Chapter 656

1961 REPLACEMENT PART

Workmen's Compensation

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DEFINITIONS, PREAMBLE AND APPLICATION

656.002 Definitions for ORS 656.002 to 656.590. As used in ORS 656.002 to 656.590 and 656.990, unless the context requires otherwise:

(1) "Beneficiary" means an injured workman, and the husband, wife, child or dependent of a workman, who is entitled to receive payments under ORS 656.002 to 656.590; provided, that a husband or wife of an injured workman living in a state of abandonment for more than one year at the time of the injury or subsequently is not a beneficiary. A wife who has lived separate and apart from her husband for a period of two years and who has not during that time, received or attempted by process of law to collect funds for her support or maintenance, is deemed living in a state of abandonment.

(2) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child toward whom the workman stands in loco parentis, an illegitimate child and a stepchild, if such stepchild was, at the time of the injury, a member of the workman's family and substantially dependent upon him for support.

(3) "Commission" means the State Industrial Accident Commission.

(4) "Dependent" means any of the following-named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower or child under the age of 18 years: Invalid child over the age of 18 years, 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 workman. 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."

(5) "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.

(6) "Engineering work" means any work of construction, improvement or alteration or repair of steam, water power, telegraph, telephone or electric plants or lines, or of railroads, street railroads, logging railroads or interurban railroads not then engaged in interstate commerce, or of streets, highways, sewers, harbors, docks or canals.

(7) "Factory" means any undertaking in which the business of working at commodities is carried on with power-driven machinery, either in the manufacture, repair or change thereof, and includes the premises, yards and plants of the employer.

(8) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

(9) "Mill" means any plant, premises, room or place where machinery is used for any process of manufacturing, changing, altering or repairing any article or commodity for sale or gain, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers.

(10) "Mine" means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined either on the surface or underground.

(11) "Payroll" means a record of wages payable to workmen for their services and shall include vacation pay, bonus pay, commissions, value of exchange labor, amounts payable under profit sharing agreements and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

(12) "Person" includes partnerships, joint ventures, associations and corporations.

(13) "Rejection" means an election not to contribute to the Industrial Accident Fund

(14) "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction.

(15) "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 the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. If a workman is not employed at a fixed wage, the commission may establish a minimum wage at which such workman shall be carried upon the payroll of the employer for the purpose of determining the contribution of the employer.

(16) "Workman" means any person who engages to furnish his 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. This definition is further modified by ORS 656.124.

(17) "Workshop" means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale any article or part of any article, machine or thing, over which plant, yard, premises, room or place the employer of the person working therein has control.

(18) "Doctor" or "physician" means a person duly licensed to practice one or more of the healing arts in this state within the limits of the license of the licentiate.

(19) An injury is accidental if the result is an accident, whether or not due to accidental means

[Amended by 1957 c 718 §1, 1959 c 448 §1]

656.004 Preamble to workmen's compensation law. The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the state involves the injury of large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workmen, a great and unnecessary cost is now incurred in litigation which cost is divided between the workmen, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the state and its taxpayers are subjected to a heavy burden in providing care and support for such injured workmen and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the state, be more fairly distributed as provided in ORS 656.002 to 656.590.

656.006 Effect on employers' liability law. ORS 656.002 to 656.590 do not abrogate the rights of the employe under the present employers' liability law, in all cases where the employe, under ORS 656.002 to 656.590 is given the right to bring suit against his employer for an injury.

656.008 Extension of laws relating to workmen's 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 workmen's compensation and the duties and powers of the State Industrial Accident Commission 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.

656.010 to 656.020 [Reserved for expansion]

EMPLOYERS COVERED; LIABILITY OF EMPLOYER REJECTING COVERAGE

656.022 Employers engaged in hazardous occupations as subject to workmen's compensation law. (1) All persons engaged as employers in any of the hazardous occupations specified in ORS 656.082 to 656.086 shall be subject to ORS 656.002 to 656.590; provided, that any such employer may be relieved of certain of the obligations imposed by those statutes and shall lose the benefits conferred by those statutes by filing with the commission written notice of an election not to be subject thereto in any manner specified in those statutes.

(2) Where an employer is engaged in a hazardous occupation, as defined in ORS 656.082 to 656.086, and is also engaged in another separate occupation or other separate occupations not so defined as hazardous, he shall not be subject to ORS 656.002 to 656.590 as to the separate nonhazardous occupations, nor shall his workmen wholly engaged in such separate nonhazardous occupations be subject thereto except by an election as authorized by ORS 656 034.

(3) Employers who are engaged in an occupation partly hazardous and partly nonhazardous come under ORS 656.002 to 656.590

as if the occupation were wholly hazardous.

(4) It is the purpose of this section that an occupation and all work incidental thereto and all workmen engaged therein shall be wholly subject to or wholly outside the provisions of ORS 656.002 to 656.590.

656.024 Election of employer engaged in hazardous occupation not to contribute; liability of employer filing rejection. Before becoming engaged as an employer in any hazardous occupation defined by ORS 656.082 to 656.086 and 656.002, the employer may file with the commission a rejection and thereupon shall be relieved from all obligations to contribute to the Industrial Accident Fund. All rejections of record and hereafter filed apply to all occupations, including nonhazardous, in which the employer engages. The rejecting employer shall be entitled to none of the benefits of ORS 656.002 to 656.590. If the occupation is hazardous the employer shall be liable for injuries to or death of his workmen, which are occasioned by his negligence, default or wrongful act as if such statutes had not been passed. In any action brought against such an employer on account of an injury sustained by his workman, it shall be 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 workman.

(2) The negligence of the injured workman, other than his wilful act committed for the purpose of sustaining the injury, contributed to the accident

(3) The injured workman had knowledge of the danger or assumed the risk which resulted in his injury

[Amended by 1959 c 448 §2]

656.026 Employers engaged in hazardous occupations automatically covered until they give notice of rejection; effective date of rejection and liability of employer. Any employer engaged in a hazardous occupation defined by ORS 656.082 to 656.086, who does not give to the commission written notice of his rejection under ORS 656.024 is subject to ORS 656.002 to 656.590 until and including the following June 30, and thereafter until and including June 30 of each succeeding year, unless, before June 1, 1959, or before June 1 of any succeeding year, his rejection is filed with the commission, whereupon, from and including the succeeding July 1, the status of the employer giving such notice shall be that resulting from the giving of the notice provided for in ORS 656 024

[Amended by 1957 c 440 §1, 1959 c 448 §3]

656.028 Recall of rejection; effective date. An employer who has filed a rejection may at any time recall such rejection by filing written notice with the commission of his election to become subject to ORS 656.002 to 656 590. Upon such election being filed it shall be effective and the employer shall be and continue in all respects subject to such statutes

[Amended by 1959 c 448 §4]

656.030 [Repealed by 1959 c 448 §14]

656.032 Public bodies may not reject benefits; exceptions. If the state or any state department, county, incorporated city or town, school district, irrigation district, or political subdivision or municipal corporation of the state or any county engages as an employer in any occupation, it may not reject the provisions and benefits of ORS 656.002 to 656.590 and shall pay to the Industrial Accident Fund the payments required of employers on all workmen in all occupations regardless of whether the occupation is classified as hazardous; provided, that this section does not apply to cities having a population of more than 100,000 which have provided equivalent compensation by ordinance or charter

[Amended by 1959 c 451 §1]

656.034 Employers not otherwise subject may elect to be subject to workmen's compensation law. Any employer, not otherwise subject to ORS 656.002 to 656.590, shall be subject thereto, shall be entitled to the protection thereof and his workmen shall be entitled to all the benefits thereof if the employer files a notice in writing with the commission of his election to contribute to the Industrial Accident Fund on that occupation and pays the registration fee as provided by ORS 656.504. The election shall automatically cancel any rejection of record filed pursuant to ORS 656.024 or 656.026. The employer forthwith shall display, in a conspicuous manner about his works and in a sufficient number of places reasonably to inform his workmen of the fact, printed notices furnished by the commission stating that he has elected to contribute to the fund.

[Amended by 1957 c 441 §1; 1959 c 448 §5]

656.036 Cancellation of election under ORS 656.034 by employer or commission. (1) If any employer, subject to ORS 656 002 to 656.590 for a nonhazardous occupation, abandons that nonhazardous occupation or changes his place of business without giving written notice thereof to the commission within 30 days after such change, or fails to pay the annual fee as provided by ORS 656.504, within 30 days after due date, the election under ORS 656.034 is deemed canceled

(2) If an employer, subject to ORS 656.002 to 656.590 for a nonhazardous occupation, files written notice of his intention to cancel his election, the election is deemed canceled at 12 midnight on the day of filing the notice with the commission.

(3) The election of an employer to contribute to the Industrial Accident Fund upon a nonhazardous occupation is deemed canceled at the time the employer becomes in default, as provided in ORS 656.560.

(4) The election of an employer to contribute to the Industrial Accident Fund for a nonhazardous occupation shall be canceled when a notice filed in accordance with ORS 656.024 or 656.026 becomes effective.

(5) Every employer whose notice of election to contribute to the Industrial Accident Fund is canceled shall forthwith remove all notices that he has elected to contribute to the fund.

[Amended by 1957 c 441 §2, 1959 c 448 §6]

656.038 Participation of railroad companies as to hazardous occupations other than the maintenance and operation of a railroad. If any railroad company operating as a common carrier of freight or passengers, including street railway companies operating as common carriers, is engaged in one or more of the hazardous occupations defined in ORS 656.082 to 656.086, other than the maintenance and operation of a railroad, such railroad company may, by filing a written statement to that effect with the commission, elect to be subject to ORS 656.002 to 656.590 as to all such hazardous occupations other than the maintenance and operation of the railroad, and not subject thereto as to such railroad maintenance and operation.

656.040 Employers operating aircraft for hire. Any employer engaged in the business of operating aircraft for hire may elect to contribute to the Industrial Accident Fund in the manner provided in ORS 656.034, if the employer has a fixed place of business and conducts an operation in this state, but not otherwise

[Amended by 1959 c 448 §7]

656.042 Employers in interstate trucking. Any employer engaged in the transportation, in interstate commerce, of goods for hire by motor vehicle, may elect to contribute to the Industrial Accident Fund in the manner provided in ORS 656.034, if the employer has a fixed place of business in this state, but not otherwise.

[Amended by 1959 c 448 §8]

656.044 Employers subject to Federal Longshoremen's and Harbor Workers' Compensation Act may be insured against their liability thereunder by commission. (1) The commission may insure employers against their liability for compensation under that certain Act of the Congress, approved March 4, 1927, known as the Longshoremen's and Harbor Workers' Compensation Act or any Act amendatory or supplementary thereto or in lieu thereof, as fully as any private insurance carrier, if such employers are subject to the workmen's compensation law of this state.

(2) The commission may, from time to time, fix rates of contributions to be paid by such employers. These rates shall be based upon the hazard of the occupation and the accident experience of the employers. The commission may require a minimum annual premium from any such employer. The commission may collect contributions from employers insured under this section in the manner provided by ORS 656.002 to 656.590 for the collection of contributions from other employers who may be subject to the workmen's compensation law of this state.

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

(4) The commission 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.

656.046 to 656.050 [Reserved for expansion]

656.052 Employers engaged in hazardous occupations to file statement with commission giving address and description of occupation; effect of failure to do so. (1) No person subject to ORS 656.002 to 656.590 shall engage as an employer in any of the

hazardous occupations enumerated in ORS 656.084, unless and until the employer has filed with the commission a statement in writing, giving the name and address of the employer and describing the hazardous occupation in which the employer is engaged or proposes to engage.

(2) If the name or address of an employer is changed, the employer shall, within 30 days of such change, file an amended statement setting forth the correct name and address of the employer.

(3) If an employer who has given the notice required in this section as to any occupation, or who is a contributor to the Industrial Accident Fund upon a nonhazardous occupation, engages in a hazardous occupation incidental to such occupation, the notice required in this section need not be given. If an employer engages in a hazardous occupation separate from such occupation, the notice required in this section shall be given.

(4) No employer shall engage in a hazardous occupation if the statement required by this section has not been filed.

(5) Any employer who engages in a hazardous occupation, as defined in ORS 656.082 to 656.086, in violation of this section, is not entitled to the benefits or protection of ORS 656.002 to 656.590.

[Amended by 1957 c 574 §2]

656.054 Liability of employer for injuries arising prior to filing of the notice under ORS 656.052. (1) If a workman of an employer engaged in a hazardous occupation receives an accidental injury prior to the time the employer has filed with the commission a notice of engaging in a hazardous occupation, as required by ORS 656.052, and such workman or other beneficiaries file a valid claim for compensation with the commission on account of said injury, the cost of such claim to the Industrial Accident Fund but not less than $100 nor in excess of $1,000 shall be a claim against the employer. The commission shall recover such claim from the employer for the benefit of the Industrial Accident Fund.

(2) If a workman appeals from an order of the commission in any claim in which the alleged accident occurred before the employer filed with the commission the notice required by ORS 656.052, the commission forthwith shall serve upon the employer a copy of the complaint and a demand that the employer intervene in the appeal as a party defendant. Such service shall be made in the manner provided by law for the service of summons. The employer may intervene in the appeal as a party defendant within 20 days after the service of the complaint or within such further time as may be allowed by order of the court. If the employer does not intervene in the appeal, the court shall have jurisdiction of such employer to the same extent as if he had intervened.

[Amended by 1959 c 448 §9]

656.056 Employers in hazardous occupations to display notice of participation or nonparticipation; unauthorized posting prohibited. (1) All employers engaged in hazardous occupations as defined in ORS 656.082 to 656.086 shall display in a conspicuous manner about their works, and in a sufficient number of places reasonably to inform their workmen of the fact, printed notices furnished by the commission stating that they are or are not, as the case may be, contributors to the Industrial Accident Fund.

(2) If the election of an employer to contribute to the Industrial Accident Fund has been canceled or if an employer has elected not to contribute to the Industrial Accident Fund or if an employer has failed to give the notice required by ORS 656.052, the employer shall no longer post or permit to remain on or about his place of business or premises any notice that he is a contributor to the Industrial Accident Fund.

656.058 to 656.080 [Reserved for expansion]

WHAT ARE HAZARDOUS OCCUPATIONS

656.082 When workmen are deemed to be employed in a hazardous occupation. If an employer is engaged in any of the occupations defined by ORS 656.084 or 656.086 as hazardous, the workmen employed by him in such occupations are deemed to be employed in a hazardous occupation but not otherwise.

656.084 List of hazardous occupations. The hazardous occupations to which ORS 656.002 to 656.590 are applicable are as follows:

(1) When power-driven machinery is used, the operation of printing, electrotyping, engraving, photoengraving, lithographing or stereotyping plants, laundries, irrigation works, grain warehouses, bowling alleys,

shops for repair of cycles, boats and motors, factories, mills or workshops.

(2) The operation of gravel, sand or coal plants or bunkers; flour, feed or chop mills; creosoting or wood-treating works; garbage works; wood saws, stockyards, tanneries, grain elevators, rock crushers, briquet plants, ice plants, cold storage plants, canneries, milk condenseries, creameries, foundries, blast furnaces, mines, gas works, water works, reduction works, breweries, distilleries, wineries, wharves, docks, smelters, powder works, service stations, garages, auto wrecking yards, junk and scrap dealers, restaurants, lumber loading, tree surgery, fence erection, well digging, machinery installation and dismantling, woodcutting, window cleaning, mechanical amusements, forest fire fighting, exterior building cleaning, garbage collectors or quarries.

(3) Logging, lumbering or shipbuilding operations; engineering works, land clearing, well drilling, stevedoring or longshoring.

(4) When not engaged in interstate commerce, the operation of railroads, logging railroads, street railroads, or interurban railroads.

(5) The construction, repair, alteration, painting, moving or demolition of buildings, bridges or other structures.

(6) The operation of telegraph, telephone, electric light or power plants or lines, public or commercial steam heating or power plants.

(7) When not engaged in interstate commerce, the transportation of persons or property for hire by motor vehicles. [Amended by 1959 c 448 §10]

656.086 Hearing of commission for purpose of declaring occupation hazardous; limitation on authority. (1) After notice and hearing as provided in this section, the commission, if it finds an occupation or work to be hazardous, may declare such occupation or work to be hazardous under ORS 656.002 to 656.590.

(2) The commission may, upon its own motion or upon motion of any interested person, fix the time and place for a hearing to determine whether any occupation or work is hazardous, and shall cause notice of such hearing to be published once at least 10 days before the hearing, in two newspapers of general circulation in the state. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any order issued by the commission after the hearing has been had.

(3) Any person affected shall have the right to appear and be heard at any such hearing.

(4) The commission may not declare an occupation hazardous which specifically is defined as nonhazardous in ORS 656.002 to 656.590.

656.088 Volunteer personnel as being engaged in a nonhazardous occupation; procedure for obtaining benefits of workmen's compensation. (1) All municipal firemen, policemen, ambulance drivers, rescue boat operators and deputy sheriffs, other than those employed full time or substitutes therefor, shall, for the purpose of ORS 656.002 to 656.590, be known as volunteer personnel and shall be considered engaged in a nonhazardous occupation.

(2) The county, city or other municipality employing volunteer personnel as specified in subsection (1) of this section may elect to contribute to the Industrial Accident Fund on such volunteer personnel as provided in ORS 656.034, after first filing an application describing the work to be performed by such personnel.

(3) Upon receiving written application from a county, city or municipality to contribute to the Industrial Accident Fund on volunteer firemen, policemen, ambulance drivers, rescue boat operators or deputy sheriffs, the commission shall fix a rate of contribution and also a wage upon which contributions shall be made. If the county, city or municipality then elects to contribute to the Industrial Accident Fund on such volunteer personnel, they shall be considered for the purposes of ORS 656.002 to 656.590 only, to be employed at the wage so fixed.

(4) The county, city or municipality shall furnish the commission with a list of the names of those employed as volunteer personnel and shall notify the commission of any changes therein. Only those persons whose names appear upon such list prior to their personal injury by accident are entitled to the benefits of ORS 656.002 to 656.590 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, provided the duties being performed are among those described on the application of the municipality or county; provided further, that such duties are also

among those required of similar full time paid employes
[Amended by 1955 c 320 §1]

656.090 Farming and work incidental thereto as a nonhazardous occupation. (1) Farming, and all work incidental thereto, is a nonhazardous occupation and is subject to ORS 656.002 to 656.590 only through compliance with ORS 656.034.

(2) Farming means the cultivating of land, dairying, horticultural or viticultural labor, stock or poultry raising, and operations incidental thereto and, when incidental thereto, threshing, clover hulling, hay baling, ensilage cutting, land clearing, wood sawing, wood cutting, operation of tractors, fruit driers, feed mills and other work done with power-driven machinery, whether or not such operations are carried on by the owner of the farm, or the person operating it.

(3) Logging, sawmilling or the construction, alteration, repairing, moving or wrecking of a building upon a farm other than a residence is not considered incidental to farming if performed by workmen other than those regularly employed as farm help upon such farm.

(4) None of the occupations enumerated in ORS 656.084 are considered hazardous when conducted by a farmer incidental to his farming operation.
[Amended by 1953 c 673 §2, 1959 c 448 §11]

656.092 to 656.120 [Reserved for expansion]

WORKMEN COVERED

656.122 Who are workmen generally. If an employer is subject to ORS 656.002 to 656.590 as to any occupation, all workmen employed by him in such occupation are subject to ORS 656.002 to 656.590 as workmen, but not otherwise.

656.124 Status of workmen employed by contractor. (1) If any person engaged in a business and subject to ORS 656.002 to 656.590 as an employer, in the course of such business, lets a contract involving the performance of labor, and such labor is performed by the person to whom the contract was let with the assistance of others, all persons engaged in the performance of the contract are deemed workmen of the person letting the contract for the purposes of this section unless the person to whom the contract is let is regularly engaged in a business involving the occupation covered by the contract and has currently on file and in effect with the commission a statement or notice made under ORS 656.024, 656.034, 656.052 or subsection (2) of this section. Any person having currently on file and in effect with the commission such a notice or statement may qualify as a workman only in accordance with the provisions of ORS 656.128.

(2) If the person to whom the contract is let performs the work without the assistance of others, he is subject to ORS 656.002 to 656.590 as a workman of the person letting the contract unless he and the person letting the contract jointly file with the commission a notice stating that the services rendered under the contract are rendered as those of an independent contractor.

(3) The provisions of this section apply only if the occupation covered by the contract is a hazardous occupation as defined in ORS 656 082 to 656.086
[Amended by 1957 c 554 §1]

656.126 Coverage of workmen injured while temporarily absent from this state; coverage of workmen from another state injured while temporarily present in this state; agreements between states relating to conflicts of jurisdiction. (1) If a workman employed in this state and subject to ORS 656.002 to 656.590 temporarily leaves the state incidental to that employment and receives an accidental injury arising out of and in the course of his employment, he, or his beneficiaries if the injury results in death, is entitled to the benefits of ORS 656.002 to 656.590 as though he were injured within this state.

(2) Any workman from another state and his employer in that other state are exempted from the provisions of ORS 656.002 to 656.590 while that workman is temporarily within this state doing work for his employer:

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

(b) If the extraterritorial provisions of ORS 656.002 to 656.590 are recognized in that other state; and

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

The benefits under the workmen's 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 workman while working for that employer in this state.

(3) A certificate from the duly authorized officer of the Industrial Accident Commission or similar department of another state certifying that the employer of the other state is insured therein and has provided extraterritorial coverage insuring his workmen while working within this state is prima facie evidence that the employer carries that workmen's 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 State Industrial Accident Commission shall have authority to enter into agreements with the workmen's 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 workmen 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.

[Amended by 1955 c.723 §1; 1957 c 474 §1]

656.128 Individual employers or partners as workmen. (1) Any person who is an individual employer, or a member of a partnership subject to ORS 656.002 to 656.590 as an employer, may make written application to the commission to become entitled as a workman to the compensation benefits thereof. Thereupon, the commission shall accept such application and fix a rate of contribution and a monthly wage at which such person shall be carried on the payroll as a workman.

(2) When the application is accepted and the rate and wage are fixed, such person may file the notice in writing with the commission of his election to contribute to the Industrial Accident Fund at the rate and upon the wage so fixed, and thereupon he shall be subject to the provisions and entitled to the benefits of ORS 656.002 to 656.590.

(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 becoming entitled to the benefits of ORS 656.002 to 656.590 as a workman under this section shall pay 60 cents per month as a workman's contribution and the employer shall contribute to the Industrial Accident Fund at the rate and upon the wage so fixed, and shall be entitled to a reduction of such contribution, as provided by ORS 656.510. However, if such person is injured while the employer is in default, after a written demand, as provided in ORS 656.560, he is not entitled to receive any compensation whatsoever under ORS 656.002 to 656.590 and such default shall automatically cancel the election of such person to become entitled as a workman to the benefits of ORS 656.002 to 656.590.

(5) Any person subject to ORS 656.002 to 656.590 as a workman as provided in this section may cancel such election by giving to the commission written notice. The cancellation shall become effective at 12 midnight on the day of filing the notice with the commission.

[Amended by 1957 c 440 §2, 1959 c.448 §12]

656.130 [Amended by 1957 c.574 §3; repealed by 1959 c.448 §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 ORS 656.002 to 656.590. No other person shall have any cause of action or right to compensation for an injury to such minor workman, except as expressly provided in ORS 656.002 to 656.590, but in the event of a lump-sum payment becoming due under ORS 656.002 to 656.590 to such minor workman, 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 ORS 656.002 to 656.590 in good faith employed a minor under the age permitted by law, believing him 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 ORS 656.002 to 656.590. The commission may determine conclusively the good faith of such employer unless the employer had in his possession 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 he 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 commission finds that the employer did not employ such minor in good faith, the minor is entitled to the benefits of ORS 656.002 to 656.590, but the employer shall pay to the Industrial Accident 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 §13]

656.134 to 656.150 [Reserved for expansion]

COMPENSABLE INJURIES

656.152 What are compensable injuries; right to compensation as in lieu of claim against employer. (1) Every workman subject to ORS 656.002 to 656.590 while employed by an employer subject to ORS 656.002 to 656.590 who, while so employed, sustains an accidental injury, or accidental injury to prosthetic appliances arising out of and in the course of his employment and resulting in his disability, or the beneficiaries of such workman, if the injury results in death, are entitled to receive from the Industrial Accident Fund the sums specified in ORS 656.002 to 656.590. The repair or replacement of prosthetic appliances so injured shall be provided subject to the approval of the commission.

(2) The right to receive such sums is in lieu of all claims against his employer on account of such injury or death, except as otherwise specifically provided in ORS 656.002 to 656.590.

[Amended by 1957 c 718 §2]

656.154 Injury due to negligence or wrong of a person not in the same employ as injured workman; remedy against such person. (1) If the injury to a workman is due to the negligence or wrong of a third person not in the same employ, the injured workman, or if death results from the injury, his widow, children or other dependents, as the case may be, may elect to seek a remedy against such third person. However, no action shall be brought against any such third person if he or his workman causing the injury was, at the time of the injury, on premises over which he had joint supervision and control with the employer of the injured workman and was an employer subject to ORS 656.002 to 656.590.

(2) As used in this section, "premises" means the place where the employer, or his workman causing the injury, and the employer of the injured workman, are engaged in the furtherance of a common enterprise or the accomplishment of the same or related purposes in operation.

(3) No person engaged in pickup or delivery of any goods, wares or merchandise to or from the premises of any employer other than his own shall be deemed to have joint supervision or control over the premises of a third party employer.

[Amended by 1959 c 504 §1]

656.156 Injuries resulting from the deliberate intention of the injured workman or the employer. (1) If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the Industrial Accident Fund.

(2) If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman may take under ORS 656.002 to 656.590, 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.

656.158 to 656.200 [Reserved for expansion]

COMPENSATION AND MEDICAL BENEFITS

656.202 Compensable injuries to be paid for according to schedules; law in force at time of accident controls. (1) If any workman, while subject to ORS 656.002 to 656.590 and in the service of an employer who is thus bound to contribute to the Industrial Accident Fund sustains an accidental injury arising out of and in the course of his employment, he or his beneficiaries, if the injury

results in death, shall receive compensation as provided in ORS 656.202 to 656 206 and 656.208 to 656.234.

(2) Except as otherwise provided by ORS 656.456, payment of benefits for injuries or deaths under the workmen's compensation law shall be continued as authorized, and in the amounts provided for, by the workmen's compensation law in force at the time the injury giving rise to the right to compensation occurred

[Amended by 1953 c 669 §4, 1953 c 670 §4, 1957 c 718 §3, 1959 c 450 §1]

656.204 Payments in case of death from accidental injury. If death results from the accidental injury, payments shall be made as follows:

(1) The commission shall pay the cost of burial not to exceed $400 in any case.

(2) If the workman is survived by a widow or invalid widower, $90 per month shall be paid to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs. The surviving spouse also shall be paid $25 per month for each child of the deceased until such child becomes 18 years of age; provided, if there are more than two such children, the surviving spouse shall be paid $20 per month for each child in excess of two; provided that in no event shall the total benefits provided for in this subsection exceed $210 per month. Upon remarriage, a widow shall be paid $1,500 as final payment of her claim, but the monthly payments for each child shall continue as before.

(3) If a workman leaves a child under the age of 18 years, by a divorced wife and the child is in the custody of the divorced wife, $25 per month shall be paid for each such child until he becomes 18 years of age; provided, if there are more than two such children the surviving spouse shall be paid $20 per month for each child in excess of two; provided that in no event shall the total benefits provided for in this subsection exceed $120 per month.

(4) If the workman leaves neither wife nor husband, but a child under the age of 18 years, other than one described in subsection (3) of this section, $70 per month shall be paid to each such child until he becomes 18 years of age.

(5) If the workman leaves neither widow, widower nor child under the age of 18 years, but leaves a dependent, 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 workman during the 12 months next preceding the occurrence of the accidental injury, but the total payments to all dependents in any case shall not exceed $100 per month. If a dependent is under the age of 18 years at the time of the accidental injury, the payment to such 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.

(6) If the workman is under the age of 21 years at the time of his death and leaves neither widow, widower, nor child, the parents of the workman shall be paid $75 per month from his death until the time at which he would have arrived at the age of 21 years. Such parents, if dependents at the time of the accidental injury, are entitled thereafter to compensation as dependents under subsection (5) of this section.

(7) If a surviving spouse receiving monthly payments dies, leaving a child under the age of 18 years, and entitled to compensation on account of the death of the workman, a monthly payment of $70 shall be made to each such child until he becomes 18 years of age.

(8) If a child is an invalid at the time of reaching the age of 18 years, the payment to him shall continue while he remains an invalid. If a person is entitled to payment because he is an invalid, such payment shall terminate when he ceases to be an invalid

(9) If, at the time of the death of a workman, his child or dependent is between 17 and 18 years of age, such child or dependent shall receive the payment provided in this section for a period of one year from the date of the death

[Amended by 1957 c 453 §1]

656.206 Permanent total disability; definition; payments. (1) "Permanent total disability" means the loss, including preexisting disability, of both feet or hands, or one foot and one hand, total loss of eyesight or such paralysis or other condition permanently incapacitating the workman from regularly performing any work at a gainful and suitable occupation.

(2) When permanent total disability results from the injury, the workman shall receive monthly during the period of that disability:

(a) If unmarried at the time of the injury, $125.

(b) If the workman has a wife or invalid husband, but no child under the age of 18 years, $155. If the husband is not an invalid, the monthly payment shall be reduced by $30.

(c) If the workman has a wife or husband and a child or children under the age of 18 years, the monthly payment provided in paragraph (b) of this subsection shall be increased by $25 for each child until it reaches 18 years of age. If the workman is a widow, widower, divorced, or other single person and has a child or children under the age of 18 years, the monthly payment provided in paragraph (a) of this subsection shall be increased by $35 for each child until it reaches that age, except:

(A) If there are more than two children under the age of 18 years of any of the classes of workmen specified in this paragraph, the monthly payment shall be increased by the additional sum of $20 for each child in excess of two, but in no event may the total benefits provided for in this paragraph exceed $275 per month.

(B) If any child to which the provisions of this section apply is an invalid at the time it reaches 18 years of age, the monthly payment provided for children under that age shall continue for that invalid child as long as it is an invalid and dependent upon the workman for support

[Amended by 1953 c 670 §4; 1955 c 553 §1, 1957 c 452 §1, 1959 c 517 §1]

656.207 Additional benefits during period of permanent total disability. In addition to the compensation provided for in ORS 656.206, the commission, during the period of permanent total disability, shall on the advice of a physician, as defined in ORS 656.002, provide to a workman who has been permanently, totally disabled such medical and surgical attendance, medicine and drugs, hospital accommodations, prosthetic appliances, and braces and supports as may be necessary in the treatment of the disabilities resulting from the accidental injury giving rise to the claim or the aggravation thereof.

[1959 c 589 §2]

656.208 Payments in case of death during period of permanent total disability. (1) If the injured workman dies during the period of permanent total disability, whatever the cause of death, leaving:

(a) A widow who was his wife either at the time of the injury causing the disability or within two years thereafter;

(b) An invalid widower who was her husband either at the time of the injury causing the disability or within two years thereafter; or

(c) Any children under the age of 18 years,

the surviving widow or invalid widower shall receive $90 per month until death or remarriage, to be increased $25 a month for each child until it reaches the age of 18 years.

(2) If there are more than two children under the age of 18 years to which the provisions of this section apply, the surviving spouse shall be paid $20 for each child in excess of two; provided that in no event may the total benefits exceed $210 per month.

(3) If any child to which the provisions of this section apply is or shall be:

(a) Without father or mother, that child shall receive $70 per month until it reaches the age of 18 years.

(b) An invalid when it reaches the age of 18 years, the monthly payment provided for children under that age shall continue for that child as long as it is an invalid and unable to support itself.

(4) If any widow or invalid husband 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.

(5) Claim shall be filed within the time limited for fatal claims by ORS 656.274.

[Amended by 1957 c 453 §2, 1959 c 450 §2]

656.210 Temporary total disability payments. When the total disability is only temporary, the workman shall receive during the period of that total disability:

(1) If unmarried at the time of the injury, or, if married, having a husband not an invalid, compensation equal to 50 percent of wages, but not more than $140 per month.

(2) If the workman has a wife or invalid husband, but no child under the age of 18 years, compensation equal to 60 percent of wages, but not more than $170 per month.

(3) If the workman has a wife or invalid husband and a child under the age of 18 years, 66⅔ percent of wages, but not more than $195 per month.

(4) If the workman has a wife or invalid husband and two children under the age of

18 years, 66⅔ percent of wages, but not more than $220 per month.

(5) If the workman has a wife or invalid husband and three children under the age of 18 years, 66⅔ percent of wages, but not more than $240 per month.

(6) If the workman has a wife or invalid husband and four children under the age of 18 years, 70 percent of wages, but not more than $260 per month.

(7) If the workman has a wife or invalid husband and five children under the age of 18 years, 73 percent of wages, but not more than $280 per month.

(8) If the workman has a wife or invalid husband and six or more children under the age of 18 years, 75 percent of wages, but not more than $290 per month.

(9) If the workman is a widow, widower, divorced or other single person, or a wife who was a deserted spouse at the time of the injury and has one or more children under the age of 18 years, 66⅔ percent of wages, but not more than $155 per month, and on behalf of each child, 10 percent of wages, but not more than $25 per month for the first two children and $20 per month for each additional child under 18 years of age, but in no event shall the benefits provided for in this subsection exceed either $290 per month or the monthly wage of the workman. The commission, in its discretion, may require proof of any such desertion or any continuation thereof and adjust payments on account of any such child or children in accordance with other applicable provisions of ORS 656.002 to 656.590.

(10) In no event shall the rate of compensation for temporary total disability be less than $130 per month for an unmarried workman, and $160 per month for a workman having a wife or invalid husband, unless the actual wages are less than these amounts, in which event compensation equal to wages shall be paid.

(11) If any child to which the provisions of this section apply is an invalid at the time it reaches 18 years of age, the monthly payment provided for children under that age shall continue for that invalid child as long as it is an invalid and dependent upon the workman for support.

(12) For the purpose of this section, the monthly wage of workmen shall be ascertained by multiplying the daily wage the workman was receiving at the time of his injury:

(a) By 22, if the workman was employed five days a week or less.

(b) By 26, if the workman was employed six days a week.

(c) By 30, if the workman was regularly employed seven days a week.

[Amended by 1955 c 713 §1, 1957 c 452 §2, 1959 c 517 §2]

656.212 Temporary partial disability payments. When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for temporary total disability which his loss of earning power at any kind of work bears to his earning power existing at the time of the occurrence of the injury.

[Amended by 1953 c 672 §2]

656.214 Permanent partial disability; definition; schedule of payments. (1) 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 workman shall receive $46.50 for each degree stated against such disability as follows:

(a) For the loss by separation of one arm at or above the elbow joint, 192 degrees, or for the permanent and complete loss of the use of one arm, 145 degrees.

(b) For the loss by separation of one forearm at or above the wrist joint, or complete loss by separation of all five digits, 150 degrees, or for the permanent and complete loss of the use of one forearm, 121 degrees.

(c) For the loss by separation of one leg, at or above the knee joint, 150 degrees, or for the permanent and complete loss of the use of one leg, 110 degrees.

(d) For the loss by separation of one foot at or above the ankle joint, 135 degrees, or for the permanent and complete loss of the use of one foot, 100 degrees.

(e) For the loss by separation of a great toe, 18 degrees; of any other toe, four degrees.

(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 law, 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 section, 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 law, 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 by separation of a thumb, 48 degrees.

(k) For the loss by separation of a first finger, 24 degrees; of a second finger, 22 degrees; of a third finger, 10 degrees; of a fourth finger, 6 degrees.

(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. The loss by separation or function of any digit shall be rated as specified with or without the loss of the metacarpal bone and adjacent soft tissue. A proportionate loss of use may be allowed for an uninjured finger or thumb where there has been a loss of effective opposition.

(4) In all other cases of injury resulting in permanent partial disability, the number of degrees of disability shall be computed by determining the disabling effect of such injury as compared to the loss of use of any member named in the schedule in this section, not exceeding, however, 145 degrees. [Amended by 1953 c 669 §4, 1955 c.716 §1, 1957 c 449 §1]

656.216 Permanent partial disability; method of payment; effect of prior receipt of temporary disability payments. (1) Compensation for permanent partial disability shall be paid at the same rate per month as provided for compensation for temporary total disability. In no case shall such payments be less than $100 per month.

(2) If a workman, 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 he has received on account of such temporary disability.

656.218 Continuance of permanent partial disability payments to survivors; burial allowance. (1) In case of the death of a workman receiving monthly payments on account of permanent partial disability, such payments shall continue for the period during which the workman, if surviving, would have been entitled thereto.

(2) The payments 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.

(3) This section does not entitle any person to double payments on account of the

death of a workman 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 §3]

656.220 Compensation for hernia. A workman, entitled to compensation for hernia when operated upon, is entitled to receive from the Industrial Accident Fund, under ORS 656.210, payment for temporary total disability for a period of not more than 60 days. If such workman refuses forthwith to submit to an operation, neither he nor his beneficiaries are entitled to any benefits whatsoever under ORS 656.002 to 656.590; provided, that in claims where the commission deems it inadvisable for the claimant to have an operation because of age or physical condition, the commission shall make an award of 10 degrees in full and final settlement of the claim.
[Amended by 1957 c 718 §4]

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

656.224 [Amended by 1953 c 674 §13, repealed by 1959 c 517 §5]

656.226 Wife and children of common-law marriage 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 such man, and children are living as a result of that relation, the woman and the children are entitled to compensation under ORS 656.002 to 656.590 the same as if the man and woman had been legally married.

656.228 Payments directly to beneficiary or custodian. If compensation is payable for the benefit of a beneficiary other than the injured workman, the commission 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.
[Amended by 1957 c 477 §1]

656.230 Lump-sum payments. (1) If, after an award by the commission, a beneficiary has been a nonresident of this state for a period of two years, the commission may, in its discretion, convert any payments thereafter to become due to such beneficiary into a lump-sum payment, not in any case exceeding $4,000, by paying a sum equal to three-fourths of the present value of such payments, estimated as to duration by the life expectancy of the beneficiary in case of death or total permanent disability and computed according to the actuarial practices in the insurance field as recommended by the State Insurance Commissioner and on the basis of interest at the rate utilized in subsection (1) of ORS 656.456, or, with the consent of the beneficiary, for a lesser sum.

(2) If a workman has been awarded compensation for permanent partial disability, the commission may, in its discretion, pay to him in a lump sum an amount not exceeding one-half of the present value of the unpaid award, computed as provided in this section. Thereupon, all subsequent monthly instalments shall be reduced proportionately.

(3) In all cases where the award for permanent partial disability does not exceed 24 degrees, the commission may, in its discretion, pay to the injured workman in a lump sum an amount equal to the present worth of such award.
[Amended by 1957 c 574 §4, 1959 c 449 §1]

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 commission, 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 commission 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 commission may, in lieu of awarding such beneficiary compensation in the amount provided by ORS 656.002 to 656.590, 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 commission, maintain him in a like degree of comfort as a beneficiary of

the same class residing in this state and receiving the full compensation authorized by ORS 656.002 to 656.590. The commission 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 and is exempt from process. No moneys payable under ORS 656.002 to 656.590 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.

656.236 to 656.240 [Reserved for expansion]

656.242 Furnishing first aid, medical and hospital care to injured workman. (1) The commission shall cause to be provided, under uniform rules and regulations, first aid to workmen who are entitled to benefits under ORS 656.002 to 656.590, together with drugs and medicines on a prescription, first aid supplies and transportation, medical and surgical attendance and hospital accommodations for injured workmen and to contract therefor in its discretion.

(2) The commission may, in its discretion, authorize employers to furnish or provide, at the expense of the commission and upon terms fixed by it, such supplies, transportation, attendance and accommodations, and may, for the purpose of experience rating only, charge to the account of such employers the average cost of such services as shown by the experience of employers in a similar industry or occupation who do not come under this section. All such transportation, attendance and accommodations shall be at all times subject to the supervision and control of the commission. The commission shall not in any one case approve the expenditure of more than $100 for hospital accommodations, $100 for surgical and medical service and $50 for transportation, medicine, X-ray plates or prints and other services or supplies, without the approval of the commission therefor having been secured prior to the time of the furnishing of such additional services, supplies and transportation.

[Amended by 1959 c 589 §1]

656.244 Furnishing of prosthetic appliances. In the case of an injury resulting in the loss by any workman entitled to the benefits of ORS 656.002 to 656.590 of a part of his body that can be replaced to advantage with a prosthetic device or appliance, the commission shall supply the injured person with such prosthetic device or appliance of the best quality. The injured workman may select such device or appliance, subject to the approval of the commission. Thereafter, the commission shall repair or replace such prosthetic device or appliance as necessitated by ordinary wear, if in the opinion of the commission the repair or replacement is reasonably required.

[Amended by 1959 c 378 §1]

656.246 Duty of commission to restore injured workman to condition of a self-supporting, able-bodied workman. (1) One purpose of ORS 656.002 to 656.590 is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied workman, and final settlement shall not be made in any case until the commission is satisfied that such restoration is probably as complete as it can be made. Except as limited by ORS 656.002 to 656.590, the commission may expend money from the Industrial Accident Fund to accomplish this purpose in each case.

(2) The amount so spent shall not be charged against the compensation allowed by ORS 656.002 to 656.590 to the injured workman, but an itemized statement thereof shall be rendered to him each month, when requested, and a duplicate to his employer.

656.248 Commission to establish standard contracts and uniform rates for medical care. (1) The commission shall make and establish standard forms for such contracts as it may make or authorize under ORS 656.242.

(2) The commission, upon its own motion or upon request, shall establish rates to be paid under such contracts. This rate shall be uniform as to all industries of the same class and shall be adequate to insure at all times to the injured workmen the standard of services and care intended by ORS

656.002 to 656.590. The commission may readjust, increase or decrease such rates.

656.250 to 656.270 [Reserved for expansion]

PROCEDURE FOR OBTAINING COMPENSATION

656.272 Contents of application for compensation. (1) A workman who is entitled to compensation under ORS 656.002 to 656.590 shall file with the commission his application for such compensation on forms furnished by the commission. The application shall contain the information required by the commission. The physician who attends the workman shall file with the commission a report on forms furnished by the commission.

(2) If death results from an injury, the persons entitled to compensation under ORS 656.002 to 656.590 shall make application therefor to the commission. This application must be accompanied by proof of death and proof of relationship showing the persons to be entitled to compensation under ORS 656.002 to 656.590, certificate of attending physician, if any, and such other proof as may be required by the rules of the commission.

656.274 Time within which applications must be filed. (1) No application shall be valid or claim thereunder enforceable in nonfatal cases unless such claim is filed within three months after the date upon which the accident occurred, but the commission may, in its discretion, upon a sufficient showing being made, permit the filing of a claim in a nonfatal case within one year of the time the accident occurred.

(2) If a workman, as a result of an accidental injury, has been rendered mentally incapable of filing a claim, a claim may be filed by the workman within 60 days after the removal of such mental incapacity or during such incapacity on behalf of the workman, by his parents, spouse, guardian, employer or physician. Any such claim must be filed within one year from date of the accidental injury.

(3) In any fatal case a claim may be filed within one year after the date upon which the accident resulting in death occurred.

(4) If a workman who has filed a claim for compensation within the time permitted by this section dies as the result of the accidental injury but before the commission has entered an order terminating compensation for temporary total disability, his widow or other beneficiaries may file a claim within 60 days after the death of the workman.

(5) If a workman, during his lifetime, has filed a claim for which he has been paid compensation, which claim has been closed for payment of compensation for temporary total disability, dies after the expiration of one year from the date of the accidental injury and as a result of the accidental injury the commission may, in its discretion, permit the filing of a fatal claim within 60 days after such death.

(6) This section does not limit the filing of a claim in fatal cases to less than one year after the date upon which the fatal accident occurred.

656.276 Application for increased compensation in case of aggravated injuries. (1) If subsequent to the last award or arrangement of compensation by the commission there has been an aggravation of the disability resulting from an accidental injury, the injured workman may file with the commission an application for increased compensation. This application shall set forth sufficient facts to show an aggravation in such disability and the degree thereof.

(2) An application for increased compensation for aggravation must be filed within two years from the date of the first final award of compensation to the claimant, or if there has been no such award, within two years of the order allowing the claim.

(3) If an application for increased compensation on account of aggravation is filed with the commission, the commission shall act thereon within 30 days from the date of filing, but may, by notifying the applicant, extend the time for entering an order, not to exceed 30 days. If such order is not entered by the commission within the time specified in this section, the application is deemed denied.

(4) No increase or rearrangement in compensation shall be operative for any period prior to the application therefor.

656.278 Jurisdiction to alter awards; appeals from award or denial of medical or hospital care. (1) The power and jurisdiction of the commission shall be continuing, and it may, upon its own motion, from time

to time modify, change or terminate its former findings, orders or awards if in its opinion such action is justified.

(2) There is no right of appeal from any order or award made by the commission on its own motion. An appeal may be taken from any order of the commission which diminishes or terminates a former award, or which terminates or denies medical or hospital care, if such award was not entered by the commission on its own motion. An order or award made by the commission during the time within which the claimant may invoke the jurisdiction of the commission as a matter of right is not an order or award, as the case may be, made by the commission on its own motion. [Amended by 1955 c 718 §1, 1957 c 559 §1]

656.280 Authority of commission to require workman to have medical examination; effect of refusal to submit to examination or treatment or of committing injurious practices. (1) Any workman entitled to receive compensation under ORS 656.002 to 656.590 is required, if requested by the commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until the examination has taken place, and no compensation shall be payable during or for account of such period.

(2) For any period of time during which any workman commits unsanitary or injurious practices which in the judgment of the commission tend to either imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as the commission deems reasonably essential to promote his recovery, his right to compensation shall be suspended and no payment shall be made for such period. The commission may reduce the period during which such workman would otherwise be entitled to compensation to such an extent as it determines his disability has been increased by such refusal.

656.282 Jurisdiction of commission to hear and determine questions; service of orders on claimants. (1) The commission may hear and determine all questions within its jurisdiction.

(2) Whenever the commission has made any order, decision or award pertaining to any claim, it shall promptly serve the claimant with a copy thereof by mail, which shall be addressed to the claimant's last known address as shown by the records of the commission.

(3) The copy of any such order, decision or award which is served upon the claimant shall have printed in bold-face type upon the front thereof a notice in substantially the following form:

NOTICE TO CLAIMANT—If you are dissatisfied with this order, decision or award, you may file with the commission an application for rehearing within 60 days from the date on which it was mailed to you. If you do apply for a rehearing and the commission takes no action upon your application within 60 days from the time you filed it, you may appeal to the courts within 90 days from the time you filed it If this order, decision or award is the result of a rehearing, you may appeal to the courts within 30 days after it was mailed to you. FAILURE TO APPLY OR APPEAL WITHIN THESE TIME LIMITS WILL RESULT IN THE LOSS OF YOUR RIGHT TO APPEAL UNDER THE WORKMEN'S COMPENSATION LAW.

[Amended by 1957 c 455 §1]

656.284 Application for rehearing as prerequisite to appeal to courts; procedure on rehearing. (1) Any claimant aggrieved by any order, decision or award under ORS 656.282, including, but not limited to, a denial of further medical or hospital care, must, before he appeals to the courts, file with the commission an application for rehearing within 60 days from the day on which the copy of such order, decision or award was mailed to the claimant.

(2) The application shall set forth in full detail the grounds upon which the claimant considers such order, decision or award is unjust or unlawful, and shall include every issue to be considered by the commission. The application must contain a general statement of the facts upon which the claimant relies in support thereof.

(3) The claimant shall be deemed to have waived all objections, irregularities and illegalities concerning the matter upon which the rehearing is sought other than those specifically set forth in such application for rehearing. The application may be amended after filing but not later than the date of rehearing.

(4) If the commission, in its opinion, has previously fully considered all matters raised by the application it may deny the application and confirm its previous decision or award or, if the evidence on file with the commission sustains the applicant's contention, it may allow the relief asked in the application. Otherwise it shall order a rehearing to decide the issues raised.

(5) If a rehearing is granted, the commission shall consider all facts, including those arising since making the order, decision or award involved and enter such order as the facts and law warrant. In every such case where a rehearing is held and a transcript of the testimony is taken, the claimant shall be entitled to a copy of the same upon payment to the commission for the cost of the transcript.

(6) An application for rehearing is deemed denied by the commission unless it has been acted upon by final order within 60 days from the date of filing; provided, that the commission may, in its discretion, extend the time within which it may act upon the application, not exceeding 30 days without claimant's approval or 60 days with claimant's approval.

[Amended by 1953 c 671 §2, 1955 c 718 §2, 1959 c 450 §4]

656.286 Appeals to circuit court; when filed; venue. (1) Within 30 days after a copy of the final order of the commission upon the application for rehearing has been mailed or within 30 days after rehearing is deemed denied under ORS 656.284, the claimant may appeal to the circuit court for the county in which the accident occurred or, if the accident occurred outside of this state, to the circuit court of the last county of this state through which the workman passed in leaving this state. If the only question of fact in such appeal is the amount of compensation payable to the plaintiff, the appeal may be filed in the county in which the plaintiff resides.

(2) If an appeal is filed in the wrong county the court shall enter an order transferring it to the proper county, if both parties do not consent that it be tried in the county where filed. The court may change the place of trial as in other cases.

656.288 Procedure on appeal. (1) Upon such appeal the plaintiff may raise only such issues of law or fact as were properly included in his application for rehearing.

(2) The appeal shall be perfected by filing with the clerk of the court a complaint, as provided in civil actions at law, and by serving a copy thereof by registered mail on the commission. The commission shall, within 20 days after receipt of such copy, answer, demur or move against the complaint.

(3) The case thereafter shall proceed as other civil cases in the court; provided, that either party thereto may demand a jury trial upon any question of fact. Such appeals shall have precedence over all other civil cases.

(4) The commission may, or within 10 days after demand by plaintiff shall, file with the court a certified copy of the application for compensation, any application for rearrangement of compensation, application for rehearing, findings, orders, awards or decisions of the commission, which, upon being so filed, shall become a part of the records in such case but shall not be received in evidence unless admissible in the absence of this subsection.

(5) Before or during the trial, the court may order the plaintiff to submit to a medical examination.

[Amended by 1957 c 288 §1]

656.290 Authority of circuit court on appeals. (1) If the court determines that the commission has acted within its power and has correctly construed the law and facts, the decision of the commission shall be confirmed; otherwise, it shall be reversed or modified. However, in case of any trial of fact by a jury, the court shall be bound by the decision of the jury as to the question of fact submitted to it.

(2) In case of a modification or reversal, the circuit court shall refer the decision back to the commission with an order directing it to fix the compensation and, when appropriate, to provide medical and hospital care, in accordance with the findings made by the court; provided, such award shall be in accordance with the schedule of compensation set forth in ORS 656.202 to 656.206 and 656.208 to 656.232.

(3) The cost of such proceedings shall be taxed against the unsuccessful party.

[Amended by 1955 c 718 §3]

656.292 Appeals from circuit court. (1) Appeals may be taken from the judgment of the circuit court as in other cases.

(2) In case of an appeal by the commission from an adverse decision of the circuit court, if the judgment of the circuit court is affirmed, the claimant shall be allowed attorneys' fees, to be fixed by the court, in addition to the compensation.

656.294 When acceptance of compensation precludes appeal. A claimant may accept and cash any check given in payment of any award or compensation without affecting his right to appeal, except that the right of appeal from any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on his own application. This section shall not be construed as a waiver of the necessity of complying with ORS 656.282 to 656.292.

656.296 to 656.310 [Reserved for expansion]

ACTIONS BY WORKMAN AGAINST THIRD PARTY, DELINQUENT EMPLOYER OR NONPARTICIPATING JOINT EMPLOYER

656.312 Election to recover damages when right of action exists against third person or delinquent employer. If a workman of an employer engaged in a hazardous occupation in violation of ORS 656.052, or of an employer in default, as provided in ORS 656.560, receives an accidental injury in the course of his employment, or if a workman receives an accidental injury due to the negligence or wrong of a third person, entitling him under ORS 656.154 to seek a remedy against such third person, such workman or, if death results from the injury, the other beneficiaries shall elect whether to recover damages from such employer or third person. If a workman 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.
[Amended by 1953 c 428 §2]

656.314 Payment of compensation notwithstanding existence of cause of action; lien of commission on cause of action for compensation paid. (1) The workman or his beneficiaries, as the case may be, shall be paid the benefits provided by ORS 656.002 to 656.590 in the same manner and to the same extent as if no right of action existed against the employer or third party, until the amount of benefits that the workman or beneficiaries are entitled to under ORS 656.002 to 656.590 can be determined and until damages are recovered from such employer or third party.

(2) The commission has a lien against the cause of action in the amount of compensation paid to the workman or his beneficiaries, including the cost of first aid and other medical, surgical and hospital service, which lien shall be preferred to all claims except the cost of recovering such damages.

656.316 Authority of commission to compel election and prompt action against third person. (1) The commission may require the workman or other beneficiaries or the legal representative of a deceased workman to exercise the right of election provided in ORS 656.312 by serving a written demand by registered mail or by personal service upon such workman, beneficiaries or legal representative.

(2) Unless such election is made within 20 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 commission, the workman, beneficiaries or legal representative is deemed to have assigned his cause of action to the commission.
[Amended by 1953 c 428 §2]

656.318 Compromise of cause of action void without approval of commission. Any compromise by the workman or other beneficiaries or the legal representative of the deceased workman of any right of action against an employer or third party is void unless made with the written approval of the commission.

656.320 Election not to proceed against employer or third person as an assignment of cause of action to commission; disposition of damages recovered by commission. (1) An election made pursuant to ORS 656.312 not to proceed against the employer or third person operates as an assignment to the commission, for the benefit of the Industrial Accident Fund, of the cause of action, if any, of the beneficiaries and of the legal representative of the deceased workman, against the employer or third person, and the commission may bring action against such employer or third person in the name of the injured workman or other beneficiaries.

(2) Any sum recovered by the commission in excess of the expenses incurred in making such recovery and the amount expended by the commission 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 workman or other beneficiaries may be entitled under ORS

656.002 to 656.590, shall be paid such workman or other beneficiaries.
[Amended by 1953 c 428 §2]

656.322 Election to recover damages from employer or third person; service of notice on commission; filing notice of commission's lien; disposition of damages recovered; settlement of third party cases. (1) If the workman or his beneficiaries elect to recover damages from the employer or third person, notice of such election shall be given the commission by personal service or by registered mail. The commission 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 commission 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 commission, as provided in this section notwithstanding ORS 656.314. The proceeds of any damages recovered from an employer or third person by the workman or beneficiaries shall be subject to a lien of the commission for its share of the proceeds as set forth in this section and 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 minimum contingency fees as established by the Oregon State Bar for such actions.

(b) The workman or his beneficiaries shall receive 40 percent of the balance of such recovery.

(c) The commission shall be paid and retain the balance of the recovery.

(2) The amount retained by the workman or his beneficiaries shall be in addition to the compensation or other benefits to which such workman or beneficiaries are entitled under ORS 656.002 to 656.590.

(3) A claimant may settle any third party case with the approval of the commission, in which event the commission is authorized to accept such a share of the proceeds as in its discretion may be just and proper.
[Amended by 1953 c 428 §2, 1955 c 656 §1, 1959 c 644 §1]

656.324 Actions against employer or third party; priority; admissibility in evidence of right to or receipt of workmen's compensation benefits; method of challenge of right to bring third party action; defenses withdrawn from employer. (1) Any action brought against a third party or employer, as provided in ORS 656.002 to 656.590, shall have precedence over all other civil cases.

(2) In any third party action brought pursuant to ORS 656.002 to 656.590, the fact that the injured workman or his beneficiaries are entitled to or have received benefits under ORS 656.002 to 656.590 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.

(4) Defenses withdrawn by ORS 656.024 from employers electing not to contribute under ORS 656.002 to 656.590 shall not be admissible in an action brought against an employer under ORS 656.312 to 656.322.

656.326 Filing of claim for compensation by workman of joint employers as an assignment to the commission of any causes of action against nonparticipating joint employer and his insurer. (1) If a workman is employed jointly by two or more employers, one or more of whom are not subject to ORS 656.002 to 656.590, the filing of a claim by such workman or other beneficiary for compensation under ORS 656.002 to 656.590 constitutes an assignment to the commission of all rights and benefits or causes of action against any of his employers not subject to such statutes or under any insurance policy secured by such employers, for the protection of such workman in the event of injury.

(2) If a joint employer not subject to ORS 656.002 to 656.590 secured a policy of insurance for the payment of benefits or compensation to a workman, in case of injury in the course of his employment, and such workman elects to take compensation under ORS 656.002 to 656.590, the commission may recover from the insurer that portion of the insurer's liability which the amount of wages paid by the employer bears to the entire wages of the injured workman.

(3) If a cause of action against a joint employer is assigned to the commission under this section, the commission may enforce the claim in the manner provided in ORS 656.312 to 656.324 for the enforcement of claims against negligent third parties.

656.328 to 656.400 [Reserved for expansion]

THE STATE INDUSTRIAL ACCIDENT COMMISSION; PERSONNEL; GENERAL DUTIES; RECORDS AND REPORTS

656.402 The State Industrial Accident Commission; members; qualifications; term; vacancies. (1) The State Industrial Accident Commission, composed of three commissioners appointed by the Governor, is created. Not more than two commissioners shall belong to one political party and inasmuch as the duties to be performed by the commissioners vitally concern the employers, the employes, as well as the whole people, of the state, it is declared to be the purpose of ORS 656.002 to 656.590 that persons be appointed as commissioners who fairly represent the interests of all concerned in the administration of ORS 656.002 to 656.590.

(2) The commissioners shall be appointed for respective terms expiring on the first Monday in January in the years 1915, 1916 and 1917 and thereafter a commissioner shall be appointed for a term of four years on the first Monday in December of each year next preceding the expiration of the term of a commissioner. Each commissioner shall hold office until his successor is appointed and qualified.

(3) Any vacancy on the commission shall be filled by appointment by the Governor.

656.404 [Repealed by 1959 c 449 §5]

656.406 Removal of commissioners. (1) The Governor may at any time remove any commissioner appointed by him for inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give the commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than 10 days thereafter. Such hearing shall be open to the public.

(2) If the commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner and his 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.

656.408 Commissioners not to engage in political or business activity; oath and bond required. (1) No commissioner 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 his entire time to the duties of his office.

(2) Before entering on the duties of his office, each commissioner shall take and subscribe to an oath or affirmation:

(a) That he will support the Constitutions of the United States and of this state and faithfully and honestly discharge the duties of the office of commissioner.

(b) That he holds no other office or position of profit.

(c) That he pursues and will pursue while such commissioner no other calling or vocation.

(d) That he holds and while such commissioner will hold, no 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 commissioners shall also, before entering upon the duties of his 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 his office. The bond, when so executed and approved, shall be filed in the office of the Secretary of State.

656.410 Powers and duties of commission generally. (1) The Industrial Accident Commission in its name may sue and be sued, and shall have a seal which shall bear the name of the commission.

(2) The commission hereby is charged with the administration of ORS 656.002 to 656.590 and to that end any of its commissioners, or assistants authorized thereto by the commission, shall have power:

(a) To hold sessions at any place within the state.

(b) To administer oaths.

(c) To issue and serve by the commission's representatives, or by any sheriff, subpenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony. The commission may require the attendance and testimony of employers, their officers and representatives before any hearing of the commission, and the production by employers of books, records, papers and documents without the payment or tender of witness fees on account of such attendance.

(d) Generally to provide for the taking

of testimony and for the recording of proceedings held in accordance with ORS 656.002 to 656.590.

656.412 Duty of circuit courts to compel obedience to and punish disobedience of commission's subpenas or lawful inquiries. The circuit court for any county, or the judge of such court, on application of the commission, or any of its commissioners or assistants, shall compel obedience to subpenas issued and served pursuant to ORS 656.410 and shall punish disobedience of any such subpena or any refusal to testify at any authorized session or to answer any lawful inquiry of any of the commissioners or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpena issued from the court is punished.

656.414 Meetings; chairman; quorum. (1) Biennially, the commissioners shall meet at the office of the commission, which shall be maintained at the state capitol, and shall elect a chairman, who shall serve for two years and until his successor is chosen.

(2) A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any two of the commissioners shall be deemed the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

656.416 Assistants and other personnel; employment; oath; powers. (1) The commission may employ and terminate the employment of such assistants, experts and clerks as may be required in the administration of ORS 656.002 to 656.590.

(2) Each assistant employed in accordance with subsection (1) of this section shall qualify by taking the same oath as a commissioner, which shall be indorsed upon and filed with his certificate of appointment in the office of the Secretary of State. When so qualified he may perform such duties as may be prescribed by the commission, including the performance of any administrative functions of the commission.

(3) The commission is authorized to employ an attorney to represent it in making collections of delinquent contributions to the Industrial Accident Fund and the interest and penalties accruing, and to conduct on behalf of said commission any and all suits, actions and proceedings whatsoever for such purpose. Such attorney or the commission may call upon the district attorney of any county in which such proceedings are instituted or pending for any service or assistance in connection therewith. The commission shall fix the compensation of such attorney, which shall be paid from the Industrial Accident Fund, as the salaries of other employes of said commission are paid. The Attorney General shall not be required to advise upon or perform any service in, or in any way connected with, the collection of such moneys.

656.418 Rules and regulations; reports of employers; employers payroll form. (1) The commission may make and declare all rules and regulations which are reasonably required in the administration of ORS 656.002 to 656.590.

(2) The commission shall require the making of reports of accidents, reports of amounts paid or agreed to be paid as wages by employers to workmen and may prescribe and require the use of the payroll form by employers which carries such specific information as is deemed necessary by the commission.

656.420 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 ORS 656.002 to 656.590 shall always be open to inspection by the commission or its agent for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary in the administration of said statutes.

(2) Every employer subject to ORS 656.002 to 656 590 shall keep a true and accurate record of the number of his workmen and the wages paid by him, the occupations at which and the number of days or parts of days any of his workmen are employed, and shall furnish to the commission, upon request, a sworn statement of the same.

(3) Any employer who wilfully misrepresents to the commission the amount of his payroll upon which the amount of his contribution to the Industrial Accident Fund is based shall be liable to the commission

in a sum equal to 10 times the amount of the difference between the amount of such contribution computed according to the representation thereof by such employer and the amount for which the employer is liable under ORS 656.002 to 656.590 according to a correct computation of his payroll. Such liability shall be enforced in a civil action in the name of the commission 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 commission or any of its representatives presenting written authority from the commission, or a refusal on the part of an employer to keep a payroll in accordance with this section, when demanded by the commission, subjects the offending employer to a penalty of $100 for each offense, to be collected by a civil action in the name of the commission and paid into the Industrial Accident Fund.

656.422 Duty of employers to report accidents; civil penalty; contents of reports. Whenever any accident occurs to any workman, the employer shall within five days, after knowledge of same, report such accident and the injury resulting therefrom to the commission. Failure to do so subjects the offending employer to a penalty of $100 for each offense, to be collected in a civil action in the name of the commission and paid into the Industrial Accident Fund. Such reports shall state:

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

(2) Whether the accident arose out of or in the course of the injured person's employment.

(3) Any other matters the rules and regulations of the commission may prescribe.

[Amended by 1959 c 450 §5]

656.424 Commission to report violations of safety statutes to prosecuting attorney. The Industrial Accident Commission shall investigate all cases where they have reason to believe that employers subject to ORS 656.002 to 656.590 have failed to install or maintain any safety appliance, device or safeguard required by statute. In all cases of failure on the part of any employer to comply with such safety statute, the commission shall report the facts to the prosecuting attorney for the district in which the violation of law occurred and request the prosecution of the offending employer.

656.426 Records, except payrolls and confidential reports, are public. The records of the commission, excepting payrolls and confidential reports, shall be open to public inspection.

656.428 Administrative expenses; authority for; limitation. The commission may incur such expenses as it determines are reasonably necessary in the administration of ORS 656.002 to 656.590, but the total expense of administration of the commission for any fiscal year ending June 30 shall not exceed 18 percent of the average annual receipts to the Industrial Accident Fund for the five-year period ending the preceding June 30. That 18 percent shall be apportioned as follows:

(1) Not to exceed 13 percent for general administrative purposes.

(2) Not to exceed five percent for the purpose of administering ORS 654.005 to 654.100

[Amended by 1957 c 440 §3]

656.430 to 656.450 [Reserved for expansion]

FUNDS; SOURCE; INVESTMENT; DISBURSEMENT

656.452 Industrial Accident Fund; source of fund; expenditures. (1) The Industrial Accident Fund hereby is created. This fund shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of general funds of the state.

(2) All moneys received by the commission under ORS 656.002 to 656.590, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund.

(3) All payments authorized by ORS 656.002 to 656.590, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

656.454 Trust fund status of Industrial Accident Fund. (1) The Industrial Accident Fund is a trust fund exclusively for the uses and purposes declared in ORS 656.002 to 656.590.

(2) 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.

(3) This section does not limit the investment of $600,000 of the Industrial Accident Fund for building purposes

656.456 Segregated Fund; Retroactive Reserve. (1) For every case of injury resulting in death or permanent total disability or in permanent partial disability exceeding 24 degrees, the commission forthwith shall notify the State Treasurer in writing of the amount required to equal, together with the anticipated interest increment, the present worth of the instalments payable on account of that injury. The number of instalments 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 State Insurance Commissioner and, in the case of permanent partial disability, according to the schedule in ORS 656 214 and 656 216. The State Treasurer shall transfer from the Industrial Fund to a fund to be known as the Segregated Fund the amount so specified by the commission.

(2) All moneys in the Segregated Fund shall be invested by the State Treasurer in the class of securities authorized in ORS 291.606, 291.608, 291.610 and 291.612 to 291.620. The earnings shall be credited to that fund.

(3) The Segregated Fund shall be charged with the payment of the instalments on claims for which moneys have been transferred to that fund.

(4) The State Treasurer shall keep an accurate account of the earnings of and payments from the Segregated Fund and may borrow from the Industrial Fund to meet payments pending conversion into cash of any security, and in such case shall repay the temporary loan out of the cash realized from the security. Any deficiency in the Segregated Fund shall be made good out of, and any balance or overplus shall revert to, the Industrial Fund.

(5) The commission biennially shall recompute the liability of the Segregated Fund and notify the State Treasurer of the proper amount to be transferred from one fund to the other

(6) (a) When payments are made by the commission to the State Treasurer pursuant to ORS 656.452, the commission shall notify the State Treasurer the portion of the payment represented by receipts under ORS 656.506, and the treasurer shall forthwith transfer one-half of all of those receipts from the Industrial Fund to a special Retroactive Reserve within the Segregated Fund.

(b) Within the limit of funds available in the Retroactive Reserve any claimant or beneficiary rated on or after April 1, 1959, as eligible to receive compensation under the provisions of the workmen's compensation law in effect prior to July 1, 1955, shall receive that compensation at the schedule in effect on July 1, 1955, to be increased by six percent, except that no payment to any claimant or beneficiary shall be greater than the amount payable under the schedule in effect on July 1, 1957, for death from accidental injury, temporary total disability, permanent total disability, or death during permanent total disability, and any claimant eligible to receive an award of compensation for permanent partial disability on or after April 1, 1959, because of an injury sustained prior to July 1, 1955, shall receive that award as provided by the schedule of payments in effect on July 1, 1955. Any payment provided by this paragraph in excess of payment specified in the law effective on the date of the injury shall be charged to the Retroactive Reserve.

(c) Any amount remaining in the Retroactive Reserve after paying the increased benefits provided in paragraph (b) of this section shall be retained for use in making other or future retroactive increases.

(d) Except as payments are increased by the provisions of this subsection, payment of benefits for injuries or deaths under the provisions of the workmen's compensation law shall be continued as authorized and in the amounts provided for by the workmen's compensation law in force at the time the injury giving rise to the right to compensation occurred.

[Amended by 1955 c 323 §2, 1957 c 63 §1, 1959 c 178 §1, 1961 c 697 §1]

656.458 Major Injury Reserve. (1) The commission may set aside a reserve of not less than $500,000 in the Industrial Accident Fund to be known as the Major Injury Reserve which shall be maintained as provided in this section.

(2) All claim costs not chargeable to the experience of an employer under ORS 656.516 shall be charged against the Major Injury Reserve.

(3) The commission shall, from time to time, if the reserve is reduced to a sum below $500,000, set aside from other moneys in the Industrial Accident Fund such sums as, in the judgment of the commission, are

necessary and sufficient to cover the withdrawals therefrom by reason of charges against the reserve as provided in subsection (2) of this section.

656.460 Second Injury Reserve. (1) The commission is authorized to set aside and maintain a reserve in the Industrial Accident Fund in the sum of not less than $250,000 to be known as the Second Injury Reserve to be used for the payment of compensation for the injuries referred to in subsection (2) of ORS 656.516.

(2) There shall be set aside in the Second Injury Reserve monthly, two and one-half percent of the total monthly receipts of the State Industrial Accident Commission from all sources. Whenever the unexpended balance of the Second Injury Reserve is greater than $200,000, the commission shall temporarily either reduce the percentage of total monthly receipts to be set aside in the Second Injury Reserve or suspend such setting aside

[Amended by 1953 c 674 §13, 1959 c 517 §3]

656.462 Catastrophe Reserve. (1) The commission is authorized to set aside and maintain a reserve to be known as the Catastrophe Reserve.

(2) The commission shall set aside in such reserve monthly one and one-half percent of the total monthly contributions received from employers and workmen until such time as, in the judgment of the commission, such reserve is sufficiently large to cover the catastrophe hazard. The Catastrophe Reserve shall be maintained at a sum of at least $100,000. The commission temporarily may reduce the percentage of monthly receipts to be transferred to the Catastrophe Reserve, if the moneys in the reserve are sufficient to cover the catastrophe hazard.

(3) A single accident causing the death or permanent total disability of more than one workman of an employer shall be known as a catastrophe. The cost of all claims arising from a catastrophe shall be charged to the Catastrophe Reserve

[Amended by 1953 c 674 §13]

656.464 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 commission 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 ORS 656.002 to 656.590.

(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 commission has no equity.

(3) The Secretary of State shall issue warrants on the Industrial Accident Fund and the Segregated Accident Fund in favor of the commission in the amounts the commission certifies it has expended from the Emergency Fund. These warrants shall be deposited in the Emergency Fund. The certificate of the commission shall be accompanied by a statement of the various payments which have been made by the commission from the Emergency Fund.

[Amended by 1953 c 674 §13, 1957 c 574 §5, 1959 c 449 §2]

656.466 Petty cash funds. The commission may, at its discretion, establish and maintain petty cash funds, not exceeding a total of $5,000 for the purpose of making change, refunding fees and contributions paid in error, the advance of traveling expense to employes and claimants, and paying miscellaneous legal fees and other petty incidental expenses in the administration of the workmen's compensation law.

[Amended by 1953 c 674 §13, 1959 c 449 §3]

656.468 When regular compensation payments may be made from the Major Injury Reserve. If the Industrial Accident Fund becomes exhausted, the commission may authorize payment from the Major Injury Reserve of compensation benefits other than those mentioned in ORS 656.458

[Amended by 1953 c 674 §13]

656.470 [Repealed by 1953 c 674 §13]

656.472 Method of disbursements from Industrial Accident Fund. All disbursements for administrative expenses from the Industrial Accident Fund, except as provided by ORS 656 464, shall be made only upon warrants drawn by the Secretary of State upon vouchers duly approved by the commission

[Amended by 1953 c 674 §13, 1957 c 574 §6, 1959 c 449 §4]

656.474 Liability of State Treasurer concerning funds. The State Treasurer shall be liable on his official bond for the safe

custody of the moneys and securities in the Industrial Accident Fund and Segregated Accident Fund.
[Amended by 1953 c 674 §13]

656.476 to 656.500 [Reserved for expansion]

RATE OF CONTRIBUTION TO THE INDUSTRIAL ACCIDENT FUND BY EMPLOYERS AND WORKMEN

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 Employer to contribute a percentage of his payroll monthly to Industrial Accident Fund; initial registration fee; annual fee. (1) Every employer subject to ORS 656.002 to 656.590 shall pay to the commission on or before the fifteenth day of each month a percentage of his total payroll for the preceding calendar month of workmen subject to ORS 656.002 to 656.590 according to and at the rates promulgated by the commission and shall forward to the commission on or before the fifteenth day of each month a signed statement showing his total payroll for the preceding calendar month, the kind of work performed, the number of men and the number of days worked. Each such employer shall pay an annual fee of $7.50 to the Industrial Accident Fund on or before December 1 of each year for the following calendar year; provided, that each employer who becomes subject to ORS 656.002 to 656 590 on or after January 1, 1958, shall pay a registration fee of $12.50 at the time he first becomes subject thereto. On or before December 1 of the year of registration he shall pay an annual fee of $7.50 for the following calendar year. He shall pay a like annual fee on or before December 1 each year thereafter. These fees shall be in addition to the other contributions which are based upon the employer's payroll

(2) If an employer and his workmen are engaged in two or more occupations for which different rates of contribution are prescribed, the employer shall contribute according to the several rates applicable; except that any workman engaged for the same employer in two or more occupations during any one day shall, for the purpose of determining the employer's rate of contribution, be deemed engaged solely in the occupation taking the higher rate.

(3) No employer shall make a deduction from the wages or salary of any employe to pay any portion of the contribution which the employer is required to make.
[Amended by 1957 c 441 §3, 1959 c 450 §6]

656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of contributions. (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 contributions due on such unreported payroll the commission shall have authority to estimate such payroll and make a demand for contributions thereon.

(2) If the report required and the contributions due thereon are not made within 10 days from the mailing of such demand the employer shall be in default as provided in ORS 656.560, and the commission may have and recover judgment or file liens for such estimated contribution or the actual contribution, whichever is greater.
[1953 c 679 §2]

656.506 Workmen's contribution. Every employer who is required to make payments to the commission under ORS 656.504 shall retain from the moneys earned by those of his workmen who are subject to ORS 656.002 to 656.590 two cents for each day or part of day the workman is employed and pay the money retained to the commission at the time his own payment is due under ORS 656.504. One-half of the money so deducted from workmen's wages shall be placed in the Retroactive Relief Reserve as provided by subsection (6) of ORS 656.456.
[Amended by 1955 c 323 §1]

656.507 Waiver of requirement of filing monthly payroll report and contributions. The commission shall have full authority and discretion, not subject to review, to waive the provisions of ORS 656.504 and 656.506 requiring reports of payrolls and payment of contributions thereon by the fifteenth of each month for the preceding month and to establish other reporting periods and payment due dates of not to exceed 12 months for any employer or class of employers.
[1953 c 679 §1, 1959 c 450 §7]

656.508 Authority of commission to fix rates of contribution for employers. (1) The commission shall classify occupations or industries with respect to their degree of hazard and fix rates of contribution upon each of the occupations or industries suffi-

cient to provide adequate funds to carry out the purposes of the workmen's compensation law and the duties of the commission.

(2) The rates so fixed shall be based upon the degree of hazard, claim costs and contributions, shall be consistent with insurance principles and shall be the lowest consistent with the maintenance of a solvent Industrial Accident Fund.

(3) The commission may annually readjust, increase or decrease the rates of contributions of all employers subject to ORS 656.002 to 656.590. Any such readjustment, increase or decrease shall be made not later than May 20 for the year 1957 and May 1 of each year thereafter and shall become effective July 1 next following, and shall be based upon the hazard, claim costs and contributions of each classification of industry.

[Amended by 1957 c 41 §1, 1957 c 386 §1]

656.510 Reduction in employer's contribution rate for favorable experience rating. (1) "Contributions," as used in this section, includes annual and registration fees required by ORS 656.504, but does not include interest and penalties.

(2) The rate of contribution, for each fiscal year, of an employer who is entitled to an experience rating shall be based on the contributions and fees paid into the Industrial Accident Fund by the employer, not including money retained from workmen's wages, and the experience of the employer during the period the employer has been subject to ORS 656.002 to 656.590, but not more than the five-calendar-year period ending December 31 immediately preceding the fiscal year. The employer contributions paid on January 1, 1958, and thereafter shall be included in the experience rating computation only if payable for a year within the five-year period ending December 31 immediately preceding the fiscal year, and then only if paid on or before January 15 next following the end of the five-year period. The rate of contribution shall be determined as follows:

(a) If the total amount paid out of the Industrial Accident Fund or set apart therefrom, and chargeable to the experience of an employer as provided by ORS 656.002 to 656.590, on account of injuries sustained by the workmen of an employer, together with all costs incidental to such claims, is less than 25 percent of the contribution paid into the fund by the employer, not including moneys retained from the workmen's wages, the rate of contribution of the employer during the following fiscal year shall be reduced by 65 percent of the base rate promulgated by the commission.

(b) Where such amount is 25 percent and less than 30 percent of the contributions, the rate shall be reduced by 60 percent.

(c) Where such amount is 30 percent and less than 35 percent of the contributions, the rate shall be reduced by 55 percent.

(d) Where such amount is 35 percent and less than 40 percent of the contributions, the rate shall be reduced by 50 percent.

(e) Where such amount is 40 percent and less than 45 percent of the contributions, the rate shall be reduced by 40 percent.

(f) Where such amount is 45 percent and less than 50 percent of the contributions, the rate shall be reduced by 35 percent.

(g) Where such amount is 50 percent and less than 55 percent of the contributions, the rate shall be reduced by 25 percent.

(h) Where such amount is 55 percent and less than 60 percent of the contributions, the rate shall be reduced by 20 percent.

(i) Where such amount is 60 percent and less than 65 percent of the contributions, the rate shall be reduced by 15 percent.

(j) Where such amount is 65 percent and less than 70 percent of the contributions, the rate shall be reduced by 10 percent.

(k) Where such amount is 70 percent or more of the contributions, the rate shall be base.

Provided that the 1957 amendments to paragraphs (a) to (k) of this subsection shall become effective July 1, 1958

[Amended by 1957 c 440 §4]

656.512 No reduction for favorable experience rating for employers contributing less than $150 per year. If, during the time for which the experience rating is determined, the contribution of any employer averages less than $150 per calendar year for each calendar year during which the employer operated subject to ORS 656.002 to 656.590, the contribution for such employer for the ensuing fiscal year shall be at base rate.

[Amended by 1957 c 440 §5]

656.514 Who is entitled to experience rating. (1) When an employer has been a contributor to the Industrial Accident Fund for a period of one full calendar year, the

employer is entitled to an experience rating, but no employer is entitled to an experience rating unless he has been a contributor for at least one full calendar year within the preceding five calendar years.

(2) If an employer has neither operated under nor been subject to ORS 656.002 to 656.590 as an employer for a period of five successive full calendar years and again becomes subject thereto as an employer he shall, for the purpose of experience rating, be considered a new employer.

656.516 Allocation of claim costs for the purpose of determining experience rating. (1) In determining the amount of claim costs to be charged to an employer on account of injuries sustained by the workmen of an employer, the total costs of the claim, including all costs incidental to such claim, up to $2,000 shall be charged against the experience of the employer for the purposes of determining his rate of contributions.

(2) On all claims where the cost of the claim, including all costs incidental to such claim, exceeds $2,000, the employer's experience rating shall be charged with 60 percent of the claim costs in excess of $2,000; provided, that with respect to any one claim and all costs incidental to the claim the maximum charge against the experience rating of the employer shall not exceed $11,000. The commission may reduce by not less than 50 percent nor more than 75 percent the maximum charge against the experience rating of any employer for any injury resulting in permanent total disability or death where that resultant disability or death is due to the combined effect of the injury and known substantial preexisting disabilities, and where the preexisting disability if separately evaluated would be the equivalent of not less than 50 percent loss of function of an arm.

(3) For the purpose of determining the experience rating:

(a) The total amount paid out or set aside on account of an injury resulting in fatality or permanent total disability of a workman shall be the maximum provided in subsection (2) of this section.

(b) The entire cost of a catastrophe shall be deemed to be the maximum chargeable for a single injury or death.

(4) If the commission finds that the injury to a workman was due at least partly to the negligence or wrong of another employer or his workman who is also in the course of employment subject to ORS 656.002 to 656.590 and the injury occurred on premises over which the employers involved had joint supervision and control the commission may, for experience rating only, proportion the liability and costs of the claim between the employers.

(5) All claim costs not chargeable to the experience of an employer under this section shall be charged against the Major Injury Reserve

[Amended by 1953 c 674 §13, 1957 c.453 §3, 1959 c.517 §4]

656.518 Reconsideration of rating on change of ownership or employer. To the end that no employer evades the burden imposed by an unfavorable experience, or be denied the benefits of a favorable experience, in all cases where there has been a change in ownership or employer, a change in the operation of a plant or a change of interest of the employer, the commission may determine whether such change justifies a new experience rating or a continuance of the experience rating existing prior to such change. It is the purpose of this section that there shall be no change in experience rating because of change of ownership or employer unless there has been a substantial change in ownership.

[Amended by 1957 c 440 §6]

656.520 Commission to notify employer of its determination of his rate of contribution. The commission shall, on or before May 1 of each year, notify each employer subject to ORS 656.002 to 656.590 of its determination of his rate of contributions for the fiscal year beginning July 1, following such date. The notice shall be mailed to the employer at his last address as shown by the records of the commission.

[Amended by 1957 c 574 §7]

656.522 Review and redetermination of rate of contribution by commission. (1) The rate of contribution as determined by the commission shall be conclusive and binding upon the employer unless, within 30 days after the mailing of the notice required by ORS 656.520, the employer files with the commission an application for review and redetermination of the rate of contribution as determined by the commission, which application shall set forth fully the grounds upon which the employer claims the determination is in error.

(2) The commission shall, within 30 days from the filing of the application for review and redetermination, grant to the employer an opportunity for a fair hearing.

(3) All facts pertaining to the contributions of an employer and all facts pertaining to charges against the experience rating of an employer by reason of injuries sustained by any workman employed by the employer, together with all costs incidental to such claims, shall be relevant and material evidence in any such hearing. However, the employer shall be estopped from denying any representation previously made to the commission with respect to any injured workman or with respect to any matter which such employer could have raised in any proceeding on a claim filed by a workman employed by him at the time of or following an injury resulting in the payment of compensation under ORS 656.002 to 656.590.

(4) The commission shall notify the employer promptly of its decision upon such hearing. Such notice shall be mailed to the employer at his last address as shown by the records of the commission.

656.524 Judicial review of rate determination. (1) The decision made pursuant to ORS 656.522 shall become final unless, within 15 days after the mailing of notice thereof to the employer, a petition for judicial review is filed in the circuit court of the county in which the employer resides or maintains his principal place of business.

(2) The petition for judicial review shall set forth the facts upon which the employer relies, but no evidence is admissible on any issue unless that issue was raised or included in the employer's application for a hearing and redetermination of his rate of contribution.

(3) In any such proceeding the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law.

(4) Such proceedings shall be given precedence over all other civil cases.

(5) An appeal may be taken from the decision of the circuit court to the Supreme Court as in other cases, regardless of the amount in controversy.

656.526 Crediting employer's contribution with proportion of surplus in Industrial Accident Fund. (1) Annually, on July 1, the commission shall determine the total liability existing against the Industrial Accident Fund.

(2) If, after the determination required by subsection (1) of this section, the commission finds the Industrial Accident Fund, aside from the reserves in the Segregated Accident Fund, moneys in the Emergency Fund, the Catastrophe, Second Injury, Major Injury and Rehabilitation Reserves, and in any other reserves deemed necessary, is sufficient to cover all contingent liability, as established by recognized actuarial insurance principles, has a surplus in excess of $7,500,000, it shall determine the amount of that excess and place it to the credit of all eligible employers who have contributed to the Industrial Accident Fund during the preceding 12 months under ORS 656.502 to 656.524.

(3) The amount of excess surplus credit each employer may receive under subsection (2) of this section is that proportion of the total surplus paid into the Industrial Accident Fund during that preceding 12 months that his contribution bears to the total contribution paid into the Industrial Accident Fund for the same period by all employers eligible to receive the credit.

(4) To be eligible to receive the credit provided by subsection (2) of this section each employer, on July 1, shall:

(a) Not be in default.

(b) Not have on file with the commission an effective written notice of his election not to contribute to the Industrial Accident Fund.

(c) Be eligible for an experience rating reduction.

(5) No part of the workmen's contribution to the Industrial Accident Fund may be included in the computation of the surplus referred to in this section, nor may any part of that contribution be utilized for credit to employer's accounts from that surplus.

[Amended by 1953 c 674 §13, 1955 c 323 §3, 1957 c 574 §8]

656.528 to 656.550 [Reserved for expansion]

ENFORCEMENT OF CONTRIBUTIONS

656.552 Deposit of cash or bond with commission to secure payment of employer's contributions. (1) If the commission finds it necessary for the protection of the Industrial Accident Fund, it may require any employer,

except political subdivisions of the state, subject to ORS 656.002 to 656.590 to deposit and keep on deposit with the commission a sum equal to the contributions due the commission upon his estimated payroll for a period of not to exceed six months.

(2) The commission may, in its discretion and in lieu of such deposit, accept a bond to secure payment of contributions to become due the Industrial Accident Fund. The deposit or posting of the bond shall not relieve the employer from making contributions to the Industrial Accident Fund based on his actual payroll, as provided by ORS 656.504.

(3) If an employer ceases to be an employer under ORS 656.002 to 656.590, the commission 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 §8]

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 he employs workmen shall, upon the commencement of a suit by the commission for that purpose, enjoin the employer from further employing workmen under ORS 656.002 to 656.590 until the employer has complied with ORS 656.552.

(2) Upon filing of a suit for such purpose by the commission, 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 contributions due from contractor. If any person lets a contract and the person to whom the contract was let, while performing the contract, engages in a hazardous occupation as an employer subject to ORS 656.002 to 656.590 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 his business, the person letting the contract shall be liable to the Industrial Accident Fund for the payment of all contributions to such fund on account of the performance of the contract or any subcontract thereunder which accrue before written notice of the contract and the name and address of the person to whom it was let has been filed with the commission.

656.558 Acceptance of warrants or certificates of state or political subdivision in payment of contributions. The commission may, in its discretion, accept from the state or any political subdivision thereof, its lawfully issued warrants or certificates of indebtedness in payment of any contributions due to the Industrial Accident Fund. Any warrants or certificates of indebtedness so received by the commission shall become a part of the Industrial Accident Fund. The State Treasurer may transfer any such warrants or certificates of indebtedness to the Segregated Accident Fund.

656.560 Default in payment of contributions; interest; penalty; employer loses benefit of ORS 656.002 to 656.590; display of notice of default. (1) When any payment of contribution required by ORS 656.002 to 656.590 to be made by an employer on his own account or on account of workmen in his employ 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 fails to make payment of contributions required within 10 days after a written demand by the commission, such employer is in default and is subject to a penalty of 10 percent of the amount of the contribution then due.

(3) The amount of such contribution at any time due, together with interest thereon, and penalty for nonpayment thereof, may be collected by the commission 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 his workmen in such manner as to inform his workmen of such default.

(5) When any employer is in default, as provided in this section, he is not entitled to any of the benefits of ORS 656.002 to 656.590, but is liable to the injured workman, or to those claiming under him in case of death, as he would have been if ORS 656.002 to 656.590 had never been enacted.

656.562 Moneys due the Industrial Accident Fund as preferred claims. All contributions, interest charges, penalties or amounts due the Industrial Accident Fund from any employer under ORS 656.002 to 656.590 and all judgments recovered by the commission against any employer under ORS 656.002 to 656.590 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.

656.564 Lien for amounts due from employer on real property, improvements and equipment on or with which labor is performed by workmen of employer. (1) A lien hereby is created in favor of the commission 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 workmen of any employer subject to ORS 656.002 to 656.590 in a sum equal to the amount at any time due from such employer to the commission on account of labor performed thereon by the workmen of such employer, together with interest and penalty.

(2) The commission 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 are due, in a sum equal to the amount at any time due from any employer subject to ORS 656.002 to 656.590 on account of labor performed by the workmen of such employer, together with interest and penalty.

(3) In order to avail itself of the lien created by this section, the commission 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 commission. 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 commission 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

656.566 Lien on property of employer for contributions due. (1) If any employer liable for the payment of contributions 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 Industrial Accident Commission 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 he 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 his 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 his absence from the county in which the lien is filed, then by the county judge of said county, running to the State Industrial Accident Commission and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the commission 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 Industrial Accident Commission 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 commission 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.

656.568 to 656.580 [Reserved for expansion]

LEGAL REPRESENTATION IN CLAIMS AND ACTIONS UNDER WORKMEN'S COMPENSATION LAW

656.582 When Attorney General to defend employer. (1) If an employer subject to ORS 656.002 to 656.590 is made defendant in any personal injury litigation brought against him by a workman in his employ, or by the guardian, personal representative or beneficiary of such workman, on account of injuries received by such workman arising out of and in the course of his employment by such employer, and it appears that the plaintiff's sole right of recovery is under ORS 656.002 to 656.590, the commission shall request the Attorney General to defend the employer in such litigation. The Attorney General shall cooperate with the commission in such defense and represent the employer as attorney.

(2) If the Attorney General files an answer in such litigation alleging the defense that the plaintiff's sole remedy is under the workmen's compensation law, the filing of such answer shall suspend all further proceedings in such litigation other than the trial of the defense that the plaintiff's right of recovery is under the workmen's compensation law, until such defense has been finally determined by the court. An appeal to the Supreme Court from the order or judgment finally disposing of such defense may be taken by either party as in other cases.

656.584 Expense of defense payable out of Industrial Accident Fund. The expense of defending any litigation under ORS 656.582, including all court costs and the traveling expenses of the Attorney General necessitated thereby shall be paid by the State Treasurer upon warrant drawn by the Secretary of State out of the Industrial Accident Fund, upon the submission of a duly executed voucher therefor approved by the commission.

656.586 Attorney General as adviser of commission; prosecution and defense of actions by Attorney General and district attorneys. The Attorney General shall be the legal adviser of the commission. Upon request of the commission, the Attorney General or, under his direction, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of ORS 656.002 to 656.590, 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 commission or the members thereof in their official capacity.

656.588 Payment of attorneys' fees on appeal of rejected claims. (1) In all cases involving accidental injuries occurring on or after July 1, 1957, where a claimant prevails in an appeal to the circuit court from a commission order rejecting his original claim for compensation, the court shall allow a reasonable attorney's fee to the claimant's attorney. In such rejected cases where the claimant prevails in his appeal before the commission itself, then the commission shall allow a reasonable attorney's fee; however, in the event a dispute arises as to the amount allowed by the commission, that amount may be settled as provided for in subsection (2) of ORS 656.590. Attorney fees provided for in this section shall be paid from the Industrial Accident Fund as an administrative expense.

(2) In all other cases attorneys' fees shall continue to be paid from the claimant's award of compensation.

[Amended by 1957 c 558 §1]

656.590 Claim for legal or other services to be approved by commission or court; approved claim as lien upon compensation. (1) No claim for legal services or for any other services rendered before the commission in

respect to any claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission, or if proceedings on appeal from the order of the commission in respect to such claim or award are had before any court, unless approved by such court.

(2) If an attorney and the commission cannot agree upon the amount of the fee, each forthwith shall submit a written statement of the services rendered to the presiding judge of the circuit court in the county in which the claimant resides. The judge shall, in a summary manner, without the payment of filing, trial or court fees, determine the amount of such fee. This controversy shall be given precedence over other proceedings.

(3) Any claim so approved shall, in the manner and to extent fixed by the commission or such court, be a lien upon such compensation.

656.592 to 656.800 [Reserved for expansion]

OCCUPATIONAL DISEASE LAW

656.802 "Occupational disease" defined for ORS 656.802 to 656.824. (1) As used in ORS 656 802 to 656.824, "occupational disease" means·

(a) Any disease or infection which arises out of and in the scope of the employment, and to which an employe is not ordinarily subjected or exposed other than during a period of regular actual employment therein.

(b) Silicosis. "Silicosis" means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by X-ray examination or by autopsy.

(c) Death, disability or impairment of health of firemen of any political division who have completed five or more years of employment as firemen, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firemen.

(2) Any condition or impairment of health arising under paragraph (c) of subsection (1) of this section shall be disputably presumed to result from a fireman's employment; provided, however, that any such fireman must have taken a physical examination upon becoming a fireman, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted his employment.

[Amended by 1959 c.351 §1, 1961 c.583 §1]

656.804 Occupational disease as an injury under workmen's compensation law; applicability of employers' liability law. (1) An occupational disease, as defined in ORS 656.802, is considered an injury for employes of employers who have come under ORS 656.002 to 656.590, except as otherwise provided in ORS 656.802 to 656.824.

(2) The common law meaning of the term occupational disease is not changed by ORS 656.802 for employes of employers who have rejected ORS 656.002 to 656.590 or who are engaged in nonhazardous occupations, nor shall ORS 654.305 to 654.335 be applicable thereto to actions arising out of occupational disease.

656.806 Preemployment medical examination; result to be filed with commission. 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 State Industrial Accident Commission, 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 commission within 10 days after the beginning of such employment.

656.807 Time within which claim must be filed. (1) Except as otherwise limited for silicosis, all occupational disease claims shall be void unless filed within three years after the last exposure in employment subject to the workmen's compensation law and within 180 days from the date the claimant becomes disabled or is informed by a physician that he is suffering from an occupational disease whichever is later.

(2) If the occupational disease results in death, a claim may be filed within 180 days after the date of the death; and the provisions of subsection (1) of this section do not limit the filing of a claim in fatal cases to less than 180 days from the date of death.

(3) The limitation of three years shall be extended to seven years in claims for radiation injury.

[Amended by 1953 c 440 §2; 1959 c 351 §2]

656.808 Rejection by claimant of commission's final order in occupational disease claim. A final order of the commission in

any claim involving occupational disease may be rejected by the claimant, in writing, filed at the office of the commission within 90 days after the date of such order.
[Amended by 1957 c 559 §2]

656.810 Appointment of medical board to review claims where commission's order is rejected by claimant; judicial review of legal issue. (1) In every case of the rejection of a final order of the commission under ORS 656.808, involving the issues enumerated in ORS 656.812, there shall be appointed a medical board of review, which board of review shall have jurisdiction to pass upon and decide such issues.

(2) The medical board of review shall be appointed in the following manner:

(a) One doctor from the list provided for by ORS 656.820 shall be named by the commission.

(b) One doctor shall be named by the claimant.

(c) The two doctors so named shall, within five days after being notified of their appointment, name a third doctor from said list. If the third doctor cannot be agreed upon, or for any other reason has not been named within such period of time, the commission shall immediately so notify the presiding judge of the circuit court of the county in which the claimant resides, or upon agreement of the claimant and the commission, the circuit judge of the county in which the claim arose. Upon receipt of such notice, such presiding judge shall forthwith name the third member of such board of review from said list.

(3) In any case involving an issue of the timeliness of filing a claim or other legal issue not to be determined by the medical board of review, the commission shall within 30 days of the filing of the claimant's rejection certify the claim record to the circuit court of the county where the disease was incurred; and the issue shall be determined by the court without jury based upon such record and such other evidence as in the court's discretion may be required.
[Amended by 1959 c 351 §3]

656.812 Duty of medical board as to examinations and findings. (1) The medical board of review shall examine the claimant and all the records of his employment and claim, and from such examination make findings upon the issues of the claim.

(2) Such findings, when made, shall be signed by at least two members of the medical board of review and shall contain the answers to the following questions:

(a) Does claimant suffer from an occupational disease or infection? If so, what?

(b) When was such disease or infection, if any, contracted, and approximately how long has claimant suffered therefrom?

(c) Has such disease or infection, if any, been caused by and did it arise out of and in the course of claimant's regular actual employment in such industrial process, trade or occupation?

(d) Is such disease, if any, disabling to the claimant?

(e) If so, to what degree is claimant disabled by such occupational disease?

(3) If the claim is for death benefits under ORS 656.802 to 656.824, the medical board of review shall find on each of the questions in subsection (2) of this section as of a date immediately preceding the employe's death and in addition shall find the cause of death.
[Amended by 1959 c 351 §4]

656.814 Findings of board as final; filing; copy to claimant. The findings of the medical board of review are final and binding and shall be filed with the commission within 60 days after appointment of the third member. A copy thereof shall be mailed to the claimant.

656.816 Limitation on recovery for disability or death from silicosis. (1) ORS 656.802 to 656.824 do not entitle an employe, or his dependents, to compensation, medical treatment or payment of funeral expenses, for disability or death from silicosis, unless the employe has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in Oregon preceding his disablement, for periods amounting in all to at least five years, some portion of which has been after July 1, 1943.

(2) Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, permanent partial disability or death, and only in the event of such disability or death resulting within three years after the last injurious exposure; provided, that in the event of death following continuous total disability commencing within three years after the last injurious exposure, the requirement of death within three years after the last injurious exposure shall not apply.

(3) Claims for compensation on account of silicosis shall be forever barred unless application is made to the commission within one year after total disability began or within six months after death.
[Amended by 1959 c 351 §5]

656.818 Amount of compensation for silicosis. If an employe has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in Oregon for periods amounting in all to at least five years after July 1, 1943, the compensation mentioned in ORS 656.816 shall be paid in accordance with ORS 656.202 to 656.206 and 656.208 to 656.234; but if such exposure after July 1, 1943, amounted to less than five years, the maximum aggregate amount payable for disability, death, or disability and death shall not exceed $1,000 plus $100 for each calendar month which elapsed after July 1, 1943, and before the month in which disability began, but shall not exceed $6,000 in any event.
[Amended by 1959 c.351 §6]

656.820 Method of establishing a list of physicians from which medical boards of review are selected. (1) The Dean of the Medical School of the University of Oregon, the State Health Officer and the State Industrial Accident Commission hereby are constituted an appointing body and may select and establish a list of licensed physicians in good professional standing, who may or may not be residents of Oregon and whom the appointing body finds to have acquired expert knowledge of occupational diseases by training and experience and to be sufficient in number for the discharge of the duties provided in ORS 656.812.

(2) In the actions of such appointing body, the commission, the dean and the State Health Officer shall each have one vote.

(3) The appointing body shall certify to the commission the names of the persons selected for registration on the list of physicians. From this list shall be selected physicians to serve on the medical boards of review.

(4) The commission shall thereupon notify such persons of their appointments. Upon their respective acceptance of such appointments, the appointees shall be registered on the list of physicians.

656.822 Fees and expenses of board members. The fees of the members of the medical board of review shall be paid from the Industrial Accident Fund. Costs and expenses incurred in the performance of any duty of the medical board of review, or any member thereof, in respect of any claim shall be paid as a part of the expenses of the Industrial Accident Fund.

656.824 Degree of occupational disease hazard as affecting contribution rates. (1) In addition to the rate making authority of the commission, it may, in fixing rates of contribution, readjust, increase or decrease the rates of all employes subject to ORS 656.002 to 656.590 and 656.802 to 656.824 with respect to the degree of hazard by reason of occupational diseases and silicosis.

(2) The rates shall be fixed and declared in accordance with ORS 656.508. The rates fixed on July 1, 1943, shall be effective on and after that date.

656.826 to 656.988 [Reserved for expansion]

PENALTIES

656.990 Penalties. (1) Any person who knowingly makes any false statement or representation to the commission for the purpose of obtaining any benefit or payment under ORS 656.002 to 656.590, either for himself or any other person, or who knowingly misrepresents to the commission or any of its representatives the amount of a payroll, or who knowingly submits a false payroll report to the commission, is guilty of a felony and is punishable, upon conviction, by imprisonment in the state penitentiary 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 subsection (5) of ORS 656.052 is punishable, upon conviction, by a fine of not less than $25 nor more than $100. Each day during which an employer engages in any hazardous occupation in violation of subsection (5) of ORS 656.052 constitutes a separate offense.

(3) Violation of ORS 656.056 is punishable, upon conviction, by a fine of not less than $10 nor more than $100.

(4) The individual refusing to keep the payroll in accordance with ORS 656.420 when demanded by the commission, 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 commission is a misdemeanor.

(6) Violation of subsection (3) of ORS 656.504 is a misdemeanor.

(7) Violation of subsection (4) of ORS 656.560 is punishable, upon conviction, by a fine of not less than $25 nor more than $100.

[Amended by 1959 c 450 §9]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961

Sam R. Haley
Legislative Counsel