or accepted at the time a worker or the beneficiaries of a worker recover damages from a third person or noncomplying employer pursuant to ORS 656.576 to 656.596, the amount of the damages shall constitute an offset against compensation due the worker or beneficiaries of the worker for the injuries for which the recovery is made to the extent of any lien that would have been authorized by ORS 656.576 to 656.596 if a workers' compensation claim had been filed and accepted at the time of recovery of damages.

(2) The offset created by subsection (1) of this section shall be recoverable from compensation payable to the worker, the worker's beneficiaries and the worker's attorney. No compensation payments shall be made to the worker, the worker's beneficiaries or the worker's attorney until the offset has been fully recovered.

(3) The worker or the beneficiaries of the worker shall notify the paying agency or potential paying agency of the amount of any damages recovered from a third person or noncomplying employer at the time of recovery or when the worker or the beneficiaries of a worker file a workers' compensation claim that is subject to ORS 656.576 to 656.596. [1993 c.644 s.2; 1995 c.332 s.48]

Note: Section 3, chapter 644, Oregon Laws 1993, provides:

Sec. 3. This Act [656.596] shall apply to all workers' compensation claims where the date of injury is after the effective date of this Act [November 4, 1993]. [1993 c.644 s.3]

656.597 [Formerly 656.326; repealed by 1971 c.70 s.2]

FUNDS; SOURCE; INVESTMENT; DISBURSEMENT

(General Provisions)

656.602 Disbursement procedures. All disbursements for administrative expenses from the Industrial Accident Fund, except as provided by ORS 656.642, shall be made only upon warrants drawn by the Oregon Department of Administrative Services upon vouchers duly approved by the State Accident Insurance Fund Corporation. [Formerly 656.472; 1977 c.804 s.17; 1983 c.740 s.243; 1985 c.212 s.9; 1987 c.373 s.36]

656.604 [Formerly 656.474; repealed by 1987 c.373 s.85]

656.605 Workers' Benefit Fund; uses and limitations. (1) The Workers' Benefit Fund is created in the State Treasury, separate and distinct from the General Fund. Moneys in the fund shall be invested in the same manner as other state moneys and investment earnings shall be credited to the fund. The fund shall consist of the following:

(a) Moneys received pursuant to ORS 656.506.

(b) Moneys recovered under ORS 656.054.

(c) Fines and penalties recovered under ORS 656.735.

(d) All moneys received by the Director of the Department of Consumer and Business Services pursuant to law or from any other source for purposes for which the fund may be expended.

(2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:

(a) Expenses of programs under ORS 656.506, 656.622, 656.625, 656.628 and 656.630.

(b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.

(c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to section 15, chapter 600, Oregon Laws 1985.

(3) Subject to the following provisions, all moneys in the fund are appropriated continuously to the Director of the Department of Consumer and Business Services to carry out the activities for which the fund may be expended:

(a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985.

(b) Moneys received pursuant to ORS 656.506 and the transfers of unexpended and unobligated moneys in the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve and Handicapped Workers Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993 Edition) may be expended only to carry out the programs referred to in ORS 656.506, 656.622, 656.625, 656.628 and 656.630.

(4) Notwithstanding any other provision of this chapter, if the director determines at any time that there are insufficient moneys in the Workers' Benefit Fund to pay the expenses of programs for which expenditure of the fund is authorized, the director may reduce the level of benefits payable accordingly. [1995 c.641 s.15; 1999 c.273 s.3]

656.612 Assessments for department activities; amount; collection procedure. (1) The Director of the Department of Consumer and Business Services shall impose and collect assessments from all insurers, self-insured employers and self-insured employer groups in an amount sufficient to pay the expenses of the Department of Consumer and Business Services under this chapter and ORS chapter 654 and under the Insurance Code. The assessments shall be paid in such manner and at such intervals as the director may direct and when collected shall be deposited in the Consumer and Business Services Fund. Such receipts in the account are continuously appropriated to the department for the purpose described in this subsection.

(2) The assessments shall be levied against the insurers' direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers.

(3) The director may impose and collect an additional assessment from self-insured employer groups in an amount sufficient to pay the additional expenses involved in administering the group self-insured program.

(4) The director may establish a minimum assessment applicable to all insurers, self-insured employers and self-insured employer groups and shall establish the time, manner and method of imposing and collecting assessments subject to applicable budgeting and fiscal laws.

(5) The assessments required under this section shall be developed pursuant to ORS 183.310 to 183.410 and in such a manner that will reasonably and substantially accomplish the objective of subsection (2) of this section at the least possible administrative cost to everyone.

(6) Assessments developed by the department under this section shall be reported to the Joint Legislative Committee on Ways and Means or, during the interim between sessions of the Legislative Assembly, to the Emergency Board. [1965 c.285 s.69a; 1973 c.353 s.2; 1975 c.556 s.45; 1977 c.804 s.18; 1979 c.839

s.13; 1981 c.535 s.41; 1981 c.854 s.44; 1985 c.506 s.1; 1987 c.373 s.37; 1987 c.884 s.22; 1989 c.413 s.21; 1990 c.2 s.35; 1999 c.409 s.1]

656.614 Self-Insured Employer Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve. (1) The Self-Insured Employer Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve shall be established within the Consumer and Business Services Fund. These reserves shall be used to pay the claims of workers of self-insured employers when the Director of the Department of Consumer and Business Services finds that the worker cannot obtain payment from the employer responsible for payment of the claim because of insolvency of such employer or the excess insurer of the employer, and exhaustion of the excess insurance and security deposited to secure such payment.

(2) If at any time the director finds that the amount of moneys in the reserves is not sufficient to carry out the purposes stated in subsection (1) of this section, the director may impose and collect from self-insured employers assessments sufficient to raise the amount of moneys in the reserves to the point where it can carry out such purposes. If at any time the director finds that there is a surplus in the reserves beyond an amount that can reasonably be anticipated as sufficient to carry out the purposes stated in subsection (1) of this section, the director may transfer the surplus to the Consumer and Business Services Fund and reduce the total amount of self-insured employer assessment by the amount so transferred.

(3) Notwithstanding the provisions of this section, the director may impose a differential assessment between the two employers adjustment reserves in order to collect sufficient moneys in the reserves as provided in subsection (2) of this section.

(4) Assessments imposed under this section shall be paid to the director in the manner and at such times as the director may direct.

(5) Notwithstanding subsection (1) of this section, the director may use the reserves to assure timely payment of compensation pending payment from the excess insurance or security deposit. The director shall recover these costs from the excess insurance or the security deposit, up to their limits. [1965 c.285 s.67a; 1975 c.556 s.46; 1979 c.845 s.3; 1981 c.535 s.42; 1983 c.816 s.12]

656.616 [Formerly 344.810; repealed by 1985 c.600 s.15]

656.618 [1965 c.285 s.67e; 1977 c.804 s.19; repealed by 1987 c.373 s.85]

656.620 [1965 c.285 s.67f; 1977 c.804 s.20; 1979 c.839 s.14; repealed by 1987 c.373 s.85]

656.622 Reemployment Assistance Program; claim data not to be used for insurance rating. (1) There is established a Reemployment Assistance Program for the benefit of employers and their workers and for the purpose of:

(a) Giving employers and their workers the benefits provided in this section.

(b) Providing reimbursement of reasonable program administration costs of self-insured employers and of insurers of employers who participate in any program funded through the Reemployment Assistance Program.

(2) In order to preclude or reduce nondisabling claims from becoming disabling claims, preclude on-the-job injuries from recurring, reduce disability by returning injured workers to work sooner and to help injured workers remain employed, the Director of the Department of Consumer and Business Services may provide assistance to employers from the Reemployment Assistance Program in such manner and amount as the director considers appropriate. Assistance may include, but need not be limited to, modification of work sites. For purposes of this subsection, work site modification may include engineering design work and occupational health consulting services. Factors to be considered by the director in determining the extent of assistance must include but need not be limited to the financial stability and solvency of employers, the employer's record of returning injured workers to the workplace and the cost-effectiveness of modifications. Assistance may be provided in the form of grants and matching contributions from employers for funds.

(3) In order to encourage the employment of individuals who have incurred compensable injuries that result in disability which may be a substantial obstacle to employment, the director may provide, to employers who employ such individuals, assistance from the Workers' Benefit Fund in such manner and amount as the director considers appropriate.

(4)(a) In addition to such assistance as the director may provide under this section, the director shall provide reimbursement to self-insured employers or to the insurers of employers who hire preferred workers for the claim costs incurred for injuries to those workers during the first three years from the date of hire, as follows:

(A) The claim costs of injuries incurred by those workers.

(B) Reasonable claims administration costs.

(b) As used in this subsection, “preferred worker” means a worker who, because of a permanent disability resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment, whether or not an order has been issued awarding permanent disability.

(c) A worker may not waive eligibility for preferred worker status in the claim by agreement pursuant to ORS 656.236.

(5)(a) In addition to such assistance as the Director of the Department of Consumer and Business Services may provide under subsection (3) of this section, the director shall provide to participating self-insured employers and the insurers of participating employers reimbursement of reasonable program administration costs.

(b) As used in this subsection, “participating employer” or “participating self-insured employer” means an employer participating in any program funded through the Reemployment Assistance Program.

(6) Notwithstanding any other provision of law, determinations by the director regarding assistance pursuant to this section are not subject to review by any court or other administrative body.

(7) The Reemployment Assistance Program shall be funded with moneys collected as provided in ORS 656.506.

(8) Any assistance from the Reemployment Assistance Program shall be to the extent of the moneys available in the Workers' Benefit Fund, for the purpose of the program as determined by the director.

(9) The director may make such rules as may be required to establish, regulate, manage and disburse moneys in the Workers' Benefit Fund in accordance with the intent of this section. Such rules shall include, but are not limited to, the eligibility criteria to receive assistance under this section and the issuance of identity cards to preferred workers to assist employers in the administration of the program.

(10) Claims costs incurred as a result of an injury sustained by a preferred worker during the three years after that worker is hired shall not be included in any data used for ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the Department of Consumer and Business Services. Neither insurance premiums nor premium assessments under this chapter are payable for preferred workers.

(11) Any moneys from the Workers' Benefit Fund reimbursed to an agency for costs incurred in reemploying injured state workers in the manner described in ORS 659.412 or in providing wage subsidies for the reemployment of injured state workers shall be outside the biennial expenditure limitation imposed on the agency by the Legislative Assembly and shall be available for expenditure by the agency as a continuous appropriation. [1965 c.285 s.68; 1969 c.536 s.3; 1971 c.768 s.3; 1977 c.557 s.2; 1981 c.854 s.60; 1983 c.391 s.4; 1983 c.816 s.13; 1985 c.600 s.13; 1985 c.770 s.2; 1987 c.884 s.20; 1990 c.2 s.36; 1991 c.93 s.11; 1991 c.496 s.1; 1991 c.694 s.1; 1993 c.760 s.3; 1995 c.332 s.49; 1995 c.641 s.21; 1999 c.273 s.4]

Note: See notes under 656.202.

656.624 [Formerly 656.584; 1983 c.740 s.244; repealed by 1987 c.250 s.1]

656.625 Reopened Claims Program. (1) There is established a Reopened Claims Program for the purpose of reimbursing the additional amounts of compensation payable to injured workers that results from any award made by the Workers' Compensation Board pursuant to ORS 656.278 after January 1, 1988.

(2) Notwithstanding any other provision of law, any reimbursement from the Workers' Benefit Fund for the purposes of the Reopened Claims Program shall be in such amounts as the board prescribes and only to the extent that moneys are available in the fund as determined by the Director of the Department of Consumer and Business Services.

(3) The director, by rule, shall prescribe the form and manner of requesting reimbursement under this section, the amount payable and such other matters as may be necessary for the administration of this section. [1987 c.884 s.39; 1995 c.332 s.49a; 1995 c.641 s.22]

656.628 Handicapped Workers Program; use of funds; conditions and limitations. (1) There is established a Handicapped Workers Program for the benefit of complying employers and their workers. The purpose of the program is to encourage the employment or reemployment of handicapped workers.

(2) As used in this section, "handicapped worker" means a worker who is afflicted with or subject to any permanent physical or mental impairment, whether congenital or due to an injury or disease, including periodic impairment of consciousness or muscular control of such character that the impairment would prevent the worker from obtaining or retaining employment.

(3) Any employer of a worker who claims or has received compensation under this chapter, or whose dependents have claimed or received such compensation, may file an application with the Director of the Department of Consumer and Business Services requesting the director to make the determinations referred to in subsection (4) of this section.

(4) When the director receives a request referred to in subsection (3) of this section, the director shall determine:

(a) Whether the injured worker was a handicapped worker and whether the injury, disease or death sustained by the worker would not have been sustained except for the handicap; or

(b) Whether the injured worker was a handicapped worker and whether the injury, disease or death sustained by the worker would have been sustained without regard to the handicap but that:

(A) Any resulting disability was substantially greater by reason of the handicap; or

(B) The handicap contributed substantially to the worker's death; and

(C) Whether the injury, disease or death of the worker would not have occurred except for the act or omission of a handicapped worker employed by the same employer and that the act or omission of the handicapped worker would not have occurred except for the handicapped worker's impairment.

(5) If the director determines that any of the conditions described in subsection (4) of this section exist, the director may reimburse the paying agency for compensation amounts in excess of $1,000 per claimant for all subsequent injuries throughout the claimant's working career, paid as the result of the condition.

(6) The reimbursement paid from the Workers' Benefit Fund shall not be included in any data used for rate making or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the Department of Consumer and Business Services.

(7) Notwithstanding any other provision of law:

(a) Any reimbursement to employers under the Handicapped Workers Program shall be in such amounts as the director prescribes and only to the extent of moneys available in the Workers' Benefit Fund as determined by the director.

(b) Determinations made by the director regarding reimbursement from the Workers' Benefit Fund for the purposes of this section are not subject to review by any court or administrative body.

(c) After a determination has been made by the director that an employer will receive reimbursement from the Workers' Benefit Fund, any settlement of the claim by the parties is void unless made with the written approval of the director.

(8) The director by rule shall prescribe the form and manner of requesting determinations under this section, the amount of reimbursement payable and such other matters as may be necessary for the administration of this section. [1981 c.535 s.14; 1995 c.332 s.49b; 1995 c.641 s.23]

656.630 Center for Research on Occupational and Environmental Toxicology funding; report of activities. (1) There is transferred to and continuously appropriated to the Center for Research on Occupational and Environmental Toxicology of the Oregon Health Sciences University, the following amounts from the following sources:

(a) The amount of revenue equivalent to one-sixteenth of one cent of the money deductible from workers' wages pursuant to ORS 656.506 (2).

(b) An amount equal to the amount raised by paragraph (a) of this subsection from those assessments made pursuant to ORS 656.612 (2).

(2) The moneys referred to in subsection (1) of this section may only be used for paying the expenses of the Center for Research on Occupational and Environmental Toxicology. If the Director of the Department of Consumer and Business Services determines adequate funds are available and the director reduces or suspends for a period of time the assessments made pursuant to ORS 656.506 (2) and 656.612 (2), the reduction or suspension of the assessments does not terminate the transfers to the Center for Research on Occupational and Environmental Toxicology authorized in subsection (1) of this section.

(3) Annually, the Center for Research on Occupational and Environmental Toxicology shall file a report with the Oregon Health Sciences University, with a copy to the Director of the Department of Consumer and Business Services, describing the activities in sufficient detail for which moneys received under this section during the year have been obligated or expended. [1993 c.760 s.6; 1995 c.162 s.85; 1995 c.641 s.11a]

Note: Section 1, chapter 1035, Oregon Laws 1999, provides:

Sec. 1. To assist the Legislative Assembly in assessing the need for modifying the criteria for establishing the compensability of workers' compensation claims for hepatitis B and C, the Center for Research on Occupational and Environmental Toxicology of the Oregon Health Sciences University shall review current scientific

and medical literature concerning occupational exposures to hepatitis B and C and shall propose to the Emergency Board by January 31, 2000, methodology for assessing and evaluating the actual occupational risk all state and local public safety workers in this state have of developing hepatitis B and C. [1999 c.1035 s.1]

(Industrial Accident Fund and Reserves)

656.632 Industrial Accident Fund. (1) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer and by the State Treasurer deposited in such banks as are authorized to receive deposits of general funds of the state.

(2) All moneys received by the State Accident Insurance Fund Corporation under this chapter, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected for the Director of the Department of Consumer and Business Services under this chapter and deposited in the Industrial Accident Fund may thereafter be transferred to the director and deposited in the Consumer and Business Services Fund.

(3) All payments authorized to be made by the State Accident Insurance Fund Corporation by this chapter, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund. [Formerly 656.452; 1975 c.556 s.47]

656.634 Trust fund status of Industrial Accident Fund. (1) The Industrial Accident Fund is a trust fund exclusively for the uses and purposes declared in this chapter, except that this provision shall not be deemed to amend or impair the force or effect of any law of this state specifically authorizing the investment of moneys from the fund.

(2) Subject to the right of the State of Oregon to direct legislatively the disposition of any surplus in excess of reserves and surplus deemed actuarially necessary according to recognized insurance principles, and necessary in addition thereto to assure continued fiscal soundness of the State Accident Insurance Fund Corporation both for current operations and for future capital needs, the State of Oregon declares that it has no proprietary interest in the Industrial Accident Fund or in the contributions made to the fund by the state prior to June 4, 1929. The state disclaims any right to reclaim those contributions and waives any right of reclamation it may have had in that fund. [Formerly 656.454; 1967 c.335 s.55; 1982 s.s.3 c.2 s.4]

656.635 Reserve accounts in Industrial Accident Fund. (1) The State Accident Insurance Fund Corporation may set aside, out of interest and other income received through investment of the Industrial Accident Fund, such part of the income as the State Accident Insurance Fund Corporation considers necessary, which moneys so segregated shall remain in the fund and constitute one or more

reserve accounts. Such reserve accounts shall be maintained and used by the State Accident Insurance Fund Corporation to offset gains and losses of invested capital.

(2) The State Accident Insurance Fund Corporation may provide for amortizing gains and losses of invested capital in such instances as the State Accident Insurance Fund Corporation determines that amortization is preferable to a reserve account provided for in subsection (1) of this section. [1967 c.335 s.57]

656.636 Reserves in Industrial Accident Fund for awards for permanent disability or death. For every case where the State Accident Insurance Fund Corporation must pay an award or benefits for death or permanent total disability or permanent partial disability, the State Accident Insurance Fund Corporation forthwith shall set aside in the Industrial Accident Fund in a reserve account the amount required to equal, together with the anticipated interest increment, the present worth of the installments payable on account of that injury. The number of installments shall be computed in case of permanent total disability or death according to the ages of the beneficiaries, and according to the actuarial practices in the insurance field as recommended by the Director of the Department of Consumer and Business Services and, in the case of permanent partial disability, according to the schedule in ORS 656.214 and 656.216. [Formerly 656.456; 1971 c.768 s.4; 1973 c.614 s.7; 1974 s.s. c.41 s.10; 1977 c.200 s.1; 1977 c.804 s.21; 1979 c.839 s.15; 1979 c.845 s.4; 1981 c.854 s.45; 1983 c.391 s.2; 1985 c.739 s.2]

656.637 [1979 c.334 s.2; 1983 c.391 s.3; repealed by 1985 c.739 s.3]

656.638 [Formerly 656.460; 1969 c.536 s.4; 1971 c.768 s.5; 1977 c.804 s.22; repealed by 1981 c.854 s.1]

656.640 Creation of reserves. The State Accident Insurance Fund Corporation may set aside such other reserves within the Industrial Accident Fund as are deemed necessary. [Formerly 656.468; 1981 c.854 s.46]

656.642 Emergency Fund. (1) There is created a revolving fund known as the Emergency Fund, which shall be deposited and maintained with the State Treasurer in the sum of $200,000.

(2) The Emergency Fund shall be disbursed by checks or orders issued by the State Accident Insurance Fund Corporation and drawn upon the State Treasurer:

(a) To pay compensation benefits.

(b) To refund to employers amounts paid to the Industrial Accident Fund in excess of the amounts required by this chapter.

(c) To distribute any surplus to employers as required by ORS 656.526.

(d) To distribute any moneys recovered from an employer or third party in which the State Accident Insurance Fund Corporation has no equity.

(e) To pay administrative expenses. [Formerly 656.464; 1971 c.357 s.1; 1983 c.740 s.245]

656.644 Petty cash funds. The State Accident Insurance Fund Corporation may, at its discretion, establish and maintain petty cash funds, not exceeding a total of $20,000 for the purpose of making change, refunding fees and premiums and assessments paid in error, the advance of traveling expense to employees and claimants, and paying miscellaneous legal fees and other petty incidental expenses in the administration of the Workers' Compensation Law. [Formerly 656.466; 1981 c.854 s.47]

656.646 [Formerly 656.558; repealed by 1981 c.876 s.1]

656.648 [1974 s.s. c.41 s.12; repealed by 1981 c.854 s.1 and 1981 c.876 s.1]

ADMINISTRATION

(General Provisions)

656.702 Records of corporation, department and insurers open to public. (1) The records of the State Accident Insurance Fund Corporation, excepting employer account records and claimant files, shall be open to public inspection. The accident experience records of the corporation shall be available to a bona fide rating organization to assist in making workers' compensation rates but any costs involved in making the records available shall be borne by the rating organization. Accident experience records of carrier-insured employers shall also be available on the same terms to assist in making such rates.

(2) Disclosure of workers' compensation claim records of the Department of Consumer and Business Services is governed by ORS 192.502 (19). [Formerly 656.426; 1973 c.794 s.33a; 1975 c.556 s.48; 1987 c.884 s.47; 1993 c.817 s.3; 1997 c.825 s.3]

656.704 Application of Administrative Procedures Act; authority of director and board. (1) Actions and orders of the Director of the Department of Consumer and Business Services, and administrative and judicial review thereof, regarding matters concerning a claim under this chapter are subject to the procedural provisions of this chapter and such procedural rules as the Workers' Compensation Board may prescribe.

(2) Notwithstanding ORS 183.315 (1), actions and orders of the director and the conduct of hearings and other proceedings pursuant to this chapter, and judicial review thereof, regarding all matters other than those concerning a claim under this chapter, are subject to ORS 183.310 to 183.550. Except as provided in subsections (4) and (5) of this section, contested case hearings under this subsection shall be conducted by a hearing officer assigned from the Hearing Officer Panel established

under section 3, chapter 849, Oregon Laws 1999. The director by rule shall prescribe the classes of orders issued by hearing officers and other personnel that are final, appealable orders and those orders that are preliminary orders subject to revision by the director.

(3)(a) For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue. However, subject to paragraph (b) of this subsection, such matters do not include any disputes arising under ORS 656.245, 656.248, 656.260, 656.327, any other provisions directly relating to the provision of medical services to workers or any disputes arising under ORS 656.340 except as those provisions may otherwise provide.

(b) The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

(A) Any dispute that requires a determination of the compensability of the medical condition for which medical services are proposed is a matter concerning a claim.

(B) Any dispute that requires a determination of whether medical services are excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services among those listed in ORS 656.245 (1)(c), is not a matter concerning a claim.

(C) Any dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim.

(D) The board and the director shall adopt rules to facilitate the fair and orderly determination of disputes that involve matters concerning a claim and additional issues. Such rules shall first require the determination of those issues that are matters concerning a claim.

(4) If a hearing involves actions and orders of the director that are subject to hearing under this section and also involves issues subject to hearing by an Administrative Law Judge from the board's Hearings Division, the director may direct that the hearing be conducted by an Administrative Law Judge in lieu of a hearing officer assigned from the Hearing Officer Panel established under section 3, chapter 849, Oregon Laws 1999.

(5) Hearings under ORS 656.740 shall be conducted by an Administrative Law Judge of the board's Hearings Division. [1965 c.285 s.54b; 1977 c.804 s.23; 1979 c.839 s.16; 1981 c.874 s.11; 1985 c.770 s.8; 1987 c.373 s.38a; 1990 c.2 s.37; 1995 c.332 s.50; 1999 c.849 s.121a; 1999 c.876 s.4; 1999 c.926 s.2]

Note: The amendments to 656.704 by sections 121c and 121e, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 121f, chapter

849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

656.704. (1) Actions and orders of the Director of the Department of Consumer and Business Services, and administrative and judicial review thereof, regarding matters concerning a claim under this chapter are subject to the procedural provisions of this chapter and such procedural rules as the Workers' Compensation Board may prescribe.

(2) Notwithstanding ORS 183.315 (1), actions and orders of the director and the conduct of hearings and other proceedings pursuant to this chapter, and judicial review thereof, regarding all matters other than those concerning a claim under this chapter, are subject to ORS 183.310 to 183.550 and such procedural rules as the director may prescribe. The director may make arrangements with the board chairperson pursuant to ORS 656.726 to obtain the services of Administrative Law Judges to conduct such proceedings or may make other arrangements to obtain personnel to conduct such proceedings. The director by rule shall prescribe the classes of orders issued by Administrative Law Judges and other personnel that are final, appealable orders and those orders that are preliminary orders subject to revision by the director.

(3)(a) For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue. However, subject to paragraph (b) of this subsection, such matters do not include any disputes arising under ORS 656.245, 656.248, 656.260, 656.327, any other provisions directly relating to the provision of medical services to workers or any disputes arising under ORS 656.340 except as those provisions may otherwise provide.

(b) The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

(A) Any dispute that requires a determination of the compensability of the medical condition for which medical services are proposed is a matter concerning a claim.

(B) Any dispute that requires a determination of whether medical services are excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services among those listed in ORS 656.245 (1)(c), is not a matter concerning a claim.

(C) Any dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim.

(D) The board and the director shall adopt rules to facilitate the fair and orderly determination of disputes that involve matters concerning a claim and additional

issues. Such rules shall first require the determination of those issues that are matters concerning a claim.

656.708 Hearings Division; duties. The Hearings Division is continued within the Workers' Compensation Board. The division has the responsibility for providing an impartial forum for deciding all cases, disputes and controversies arising under ORS 654.001 to 654.295 and 654.750 to 654.780, all cases, disputes and controversies regarding matters concerning a claim under this chapter, and for conducting such other hearings and proceedings as may be prescribed by law. [1977 c.804 s.25; 1979 c.839 s.17; 1987 c.373 s.39]

656.709 Ombudsman for injured workers; ombudsman for small business; duties. (1) The office of ombudsman for injured workers is created in the Department of Consumer and Business Services. The ombudsman shall report directly to the Director of the Department of Consumer and Business Services. The ombudsman shall act as an advocate for injured workers by accepting complaints concerning matters related to workers' compensation, investigating them and attempting to resolve them. The ombudsman shall also provide information to injured workers to enable them to protect their rights in the workers' compensation system.

(2) The office of ombudsman for small business is created in the department. The ombudsman shall report directly to the director. The ombudsman shall provide information and assistance to small businesses with regard to workers' compensation insurance and claims processing matters. [1987 c.884 s.60b; 1990 c.2 s.38]

656.710 [1977 c.699 s.2; 1979 c.839 s.18; repealed by 1981 c.535 s.26]

656.712 Workers' Compensation Board; members; qualifications; chairperson; confirmation; term; vacancies. (1) The Workers' Compensation Board, composed of five members appointed by the Governor, is created within the Department of Consumer and Business Services. Not more than three members shall belong to one political party and inasmuch as the duties to be performed by the members vitally concern the employers, the employees, as well as the whole people, of the state, persons shall be appointed as members who fairly represent the interests of all concerned. All board members shall impartially apply the law in each case and shall not represent any special interest. However, at least two members shall be selected from among persons with background and understanding as to the concerns of employers and at least two members of the board shall be selected from among persons with background and understanding as to the concerns of employees. One member shall represent the interests of the public and shall serve as the board chairperson.

(2) A member of the board shall be appointed for a term of four years from the date of appointment and qualification. Each member shall hold office until a successor is appointed and qualified. However, all board members serve at the

pleasure of the Governor and may be removed in accordance with the provisions of ORS 656.714.

(3) Any vacancy on the board shall be filled by appointment by the Governor.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. [Formerly 656.402; 1973 c.792 s.28; 1977 c.109 s.3; 1977 c.804 s.26; 1981 c.535 s.43; 1987 c.373 s.40; 1993 c.462 s.1; 1995 c.332 s.64; 1999 c.876 s.5]

656.714 Removal of board member. (1) The Governor may at any time remove any member of the Workers' Compensation Board for inefficiency, neglect of duty or malfeasance in office. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense, which shall not be less than 10 days thereafter. Such hearing shall be open to the public.

(2) If the member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the findings thereon, with a record of the proceedings.

(3) The power of removal is absolute and there is no right of review in any court whatsoever. [Formerly 656.406; 1989 c.1094 s.3]

656.716 Board members not to engage in political or business activity that interferes with duties as board member; oath and bond required. (1) No member of the Workers' Compensation Board shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote the entire time to the duties of the office of the member.

(2) Before entering on the duties of office, each member shall take and subscribe to an oath or affirmation:

(a) That the member will support the Constitutions of the United States and of this state and faithfully and honestly discharge the duties of the office.

(b) That the member does not hold any other office or position of profit that will interfere with the ability of the member to fully perform the duties of the member's position with the board.

(c) That the member is not pursuing and will not pursue, while a member, any other calling or vocation that will interfere with the ability of the member to fully perform the duties of the member's position with the board.

(d) That the member does not hold and while a member will not hold a position under any political party.

(3) The oath or affirmation shall be filed in the office of the Secretary of State.

(4) Each of the members of the board shall also, before entering upon the duties of office, execute a bond payable to the State of Oregon, in the penal sum of $10,000, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of office. The bond, when so executed and approved, shall be

filed in the office of the Secretary of State. [Formerly 656.408; 1977 c.804 s.27; 1987 c.373 s.41; 1999 c.1020 s.4]

656.718 Chairperson; quorum; panels. (1) The board chairperson shall supervise and manage the Workers' Compensation Board and the Hearings Division. The chairperson serves at the pleasure of the Governor and may be removed in accordance with the provisions of ORS 656.714.

(2) A majority of the board's members shall constitute a quorum to transact the board's business. No vacancy shall impair the right of the remaining members to exercise all the powers of the board.

(3) In exercise of authority to decide individual cases, members of the board may sit together or in panels. A decision of a panel shall be by a majority of the panel. When sitting en banc, the concurrence of a majority of the members participating is necessary for a decision. No board member shall review any case in which the member acted as an Administrative Law Judge in the case. [Formerly 656.414; 1967 c.2 s.4; 1993 c.462 s.2; 1999 c.876 s.6]

656.720 Prosecution and defense of actions by Attorney General and district attorneys. Upon request of the Director of the Department of Consumer and Business Services the Attorney General or, under direction of the Attorney General, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of this chapter, when such actions or proceedings are within the county in which such district attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the Department of Consumer and Business Services or its employees in their official capacity. [Formerly 656.586; 1971 c.418 s.18; 1977 c.804 s.28]

656.722 Authority to employ subordinates. The Workers' Compensation Board chairperson may employ and terminate the employment of such assistants, experts, field personnel and clerks as may be required in the administration of ORS chapter 654 and this chapter and other duties assigned to the board or the board chairperson by statute. [Formerly 656.416; 1977 c.804 s.29; 1981 c.860 ss.2, 6; 1987 c.373 s.42; 1999 c.876 s.7]

656.724 Administrative Law Judges; appointment; qualifications; term; performance survey; removal procedure. (1) The Workers' Compensation Board chairperson, after consultation with the board, shall employ Administrative Law Judges to hold such hearings as may be prescribed by law. An Administrative Law Judge must be a member in good standing of the Oregon State Bar, or the bar of the highest court of record in any other state or currently admitted to practice before the federal courts in the District of Columbia. Administrative Law Judges shall qualify in the same manner as members of the board under ORS 656.716 (2). The board chairperson, after consultation with the board, may appoint Administrative Law

Judges to serve for a probationary period of 18 months or less prior to regular employment.

(2) Administrative Law Judges are in the unclassified service under ORS chapter 240, and the board shall fix their salaries in accordance with ORS 240.245.

(3)(a) The board chairperson, after consultation with the board, shall establish criteria whereby each Administrative Law Judge shall receive an annual performance evaluation. Such criteria shall include, but not be limited to, work quality and productivity.

(b) The employment of each Administrative Law Judge shall be subject to formal review by the board chairperson every four years. Complaints and comments filed with the board chairperson regarding the official conduct, competence or fitness of an Administrative Law Judge, as well as the board's records, shall be reviewed by the board chairperson. Not less than 90 days prior to the expiration of the probationary period, or within 180 days but not less than 90 days prior to each four-year review, the board chairperson shall solicit comments from attorneys practicing in the field of workers' compensation. These comments and all complaints and other records filed with the board chairperson regarding the official conduct, competence or fitness of an Administrative Law Judge shall be reviewed by the board. The board chairperson shall conduct an annual survey of all attorneys regularly participating in workers' compensation cases, in such manner as to allow the attorneys to remain anonymous while rating the Administrative Law Judges as to knowledge of workers' compensation law, judicial temperament, capability to handle hearings, diligence, efficiency and other similar factors. The results of the survey shall be published by the board chairperson, listing each Administrative Law Judge by name.

(c) Notwithstanding ORS 240.240 and in accordance with ORS 240.555 and 240.560, an Administrative Law Judge may be removed at any time, for official misconduct, incompetence, inefficiency, indolence, malfeasance or other unfitness to render effective service.

(4) Administrative Law Judges have the same powers granted to board members or assistants under ORS 656.726 (2)(a), (b), (c) and (d).

(5) A presiding Administrative Law Judge shall be appointed by the board chairperson and shall serve as presiding Administrative Law Judge at the pleasure of the board chairperson. The presiding Administrative Law Judge shall perform such administrative duties as the board chairperson may delegate. The board chairperson may designate another Administrative Law Judge to serve as acting presiding Administrative Law Judge during any period when the presiding Administrative Law Judge is absent or disabled.

(6) Notwithstanding subsections (1) to (5) of this section, the board chairperson, after consultation with the board, may employ any member of the Oregon State Bar to serve as an Administrative Law Judge on a temporary basis, not to exceed one year, when the board chairperson determines that such employment is necessary in the conduct of the business of the Hearings Division. Criteria and procedures for selecting and employing such Administrative Law Judges shall be identical to those established for regularly employed Administrative Law Judges.

(7) It is the declared purpose of this section to foster and protect the Administrative Law Judges' ability to provide full, fair and speedy hearings and decisions. [1965 c.285 s.53a; 1965 c.564 s.6; 1967 c.180 s.1; 1971 c.695 s.9; 1973 c.774 s.1; 1979 c.677 s.1; 1979 c.839 s.19; 1981 c.535 s.44; 1985 c.212 s.11; 1987 c.884 s.13; 1989 c.1094 s.4; 1990 c.2 s.39; 1995 c.332 s.51; 1999 c.876 s.8]

656.725 Duties and status of Administrative Law Judges. (1) Individuals holding the position of Administrative Law Judge created by the amendments to ORS 656.724 by section 51, chapter 332, Oregon Laws 1995, have the authority to perform only those duties, functions and powers provided in ORS chapters 654, 655 and 656, and such other duties, functions and powers as may be prescribed by the Workers' Compensation Board pursuant to ORS 656.726.

(2) Administrative Law Judges are not judges for the purposes of any provision of the Oregon Constitution and are not judges for the purposes of judges' retirement under ORS chapter 238. [1995 c.332 s.53]

656.726 Duties and powers to carry out workers' compensation and occupational safety laws. (1) The Workers' Compensation Board in its name and the Director of the Department of Consumer and Business Services in the director's name as director may sue and be sued, and each shall have a seal.

(2) The board hereby is charged with reviewing appealed orders of Administrative Law Judges in controversies concerning a claim arising under this chapter, exercising own motion jurisdiction under this chapter and providing such policy advice as the director may request, and providing such other review functions as may be prescribed by law. To that end any of its members or assistants authorized thereto by the members shall have power to:

(a) Hold sessions at any place within the state.

(b) Administer oaths.

(c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony before any hearing under ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter.

(d) Generally provide for the taking of testimony and for the recording of proceedings.

(3) The board chairperson is hereby charged with the administration of and responsibility for the Hearings Division.

(4) The director hereby is charged with duties of administration, regulation and enforcement of ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. To that end the director may:

(a) Make and declare all rules and issue orders which are reasonably required in the performance of the director's duties. Unless otherwise specified by law, all reports, claims or other documents shall be deemed timely provided to the director or board if mailed by regular mail or delivered within the time required by law. Notwithstanding ORS 183.310 to 183.410, if a matter comes before the director

that is not addressed by rule and the director finds that adoption of a rule to accommodate the matter would be inefficient, unreasonable or unnecessarily burdensome to the public, the director may resolve the matter by issuing an order, subject to review under ORS 183.310 to 183.550. Such order shall not have precedential effect as to any other situation.

(b) Hold sessions at any place within the state.

(c) Administer oaths.

(d) Issue and serve by representatives of the director, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony in any inquiry, investigation, proceeding or rulemaking hearing conducted by the director or the director's representatives. The director may require the attendance and testimony of employers, their officers and representatives in any inquiry under this chapter, and the production by employers of books, records, papers and documents without the payment or tender of witness fees on account of such attendance.

(e) Generally provide for the taking of testimony and for the recording of such proceedings.

(f) Provide standards for the evaluation of disabilities. The following provisions apply to the standards:

(A) The criteria for evaluation of disabilities under ORS 656.214 (5) shall be permanent impairment due to the industrial injury as modified by the factors of age, education and adaptability to perform a given job.

(B) Impairment is established by a preponderance of medical evidence based upon objective findings.

(C) When, upon reconsideration of a notice of closure pursuant to ORS 656.268, it is found that the worker's disability is not addressed by the standards adopted pursuant to this paragraph, notwithstanding ORS 656.268, the director shall stay further proceedings on the reconsideration of the claim and shall adopt temporary rules amending the standards to accommodate the worker's impairment. When the director adopts temporary rules amending the standards, the director shall submit those temporary rules to the Workers' Compensation Management-Labor Advisory Committee for review at their next meeting.

(D) Notwithstanding any other provision of this section, impairment is the only factor to be considered in evaluation of the worker's disability under ORS 656.214 (5) if:

(i) The worker returns to regular work at the job held at the time of injury;

(ii) The attending physician releases the worker to regular work at the job held at the time of injury and the job is available but the worker fails or refuses to return to that job; or

(iii) The attending physician releases the worker to regular work at the job held at the time of injury but the worker's employment is terminated for cause unrelated to the injury.

(g) Prescribe procedural rules for and conduct hearings, investigations and other proceedings pursuant to ORS 654.001 to 654.295, 654.750 to 654.780 and this

chapter regarding all matters other than those specifically allocated to the board or the Hearings Division.

(h) Participate fully in any proceeding before the Hearings Division, board or Court of Appeals in which the director determines that the proceeding involves a matter that affects or could affect the discharge of the director's duties of administration, regulation and enforcement of ORS 654.001 to 654.295 and 654.750 to 654.780 and this chapter.

(5) The board may make and declare all rules which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings and exercising its authority under ORS 656.278. The board shall adopt standards governing the format and timing of the evidence. The standards shall be uniformly followed by all Administrative Law Judges and practitioners. The rules may provide for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, if possible, narrow issues and simplify the method of proof at hearings. The rules shall specify who may appear with parties at prehearing conferences and hearings.

(6) The director and the board chairperson may incur such expenses as they respectively determine are reasonably necessary to perform their authorized functions.

(7) The director, the board chairperson and the State Accident Insurance Fund Corporation shall have the right, not subject to review, to contract for the exchange of, or payment for, such services between them as will reduce the overall cost of administering this chapter.

(8) The director shall have lien and enforcement powers regarding assessments to be paid by subject employers in the same manner and to the same extent as is provided for lien and enforcement of collection of premiums and assessments by the corporation under ORS 656.552 to 656.566.

(9) The director shall have the same powers regarding inspection of books, records and payrolls of employers as are granted the corporation under ORS 656.758. The director may disclose information obtained from such inspections to the Director of the Department of Revenue to the extent the Director of the Department of Revenue requires such information to determine that a person complies with the revenue and tax laws of this state and to the Director of the Employment Department to the extent the Director of the Employment Department requires such information to determine that a person complies with ORS chapter 657.

(10) The director shall collect hours-worked data information in addition to total payroll for workers engaged in various jobs in the construction industry classifications described in the job classification portion of the Workers' Compensation and Employers Liability Manual and the Oregon Special Rules Section published by the National Council on Compensation Insurance. The information shall be collected in the form and format necessary for the National Council on Compensation Insurance to analyze premium equity. [Formerly 656.410;

1977 c.804 s.30; 1979 c.677 s.2; 1979 c.839 s.20; 1981 c.535 s.45; 1981 c.723 s.5; 1981 c.854 s.49a; 1981 c.876 s.9; 1985 c.600 s.16; 1985 c.706 s.4; 1985 c.770 s.4; 1987 c.884 s.2; 1990 c.2 s.40; 1995 c.332 s.55; amendments by 1995 c.332 s.55a repealed by 1999 c.6 s.1; 1999 c.313 s.10; 1999 c.876 s.9]

Note: See notes under 656.202.

656.727 Rules for administration of benefit offset. In carrying out the provisions of ORS 656.209, the Department of Consumer and Business Services shall promulgate rules that include, but are not limited to:

(1) Requiring injured workers to make application for federal social security disability benefits.

(2) Requiring injured workers to file with the appropriate agency that administers the federal social security program a release authorizing the federal agency to make disclosure to the department of such information regarding the injured worker as will enable the department to carry out the provisions of ORS 656.209.

(3) A procedure for ordering reduction of benefits or such other sanctions as the department considers appropriate to insure that injured workers comply with rules promulgated pursuant to this section. [1977 c.430 s.7; 1979 c.117 s.4]

656.728 [Subsection (1) formerly 344.820; subsection (2) formerly 344.830; 1973 c.634 s.3; 1977 c.862 s.2; 1981 c.854 s.50; 1981 c.874 s.6; 1981 c.535 s.12; repealed by 1985 c.600 s.2]

656.729 [1981 c.723 s.2; repealed by 1985 c.770 s.5]

656.730 Assigned risk plan. (1) The Director of the Department of Consumer and Business Services shall promulgate a plan for the equitable apportionment among the State Accident Insurance Fund Corporation and all members of workers' compensation rating organizations in the state coverage required by ORS 656.017 for subject employers whose coverage the fund, or any members of such rating organizations, object to providing. The plan shall include provisions authorized pursuant to ORS 737.265 (2), except that:

(a) Regardless of the rating plans adopted by any rating organization, the plan shall provide a rating structure with differing rate tiers for insureds too small to qualify for experience rating and for insureds large enough to be experience rated; and

(b) The plan shall seek and be entitled to receive approval for all classification exceptions approved by the director for any insurer.

(2) If any insurer issuing guaranty contracts under this chapter refuses to accept its equitable apportionment under such plan, the director shall revoke the insurer's

authority to issue guaranty contracts. [1965 c.285 s.94a; 1979 c.673 s.2; 1990 c.1 s.2]

656.732 Power to compel obedience to subpoenas and punish for misconduct. The circuit court for any county, or the judge of such court, on application of the Director of the Department of Consumer and Business Services, the Workers' Compensation Board, or any of the board members, their Administrative Law Judges or assistants, shall compel obedience to subpoenas issued and served pursuant to ORS 656.726 and shall punish disobedience of any such subpoena or any refusal to testify at any authorized session or hearing or to answer any lawful inquiry of the director or any of the board members, Administrative Law Judges or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpoena issued from the court is punished. [Formerly 656.412; 1979 c.839 s.21]

656.734 [Formerly 656.424; repealed by 1973 c.833 s.48]

656.735 Civil penalty for noncomplying employers; amount; liability of partners and of corporate and limited liability company officers; effect of final order; penalty as preferred claim; disposition of moneys collected. (1) The Director of the Department of Consumer and Business Services shall assess any person who violates ORS 656.052 (1) a civil penalty of not more than $1,000 or twice the premium that would have been due for the period of noncompliance, whichever is the greater.

(2) The director shall assess any person who continues to violate ORS 656.052 (1), after an order issued pursuant to ORS 656.052 (2) has become final, a civil penalty, in addition to any penalty assessed under subsection (1) of this section, of not more than $250 for each day such violation continues.

(3) In addition to any other penalties assessed under this section, where a subject worker receives a compensable injury while in the employ of a noncomplying employer, the director shall assess such employer a civil penalty of not less than $100 and not more than:

(a) $500 if the worker suffers no disability;

(b) $1,000 if the worker suffers a temporary disability;

(c) $2,500 if the worker suffers a permanent partial disability; or

(d) $5,000 if the worker dies or suffers permanent total disability.

(4)(a) When a noncomplying employer is a corporation, such corporation and the officers and directors thereof shall be jointly and severally liable for any civil penalties assessed under this section and any claim costs incurred under ORS 656.054.

(b) When a noncomplying employer is a limited liability company, the company and its members and managers shall be jointly and severally liable for any civil penalties assessed by the director under this section and any claim costs incurred under ORS 656.054. As used in this paragraph, “limited liability company,”

“manager” and “member” have the meanings for those terms provided in ORS 63.001.

(c) When a noncomplying employer is a limited liability partnership or foreign limited liability partnership, the partnership and its limited liability partners shall be jointly and severally liable for any civil penalties assessed by the director under this section and any claim costs incurred under ORS 656.054. As used in this paragraph, “ limited liability partnership” and “foreign limited liability partnership” have the meanings for those terms provided in ORS 67.005.

(d) When a noncomplying employer is a partnership, the partnership and its partners shall be jointly and severally liable for any civil penalties assessed by the director under this section and any claim costs incurred under ORS 656.054. As used in this paragraph, “partnership” has the meaning for that term provided in ORS 67.005.

(5) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(6) Civil penalties, and judgments entered thereon, due to the director under this section from any person shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, and proceedings for the administration of estates and receiverships involving the person liable therefor or the property of such person.

(7) All moneys collected under this section shall be paid into the Workers' Benefit Fund. [1973 c.447 s.4; 1977 c.73 s.1; 1983 c.696 s.23; 1995 c.332 s.65; 1995 c.641 s.12; 1995 c.689 s.37; 1997 c.775 s.91]

656.740 Review of proposed order declaring noncomplying employer or nonsubjectivity determination; review of proposed assessment or civil penalty; insurer as party; hearing. (1) A person may contest a proposed order of the Director of the Department of Consumer and Business Services declaring that person to be a noncomplying employer, or a proposed assessment of civil penalty, by filing with the Department of Consumer and Business Services, within 60 days of receipt of notice thereof, a written request for a hearing. Such a request need not be in any particular form, but shall specify the grounds upon which the person contests the proposed order or assessment. An order by the director under this subsection is prima facie correct and the burden is upon the employer to prove that the order is incorrect.

(2) A person may contest a nonsubjectivity determination of the director by filing a written request for hearing with the department within 30 days after the

mailing of the determination or within 60 days after the mailing of the determination if the person establishes at a hearing before the Hearings Division of the Workers' Compensation Board that there was good cause for failure to file the hearing request by the 30th day after the mailing of the determination.

(3) When any insurance carrier, including the State Accident Insurance Fund Corporation, is alleged by an employer to have contracted to provide the employer with workers' compensation coverage for the period in question, the Workers' Compensation Board shall join such insurance carrier as a necessary party to any hearing relating to such employer's alleged noncompliance or to any hearing relating to a nonsubjectivity determination and shall serve the carrier, at least 30 days prior to such hearing, with notice thereof.

(4) A hearing relating to a nonsubjectivity determination, to a proposed order declaring a person to be a noncomplying employer, or to a proposed assessment of civil penalty under ORS 656.735, shall be held by an Administrative Law Judge of the board's Hearings Division. However, a hearing shall not be granted unless a request for hearing is filed within the period specified in subsection (1) or (2) of this section, and if a request for hearing is not so filed, the nonsubjectivity determination, order or penalty, as proposed, shall be a final order of the department and shall not be subject to review by any agency or court.

(5) Notwithstanding ORS 183.315 (1), the issuance of nonsubjectivity determinations, orders declaring a person to be a noncomplying employer or the assessment of civil penalties pursuant to this chapter, the conduct of hearings and the judicial review thereof shall be as provided in ORS 183.310 to 183.550, except that:

(a) The order of an Administrative Law Judge in a contested case shall be deemed to be a final order of the director.

(b) The director shall have the same right to judicial review of the order of an Administrative Law Judge as any person who is adversely affected or aggrieved by such final order.

(c) When a nonsubjectivity determination or an order declaring a person to be a noncomplying employer is contested at the same hearing as a matter concerning a claim pursuant to ORS 656.283 and 656.704, the review thereof shall be as provided for a matter concerning a claim.

(6)(a) If a person against whom an order is issued pursuant to this section prevails at hearing or on appeal, the person is entitled to reasonable attorney fees to be paid by the director from the Workers' Benefit Fund.

(b) If a person against whom an order is issued is found to be a noncomplying employer, but the person proves coverage pursuant to subsection (3) of this section and the insurer failed to file timely a guaranty contract as required by ORS 656.419 or improperly canceled the person's coverage, the noncomplying employer is entitled to reasonable attorney fees paid by the insurer.

(c) If a worker prevails at hearing or on appeal from a nonsubjectivity determination, the worker is entitled to reasonable attorney fees to be paid by the director from the Workers' Benefit Fund and reimbursed by the employer. [1973

c.447 s.5; 1975 c.341 s.1; 1975 c.759 s.19; 1977 c.804 s.31; 1979 c.839 s.22; 1983 c.816 s.14; 1987 c.234 s.3; 1995 c.332 s.65a; 1995 c.641 s.13; 1999 c.246 s.1; 1999 c.1020 s.2]

656.745 Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure. (1) The Director of the Department of Consumer and Business Services shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(2) The director may assess a civil penalty against an employer or insurer who:

(a) Fails to pay assessments or other payments due to the director under this chapter and is in default; or

(b) Fails to comply with rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of this chapter.

(3) A civil penalty shall be not more than $2,000 for each violation or $10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate violation.

(4) ORS 656.735 (5) to (7) and 656.740 also apply to orders and penalties assessed under this section. [1975 c.556 s.38; 1979 c.839 s.31; 1987 c.233 s.2; 1987 c.884 s.46]

656.750 Civil penalty for failure to maintain records of compensation claims; amount; disposition of funds. (1) The Director of the Department of Consumer and Business Services shall assess against a self-insured employer who fails to comply with ORS 656.455, a civil penalty of $250 a day for each day such failure continues.

(2) ORS 656.735 (5) to (7) and 656.740 also apply to orders and penalties assessed under this section. [1975 c.585 s.9; 1983 c.696 s.24; 1987 c.233 s.3; 1987 c.884 s.60; 1991 c.640 s.3]

(State Accident Insurance Fund Corporation)

656.751 State Accident Insurance Fund Corporation created; board; members' qualifications; terms; compensation; expenses; function; report. (1) The State Accident Insurance Fund Corporation is created as an independent public corporation. The corporation shall be governed by a board of five directors appointed by the Governor. Two members shall be chosen to represent the public. Of the remaining three members, a board member must be insured by the State Accident Insurance Fund Corporation at the time of appointment and for one year prior to appointment, or an employee of such an employer. Members of the board

are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(2) No member of the board of directors shall have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of appointment to the board, in any corporation or other business entity doing business in the workers' compensation insurance industry.

(3) The term of office of a member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board of directors is entitled to compensation and expenses as provided in ORS 292.495.

(5) The board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers as the board of directors considers necessary for performance of the functions of those offices. A majority of the members of the board of directors constitutes a quorum for the transaction of business.

(6) The board of directors shall meet at least once every three months at a time and place determined by the board of directors. The board of directors shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board of directors.

(7) It is the function of the board of directors to establish the policies for the operation of the State Accident Insurance Fund Corporation, consistent with all applicable provisions of law.

(8) The board shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the State Accident Insurance Fund Corporation for the preceding year. [1979 c.829 s.2; 1981 c.854 s.51]

656.752 State Accident Insurance Fund Corporation; purpose and functions. (1) The State Accident Insurance Fund Corporation is created for the purpose of transacting workers' compensation insurance and reinsurance business. The State Accident Insurance Fund Corporation also may insure an Oregon employer against any liability such employer may have on account of bodily injury to a worker of the employer arising out of and in the course of employment as fully as any private insurance carrier.

(2) The functions of the State Accident Insurance Fund Corporation shall be:

(a) To confer with and solicit employers and to determine, handle, audit and enforce collection of premiums, assessments and fees of insured employers insured with the State Accident Insurance Fund Corporation;

(b) To make insurance available to as many Oregon employers as inexpensively as may be consistent with the overall integrity of the Industrial Accident Fund, in accordance with ORS 656.634 and sound principles of insurance;

(c) To receive and handle and process the claims of workers and beneficiaries of workers injured in the employ of insured employers insured with the State Accident Insurance Fund Corporation; and

(d) To perform all other functions which the laws of this state specifically authorize or which are necessary or appropriate to carry out the functions expressly authorized.

(3) The State Accident Insurance Fund Corporation in its name may sue and be sued.

(4) The State Accident Insurance Fund Corporation may authorize self-insured employers or other insurers to use any physical rehabilitation center operated by the State Accident Insurance Fund Corporation on such terms as the State Accident Insurance Fund Corporation deems reasonable.

(5) The State Accident Insurance Fund Corporation in its own name, may acquire, lease, rent, own and manage real property. It may construct, equip and furnish buildings or other structures as are necessary to accommodate its needs. It may purchase, rent, lease or otherwise acquire for its use all supplies, materials, equipment and services necessary to carry out its functions. It may sell or otherwise dispose of any property acquired under this subsection.

(6) Any real property acquired and owned by the State Accident Insurance Fund Corporation under this section shall be subject to ad valorem taxation.

(7) The State Accident Insurance Fund Corporation may furnish advice, services and excess workers' compensation and employer liability insurance to any employer qualified as a self-insured employer under the provisions of ORS 656.407, on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable.

(8) With the approval of the Director of the Department of Consumer and Business Services, the State Accident Insurance Fund Corporation may provide reinsurance coverage to Oregon employers on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable. [1965 c.285 s.55; 1965 c.564 s.7; 1967 c.253 s.1; 1969 c.247 s.2; 1971 c.262 s.1; 1977 c.659 s.3; 1979 c.815 s.10; 1979 c.829 s.5a; 1981 c.854 s.52; 1981 c.876 s.7; 1990 c.1 s.3]

656.753 State Accident Insurance Fund Corporation exempt from certain financial administration laws; contracts with state agencies for services. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, 279, 282, 283, 291, 292 and 293 do not apply to the State Accident Insurance Fund Corporation.

(2) In carrying out the duties, functions and powers imposed by law upon the State Accident Insurance Fund Corporation, the board of directors or the manager of the State Accident Insurance Fund Corporation may contract with any state agency for the performance of such duties, functions and powers as the corporation considers appropriate.

(3) Notwithstanding subsection (1) or (2) of this section, ORS 293.240 except for appeals pursuant to ORS 737.318, ORS 293.260, 293.262 and 293.505 (2) shall

apply to the directors, manager, assistants and accounts of the State Accident Insurance Fund Corporation and any subsidiary corporation formed or acquired by the State Accident Insurance Fund Corporation.

(4) Notwithstanding subsection (1) or (2) of this section, ORS 243.305, 279.053 and 659.025 apply to the directors, manager and employees of the State Accident Insurance Fund Corporation. [1979 c.829 s.4; 1981 c.876 s.8; subsection (3) enacted as 1983 c.412 s.2; subsection (4) enacted as 1983 c.808 s.4; 1987 c.884 s.5]

656.754 Manager; appointment; functions. (1) The State Accident Insurance Fund Corporation is under the direct supervision of a manager appointed by the board of directors of the State Accident Insurance Fund Corporation. The manager serves at the pleasure of the board of directors. The manager shall qualify in the manner provided for board members in ORS 656.716 except that no bond shall be required.

(2) The manager has such powers as are necessary to carry out the functions of the State Accident Insurance Fund Corporation, subject to policy direction by the board of directors.

(3) The manager may employ, terminate and supervise the employment of such assistants, experts, field personnel and clerks as may be required in the administration of the State Accident Insurance Fund Corporation. [1965 c.285 s.56; 1973 c.792 s.29; 1979 c.829 s.6]

656.756 [1965 c.285 s.56a; repealed by 1967 c.7 s.40]

656.758 Inspection of books, records and payrolls; statement of employment data; civil penalty for misrepresentation; failure to submit books for inspection and refusal to keep correct payroll. (1) The books, records and payrolls of any employer pertinent to the administration of this chapter shall always be open to inspection by the State Accident Insurance Fund Corporation or its agent for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary in the administration of said statutes.

(2) Every employer subject to this chapter shall keep a true and accurate record of the number of workers and the wages paid by the employer, the occupations at which and the number of days or parts of days any of the workers are employed, and shall furnish to the State Accident Insurance Fund Corporation, upon request, a sworn statement of the same.

(3) Any employer who willfully misrepresents to the State Accident Insurance Fund Corporation the amount of the payroll upon which the amount of premium is based shall be liable to the State Accident Insurance Fund Corporation in a sum equal to 10 times the amount of the difference between the amount of such premium computed according to the representation thereof by such employer and the amount for which the employer is liable under this chapter according to a correct computation of the payroll. Such liability shall be enforced in a civil action in the

name of the State Accident Insurance Fund Corporation and any amount so collected shall become a part of the Industrial Accident Fund.

(4) Failure on the part of the employer to submit such books, records and payrolls for inspection to any member of the State Accident Insurance Fund Corporation or any of its representatives presenting written authority from the State Accident Insurance Fund Corporation, or a refusal on the part of an employer to keep a payroll in accordance with this section, when demanded by the State Accident Insurance Fund Corporation, subjects the offending employer to a penalty of $100 for each offense, to be collected by a civil action in the name of the State Accident Insurance Fund Corporation and paid into the Industrial Accident Fund. [Amended by 1981 c.854 s.53]

656.760 Notice to Secretary of State regarding action on audit report. Not later than the 90th day after the Secretary of State completes and delivers to the appropriate authority an audit under ORS 297.210, the State Accident Insurance Fund Corporation or any subsidiary corporation formed or acquired by the State Accident Insurance Fund Corporation shall notify the Secretary of State in writing of the measures taken and proposed to be taken, if any, to respond to the recommendations of the audit report. The Secretary of State may extend the 90-day period for good cause. [1983 c.412 s.3]

(Claims Examiner Certification)

656.780 Certification of claims examiners; records of certification and training of examiners; department inspection of records; penalties. (1) The Director of the Department of Consumer and Business Services shall adopt by rule standards for certification of workers' compensation claims examiners. Workers' compensation insurers, self-insured employers and third party administrators shall administer the standards.

(2) Each insurer, self-insured employer and third party administrator shall maintain records of the certification and training of their workers' compensation claims examiners. These records are subject to inspection and review by the director. The director may impose a civil penalty against any insurer, self-insured employer or third party administrator that fails to maintain or produce certification and training records as required by the rules of the director.

(3) Insurers, self-insured employers and third party administrators may employ only certified workers' compensation claims examiners to process workers' compensation claims. The director may impose a civil penalty against any insurer, self-insured employer or third party administrator that violates this subsection. [1990 c.2 s.52; 1999 c.418 s.1]

Note: Section 2, chapter 418, Oregon Laws 1999, provides:

Sec. 2. The certification of workers' compensation claims examiners that are valid on December 31, 1999, are extended until December 31, 2000. [1999 c.418 s.2]

(Advisory Committees)

656.790 Workers' Compensation Management-Labor Advisory Committee; membership; duties; expenses. (1) The Governor shall appoint a Workers' Compensation Management-Labor Advisory Committee composed of 10 appointed members. Five members from organized labor shall represent subject workers and five members shall represent subject employers. In addition to the appointed members, the Director of the Department of Consumer and Business Services shall serve ex-officio as a member of the committee. The appointment of members of the committee is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The director may recommend areas of the law which the director desires to have studied or the committee may study such aspects of the law as the committee shall determine require their consideration. The committee periodically shall review the standards for evaluation of permanent disability adopted under ORS 656.726 and shall recommend to the director factors to be included or such other modification of application of the standards as the committee considers appropriate. The committee shall advise the director regarding any proposed changes in the operation of programs funded by the Workers' Benefit Fund. The committee shall report its findings to the director for such action as the director deems appropriate.

(3) The committee shall report to the Legislative Assembly such findings and recommendations as the committee considers appropriate, including a report on the following matters:

(a) Decisions of the Supreme Court and Court of Appeals that have significant impact on the workers' compensation system.

(b) Adequacy of workers' compensation benefits.

(c) Medical and legal system costs.

(d) Adequacy of assessments for reserve programs and administrative costs.

(e) The operation of programs funded by the Workers' Benefit Fund.

(4) The members of the committee shall be appointed for a term of two years and shall serve without compensation, but shall be entitled to travel expenses. The committee may hire, subject to approval of the director, such experts as it may require to discharge its duties. All expenses of the committee shall be paid out of the Consumer and Business Services Fund. [1969 c.448 s.2; 1975 c.556 s.49; 1977 c.804 s.32; 1990 c.2 s.41; 1995 c.332 s.55b; 1995 c.641 s.25]

Note: See notes under 656.202.

656.792 [1965 c.285 s.29; 1969 c.314 s.69; repealed by 1969 c.448 s.3]

656.794 Advisory committee on medical care. There shall be created an advisory committee on medical care. This committee shall consist of members appointed by and serving at the pleasure of the Director of the Department of Consumer and Business Services to advise the director on matters relating to the provision of medical care to workers. The director by rule shall determine the composition of the committee. Membership of the committee shall include representatives of the types of health care providers that are most representative of health care providers providing medical care services to injured workers. The committee shall also include one representative of insurers, one representative of employers, one representative of workers, one representative of managed care organizations and other persons as the director may determine are necessary to carry out the purpose of the committee. Members of the committee shall be paid travel and other necessary expenses for service as a member. Such payments shall be made from the Consumer and Business Services Fund. [1965 c.285 s.27; 1981 c.535 s.46; 1981 c.854 s.54; 1987 c.884 s.26; 1999 c.879 s.1]

656.796 [1981 c.535 s.50; repealed by 1997 c.82 s.11]

OCCUPATIONAL DISEASE LAW

656.802 "Occupational disease" defined. (1)(a) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(b) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened by mental stress.

(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an “occupational disease.” Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment. [Amended by 1959 c.351 s.1; 1961 c.583 s.1; 1973 c.543 s.1; 1977 c.734 s.1; 1983 c.236 s.1; 1987 c.713 s.4; 1990 c.2 s.43; 1995 c.332 s.56]

656.804 Occupational disease as an injury under Workers' Compensation Law. An occupational disease, as defined in ORS 656.802, is considered an injury for employees of employers who have come under this chapter, except as otherwise provided in ORS 656.802 to 656.807. [Amended by 1965 c.285 s.87; 1973 c.543 s.2]

656.806 Preemployment medical examination; result to be filed with director. As a prerequisite to employment in any case, a prospective employer may, by written direction, require any applicant for such employment to submit to a physical examination by a doctor to be designated by the Director of the Department of Consumer and Business Services, and paid by such prospective employer. In every case in which such right is exercised, and the applicant is subsequently employed, the employer shall file a true copy of the written direction for and the

doctor's findings resulting from the physical examination, with the director within 10 days after the beginning of such employment.

656.807 Time for filing of claims for occupational disease; procedure. (1) All occupational disease claims shall be void unless a claim is filed with the insurer or self-insured employer by whichever is the later of the following dates:

(a) One year from the date the worker first discovered, or in the exercise of reasonable care should have discovered, the occupational disease; or

(b) One year from the date the claimant becomes disabled or is informed by a physician that the claimant is suffering from an occupational disease.

(2) If the occupational disease results in death, a claim may be filed within one year from the date that the worker's beneficiary first discovered, or in the exercise of reasonable care should have discovered, that the cause of the worker's death was due to an occupational disease.

(3) The procedure for processing occupational disease claims shall be the same as provided for accidental injuries under this chapter. [Amended by 1953 c.440 s.2; 1959 c.351 s.2; 1965 c.285 s.87a; 1973 c.543 s.3; 1981 c.535 s.47; 1981 c.854 s.55; 1985 c.212 s.10; 1987 c.713 s.6]

656.808 [Amended by 1957 c.559 s.2; 1965 c.285 s.88; repealed by 1973 c.543 s.4]

656.810 [Amended by 1959 c.351 s.3; 1965 c.285 s.89; repealed by 1973 c.543 s.4]

656.812 [Amended by 1959 c.351 s.4; repealed by 1973 c.543 s.4]

656.814 [Amended by 1965 c.285 s.90; repealed by 1973 c.543 s.4]

656.816 [Amended by 1959 c.351 s.5; 1965 c.285 s.91; repealed by 1973 c.543 s.4]

656.818 [Amended by 1959 c.351 s.6; 1965 c.285 s.92; repealed by 1973 c.543 s.4]

656.820 [Repealed by 1973 c.543 s.4]

656.822 [Amended by 1965 c.285 s.92a; repealed by 1973 c.543 s.4]

656.824 [Repealed by 1981 c.854 s.1]

WORKER LEASING COMPANIES

656.850 License; compliance with workers' compensation and safety laws. (1) As used in this section and ORS 656.018, 656.403, 656.855 and 737.270:

(a) “Worker leasing company” means a person who provides workers, by contract and for a fee, to work for a client but does not include a person who provides workers to a client on a temporary basis.

(b) “Temporary basis” means providing workers to a client for special situations such as to cover employee absences, employee leaves, professional skill shortages, seasonal workloads and special assignments and projects with the expectation that the position or positions will be terminated upon completion of the special situation. Workers also are provided on a temporary basis if they are provided as probationary new hires with a reasonable expectation of transitioning to permanent employment with the client and the client uses a preestablished probationary period in its overall employment selection program.

(c) “Temporary service provider” means a person who provides workers, by contract and for a fee, to a client on a temporary basis.

(2) No person shall perform services as a worker leasing company in this state without first having obtained a license therefor from the Director of the Department of Consumer and Business Services. No person required by this section to obtain a license shall fail to comply with this section or ORS 656.855, or any rule adopted pursuant thereto.

(3) When a worker leasing company provides workers to a client, the worker leasing company shall satisfy the requirements of ORS 656.017 and 656.407 and provide workers' compensation coverage for those workers and any subject workers employed by the client unless during the term of the lease arrangement the client has an active guaranty contract on file with the director that extends coverage to subject workers employed by the client and any workers leased by the client. If the client allows the guaranty contract to terminate and continues to employ subject workers or has leased workers, the client shall be considered a noncomplying employer unless the worker leasing company has complied with subsection (5) of this section.

(4) When a worker leasing company provides workers for a client, the worker leasing company shall assure that the client provides adequate training, supervision and instruction for those workers to meet the requirements of ORS chapter 654.

(5) When a worker leasing company provides subject workers to work for a client and also provides workers' compensation coverage for those workers, the worker leasing company shall notify the director in writing. The notification shall be given in such manner as the director may prescribe. A worker leasing company may terminate its obligation to provide workers' compensation coverage for workers provided to a client by giving to the client and the director written notice of the termination. A notice of termination shall state the effective date and hour of the termination, but the termination shall be effective not less than 30 days after the notice is received by the director. Notice to the client under this section shall be given by mail, addressed to the client at its last-known address. If the client is a partnership, notice may be given to any of the partners. If the client is a corporation,

notice may be given to any agent or officer of the corporation upon whom legal process may be served. [1993 c.628 s.2; 1997 c.491 s.4]

656.855 Rules; dedication of moneys received. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the Director of the Department of Consumer and Business Services, by rule, shall establish a licensing system for worker leasing companies. Such system shall include, but not be limited to:

(a) Prescribing the form and content of and the times and procedures for submitting applications for license issuance or renewal.

(b) Prescribing the term of the license and the fee for original issuance and renewal of the license. The fees shall be set in an amount necessary to support the administration of this section and ORS 656.850.

(c) Prescribing those violations of this section or of ORS 656.850 for which the director may refuse to issue or renew or may suspend or revoke a license.

(d) Prescribing the form and contents of records a licensee is required to maintain and specifying the times, places and manner of audit by the director of those records.

(2) All moneys received by the director pursuant to this section shall be credited to the Consumer and Business Services Fund and are appropriated continuously to the director to carry out the provisions of this section and ORS 656.850. [1993 c.628 s.3]

PENALTIES

656.990 Penalties. (1) Any person who knowingly makes any false statement or representation to the Workers' Compensation Board or its employees, the Workers' Compensation Board chairperson, the Director of the Department of Consumer and Business Services or employees of the director, the insurer or self-insured employer for the purpose of obtaining any benefit or payment under this chapter, either for self or any other person, or who knowingly misrepresents to the board, the board chairperson, the director or the corporation or any of their representatives the amount of a payroll, or who knowingly submits a false payroll report to the board, the board chairperson, the director or the corporation, is punishable, upon conviction, by imprisonment for a term of not more than one year or by a fine of not more than $1,000, or by both.

(2) Violation of ORS 656.052 is a Class D violation. Each day during which an employer engages in any subject occupation in violation of ORS 656.052 constitutes a separate offense.

(3) Violation of ORS 656.056 is a Class D violation.

(4) The individual refusing to keep the payroll in accordance with ORS 656.726 or 656.758 when demanded by the director or corporation, is punishable, upon conviction, by a fine of not more than $100 or by imprisonment in the county jail for not more than 90 days, or by both. Circuit courts and justice courts shall have concurrent jurisdiction of this offense.

(5) Failure on the part of an employer to send the signed payroll statement required by ORS 656.504 within 30 days after receipt of notice by the director or corporation is a misdemeanor.

(6) Violation of ORS 656.560 (4) is a Class D violation. [Amended by 1959 c.450 s.9; 1965 c.285 s.93; 1977 c.804 s.33; 1981 c.535 s.48; 1981 c.854 s.56; 1985 c.770 s.9; 1990 c.2 s.44; 1999 c.876 s.10; 1999 c.1051 s.216]

Chapter 654

1999 EDITION

Occupational Safety and Health

SAFETY AND HEALTH CONDITIONS IN PLACES OF EMPLOYMENT

HAZARD COMMUNICATION AND HAZARDOUS SUBSTANCES

INJURED WORKERS' MEMORIAL SCHOLARSHIP

HEALTH AND SANITATION INSPECTIONS

EMPLOYER LIABILITY LAW

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SAFETY AND HEALTH CONDITIONS IN PLACES OF EMPLOYMENT

654.001 Short title. ORS 654.001 to 654.295, 654.750 to 654.780 and 654.991 may be cited as the Oregon Safe Employment Act. [1973 c.833 s.2]

654.003 Policy. The purpose of the Oregon Safe Employment Act is to assure as far as possible safe and healthful working conditions for every working man and woman in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payments and human suffering, that is created by occupational injury and disease. To accomplish this purpose the Legislative Assembly intends to provide a procedure that will:

(1) Encourage employers and employees to reduce the number of occupational safety and health hazards and to institute new programs and improve existing programs for providing safe and healthful working conditions.

(2) Establish a coordinated program of worker and employer education, health and safety consultative services, demonstration projects and research to assist workers and their employers in preventing occupational injury and disease, whatever the cause.

(3) Authorize the Director of the Department of Consumer and Business Services and the designees of the director to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment.

(4) Provide an effective program, under the director, to enforce all laws, regulations, rules and standards adopted for the protection of the life, safety and health of employees, and in so doing, predominantly prioritize inspections of places of employment to first focus enforcement activities upon places of employment that the director reasonably believes to be the most unsafe.

(5) Establish appropriate reporting and research procedures that will help achieve the objectives of the Oregon Safe Employment Act, identify occupational

hazards and unsafe and unhealthy working conditions, and describe the nature of the occupational safety and health problem.

(6) Assure that Oregon assumes fullest responsibility, in accord with the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), for the development, administration and enforcement of safety and health laws and standards. [1973 c.833 s.3; 1987 c.884 s.55; 1999 c.1017 s.1]

Note: Section 5, chapter 1017, Oregon Laws 1999, provides:

Sec. 5. The amendments to ORS 654.003, 654.035, 654.067 and 654.071 by sections 1 to 4 of this 1999 Act apply only to inspections or investigations started on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.1017 s.5]

654.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) “Board” means the Workers' Compensation Board created by ORS 656.712.

(2) “Department” means the Department of Consumer and Business Services.

(3) “Director” means the Director of the Department of Consumer and Business Services.

(4) “Employee” means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS chapter 656, whether by operation of law or by election.

(5) “Employer” means any person who has one or more employees, or any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128.

(6) “Owner” means and includes every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(7) “Person” means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(8) “Place of employment” means and includes every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp, wherever located, provided by an employer for employees or by another person engaged in

providing living quarters or shelters for employees. “Place of employment” does not include:

(a) Any place where the only employment involves nonsubject workers employed in or about a private home; and

(b) Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren. [Amended by 1973 c.833 s.4; 1975 c.102 s.2; 1977 c.804 s.34; 1987 c.373 s.30; 1993 c.744 s.17; 1999 c.433 s.1]

654.010 Employers to furnish safe place of employment. Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees. [Amended by 1973 c.833 s.5]

654.015 Unsafe or unhealthy place of employment prohibited. No employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health. [Amended by 1973 c.833 s.6]

654.020 Interference with safety devices or methods prohibited; civil penalty. (1) No person shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment.

(2) If an employee is injured as a result of an employer's violation of the provisions of subsection (1) of this section, the employer shall be assessed a civil penalty under ORS 654.086 (1)(c).

(3) If removal or the rendering inoperative of a safety device or safeguard is necessary for repair or maintenance work, injuries sustained while the repair or maintenance work is being performed are exempted from this section. [Amended by 1973 c.833 s.7; 1977 c.869 s.1]

654.022 Duty to comply with safety and health orders, decisions and rules. Every employer, owner, employee and other person shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the Department of Consumer and Business Services in connection with the matters specified in ORS 654.001 to 654.295 and 654.750 to 654.780, or in any way relating to or affecting safety and health in employments or places of employment, or to protect the life, safety and health of employees in such employments or places of employment, and shall do everything necessary or proper

in order to secure compliance with and observance of every such order, decision, direction, standard, rule or regulation. [Formerly 654.060; 1977 c.804 s.35]

654.025 Jurisdiction and supervision of Workers' Compensation Board, director and other state agencies over employment and places of employment. (1) The Director of the Department of Consumer and Business Services is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws, regulations, rules, standards and lawful orders requiring such employment and place of employment to be safe and healthful, and requiring the protection of the life, safety and health of every employee in such employment or place of employment.

(2) The director and the Workers' Compensation Board may make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying out their respective functions under ORS 654.001 to 654.295 and 654.750 to 654.780, notwithstanding any other statutory provisions which may be to the contrary. Nothing in ORS 654.001 to 654.295 and 654.750 to 654.780, however, shall authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary to protect the health or safety of others.

(3)(a) The director may enforce all regulations, rules and standards duly adopted by any other state agency for the safety and health of employees.

(b) This grant of concurrent jurisdiction and authority to the director shall not be construed, however, as repealing or amending, or as derogating in any respect from, the statutory jurisdiction and authority of any other state agency to promulgate and enforce regulations, rules and standards and to conduct inspections and investigations, except that no other state agency shall issue the citations or assess the civil penalties provided in ORS 654.001 to 654.295 and 654.750 to 654.780.

(c) In the event a state of facts or condition constitutes a violation of more than one rule, regulation, standard or order of the director or any other agency pertaining to occupational safety or health, the state of facts or condition shall be the basis for the issuance of only one citation and proceeding or the assessment of only one penalty unless the statute specifically provides that a continuation of a state of facts or a condition constitutes a new violation.

(d) Where another state agency, pursuant to its statutory authority, proposes to adopt a regulation, rule or standard relating to occupational safety or health, such agency shall accord the director an opportunity to review such regulation, rule or standard prior to its adoption for the purpose of assuring that employers will not be asked to comply with contradictory or inconsistent requirements or be burdened with an unnecessary duplication of occupational safety and health codes, inspections or reports.

(4) The board and the director may subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony

in any inquiry, investigation, hearing or proceeding in any part of the state, and the board and the director shall provide for defraying the expenses thereof.

(5) The director and the board may do and perform all things, whether specifically designated in ORS 654.001 to 654.295 and 654.750 to 654.780 or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon them by ORS 654.001 to 654.295 and 654.750 to 654.780. The director's authority under this section shall include but is not limited to:

(a) Designating by order or rule any named state employee or category of state employees who shall have authority to exercise any of the duties and powers imposed upon the director by law and whose act as authorized by the order or rule shall be considered to be an official act of the director. The director may designate local government employees with public health administration or enforcement duties to exercise duties and powers imposed upon the director with respect to ORS 654.174 (1) and (2).

(b) Instituting any legal or equitable proceeding which would assist in the enforcement of any state occupational safety or health law or any regulation, rule, standard or order promulgated thereunder, including but not limited to seeking injunctive relief to enjoin an employer from operating the place of employment until the employer has complied with the provisions of such law, regulation, rule, standard or order. Upon the filing of a suit for an injunction by the director, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of such notice. [Amended by 1973 c.833 s.9; 1977 c.804 s.36; 1979 c.839 s.23; 1985 c.423 s.6]

654.030 [Amended by 1973 c.833 s.24; renumbered 654.130]

654.031 Duty to order correction of unsafe or unhealthy conditions. Whenever the Director of the Department of Consumer and Business Services has reason to believe, after an inspection or investigation, that any employment or place of employment is unsafe or detrimental to health or that the practices, means, methods, operations or processes employed or used in connection therewith are unsafe or detrimental to health, or do not afford adequate protection to the life, safety and health of the employees therein, the director shall issue such citation and order relative thereto as may be necessary to render such employment or place of employment safe and protect the life, safety and health of employees therein. The director may in the order direct that such additions, repairs, improvements or changes be made, and such devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe and healthful, in the manner and within the time specified in the order. [Formerly 654.045]

654.035 Scope of rules and orders. The Director of the Department of Consumer and Business Services may, by general or special orders, or by regulations, rules, codes or otherwise:

(1) Declare and prescribe what devices, safeguards or other means of protection and what methods, processes or work practices are well adapted to render every employment and place of employment safe and healthful.

(2) Fix reasonable standards and prescribe and enforce reasonable orders for the adoption, installation, use and maintenance of devices, safeguards and other means of protection, and of methods, processes and work practices, including, but not limited to, work practices qualifications for equipment, materials and activities requiring special competence, to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, safety and health of employees.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe and healthful.

(4) Fix standards for routine, periodic or area inspections of places of employment that are reasonably necessary in order to determine that all occupational safety and health laws and the regulations, rules and standards promulgated thereunder are being complied with. Except for complaint inspections, follow-up inspections, imminent danger inspections, referral inspections and inspections to determine the cause of an occupational death, injury or illness, all inspections shall be based on written neutral administrative standards. The standards shall include a prioritized scheduling system for inspections that predominantly focuses enforcement activities upon places of employment that the director reasonably believes to be the most unsafe. The standards shall be accessible to employers under ORS 192.410 to 192.505 for at least 36 months from the last date the standards are in effect. The director shall notify in writing each employer whose accepted disabling claims rate is above the state average for its standard industrial classification and each employer whose industry is rated by the director as one of the most unsafe industries in the state of the increased likelihood of inspection of their places of employment and of the availability of consultative services. The director may by rule offer incentives to employers that elect consultative services before an inspection is conducted. Nothing in this subsection prevents the director from conducting a random inspection of a place of employment so long as the inspection is scheduled and conducted pursuant to written neutral administrative standards.

(5) Require the performance of any other act which the protection of the life, safety and health of employees in employments and places of employment may demand. [Amended by 1973 c.833 s.11; 1987 c.884 s.9; 1999 c.1017 s.2]

Note: See note under 654.003.

654.040 [Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.045 [Amended by 1973 c.833 s.10; renumbered 654.031]

654.047 [Formerly 654.225; 1965 c.285 s.82; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.050 [Amended by 1953 c.387 s.2; 1957 c.436 s.1; 1965 c.285 s.69d; 1969 c.534 s.1; 1971 c.251 s.1; repealed by 1973 c.833 s.19 (654.082 and 654.086 enacted in lieu of 654.050)]

654.055 [Repealed by 1973 c.833 s.12 (654.056 and 654.078 enacted in lieu of 654.055)]

654.056 Variance from safety or health standards; effect of variance on citations. (1) Any employer may apply to the Director of the Department of Consumer and Business Services, pursuant to regulations and procedures adopted by the director, for an order granting the employer a variance from a particular safety or health regulation, rule or standard.

(2) The director may grant a temporary variance only if the employer demonstrates by a preponderance of the evidence that:

(a) The employer is unable to comply with a new regulation, rule or standard by its effective date;

(b) The employer has an effective program for complying with the law as quickly as practicable; and

(c) The employer is taking all available steps in the interim to safeguard the employees of the employer against the hazards covered by the regulation, rule or standard.

(3) The director may grant a permanent variance only if the employer demonstrates by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and a place of employment which are as safe and healthful as those which would prevail if the employer complied with the regulation, rule or standard.

(4) Where the director proposes to deny a request for a variance, the employer shall be given an opportunity for a hearing before the Workers' Compensation Board in which the employer may contest the proposed denial.

(5) Where the director proposes to grant a variance, the affected employees shall be given an opportunity for a hearing before the board in which they may contest the proposed variance.

(6) A request for a variance which is filed after an inspection or investigation by the director will not act to stay or dismiss any citation which may result from such inspection or investigation, and an order granting the requested variance shall have no retroactive effect.

(7) An order granting a variance may be modified or revoked by the director upon the director's own motion or upon the application of the employer or an affected employee or representative of the employee, in the manner prescribed for its issuance at any time after six months from its issuance. [1973 c.833 s.13 (enacted in lieu of 654.055); 1977 c.804 s.37]

654.060 [Amended by 1973 c.833 s.8; renumbered 654.022]

654.062 Notice of violation to employer by worker; complaint by worker to director; inspection; protection of complaining employees. (1) Every employee should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employee.

(2) However, any employee or representative of the employee may complain to the Director of the Department of Consumer and Business Services or any authorized representatives of the director of any violation of law, regulation or standard pertaining to safety and health in the place of employment, whether or not the employee also notifies the employer.

(3) Upon receiving any employee complaint, the director shall make such inquiries, inspections and investigations as the director considers reasonable and appropriate. Where an employee has complained in writing of an alleged violation and no resulting citation is issued to the employer, the director shall furnish to the employee or representative of the employee, upon written request, a statement of reasons for the decision.

(4) The director shall establish procedures for keeping confidential the identity of any employee who requests such protection in writing. Where such a request has been made, neither a written complaint from an employee, or representative of the employee, nor a memorandum containing the identity of a complainant shall be construed as a public record under ORS 192.210 to 192.505 and 192.610 to 192.990.

(5)(a) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employee or prospective employee because such employee has opposed any practice forbidden by ORS 654.001 to 654.295 and 654.750 to 654.780, made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295 and 654.750 to 654.780, or has testified or is about to testify in any such proceeding, or because of the exercise of such employee on behalf of the employee or others of any right afforded by ORS 654.001 to 654.295 and 654.750 to 654.780.

(b) Any employee or prospective employee who believes that the employee has been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, by any person in violation of this subsection may, within 30 days after the employee has reasonable cause to believe that such a violation has occurred, file a complaint with the Commissioner of the Bureau of Labor and Industries alleging such discrimination

under the provisions of ORS 659.040. Upon receipt of such complaint the commissioner shall process the complaint and case under the procedures, policies and remedies established by ORS 659.010 to 659.110 and 659.505 to 659.545 and the policies established by ORS 654.001 to 654.295 and 654.750 to 654.780 in the same way and to the same extent that the complaint would be processed by the commissioner if the complaint involved allegations of unlawful employment practices based upon race, religion, color, national origin, sex or age under ORS 659.030 (1)(f). The affected employee shall also have the right to bring a suit in any circuit court of the State of Oregon against any person alleged to have violated this subsection. The commissioner or the circuit court may order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days after the receipt of a complaint filed under this subsection the commissioner shall notify the complainant of the commissioner's determination under paragraph (b) of this subsection. [Formerly 654.235; 1973 c.833 s.14; 1983 c.275 s.1; 1999 c.55 s.3]

654.065 [Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.067 Inspection of places of employment; denial of access; warrants; safety and health consultation with employees. (1) In order to carry out the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780, the Director of the Department of Consumer and Business Services, upon presenting appropriate credentials to the owner, employer or agent in charge, is authorized:

(a) To enter without delay and at reasonable times any place of employment; and

(b) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately the owner, employer, agents or employees.

(2) No person shall give an owner, employer, agent or employee advance notice of any inspection to be conducted under ORS 654.001 to 654.295 and 654.750 to 654.780 of any place of employment without authority from the director.

(3) Except in the case of an emergency, or of a place of employment open to the public, if the director is denied access to any place of employment for the purpose of an inspection or investigation, such inspection or investigation shall not be conducted without an inspection warrant obtained pursuant to ORS 654.202 to 654.216, or without such other authority as a court may grant in an appropriate civil proceeding. Nothing contained herein, however, is intended to affect the validity of a constitutionally authorized inspection conducted without an inspection warrant.

(4) A representative of the employer and a representative authorized by the employees of the employer shall be given an opportunity to accompany the director during the inspection of any place of employment for the purpose of aiding such

inspection. When there is no employee representative, or the employee representative is not an employee of the employer, the director should consult with a reasonable number of employees concerning matters of safety and health in the place of employment.

(5) The representative of the employer may, at the employer's option, be an attorney retained by the employer. [1973 c.833 s.16 (enacted in lieu of 654.047, 654.222 and 654.232); 1999 c.1017 s.3]

Note: See note under 654.003.

654.070 [Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.071 Citation for safety or health standard violations; effect of failure to correct violation; posting of citations and notices by employer. (1) If the Director of the Department of Consumer and Business Services or an authorized representative of the director has reason to believe, after inspection or investigation of a place of employment, that an employer has violated any state occupational safety or health law, regulation, standard, rule or order, the director or the authorized representative shall with reasonable promptness issue to such employer a citation, and notice of proposed civil penalty, if any, to be assessed under this chapter, and fix a reasonable time for correction of the alleged violation.

(2) Each citation and notice required by subsection (1) of this section shall be in writing, shall be mailed to or served upon the employer or a registered agent of the employer, and shall contain:

(a) The date and place of the alleged violation;

(b) A plain statement of the facts upon which the citation is based;

(c) A reference to the law, regulation, rule, standard or order relied upon;

(d) The amount, if any, of the proposed civil penalty;

(e) The time, if any, fixed for the correction of the alleged violation;

(f) Notice of the employer's right to contest the citation, the proposed civil penalty and the period of time fixed for correction of the alleged violation; and

(g) Notice of any affected employee's right to contest the period of time fixed for correction of the alleged violation.

(3) No citation or notice of proposed civil penalty may be issued under this section after the expiration of 180 days following the start of the inspection or investigation, but this shall not prevent the issuance, at any time, of an order to correct that violation or the issuance of a citation for a subsequent violation.

(4) If the director has reason to believe that an employer has failed to correct a violation within the period of time fixed for correction, or within the time fixed in a subsequent order granting an extension of time to correct the violation, the director shall consider such failure as a separate and continuing violation and shall issue a citation and notice of proposed civil penalty, if any, to be assessed pursuant to ORS 654.086 (1)(d).

(5) The director may prescribe procedures for the issuance of a notice in lieu of citation to inform an employer and employees of a minimal violation that has no direct or immediate relationship to occupational safety or health.

(6) Each citation and notice, or copies thereof, issued under ORS 654.001 to 654.295 and 654.750 to 654.780 shall be posted by the employer, immediately upon receipt, in a conspicuous manner in a sufficient number of locations in the place or places of employment to reasonably inform employees of such citation and notice.

(7) Notwithstanding any other provision of this section, the director or authorized representative of the director shall deliver to the operator of a farm labor camp a copy of any notice, evaluation report or citation resulting from the inspection. [1973 c.833 s.17; 1981 c.696 s.4; 1999 c.72 s.1; 1999 c.1017 s.4]

Note: See note under 654.003.

654.074 [1973 c.833 s.17a; repealed by 1977 c.804 s.55]

654.075 [Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.078 Contesting violations; hearing; admissibility in criminal or civil proceedings of stipulations involving violations. (1) An employer may contest a citation, a proposed assessment of civil penalty and the period of time fixed for correction of a violation, or any of these, by filing with the Department of Consumer and Business Services, within 20 days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but shall specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(2) An affected employee or representative of such employees may contest the time fixed for correction of a violation by filing with the department, within 20 days after the receipt by the employer of the citation, notice or order which fixes such time for correction, a written request for a hearing before the board. Such a request need not be in any particular form, but shall specify the violation in question and the grounds upon which the employee considers the correction period to be unreasonable.

(3) A hearing on any question relating to the validity of a citation or the proposed civil penalty to be assessed therefor shall not be granted unless a request for hearing is filed by the employer within the period specified in subsection (1) of this section. If a request for hearing is not so filed, the citation and the assessment of penalty as proposed shall be a final order of the department and shall not be subject to review by any agency or court.

(4) A hearing relating to the reasonableness of the time prescribed for the correction of a violation shall not be granted, except for good cause shown, unless a request for hearing is filed within the period specified in subsections (1) and (2) of

this section. If a request for hearing is not so filed the time fixed for correction of the violation shall be a final order of the department and shall not be subject to review by any agency or court.

(5) Where an employer contests, in good faith and not solely for delay or avoidance of penalties, the period of time fixed for correction of a nonserious violation, such period of time shall not run between the date the request for hearing is filed and the date the order of the department becomes final by operation of law or on appeal.

(6) Where an employer or employee contests the period of time fixed for correction of a serious violation, any hearing on that issue shall be conducted as soon as possible and shall take precedence over other hearings conducted by the board under the provisions of ORS 654.001 to 654.295 and 654.750 to 654.780.

(7) Where informal disposition of a contested case is made by stipulation, agreed settlement or a consent order, such stipulation, settlement or order shall not be pleaded or admissible in evidence as an admission or confession in any criminal prosecution or in any other civil proceeding that may be instituted against the employer, except in the case of a civil proceeding brought to enforce such stipulation, settlement or order. [1973 c.833 s.18 (enacted in lieu of 654.055); 1977 c.804 s.38]

654.080 [Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.082 Prohibiting use of equipment involved in violation; red warning notice. (1) The Director of the Department of Consumer and Business Services, or an authorized representative of the director with the approval of the director or, pursuant to such rules and procedures as the director may prescribe, with the approval of the director, to preclude exposure to a condition which, if such exposure occurred would constitute a violation of any statute, or of any lawful regulation, rule, standard or order affecting employee safety or health at a place of employment, may preclude exposure by prohibiting use of the machine, equipment, apparatus or place of employment constituting such condition. When use is prohibited a red warning notice shall be posted in plain view of any person likely to use the same, calling attention to the condition, defect, lack of safeguard or unsafe or unhealthful place of employment and the fact that further use is prohibited.

(2) No person shall use or operate any place of employment, machine, device, apparatus or equipment, after the red warning notice required by this section is posted, before such place of employment, machine, device, apparatus or equipment is made safe and healthful, and the required safeguards or safety appliances or devices are provided, and authorization for the removal of such red warning notice has been obtained from the director. However, nothing in this subsection prohibits an employer from directing employees to use or operate any such place of employment, machine, device, apparatus or equipment exclusively for the purpose of

remedying the violation as specifically designated by the director in the red warning notice.

(3) No person shall deface, destroy or remove any red warning notice posted pursuant to this section until authorization for the removal of such notice has been obtained from the director. [1973 c.833 s.20 (enacted in lieu of 654.050); 1975 c.102 s.3; 1977 c.804 s.39; 1977 c.869 s.2a]

654.085 [Amended by 1973 c.833 s.33; renumbered 654.285]

654.086 Civil penalty for violations; classification of violations; payment and disposition of penalty moneys. (1) The Director of the Department of Consumer and Business Services or the authorized representative of the director is hereby granted the authority to assess civil penalties as provided by this section for violation of the requirements of any state occupational safety or health statute or the lawful rules, standards or orders adopted thereunder as follows:

(a) Any employer who receives a citation for a serious violation of such requirements shall be assessed a civil penalty of not less than $50 and not more than $7,000 for each such violation.

(b) Any employer who receives a citation for a violation of such requirements, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than $7,000 for each such violation.

(c) Any employer who willfully or repeatedly violates such requirements may be assessed a civil penalty of not more than $70,000 for each violation, but not less than $5,000 for a willful violation.

(d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct a violation may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.

(e) Any employer who knowingly makes any false statement, representation or certification regarding the correction of a violation shall be assessed a civil penalty of not less than $100 and not more than $2,500.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of ORS 654.001 to 654.295 and 654.750 to 654.780, may be assessed a civil penalty of not more than $1,000 for each violation.

(g) Any person who violates the provisions of ORS 654.082 (2) or (3) shall be assessed a civil penalty of not less than $100 and not more than $5,000 for each such violation.

(h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to comply with ORS 654.174 (1) shall be assessed a civil penalty of not less than $250 and not more than $2,500 for each such violation.

(i) Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule or order carrying out ORS 654.097, shall be assessed a civil penalty of not more than $2,000 for each violation or $10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate offense.

(2) For the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780 a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) Civil penalties collected under ORS 654.001 to 654.295 and 654.750 to 654.780 shall be paid into the Consumer and Business Services Fund. [1973 c.833 s.21 (enacted in lieu of 654.050); 1981 c.696 s.5; 1983 c.696 s.22; 1985 c.423 s.4; 1987 c.884 s.56; 1989 c.962 s.20; 1991 c.676 s.159; 1991 c.570 s.1; 1991 c.640 s.2; 1995 c.640 s.1]

654.090 Occupational safety and health activities; voluntary compliance; consultative services. In order to carry out the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780 and encourage voluntary compliance with occupational safety and health laws, regulations and standards and to promote more effective workplace health and safety programs, the Director of the Department of Consumer and Business Services shall:

(1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and the use of public communications media;

(b) The collection and dissemination of accident statistics; and

(c) The publication and distribution of training and accident prevention materials, including audio and visual aids.

(2) Appoint advisers who shall, without compensation, assist the director in establishing standards of safety and health. The director may adopt and incorporate in its regulations, rules and standards such safety and health recommendations as it may receive from such advisers.

(3) Provide consultative services for employers on safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in the place of employment of the employer or to request assistance in developing a plan to correct such problems or hazards, which will not directly result in a citation and civil penalty.

(4) Place emphasis, in the research, education and consultation program, on development of a model for providing services to groups of small employers in particular industries and their employees.

(5) Separately administer the voluntary compliance and research, education and consultation activities described in this section and the enforcement activities described in ORS 654.025 to 654.086. [Amended by 1965 c.285 s.69h; 1973 c.833 s.22; 1987 c.884 s.57; 1997 c.249 s.198]

654.092 [Formerly 654.255; repealed by 1965 c.285 s.95]

654.093 [Formerly 654.265; repealed by 1973 c.833 s.48]

654.094 [Formerly 654.270; repealed by 1965 c.285 s.95]

654.095 [Amended by 1965 c.285 s.69e; repealed by 1973 c.833 s.48]

654.096 [Formerly 654.275; repealed by 1967 c.92 s.5]

654.097 Consultative services required; program standards; rules. (1)(a) An insurer that issues guaranty contracts to employers pursuant to ORS chapter 656 shall furnish occupational safety and health loss control consultative services to its insured employers in accordance with standards established by the Director of the Department of Consumer and Business Services.

(b) A self-insured employer shall establish and implement an occupational safety and health loss control program in accordance with standards established by the director.

(2) An insurer or self-insured employer may furnish any of the services required by this section through an independent contractor.

(3) The program of an insurer for furnishing loss control consultative services as required by this section shall be adequate to meet the minimum standards prescribed by the director by rule from time to time. Such services shall include the conduct of workplace surveys to identify health and safety problems, review of employer injury records with appropriate persons and development of plans for improvement of employer health and safety loss records. At the time a guaranty contract is issued and on an annual basis thereafter, the insurer shall notify its insured employers of the loss control consultative services that the insurer is required by rule to offer, without additional charge as provided in this section, and shall provide a written description of the services that the insurer does offer.

(4) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultative services.

(5) Each insurer shall make available, at the request of the director and in the form prescribed by the director, its annual expenditures for safety and health loss

control activities for the prior year and its budget for safety and health loss control activities for the following year.

(6) As used in this section, "employer," "insurer" and "self-insured employer" have the meaning for those terms provided in ORS 656.005. [Formerly 656.451]

Note: 654.097 was added to and made a part of 654.001 to 654.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

654.100 [Repealed by 1973 c.833 s.31 (654.251 enacted in lieu of 654.100)]

654.101 Voluntary safety and health consultation; refusal to disclose report. (1) As used in this section, unless the context requires otherwise:

(a) "Safety and health consultation" means a voluntary review or inspection of a facility or equipment to improve workplace safety. "Safety and health consultation" does not include:

(A) An investigation of an occupational accident, illness or disease; or

(B) A discussion between employees of an employer or between employees of several employers in a multiemployer work setting.

(b) "Safety and health consultation report" means documentation of a safety and health consultation, including recommendations and supporting documents created by a consultant.

(2) In any inspection, investigation or administrative proceeding under ORS 654.001 to 654.295 and 654.750 to 654.780, an employer for which a safety and health consultation has occurred may refuse to disclose and may prevent any other person from disclosing a safety and health consultation report that results from the safety and health consultation. [1999 c.584 s.2]

Note: 654.101 was added to and made a part of 654.001 to 654.295 and 654.750 to 654.780 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

654.105 [1957 c.156 s.1; 1959 c.684 s.1; repealed by 1973 c.833 s.29 (654.241 enacted in lieu of 654.105 and 654.226)]

654.110 [1957 c.156 s.2; 1959 c.684 s.3; repealed by 1971 c.251 s.2]

654.120 Records of proceedings; confidentiality of certain information; federal reporting requirements. (1) The Department of Consumer and Business Services shall maintain, for a reasonable time, records of all inspections, investigations, employee complaints, employer reports, citations, hearings, proceedings and any other matters necessary for achieving the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780.

(2) Each employer shall keep records, in the manner prescribed by the Director of the Department of Consumer and Business Services, of work-related deaths and serious injuries and illnesses, and of such other relevant occupational safety and health matters as are reasonably necessary for achieving the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780. Each employer shall notify the director forthwith of the work-related death of any employee of the employer, and shall make such other reports as the director may reasonably prescribe by rule or order.

(3) All information reported to or otherwise obtained by the department in connection with any matter or proceeding under ORS 654.001 to 654.295 and 654.750 to 654.780 which contains or which might reveal a trade secret referred to in section 1905, title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other officers or employees of the department or other agencies concerned with carrying out their duties under ORS 654.001 to 654.295 and 654.750 to 654.780 or when relevant in any proceeding under ORS 654.001 to 654.295 and 654.750 to 654.780 or under 654.991. In any such matter or proceeding the department, the other state agency, the Administrative Law Judge, the Workers' Compensation Board or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(4) The director will make reports to the Secretary of Labor of the United States in such form and containing such information as the Secretary of Labor shall from time to time require pursuant to the Occupational Safety and Health Act of 1970 (Public Law 91-596).

(5) Nothing contained in ORS 654.001 to 654.295 and 654.750 to 654.780 shall relieve an employer from making such reports to the Secretary of Labor of the United States as may be required by federal law. [1973 c.833 s.23; 1977 c.804 s.40]

654.130 Proceedings against unwilling witnesses. (1) The Director of the Department of Consumer and Business Services or the Workers' Compensation Board, or the authorized representative or designee of the director or the board before whom testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers as required by subpoena, may report to the circuit court in the county in which the inquiry, investigation, hearing or other proceeding is pending, by petition setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been subpoenaed in the manner prescribed and that the witness has failed and refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to the witness in the course of such proceeding, and ask an order of the court to compel the witness to attend and testify or produce said papers.

(2) The court, upon receiving the petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why the witness has not attended and testified or produced the papers.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued, the court shall thereupon enter an order that the witness appear before the director or the board or the authorized representative or designee of the director or the board at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court. [Formerly 654.030; 1979 c.839 s.24]

654.150 Sanitary facilities at construction projects; standards; exemptions. (1) At the site of every construction project estimated to cost $1 million or more the employer or owner of such place of employment shall provide toilet facilities and facilities for maintaining personal cleanliness for the use of employees on the construction project. Flush toilets shall be provided and the washing facilities shall consist of warm water, wash basins and soap. A building or a mobile, self-contained unit may be provided for such facilities. The number, types and maintenance of facilities shall conform to minimum standards set by the Director of the Department of Consumer and Business Services.

(2) Subsection (1) of this section does not apply to highway construction or maintenance projects or to electricity, water, sewer or gas transmission facility construction or maintenance projects.

(3) The director may, by order, exempt or partially exempt, individual or classes of construction projects from the requirements of subsection (1) of this section when conditions are such that compliance is impractical or impossible. [1975 c.751 s.2; 1993 c.450 s.1]

654.154 Exemption from inspection or investigation for certain agricultural activities. (1) Notwithstanding any other provision of the Oregon Safe Employment Act, an employer engaged in agricultural activities with 10 or fewer agricultural employees is exempt from inspection or investigation under ORS 654.067 under the following conditions:

(a) There has not been a complaint filed pursuant to ORS 654.062 or, within the preceding two-year period, an accident at the employer's agricultural place of employment resulting in death or serious disabling injury from violation of the Oregon Safe Employment Act or rules adopted pursuant thereto.

(b) The employer and principal supervisors of the agricultural employees annually attend four hours of instruction on agricultural safety rules and procedures at a course conducted or approved by the Director of the Department of Consumer and Business Services.

(c) The agricultural activities are inspected once every four years by an individual acting in a safety consultant capacity, and all violations found upon inspection are remedied within 90 days of the date of inspection.

(2) In order to promote communication and understanding between the director and agricultural interests, the director shall appoint an agricultural advisory committee of seven agricultural employers, each with 10 or fewer agricultural

employees, to review and consult with the director on the administration of the Oregon Safe Employment Act with regard to agricultural activities. [1995 c.163 s.2]

Note: 654.154 was added to and made a part of 654.001 to 654.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

654.155 [Repealed by 1973 c.833 s.48]

654.160 Applicability of ORS 654.150 to be included in contracts; liability for cost of compliance. (1) A statement as to whether or not ORS 654.150 applies at the construction site shall be included in the contract for a construction project. If the contract states that ORS 654.150 applies, the owner shall also include in the contract documents a provision designating which party to the contract is responsible for any costs that may be incurred in complying with ORS 654.150 and the rules adopted pursuant thereto.

(2) The owner of a construction site is liable to any contractor who is an employer at the site for costs incurred by the contractor if:

(a) Representatives of the Director of the Department of Consumer and Business Services decide that ORS 654.150 applies to the construction project, and the contract documents did not designate which party to the contract for the project was responsible for complying with ORS 654.150 and the rules adopted pursuant thereto; and

(b) The contractor incurs additional costs in complying with ORS 654.150.

(3) In addition to being liable for the amount of the additional costs incurred, as provided by subsection (2) of this section, the owner is liable for interest on the amount at the rate of one percent per month from the date such contractor makes demand upon the owner to reimburse the contractor for such costs until the contractor is paid. [1977 c.129 s.2]

654.165 Employees not required to work bare-handed or rubber-gloved on high voltage lines. No employer shall require an employee to perform bare-handed or rubber-gloved work on a live electrical line with a voltage of 5,000 volts or greater. [1991 c.549 s.2]

Note: 654.165 was added to and made a part of 654.001 to 654.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

654.170 Stairway railings and guards not required for certain public and historic buildings. Nothing in ORS 654.001 to 654.295 and 654.750 to 654.780 requires the installation of railings or guards on exterior stairways providing access to and egress from the State Capitol Building or the grand staircases to the

chambers of the Senate and House of Representatives in the rotunda of the State Capitol Building or any staircase in any public monument or memorial or building of historic significance. [1977 c.780 s.2]

654.174 Sanitation facilities for workers harvesting food crops; employer to post notice; rules. (1) Employers of workers who are engaged in field activities for the growing and harvesting of food crops intended for human consumption shall provide for such workers at convenient locations, and in accordance with such rules as the Director of the Department of Consumer and Business Services may prescribe:

(a) Toilet facilities that are maintained in clean and sanitary condition, of such design and construction as to provide privacy and to prevent crop contamination and, where practicable, one toilet for each sex.

(b) Handwashing facilities that provide clean water, soap or other suitable cleansing agent, paper towels and a method for disposal of used towels and wash water to avoid crop contamination.

(c) Clean, potable drinking water served in a sanitary manner, which may include but is not limited to containers with spigots and tight fitting lids and disposable cups sufficient in number for each worker.

(2) Every employer required to comply with subsection (1) of this section shall keep conspicuously posted a notice describing the requirements of that subsection and advising where complaints may be filed. The notice must be in the English language and in the language spoken by the majority of the employees.

(3) The director shall promulgate rules to implement subsections (1) and (2) of this section which shall not be less protective than the rules on those subjects that are operative on July 9, 1985. [1985 c.423 ss.2,3,5]

654.175 [Repealed by 1969 c.534 s.2]

WORKPLACE SAFETY COMMITTEES

654.176 Safety committee requirement; conditions. (1) In order to promote health and safety in places of employment in this state:

(a) Every public or private employer of more than 10 employees shall establish and administer a safety committee in accordance with rules adopted pursuant to ORS 654.182.

(b) Every public or private employer of 10 or fewer employees shall establish and administer a safety committee in accordance with rules adopted pursuant to ORS 654.182 if the Director of the Department of Consumer and Business Services finds that:

(A) The employer has a lost workday cases incidence rate in the top 10 percent of all rates for employers in the same industry; or

(B) The employer is not an agricultural employer and the workers' compensation premium classification assigned to the greatest portion of the payroll for the

employer has a premium rate in the top 25 percent of premium rates for all classes as approved by the director pursuant to ORS 737.320 (3).

(2) In making determinations under subsection (1) of this section, the director shall utilize the most recent departmental statistics regarding occupational injuries and illnesses and workers' compensation loss cost rates approved according to ORS 737.320 (3) for use in this state. [1981 c.488 s.2; 1990 c.2 s.1; 1995 c.83 s.1]

654.180 [Repealed by 1969 c.534 s.2]

654.182 Rules for ORS 654.176; contents. (1) In carrying out ORS 654.176, the Director of the Department of Consumer and Business Services shall promulgate rules which include, but are not limited to provisions:

(a) Prescribing the membership of the committees to insure equal numbers of employees, who are volunteers or are elected by their peers, and employer representatives and specifying the frequency of meetings.

(b) Requiring employers to make adequate written records of each meeting and to file and maintain the records subject to inspection by the director.

(c) Requiring employers to compensate employee representatives on safety committees at the regular hourly wage while the employees are engaged in safety committee training or are attending safety committee meetings.

(d) Prescribing the duties and functions of safety committees, which include, but are not limited to:

(A) Establishing procedures for workplace safety inspections by the committee.

(B) Establishing procedures for investigating all safety incidents, accidents, illnesses and deaths.

(C) Evaluating accident and illness prevention programs.

(e) Prescribing guidelines for the training of safety committee members.

(2) An employer that is a member of a multiemployer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section and ORS 654.176 shall be considered to have met the requirements of this section and ORS 654.176. [1981 c.488 s.3; 1990 c.2 s.2; 1991 c.746 s.2]

654.187 [1981 c.488 s.4; repealed by 1991 c.746 s.1]

654.189 Safe Employment Education and Training Advisory Committee; members; terms; expenses; duties; meetings. (1) The Director of the Department of Consumer and Business Services may appoint a Safe Employment Education and Training Advisory Committee composed of seven members: Three representing employees, three representing employers and one representing the Department of Consumer and Business Services. The committee shall elect its chairperson.

(2) The members of the committee shall be appointed for a term of three years and shall serve at the pleasure of the director. Before the expiration of the term of a

member, the director shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective.

(3) The members shall serve without compensation, but shall be entitled to travel expenses pursuant to ORS 292.495.

(4) The duties of the committee shall be determined by the director and shall include, but not be limited to:

(a) Recommending to the director:

(A) Occupational Safety and Health Grant application procedures and criteria for grant approval;

(B) Occupational Safety and Health Grant recipients; and

(C) Revocation of grants to recipients failing to comply with grant criteria established by the director pursuant to ORS 654.191.

(b) Receiving and processing Occupational Safety and Health Grant applications.

(5) The committee shall meet at least once every three months at a place, day and hour determined by the committee. The committee shall also meet at other times and places specified by a majority of the members of the committee or the chairperson of the committee. A majority of the members of the committee constitutes a quorum for the transaction of business. [1989 c.857 s.3]

654.191 Occupational Safety and Health Grant Program. (1) The Director of the Department of Consumer and Business Services, in consultation with the Safe Employment Education and Training Advisory Committee, shall establish an Occupational Safety and Health Grant program to fund the education and training of employees in safe employment practices and conduct and to promote the development of employer-sponsored health and safety programs.

(2) The director shall adopt rules establishing:

(a) Grant application procedures and criteria for grant approval; and

(b) Procedures for revocation of grants to recipients failing to comply with grant criteria established by the director pursuant to this section.

(3) The director, after reviewing the recommendation of the Safe Employment Education and Training Advisory Committee, shall approve or deny an application for an Occupational Safety and Health Grant. If the director approves a grant under this section, the director shall set the amount of the grant awarded to the grant recipient.

(4) The director shall monitor grant recipients for compliance with grant criteria and procedures established by the director.

(5) The grants awarded under this section shall be funded only from the civil penalties paid into the Consumer and Business Services Fund under ORS 654.086. [1989 c.857 s.2]

654.192 Labor organization not liable for injury resulting from absence of safety or health provision. When an employee incurs an injury compensable under

ORS chapter 656, the discussion or furnishing, or failure to discuss or furnish, or failure to enforce any safety or health provision to protect employees against work injuries, in any collective bargaining agreement or negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury. [1981 c.488 s.5]

HAZARD COMMUNICATION AND HAZARDOUS SUBSTANCES

654.194 [1985 c.683 s.2; repealed by 1999 c.232 s.1]

654.196 Rules on contents of piping systems; posting notice on right to be informed of hazardous substances; withholding of information under certain circumstances. (1) The Director of the Department of Consumer and Business Services may by rule require employers to provide information to employees relating to the contents of piping systems. The rules shall include, but need not be limited to requirements for:

(a) Labeling piping systems to provide notice about hazardous chemicals contained in the system; and

(b) Labeling a piping system that uses asbestos as a pipe insulation material.

(2) Every employer shall post a sign in the location where notices to employees are normally posted to inform employees that they have a right under this section and ORS 453.317 (7) to information from the employer regarding hazardous substances found in the place of employment.

(3) The sign required under subsection (2) of this section shall include, but need not be limited to, the following information and shall be substantially in the following form:

NOTICE TO EMPLOYEES

You have a right under state law to information about hazardous substances found in your place of employment. For this information, contact your employer.

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(4) Notwithstanding any other provision of this chapter or ORS 192.410 to 192.505, an employer may withhold the precise chemical name of a chemical only if the employer can substantiate that:

(a) The chemical name is a trade secret with commercial value that can be protected only by limiting disclosure; and

(b) The commercial value of the product cannot be preserved by withholding the processes, mixture percentages or other aspects of the production of the product instead of its chemical constituents.

(5) A trade secret designation claimed under subsection (4) of this section may be subject to yearly review.

(6) Notwithstanding any other provision of this chapter or ORS 192.410 to 192.505, if a treating physician or health professional concludes that the chemical identity of a hazardous chemical used in an employer's place of employment is necessary to prescribe necessary treatment for a patient, the employer may not require the physician or health professional to sign a confidentiality agreement as a condition to the release of the information by the employer, manufacturer or importer. [1985 c.683 ss.3,4,5; 1999 c.232 s.2]

INJURED WORKERS' MEMORIAL SCHOLARSHIP

654.200 Scholarship account; use; standards for eligibility. (1) There is established in the Consumer and Business Services Fund the Workers' Memorial Scholarship Account. Only the interest earned on moneys in the account shall be used by the Director of the Department of Consumer and Business Services for the establishment and administration of a scholarship program to pay education related expenses of the spouses and children of workers who are killed or who have received a permanent total disability award from injury on the job. A maximum of $250,000 to carry out the provisions of this section shall be credited to the account from civil penalties recovered pursuant to ORS 654.086.

(2) The director shall consult with the Safe Employment Education and Training Advisory Committee established pursuant to ORS 654.189 in determining the appropriate scholarship standard and in selecting the recipients. [1991 c.395 s.2; 1993 c.597 s.1; 1999 c.1058 s.1]

HEALTH AND SANITATION INSPECTIONS

654.202 Issuance of warrants for safety and health inspections. Magistrates authorized to issue search warrants may, upon application of the Director of the Department of Consumer and Business Services, or any public officer, agent or employee of the director acting in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any place of employment is required or authorized by any state or local statute, ordinance or regulation relating to occupational safety or health. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place of employment. [1971 c.405 s.1; 1973 c.833 s.25; 1977 c.804 s.41]

654.205 [Repealed by 1959 c.516 s.6]

654.206 Grounds for issuance of inspection warrants; requirements of affidavit. (1) An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant hereunder, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the place of employment to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the

basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

(2) Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the particular place of employment, or there is probable cause to believe that a condition of nonconformity with a safety or health statute, ordinance, regulation, rule, standard or order exists with respect to the particular place of employment, or an investigation is reasonably believed to be necessary in order to determine or verify the cause of an employee's death, injury or illness. [1971 c.405 s.2; 1973 c.833 s.26]

654.210 [Repealed by 1959 c.516 s.6]

654.212 Procedure for issuance of inspection warrant by magistrate. (1) Before issuing an inspection warrant, the magistrate may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.

(2) If the magistrate is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the magistrate shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place of employment to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the magistrate has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night. [1971 c.405 s.3; 1973 c.833 s.27; 1987 c.158 s.126]

654.215 [Repealed by 1959 c.516 s.6]

654.216 Execution of inspection warrants. (1) Except as provided in subsection (2) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the place of employment designated in the warrant and show the occupant or person in possession of the place of employment the warrant or a copy thereof upon request.

(2) In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in subsection (1) of this section, but may promptly enter the designated place of employment if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

(3) A peace officer may be requested to assist in the execution of the inspection warrant.

(4) An inspection warrant must be executed and returned to the magistrate by whom it was issued within 10 days from its date, unless such magistrate before the expiration of such time, by indorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void. [1971 c.405 s.4; 1973 c.833 s.28]

654.220 [Repealed by 1959 c.516 s.6]

654.222 [1971 c.405 s.5; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.225 [Amended by 1959 c.516 s.1; renumbered 654.047]

654.226 [1971 c.405 s.6; repealed by 1973 c.833 s.29 (654.241 enacted in lieu of 654.105 and 654.226)]

654.230 [Repealed by 1959 c.516 s.6]

654.232 [1971 c.405 s.7; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.235 [Amended by 1959 c.516 s.2; renumbered 654.062]

654.240 [Repealed by 1959 c.516 s.6]

654.241 [1973 c.833 s.30 (enacted in lieu of 654.105 and 654.226); repealed by 1975 c.102 s.4]

654.245 [Repealed by 1959 c.516 s.6]

654.250 [Repealed by 1959 c.516 s.6]

654.251 Assistance to director from other state agencies; inspection of farm labor camps and facilities. (1) The Bureau of Labor and Industries and any other state agency which is vested under separate statute with the authority to make inspections of places of employment, or to promulgate regulations, rules or standards relating to particular areas of occupational safety and health, shall render such advice and assistance to the Director of the Department of Consumer and Business Services as the director may reasonably request or prescribe in order to carry out the purposes of ORS 654.001 to 654.295 and 654.750 to 654.780. When any state agency completes an inspection of a place of employment, it shall promptly

notify the director and the affected employer of any condition that may violate any occupational safety or health law, regulation, rule or standard.

(2) In addition to the inspection authority granted to the director and the representatives and designees of the director by ORS 654.001 to 654.295 and 654.750 to 654.780, the Bureau of Labor and Industries may inspect farm labor camps, fields and facilities prior to occupancy and as reasonably necessary or appropriate thereafter, and shall report any violation of occupational safety or health laws, regulations, rules or standards to the director or the designees of the director. [1973 c.833 s.32 (enacted in lieu of 654.100); 1987 c.414 s.160]

654.255 [Amended by 1955 c.643 s.1; 1957 c.492 s.1; 1959 c.516 s.3; renumbered 654.092]

654.260 [Amended by 1955 c.643 s.2; repealed by 1959 c.516 s.6]

654.265 [Amended by 1955 c.644 s.1; renumbered 654.093]

654.270 [Renumbered 654.094]

654.275 [Amended by 1959 c.516 s.4; renumbered 654.096]

654.285 Admissibility of rules and orders of department in evidence in proceedings under ORS 654.001 to 654.295 and 654.750 to 654.780. Except as provided in ORS 654.078 (7), every regulation, rule, standard, finding, decision and order of the Department of Consumer and Business Services, general or special, made and entered under the provisions of ORS 654.001 to 654.295 and 654.750 to 654.780 and which has become final by operation of law or on appeal, shall be admissible as evidence in any hearing, civil proceeding or criminal prosecution conducted under the provisions of this chapter and shall, in every such hearing, proceeding or prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety and health. [Formerly 654.085; 1977 c.804 s.42]

654.290 Applicability of Administrative Procedures Act; Administrative Law Judge qualifications. (1) Promulgation by the Director of the Department of Consumer and Business Services or by the Workers' Compensation Board of regulations, rules and standards authorized by ORS 654.001 to 654.295 and 654.750 to 654.780, and any judicial review thereof, shall be as provided in ORS 183.310 to 183.550.

(2) Notwithstanding ORS 183.315 (1), the issuance of orders pursuant to ORS 654.001 to 654.295 and 654.750 to 654.780, the conduct of hearings in contested cases and the judicial review thereof shall be as provided in ORS 183.310 to 183.550, except that:

(a) The chairperson of the Workers' Compensation Board or the designee of the chairperson shall employ Administrative Law Judges to hold hearings in contested cases.

(b) The order of an Administrative Law Judge in a contested case shall be deemed to be a final order of the board.

(c) The director shall have the same right to judicial review of the order of an Administrative Law Judge as any person who is adversely affected or aggrieved by such final order.

(d) Affected employees or their authorized representative shall be accorded an opportunity to participate as parties in hearings.

(3) Administrative Law Judges shall be members in good standing of the Oregon State Bar and possess such other qualifications as the board may prescribe, and shall be employed in accordance with ORS 656.724. [1973 c.833 s.35 (enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080); 1975 c.759 s.18; 1977 c.804 s.43; 1999 c.876 s.1]

654.293 Representation of employer by attorney permitted. Neither ORS 9.320 nor any provision in the Oregon Safe Employment Act shall be construed to deny an employer the right to be represented by an attorney or any other authorized representative designated by the employer in any proceedings under ORS 654.001 to 654.295 and 654.750 to 654.780. [1975 c.370 s.2]

654.295 Application of Oregon Safe Employment Act. (1) Nothing contained in ORS 654.001 to 654.295 and 654.750 to 654.780 shall invalidate any existing occupational safety or health regulation, rule, standard or order which is not clearly inconsistent with the purposes and provisions of ORS 654.001 to 654.295 and 654.750 to 654.780.

(2) Where any part of a law, regulation, rule, standard or order is found to be clearly inconsistent with ORS 654.001 to 654.295 and 654.750 to 654.780 and declared to be invalid, it is the intent of the Legislative Assembly that the remaining provisions of such law, regulation, rule, standard or order remain in effect as fully as if the invalid part had not been adopted. [1973 c.833 s.36]

EMPLOYER LIABILITY LAW

654.305 Protection and safety of persons in hazardous employment generally. Generally, all owners, contractors or subcontractors and other persons having charge of, or responsibility for, any work involving a risk or danger to the employees or the public shall use every device, care and precaution that is practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of the structure, machine or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices. [Amended by 1997 c.249 s.199]

654.310 Places of employment; compliance with applicable orders, rules. All owners, contractors, subcontractors, or persons whatsoever, engaged in the construction, repairing, alteration, removal or painting of any building, bridge, viaduct or other structure, or in the erection or operation of any machinery, or in the manufacture, transmission and use of electricity, or in the manufacture or use of any dangerous appliance or substance, shall see that all places of employment are in compliance with every applicable order, decision, direction, standard, rule or regulation made or prescribed by the Department of Consumer and Business Services pursuant to ORS 654.001 to 654.295 and 654.750 to 654.780. [Amended by 1975 c.148 s.1; 1977 c.804 s.44]

654.315 Persons in charge of work to see that ORS 654.305 to 654.335 are complied with. The owners, contractors, subcontractors, foremen, architects or other persons having charge of the particular work, shall see that the requirements of ORS 654.305 to 654.335 are complied with.

654.320 Who considered agent of owner. The manager, superintendent, foreman or other person in charge or control of all or part of the construction, works or operation shall be held to be the agent of the employer in all suits for damages for death or injury suffered by an employee.

654.325 Who may prosecute damage action for death; damages unlimited. If there is any loss of life by reason of violations of ORS 654.305 to 654.335 by any owner, contractor or subcontractor or any person liable under ORS 654.305 to 654.335, the surviving spouse and children and adopted children of the person so killed and, if none, then the lineal heirs of that person and, if none, then the mother or father, as the case may be, shall have a right of action without any limit as to the amount of damages which may be awarded. If none of the persons entitled to maintain such action reside within the state, the executor or administrator of the deceased person may maintain such action for their respective benefits and in the order above named.

654.330 Fellow servant negligence as defense. In all actions brought to recover from an employer for injuries suffered by an employee, the negligence of a fellow servant shall not be a defense where the injury was caused or contributed to by any of the following causes:

(1) Any defect in the structure, materials, works, plant or machinery of which the employer or the agent of the employer could have had knowledge by the exercise of ordinary care.

(2) The neglect of any person engaged as superintendent, manager, foreman or other person in charge or control of the works, plant, machinery or appliances.

(3) The incompetence or negligence of any person in charge of, or directing the particular work in which the employee was engaged at the time of the injury or death.

(4) The incompetence or negligence of any person to whose orders the employee was bound to conform and did conform and by reason of having conformed thereto the injury or death resulted.

(5) The act of any fellow servant done in obedience to the rules, instructions or orders given by the employer or any other person who has authority to direct the doing of said act.

654.335 Contributory negligence. The contributory negligence of the person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of the damage.

SAFETY AND HEALTH PROFESSIONALS

654.400 Use of title of industrial hygienist, occupational health and safety technologist, construction health and safety technician or safety professional; cause of action. (1) No person may purport to be:

(a) A certified industrial hygienist or use the initials CIH unless the person holds a current certification as an industrial hygienist from the American Board of Industrial Hygiene.

(b) An industrial hygienist in training or use the initials IHIT unless the person holds a current designation as an industrial hygienist in training from the American Board of Industrial Hygiene.

(c) A certified occupational health and safety technologist or use the initials OHST unless the person holds a current certification as an occupational health and safety technologist from the American Board of Industrial Hygiene or the Board of Certified Safety Professionals.

(d) A certified construction health and safety technician or use the initials CHST unless the person holds a current certification as a construction health and safety technician from the American Board of Industrial Hygiene or the Board of Certified Safety Professionals.

(e) A certified safety professional or use the initials CSP unless the person holds a current designation as a certified safety professional from the Board of Certified Safety Professionals.

(f) An associate safety professional or use the initials ASP unless the person holds a current designation as an associate safety professional from the Board of Certified Safety Professionals.

(2) The American Board of Industrial Hygiene, the Board of Certified Safety Professionals or a person lawfully practicing a profession listed in subsection (1) of this section may bring a private cause of action in the appropriate court to recover damages up to $1,000 against any person who violates subsection (1) of this section. The court may provide such equitable relief as it deems necessary or proper. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1999 c.478 s.1]

Note: 654.400 and 654.402 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 654 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 3, chapter 478, Oregon Laws 1999, provides:

Sec. 3. Sections 1 and 2 of this 1999 Act [654.400 and 654.402] apply only to persons using the titles or initials specified in section 1 of this 1999 Act on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.478 s.3]

654.402 Activities permitted under other designation, certification or license. ORS 654.400 does not prevent a person legally regulated in this state under any other licensing provisions, rules or regulations from engaging in the activities permitted under that designation, certification or license provided that the person does not use the titles or initials specified in ORS 654.400. [1999 c.478 s.2]

Note: See notes under 654.400.

654.405 [Repealed by 1973 c.833 s.48]

654.410 [Repealed by 1973 c.833 s.48]

654.415 [Repealed by 1973 c.833 s.48]

654.420 [Repealed by 1973 c.833 s.48]

654.425 [Repealed by 1973 c.833 s.48]

654.430 [Repealed by 1973 c.833 s.48]

654.505 [Repealed by 1961 c.485 s.29]

654.510 [Amended by 1953 c.514 s.5; 1957 c.201 s.1; 1959 c.515 s.1; repealed by 1961 c.485 s.29]

654.515 [Repealed by 1961 c.485 s.29]

654.520 [Amended by 1953 c.514 s.5; repealed by 1961 c.485 s.29]

654.525 [Amended by 1959 c.657 s.1; repealed by 1961 c.485 s.29]

654.530 [Amended by 1953 c.514 s.5; 1957 c.201 s.2; repealed by 1961 c.485 s.29]

654.532 [1953 c.514 s.5; 1957 c.201 s.3; repealed by 1961 c.485 s.29]

654.535 [Amended by 1953 c.514 s.5; 1957 c.201 s.4; repealed by 1961 c.485 s.29]

654.540 [Amended by 1957 c.465 s.11; repealed by 1961 c.485 s.29]

654.545 [Amended by 1953 c.514 s.5; repealed by 1961 c.485 s.29]

654.550 [Amended by 1953 c.514 s.5; 1957 c.201 s.5; repealed by 1961 c.485 s.29]

654.605 [Repealed by 1973 c.833 s.48]

654.610 [Repealed by 1973 c.833 s.48]

654.705 [Repealed by 1967 c.150 s.2]

654.710 [Repealed by 1967 c.150 s.2]

REPORTS OF ACCIDENTS TO PUBLIC UTILITY COMMISSION

654.715 Report of accidents to Public Utility Commission; investigation; supplemental reports. (1) Every public utility and telecommunications utility shall give immediate notice by telegraph, telephone or personally, to the Public Utility Commission whenever any accident occurs within this state upon its premises, or directly or indirectly arises from or is connected with its maintenance or operation, if the accident is attended by loss of human life or limb or serious injury to person or property.

(2) The Public Utility Commission may, if the commission deems the public interest requires it, investigate each such accident forthwith, after giving the public utility or telecommunications utility involved reasonable notice of the time and place of such investigation.

(3) The Public Utility Commission may adopt and amend rules and regulations governing the form and content of reports to the commission to enable the commission to ascertain relevant facts and circumstances attending such accident and the causes thereof. Whenever the original report is insufficient, in the opinion of the commission, the commission may require the public utility or telecommunications utility to file supplemental reports of accidents. [Amended by 1965 c.462 s.2; 1987 c.447 s.137; 1995 c.733 s.48]

654.720 Public inspection or use of reports as evidence prohibited. No report, or any part thereof, required by ORS 654.715, shall be open to public inspection or be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

HAZARDOUS CHEMICALS USED IN AGRICULTURE

654.750 Definitions for ORS 654.750 to 654.780. As used in this section and ORS 654.760, 654.770 and 654.780, unless the context requires otherwise:

(1) "Employee" means any individual, whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer.

(2) "Employer" means any person engaged in agriculture who engages one or more employees.

(3) "Hazardous chemical" means any chemical which is a physical or health hazard.

(4) "Health hazard" means a chemical for which there is statistically significant evidence, based on at least one study conducted in accordance with established scientific principles, that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogenic, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes.

(5) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable or water-reactive compound. [1987 c.832 s.2]

654.760 Rules on hazardous chemicals, safety equipment and training. The Department of Consumer and Business Services shall adopt rules that require employers in agriculture to:

(1) Provide adequate information to all of their employees about hazardous chemicals in use in the workplace and to which employees may reasonably be expected to be exposed;

(2) Provide protective safety equipment determined by rule to be adequate; and

(3) Provide adequate training for employees mixing, loading, applying or otherwise handling hazardous chemicals. [1987 c.832 s.3; 1999 c.232 s.3]

654.770 Basic information available to agricultural employers for employees; content; language. No later than March 1, 1988, the Department of Consumer and Business Services shall develop and make available basic information for agriculture employers to use in informing and training employees. The information shall include, but not be limited to, proper personal hygiene, protective safety equipment, general safety rules, proper work clothing, employee rights with

respect to this chapter and common symptoms of hazardous chemical exposure. The basic information shall be developed in a variety of languages including but not limited to English, Spanish, Russian, Thai, Japanese, Chinese, Laotian, Vietnamese, Korean and Cambodian. [1987 c.832 s.4]

654.780 Copies of basic information for employees; when provided. Agriculture employers shall give all employees a copy of the basic information developed by the Department of Consumer and Business Services for the purpose of informing employees pursuant to ORS 654.770. The information shall be provided in the employee's own language if the department has produced it in that language. The information shall be provided to persons employed on July 18, 1987, within a reasonable time after the information is made available by the department. The information shall be provided to persons hired after July 18, 1987, at the time of hire or, if it has not yet been made available by the department, within a reasonable time thereafter. [1987 c.832 s.5]

PENALTIES

654.990 [Amended by 1959 c.516 s.5; 1961 c.485 s.28; 1967 c.150 s.1; repealed by 1973 c.833 s.37 (654.991 enacted in lieu of 654.990)]

654.991 Penalties. (1) Subject to ORS 153.022, any employer who willfully violates any provision of, or any regulation, rule, standard or order promulgated pursuant to, ORS 654.001 to 654.295 and 654.750 to 654.780, and that violation is found to have caused or materially contributed to the death of any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both. For the purposes of this subsection, a violation is willful if it is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a regulation, rule, standard or order. ORS 161.085 shall apply to terms used in this section.

(2) Any person who gives advance notice of any inspection to be conducted under ORS 654.001 to 654.295 and 654.750 to 654.780, without authority from the Director of the Department of Consumer and Business Services or the designees of the director, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(3) Whoever knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to ORS 654.001 to 654.295 and 654.750 to 654.780 shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both.

(4) Punishment under this section does not affect or lessen the civil liability of the offender. [1973 c.833 s.38 (enacted in lieu of 654.990); 1977 c.455 s.1; 1999 c.1051 s.321]

Chapter 183

1999 EDITION

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183.502

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183.540

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Review of rules by Legislative Counsel, 171.572

183.010 [Repealed by 1971 c.734 s.21]

183.020 [Repealed by 1971 c.734 s.21]

READABILITY OF PUBLIC WRITINGS

183.025 State agency required to prepare public writings in readable form; public input in rulemaking; definitions. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by

agencies and the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt, amend or repeal a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

(3) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government.

[Formerly 182.065; 1993 c.729 s.4]

183.030 [Repealed by 1971 c.734 s.21]

183.040 [Repealed by 1971 c.734 s.21]

183.050 [Repealed by 1971 c.734 s.21]

183.060 [1957 c.147 s.1; repealed by 1969 c.292 s.3]

CIVIL PENALTIES

183.090 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

(a) “Agency” has that meaning given in ORS 183.310.

(b) “Civil penalty” includes only those monetary penalties that are specifically denominated as civil penalties by statute. [1991 c.734 s.2; 1997 c.387 s.3]

GENERAL PROVISIONS

183.310 Definitions for ORS 183.310 to 183.550. As used in ORS 183.310 to 183.550:

(1) “Agency” means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) “Contested case” means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(5)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state; and

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(6) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(8) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(9) “Small business” means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 s.1; 1965 c.285 s.78a; 1967 c.419 s.32; 1969 c.80 s.37a; 1971 c.734 s.1; 1973 c.386 s.4; 1973 c.621 s.1a; 1977 c.374 s.1; 1977 c.798 s.1; 1979 c.593 s.6; 1981 c.755 s.1; 1987 c.320 s.141; 1987 c.861 s.1]

183.315 Application of ORS 183.310 to 183.550 to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

(2) ORS 183.310 to 183.550 do not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of ORS 183.310 to 183.550 to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to the Public Utility Commission.

(7) The provisions of ORS 183.310 to 183.550 do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060. [1971 c.734 s.19; 1973 c.612 s.3; 1973 c.621 s.2; 1973 c.694 s.1; 1975 c.759 s.1; 1977 c.804 s.45; 1979 c.593 s.7; 1981 c.711 s.16; 1987 c.320 s.142; 1987 c.373 s.21; 1989 c.90 s.1; 1997 c.26 s.1; 1999 c.448 s.6; 1999 c.679 s.1]

Note: Section 3, chapter 679, Oregon Laws 1999, provides:

Sec. 3. Section 2 of this 1999 Act [423.078] and the amendments to ORS 183.315 by section 1 of this 1999 Act apply to orders issued by the Department of Corrections before, on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.679 s.3]

183.317 [1971 c.734 s.187; repealed by 1979 c.593 s.34]

183.320 [1957 c.717 s.15; repealed by 1971 c.734 s.21]

ADOPTION OF RULES

183.325 Delegation of rulemaking authority to named officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an “agency” for the purposes of the rulemaking requirements of ORS 183.310 to 183.550. [1979 c.593 s.10; 1993 c.729 s.1]

183.330 Description of organization; service of order; rules coordinator; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

(c) Keep and make available the mailing list required by ORS 183.335 (7).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing. [1957 c.717 s.2; 1971 c.734 s.4; 1975 c.759 s.3; 1979 c.593 s.8; 1993 c.729 s.2]

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 s.2]

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (7) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (14) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534; and

(F) If an advisory committee is not appointed under the provisions of ORS 183.025 (2), an explanation as to why no advisory committee was used to assist the agency in drafting the rule.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under the provisions of subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by bracketing material to be deleted and showing all new material in boldfaced type.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (7) of this section and to the persons specified in subsection (14) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(c) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Comments of the committees submitted under subsection (15) of this section.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists

current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(8) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(9) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990 relating to public contracts and purchasing.

(10)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(11) Notwithstanding the provisions of subsection (10) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(13) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(14) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or co-chairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or co-chairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(15)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (14) of this section shall review the

proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 s.3; 1973 c.612 s.1; 1975 c.136 s.11; 1975 c.759 s.4; 1977 c.161 s.1; 1977 c.344 s.6; 1977 c.394 s.1a; 1977 c.798 s.2; 1979 c.593 s.11; 1981 c.755 s.2; 1987 c.861 s.2; 1993 c.729 s.3; 1995 c.652 s.5; 1997 c.602 s.3; 1999 c.123 s.1; 1999 c.334 s.1]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the federal government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 s.15]

183.340 [1957 c.717 s.3 (3); 1971 c.734 s.6; repealed by 1975 c.759 s.5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in section 8, chapter 849, Oregon Laws 1999, any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS 183.310 to 183.550.

(2) Except as provided in section 8, chapter 849, Oregon Laws 1999, all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS 183.310 to 183.550, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 s.6 (enacted in lieu of 183.340); 1979 c.593 s.12; 1997 c.837 s.1; 1999 c.849 s.24]

Note: The amendments to 183.341 by section 25, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 26, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

183.341. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under ORS 183.310 to 183.550.

(2) All agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of ORS 183.310 to 183.550, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section.

183.350 [1957 c.717 s.3 (1), (2); repealed by 1971 c.734 s.21]

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279.833. [1971 c.734 s.5; 1973 c.612 s.2; 1975 c.759 s.7; 1977 c.798 s.2b; 1979 c.593 s.13; 1991 c.169 s.2]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection,

and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule; and

(c) Contains executive orders of the Governor.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as “O.A.R.” with appropriate numerical indications. [1957 c.717 s.4 (1), (2), (3); 1961 c.464 s.1; 1971 c.734 s.7; 1973 c.612 s.4; 1975 c.759 s.7a; 1977 c.394 s.2; 1979 c.593 s.16; 1993 c.729 s.13; 1995 c.79 s.62]

183.362 Program for biennial publication of Oregon Administrative Rules. (1) Notwithstanding ORS 183.360, the Secretary of State may implement a program for the publication of the Oregon Administrative Rules not less than once every two years with annual supplements. The Secretary of State may implement a program under this section only if the Secretary of State publishes the full text of proposed administrative rules in the manner specified by this section.

(2) Except as provided in subsection (3) of this section, upon implementing a program under this section the Secretary of State shall require that an agency submit the full text of the proposed rule in addition to information required to be published under the provisions of ORS 183.335 (1). Except as provided in subsection (3) of

this section, the Secretary of State shall publish the full text of the proposed rule in the bulletin referred to in ORS 183.360.

(3) The Secretary of State may waive the submission of the full text of a proposed administrative rule and decline to publish the full text of the proposed rule in the bulletin referred to in ORS 183.360 if:

(a) The proposed rule is unusually voluminous; and

(b) In addition to the information provided by the agency under the provisions of ORS 183.335 (2) the agency identifies a location where the rule is available for inspection and copying.

(4) If the adopted rule submitted to the Secretary of State under the provisions of ORS 183.355 is different from the proposed rule submitted to the Secretary of State under a program implemented under this section, the Secretary of State shall publish in the bulletin referred to in ORS 183.360 either the full text of the rule as adopted or a list of the changes made in the proposed rule before the agency adopted the rule. [1993 c.729 s.12]

Note: 183.362 was added to and made a part of 183.310 to 183.550 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.365 Publication of administrative rules in electronic form. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of

Oregon relative to any of the information made available pursuant to subsection (1) of this section. [1995 c.614 s.5]

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 s.4 (4); 1959 c.260 s.1; 1969 c.174 s.4; 1975 c.759 s.8; 1977 c.394 s.3]

183.380 [1957 c.717 s.4 (5); repealed by 1971 c.734 s.21]

183.390 Petitions requesting adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 30 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335. [1957 c.717 s.5; 1971 c.734 s.8]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact. The court's review of the Master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 s.6; 1971 c.734 s.9; 1975 c.759 s.9; 1979 c.593 s.17; 1987 c.861 s.3]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 s.7; 1971 c.734 s.10; 1973 c.612 s.5]

CONTESTED CASES

183.413 Notice to party before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of state agencies so that citizens shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(d) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the agency.

(3) The information required to be given to a party to a hearing under subsection (2) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of an agency to give notice of any item specified in subsection (2) of this section, shall not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 ss.37, 38,39; 1995 c.79 s.63]

183.415 Notice, hearing and record in contested case; informal disposition; hearing officer; ex parte communications. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made

to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications. If an ex parte communication is made to a hearing officer assigned from the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999, the hearing officer must comply with section 20, chapter 849, Oregon Laws 1999.

(10) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or a hearing officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [1971 c.734 s.13; 1979 c.593 s.18; 1985 c.757 s.1; 1997 c.837 s.2; 1999 c.849 s.27]

Note: The amendments to 183.415 by section 28, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 29, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

183.415. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.

(10) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or a hearing officer.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency.

183.418 Interpreter for non-English speaking person in contested case. (1) When a non-English speaking person is a party to a contested case, the non-English speaking person is entitled to a qualified interpreter to interpret the proceedings to the non-English speaking person and to interpret the testimony of the non-English speaking person to the agency.

(2)(a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified interpreter for the non-English speaking person; and the agency shall fix and pay the fees and expenses of the qualified interpreter if:

(A) The non-English speaking person makes a verified statement and provides other information in writing under oath showing the inability of the non-English speaking person to obtain a qualified interpreter, and provides any other information required by the agency concerning the inability of the non-English speaking person to obtain such an interpreter; and

(B) It appears to the agency that the non-English speaking person is without means and is unable to obtain a qualified interpreter.

(b) If the non-English speaking person knowingly and voluntarily files with the agency a written statement that the non-English speaking person does not desire a qualified interpreter to be appointed for the non-English speaking person, the agency shall not appoint such an interpreter for the non-English speaking person.

(3) As used in this section:

(a) “Non-English speaking person” means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate in the proceedings.

(b) “Qualified interpreter” means a person who is readily able to communicate with the non-English speaking person, translate the proceedings for the non-English speaking person, and accurately repeat and translate the statements of the non-English speaking person to the agency. [1973 c.386 s.6; 1989 c.224 s.11; 1991 c.750 s.5]

Note: 183.418 is repealed July 1, 2001. See sections 9 and 10, chapter 1041, Oregon Laws 1999.

183.420 [1957 c.717 s.8 (1); repealed by 1971 c.734 s.21]

183.421 Interpreter for disabled person in contested case. (1) In any contested case in which a disabled person is a party or witness, the agency shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the disabled person, or to interpret the testimony of the disabled person.

(2) No fee shall be charged to a party or witness for the appointment of an interpreter or use of an assistive communication device under this section. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for the purposes of this section.

(3) For the purposes of this section:

(a) "Assistive communication device" means any equipment designed to facilitate communication by a disabled person.

(b) "Disabled person" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(c) "Qualified interpreter" means a person who is readily able to communicate with the disabled person, interpret the proceedings and accurately repeat and interpret the statements of the disabled person to the agency. [1991 c.750 s.4]

Note: 183.421 is repealed July 1, 2001. See sections 9 and 10, chapter 1041, Oregon Laws 1999.

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, or upon the agency's own motion, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 s.14; 1975 c.759 s.11; 1979 c.593 s.19; 1997 c.837 s.6]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.550 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 s.8 (3), (4); 1965 c.212 s.1; 1971 c.734 s.11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases. (1) An agency may issue subpoenas on its own motion in a contested case. In addition, an agency or hearing officer in a contested case may issue subpoenas upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the hearing officer, the agency or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal

to testify therein. [1957 c.717 s.8 (2); 1971 c.734 s.12; 1979 c.593 s.20; 1981 c.174 s.4; 1989 c.980 s.10a; 1997 c.837 s.3; 1999 c.849 s.30]

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440. (1) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency.

(2) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued by the agency to compel the appearance of witnesses on behalf of the party, the agency may issue subpoenas on its own motion. [1981 c.174 s.6; 1997 c.837 s.4; 1999 c.849 s.32]

183.450 Evidence in contested cases. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 s.9; 1971 c.734 s.15; 1975 c.759 s.12; 1977 c.798 s.3; 1979 c.593 s.21; 1987 c.833 s.1; 1995 c.272 s.5; 1997 c.391 s.1; 1997 c.801 s.76; 1999 c.448 s.5; 1999 c.849 s.34]

183.452 Representation of agencies at contested case hearings. (1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 s.3]

Note: 183.452 was made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.455 [1987 c.259 s.3; repealed by 1999 c.448 s.10]

183.457 Representation of persons other than agencies participating in contested case hearings. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and

unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The Office of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The State Fire Marshal in the Department of State Police.

(g) The Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The Land Conservation and Development Commission and the Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency. [1987 c.833 s.3; 1989 c.453 s.2; 1993 c.186 s.4; 1995 c.102 s.1; 1999 c.448 s.1; 1999 c.599 s.1]

Note: 183.457 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.458 Nonattorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support or public assistance as defined in ORS 411.010, a party may be represented by any of the following persons:

(a) An authorized representative who is an employee of a nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(b) An authorized representative who is an employee of the system designated to protect and advocate the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.). The authorized representative must be supervised by an attorney also employed by the system.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding. [1999 c.448 s.4]

Note: 183.458 was made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 s.10; 1971 c.734 s.16; 1975 c.759 s.13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 s.36c]

183.464 Proposed order by hearings officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearings officer is authorized or required by law or agency rule to issue a final order, the hearings officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1)

to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption. [1979 c.593 ss.36,36b; 1995 c.79 s.64]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 s.11; 1971 c.734 s.17; 1979 c.593 s.22]

HEARING OFFICER PANEL
(PILOT PROJECT)

Note: Sections 2 to 21, chapter 849, Oregon Law 1999, were added to and made a part of ORS 183.310 to 183.550. See section 1, chapter 849, Oregon Laws 1999. Sections 2 to 21, chapter 849, Oregon Laws 1999, become operative on January 1, 2000, and are repealed January 1, 2004. See sections 213 and 214, chapter 849, Oregon Laws 1999. The text of sections 2 to 21, 213 and 214, chapter 849, Oregon Laws 1999, is set forth for the user's convenience.

Sec. 2. Definitions. For the purposes of sections 2 to 21 of this 1999 Act:

(1) “Chief hearing officer” means the person employed under section 4 of this 1999 Act to organize and manage the Hearing Officer Panel.

(2) “Panel” means the Hearing Officer Panel established under section 3 of this 1999 Act. [1999 c.849 s.2]

Sec. 3. Hearing Officer Panel established. (1) The Hearing Officer Panel is established within the Employment Department. The panel shall be managed by the chief hearing officer employed under section 4 of this 1999 Act. The panel shall make hearing officers available to agencies under sections 2 to 21 of this 1999 Act. Hearing officers assigned from the panel under sections 2 to 21 of this 1999 Act may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by sections 2 to 21 of this 1999 Act;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under sections 2 to 21 of this 1999 Act.

(2) All persons serving on the panel must meet the standards and training requirements of section 19 of this 1999 Act. [1999 c.849 s.3]

Sec. 4. Chief hearing officer; powers and duties. (1) The Director of the Employment Department shall employ a person to serve as chief hearing officer for the Hearing Officer Panel established under section 3 of this 1999 Act. The person employed to serve as chief hearing officer must be an active member of the Oregon State Bar. The chief hearing officer has all the powers necessary and convenient to organize and manage the panel. Subject to the State Personnel Relations Law, the chief hearing officer shall employ all persons necessary to the administration of the panel, prescribe the duties of those employees and fix their compensation.

(2) The chief hearing officer shall employ hearing officers to serve on the panel. The chief hearing officer shall ensure that hearing officers on the panel receive all training necessary to meet the standards required under the program created under section 19 of this 1999 Act.

(3) The chief hearing officer shall take all actions necessary to protect and ensure the independence of each hearing officer assigned from the panel. [1999 c.849 s.4]

Sec. 5. Hiring and review of hearing officers. (1) A hearing officer employed by or contracting with the chief hearing officer shall conduct hearings on behalf of agencies as assigned by the chief hearing officer. A hearing officer shall be impartial in the performance of the hearing officer's duties and shall remain fair in all hearings conducted by the hearing officer.

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief hearing officer as hearing officers. The chief hearing officer by rule may establish additional qualifications for hearing officers serving on the Hearing Officer Panel. [1999 c.849 s.5]

Sec. 6. Contract hearing officers. (1) The chief hearing officer for the Hearing Officer Panel may contract for the services of persons to act as hearing officers.

(2) Contract hearing officers shall meet the same qualifications as hearing officers regularly employed by the chief hearing officer and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for hearing officers regularly employed by the chief hearing officer and conducting similar hearings. [1999 c.849 s.6]

Sec. 7. Assignment of hearing officers to agencies. (1) In assigning a hearing officer to conduct hearings on behalf of an agency, the chief hearing officer shall, whenever practicable, assign a hearing officer that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use hearing officers assigned from the Hearing Officer Panel to conduct hearings must delegate responsibility for the conduct of the hearing to a hearing officer assigned from the Hearing Officer Panel, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize a hearing officer assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use hearing officers assigned from the panel may contract with the chief hearing officer for the assignment of a hearing officer from the panel for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 s.7]

Sec. 8. Rules for hearings conducted by hearing officers from panel. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by hearing officers assigned from the Hearing Officer Panel established under section 3 of this 1999 Act must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief hearing officer for the panel, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) Except as may be expressly granted by the agency to a hearing officer assigned from the panel, or as may be expressly provided for by law, a hearing officer conducting a hearing for an agency under sections 2 to 21 of this 1999 Act may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 s.8]

Sec. 9. Agencies required to seek hearing officer from panel. (1) Except as provided in this section, all agencies must use hearing officers assigned from the Hearing Officer Panel established under section 3 of this 1999 Act to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use hearing officers assigned from the panel:

(a) The Department of Education, the State Board of Education and the Superintendent of Public Instruction.

(b) Employment Appeals Board.

(c) Employment Relations Board.

(d) Public Utility Commission.

(e) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(f) Land Conservation and Development Commission.

(g) Land Use Board of Appeals.

(h) Department of Revenue.

(i) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.

(j) State Accident Insurance Fund Corporation.

(k) Psychiatric Security Review Board.

(L) State Board of Parole and Post-Prison Supervision.

(m) Department of Corrections.

(n) Energy Facility Siting Council.

(o) Vocational Rehabilitation Division.

(p) Secretary of State.

(q) State Treasurer.

(r) Attorney General.

(s) Fair Dismissal Appeals Board.

(t) Department of State Police.

(u) Oregon Youth Authority.

(v) Boards of stewards appointed by the Oregon Racing Commission.

(w) The Department of Higher Education and the institutions of higher education listed in ORS 352.002.

(x) The Governor.

(y) State Land Board.

(3) The Workers' Compensation Board is exempt from using hearing officers assigned from the panel for any hearing conducted by the board under ORS chapters 147, 654 and 656. The Director of the Department of Consumer and Business Services must use hearing officers assigned from the panel for all contested case hearings regarding matters other than those concerning a claim under ORS chapter 656, as provided in ORS 656.704 (2). Except as specifically provided in this subsection, the Department of Consumer and Business Services must use hearing officers assigned from the panel only for contested cases arising out of the department's powers and duties under:

(a) ORS chapter 59;

(b) ORS 200.005 to 200.075;

(c) ORS chapter 455;

(d) ORS chapter 674;

(e) ORS chapters 706 to 716;

(f) ORS chapter 717;

(g) ORS chapters 722, 723, 725 and 726; and

(h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use a hearing officer assigned from the panel, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of sections 2 to 21 of this 1999 Act, no agency shall be required to use a hearing officer assigned from the panel if:

(a) Federal law requires that a different hearing officer be used; or

(b) Use of a hearing officer from the panel could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use hearing officers assigned from the panel only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 s.9]

Sec. 10. Assignment of hearing officers to exempt agencies and local governments. (1) Upon request of an agency, the chief hearing officer for the Hearing Officer Panel may assign hearing officers from the panel to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of panel hearing officers under section 9 of this 1999 Act.

(2) The chief hearing officer may contract with any political subdivision of this state to provide hearing officer services to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c.849 s.10]

Sec. 11. Request for change of hearing officer assigned from panel. (1) After assignment of a hearing officer from the Hearing Officer Panel to conduct a hearing on behalf of an agency, the chief hearing officer shall assign a different hearing officer for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief hearing officer may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of hearing officer under subsection (1) of this section may be granted by the chief hearing officer without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to a hearing officer assigned after a request for a different hearing officer has been granted under subsection (1) of this section, the chief hearing officer shall assign a different hearing officer only upon a showing of good cause. [1999 c.849 s.11]

Sec. 12. Modification of hearing officer findings by agency. (1) In any contested case hearing conducted by a hearing officer assigned from the Hearing Officer Panel, the hearing officer shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The hearing officer shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the hearing officer assigned from the panel will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the hearing officer in any substantial manner, the agency must identify the

modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the hearing officer assigned from the Hearing Officer Panel only if the agency determines that the finding of historical fact made by the hearing officer is not supported by a preponderance of the evidence in the record. For the purposes of this section, a hearing officer makes a finding of historical fact if the hearing officer determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the hearing officer, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 s.12]

Sec. 13. Billings for services of hearing officers from panel. The chief hearing officer for the Hearing Officer Panel shall establish a schedule of fees for services rendered by hearing officers assigned from the panel. The fee charged shall be in an amount calculated to recover the cost of providing the hearing officer, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief hearing officer under this section shall be paid into the Hearing Officer Panel Operating Account created under section 14 of this 1999 Act. [1999 c.849 s.13]

Sec. 14. Operating account. (1) The Hearing Officer Panel Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under section 13 of this 1999 Act. Moneys credited to the account are continuously appropriated to the chief hearing officer for the Hearing Officer Panel created under section 3 of this 1999 Act for the purpose of paying expenses incurred in the administration of the panel.

(2) At the discretion of the chief hearing officer, petty cash funds may be established and maintained for the purpose of administering the duties of the panel. [1999 c.849 s.14]

Sec. 15. Budgeting. The chief hearing officer for the Hearing Officer Panel shall estimate in advance the expenses that the panel will incur during each biennium and shall notify each agency required to use the panel's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 s.15]

Sec. 16. Rulemaking authority. Subject to the provisions of the State Personnel Relations Law, the chief hearing officer for the Hearing Officer Panel may adopt rules to:

(1) Organize and manage the Hearing Officer Panel established under section 3 of this 1999 Act.

(2) Facilitate the performance of the duties of hearing officers assigned from the panel.

(3) Establish qualifications for persons serving as hearing officers on the panel.

(4) Establish standards and procedures for the evaluation and training of hearing officers on the panel, consistent with standards and training requirements established under section 19 of this 1999 Act. [1999 c.849 s.16]

Sec. 16a. Alternative dispute resolution. Sections 2 to 21 of this 1999 Act do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of a hearing officer from the Hearing Officer Panel. [1999 c.849 s.16a]

Sec. 17. Transfer of employees. (1) On the operative date of sections 2 to 21 of this 1999 Act [January 1, 2000], the chief administrative officer or board of the agencies specified in subsection (2) of this section shall transfer to the chief hearing officer for the Hearing Officer Panel the permanent employees in the regular service of the agencies whose job duties involve the conducting of contested case proceedings or whose job duties relate to providing administrative services required for the conducting of contested case proceedings. The transfer of employees shall be made in a manner that is consistent with the provisions of the budget passed by the Legislative Assembly for the Employment Department in the 1999-2001 biennium.

(2) The agencies subject to the requirements of this section are:

(a) Employment Department.

(b) Water Resources Department.

(c) Department of Transportation.

(d) Oregon Liquor Control Commission.

(e) Construction Contractors Board.

(f) Adult and Family Services Division of the Department of Human Services.

(g) Workers' Compensation Division and Insurance Division of the Department of Consumer and Business Services.

(3) The chief hearing officer shall employ all persons transferred under this section in the performance of the duties and functions of the Hearing Officer Panel.

(4) The salaries and benefits of persons transferred under this section may not be reduced because of the transfer, and persons who are represented by a labor organization, as defined in ORS 243.650, shall continue to be represented by that labor organization. Transferred persons are considered permanent employees and may be disciplined or terminated only under the same classification and procedures applicable to those employees before transfer. [1999 c.849 s.17]

Sec. 18. Transfer of pending cases. On the operative date of sections 2 to 21 of this 1999 Act [January 1, 2000], the chief hearing officer for the Hearing Officer Panel shall assign hearing officers as requested by agencies to continue the conduct of and conclude proceedings pending on the operative date of sections 2 to 21 of this 1999 Act. [1999 c.849 s.18]

Sec. 19. Standards and training program. (1) The chief hearing officer for the Hearing Officer Panel, working in coordination with the Attorney General, shall design and implement a standards and training program for hearing officers on the panel and for persons seeking to serve as hearing officers on the panel. The program shall include:

(a) The establishment of an ethical code for persons serving as hearing officers on the panel.

(b) Training for hearing officers on the panel that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief hearing officer under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief hearing officer for hearing officers on the panel.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief hearing officer for hearing officers on the panel.

(c) The provision of specialized training for hearing officers in subject matter areas affecting particular agencies required to use hearing officers assigned from the panel.

(3) The chief hearing officer is bound by the ethical code established under this section and must satisfactorily complete training required of hearing officers on the panel other than specialized training in subject matter areas affecting particular agencies. [1999 c.849 s.19]

Sec. 20. Required disclosure of ex parte contacts. (1) A hearing officer assigned from the Hearing Officer Panel who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the hearing officer received an ex parte communication;

(b) A copy of any ex parte written communication received by the hearing officer;

(c) A copy of any written response to the communication made by the hearing officer;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the hearing officer; and

(e) A memorandum reflecting the substance of any oral response made by the hearing officer to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, a hearing officer shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The hearing officer shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to a hearing officer while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to a hearing officer, or to any agent of a hearing officer, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of the agency that is using the hearing officer to conduct the hearing.

(5) The provisions of this section do not apply to:

(a) Communications made to a hearing officer by other hearing officers;

(b) Communications made to a hearing officer by any person employed by the panel to assist the hearing officer; or

(c) Communications made to a hearing officer by an assistant attorney general if the communications are made in response to a request from the hearing officer and the assistant attorney general is not advising the agency that is conducting the hearing. [1999 c.849 s.20]

Sec. 21. Hearing Officer Panel Oversight Committee. (1) The Hearing Officer Panel Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon

State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief hearing officer for the Hearing Officer Panel employed under section 4 of this 1999 Act shall serve as an ex officio member of the committee. The chief hearing officer may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study the implementation and operation of the Hearing Officer Panel established under section 3 of this 1999 Act;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Hearing Officer Panel;

(c) Make any recommendations for additional legislation governing the operations of the Hearing Officer Panel; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose. [1999 c.849 s.21]

Sec. 213. (1) Sections 2 to 21 of this 1999 Act become operative on January 1, 2000.

(2) Notwithstanding subsection (1) of this section, the chief hearing officer for the Hearing Officer Panel shall be employed within 30 days after the effective date of this 1999 Act [August 1, 1999]. The chief hearing officer shall have all powers necessary to plan and to take any actions before January 1, 2000, that are necessary

to enable the chief hearing officer and the hearing officers to implement and to exercise, on and after January 1, 2000, all the duties, functions and powers conferred upon the chief hearing officer, the hearing officers and the Hearing Officer Panel by sections 1 to 21 of this 1999 Act.

(3) The chief hearing officer employed under section 4 of this 1999 Act may temporarily exempt particular agencies, or particular categories of hearings conducted by agencies, from the application of section 11 of this 1999 Act. In no event shall any exemption given under this subsection extend beyond December 31, 2001. [1999 c.849 s.213]

Sec. 214. (1) Sections 2 to 21 of this 1999 Act are repealed January 1, 2004.

(2) Immediately before the repeal of sections 2 to 21 of this 1999 Act, the chief hearing officer for the Hearing Officer Panel shall return all records or personnel that are still employed by the panel to the chief administrative officer or board of each agency that was required to transfer records or personnel to the panel under section 17 of this 1999 Act. The chief administrative officer or board shall take possession of the records and personnel and employ them in the conduct of contested case proceedings on behalf of the agency.

(3) Any dispute as to transfer of records or personnel under this section shall be resolved by the Governor, and the decision of the Governor is final. [1999 c.849 s.214]

JUDICIAL REVIEW

183.480 Judicial review of agency orders. (1) Except as provided in ORS 183.415 (5)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 s.12; 1963 c.449 s.1; 1971 c.734 s.18; 1975 c.759 s.14; 1979 c.593 s.23; 1983 c.338 s.901; 1985 c.757 s.4; 1997 c.837 s.5]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a

petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any

intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 s.15; 1977 c.798 s.4; 1979 c.593 s.24; 1985 c.757 s.2; 1989 c.453 s.1; 1991 c.331 s.44]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 s.16; 1979 c.284 s.121; 1979 c.593 s.25a; 1985 c.757 s.3; 1999 c.113 s.1]

Note: Section 2, chapter 113, Oregon Laws 1999, provides:

Sec. 2. The amendments to ORS 183.484 by section 1 of this 1999 Act apply to all orders other than contested cases, whether issued before, on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.113 s.2]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's judgment docket.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment or decree in the register and docket it pursuant to the direction of the court to which the appeal is made. [1973 c.612 s.7; 1981 c.178 s.11; 1985 c.540 s.39]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 s.27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 s.13; 1979 c.593 s.28]

183.495 [1975 c.759 s.16a; repealed by 1985 c.757 s.7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 s.1; 1985 c.757 s.5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

APPEALS FROM CIRCUIT COURTS

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be

taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 s.14; 1969 c.198 s.76]

ALTERNATIVE DISPUTE RESOLUTION

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Dispute Resolution Commission, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Dispute Resolution Commission and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Dispute Resolution Commission, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution;

(c) Identifying, advising and assisting groups of agencies to cooperate in developing alternative means of dispute resolution;

(d) Designating an agency within each group of agencies identified in paragraph (c) of this subsection to coordinate alternative means of dispute resolution among those agencies;

(e) Encouraging the coordination and integration of activities and programs among state and local governments and the public to ensure efficiency of alternative means of dispute resolution; and

(f) Developing a method to evaluate the effectiveness of agencies' alternative dispute resolution programs.

(6) The participating and coordinating agencies shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(7) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(8) All funds in the Oregon Department of Administrative Services Operating Fund received from the Dispute Resolution Commission under the provisions of ORS 36.155 may be used by the Oregon Department of Administrative Services only to fund implementation of alternative dispute resolution by agencies under subsections (5) to (7) of this section.

(9) The Department of Justice, the Dispute Resolution Commission and the Oregon Department of Administrative Services shall jointly report to the Legislative Assembly on or before January 15 of each odd-numbered year regarding any additional programs implemented under subsection (5) of this section. [1993 c.647 s.2; 1995 c.515 s.2; 1997 c.706 s.5; 1997 c.801 s.42; 1997 c.837 s.7]

Note: 183.502 was added to and made a part of 183.310 to 183.550 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 17 and 18, chapter 670, Oregon Laws 1997, provide:

Sec. 17. Collaborative dispute resolution pilot program. (1) The Attorney General shall establish a collaborative dispute resolution pilot program for civil actions filed by the State of Oregon and for any other matters designated by the Attorney General.

(2) The Attorney General shall adopt rules governing participation of parties and their representatives in the collaborative dispute resolution pilot program and providing for notice to parties regarding the availability of the collaborative dispute resolution process. The rules shall also:

(a) Ensure that matters are referred to the pilot program in a manner consistent with the purposes established in ORS 183.502 (5) to (7); and

(b) Ensure that to the greatest extent possible the selection of collaborative dispute resolution providers will be accomplished jointly by all participants in the collaborative dispute resolution process.

(3) Providers in the collaborative dispute resolution pilot program established under this section shall assist the participants in the dispute resolution process to collaboratively resolve issues. The provider may act as a mediator, facilitator, convenor, neutral factfinder or other neutral party. The provider shall not act as an arbitrator or investigator.

(4) On or before January 30 of each odd-numbered year, the Department of Justice shall prepare and deliver a report to the Legislative Assembly, in the manner provided by ORS 192.245, on the implementation of the pilot program required by this section. The report shall include an assessment of:

(a) Utilization of the collaborative dispute resolution process;

(b) The efficiency and cost effectiveness of collaborative dispute resolution processes as compared with other methods of dispute resolution; and

(c) The satisfaction of this state and of the other parties with the collaborative dispute resolution process and the results produced through use of the process. [1997 c.670 s.17]

Sec. 18. Section 17 of this Act is repealed December 31, 2001. [1997 c.670 s.18]

183.510 [1957 c.717 s.16; repealed by 1971 c.734 s.21]

HOUSING COST IMPACT STATEMENT

183.530 Housing cost impact statement required for certain proposed rules. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The Office of Energy. [1995 c.652 s.2]

Note: 183.530 to 183.538 were added to and made a part of 183.310 to 183.550 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The State Housing Council shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 s.3; 1997 c.249 s.54]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (11), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repealing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 s.4]

Note: See note under 183.530.

EFFECTS OF RULES ON BUSINESS

183.540 Reduction of economic impact on small businesses. When the economic effect analysis shows that the rule has a significant adverse effect upon small business and, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards; or

(4) Exempting small businesses from any or all requirements of the rule. [1981 c.755 s.4]

183.545 Review of rules to minimize economic effect on businesses. Each agency periodically, but not less than every three years, shall review all rules that have been issued by the agency. The review shall include an analysis to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic effect on businesses and the effect due to size and type of business. [1981 c.755 s.5]

183.550 Public comment; factors to be considered in review. (1) As part of the review required by ORS 183.545, the agency shall invite public comment upon the rules.

(2) In reviewing the rules described in subsection (1) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local governmental regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for each rule. [1981 c.755 s.6]

REVIEW OF STATE AGENCY RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) “Committee” means the Legislative Counsel Committee.

(2) “Rule” has the meaning given in ORS 183.310.

(3) “State agency” has the meaning given to “agency” in ORS 183.310. [Formerly 171.705]

183.715 Submission of adopted rule to Legislative Counsel required; exception. (1) A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of the adopted rule that is submitted to the Legislative Counsel must show

new matter in boldfaced type and omitted matter in italic type within brackets or in any manner approved by the Legislative Counsel that clearly delineates new and omitted matter.

(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:

(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and

(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel. [Formerly 171.707; 1991 c.94 s.1; 1999 c.167 s.1]

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting. (1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the committee, to the state agency concerned, and if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the committee at which the committee will consider the determinations. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule adopted by a federal agency. Upon receipt of the written request, the Legislative Counsel shall prepare a report to the Legislative Counsel Committee that contains:

(a) A copy of the request, including copies of the two rules that the requester asserts are conflicting or duplicative; and

(b) Legislative Counsel's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7) of this section, the Legislative Counsel Committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned and to the person requesting the review. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 s.7; 1997 c.602 s.4]

183.722 Required agency response to Legislative Counsel determination. (1) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the state agency shall either make a written response to the determination or appear at the meeting of the Legislative Counsel Committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel Committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the state agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the state agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services, the state agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the agency to the determinations. [1997 c.602 s.7; 1999 c.31 s.2]

183.725 Report of Legislative Counsel Committee to agencies and Legislative Assembly. (1) The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

(2) The committee shall report to the Legislative Assembly at each regular session on its review of state agency rules. [Formerly 171.713; 1993 c.729 s.8; 1997 c.602 s.5; 1999 c.31 s.1]

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Chapter 659

1999 EDITION

Civil Rights; Unlawful Employment Practices; Genetic Privacy

ENFORCEMENT OF CIVIL RIGHTS

DISCRIMINATION IN EDUCATION

PROHIBITION AGAINST CERTAIN LOCAL LAWS RELATING TO SEXUAL ORIENTATION

DISCRIMINATION AGAINST ATHLETES

UNLAWFUL EMPLOYMENT PRACTICES

DISCRIMINATION AGAINST DISABLED PERSONS IN EMPLOYMENT

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659.010 Definitions for ORS 659.010 to 659.110 and 659.400 to 659.545. As used in ORS 659.010 to 659.110 and 659.400 to 659.545, unless the context requires otherwise:

(1) “Bureau” means the Bureau of Labor and Industries.

(2) “Cease and desist order” means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring the respondent to:

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 30.670 to 30.685, 659.010 to 659.110 and 659.400 to 659.545, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated;

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order as may be required to ensure compliance therewith; or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 30.670 to 30.685, 659.010 to 659.110 and 659.400 to 659.545.

(3) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

(4) “Conciliation agreement” means a written agreement settling and disposing of a complaint under ORS 659.010 to 659.110 and 659.400 to 659.545 signed by a respondent and an authorized official of the Bureau of Labor and Industries.

(5) “Employee” does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.

(6) “Employer” means any person who in this state, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. “Employer” also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, and municipal corporations, and all other political subdivisions of the state.

(7) “Employment agency” includes any person undertaking to procure employees or opportunities to work.

(8) “Entity” includes employers, labor organizations, employment agencies, places of public accommodation as defined in ORS 30.675 or career schools.

(9)(a) “Familial status” means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) “Familial status” includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(10) “Labor organization” includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(11) “National origin” includes ancestry.

(12) “Person” includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(13) “Respondent” includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659.050 (1).

(14) “Unlawful employment practice” includes only those unlawful employment practices specified in ORS 25.424, 399.235, 654.062 (5), 659.030, 659.035,

659.036, 659.227, 659.270, 659.295, 659.330, 659.340, 659.358 (1) to (4) and 659.400 to 659.494.

(15) “Unlawful practice” means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color, sex, marital status or national origin made by any place of public accommodation as defined in ORS 30.675, by any person acting on behalf of any such place or by any person aiding or abetting any such place or person in violation of ORS 30.685, or any violation of ORS 345.240, 659.033, 659.037, 659.430 or rules adopted pursuant to ORS 659.103 (1), but does not include a refusal to furnish goods or services when the refusal is based on just cause. [Amended by 1957 c.724 s.3; 1959 c.547 s.5; 1959 c.689 s.13; 1961 c.247 s.2; 1963 c.622 s.3; 1969 c.618 s.1; 1973 c.714 s.5; 1977 c.770 s.12; 1979 c.813 s.1; 1983 c.225 s.1; 1987 c.319 s.5; 1987 c.393 s.1; 1989 c.317 s.3; 1989 c.686 s.1; 1991 c.652 s.13; 1991 c.939 s.5; 1993 c.719 s.3; 1993 c.798 s.32; 1995 c.343 s.56; 1995 c.580 s.15; 1997 c.30 s.1; 1999 c.245 s.2]

Note: Section 7 (1) and (3), chapter 245, Oregon Laws 1999, provides:

Sec. 7. (1) The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act apply to all conduct that occurs on or after October 4, 1997, and that constitutes an unlawful employment practice under ORS 659.436 to 659.449. The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act do not act to revive any claim or cause of action that is barred by reason of the operation of ORS 659.121 (3) or 659.095.

(3) The amendments to ORS 659.010 and 659.121 by sections 1 and 2 of this 1999 Act do not act to revive any civil action in which a judgment was entered before the effective date of this 1999 Act [June 10, 1999]. [1999 c.245 s.7(1), (3)]

659.015 Declaration of policy against discrimination in employment because of age. It is declared to be the public policy of Oregon that available manpower should be utilized to the fullest extent possible. To this end the abilities of an individual, and not any arbitrary standards which discriminate against an individual solely because of age, should be the measure of the individual's fitness and qualification for employment. [1959 c.547 s.2; 1959 c.689 s.2]

659.020 Declaration of policy against discrimination; opportunity to obtain employment without discrimination recognized as a civil right; exception of religious group. (1) It is declared to be the public policy of Oregon that practices of discrimination against any of its inhabitants because of race, religion, color, sex, marital status, national origin, age or disability are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment without discrimination because of race, religion, color, sex, marital status, national origin, age or disability hereby is

recognized as and declared to be a civil right. However, this section shall not be construed to prevent a bona fide church or sectarian religious institution, including but not limited to a school, hospital or church camp, from preferring an employee or applicant for employment of one religious sect or persuasion over another when:

(a) That religious sect or persuasion to which the employee or applicant belongs is the same as that of such church or institution;

(b) In the opinion of such bona fide church or sectarian religious institution, such a preference will best serve the purposes of such church or institution; and

(c) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity which has no necessary relationship to the church or institution, or to its primary purposes. [Amended by 1969 c.618 s.2; 1977 c.770 s.13; 1983 c.225 s.2; 1989 c.224 s.125]

659.022 Purpose of ORS 659.010 to 659.110 and 659.400 to 659.545. The purpose of ORS 659.010 to 659.110 and 659.400 to 659.545 is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, sex, marital status, national origin or age as a barrier to employment of the inhabitants of this state; to insure human dignity of all people within this state, and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color, sex, marital status or national origin. To accomplish this purpose the Legislative Assembly intends by ORS 659.010 to 659.110 and 659.400 to 659.545 to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color, sex, marital status or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color, sex, marital status or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint. [1963 c.622 s.2; 1969 c.618 s.2a; 1977 c.770 s.14]

659.024 [1959 c.547 s.3; 1963 c.622 s.5; 1965 c.575 s.1; 1973 c.189 s.2; repealed by 1977 c.770 s.15]

659.025 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports. (1) To achieve the public policy of the State of Oregon for persons in the state to attain

employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.

(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process. [Subsection (1) enacted as 1981 c.454 s.1; subsection (2) enacted as 1981 c.242 s.1; 1989 c.224 s.126]

Note: 659.025 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.026 [1959 c.689 s.3; 1973 c.189 s.3; repealed by 1977 c.770 s.15]

659.027 Affirmative action reports to include information on contracts to minority businesses. In carrying out the policy of affirmative action, every state agency shall include in its affirmative action reports under ORS 659.025 information concerning its awards of construction, service and personal service contracts awarded to minority businesses. [1983 c.183 s.1]

Note: 659.027 was added to the Oregon Small Business Development Act of 1983 but was not added to or made a part of ORS chapter 659 or any series therein. See ORS 285B.120. See Preface to Oregon Revised Statutes for further explanation.

659.028 Seniority systems and benefit plans not unlawful employment practices. It is not an unlawful employment practice for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter. However, except as otherwise provided by law, no such employee benefit plan shall excuse the failure to hire any individual and no such seniority system or employee benefit plan shall require the involuntary retirement of any individual 18 years of age or older because of the age of such individual. [1969 c.618 s.8; 1981 c.643 s.1; 1987 c.279 s.1]

659.029 “Because of sex” defined. For purposes of ORS 659.030, the phrase “because of sex” includes, but is not limited to, because of pregnancy, childbirth and

related medical conditions or occurrences. Women affected by pregnancy, childbirth or related medical conditions or occurrences shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work by reason of physical condition, and nothing in this section shall be interpreted to permit otherwise. [1977 c.330 s.2]

659.030 What are unlawful employment practices. (1) For the purposes of ORS 659.010 to 659.110, 659.227, 659.330, 659.340 and 659.400 to 659.545, it is an unlawful employment practice:

(a) For an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older or because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual, to refuse to hire or employ or to bar or discharge from employment such individual. However, discrimination is not an unlawful employment practice if such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual, to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual to exclude or to expel from its membership such individual or to discriminate in any way against any such individual or any other person.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older or on the basis of an expunged juvenile record, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification. But identifying employees according to race, religion, color, sex, national origin, marital status, or age does not violate this section unless the Commissioner of the Bureau of Labor and Industries, after hearing conducted pursuant to ORS 659.103, determines that such a designation expresses an intent to

limit, specify or discriminate on the basis of race, religion, color, sex, national origin, marital status or age.

(e) For an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against any individual:

(A) On the basis of the individual's race, color, national origin, sex, religion, marital status or age, if the individual is 18 years of age or older;

(B) Because of the race, color, national origin, sex, religion, marital status or age of any other person with whom the individual associates; or

(C) Because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262.

However, it shall not be an unlawful practice for an employment agency to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(f) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section, ORS 30.670, 30.685, 659.033 and 659.400 to 659.460, or because the person has filed a complaint, testified or assisted in any proceeding under ORS 659.010 to 659.110 and 659.400 to 659.545 or has attempted to do so.

(g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under ORS 659.010 to 659.110 and 659.400 to 659.545 or to attempt to do so.

(2) The provisions of this section apply to an apprentice under ORS chapter 660, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training before attaining the age of 70 years is not an unlawful employment practice. The commissioner shall administer this section with respect to apprentices under ORS chapter 660 equally with regard to all employees and labor organizations.

(3) The compulsory retirement of employees required by law at any age is not an unlawful employment practice if lawful under federal law.

(4)(a) It shall not be an unlawful employment practice for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature to its employees or members who are responsible for a minor child.

(b) As used in this subsection “responsible for a minor child” means having custody or legal guardianship of a minor child or acting in loco parentis to the child. [Amended by 1969 c.618 s.3; 1977 c.770 s.1; 1977 c.801 s.1a; 1981 c.595 s.1; 1981 c.643 s.2; 1983 c.477 s.1; 1983 c.820 s.17; 1985 c.98 s.4; 1985 c.151 s.1; 1987 c.279 s.2; 1993 c.33 s.359]

659.031 “Purchaser” defined for ORS 659.033. As used in ORS 659.033, unless the context requires otherwise, “purchaser” includes an occupant, prospective

occupant, lessee, prospective lessee, buyer or prospective buyer. [1959 c.584 s.2; 1973 c.714 s.6]

659.032 [1957 c.725 s.2; repealed by 1959 c.584 s.4]

659.033 Discrimination in selling, renting or leasing real property prohibited. (1) No person shall, because of race, color, sex, marital status, source of income, familial status, religion or national origin of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination based on race, color, sex, marital status, source of income, religion or national origin.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this subsection and subsection (3) of this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.

(2)(a) No person or other entity whose business includes engaging in residential real estate related transactions shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, sex, marital status, source of income, familial status, religion or national origin.

(b) As used in this subsection, “residential real estate related transaction” means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) For securing residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(3) No real estate licensee shall accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, sex, marital status, source of income, familial status, religion or national origin.

(4) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry

into the neighborhood of a person or persons of a particular race, color, sex, marital status, source of income, familial status, religion or national origin.

(5) For purposes of subsections (1) to (4) of this section, "source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

(6) Subsections (1) and (3) of this section do not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of subsections (1) and (3) of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

(7)(a) This section does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, "housing for older persons" means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(ii) Policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing shall not fail to meet the requirements for housing for older persons if:

(A) Persons residing in such housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of such housing shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units. However, such units are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(8) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome. [1957 c.725 s.3; 1959 c.584 s.3; 1973 c.714 s.7; 1975 c.384 s.1; 1989 c.523 s.4; 1989 c.686 s.2; 1995 c.559 s.44; 1997 c.235 s.1]

Note: Section 5, chapter 686, Oregon Laws 1989, provides:

Sec. 5. Notwithstanding sections 1 to 4 of this Act [659.010, 659.033, 659.121 and 659.430], the commissioner need not accept or investigate any complaints or otherwise expend any funds as a result of this Act until and unless the commissioner obtains full certification from the Secretary of Housing and Urban Development pursuant to 42 U.S.C. 3610, Public Law 100-430, section 8, and obtains additional funding as necessary to meet the fiscal impact of sections 1 to 4 of this Act upon the Bureau of Labor and Industries. [1989 c.686 s.5]

659.034 [1957 c.725 s.4; repealed by 1959 c.584 s.4]

659.035 Discrimination or retaliation against employee for reporting certain violations or testifying at unemployment compensation hearing prohibited; enforcement. (1) It is an unlawful employment practice for:

(a) An employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported possible violations of ORS chapter 441 or of ORS 443.400 to 443.455 or has testified in good faith at an unemployment compensation hearing or other hearing conducted pursuant to ORS chapter 657; or

(b) A public employer to violate ORS 659.510 or 659.535.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) In addition to sanctions described in subsection (2) of this section, any person aggrieved by an unlawful employment practice prohibited by subsection (1)(b) of this section may seek compensatory damages or $250, whichever is greater. [1981 c.470 s.5; 1985 c.404 s.3; 1989 c.890 s.10]

659.036 Employer prohibited from obtaining, seeking to obtain or using genetic information; remedies. (1) It shall be an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information, as defined in ORS 659.700, of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee. This subsection does not prohibit an employer from seeking, obtaining or using genetic information with specific authorization of the employee or prospective employee solely to determine a bona fide occupational qualification, as may be defined by rules adopted by the Commissioner of the Bureau of Labor and Industries.

(2) If an employee or a prospective employee files a complaint with the Bureau of Labor and Industries alleging violation of subsection (1) of this section, the bureau shall cause any necessary investigation to be made and shall enforce

subsection (1) of this section in the manner provided in ORS 659.010 to 659.110 and 659.121. [1993 c.719 s.2; 1995 c.680 s.6]

659.037 Notice that discrimination will be made in place of public accommodation prohibited; age exceptions. Except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting of minors in places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years of age and older, no person acting on behalf of any place of public accommodation as defined in ORS 30.675 shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age and older. [1957 c.724 s.10; 1973 c.714 s.8; 1977 c.770 s.2; 1995 c.79 s.336]

659.038 Certain prohibitions based on familial status or sex not applicable to renting of space in single-family residence; conditions. The provisions of ORS 659.033 (1)(a) to (d) and (f) that prohibit actions based upon familial status or sex do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner's primary residence and all occupants share some common space within the residence. [1999 c.627 s.2]

Note: Section 3, chapter 627, Oregon Laws 1999, provides:

Sec. 3. The exemption created under section 2 of this 1999 Act [659.038] applies to rentals occurring on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.627 s.3]

659.040 Complaints of unlawful employment practices. (1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged unlawful employment practice.

(2) Whenever the Attorney General or commissioner has reason to believe that any person, employer, labor organization or employment agency has committed an

unlawful employment practice, the Attorney General or the commissioner may make, sign and file a complaint in the same manner as a complaint is filed under subsection (1) of this section.

(3) Any employer whose employees, or any of them, refuse or threaten to refuse to abide by ORS 659.010 to 659.110 and 659.400 to 659.545 or to cooperate in carrying out the purposes of said statutes may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) The commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice. [Amended by 1957 c.724 s.13; 1971 c.723 s.1; 1977 c.453 s.2; 1977 c.770 s.3]

659.045 Complaints of discrimination in housing, in place of public accommodation or in career school. (1) Any person claiming to be aggrieved by an alleged distinction, discrimination or restriction on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age or older made by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or in violation of ORS 30.685 or any person claiming to be aggrieved by a violation of ORS 345.240 or any person claiming to be aggrieved by a violation of ORS 659.033 may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the career school alleged to have committed the act complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged distinction, discrimination or restriction.

(2) The Attorney General or the Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint in a like manner as a complaint filed under subsection (1) of this section whenever the Attorney General or commissioner has reason to believe that any place of public accommodation or any person acting on behalf of such place or any person aiding or abetting such place or person has denied any person rights under ORS 30.670 or 30.685 or has violated ORS 659.037 or that a violation of ORS 345.240 has occurred or that any person has violated the provisions of ORS 659.033. [1957 c.724 s.5; 1969 c.618 s.4; 1973 c.714 s.9; 1977 c.453 s.2; 1977 c.770 s.4; 1995 c.343 s.57]

659.050 Investigation of complaint; cease and desist order; penalty; written settlement; relaxation of terms; effect of violation of order or settlement. (1) After the filing of any complaint under ORS 659.040 or 659.045, the Commissioner of the Bureau of Labor and Industries may cause prompt investigation to be made in connection therewith. If during the course of such investigation or upon the conclusion thereof it appears to the commissioner that additional persons should be

named as respondents in the complaint the names of such persons may be added as respondents thereto. If the investigation discloses any substantial evidence supporting the allegations of the complaint the commissioner may cause immediate steps to be taken through conference, conciliation and persuasion to effect a settlement of the complaint and eliminate the effects of the unlawful practice and to otherwise carry out the purpose of ORS 659.010 to 659.110 and 659.400 to 659.545.

(2) After the filing of a complaint by the commissioner under ORS 659.045, the commissioner may also issue a temporary cease and desist order requiring any respondent named in the complaint to refrain from the unlawful practice alleged. If the investigation discloses substantial evidence supporting the allegations of the complaint under ORS 659.045 (1) or (2), the commissioner may, in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice, and may issue a permanent cease and desist order requiring each such respondent to refrain from the unlawful practice found. A civil penalty imposed under this section shall not exceed $1,000 for each violation.

(3) If the commissioner imposes a penalty or issues a temporary or permanent cease and desist order under subsection (2) of this section, the commissioner shall serve upon the respondent in accordance with ORCP 7 D, an order directing the respondent to pay the penalty to the commissioner and to cease and desist as therein described. The order shall include:

(a) A reference to the particular statutes or rules involved in the violation;

(b) A short and concise statement of the matters which constitute the violation;

(c) A statement of the amount of the penalty imposed;

(d) A statement of the respondent's right to a contested case hearing and to be represented by counsel at such a hearing, provided that any request for a contested case hearing must be received by the commissioner in writing within 20 days after receipt by the respondent of the order;

(e) A statement that the respondent must, within 20 days after receipt of the order, either pay in full the penalties assessed or present to the commissioner a written request for a contested case hearing as provided in this section;

(f) A statement that failure to make a written request to the commissioner for a contested case hearing within the time specified shall constitute a waiver of the right thereto; and

(g) A statement that unless the written requests provided for in paragraph (d) of this subsection are received by the commissioner within the time specified for making such requests, the order shall become final.

(4) Upon failure of the respondent to pay the amount specified in the order within the time specified, and upon failure to request a contested case hearing within the time specified, the order shall become final.

(5) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of the costs incurred in determining the violations, conducting hearings under this section and assessing and collecting such penalties.

The remainder, if any, of the sums collected as penalties pursuant to this section shall be paid over by the commissioner to the Division of State Lands for the benefit of the Common School Fund of this state. The division shall issue a receipt for the money to the commissioner.

(6) The terms of any settlement of a complaint under this section shall be contained in a written conciliation agreement filed with the commissioner. Such agreement may include any or all terms and conditions which may be included in a cease and desist order.

(7) The commissioner may relax any terms or conditions of a conciliation agreement or cease and desist order, the performance of which would cause an undue hardship on the respondent or another person and are not essential to protection of the complainant's rights. In the absence of such relaxation by the commissioner, no respondent shall violate any terms or conditions of a cease and desist order or conciliation agreement to which the respondent was a party; nor shall the agent or successor in interest violate any terms or conditions thereof. [Amended by 1957 c.724 s.6; 1963 c.622 s.6; 1971 c.723 s.2; 1975 c.503 s.1; 1987 c.393 s.2]

659.055 Complainant not to be deprived of services, real property or employment pending determination of complaint. Prior to a final administrative determination on the merits of a complaint filed against the respondent under ORS 659.010 to 659.110 and 659.400 to 659.545 and subsequent to receipt of notice from the Commissioner of the Bureau of Labor and Industries or deputy that such complaint has been filed subject to ORS 659.105, no respondent shall, with an intention to defeat a purpose of this chapter, take any action which makes unavailable to the complainant therein, any services, real property, employment or employment opportunities sought by said complaint upon administrative determination on the merits thereof. [1963 c.622 s.4]

659.060 Hearing on complaints; findings; orders. (1) In case of failure to resolve a complaint after reasonable effort under ORS 659.050, or if it appears to the Commissioner of the Bureau of Labor and Industries that the interest of justice requires a hearing without first proceeding by conference, conciliation and persuasion, or if a written request is made by respondent in accordance with ORS 659.050, the commissioner shall cause to be prepared and served upon each respondent required to appear at such hearing such specific charges, in writing, as the respondent will be required to answer, together with a written notice of the time and place of such hearing.

(2) All proceedings before the commissioner under this section shall be in conformity with the provisions of ORS 183.310 to 183.550.

(3) After considering all the evidence, the commissioner shall cause to be issued findings of facts, and conclusions of law. The commissioner shall also issue an order dismissing the charge and complaint against any respondent not found to have engaged in any unlawful practice charged and an appropriate cease and desist order against any respondent found to have engaged in any unlawful practice charged.

(4) Nothing stated in ORS 659.010 to 659.110 and 659.400 to 659.545 shall be construed to prevent a settlement of any case scheduled for hearing under the provisions of ORS 659.010 to 659.110 and 659.400 to 659.545 by conciliation, conference and persuasion, nor to prevent the commissioner from appointing a special tribunal or hearings examiner to hear and determine matters of fact, make conclusions of law and formulate an order appropriate to the facts as found under ORS 659.010 to 659.110 and 659.400 to 659.545, reserving to the commissioner or designee the decision to affirm, reverse, modify or supplement the determinations, conclusions or order of the special tribunal or hearings examiner. The provisions of this subsection shall apply to all pending files in the Bureau of Labor and Industries as well as to files commenced on or after June 17, 1975. [Amended by 1957 c.724 s.7; 1961 c.145 s.1; 1963 c.622 s.7; 1971 c.418 s.20; 1971 c.723 s.3; 1975 c.419 s.1; 1987 c.393 s.3]

659.070 Enforcement of conciliation agreements and orders; money damages as judgment. Any conciliation agreement or order issued by the Commissioner of the Bureau of Labor and Industries under ORS 659.060 may be enforced by mandamus or injunction or by a suit in equity to compel specific performance of such order. Any such agreement or order that awards money damages, unless paid, shall constitute a judgment and may be recorded in the County Clerk Lien Record pursuant to ORS 205.125 and may be enforced as provided in ORS 205.126. [Amended by 1963 c.622 s.10; 1983 c.225 s.3; 1999 c.245 s.3; 1999 c.788 s.44]

659.080 [Amended by 1957 c.724 s.8; 1961 c.145 s.2; 1963 c.622 s.11; repealed by 1971 c.734 s.21]

659.085 Judicial review of orders under ORS 659.070. Judicial review of orders under ORS 659.070 shall be in accordance with ORS 183.310 to 183.550. [1971 c.734 s.103]

659.090 [Repealed by 1971 c.734 s.21]

659.095 Complainant authorized to file civil suit when conciliation agreement not obtained; termination or dismissal of proceedings. (1) If, within one year following the filing of a complaint pursuant to ORS 659.040 (1) or 659.045 (1) except a complaint alleging violations of ORS 30.670 or 30.685, the Commissioner of the Bureau of Labor and Industries has been unable to obtain a conciliation agreement with a respondent, or has not caused to be prepared and attempted to serve the specific charges referred to in ORS 659.060 (1), the commissioner shall so notify the complainant in writing and within 90 days after the date of mailing of such notice, the complainant may file a civil suit as provided for in ORS 659.121. Within one year following the filing of the complaint, the

commissioner may issue, or cause to be issued, an administrative determination. If no administrative determination has been issued at the end of the one-year period, the commissioner has no further authority to continue proceedings to resolve the complaint, except as provided in ORS 659.070 and 659.085. If prior to the expiration of one year from the filing of a complaint pursuant to this section the commissioner dismisses the complaint for any reason other than a dismissal pursuant to ORS 659.060 (3), or the complainant requests the commissioner to terminate proceedings with respect to the complaint, the commissioner shall notify the complainant of said dismissal or termination in writing, and within 90 days after the date of mailing of such notice of dismissal or termination, a civil suit may be filed as provided for in ORS 659.121.

(2) As used in this section, "administrative determination" means a written notice to the respondent and the complainant signed by the commissioner, or the commissioner's designee, which includes, but is not limited to, the following information:

(a) The name of the complainant;

(b) The name of the respondent;

(c) Allegations contained in the complaint;

(d) Facts found by the commissioner to have a bearing on the allegations contained in the complaint in the course of any investigation, conference or other information gathering function of the Bureau of Labor and Industries as such facts relate to laws within the bureau's jurisdiction; and

(e) A statement as to whether investigation of the complaint has disclosed any substantial evidence supporting the allegations of the complaint. [1977 c.453 s.4; 1979 c.843 s.1]

659.100 Elimination and prevention of discrimination by Bureau of Labor and Industries; subpoenas. (1) The Bureau of Labor and Industries may eliminate and prevent discrimination in employment because of race, religion, color, sex, national origin, marital status, physical or mental disability or age if the individual is 18 years of age and over or by employers, employees, labor organizations, employment agencies or other persons and take other actions against discrimination because of race, religion, color, sex, national origin, marital status, physical or mental disability or age if the individual is 18 years of age and over as provided in ORS 659.010 to 659.110 and 659.400 to 659.545. To eliminate the effects of discrimination the Bureau of Labor and Industries may promote voluntarily affirmative action by employers, labor organizations, governmental agencies, private organizations and individuals and may accept financial assistance and grants or funds for such purpose.

(2) The Bureau of Labor and Industries may eliminate and prevent violations of ORS 659.033 and may eliminate and prevent discrimination or restrictions because of race, religion, color, sex, marital status, physical or mental disability, national origin or age of any individual 18 years of age and older by career schools licensed under any law of the State of Oregon, or by any place of public accommodation as

defined in ORS 30.675 or by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 30.685. The Bureau of Labor and Industries hereby is given general jurisdiction and power for such purposes.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other personnel as may be necessary to carry into effect the powers and duties conferred upon the Bureau of Labor and Industries and the commissioner under ORS 659.010 to 659.110 and 659.400 to 659.545 and may prescribe the duties and responsibilities of such employees. The Commissioner of the Bureau of Labor and Industries may delegate any of the powers under ORS 659.010 to 659.110 and 659.400 to 659.545 to the deputy commissioner employed under this subsection.

(4) The commissioner or the designee of the commissioner may issue subpoenas to require the production of evidence necessary for the performance of any of the duties under ORS 659.010 to 659.115 and 659.400 to 659.545.

(5) No person delegated any powers or duties under this section and ORS 659.103 shall act as prosecutor and examiner in processing any violation under ORS 659.010 to 659.110 and 659.400 to 659.545. [Amended by 1957 c.724 s.9; 1959 c.547 s.6; 1959 c.689 s.14; 1961 c.145 s.3; 1963 c.622 s.8; part renumbered 659.103; 1969 c.618 s.5; 1971 c.322 s.1; 1973 c.714 s.10; 1977 c.770 s.5; 1981 c.643 s.3; 1987 c.279 s.3; 1989 c.224 s.127; 1995 c.343 s.58]

659.102 [Subsection (1) enacted as 1959 c.547 s.4; subsection (2) enacted as 1959 c.689 s.4; repealed by 1977 c.770 s.15]

659.103 Rules for carrying out ORS 659.010 to 659.110 and 659.400 to 659.545. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that discrimination will be made against the person because of race, religion, sex, marital status, color or national origin.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or discrimination as to race, religion, color, sex, national origin or age.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, religion, color, sex, national origin or age are based on bona fide job qualifications.

(d) Establishing rules for internal operation and rules of practice and procedure before the commissioner under ORS 659.010 to 659.110 and 659.470 to 659.545.

(e) Establishing rules covering any other matter required to carry out the purpose of ORS 659.010 to 659.110 and 659.400 to 659.545.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, religion, color, sex, marital status, national origin or age.

(c) Whether a statement or inquiry soliciting information as to race, religion, color, sex, marital status, national origin or age communicates an idea independent of an intention to limit, specify or discriminate as to race, religion, color, sex, marital status, national origin or age.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to discriminate as to race, religion, color, sex, marital status, national origin or age. [Formerly part of 659.100; 1969 c.618 s.6; 1973 c.714 s.11]

659.105 Cause of action for violation of ORS 659.050 or 659.055; defenses. (1) Any person aggrieved by a violation of ORS 659.050 (7) or 659.055 shall have a cause of action against the violator thereof for damages sustained thereby and also for such additional sum as may be reasonable as exemplary damages.

(2) As a defense to any cause of action arising under this section based on a violation of ORS 659.055 the defendant may plead and prove that either:

(a) Subsequent to the defendant's conduct on which the plaintiff bases the cause of action, the complaint under ORS 659.040 or 659.045 has been dismissed by the Commissioner of the Bureau of Labor and Industries or deputy, or the court, either for want of evidence to proceed to a hearing or for lack of merit after such hearing; or

(b) In the case of the sale of real property defendant's conduct giving rise to plaintiff's cause of action was neither committed within the first two years after notice by the commissioner or deputy of the filing of the complaint of discrimination under ORS 659.010 to 659.110 and 659.400 to 659.545, nor within any extended period of time obtained at the request of respondent for disposition of the case. The two-year provision in this paragraph shall apply to all defenses with regard to which, on June 30, 1975, either 90 days has not expired after the notice or the extended period of time has not expired. [1963 c.622 s.9; 1975 c.503 s.2; 1987 c.393 s.4]

659.110 Willful interference with administration of law and violation of orders of commissioner prohibited. (1) No person shall willfully resist, prevent, impede or interfere with the Commissioner of the Bureau of Labor and Industries or any authorized agents of the commissioner in the performance of duty under ORS 659.010 to 659.110 and 659.400 to 659.545 or willfully violate an order of the commissioner.

(2) An appeal or other procedure for the review of any such order is not deemed to be such willful conduct. [Amended by 1957 c.724 s.14]

659.115 Advisory agencies and intergroup-relations councils. (1) The Commissioner of the Bureau of Labor and Industries shall create such advisory agencies and intergroup-relations councils, local, regional or statewide, as in the judgment of the commissioner will aid in effectuating the purposes of ORS 659.010 to 659.110 and 659.400 to 659.545. The commissioner may empower them:

(a) To study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religion, color, sex or national origin.

(b) To foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the state.

(c) To make recommendations to the commissioner for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education.

(2) Such advisory agencies and councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary expenses in accordance with laws and regulations governing state officers.

(3) The commissioner may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. [1955 c.534 s.1; 1969 c.618 s.7]

659.120 [Repealed by 1955 c.534 s.2]

659.121 Civil suit for injunctive relief; civil action for damages; time for commencement; jury trial; damages recoverable; effect on other remedies. (1) Any person claiming to be aggrieved by an unlawful employment practice prohibited by ORS 25.424, 399.235, 659.030, 659.035, 659.227, 659.270, 659.295, 659.330, 659.340 or 659.400 to 659.494 may file a civil suit in circuit court for injunctive relief and the court may order such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. Back pay liability shall not accrue from a date more than two years prior to the filing of a complaint with the Commissioner of the Bureau of Labor and Industries, pursuant to ORS 659.040, or if no such complaint has first been filed, then, more than two years prior to the filing of the civil suit provided for in ORS 659.040, 659.045, 659.095 and this section. In any suit brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal.

(2) Any person claiming to be aggrieved by alleged violations of ORS 659.033 (1) or (3), 659.295, 659.400 to 659.449 or 659.550 may file a civil action in circuit court to recover compensatory damages or $200, whichever is greater, and punitive damages. In addition, the court may award relief authorized under subsection (1) of this section and such equitable relief as it considers appropriate. At the request of

any party, the trial of such case shall be by jury. In any action brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Any attorney fee agreement shall be subject to approval by the court.

(3) Where no complaint has been filed pursuant to ORS 659.040 (1) or 659.045 (1) and except as otherwise provided herein, the civil suit or action shall be commenced within one year of the occurrence of the alleged unlawful employment practice. Where a complaint has been filed pursuant to ORS 659.040 (1) or 659.045 (1) the civil suit or action provided for herein shall be commenced only in accordance with the time limitations provided for in ORS 659.095. The filing of a complaint with the commissioner under ORS 659.040 (1) or 659.045 (1) shall not be a condition precedent to the filing of civil suit or action under this section.

(4) This section shall not be construed to limit or alter in any way the authority or power of the commissioner or to limit or alter in any way any of the rights of an individual complainant until and unless the complainant commences civil suit or action. Except as provided in subsection (5) of this section, the filing of a civil suit or action in either circuit court pursuant to subsection (1) of this section or federal district court under applicable federal law shall constitute both an election of remedies as to the rights of that individual with respect to those matters alleged in the complaint filed with the commissioner, and a waiver with respect to the right to file a complaint with the commissioner pursuant to ORS 659.040 (1) or 659.045 (1).

(5)(a) Where a person claiming to be aggrieved by alleged violations of ORS 659.033 or 659.430 or applicable federal law files a civil suit or action in circuit court or in federal district court, that filing does not constitute an election of remedies until such time as the trial commences.

(b) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of specific charges issued by the commissioner if a hearings referee has commenced a hearing on the record under this chapter with respect to such charge.

(6) Notwithstanding any other provision of ORS 659.010 to 659.121 and 659.470 to 659.545, a civil complaint alleging violations of ORS 659.033 or 659.430 may be filed not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under ORS 659.010 to 659.121 and 659.470 to 659.545, whichever occurs last. The two-year period shall not include any time during which an administrative proceeding was pending with respect to the housing practice or breach. [1977 c.453 s.6; 1979 c.813 s.2; 1981 c.897 s.95; 1983 c.225 s.4; 1987 c.822 s.1; 1989 c.165 s.3; 1989 c.317 s.4; 1989 c.686 s.4; 1989 c.1044 s.6; 1991 c.342 s.2; 1993 c.798 s.33; 1995 c.580 s.16; 1999 c.245 s.1]

Note: See note under 659.010.

659.130 [Repealed by 1955 c.534 s.2]

659.131 [1977 c.771 s.1; renumbered as (1),(2),(3) of 659.340]

659.136 [1977 c.771 s.2; renumbered as (4) of 659.340]

659.140 [Repealed by 1955 c.534 s.2]

DISCRIMINATION IN EDUCATION

659.150 Definition of "discrimination"; prohibition on discrimination in education; rules. (1) As used in this section, "discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion or sex.

(2) No person in Oregon shall be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The State Board of Education and the State Board of Higher Education shall establish rules necessary to insure compliance with subsection (2) of this section in the manner required by ORS 183.310 to 183.550. [1975 c.204 s.1; 1989 c.224 s.128]

659.155 Sanctions for noncompliance with discrimination prohibitions. (1) Any public elementary or secondary school determined by the Superintendent of Public Instruction or any community college determined by the Commissioner for Community College Services to be in noncompliance with provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.

(2) Any public institution of higher education determined by the Chancellor of the State Board of Higher Education to be in noncompliance with provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Higher Education.

(3) Any public charter school determined by the sponsor of the school or the Superintendent of Public Instruction to be in noncompliance with the provisions of ORS 659.150 and this section shall be subject to appropriate sanctions, which may include the withholding of all or part of state funding by the sponsor or superintendent, as established by rule of the State Board of Education. [1975 c.204 s.3; 1989 c.491 s.64; 1999 c.200 s.35]

659.160 Enforcement of ORS 659.150. (1) Any person claiming to be aggrieved by unlawful discrimination in higher education as prohibited by ORS 659.150 may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other relief as may be appropriate. Damages shall be $200 or actual damages, whichever is greater.

(2) The action authorized by this section shall be filed within one year of the filing of a grievance.

(3) No action shall be filed unless, within 180 days of the alleged discrimination, a grievance has been filed with the community college board of education or the State Board of Higher Education.

(4) No action may be filed until 90 days after filing a grievance unless only injunctive relief is sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be independent of the right to pursue any administrative remedy available to complainants pursuant to ORS 659.150.

(5) No action may be filed if the community college board of education or the State Board of Higher Education has obtained a conciliation agreement with the person filing the grievance or if a final determination of a grievance has been made except as provided in ORS 183.480.

(6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any person seeking to maintain an action under this section shall also file a notice of claim within 180 days of the alleged discrimination as required by ORS 30.275.

(7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(8) Nothing in this section is intended to reduce the obligations of the education agencies under ORS 659.150 to 659.160. [1987 c.276 s.2; 1995 c.618 s.116]

PROHIBITION AGAINST CERTAIN LOCAL LAWS RELATING TO SEXUAL ORIENTATION

659.165 Political subdivisions prohibited from enacting or enforcing certain laws relating to sexual orientation; remedy. (1) A political subdivision of the state may not enact or enforce any charter provision, ordinance, resolution or policy granting special rights, privileges or treatment to any citizen or group of citizens on account of sexual orientation, or enact or enforce any charter provision, ordinance, resolution or policy that singles out citizens or groups of citizens on account of sexual orientation.

(2) Any person who believes that a political subdivision has enacted or is enforcing a charter provision, ordinance, resolution or policy in violation of this section may bring an action in circuit court to have the charter provision, ordinance,

resolution or policy declared invalid, for injunctive relief and for such other relief as the court may consider appropriate. The court shall award reasonable attorney fees and costs to a plaintiff who prevails in an action under this subsection. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court. [1993 c.556 s.1; 1995 c.618 s.117]

Note: 659.165 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

DISCRIMINATION AGAINST ATHLETES

659.175 Prohibition against discrimination for participation in sanctioned athletic events. (1) No public or private organization or individual:

(a) Shall infringe in any manner on the right of an athlete to compete in or train for any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(b) Shall levy any form of punishment or sanction against any athlete for participating in any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(2) This section applies only to those sports under the jurisdiction of the United States Olympic Committee and known to be “Olympic” sports. [1983 c.823 s.3]

Note: 659.175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

UNLAWFUL EMPLOYMENT PRACTICES

659.210 Deceptive representations or advertisements by persons employing labor prohibited. No person, firm, company, corporation, or association of any kind employing labor, shall, either in person or through any agent, manager or other legal representatives, induce, influence, persuade or engage workers to change from one place to another in this state or bring workers of any class or calling into this state to work in any of the departments of labor by:

(1) Any false or deceptive representation or false advertising, concerning the amount or character of the compensation to be paid for any work, or as to the existence or nonexistence of a strike, lockout or other labor troubles pending between employer or employees.

(2) Neglecting to state in the advertisement, proposal or inducement for the employment of workers that there is a strike, lockout or unsettled condition of labor, when such strike, lockout or unsettled condition of labor actually exists.

659.220 Right of worker to recover damages and attorney fees. (1) Any worker of this state, or any worker of another state, who is influenced, induced or persuaded to engage with any persons mentioned in ORS 659.210, through or by means of any of the things prohibited in that statute, shall have a right of action for:

(a) Recovery of all damages sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce the worker to change the worker's place of employment against any persons, corporations, companies, or associations, directly or indirectly causing such damages, or $500, whichever is greater; and

(b) Such reasonable attorney fees at trial and on appeal as the court fixes, to be taxed in any judgment recovered.

(2) In any action brought under this section, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. [Amended by 1979 c.389 s.1; 1981 c.897 s.96]

659.225 Requiring breathalyzer or lie detector test prohibited; exception for breathalyzer test. (1) No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employee to take a breathalyzer test, polygraph test or any other form of a so-called lie detector test. However, nothing in this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(2) For the purposes of this section, an individual is “under the influence of intoxicating liquor” when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision. [1963 c.249 s.1; 1981 c.301 s.1]

659.227 Requiring breathalyzer, polygraph, psychological stress or brain-wave test or genetic test prohibited; exceptions. (1) Except as provided in subsection (5) of this section, it is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects

the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) As used in this section:

(a) "Breathalyzer test" means a test to detect the presence of alcohol in the body through the use of instrumentation or mechanical devices.

(b) "Genetic test" has the meaning given in ORS 659.700.

(c) "Polygraph examination or psychological stress test" means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices.

(d) An individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

(4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to an individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal investigation conducted by a law enforcement agency, as defined in ORS 181.010, a district attorney or the Attorney General.

(5) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(6) Subsection (1) of this section does not prohibit the administration of a genetic test to an individual if the individual or the individual's representative grants informed consent in the manner provided by ORS 659.710, and the genetic test is administered solely to determine a bona fide occupational qualification. [1979 c.318 s.1; 1981 c.301 s.2; 1989 c.892 s.1; 1995 c.680 s.7]

Note: 659.227 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.230 Blacklisting and blackmailing prohibited. (1) No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employee, mechanic or laborer discharged by such corporation, company or individual, with intent and for the purpose of preventing such employee, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual.

(2) No officer or agent of any corporation or any other person shall, in any manner, conspire or contrive by correspondence or otherwise to prevent an

employee discharged by such corporation or such person from securing employment.

659.240 Use of force or misrepresentation to prevent employment prohibited. (1) No person shall, by force, threats, or intimidation, prevent, or endeavor to prevent, any person employed by another from continuing or performing work, or from accepting any new work or employment.

(2) No person shall circulate any false written or printed matter, or be concerned in the circulation of any such matter, to induce others not to buy from or sell to or have dealings with any person, for the purpose or with the intent to prevent such person from employing any person, or to force or compel such person to employ or discharge from employment anyone, or to alter the mode of carrying on business, or to limit or increase the number of employees or the rate of wages or time of service.

659.250 Fraudulently accepting advancement and refusing to work prohibited. (1) No person shall, with intent to defraud, sign for and accept or receive transportation to or in the direction of a place of employment provided by or at the instance or expense of the proposed employer, or knowingly or with intent to defraud accept or receive the benefit of any other pecuniary advancements made by or at the instance or expense of the employer, as advances against wages for labor to be performed, and neglect to render service or perform labor or pay in money equal in value to such transportation or other benefits accepted or received.

(2) The failure of any person to render service, perform labor, or pay in money for such transportation or other benefits, shall be prima facie evidence of intent to defraud if:

(a) At or prior to the time of advancing such transportation or other benefits, the employer has delivered directly to such laborer or has filed in duplicate with the employment agency through which any such laborer is secured, one copy of which shall be delivered to such laborer, a written or printed statement setting forth the wages to be paid, the character of the work to be performed, and the living and working conditions; and

(b) The wages to be paid, the character of the work to be performed and the living and working conditions are as represented in such written or printed statement.

659.260 Employer prohibited from filing false statement with employment agency to secure labor. (1) No employer of labor shall directly or through any agent, knowing and with intent to deceive, file with any employment agency as a preliminary to securing labor, a false written or printed statement of wages to be paid, work to be performed or living and working conditions.

(2) The failure or refusal of such employer to employ any laborer, to whom such written or printed statement has been delivered, is prima facie evidence of intent to deceive.

659.270 Discharge or discrimination against employee because of legislative testimony prohibited; enforcement. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment solely for the reason that the employee has testified before the Legislative Assembly or any of its interim or statutory committees, including advisory committees and subcommittees thereof, or task forces.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1980 c.1 s.3]

Note: 659.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.280 Definitions for ORS 659.280 to 659.295. (1) For purposes of ORS 659.280 to 659.295, “access” means ingress to and egress from residential areas which are concentrated in a central location. It shall not include:

(a) The right to enter the individual residences of employees unless a resident of the household consents to the entry;

(b) The right to use any services provided by the employer for the exclusive use of the employees;

(c) The right to enter single residences shared by employees and employers where a separate entrance to the employee's quarter is not provided; or

(d) The right to enter work areas.

(2) “Authorized person” means government officials, medical doctors, certified education providers, county health care officials, representatives of religious organizations and any other providers of services for farmworkers funded in whole or part by state, federal or local government.

(3) “Housing” means living quarters owned, rented or in any manner controlled by an employer and occupied by the employee.

(4) “Invited person” means persons invited to a dwelling unit by an employee or a member of the employee's family residing with the employee. [1981 c.867 s.2; 1989 c.165 s.1]

659.285 Restriction of access to employee housing owned or controlled by employer prohibited; telephone accessibility. (1) Employers shall not restrict access by authorized persons or invited persons to any housing owned, rented or in any manner controlled by the employer where employees are residing. Authorized persons or invited persons must announce their presence on the premises upon

request. Authorized persons shall, upon request, provide credentials identifying the person as representing a qualifying agency or organization.

(2)(a) A person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in this section. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains an order pursuant to ORS 659.297.

(b) Invited persons shall not be allowed to enter work areas or to interfere with any employee's work or performance of duties on behalf of the employer.

(3)(a) The employer shall insure to the employees residing in housing owned or controlled by an employer and occupied by employees the availability of:

(A) A reasonably accessible operating telephone, whether pay or private, available 24 hours a day for emergency use; and

(B) An operating telephone, whether pay or private, located within two miles of the housing, accessible and available so as to provide reasonable opportunity for private use by employees.

(b) An employer may request a waiver from the requirements of paragraph (a) of this subsection if the employer demonstrates to the bureau that:

(A) Compliance would constitute an unreasonable hardship for the employer; and

(B) The camp meets any requirements established by the Department of Consumer and Business Services for an emergency medical plan. [1981 c.867 s.3; 1989 c.165 s.2]

659.290 Regulations by employers concerning use and occupancy of employee housing; requirements; notice. Employers may adopt reasonable rules and regulations concerning the use and occupancy of such housing including hours of access which must be posted in a conspicuous place at least three days prior to enforcement. Such rules shall be enforceable as to employees, invited persons and those authorized persons who are not governmental officials or who are not visiting the camp for emergency purposes only if:

(1) Their purpose is to promote the safety or welfare of the employees and authorized persons allowed access;

(2) They preserve the employer's property from abusive use;

(3) They are reasonably related to the purpose for which they are adopted;

(4) They apply to all employees on the premises in a fair manner; and

(5) They are sufficiently explicit in the prohibition, direction or limitation of the employee's conduct to fairly inform the employees of what must be done to comply. [1981 c.867 s.4; 1989 c.165 s.7]

659.295 Eviction from employee housing or discrimination against employee for reporting violations of ORS 659.280 to 659.295 prohibited;

enforcement. (1) It is an unlawful employment practice for an employer to expel or evict from housing referred to in ORS 659.280 to 659.295 or to discharge, demote, suspend from employment or in any other manner discriminate or retaliate against an employee or any member of the employee's household for the reason that the employee or any member of the employee's household has:

(a) Reported or complained concerning possible violations of ORS 659.280 to 659.295; or

(b) Conferred with or invited to residential areas, any authorized person or invited person.

(2) Complaints may be filed with the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of ORS 659.280 to 659.295 subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.110 and 659.121. A person denied access under ORS 659.285 is a person aggrieved for purposes of ORS 659.121. [1981 c.867 s.5]

659.297 Warrant on behalf of person entitled to access to housing; vacation of warrant; rulemaking authority. (1) In the event that any person claiming to be an authorized or invited person is denied access to housing, the person may apply to any magistrate having jurisdiction to issue warrants, for an order authorizing the person to gain access to the housing.

(2) The application pursuant to this section shall be sworn and shall include allegations of the facts and circumstances under which the person alleges that the person is entitled to access under ORS 659.280 to 659.295.

(3) If, on ex parte review of the application, it appears from the sworn allegations of the application that the person is entitled to access to the housing, the magistrate shall promptly issue an order restraining the owner of the housing from interfering with the access of the applicant to the housing.

(4) No fee, bond or undertaking shall be required in connection with proceedings under this section.

(5) On sufficient cause, the magistrate may enter further orders for the protection of residents of the housing, including the temporary sealing of the application, or portions thereof.

(6) Any person subject to an order referred to in subsections (1) to (5) of this section may request that the order be vacated or modified by filing a written motion with the court which issued the order.

(7) Upon receipt of a motion to modify or vacate the order, the court shall schedule a hearing.

(8) If after hearing, the court determines that the applicant is not entitled to access, the court shall vacate or modify the order.

(9) The Bureau of Labor and Industries may adopt rules to carry out the provisions of this section, ORS 659.121 and 659.280 to 659.290. [1989 c.165 ss.4,5,6]

Note: 659.297 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.320 Employer failing to make agreed payments to employee benefit fund. Whenever an employer has agreed in writing with any employee to make payments to a health and welfare, dental, pension, vacation, apprenticeship and industry fund or any other such plan for the benefit of the employees, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer willfully or with intent to defraud to fail to make the payments required by the terms of any such agreement. [1957 c.548 s.1; 1973 c.140 s.1]

659.322 Prohibition on limiting coverage under employee benefit plan based on eligibility to receive benefits under Title XIX of Social Security Act; prohibitions on limiting coverage under group health plans; requirements for group health plans. (1) No employee benefit plan may include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan because that individual is provided, or is eligible for, benefits or services pursuant to a plan under Title XIX of the Social Security Act. This section applies to employee benefit plans, whether sponsored by an employer or a labor union.

(2) A group health plan is prohibited from considering the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. 1396a (section 1902 of the Social Security Act), herein referred to as Medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders or certificate holders.

(3) To the extent that payment for covered expenses has been made under the state Medicaid program for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

(4) A group health plan shall not deny enrollment of a child under the health plan of the child's parent on the grounds that:

(a) The child was born out of wedlock;

(b) The child is not claimed as a dependent on the parent's federal tax return; or

(c) The child does not reside with the child's parent or in the group health plan service area.

(5) Where a child has health coverage through a group health plan of a noncustodial parent, the group health plan shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) Make payments on claims submitted in accordance with paragraph (b) of this subsection directly to the custodial parent, the provider or the state Medicaid agency.

(6) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the group health plan shall be required:

(a) To permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program or the state agency administering 42 U.S.C. 651 to 669, the child support enforcement program; and

(c) Not to disenroll or eliminate coverage of the child unless the group health plan is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(7) A group health plan may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from such plan, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(8)(a) In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, the plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply to the natural, dependent children of the participants and beneficiaries, regardless of whether the adoption has become final.

(b) A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(9) As used in this section:

(a) “Child” means, in connection with any adoption, or placement for adoption of the child, an individual who has not attained 18 years of age as of the date of the adoption or placement for adoption.

(b) “Group health plan” means a group health plan as defined in 29 U.S.C. 1167.

(c) “Placement for adoption” means the assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligations. [1991 c.875 s.5; 1995 c.506 s.5; 1999 c.59 s.198]

659.324 Health insurance coverage for children of employees. Where a parent is required by a court or administrative order to provide health coverage that is available through an employer doing business in this state, the employer shall:

(1) Permit the parent to enroll under family coverage a child who is otherwise eligible for coverage without regard to any enrollment season restrictions.

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program or the state agency administering 42 U.S.C. 651 to 669, the child support enforcement program.

(3) Not disenroll or eliminate coverage of a child unless the employer is provided satisfactory written evidence that:

(a) The court order is no longer in effect;

(b) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(c) The employer has eliminated family health coverage for all of its employees.

(4) Withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the entity providing the coverage. [1995 c.506 s.7]

659.330 Requiring employee to pay for medical examination as condition of continued employment prohibited; exceptions. (1) It is an unlawful employment practice for any employer to require an employee, as a condition of continuation of employment, to pay the cost of any medical examination or the cost of furnishing any health certificate.

(2) Notwithstanding subsection (1) of this section, it is not an unlawful employment practice for an employer to require the payment of medical examination or health certificate costs:

(a) From health and welfare fringe benefit moneys contributed entirely by the employer; or

(b) By the employee if the medical examination or health certificate is required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance.

(3) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1979 c.595 s.1]

Note: 659.330 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.340 Refusal to employ or otherwise discriminate solely because of employment of another family member prohibited; exceptions; enforcement. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:

(a) Refuse to hire or employ an individual;

(b) Bar or discharge from employment an individual; or

(c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.

(2) An employer is not required to hire or employ and is not prohibited from barring or discharging an individual if such action:

(a) Would constitute a violation of any law of this state or of the United States, or any rule promulgated pursuant thereto, with which the employer is required to comply;

(b) Would constitute a violation of the conditions of eligibility for receipt by the employer of financial assistance from the government of this state or the United States;

(c) Would place the individual in a position of exercising supervisory, appointment or grievance adjustment authority over a member of the individual's family or in a position of being subject to such authority which a member of the individual's family exercises; or

(d) Would cause the employer to disregard a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(3) As used in this section:

(a) “Employer” has the meaning for that term provided in ORS 659.010.

(b) “Member of an individual's family” means the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual.

(4) Subsections (1) to (3) of this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 for enforcement of an unlawful employment practice. Violation of subsections (1) to (3) of this section subjects the violator to the same civil and criminal penalties as provided for violation of ORS 659.010 to 659.110 and 659.470 to 659.545. [(1), (2), (3) formerly 659.131; (4) formerly 659.136; 1983 c.225 s.5; 1985 c.565 s.90]

Note: 659.340 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.358 Leave of absence to donate bone marrow; verification by employer. (1) It shall be an unlawful employment practice for an employer to deny to grant already accrued paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The total length of the leaves shall be determined by the employee, but shall not exceed the amount of already accrued paid leave or 40 work hours, whichever is less, unless agreed to by the employer.

(2) The employer may require verification by a physician of the purpose and length of each leave requested by the employee to donate bone marrow. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave of absence used by the employee prior to that medical determination is not affected.

(3) An employer shall not retaliate against an employee for requesting or using accrued paid leave of absence as provided by this section.

(4) This section does not:

(a) Prevent an employer from providing leave for bone marrow donations in addition to leave required under this section.

(b) Affect an employee's rights with respect to any other employment benefit.

(5) As used in this section:

(a) “Employee” means a person who performs services for hire for an employer, for an average of 20 or more hours per week, and includes all individuals employed at any site owned or operated by an employer. “Employee” does not include an independent contractor.

(b) “Employer” means a person or entity that employs any employee in at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district or other governmental subdivision. [1991 c.652 ss.2,4]

Note: 659.358 (5) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.360 [1987 c.319 s.2; repealed by 1995 c.580 s.18]

659.365 [1987 c.319 s.3; repealed by 1995 c.580 s.18]

659.370 [1987 c.319 s.4; repealed by 1995 c.580 s.18]

659.380 Prohibiting use of tobacco in nonworking hours. (1) It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful

tobacco products during nonworking hours, except when the restriction relates to a bona fide occupational requirement.

(2) Subsection (1) of this section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products.

(3) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545. [1989 c.892 s.3]

659.385 [1989 c.822 s.2; repealed by 1995 c.580 s.18]

659.389 [1989 c.822 s.3; repealed by 1995 c.580 s.18]

659.391 [1989 c.822 s.4; repealed by 1995 c.580 s.18]

659.393 [1989 c.822 s.5; 1991 c.939 s.6; repealed by 1995 c.580 s.18]

CIVIL RIGHTS OF DISABLED PERSONS

659.400 Definitions for ORS 659.400 to 659.460. As used in ORS 659.400 to 659.460, unless the context requires otherwise:

(1) "Disabled person" means a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) As used in subsection (1) of this section:

(a) "Major life activity" includes, but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(b) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(c) "Is regarded as having such an impairment" means that the individual:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or supervisor as having such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is treated by an employer or supervisor as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Substantially limits" means:

(A) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(3) “Drug” means a controlled substance, as classified in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C.A. 812, as amended, and as modified under ORS 475.035.

(4) “Employer” means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard.

(5) “Illegal use of drugs” means any use of drugs, the possession or distribution of which is unlawful under state law or under the Controlled Substances Act, 21 U.S.C.A. 812, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law. [1973 c.660 s.2; 1979 c.640 s.1; 1989 c.224 s.129; 1997 c.854 s.12]

659.405 Policy. (1) It is declared to be the public policy of Oregon to guarantee disabled persons the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, and to secure housing accommodations of their choice, without discrimination.

(2) The right to otherwise lawful employment without discrimination because of disability where the reasonable demands of the position do not require such a distinction, and the right to use and enjoy places of public accommodation, resort or amusement, and to purchase or rental of property without discrimination because of disability, are hereby recognized and declared to be the rights of all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect these rights and ORS 659.400 to 659.460 shall be construed to effectuate such policy. [1973 c.660 s.3; 1979 c.640 s.2; 1989 c.224 s.130]

659.410 Prohibition against discrimination against worker applying for workers' compensation benefits or use of laws relating to disability. It is an unlawful employment practice for an employer to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS chapter 656 or of ORS 659.400 to 659.460 or has given testimony under the provisions of such sections. [1973 c.660 s.4; 1989 c.1044 s.1; 1999 c.245 s.4]

659.412 Reemployment rights of injured state workers. (1) For the purpose of administration of ORS 659.415 and 659.420:

(a) An injured worker employed at the time of injury by any agency in the legislative department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the legislative department.

(b) An injured worker employed at the time of injury by any agency in the judicial department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the judicial department.

(c) An injured worker employed at the time of injury by any agency of the Executive or Administrative Department of the government of this state shall have the right to reinstatement as reemployment at any available and suitable position in any agency of the Executive or Administrative Department.

(2) Notwithstanding ORS 659.415 and 659.420, an injured worker referred to in subsection (1) of this section has preference for entry level and light duty assignments with agencies described in subsection (1) of this section. In accordance with the provisions of ORS 183.310 to 183.550, any agency referred to in subsection (1) of this section may adopt rules to define entry level and light duty assignments. However, the rulemaking power for all agencies referred to in subsection (1)(c) of this section shall be exercised by the Administrator of the Personnel Division.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division may compel compliance with this section, ORS 659.415 and 659.420 by any agency referred to in subsection (1)(c) of this section. [1989 c.850 s.2; 1995 c.332 s.62]

659.415 Reinstatement of worker sustaining compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is “available” even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position which is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment which is suitable prior to becoming medically stationary.

(E) Seven days from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 s.5; 1979 c.813 s.3; 1981 c.874 s.14; 1989 c.1044 s.1; 1990 c.2 s.45; 1995 c.332 s.60]

659.417 Right of reinstatement protected. The rights of reinstatement afforded by ORS 659.415 and 659.420 shall not be forfeited if the worker refuses to return to the worker's regular or other offered employment without release to such employment by the worker's attending physician. [1987 c.884 s.45]

659.420 Employment of injured worker in other available and suitable work; termination of right to reemployment; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(5) Any violation of this section is an unlawful employment practice. [1973 c.660 s.6; 1979 c.813 s.4; 1995 c.332 s.61]

659.425 Discrimination against disabled persons by employment agency, labor organization or place of public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a disabled person, or to classify or refer for employment any individual because that individual is a disabled person.

(2) It is an unlawful employment practice for a labor organization, because an individual is a disabled person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(3) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a disabled person.

(4) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to acquire, rent or maintain property. [1973 c.660 s.7; 1979 c.640 s.3; 1989 c.224 s.131; 1997 c.854 s.13]

659.430 Discrimination against disabled persons in real property transactions prohibited; advertising discriminatory preference prohibited; when necessary modification to be allowed; assisting discriminatory practices prohibited. (1) No person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold,

rented or made available or a disability of any person associated with a purchaser, lessee or renter, shall discriminate by:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser, lessee or renter;

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection therewith; or

(d) Attempting to discourage the sale, rental or lease of any real property.

(2) For purposes of this subsection, discrimination includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(3) No person shall publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination against a disabled person.

(4) No person or other entity whose business includes engaging in residential real estate related transactions, as defined in ORS 659.033 (2)(b), shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a disability.

(5) No real estate broker or salesperson shall accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a disabled person.

(6) No person shall assist, induce, incite or coerce another person to permit an act or engage in a practice that violates this section.

(7) No person shall coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(8) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a disabled person or persons.

(9) Any violation of this section is an unlawful practice. [1973 c.660 s.8; 1979 c.640 s.4; 1983 c.225 s.6; 1989 c.686 s.3; 1995 c.79 s.337]

659.435 Enforcement powers of commissioner. Any person claiming to be aggrieved by an unlawful employment practice may file a complaint under ORS 659.040, and any person claiming to be aggrieved by an unlawful practice may file a complaint under ORS 659.045. The Commissioner of the Bureau of Labor and Industries may then proceed and shall have the same enforcement powers, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, under ORS 659.050 to 659.085 as in the case of any other complaint filed under ORS 659.040 or 659.045. [1973 c.660 s.9]

DISCRIMINATION AGAINST DISABLED PERSONS IN EMPLOYMENT

659.436 Discrimination against disabled persons prohibited. (1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because an otherwise qualified person is a disabled person.

(2) An employer violates subsection (1) of this section if the employer does any of the following:

(a) The employer limits, segregates or classifies a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because the applicant or employee is a disabled person.

(b) The employer participates in a contractual or other arrangement or relationship that has the effect of subjecting an otherwise qualified job applicant or employee who is a disabled person to the discrimination prohibited by ORS 659.436 to 659.449, including but not limited to participating in a relationship with an employment or referral agency, a labor union, an organization providing fringe benefits to an employee of the employer, or an organization providing training and apprenticeship programs.

(c) The employer utilizes standards, criteria or methods of administration that have the effect of discrimination on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

(d) The employer excludes or otherwise denies equal jobs or benefits to an otherwise qualified person because the person is known to have a relationship or association with a disabled person.

(e) The employer does not make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled person who is a job applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(f) The employer denies employment opportunities to a job applicant or employee who is an otherwise qualified disabled person, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

(g) The employer uses qualification standards, employment tests or other selection criteria that screen out or tend to screen out a disabled person or a class of disabled persons unless the standard, test or other selection criterion, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity.

(h) The employer fails to select and administer tests relating to employment in the most effective manner to ensure that when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or other characteristics of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant. The provisions of this paragraph do not limit the ability of an employer to select or administer tests designed to measure sensory, manual or speaking skills of an employee or job applicant. [1997 c.854 s.2]

Note: Section 7 (2), chapter 245, Oregon Laws 1999, provides:

Sec. 7. (2) The provisions of ORS 659.436 to 659.449 apply only to conduct occurring on or after October 4, 1997. Any conduct that occurred before October 4, 1997, and that constituted an unlawful employment practice under ORS 659.425 (1) (1995 Edition), shall continue to be governed by the law in effect immediately before October 4, 1997. [1999 c.245 s.7(2)]

659.437 Qualification for position. For the purposes of ORS 659.436, a disabled person is otherwise qualified for a position if the person, with or without reasonable accommodation, can perform the essential functions of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a written description before advertising or interviewing applicants for a job, the position description shall be considered evidence of the essential functions of the job. [1997 c.854 s.3]

Note: See note under 659.436.

659.439 Reasonable accommodation. (1) For the purposes of ORS 659.436, reasonable accommodation of an otherwise qualified disabled person may include:

(a) Making existing facilities used by employees readily accessible to and usable by disabled persons.

(b) Job restructuring, part-time or modified work schedules or reassignment to a vacant position.

(c) Acquisition or modification of equipment or devices.

(d) Appropriate adjustment or modification of examinations, training materials or policies.

(e) The provision of qualified readers or interpreters.

(2) Notwithstanding any other provision of ORS 659.400 to 659.460, an employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to a person with a disability arising out of transsexualism. [1997 c.854 s.4]

Note: See note under 659.436.

659.440 Undue hardship. (1) For the purposes of ORS 659.436, an accommodation imposes an undue hardship on the operation of the business of the employer if the accommodation requires significant difficulty or expense.

(2) For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(a) The nature and the cost of the accommodation needed.

(b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities.

(d) The type of operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer. [1997 c.854 s.5]

Note: See note under 659.436.

659.442 Illegal use of drugs. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS 659.436 do not apply to any job applicant or employee who is currently engaging in the illegal use of drugs if the employer takes action based on that conduct.

(2) The protections of ORS 659.436 apply to the following persons:

(a) A person who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs.

(b) A person who is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs.

(c) A person who is erroneously regarded as engaging in the illegal use of drugs.

(3) An employer may adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that a person described in subsection (2)(a) or (b) of this section is no longer engaging in the illegal use of drugs. [1997 c.854 s.6]

Note: See note under 659.436.

659.444 Permitted employer action. ORS 659.436 to 659.449 do not affect the ability of an employer to do any of the following:

(1) An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee. An employer may prohibit possession of drugs except for drugs prescribed by a licensed health care professional.

(2) An employer may prohibit the use of alcohol at the workplace by any employee.

(3) An employer may require that employees not be under the influence of alcohol or illegally used drugs at the workplace.

(4) An employer may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988.

(5) An employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance and behavior to which the employer holds other employees, even if the unsatisfactory performance or behavior is related to the alcoholism of or the illegal use of drugs by the employee.

(6) An employer may require that employees comply with all federal and state statutes and regulations regarding alcohol and the illegal use of drugs. [1997 c.854 s.7]

Note: See note under 659.436.

659.446 Conditions that do not constitute impairment. (1) For the purposes of ORS 659.436 to 659.449, homosexuality and bisexuality are not physical or mental impairments. A person who is homosexual or bisexual is not a disabled person for the purposes of ORS 659.436 to 659.449 solely by reason of being homosexual or bisexual.

(2) For the purposes of ORS 659.436 to 659.449, the following conditions are not physical or mental impairments, and a person with one or more of the following conditions is not a disabled person for the purposes of ORS 659.436 to 659.449 solely by reason of that condition:

(a) Transvestism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders.

(b) Compulsive gambling, kleptomania or pyromania.

(c) Psychoactive substance use disorders resulting from current illegal use of drugs. [1997 c.854 s.8]

Note: See note under 659.436.

659.447 Medical examinations and inquiries; job applicants. (1) Except as provided in this section, an employer violates ORS 659.436 if the employer

conducts a medical examination of a job applicant, makes inquiries of a job applicant as to whether the applicant is a disabled person or makes inquiries as to the nature or severity of any disability of the applicant.

(2) An employer may make inquiries into the ability of a job applicant to perform job-related functions.

(3) An employer may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and condition the employment on the results of the examination, if the following conditions are met:

(a) All persons entering the employ of the employer must be subject to the examination regardless of disability.

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except as follows:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659.436 to 659.449 shall be provided relevant information on request.

(c) The results of an examination authorized under this subsection may only be used in the manner provided for in ORS 659.436 to 659.449. [1997 c.854 s.9]

Note: See note under 659.436.

659.448 Medical examinations and inquiries; employees. (1) Except as provided in this section, an employer may not require that an employee submit to a medical examination, may not make inquiries of an employee as to whether the employee is a disabled person, and may not make inquiries of an employee as to the nature or severity of any disability of the employee, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

(3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659.447. [1997 c.854 s.10]

Note: See note under 659.436.

659.449 Construction. ORS 659.436 to 659.449 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Americans with Disabilities Act of 1990, as amended. [1997 c.854 s.11]

Note: See note under 659.436.

BENEFITS FOR INJURED WORKER AND COVERED DEPENDENTS

659.450 Definitions for ORS 659.450 to 659.460. As used in ORS 659.450 to 659.460, unless the context requires otherwise:

(1) “Group health benefits” means that form of health benefits provided by the State of Oregon to cover groups of employees, with or without one or more members of their families or one or more dependents. The group health benefits which are continued under ORS 659.450 to 659.460 shall be the same as the worker and the worker's dependents had immediately prior to the injury or illness, and includes, but is not limited to, medical care, dental care, vision care or prescription drug coverage, or any combination thereof, that the worker had elected prior to the injury or illness. If the plan elected prior to the injury or illness is no longer available, the worker shall have the same plan selection rights as do active employees.

(2) “Employer” means the State of Oregon.

(3) “Worker” means any state employee who has filed a workers' compensation claim pursuant to ORS chapter 656. [1989 c.1044 s.3; 1991 c.90 s.1; 1999 c.245 s.6]

659.455 Employer to continue group health benefits for injured worker and covered dependents; when ended. (1) The State of Oregon shall cause group health benefits to continue in effect with respect to that worker and any covered dependents or family members by timely payment of the premium that includes the contribution due from the employer under the applicable benefit plan, subject to any premium contribution due from the worker that the worker paid before the occurrence of the injury or illness. If the premium increases or decreases, the employer and worker contributions shall be adjusted to remain consistent with similarly situated active employees. The employer shall continue the worker's health benefits in effect until whichever of the following events occurs first:

(a) The worker's attending physician has determined the worker to be medically stationary and a notice of closure has been entered;

(b) The worker returns to work for the employer, after a period of continued coverage under this section, and satisfies any probationary or minimum work requirement to be eligible for group health benefits;

(c) The worker takes full or part-time employment with another employer that is comparable in terms of the number of hours per week the worker was employed with the employer who is continuing coverage under ORS 659.450 to 659.460 or the worker retires;

(d) Twelve months have elapsed since the date the employer received notice that the worker filed a workers' compensation claim pursuant to ORS chapter 656;

(e) The claim is denied and the claimant fails to appeal within the time provided by ORS 656.319 or the Workers' Compensation Board or a workers' compensation hearings referee or a court issues an order finding the claim is not compensable;

(f) The worker does not pay the required premium or portion thereof in a timely manner in accordance with the terms and conditions under this section;

(g) The worker elects to discontinue coverage under this section and notifies the employer in writing of this election;

(h) The worker's attending physician has released the worker to modified or regular work, the work has been offered to the worker and the worker refuses to return to work; or

(i) The worker has been terminated from employment for reasons unrelated to the workers' compensation claim.

(2) If the workers' compensation claim of a worker for whom health benefits are provided pursuant to subsection (1) of this section is denied and the worker does not appeal or the worker appeals and does not prevail, the employer may recover from the worker the amount of the premiums plus interest at the rate authorized by ORS 82.010. The employer may recover the payments through a payroll deduction not to exceed 10 percent of gross pay for each pay period.

(3) The employer shall notify the worker of the provisions of ORS 659.121, 659.410 and 659.450 to 659.460 within a reasonable time after the employer receives notice that the worker will be absent from work as a result of an injury or illness for which a workers' compensation claim has been filed pursuant to ORS chapter 656. The employer's notice shall include the terms and conditions of the continuation of health benefits and what events will terminate the coverage.

(4) If the worker fails to make timely payment of any premium contribution owing, the employer shall notify the worker of impending cancellation of the health benefits and provide the worker with 30 days to pay the required premium prior to canceling the policy.

(5) It is an unlawful employment practice for the State of Oregon as an employer to discriminate against a worker, as defined in ORS 659.450, by terminating the worker's group health benefits while that worker is absent from the place of employment as a result of an injury or illness for which a workers' compensation claim has been filed against the same public employer pursuant to ORS chapter 656, except as provided for in this section. [1989 c.1044 s.4; 1991 c.90 s.2; 1999 c.245 s.5; 1999 c.313 s.15]

659.460 Worker may continue benefits after employer's obligation ends. If the employer's obligation to continue paying premiums for health benefits under ORS 659.455 expires or terminates, the worker may continue coverage by paying the entire premium pursuant to ORS 743.530. [1989 c.1044 s.5]

FAMILY LEAVE

659.470 Definitions for ORS 659.470 to 659.494. As used in ORS 659.470 to 659.494:

(1) "Covered employer" means an employer described in ORS 659.472.

(2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659.474.

(3) "Family leave" means a leave of absence described in ORS 659.476.

(4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5) "Health care provider" means the person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, and who is a physician licensed to practice medicine and surgery, including a doctor of osteopathy, a podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a direct entry midwife, a nurse-midwife or a clinical social worker, authorized to practice and performing within the scope of their professional license as provided for by law. "Health care provider" includes a Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, who is primarily responsible for the treatment of the eligible employee or a family member of the eligible employee. "Health care provider" includes a chiropractor, but only to the extent the chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care. [1995 c.580 s.1]

659.472 Covered employers. (1) The requirements of ORS 659.470 to 659.494 apply only to employers who employ 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.

(2) The requirements of ORS 659.470 to 659.494 do not apply to any employer who offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the leave required by ORS 659.470 to 659.494. [1995 c.580 s.2]

659.474 Eligible employees. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659.476 (1)(b) to (d) except:

(a) An employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.

(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659.476 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence. [1995 c.580 s.3]

659.476 Purposes for which family leave may be taken. (1) Family leave under ORS 659.470 to 659.494 may be taken by an eligible employee for any of the following purposes:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.

(b) To care for a family member with a serious health condition.

(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.

(2) Leave under subsection (1)(a) of this section must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of family leave under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of the child. [1995 c.580 s.4]

659.478 Length of leave; conditions. (1) Except as specifically provided by ORS 659.470 to 659.494, an eligible employee is entitled to up to 12 weeks of family leave within any one-year period.

(2)(a) In addition to the 12 weeks of leave authorized by subsection (1) of this section, a female employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties offered by the employer.

(b) An employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659.476 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659.476 (1)(d).

(3) When two family members work for the same covered employer, the employees may not take concurrent family leave unless:

(a) One employee needs to care for the other employee who is suffering from a serious health condition; or

(b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering a serious health condition.

(4) An employee may take family leave for the purposes specified in ORS 659.476 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(5) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659.476 (1)(d) if another family member is available to care for the child.

(6) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an employee or a family member of the employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this subsection shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek will not result in the loss of an employee's exempt status under the federal Fair Labor Standards Act. [1995 c.580 s.5]

659.480 Notice to employer. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; or

(c) A premature birth, unexpected adoption or unexpected foster placement.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave, and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) If the employee fails to give notice as required by subsections (1) and (3) of this section, the employer may reduce the period of family leave required by ORS 659.478 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. [1995 c.580 s.6]

659.482 Medical verification and scheduling of treatment. (1) Except as provided in subsection (2) of this section, a covered employer may require medical verification from a health care provider of the need for the leave if the leave is for a purpose described in ORS 659.476 (1)(b) to (d). If an employee is required to give notice under ORS 659.480 (1), the employer may require that medical verification be provided by the employee before the leave period commences. If the employee commences family leave without prior notice pursuant to ORS 659.480 (2), the medical verification must be provided by the employee within 15 days after the employer requests the medical verification. The employer may require an employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second health care provider conflicts with the medical verification provided by the employee, the employer may require the two health care providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third health care provider shall be final and binding on the employer and employee. In addition to the medical verifications provided for in this subsection, an employer may require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose described in ORS 659.476 (1)(d) only after an employee has taken more than three days of leave under ORS 659.476 (1)(d) during any one-year period. Any medical verification required under this subsection must be paid for by the covered employer. An employer may not require an employee to obtain the opinion of a second health care provider for the purpose of medical verification required under this subsection.

(3) Subject to the approval of the health care provider, the employee taking family leave for a serious health condition of the employee or a family member of the employee shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operations. [1995 c.580 s.7]

659.484 Job protection. (1) After returning to work after taking family leave under the provisions of ORS 659.470 to 659.494, an eligible employee is entitled to be restored to the position of employment held by the employee when the leave commenced if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of family leave. If the position held by the employee at the time family leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. If an equivalent position is not available at the job site of the employee's former position, the employee may be offered an equivalent position at a job site located within 20 miles of the job site of the employee's former position.

(2) Except for employee benefits used during the period of leave, the taking of family leave under ORS 659.470 to 659.494 shall not result in the loss of any employment benefit accrued before the date on which the leave commenced.

(3) This section does not entitle any employee to:

(a) Any accrual of seniority or employment benefits during a period of family leave; or

(b) Any right, benefit or position of employment other than the rights, benefits and position that the employee would have been entitled to had the employee not taken the family leave.

(4)(a) Before restoring an employee to a position under subsection (1) of this section, an employer may require that the employee receive certification from the employee's health care provider that the employee is able to resume work. Certification under this subsection may only be required pursuant to a uniformly applied practice or policy of the employer.

(b) This subsection does not affect the ability of an employer to require an employee during a period of family leave to report periodically to the employer on the employee's status and on the employee's intention to return to work.

(5) Benefits are not required to continue to accrue during a family leave unless continuation or accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy. Notwithstanding ORS 652.610 (3), if the employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of family leave that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. In no event may the total amount deducted for insurance under the provisions of this subsection exceed 10 percent of the employee's gross pay each pay period.

(6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disability, life or other insurance coverage for an employee under the provisions of subsection (5) of this section, and the employee does not return to employment with the employer after taking family leave, the employer may deduct amounts paid by the employer from any amounts owed by the employer to the employee, or may seek to recover those amounts by any other legal means, unless the employee fails to return to work because of:

(a) A continuation, reoccurrence or onset of a serious health condition that would entitle the employee to leave for one of the purposes specified by ORS 659.476 (1)(b) or (c); or

(b) Other circumstances beyond the control of the employee. [1995 c.580 s.8]

659.486 Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, family leave is not required to be granted with pay.

(2) An employee on family leave is entitled to utilize any paid accrued vacation leave during the period of family leave, or to utilize any other paid leave that is offered by the employer in lieu of vacation leave during the period of family leave.

(3) An employee taking family leave for the purpose specified in ORS 659.476 (1)(a) is entitled to utilize any paid accrued sick leave in addition to paid leave that may be utilized under subsection (2) of this section.

(4) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement, the employer may determine the particular order in which accrued leave is to be used in circumstances in which more than one type of accrued leave is available to the employee.

(5) Except as provided by subsection (3) of this section, ORS 659.470 to 659.494 do not require an employer to provide or allow the use of any form of paid sick leave, paid medical leave or paid family leave in any situation in which the employer would not normally provide or allow use of paid sick leave, paid medical leave or paid family leave. [1995 c.580 s.9]

659.488 Special rules for teachers. (1) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher requests leave for one of the purposes specified in ORS 659.476 (1)(b) or (c), the need for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total number of working days in the period during which the leave would extend, the employer of the teacher may require that the employee elect one of the two following options:

(a) The employee may elect to take leave for a period or periods of a particular duration, not to exceed the duration of the anticipated medical treatment; or

(b) The employee may elect to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the regular position of the employee. The teacher must be qualified for the alternative position, and the position must have pay and benefits that are equivalent to the pay and benefits of the employee's regular position.

(2) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for the purpose specified in ORS 659.476 (1)(c) more than five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least three weeks' duration; and

(b) The employee's return to employment would occur during the three-week period before the end of the term.

(3) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for one of the purposes specified in ORS 659.476 (1)(a) or (b) during the five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least two weeks' duration; and

(b) The employee's return to employment would occur during the two-week period before the end of the term.

(4) Notwithstanding any other provision of ORS 659.470 to 659.494, if a teacher commences a period of family leave for one of the purposes specified in ORS 659.476 (1)(a) or (b) during the three-week period before the end of the term, and the duration of the leave is greater than five working days, the employer of the teacher may require that the employee continue on family leave until the end of the term.

(5) The provisions of this section apply only to an employee who is employed principally in an instructional capacity by a public kindergarten, elementary school, secondary school or education service district. [1995 c.580 s.9a]

659.490 Postings by employer. A covered employer shall post a notice of the requirements of ORS 659.470 to 659.494 in every establishment of the employer in which employees are employed. The Bureau of Labor and Industries shall provide notices to covered employers meeting the requirements of this section. [1995 c.580 s.10]

659.492 Enforcement. (1) A covered employer who denies family leave to an eligible employee in the manner required by ORS 659.470 to 659.494 commits an unlawful employment practice.

(2) Any employee claiming to be aggrieved by a violation of ORS 659.470 to 659.494 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659.040. The Commissioner of the Bureau of Labor and Industries shall enforce the provisions of ORS 659.470 to 659.494 in the manner provided in ORS 659.010 to 659.110 for the enforcement of other unlawful employment practices.

(3) Any person claiming to be aggrieved by a violation of ORS 659.470 to 659.494 may bring a civil action in the manner provided by ORS 659.121 (1). [1995 c.580 s.11]

659.494 Exclusivity of provisions. (1) ORS 659.470 to 659.494 do not limit any right of an employee to family medical leave to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.

(2) ORS 659.470 to 659.494 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. Family leave taken under ORS 659.470 to 659.494 must be taken concurrently with any leave taken under the federal Family and Medical Leave Act of 1993. [1995 c.580 s.12]

DISCLOSURES BY PUBLIC EMPLOYEES (WHISTLEBLOWING)

659.505 Definitions for ORS 659.505 to 659.545. As used in ORS 240.316, 659.035 and 659.505 to 659.545:

(1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

(2) "Employee" means a person employed by or under contract with:

(a) The state or any agency of or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employees of the public corporation created under ORS 656.751;

(d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(e) Any person authorized by contract to act on behalf of the state, agency or subdivision.

(3) "Public employer" means:

(a) The state or any agency of or political subdivision in the state; and

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee. [1989 c.890 s.2]

659.510 Prohibited conduct by public employer. (1) Subject to ORS 659.515, except as provided in ORS 240.316, 659.035 and 659.505 to 659.545, no public employer shall:

(a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of:

(A) The state or any agency of or political subdivision in the state; or

(B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.

(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:

(A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;

(B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or

(C) Subject to ORS 659.525 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal

government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659.515 (1).

(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.

(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659.525. [1989 c.890 s.3]

659.515 Effect on public employer's authority over employees. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

(1) Prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision;

(2) Permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;

(3) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(4) Except as specified in ORS 659.525 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(5) Restrict or preclude disciplinary action against an employee if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety; or

(6) Restrict or impair any judicial right of action an employee or an employer has under existing law. [1989 c.890 s.4]

659.520 Effect on public record disclosures. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

(1) Allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505.

(2) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. [1989 c.890 s.5]

659.525 Policy on cooperation with law enforcement officials. (1) In order to protect the safety of the citizens of this state, it is the policy of this state that all public employers and their employees cooperate with law enforcement officials in the apprehension of persons subject to a felony or misdemeanor warrant for arrest.

(2) Notwithstanding any other law, when an employee reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision in the state is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States, the employee shall promptly and without delay report to the employee's immediate supervisor or a person designated by the agency by rule to receive such report.

(3) The supervisor or person designated by the agency shall notify the Oregon State Police promptly and without delay of the information supplied by the employee.

(4) The notification required by subsections (2) and (3) of this section shall include disclosure of the name and address of the person, available information concerning the felony or misdemeanor warrant for arrest and other available identifying information.

(5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [1989 c.890 s.6]

659.530 Civil action on behalf of employee authorized. In addition to appeal proceedings of ORS 240.560 for a state employee and any comparable provisions for employees of political subdivisions and remedies available under ORS 659.035, an employee alleging a violation of ORS 659.510 may bring a civil action for appropriate injunctive relief or damages, or both, within 90 days after the occurrence of the alleged violation. The action may be filed in the circuit court of the county in which the alleged violation occurred, or the county in which the complainant resides. If damages are awarded, the court shall award actual damages or $250, whichever is greater. [1989 c.890 s.7]

659.535 Disclosure of employee's name without consent prohibited. The identity of the employee who discloses any of the following shall not be disclosed without the written consent of the employee during any investigation of the information provided by the employee, relating to:

(1) Matters described in ORS 659.510 (1)(b).

(2) Reports required by ORS 659.525 (2). [1989 c.890 s.8]

659.540 Uniform application to all public employers; optional procedure for disclosures. (1) The Bureau of Labor and Industries by rule shall assure that the requirements of ORS 240.316, 659.035 and 659.505 to 659.545 are applied uniformly to all public employers. Each public employer may adopt rules, consistent

with the Bureau of Labor and Industries rules, which apply to that public employer and which also implement ORS 240.316, 659.035 and 659.505 to 659.545.

(2) A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659.510 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary action by any supervisor for such disclosure. [1989 c.890 s.9]

659.545 Short title. ORS 240.316, 659.035 and 659.505 to 659.545 shall be known as the Whistleblower Law. [1989 c.890 s.1]

EMPLOYMENT DISCRIMINATION BASED ON INITIATING OR AIDING CRIMINAL OR CIVIL PROCEEDING (WHISTLEBLOWING)

659.550 Prohibition against discrimination in employment based on initiating or aiding in criminal or civil proceedings; complaints. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported criminal activity by any person, has in good faith caused a complainant's information or complaint to be filed against any person, has in good faith cooperated with any law enforcement agency conducting a criminal investigation, has in good faith brought a civil proceeding against an employer or has testified in good faith at a civil proceeding or criminal trial.

(2) Complaints may be filed by employees, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110, 659.121 and 659.470 to 659.545.

(3) For the purposes of this section, “complainant's information” and “complaint” have the meanings given those terms in ORS 131.005.

(4) The remedies provided by this section are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section. [1991 c.342 s.1]

Note: 659.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.560 [1991 c.939 s.2; repealed by 1995 c.580 s.18]

659.565 [1991 c.939 s.3; repealed by 1995 c.580 s.18]

659.570 [1991 c.939 s.4; repealed by 1995 c.580 s.18]

GENETIC PRIVACY

659.700 Definitions for ORS 659.700 to 659.720. As used in ORS 659.700 to 659.720:

(1) “Anonymous research” means:

(a) Scientific or medical research conducted in such a manner that the identity of an individual who has provided a sample, or the identity of an individual from whom genetic information has been obtained, cannot be determined; or

(b) Scientific or medical research conducted in accordance with the Federal Policy for the Protection of Human Subjects with the approval of an institutional review board established in accordance with that policy.

(2) “DNA” means deoxyribonucleic acid.

(3) “DNA sample” means any human biological specimen from which DNA was extracted, or any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to determine a genetic characteristic. “DNA sample” includes DNA extracted from the specimen.

(4) “Genetic characteristic” means any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder or syndrome, or to be associated with statistically increased risk of development of a disease, disorder or syndrome.

(5) “Genetic information” is the information about an individual or family obtained from:

(a) A genetic test; or

(b) An individual's DNA sample.

(6) “Genetic test” means a test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose a genetic characteristic.

(7) “Insurance provider” means an insurance company, health care service contractor, fraternal benefit organization, insurance agent, third party administrator, insurance support organization or other person subject to regulation by the Insurance Code.

(8) “Person” has the meaning given in ORS 433.045. [1995 c.680 s.1; 1997 c.780 s.1; 1999 c.921 s.1]

Note: The amendments to 659.700 by section 2, chapter 921, Oregon Laws 1999, become operative January 1, 2002. See section 3, chapter 921, Oregon Laws 1999. The text that is operative on and after January 1, 2002, is set forth for the user's convenience.

659.700. As used in ORS 659.700 to 659.720:

(1) “Anonymous research” means scientific or medical research conducted in such a manner that the identity of a person who has provided a sample, or the identity of a person from whom genetic information has been obtained, cannot be determined.

(2) “DNA” means deoxyribonucleic acid.

(3) “DNA sample” means any human biological specimen from which DNA was extracted, or any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to determine a genetic characteristic. “DNA sample” includes DNA extracted from the specimen.

(4) “Genetic characteristic” means any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder or syndrome, or to be associated with statistically increased risk of development of a disease, disorder or syndrome.

(5) “Genetic information” is the information about an individual or family obtained from:

(a) A genetic test; or

(b) An individual's DNA sample.

(6) “Genetic test” means a test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose a genetic characteristic.

(7) “Insurance provider” means an insurance company, health care service contractor, fraternal benefit organization, insurance agent, third party administrator, insurance support organization or other person subject to regulation by the Insurance Code.

(8) “Person” has the meaning given in ORS 433.045.

Note: 659.700 to 659.720 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.705 Legislative findings; purposes. (1) The Legislative Assembly finds that:

(a) The DNA molecule contains information about an individual's probable medical future. This information is written in a code that is rapidly being broken.

(b) Genetic information is uniquely private and personal information that generally should not be collected, retained or disclosed without the individual's authorization.

(c) The improper collection, retention or disclosure of genetic information can lead to significant harm to the individual, including stigmatization and discrimination in areas such as employment, education, health care and insurance.

(d) An analysis of an individual's DNA provides information not only about an individual, but also about blood relatives of the individual, with the potential for impacting family privacy, including reproductive decisions.

(e) Current legal protections for medical information, tissue samples and DNA samples are inadequate to protect genetic privacy.

(f) Laws for the collection, storage and use of identifiable DNA samples and private genetic information obtained from those samples are needed both to protect individual privacy and to permit legitimate scientific and medical research.

(2) The purposes of ORS 659.700 to 659.720 and 746.135 and the provisions of ORS 659.036, 659.227 and 746.015 relating to genetic characteristics, information and testing are as follows:

(a) To define the rights of individuals whose genetic information is collected, retained or disclosed.

(b) To define the circumstances under which an individual may be subjected to genetic testing.

(c) To define the circumstances under which an individual's genetic information may be collected, retained or disclosed.

(d) To protect against discrimination by an insurer or employer based upon an individual's genetic characteristics. [1995 c.680 s.2; 1997 c.780 s.2]

Note: See second note under 659.700.

659.710 Informed consent required for obtaining genetic information; exceptions. (1) No person shall obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except:

(a) As authorized by ORS 181.085 or comparable provisions of federal criminal law relating to the identification of persons, or for the purpose of establishing the identity of a person in the course of an investigation conducted by a law enforcement agency, a district attorney, a medical examiner or the Criminal Justice Division of the Department of Justice;

(b) For anonymous research where the identity of the subject will not be revealed;

(c) As permitted by rules of the Health Division for identification of deceased individuals;

(d) As permitted by rules of the Health Division for newborn screening procedures; or

(e) As authorized by statute for the purpose of establishing paternity.

(2) A physician licensed under ORS chapter 677 shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 677.097. Any other licensed health care provider or facility must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in a manner substantially similar to that provided by ORS 677.097 for physicians.

(3) An insurance provider shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Department of Consumer and Business Services. Any other person must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Health Division.

(4) The Health Division may not adopt rules under subsection (1)(d) of this section that would require the providing of a DNA sample for the purpose of obtaining complete genetic information used to screen all newborns. [1995 c.680 s.3]

Note: See second note under 659.700.

659.715 Individual's rights in genetic information; retention of information; destruction of information. (1) Subject to the provisions of ORS 659.036, 659.700 to 659.720 and 746.135, an individual's genetic information and DNA sample are the property of the individual except when the information or sample is used in anonymous research.

(2) A person does not interfere with, infringe upon, misappropriate or otherwise damage an individual's property by obtaining, testing, retaining, disclosing or providing an individual's genetic information or DNA sample solely for anonymous research.

(3) A person may not retain another individual's genetic information or DNA sample without first obtaining authorization from the individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Retention is permitted by rules of the Health Division for identification of, or testing to benefit blood relatives of, deceased individuals;

(d) Retention is permitted by rules of the Health Division for newborn screening procedures; or

(e) Retention is for anonymous research.

(4) The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions; or

(c) Retention is for anonymous research.

(5) A DNA sample from an individual that is the subject of a research project, other than an anonymous research project, shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

(6) A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil, criminal and juvenile proceedings.

(7) An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual, unless the genetic information has been made anonymous by destruction of all information that could allow disclosure of the identity of the individual who provided the sample.

(8) The Health Division shall coordinate the implementation of this section.

(9) This section applies only to genetic information that can be identified as belonging to an individual or family. This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample. [1995 c.680 s.4; 1997 c.780 s.3]

Note: See second note under 659.700.

659.720 Disclosure of genetic information prohibited; exceptions. (1) Regardless of the manner of receipt or the source of genetic information, including information received from an individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or to disclose genetic information about the individual in a manner that permits identification of the individual, unless:

(a) Disclosure is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child abuse team;

(b) Disclosure is required by specific court order entered pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Disclosure is authorized by statute for the purpose of establishing paternity;

(d) Disclosure is specifically authorized by the tested individual or the tested individual's representative by signing a consent form prescribed by rules of the Health Division;

(e) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; or

(f) Disclosure is for the purpose of identifying bodies.

(2) The prohibitions of this section apply to any redisclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed. [1995 c.680 s.5]

Note: See second note under 659.700.

PENALTIES

659.990 Penalties. (1) Violation of ORS 659.110 is punishable, upon conviction, by imprisonment in the county jail for not more than one year or by a fine of not more than $500, or by both.

(2) Violation of ORS 659.210 is punishable, upon conviction, by a fine of not more than $1,000 or imprisonment in the county jail for not more than one year, or both.

(3) Violation of ORS 659.230 by any officer or agent of a corporation or any other person is punishable, upon conviction, by a fine of not less than $50 nor more than $250, or by imprisonment in the county jail not less than 30 nor more than 90 days, or both.

(4) Violation of ORS 659.240 is punishable, upon conviction, by a fine of not less than $10 nor more than $200 or by imprisonment in the county jail for not less than one month nor more than six months.

(5) Violation of ORS 659.250 or 659.260 is punishable, upon conviction, by a fine of not more than $100 or imprisonment in the county jail for not more than 60 days, or both.

(6) Any person who violates ORS 659.320, upon conviction, shall be required to make immediate restitution of delinquent payments to the fund or funds mentioned in ORS 659.320 and shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than one year, or both.

(7) Violation of ORS 659.225 is punishable, upon conviction, by a fine of not more than $500 or by imprisonment in the county jail for not more than one year, or by both. [Subsection (6) enacted as last sentence of 1957 c.548 s.1; subsection (7) enacted as 1963 c.249 s.2; 1973 c.140 s.2]

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Chapter 658

1999 EDITION

NOTE: This publication includes only the portion of ORS chapter 658 relating to farmworker camps.

Farmworker Camps

PILOT PROGRAM FOR UTILITY CONNECTIONS IN JACKSON COUNTY

(Temporary provisions relating to a pilot program for utility connections in Jackson County are compiled as notes preceding 658.705)

GENERAL PROVISIONS

FARM LABOR CONTRACTOR INDORSEMENT

OPERATION OF FARMWORKER CAMPS

MISCELLANEOUS

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658.750

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PILOT PROGRAM FOR UTILITY CONNECTIONS IN JACKSON COUNTY

Note: Sections 1 to 3, chapter 210, Oregon Laws 1995, provide:

Sec. 1. The Legislative Assembly finds that:

(1) Adequate farmworker camp housing is vital to both farmworkers and agricultural producers.

(2) There is a shortage of adequate farmworker camp housing in Oregon, particularly in less populous counties with fewer resources.

(3) Sewerage disposal and quality of water supplies limit improvement and development of farmworker camp housing.

(4) A pilot program would demonstrate the feasibility of using certain methods to improve the quality of farmworker camp housing. [1995 c.210 s.1]

Sec. 2. (1) At the request of a property owner and on payment of required fees and charges, a local government or special district shall provide a hookup to water or sewerage service to a farmworker camp in Jackson County if:

(a) The existing service is contiguous to the site to be served;

(b) The level of service is limited to the needs of the farmworker camp; and

(c) Intervening hookups are not allowed.

(2) A local government or special district shall have discretion to not extend water or sewerage service to a farmworker camp under subsection (1) of this section, if the local government or special district has a general moratorium on additional hookups.

(3) Conversion of the farmworker camp to a dwelling not in conjunction with a farm use is prohibited, unless the land is inside an urban growth boundary.

(4) As used in this section, "farmworker camp" has the meaning given that term in ORS 658.705. [1995 c.210 s.2]

Sec. 3. Sections 1 and 2, chapter 210, Oregon Laws 1995, are repealed on December 31, 2003. [1995 c.210 s.3; 1999 c.388 s.1]

GENERAL PROVISIONS

658.705 Definitions for ORS 658.705 to 658.850. As used in ORS 658.705 to 658.850:

(1) "Applicant" means an individual who proposes to operate a farmworker camp and who is applying for a camp operator indorsement under ORS 658.730.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(4) "Department" means the Department of Consumer and Business Services.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Farm labor contractor" has the same meaning as that provided in ORS 658.405.

(7) "Farmworker camp" means any place or area of land where sleeping places, manufactured structures or other housing is provided by a farmer, farm labor contractor, employer or any other person in connection with the recruitment or employment of workers to work in the production and harvesting of farm crops or in the reforestation of lands, as described in ORS 658.405. "Farmworker camp" does not include:

(a) A single, isolated dwelling occupied solely by members of the same family, or by five or fewer unrelated individuals; or

(b) A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers.

(8) "Farmworker camp operator" means any person who operates a farmworker camp.

(9) "Indorsee" means a farm labor contractor licensed under ORS 658.410 who has obtained a camp indorsement under ORS 658.730. [1989 c.962 s.2; 1993 c.18 s.143; 1993 c.744 s.19]

658.715 Farmworker camp operator requirements. (1) No person shall operate a farmworker camp unless:

(a) The person is a farm labor contractor licensed under ORS 658.405 to 658.503, and the contractor first obtains an indorsement to do so as provided in ORS 658.730; or

(b) The person:

(A) Has a substantial ownership interest in the real property, subject to farm use special assessment under ORS 308.345 to 308.406, on which the camp is located or has any form of ownership interest in a business organization that operates the farmworker camp and files a schedule F as part of an income tax return in the preceding tax year; or

(B) Is related by blood or marriage to any person who has a substantial ownership interest in the real property, subject to farm use special assessment under ORS 308.345 to 308.406, on which the camp is located or has any form of ownership interest in the business organization that operates the farmworker camp and files a schedule F as part of an income tax return in the preceding tax year.

(2) Nothing in ORS 658.705 to 658.850 requires a permanent employee of a farmworker camp operator, who has no financial interest in the camp other than the wages paid to the employee, to obtain a camp indorsement. [1989 c.962 s.3; 1991 c.67 s.166; 1995 c.79 s.335; 1999 c.314 s.57]

658.717 Notice of farmworker camp operations. Every farmworker camp operator shall:

(1) Post an informational notice, on a form provided by the Department of Consumer and Business Services as set forth in subsection (2) of this section, in an area of the farmworker camp frequented by the occupants.

(2) The notice provided by the department under subsection (1) of this section shall be published in English and in the language or languages used to communicate with the occupants of the farmworker camp and shall contain the following information:

(a) The name and address of the operator.

(b) The address and phone number of the department.

(c) A statement that inquiries regarding health and sanitation matters or the terms and conditions of occupancy may be made to the department.

(d) A statement that the farmworker camp is registered with the department. [1995 c.500 s.3]

658.720 Certain agreements void. Agreements by workers purporting to modify their rights under ORS 658.705 to 658.850 shall be void as contrary to public policy. [1989 c.962 s.11; 1991 c.67 s.167]

FARM LABOR CONTRACTOR INDORSEMENT

658.730 Farm labor contractor indorsement to operate farmworker camp; posting indorsement. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries, by rule, shall establish an indorsement system for any farm labor contractor who operates a farmworker camp. Such system shall include, but not be limited to, provisions prescribing:

(a) The form and content of and the times and procedures for submitting an application for indorsement issuance or renewal.

(b) The requirements for and the manner of testing the competency of indorsement applicants.

(2) The indorsement shall be posted conspicuously in an exterior area of the camp that is open to all employees and in a manner easily visible to the occupants of and visitors to the camp. [1989 c.962 s.4]

658.735 Bond required; claim on bond; procedures. (1) Each applicant shall submit with the application and shall continually maintain thereafter a bond approved by the Commissioner of the Bureau of Labor and Industries. The amount of the bond and the security behind the bond shall be $15,000 or the amount specified in ORS 658.415, whichever is greater. This bond shall satisfy the bond required by ORS 658.415. If there is an unsatisfied final judgment of a court or decision of an administrative agency against an indorsee applicant, the subject of which is any matter which would be covered by the bond referred to in this subsection, the commissioner shall not issue an indorsement to the applicant until the judgment or decision is satisfied. As a condition of indorsement, the commissioner may require the applicant to submit proof of financial ability required by this subsection in an amount up to three times that ordinarily required of an indorsee applicant. In lieu of the bond required by this subsection, each applicant may file with the commissioner, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the commissioner.

(2) All bonds or deposits filed under this section shall be executed to cover liability for the period for which the indorsement is issued. During the period for which executed, no bond can be canceled or otherwise terminated.

(3) Any person who suffers any loss specified in subsection (9) of this section shall have a right of action in the name of the person against the surety upon the bond or against the deposit with the commissioner:

(a) The right of action is assignable and must be included with the claim, or of a judgment thereon.

(b) The right of action shall not be included in any suit or action against the farmworker camp operator but must be exercised independently after first procuring a judgment, decree or other form of adequate proof of liability established by rule establishing the farmworker camp operator's liability for the claim.

(4) The surety company or the commissioner shall make prompt and periodic payments on the farmworker camp operator's liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over any other claims.

(b) Payment shall be made in full of all sums due to each person who presents adequate proof of the claim.

(c) If there are insufficient funds to pay in full the person next entitled to payment in full, such person will be paid in part.

(5) No person shall bring any suit or action against the surety company or the commissioner on the bonding obligation or as trustee for the beneficiaries of the indorsee under any deposit made pursuant to this section unless the person has first exhausted the procedures contained in subsections (3) and (6) of this section and contends that the surety company or the commissioner still has funds which are applicable to the person's judgment or acknowledgment.

(6) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been made by certified mail to the surety company or the commissioner within six months from the end of the period for which the bond or deposit was executed and made.

(7) If the commissioner has received no notice as provided in subsection (6) of this section within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit

under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(8) Every indorsee required by this section to furnish a surety bond, or make a deposit in lieu thereof, shall keep conspicuously posted in an exterior area of the camp which is open to all employees and in a manner easily visible to occupants of and visitors to the camp, a notice in both English and any other language used by the indorsee to communicate with workers specifying the indorsee's compliance with the requirements of this section and specifying the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner, together with the address of the commissioner.

(9) The bond or deposit referred to in subsection (1) of this section shall be payable to the commissioner and shall be conditioned upon:

(a) All sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;

(b) All damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee, or the indorsee's agents or employees acting within the scope of their employment; and

(c) All sums legally owing to any employee of the indorsee. [1989 c.962 s.5; 1993 c.723 s.2]

658.740 Revocation, suspension, refusal to issue or renew indorsement. The Commissioner of the Bureau of Labor and Industries may revoke, suspend, refuse to renew or refuse to issue an indorsement to act as a farmworker camp operator upon the commissioner's own motion or upon complaint by an individual if the:

(1) Indorsee has violated or failed to comply with any provision of ORS 658.715 to 658.850 or any of the rules adopted thereunder;

(2) Conditions under which the indorsement was issued have changed or no longer exist;

(3) Indorsee's character, reliability or competence makes the indorsee unfit to act as a farmworker camp operator; or

(4) Applicant or operator makes any material misrepresentation, false statement or willful concealment in the application for a license. [1989 c.962 s.9]

OPERATION OF FARMWORKER CAMPS

658.750 Camp operator registration; procedures. (1) Every farmworker camp operator shall register with the Department of Consumer and Business Services each farmworker camp operated by the operator.

(2) The department shall establish, by rule, procedures for annual registration of farmworker camps. The department may adopt any other rule necessary to implement the provisions of ORS 658.705 to 658.850.

(3) Upon receipt of an initial application for registration, the department shall conduct a preoccupancy consultation with the operator of the farmworker camp if:

(a) The camp was not registered with the department prior to January 1, 1989, and has not been registered with the Commissioner of the Bureau of Labor and Industries or the Director of the Department of Consumer and Business Services in a prior year; or

(b) The camp operator requests a consultation.

(4) If the department has determined that the health and safety conditions existing at the camp are not in conformance with the rules of the department, the department shall not register the camp until the department determines that the camp has been brought into compliance.

(5) Upon registration of a camp, the department shall transmit a copy of the registration to the Bureau of Labor and Industries.

(6) The department shall compile periodically a list of all registered camps and make the list available to the bureau and other interested persons. [1989 c.962 s.6; 1991 c.67 s.168; 1995 c.500 s.1]

658.755 Farmworker camp operator duties; prohibitions. (1) Every farmworker camp operator shall:

(a) If a farm labor contractor, comply with the provisions of ORS 658.405 to 658.503.

(b) Comply with ORS chapter 654 and the administrative rules of the Department of Consumer and Business Services adopted pursuant to ORS chapter 654.

(c) Comply with all applicable building codes and health and safety laws.

(d) Comply with ORS 659.280 to 659.295.

(e) Pay or distribute promptly, when due, to individuals entitled thereto, all moneys or other things of value entrusted to the farmworker camp operator, or agents or employees of the operator, by any individual for that purpose.

(f) Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the operator's capacity as an operator of a farmworker camp.

(2) No farmworker camp operator shall:

(a) Operate a camp which is not registered with the department as required by ORS 658.750.

(b) Make any material misrepresentation, false statement or willful concealment in the application for an indorsement or registration.

(c) Willfully make or cause to be made to any person any false, fraudulent or misleading representation concerning the terms and conditions of occupancy in the farmworker camp.

(d) Knowingly publish or circulate any false or misleading information concerning the terms, conditions or existence of housing or employment at any place.

(e) Assist a person who is not entitled to operate a farmworker camp under ORS 658.705 to 658.850 to act in violation of ORS 658.705 to 658.850 or in violation of ORS 658.405 to 658.503 or ORS chapter 654.

(f) By force, intimidation or threat in any manner whatsoever, induce any occupant of the farmworker camp to give up any part of the compensation the occupant is entitled to by contract or by any state or federal wage payment law.

(g) By force, intimidation or threat in any manner whatsoever, restrain any person who wishes to leave the camp from doing so. [1989 c.962 s.7; 1991 c.67 s.169; 1995 c.500 s.4]

658.760 Prohibited actions by operator; burden of proof. (1) No farmworker camp operator shall discharge, evict or in any other manner discriminate against any person because that person:

(a) Has made a claim against the operator or employer for compensation for the occupant's own personal services.

(b) Has caused to be instituted any proceedings under or related to ORS 658.705 to 658.850.

(c) Has testified or is about to testify in any such proceedings.

(d) Has discussed or consulted with anyone concerning the occupant's rights under ORS 658.405 to 658.503 or 658.705 to 658.850.

(2) The aggrieved person shall have the burden of proving that the discrimination was because of the protected activity. [1989 c.962 s.8; 1991 c.67 s.170]

658.780 Protest of registration. Any individual may protest the registration of any proposed farmworker camp and the Department of Consumer and Business Services shall give the individual an opportunity to state the reasons for the objection. [1989 c.962 s.14; 1995 c.500 s.5]

658.785 Revocation or suspension of registration. The Department of Consumer and Business Services may revoke or suspend a registration upon the department's own motion or upon complaint by an aggrieved individual if the:

(1) Camp is no longer in compliance with the provisions of ORS 658.715 to 658.850 or any rules adopted thereunder;

(2) Conditions under which the registration was accepted have changed or no longer exist;

(3) Information supplied by the operator or applicant regarding the farmworker camp included any material misrepresentation, false statement or willful concealment in the registration or in any procedure in the application process; or

(4) The department finds that the camp fails to comply with the requirements of ORS chapter 654 and the regulations adopted thereunder. [1989 c.962 s.15; 1995 c.500 s.6]

658.790 Vacation of camp; substitute lodging; standards. (1) If any government agency authorized to enforce building, health or safety standards orders a camp vacated because the camp is not habitable, the camp operator shall provide lodging, without charge, that meets the health and safety standards of the Department of Consumer and Business Services, for seven days or until the camp is made habitable, whichever is less.

(2) The provisions of subsection (1) of this section do not apply if the department determines that the cause of closure was beyond the control of the camp operator.

(3) In addition to other remedies provided by law, the department shall enforce the provisions of subsection (1) of this section. [1989 c.962 s.17; 1997 c.27 s.1]

658.805 Denial of right to court action in certain cases; injunction; attorney fees. (1) Except to appeal from an act or determination of the Commissioner of the Bureau of Labor and Industries or the Department of Consumer and Business Services, no person operating a farmworker camp, as defined in ORS 658.705, is entitled to demand, receive or accept any fee directly or indirectly or maintain any suit or action in the courts of this state involving the farmworker camp, without alleging and proving that the person was registered or indorsed to operate a farmworker camp.

(2) The commissioner, Director of the Department of Consumer and Business Services or any local governmental agency may bring suit in any court of competent jurisdiction to enjoin any person from violating any of the provisions of ORS 658.705 to 658.850, or rules adopted pursuant thereto, and from committing future violations.

(3) Any aggrieved person may bring suit in any court of competent jurisdiction to enjoin any person violating ORS 658.715 (1) or 658.755 (2)(a) from violating any of the provisions of ORS 658.705 to 658.850, or rules adopted pursuant thereto, and from committing future violations.

(4) In actions brought pursuant to this section, the court may award to the prevailing party costs and disbursements and a reasonable attorney fee. In addition, if damages are found, the amount of damages recoverable from a farmworker camp operator who is subject to suit pursuant to subsection (3) of this section who violates ORS 658.705 to 658.850 is actual damages or $500, whichever is greater. [1989 c.962 s.18; 1991 c.67 s.171; 1995 c.500 s.7]

MISCELLANEOUS

658.810 Fees. Fees required for farmworker camp indorsements shall be established under ORS 658.413. [1989 c.962 s.5a; 1995 c.500 s.8; 1999 c.399 s.8]

658.815 Disposition of other moneys. All moneys other than fees described in ORS 658.413 received by the commissioner under ORS 658.715 to 658.850 shall be credited to the General Fund. [1989 c.962 s.12; 1991 c.67 s.172; 1999 c.399 s.9]

658.820 Rules; proceedings. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules necessary for the administration of ORS 658.705 to 658.850.

(2) All rules adopted under ORS 658.715 to 658.850 shall be issued in compliance with ORS 183.310 to 183.410.

(3) All proceedings relating to the issuance, revocation, suspension, renewal or refusal to renew an indorsement to act as a farmworker camp operator shall be conducted under ORS 183.310 to 183.497. [1989 c.962 s.13; 1991 c.67 s.173]

658.825 Determination of violation of other provisions required. The Commissioner of the Bureau of Labor and Industries shall not revoke, suspend or refuse to renew or reissue an indorsement under ORS 658.740 or any rule adopted thereunder, or assess penalties under ORS 658.850 for violations of ORS chapter 654 or any rule adopted thereunder unless the Department of Consumer and Business Services has determined that the operator has failed to comply with ORS chapter 654 or any rules adopted thereunder. [1989 c.962 s.19; 1995 c.500 s.9]

658.827 Department to report violations. In pursuing its duties under ORS chapter 654, the Department of Consumer and Business Services shall report to the Bureau of Labor and Industries any violation of this chapter observed by department staff. [1989 c.962 s.16]

658.830 Interagency coordination agreement. The Department of Consumer and Business Services and the Commissioner of the Bureau of Labor and Industries shall adopt an interagency agreement to coordinate the application of all laws the department and the commissioner are charged with administering with respect to farm labor camps. [1989 c.164 s.15]

Note: 658.830 was added to and made a part of 658.705 to 658.850 by legislative action but was not added to any other series therein. See Preface to Oregon Revised Statutes for further explanation.

658.850 Civil penalties. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $2,000 for each violation of any provision of ORS 658.715 to 658.850.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) The commissioner may suspend a penalty issued under ORS 658.705 to 658.850 if the deficiency is corrected within 15 days of the notice of violation. [1989 c.962 s.10; 1991 c.67 s.175; 1991 c.734 s.62]

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