

# Chapter 656

## 1965 REPLACEMENT PART

### Workmen's Compensation

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## GENERAL PROVISIONS

**656.001 Short title.** ORS 656.001 to 656.794 may be cited as the Workmen's Compensation Law.  
[1965 c.285 §1]

**656.002 Definitions for ORS 656.001 to 656.794.** As used in ORS 656.001 to 656.794 and 656.990, unless the context requires otherwise:

(1) "Administrative Fund" means the fund created by ORS 656.612.

(2) "Beneficiary" means an injured workman, and the husband, wife, child or dependent of a workman, who is entitled to receive payments under ORS 656.001 to 656.794. However, 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.

(3) "Board" means the Workmen's Compensation Board.

(4) "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.

(5) "Claim" means a written request for compensation from a subject workman or someone on his behalf, or any compensable injury of which a subject employer has notice or knowledge.

(6) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means.

(7) "Compensation" includes all benefits, including medical services, provided for a compensable injury to a subject workman or his beneficiaries by a direct responsibility employer or the department pursuant to ORS 656.001 to 656.794.

(8) "Contributing employer" means an employer required or electing to pay contri-

butions under subsection (1) of ORS 656.504 whether or not he has actually paid the required contributions, and includes all subject employers other than direct responsibility employers.

(9) "Department" means the State Compensation Department created under ORS 656.752.

(10) "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."

(11) "Direct responsibility employer" means an employer possessing a certification by the board that he shall directly assume the responsibility for paying compensation under ORS 656.001 to 656.794 that would otherwise be insured by the payment of contributions under subsection (1) of ORS 656.504.

(12) "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.

(13) "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.

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

(15) "Noncomplying employer" means a subject employer who has failed to comply with ORS 656.016 or who is in default under ORS 656.560 in the payment of contributions required by ORS 656.504.

(16) "Party" means a claimant for compensation, the employer of the injured workman at the time of injury or the department.

(17) "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.

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

(19) "Subject employer or workman" means an employer or a workman who is subject to the provisions of ORS 656.001 to 656.794 as provided in ORS 656.023 and 656.027.

(20) "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. The department may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which such workman shall be carried upon the payroll of the employer for the purpose of determining the contribution of the employer.

(21) "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.

[Amended by 1957 c.718 §1; 1959 c.448 §1; 1965 c.285 §4]

**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 656.001 to 656.794.

**656.006 Effect on employers' liability law.** ORS 656.001 to 656.794 does not abrogate the rights of the employe under the present employers' liability law, in all cases where the employe, under ORS 656.001 to 656.794 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 Workmen's Compensation Board 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 Treatment by spiritual means.** Nothing in this chapter shall be construed to require a workman who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical treatment nor shall such workman or his dependents be deprived of any compensation payments to which he would have been entitled if medical or surgical treatment were employed, and the employer or insurance carrier may pay for treatment by prayer or spiritual means.

[1965 c.285 §41c]

656.012 and 656.014 [Reserved for expansion]

## COVERAGE

**656.016 Employers' obligation to provide workmen's compensation coverage; two ways.** (1) Every employer subject to ORS 656.001 to 656.794 is required to assure that his subject workmen will receive the compensation for compensable injuries provided in ORS 656.001 to 656.794 either by:

(a) Contributing to the Industrial Accident Fund as a contributing employer; or

(b) Qualifying as a direct responsibility employer under ORS 656.405 and 656.409. However, this state and political subdivisions therein may not become direct responsibility employers.

(2) Any employer required by statutes of this state other than ORS 656.001 to 656.794 or by the rules, regulations, contracts or procedures of any agency of this state or a political subdivision therein to provide or agree to provide workmen's compensation coverage, either directly or through bond requirements, shall have the right to provide such coverage by either of the methods provided in subsection (1) of this section.

[1965 c.285 §5]

**656.018 Effect of providing coverage; exclusive remedy.** (1) Every employer who satisfies the duty required by subsection (1) of ORS 656.016 is relieved of all other liability for compensable injuries to his subject workmen, the workmen's beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such injuries, except as specifically provided otherwise in ORS 656.001 to 656.794.

(2) The rights given to a subject workman and his beneficiaries for compensable injuries under ORS 656.001 to 656.794 are in lieu of any remedies they might otherwise have for such injuries against the workman's employer under ORS 654.305 to 654.335 or other laws, common law or statute, except to the extent the workman is expressly given the right under ORS 656.001 to 656.794 to bring suit against his employer for an injury.

(3) The exemption from liability given an employer under this section is also extended to the employer's insurer, the board, and the employes, officers and directors of the employer, the employer's insurer and the board except that the exemption from liability shall not apply:

(a) Where the injury is proximately

caused by wilful and unprovoked aggression by the person otherwise exempt under this subsection; or

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

(4) Nothing in ORS 656.001 to 656.794 shall prohibit payment, voluntarily or otherwise, to injured workmen or their beneficiaries in excess of the compensation required to be paid under ORS 656.001 to 656.794.

[1965 c.285 §6]

**656.020 Damage actions by workmen against noncomplying employers; defenses outlawed.** Actions for damages may be brought by an injured workman or his legal representative against any employer who has failed to comply with ORS 656.016 or is in default under ORS 656.560. Except for the provisions of ORS 656.578 to 656.593 and this section, such noncomplying employer is liable as he would have been if ORS 656.001 to 656.794 had never been enacted. In such actions, it is no defense for the employer to show that:

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

[1965 c.285 §7]

**656.022** [Repealed by 1965 c.285 §95]

**656.023 Who are subject employers.** Every employer employing one or more subject workmen in the state is subject to ORS 656.001 to 656.794.

[1965 c.285 §8]

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

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

**656.027 Who are subject workmen.** All workmen are subject to ORS 656.001 to 656.794 except those nonsubject workmen described in the following subsections:

(1) A workman employed as a domestic servant in or about a private home. For the

purposes of this subsection "domestic servant" means any workman engaged in household domestic service.

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

(3) A workman whose employment is casual and either:

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

(b) The employment is in the course of the trade, business or profession of a non-subject employer.

For the purpose of this subsection, "casual" refers only to employments where the work in any 30-day period, without regard to the number of workmen employed, involves a total labor cost of less than \$100.

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

(5) A workman employed in farming by an employer whose payroll for wages earned during the preceding calendar year ending December 31 did not exceed \$1,500, excluding board and lodging and exchange labor. As used in this subsection, "farm" includes stock, dairy, poultry, fruit, berry, fur-bearing animal and truck farms, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

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

(7) Workmen of any city having a population of more than 200,000 that provides by ordinance or charter compensation equivalent to compensation under ORS 656.001 to 656.794.

(8) Sole proprietors, partners and officers of corporations.

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

[1965 c.285 §9]

Note: 1965 c.285 §§9a and 9b have not been compiled because they are temporary, but are set out below. See also ORS 656.084 and 656.090.

Sec. 9a. Certain workmen not subject until January 1, 1967. (1) Notwithstanding section 9 of this 1965 Act [ORS 656.027], any workman employed by

an employer engaged in any occupation other than those described in ORS 656.084 is not a subject workman unless his employer employs in any one day four or more workmen.

(2) Once an employer employs in any one day four or more workmen, all workmen of such employer thereafter are subject workmen even though subsequently the employer employs fewer workmen.

(3) This section has no force and effect after January 1, 1967.

Sec. 9b. Workmen engaged in farming. Notwithstanding sections 9 [ORS 656.027] and 9a of this 1965 Act, all workmen employed by employers engaged in the occupation classified as nonhazardous under ORS 656.090 are not subject workmen. This section has no force or effect after January 1, 1968.

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

656.030 [Repealed by 1959 c.448 §14]

**656.031 Coverage for municipal volunteer personnel.** (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 656.001 to 656.794, be known as volunteer personnel and shall not be considered as workmen unless the municipality has filed the election provided by this section.

(2) The county, city or other municipality employing volunteer personnel as specified in subsection (1) of this section may elect to have such personnel considered as subject workmen for purposes of ORS 656.001 to 656.794. Such election shall be made by a written application to the department that includes a description of the work to be performed by such personnel.

(3) Upon receiving the written application the department may fix assumed wage rates for the volunteer personnel, which may be used only for purposes of computations under ORS 656.001 to 656.794.

(4) The county, city or municipality shall furnish the department with a list of the names of those employed as volunteer personnel and shall notify the department 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 656.001 to 656.794 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:

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

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

[Formerly 656.088]

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

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

**656.035 Status of workmen in separate occupations of employer.** If an employer is engaged in an occupation in which he employs one or more subject workmen and is also engaged in a separate occupation in which there are no subject workmen, he is not subject to ORS 656.001 to 656.794 as to that separate occupation, nor are his workmen wholly engaged in that occupation subject to ORS 656.001 to 656.794.

[1965 c.285 §10]

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

**656.038** [Repealed by 1965 c.285 §95]

**656.039 Employer may elect to provide coverage for workmen not subject to law; procedure.** (1) An employer of one or more persons defined as nonsubject workmen or not defined as subject workmen may elect to make them subject workmen. If the employer is or becomes a contributing employer, the election shall be made by filing written notice thereof with the department. The election becomes effective when the written notice is accepted by an authorized representative of the department. If the employer is or becomes a direct responsibility employer, the election shall be made by filing written notice thereof with the board, the effective date of coverage to be in accordance with the provisions of subsection (2) of ORS 656.413.

(2) Any election under subsection (1) of this section by a direct responsibility employer may be canceled by written notice thereof to the board. The cancellation shall become effective at 12 midnight ending the day the notice is received by the board. Any election under subsection (1) of this section by a contributing employer may be canceled by written notice thereof to the board and the department, the cancellation to be effective at 12 midnight ending the day the notice is received by the department.

(3) Any election by a contributing employer under subsection (1) of this section who fails to pay annual fees, assessments, deposits or contributions charged under ORS

656.001 to 656.794 within 10 days after demand, is deemed canceled.

(4) When necessary the department or the board shall fix assumed minimum or maximum wages for persons made subject workmen under this section.

[1965 c.285 §11]

Note: 1965 c.285 §69b(4) provides:

"(4) An employer contributing to the Industrial Accident Fund on the day preceding the fully operative date prescribed by section 97 of this 1965 Act, with respect to any occupation, shall not be required to file a written notice under section 11 of this 1965 Act [ORS 656.039] with respect to that occupation in order to become or continue as a contributing employer except as otherwise provided by regulation of the department."

The fully operative date prescribed by 1965 c.285 §97 is January 1, 1966.

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

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

**656.044 Department may insure liability under Longshoremen's and Harbor Workers' Compensation Act; procedure.** (1) The department may insure employers against their liability for compensation under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 to 950) or any Act amendatory or supplementary thereto or in lieu thereof, as fully as any private insurance carrier, if such employers are subject to ORS 656.001 to 656.794.

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

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

(4) The department or any employer may cancel any insurance coverage issued under this section by giving notice as required by the Longshoremen's and Harbor Workers' Compensation Act, or the rules or regulations made in pursuance thereof.

[Amended by 1965 c.285 §13]

**656.046 to 656.050** [Reserved for expansion]

**656.052 Prohibition against employment without coverage; notice to department to secure coverage.** (1) No person shall engage as a subject employer unless and until

the employer has provided coverage pursuant to ORS 656.016 for subject workmen he employs. Any employer who does not elect to become a direct responsibility employer must, to secure such coverage, file with the department a statement in writing giving the name and address of the employer and describing the occupation in which the employer is engaged or proposes to engage, coverage to be effective the date when the written statement is accepted by an authorized representative of the department.

(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) The board shall have access to all statements filed under this section.  
[Amended by 1957 c.574 §2; 1965 c.285 §14]

**656.054 Payment of claims of injured workmen of noncomplying employers.** (1) A compensable injury to a subject workman while in the employ of a noncomplying employer is compensable to the same extent as if the employer had complied with ORS 656.001 to 656.794. The claim shall be paid by the department out of the Industrial Accident Fund.

(2) The cost of such claim to the Industrial Accident Fund but not less than \$100 shall be a liability of the noncomplying employer. The department shall recover the costs of such claim from the employer for the benefit of the Industrial Accident Fund and in addition the employer shall be required to pay contributions, assessments and fees for the time during which he engaged as an employer in a subject occupation to the same extent as if he had complied with paragraph (a) of subsection (1) of ORS 656.016 as a contributing employer. The board shall provide by regulation for the Administrative Fund to reimburse, on a periodic basis, the Industrial Accident Fund for any net loss, including reasonable administrative costs, it incurs under this section.  
[Amended by 1959 c.448 §9; 1965 c.285 §15]

**656.056 Subject employers must post notice of manner of compliance.** (1) All subject employers shall display in a conspicuous manner about their works, and in a sufficient number of places reasonably to inform their workmen of the fact, printed notices furnished by the board stating that they are subject to ORS 656.001 to 656.794 and the

manner of their compliance with ORS 656.001 to 656.794.

(2) No employer who is not currently a subject employer shall post or permit to remain on or about his place of business or premises any notice that he is subject to, and complying with, ORS 656.001 to 656.794.  
[Amended by 1965 c.285 §16]

**656.058 to 656.080** [Reserved for expansion]

**656.082** [Repealed by 1965 c.285 §95]

**656.084 List of hazardous occupations.** The hazardous occupations to which ORS 656.001 to 656.794 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; repealed by 1965 c.285 §95a, operative on January 1, 1967 (see 1965 c.285 §97)]

**656.086** [Repealed by 1965 c.285 §95]

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

**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 656.001 to 656.794 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, insilage 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; repealed by 1965 c.285 §95a, operative on January 1, 1967 (see 1965 c.285 §97)]

**656.092 to 656.120** [Reserved for expansion]

**656.122** [Repealed by 1965 c.285 §95]

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

**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 656.001 to 656.794 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 656.001 to 656.794 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 656.001 to 656.794 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 656.001 to 656.794 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 Workmen's Compensation Board 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 Workmen's Compensation Board 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]

Note: 1965 c.285 §69b(3) provides:

"(3) The powers, functions and duties of the State Industrial Accident Commission under ORS 656.126 shall remain in the Workmen's Compensation Board. Agreements entered into under ORS 656.126 and in effect on the fully operative date of this 1965 Act [January 1, 1966], or entered into thereafter, shall apply to workmen of direct responsibility employers as well as workmen employed by contributing employers."

**656.128 Sole proprietors, partners may elect to be covered by department.** (1) Any person who is a sole proprietor, or a member of a partnership subject to ORS 656.001 to 656.794 as an employer, may make written application to the department to become entitled as a subject workman to the compensation benefits thereof. Thereupon, the department shall accept such application and fix a classification and an assumed monthly wage at which such person shall be carried on the payroll as a workman for purposes of computations under ORS 656.001 to 656.794. If the person making application under this section is an employer of subject

workmen, his application shall not be accepted unless he is a contributing employer.

(2) When the application is accepted and the assumed wage is fixed, such person may file in writing with the department his election to become a subject workman at the assumed wage so fixed, and thereupon he shall be subject to the provisions and entitled to the benefits of ORS 656.001 to 656.794.

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

(4) 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 656.001 to 656.794 and such default shall automatically cancel the election of such person to become entitled as a workman to the benefits of ORS 656.001 to 656.794.

(5) Any person subject to ORS 656.001 to 656.794 as a workman as provided in this section may cancel such election by giving to the department written notice. The cancellation shall become effective at 12 midnight ending the day of filing the notice with the department.

[Amended by 1957 c.440 §2; 1959 c.448 §12; 1965 c.285 §18]

**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 656.001 to 656.794. 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 656.001 to 656.794, but in the event of a lump-sum payment becoming due under ORS 656.001 to 656.794 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 656.001 to 656.794 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 656.001 to 656.794. The board 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 board finds that the employer did not employ such minor in good faith, the minor is entitled to the benefits of ORS 656.001 to 656.794, 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]

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

**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 656.001 to 656.794.

(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 Intentional injuries.** (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 under ORS 656.001 to 656.794.

(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 656.001 to 656.794, and also have cause for action against the employer, as if such statutes had not been passed, for damages over the amount payable under those statutes.

[Amended by 1965 c.285 §20]

656.158 to 656.200 [Reserved for expansion]

### COMPENSATION AND MEDICAL BENEFITS

**656.202 Compensation payable to subject workman in accordance with law in force at time of injury.** (1) If any subject workman sustains a compensable injury, he or his beneficiaries, if the injury results in death, shall receive compensation as provided in ORS 656.202 to 656.234 and 656.245.

(2) Except as otherwise provided by ORS 656.636, payment of benefits for injuries or deaths under ORS 656.001 to 656.794 shall be continued as authorized, and in the amounts provided for, by the law in force at the time the injury giving rise to the right to compensation occurred.

[Amended by 1953 c.669 §4; 1953 c.670 §4; 1957 c.718 §3; 1959 c.450 §1; 1965 c.285 §21]

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

(1) The cost of burial shall be paid, not to exceed \$600 in any case.

(2) If the workman is survived by a widow or invalid widower, \$110 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. However:

(a) If there are more than two such children, the surviving spouse shall be paid \$20 per month for each child in excess of two.

(b) In no event shall the total benefits provided for in this subsection exceed \$230 per month.

(c) Upon remarriage, a widow shall be

paid \$2,500 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. However:

(a) If there are more than two such children the surviving spouse shall be paid \$20 per month for each child in excess of two.

(b) In no event shall the total benefits provided for in this subsection exceed \$140 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 the dependent shall cease when such dependent becomes 18 years of age. The payment to any dependent shall cease under the same circumstances that would have terminated the dependency had the injury not happened.

(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 become 21 years of age. The 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 who is 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

he becomes 18 years of age, the payment to him shall continue while he remains an invalid. If a person is entitled to payment because he is an invalid, 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 has become 17 years of age but is under 18 years of age, the child or dependent shall receive the payment provided in this section for a period of one year from the date of the death.

[Amended by 1957 c.453 §1; 1965 c.285 §22]

**656.206 Permanent total disability.** (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, \$155.

(b) If the workman has a wife or invalid husband, but no child under the age of 18 years, \$185. 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 \$305 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.

(3) In no event shall the rate of compensation for permanent total disability exceed 90 percent of the monthly wages of the workman as computed under subsections (12) and (13) of ORS 656.210.

[Amended by 1953 c.670 §4; 1955 c.553 §1; 1957 c.452 §1; 1959 c.517 §1, 1965 c.285 §22a]

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

**656.208 Death during 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 \$110 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. However, in no event may the total benefits exceed \$230 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 paragraph (e) of subsection (1) ORS 656.319.

[Amended by 1957 c.453 §2; 1959 c.450 §2; 1965 c.285 §22b]

**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 \$170 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 \$200 per month.

(3) If the workman has a wife or invalid husband and a child under the age of 18 years, 65 percent of wages, but not more than \$225 per month.

(4) If the workman has a wife or invalid husband and two children under the age of 18 years, 68 percent of wages, but not more than \$250 per month.

(5) If the workman has a wife or invalid husband and three children under the age of 18 years, 70 percent of wages, but not more than \$270 per month.

(6) If the workman has a wife or invalid husband and four children under the age of 18 years, 72 percent of wages, but not more than \$290 per month.

(7) If the workman has a wife or invalid husband and five children under the age of 18 years, 74 percent of wages, but not more than \$310 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 \$320 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, 66 $\frac{2}{3}$  percent of wages, but not more than \$185 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 \$320 per month or 90 percent of the monthly wage of the workman, whichever is the lesser. The board, in its discretion, may require proof of any such desertion or any continuation thereof and direct adjustment of payments on account of any such child or children in accordance with other applicable provisions of ORS 656.001 to 656.794.

(10) In no event shall the rate of com-

ensation for temporary total disability be less than \$130 per month for an unmarried workman, or, if married, having a husband not an invalid and \$160 per month for a workman having a wife or invalid husband, or 90 percent of the monthly wage, whichever is the lesser.

(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 14, if the workman was regularly employed not more than three days a week.

(b) By 18, if the workman was regularly employed four days a week.

(c) By 22, if the workman was regularly employed five days a week.

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

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

As used in this subsection, "regularly employed" means actual employment or availability for such employment.

(13) For purposes of this section the monthly wages of a workman on a farm, as defined in subsection (5) of ORS 656.027, may not exceed one-twelfth of the actual wages received by such workman in the 12-month period preceding the injury. If the workman was employed for less than 176 days of the preceding 12 months, the board shall set a reasonable monthly wage to be used as actual wages under this section.

(14) No disability payment is recoverable for temporary total disability suffered during the first three days after the workman leaves work as a result of his compensable injury unless the total disability continues for a period of 14 days or the workman is an inpatient in a hospital. If the workman leaves work the day of the injury, that day shall be considered the first day of the three-day period.

[Amended by 1955 c.713 §1; 1957 c.452 §2; 1959 c.517 §2; 1965 c.285 §22c]

**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.**

(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 \$55 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 paragraph, combined binaural hearing loss shall be calculated by taking seven times the hearing loss in the less damaged ear plus the hearing loss in the more damaged ear and dividing that amount by eight. In the case of individuals with compensable hearing loss involving both ears, either the method of calculation for monaural hearing loss or that for combined binaural hearing loss shall be used, depend-

ing upon which allows the greater award of disability.

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

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

(j) For the loss 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 any member named in the schedule in this section, not exceeding, however, 192 degrees.

[Amended by 1953 c.669 §4; 1955 c.716 §1; 1957 c.449 §1; 1965 c.285 §22d]

**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 under ORS 656.210, payment for temporary total disability for a period of not more than 60 days. If such workman re-

fuses forthwith to submit to an operation, neither he nor his beneficiaries are entitled to any benefits whatsoever under ORS 656.001 to 656.794. However, in claims where the physician deems it inadvisable for the claimant to have an operation because of age or physical condition, the claimant shall receive an award of 10 degrees in full and final settlement of the claim.

[Amended by 1957 c.718 §4; 1965 c.285 §24]

**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 656.001 to 656.794 the same as if the man and woman had been legally married.

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

(2) Compensation paid to an injured workman who is a minor prior to receipt of notice by the department or direct responsibility employer from the parent or guardian of the minor that the parent or guardian claims the compensation shall discharge the obligation to pay compensation to the extent of such payment.

[Amended by 1957 c.477 §1; 1965 c.285 §25]

**656.230 Accelerating award payments with board approval.** (1) If, after an award, a beneficiary has been a nonresident of this

state for a period of two years, the board may, in its discretion, with the consent of the beneficiary permit the conversion of any payments thereafter to become due to such beneficiary into a lump-sum payment, not in any case exceeding \$4,000, by authorizing the payment of a sum not greater than 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 and interest rate as recommended by the State Insurance Commissioner.

(2) If a workman has been awarded compensation for permanent partial disability, the board may, in its discretion, order to be paid 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 instalments shall be reduced proportionately.

(3) In all cases where the award for permanent partial disability does not exceed 24 degrees, the department or direct responsibility employer 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; 1965 c.285 §23a]

**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 board, 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 board 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 board may, in lieu of awarding such beneficiary compensation in the amount provided by ORS 656.001 to 656.794, 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 board, 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 656.001 to

656.794. The board 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 656.001 to 656.794 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 Prohibition against "releases"; charging costs.** (1) No release by a workman or his beneficiary of any rights under ORS 656.001 to 656.794 is valid.

(2) Except as provided in ORS 656.506, none of the cost of workmen's compensation to employers under ORS 656.001 to 656.794 shall be charged to a subject workman.

[1965 c.285 §28]

**656.238 and 656.240** [Reserved for expansion]

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

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

**656.245 Medical services to be provided; choice of doctor.** (1) For every compensable injury, the direct responsibility employer or the department shall cause to be provided medical services for conditions resulting from the injury for such period as the nature of the injury or the process of the recovery requires, including such medical services as may be required after a determination of permanent disability. Such medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(2) The workman may choose his own attending doctor or physician within the State of Oregon.

[1965 c.285 §23]

656.246 [Repealed by 1965 c.285 §95]

**656.248 Medical service rates.** The board, upon its own motion or upon request, shall in compliance with ORS chapter 183 and ORS 656.794 promulgate reasonable rates to be paid for medical services provided pursuant to ORS 656.245. Such rates shall be adequate to insure at all times to the injured workmen the standard of services and care intended by ORS 656.001 to 656.794. The board may readjust, increase or decrease such rates in compliance with ORS chapter 183.

[Amended by 1965 c.285 §26]

656.250 to 656.260 [Reserved for expansion]

### PROCEDURE FOR OBTAINING COMPENSATION

Note: 1965 c.285 §43 provides:

**Sec. 43. Procedures to govern claims arising before January 1, 1966.** (1) Subject to the provisions of subsections (2) to (5) of this section, all proceedings, rights and remedies with respect to injuries that occurred before the fully operative date prescribed by section 97 of this 1965 Act [January 1, 1966], shall be governed by the law in effect at the time the injury occurred.

(2) The powers, duties and functions performed by the State Industrial Accident Commission under such law shall be performed by the manager of the department except that the board shall exercise all powers, duties and functions imposed on the commission under ORS 656.278 with respect to claims arising from such injuries.

(3) When the department makes an order, decision or award under ORS 656.282 pertaining to any claim based on an injury that occurred before the fully operative date prescribed by section 97 of this 1965 Act [January 1, 1966], the claimant may, in lieu of exercising rehearing and appeal rights under the law in effect at the time of the injury, choose to request a hearing under the provisions of ORS 656.001 to 656.794 as changed by this 1965 Act and subsequent Acts.

(4) In the event the claimant chooses to proceed under subsection (3) of this section, the rules and procedures contained in ORS 656.001 to 656.794 as changed by this 1965 Act and subsequent Acts shall govern hearings, review by the board, judicial review, aggravation and continuing jurisdiction except that the claimant shall have 60 days from the date on which the notice was mailed to him within which to request a hearing under section 34 of this 1965 Act [ORS 656.283].

(5) The copy of the order, decision or award served upon the claimant under ORS 656.282 shall contain a statement informing the claimant of his rights under subsection (3) of this section, the form of the statement to be determined by the department.

**656.262 Responsibility for processing and payment of compensation; acceptance and denial of claim; penalties for payment delays.** (1) Processing of claims and providing compensation for a workman in the employ of a contributing employer shall be the responsibility of the department, and when the workman is injured while in the

employ of a direct responsibility employer, such employer shall be responsible. However, contributing employers shall assist the department in processing claims as required in ORS 656.001 to 656.794.

(2) The compensation due under ORS 656.001 to 656.794 from the department or direct responsibility employer shall be paid periodically, promptly and directly to the person entitled thereto upon the employer's receiving notice or knowledge of a claim, except where the right to compensation is denied by the direct responsibility employer or department.

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

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

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

(c) Whether the employer recommends or opposes acceptance of the claim, and his reasons.

(d) Such other details the department may require.

Failure to so report subjects the offending employer to a charge for reimbursing the department for any penalty the department is required to pay under subsection (8) of this section because of such failure.

(4) The first instalment of compensation shall be paid no later than the 14th day after the subject employer has notice or knowledge of the claim. Thereafter, compensation shall be paid at least once each two weeks, except where the board determines that payment in instalments should be made at some other interval. The board may by regulation convert monthly benefit schedules to weekly or other periodic schedules.

(5) Written notice of acceptance or denial of the claim shall be furnished to the claimant and the board by the department and direct responsibility employer within 60 days after the employer has notice or knowledge of the claim. The department shall also furnish the contributing employer a copy of the notice of acceptance.

(6) If the direct responsibility employer or department denies a claim for compensation, written notice of such denial, stating the reason for the denial, and informing the workman of hearing rights under ORS

656.283, shall be given to the claimant. A copy of the notice of denial shall be mailed to the board, and to the contributing employer by the department. The workman may request a hearing on the denial at any time within 60 days after the mailing of the notice of denial.

(7) Merely paying or providing compensation shall not be considered acceptance of a claim or an admission of liability, nor shall mere acceptance of such compensation be considered a waiver of the right to question the amount thereof.

(8) If the department or direct responsibility employer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, it shall be liable for an additional amount up to 25 percent of the amounts then due plus any attorney fees which may be assessed under ORS 656.382.

(9) The department may authorize contributing employers to pay compensation to injured workmen and shall reimburse employers for compensation so paid.

[1965 c.285 §30]

**656.265 Notice of accident from workman.** (1) Notice of an accident resulting in an injury or death shall be given immediately by the workman or his dependent to the employer, but not later than 30 days after the accident. The employer shall acknowledge forthwith receipt of such notice.

(2) The notice need not be in any particular form. However, it shall be in writing and shall apprise the employer when and where and how an injury has occurred to a workman. A report or statement secured from a workman concerning an accident which may involve a compensable injury shall be considered notice from the workman and the employer shall forthwith furnish the workman a copy of any such report or statement.

(3) Notice shall be given to the employer by mail, addressed to the employer at his last-known place of business, or by personal delivery to the employer or to a foreman or other supervisor of the employer. If for any reason it is not possible to so notify the employer, notice may be given to the board and referred to the department or the direct responsibility employer.

(4) Failure to give notice as required by this section bars a claim under ORS 656.001 to 656.794 unless:

(a) The contributing employer or direct

responsibility employer had knowledge of the injury or death, or the department or direct responsibility employer has not been prejudiced by failure to receive the notice; or

(b) The department or direct responsibility employer has begun payments as required under ORS 656.001 to 656.794; or

(c) The notice is given within one year after the date of the accident and the workman or his beneficiaries establish in a hearing he had good cause for failure to give notice within 30 days after the accident.

(5) The issue of failure to give notice must be raised at the first hearing on a claim for compensation in respect to the injury or death.

(6) The board shall promulgate and prescribe uniform forms to be used by workmen in reporting their injuries to their employers. These forms shall be supplied by all employers to injured workmen upon request of the injured workman or some other person on his behalf. Nothing contained in this section, however, shall defeat the claim of any workman who does not use the suggested form but otherwise substantially complies with this section.

[1965 c.285 §30a]

**656.268 Procedure for determining awards for permanent disability; setting aside funds to pay awards.** (1) One purpose of ORS 656.001 to 656.794 is to restore the injured workman as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied workman. Claims shall not be closed nor permanent awards, if any, made until the workman's condition becomes medically stationary.

(2) When the department or direct responsibility employer believes that an injured workman's condition has become medically stationary, it shall so notify the board, the workman, and contributing employer, if any, and request the claim be examined and further compensation, if any, be determined. A copy of all medical reports necessary to make such determination also shall be furnished to the board and to the workman and to the contributing employer, if requested by such workman or employer. However, if the doctor believes furnishing any medical information would be detrimental to the workman, such information need not be furnished to him but shall upon request be furnished to his attorney or other repre-

sentative. The employer or department may commence payment of a permanent disability award without waiting for a determination under subsection (3) of this section. If the attending physician has not approved the workman's return to his regular employment, the department or direct responsibility employer must continue to make temporary total disability payments until termination of such payments is authorized following examination of the medical reports submitted to the board under this section.

(3) Within 30 days after the board receives the medical reports, the claim shall be examined and further compensation, including permanent disability award, if any, determined under the board's supervision. If necessary the board may require additional medical or other information with respect to the claim, and may postpone the determination for not more than 60 additional days. Any determination under this subsection may include necessary adjustments in compensation paid or payable prior to the determination, including disallowance of permanent disability payments prematurely made, crediting temporary disability payments against permanent disability awards and payment of temporary disability payments which were payable but not paid.

(4) The board shall mail a copy of the determination to all interested parties. Any such party may request a hearing under ORS 656.283 on the determination made under subsection (3) of this section within one year after copies of the determination are mailed.

(5) If the claim resulted from an injury to a workman while in the employ of a contributing employer, the department shall set aside in the Contributing Employers Awards Reserve an amount of money sufficient to pay the award or benefits. If the claim resulted from an injury to a workman while in the employ of a direct responsibility employer, the board may, in the event of:

(a) The insolvency or threatened insolvency of such employer or his surety or guarantor; and

(b) The inadequacy of cash, bond or securities otherwise on deposit by any of them to secure such payment, require the employer to deposit cash, securities or other assets in such amount as it deems necessary to assure ultimate payment of the award.

[1965 c.285 §31]

**656.271 Increased compensation for aggravation of disability.** (1) If subsequent to the last award or arrangement of compensation there has been an aggravation of the disability resulting from a compensable injury, the injured workman is entitled to increased compensation including medical services based upon such aggravation. The claim for aggravation must be supported by a written opinion from a physician that there are reasonable grounds for the claim. In its discretion, the board may order the payment for such medical opinion by claimant or the department or the direct responsibility employer.

(2) A request for a hearing on increased compensation for aggravation must be filed with the board within five years after the first determination made under subsection (3) of ORS 656.268.

(3) Upon receiving a request for a hearing for increased compensation on account of aggravation, the board shall notify in writing all parties in interest to the claim and shall, if necessary, schedule a hearing before a hearing officer within 30 days after mailing notice of the request for hearing on increased compensation. Subsequent proceedings as to hearings, review and appeal shall conform to ORS 656.010 and 656.262 to 656.382.

[1965 c.285 §32]

**656.272** [Repealed by 1965 c.285 §95]

**656.274** [Repealed by 1965 c.285 §95]

**656.275** [1963 c.20 §2; repealed by 1965 c.285 §95]

**656.276** [Repealed by 1965 c.285 §95]

**656.278 Board has continuing authority to alter earlier action on claim.** (1) The power and jurisdiction of the board shall be continuing, and it may, upon its own motion, from time to time modify, change or terminate former findings, orders or awards if in its opinion such action is justified.

(2) An order or award made by the board during the time within which the claimant has the right to request a hearing on aggravation under ORS 656.271 is not an order or award, as the case may be, made by the board on its own motion.

(3) The claimant has no right to a hearing, review or appeal on any order or award made by the board on its own motion, except when the order diminishes or terminates a former award or terminates medical or hospital care. The employer may request a hearing on an order which increases the award

or grants additional medical or hospital care to the claimant.

[Amended by 1955 c.718 §1; 1957 c.559 §1; 1965 c.285 §33]

**656.280** [Amended by 1965 c.285 §41b; renumbered 656.325]

**656.282** [Amended by 1957 c.455 §1; repealed by 1965 c.285 §95]

**656.283 Hearing rights and procedure.**

(1) Subject to ORS 656.319, any party or the board may at any time request a hearing on any question concerning a claim.

(2) A request for hearing may be made by any writing, signed by or on behalf of the party and including his address, requesting the hearing, stating that a hearing is desired, and mailed to the board.

(3) The board shall refer the request for hearing to a hearing officer for determination as expeditiously as possible.

(4) At least 10 days' prior notice of the time and place of hearing shall be given to all parties in interest by mail. Hearings shall be held in the county where the workman resided at the time of the injury or such other place selected by the hearing officer.

(5) A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the order of the hearing officer.

(6) Except as otherwise provided in this section and rules of procedure established by the board, the hearing officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice.

(7) Any party shall be entitled to issuance and service of subpoenas under the provisions of paragraph (c) of subsection (2) of ORS 656.726. Any party or his representative may serve such subpoenas.

[1965 c.285 §34]

**656.284** [Amended by 1953 c.671 §2; 1955 c.718 §2; 1959 c.450 §4; repealed by 1965 c.285 §95]

**656.286** [Amended by 1963 c.605 §1; repealed by 1965 c.285 §95]

**656.288** [Amended by 1957 c.288 §1; repealed by 1965 c.285 §95]

**656.289 Orders of hearing officer; contents, disposition and effect.** (1) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the hearing officer shall promptly and not later than 30 days after the hearing determine the matter and make an order in accordance with his determination.

(2) The order shall be filed with the board. A copy of the order shall be sent forthwith by mail to all parties in interest.

(3) The order is final unless, within 30 days after the date on which a copy of the order is mailed to the parties, one of the parties requests a review by the board under ORS 656.295. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.295.

(4) Notwithstanding ORS 656.236, in any case where there is a bona fide dispute over compensability of a claim, the parties may, with the approval of a hearing officer, the board or the court, by agreement make such disposition of the claim as is considered reasonable.

[1965 c.285 §35]

**656.290** [Amended by 1955 c.718 §3; repealed by 1965 c.285 §95]

**656.292** [Amended by 1965 c.285 §38; renumbered 656.301]

**656.294** [Amended by 1965 c.285 §37; renumbered 656.304]

**656.295 Board review of hearing officer orders.** (1) The request for review by the board of an order of a hearing officer need only state that the party requests a review of the order.

(2) The request for review shall be mailed to the board and copies of the request shall be mailed to all other parties to the proceeding before the hearing officer.

(3) When review has been requested, the record of such oral proceedings at the hearings before the hearing officer as may be necessary for purposes of the review shall be transcribed at the expense of the board. All copies shall be certified to be true and correct by the hearing officer. Copies of any exhibits which can be conveniently duplicated shall be furnished to the parties in interest along with a copy of the transcribed record.

(4) Notice of the review shall be given to the parties by mail.

(5) The review by the board shall be based upon the record submitted to it under subsection (3) of this section and such oral or written argument as it may receive. However, if the board determines that a case has been improperly, incompletely or otherwise insufficiently developed or heard by the hearing officer, it may remand the case to the hearing officer for further evidence taking, correction or other necessary action.

(6) The board may affirm, reverse, modify or supplement the order of the hearing

officer and make such disposition of the case as it determines to be appropriate. It shall make its decision within 30 days after the review.

(7) The order of the board shall be filed and a copy thereof sent by mail to the parties.

(8) An order of the board is final unless within 30 days after the date of mailing of copies of such order to the parties, one of the parties appeals to the circuit court for judicial review pursuant to ORS 656.298. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.298.

[1965 c.285 §35a.]

**656.298 Circuit court review of board orders.** (1) Any party affected by an order of the board may, within the time limit specified in ORS 656.295, request judicial review of the order with the circuit court for the county in which the workman resided at the time of his injury, or the county where the injury occurred.

(2) The name and style of the proceedings shall be "In the Matter of the Compensation of (name of the workman)."

(3) The judicial review shall be commenced by serving, by registered or certified mail, a copy of a notice of appeal on the board and on the other parties who appeared in the review proceedings, and by filing with the clerk of the circuit court the original notice of appeal with proof of service indorsed thereon. The notice of appeal shall state:

(a) The name of the person appealing and of all other parties.

(b) The date the order appealed from was filed.

(c) A statement that the order is being appealed to the circuit court.

(d) A brief statement of the relief requested and the reasons the relief should be granted.

(4) Within 10 days after service of notice of appeal on a party under subsection (3) of this section, such party may also request judicial review in the same manner.

(5) Within 30 days after service of notice of appeal on the board, the board shall forward to the clerk of the circuit court:

(a) The original copy of the transcribed record prepared under ORS 656.295.

(b) All exhibits.

(c) Copies of all decisions and orders

entered during the hearing and review proceedings.

(6) The circuit court review shall be by a judge, without a jury, on the entire record forwarded by the board. The judge may remand the case to the hearing officer for further evidence taking, correction or other necessary action. However, the judge may hear additional evidence concerning disability that was not obtainable at the time of the hearing. The judge may affirm, reverse, modify or supplement the order appealed from, and make such disposition of the case as the judge determines to be appropriate.

(7) An appeal taken under this section shall be given precedence on the docket over all other cases, except those given equal status by statute.

[1965 c.285 §36.]

**656.301 Appeal to Supreme Court from circuit court.** (1) Appeals may be taken from the judgment of the circuit court, the scope of review to be the same as that of the circuit court.

(2) In case of an appeal by the department or employer 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 and to be paid by the party initiating the appeal, in addition to the compensation.

[Formerly 656.292]

**656.304 When acceptance of compensation precludes hearing.** A claimant may accept and cash any check given in payment of any award or compensation without affecting his right to a hearing, except that the right of hearing on any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on his own application under ORS 656.230. This section shall not be construed as a waiver of the necessity of complying with ORS 656.283 to 656.301.

[Formerly 656.294]

**656.307 Payment of compensation when there is uncertainty as to identity of employer.** Where there is uncertainty as to which of several subject employers, one of which is a direct responsibility employer, is the true employer of a claimant workman, the board shall, by order, designate who shall pay the claim, if the claim is otherwise compensable. Payments shall begin within 30 days after the board has been notified of

the accident. When a determination of the true employer or employers has been made, the board shall direct any necessary monetary adjustment between the parties involved. Any failure to obtain reimbursement from a direct responsibility employer shall be recovered from the Direct Responsibility Employers Adjustment Reserve.

[1965 c.285 §39]

**656.310 Presumption concerning notice of injury and self-inflicted injuries; reports as evidence.** (1) In any proceeding for the enforcement of a claim for compensation under ORS 656.001 to 656.794, there is a rebuttable presumption that:

(a) Sufficient notice of injury was given and timely filed; and

(b) The injury was not occasioned by the wilful intention of the injured workman to injure or kill himself.

(2) The contents of medical, surgical and hospital reports presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein; so, also, shall such reports presented by the department or direct responsibility employers, provided that the doctor rendering medical and surgical reports consents to subject himself to cross-examination.

[1965 c.285 §40]

**656.312** [Amended by 1953 c.428 §2; 1965 c.285 §44; renumbered 656.578]

**656.313 Employer or department request for board or court review shall not stay compensation.** (1) Filing by an employer or the department of a request for review or court appeal shall not stay payment of compensation to a claimant.

(2) If the board or court subsequently orders that compensation to the claimant should not have been allowed or should have been awarded in a lesser amount than awarded, the claimant shall not be obligated to repay any such compensation which was paid pending the review or appeal.

[1965 c.285 §41]

**656.314** [Amended by 1965 c.285 §45; renumbered 656.580]

**656.316** [Amended by 1953 c.428 §2; 1965 c.285 §46; renumbered 656.583]

**656.318** [Amended by 1965 c.285 §47; renumbered 656.587]

**656.319 Time within which hearing must be requested.** (1) A hearing on any question relating to a compensable injury, other than those described in subsection (2)

of this section, shall not be granted unless a request for hearing is filed within the times specified in this subsection, and if a request for hearing is not so filed, the claim is not enforceable:

(a) If no medical services were provided or benefits paid, one year after the date of the accident.

(b) If only medical services were provided, one year after the date medical services were last provided.

(c) If disability payments were paid, one year after the date such payments were last made.

(d) If the workman was rendered mentally incapable of seeking compensation because of the accidental injury, six months after removal of such mental incapacity if his parents, guardians, employer, physician or other person have not requested a hearing on his behalf within one year after the accident.

(e) If a workman has received or is entitled to benefits for temporary total disability and dies as a result of the accidental injury, six months after the date of the death of the workman.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) With respect to objection by a claimant to denial of a claim for compensation under ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless a request for hearing is filed within 60 days after the claimant was notified of the denial.

(b) With respect to objections to a determination under subsection (3) of ORS 656.268, a hearing on such objections shall not be granted unless a request for hearing is filed within one year after the copies of the determination were mailed to the parties.

(c) With respect to any dispute on increased compensation by reason of aggravation under ORS 656.271, a hearing on such dispute shall not be granted unless a request for hearing is filed within five years after the first determination made under subsection (3) of ORS 656.268.

[1965 c.285 §41a]

**656.320** [Amended by 1953 c.428 §2; 1965 c.285 §48; renumbered 656.591]

**656.322** [Amended by 1953 c.428 §2; 1955 c.656 §1; 1959 c.644 §1; 1965 c.285 §49; renumbered 656.593]

**656.324** [Amended by 1965 c.285 §50; renumbered 656.595]

**656.325 Required medical examination; suspension of compensation; injurious practices; claimant's duty to reduce disability.**

(1) Any workman entitled to receive compensation under ORS 656.001 to 656.794 is required, if requested by the board, department or a direct responsibility employer, 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 board. If the workman refuses to submit to any such examination, or obstructs the same, his rights to compensation shall be suspended with the consent of the board 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 tend to either imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, his right to compensation shall be suspended with the consent of the board and no payment shall be made for such period. The period during which such workman would otherwise be entitled to compensation may be reduced with the consent of the board to such an extent as his disability has been increased by such refusal.

(3) A workman who has received an award for unscheduled permanent total or unscheduled partial disability should be encouraged to make a reasonable effort to reduce his disability; and his award shall be subject to periodic examination and adjustment in conformity with ORS 656.268.

(4) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283.

[Formerly 656.280]

**656.326** [Amended by 1965 c.285 §51; renumbered 656.597]

**656.328 to 656.380** [Reserved for expansion]

**LEGAL REPRESENTATION**

**656.382 Penalties and attorney's fees payable by employer or department for misconduct.** (1) If a direct responsibility employer or the department refuses to pay compensation due under an order of a hearing officer, board or court, or otherwise unreasonably resists the payment of compensation, the employer or department shall pay to the claimant or his attorney a reasonable

attorney's fee as provided in subsection (2) of this section. To the extent a contributing employer has caused the department to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review or court appeal is initiated by an employer or the department, and the hearing officer, board or court finds that the compensation awarded to a claimant should not be disallowed or reduced, the employer or department shall be required to pay to the claimant or his attorney a reasonable attorney's fee in an amount set by the hearing officer, board or the court for legal representation by an attorney for the claimant at the hearing, review or appeal.

(3) If upon reaching a decision on a request for hearing initiated by an employer it is found by the hearing officer that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the hearing officer may order the employer to pay to the claimant such penalty not exceeding \$750 and not less than \$100 as may be reasonable in the circumstances.

[1965 c.285 §42]

**656.384 When Attorney General to defend employer.** (1) If an employer subject to ORS 656.001 to 656.794 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 656.001 to 656.794, the board shall request the Attorney General to defend the employer in such litigation. The Attorney General shall cooperate with the board 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.

[Formerly 656.582]

**656.386 Recovery of attorney's fees in appeal to board or court on rejected claim.**

(1) In all cases involving accidental injuries where a claimant prevails in an appeal to the circuit court from a board order denying his 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 finally in a hearing before the hearing officer or in a review by the board itself, then the hearing officer or board shall allow a reasonable attorney's fee; however, in the event a dispute arises as to the amount allowed by the hearing officer or board, that amount may be settled as provided for in subsection (2) of ORS 656.388. Attorney fees provided for in this section shall be paid from the Industrial Accident Fund as an administrative expense when the claimant was employed by a contributing employer, and be paid by the direct responsibility employer when the claimant was employed by such an employer.

(2) In all other cases attorneys' fees shall continue to be paid from the claimant's award of compensation except as otherwise provided in ORS 656.301 and 656.382.

[Formerly 656.588]

**656.388 Approval of amount of attorney's fees; suggested fee schedule.** (1) No claim for legal services or for any other services rendered before a hearing officer or the board, as the case may be, in respect to any claim or award for compensation, to or on account of any person, shall be valid unless approved by the hearing officer or board, or if proceedings on appeal from the order of the board in respect to such claim or award are had before any court, unless approved by such court.

(2) If an attorney and the hearing officer or board 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 hearing

officer, board or such court, be a lien upon such compensation.

(4) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a suggested schedule of fees for attorneys representing a workman under ORS 656.001 to 656.794.

[Formerly 656.590]

656.390 to 656.400 [Reserved for expansion]

**DIRECT RESPONSIBILITY EMPLOYERS**

**656.401 Obligations of direct responsibility employers.** (1) A subject employer who is certified as a direct responsibility employer under ORS 656.413 directly assumes the responsibility for providing compensation due his subject workmen and their beneficiaries under ORS 656.001 to 656.794.

(2) A direct responsibility employer shall not pay the contributions required of other subject employers by subsection (1) of ORS 656.504, but shall pay assessments pursuant to ORS 656.612.

(3) The claims of subject workmen and their beneficiaries resulting from injuries while in the employment of direct responsibility employers shall be handled in the manner provided by ORS 656.001 to 656.794, and the direct responsibility employer shall be subject to the rules and regulations of the board with respect thereto.

(4) No insurance obtained by a direct responsibility employer and no security deposited under ORS 656.405 shall relieve such employer from full and primary responsibility for claims administration and payment of compensation under ORS 656.001 to 656.794. It is understood that a direct responsibility employer qualifying under subsection (2) of ORS 656.405 may insure or reinsure all or any portion of his risks under ORS 656.001 to 656.794 with an insurance company admitted to do business in this state or with any other insurer with whom insurance can be placed or secured pursuant to ORS 750.010 to 750.110.

[1965 c.285 §74]

656.402 [Renumbered 656.712]

656.404 [Repealed by 1959 c.449 §5]

**656.405 Qualifications to become direct responsibility employer.** An employer may qualify as a direct responsibility employer by establishing to the board that such employer has sufficient financial ability to be able to make certain the prompt payment of all

compensation under ORS 656.001 to 656.794 and to be able to pay all assessments which may become due from such employer. A direct responsibility employer may establish proof of financial ability by:

(1) Filing with the board a guaranty contract issued by an insurance company admitted to do so under ORS chapter 736 or ORS 749.010 to 749.150, and complying with ORS 736.155. The guaranty contract must provide that the insurer agrees to assume, without monetary limit, the liability of the employer for compensation for injuries occurring to subject workmen and for assessments imposed under ORS 656.001 to 656.794 during the period the guaranty contract is in effect; or

(2) Depositing in a depository, designated by the board, money, corporate or governmental securities or a surety bond written by any company admitted to transact surety business in this state. The money, securities or bond shall be in an amount reasonably sufficient to insure payment of compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than \$100,000. In arriving at the amount of money, securities or bond required under this subsection, the board may take into consideration the financial ability of the employer to pay compensation and assessments and his probable continuity of operation. The money, securities or bonds so deposited shall be held by the board to secure the payment of compensation for injuries to subject workmen of such direct responsibility employer and to secure payment of his assessments. The amount of security may be increased or decreased from time to time by the board.

[1965 c.285 §75(1)]

656.406 [Renumbered 656.714]

656.408 [Renumbered 656.716]

**656.409 Procedure upon default by direct responsibility employer; termination of liability on surety bond or guaranty contract.** (1) In case of default on the part of a direct responsibility employer in payment of compensation or assessments under ORS 656.001 to 656.794, the board may, on notice to the employer and any insurer or guarantor, use money or interest on securities, sell securities or institute legal proceedings on surety bonds or guaranty contracts deposited or filed with the board to the extent necessary to make such payments. Prior to any

default on the part of the employer, the employer shall be entitled to all interest and dividends on bonds or securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership thereof.

(2) A company providing a surety bond or guaranty contract under ORS 656.405 may terminate liability on its surety bond or guaranty contract, as the case may be, by giving the board and the employer written notice stating that no less than 30 days after the receipt of such notice, such termination shall be effective. Such termination shall in no way limit liability which was incurred under the surety bond or guaranty contract prior to such termination. Notwithstanding ORS 656.413 to 656.421, if the employer fails to requalify as a direct responsibility employer on or before the termination date, the employer's certification is deemed to be withdrawn when the termination becomes effective.

[1965 c.285 §75(2), (3)]

656.410 [Amended by 1965 c.285 §54; renumbered 656.726]

656.412 [Amended by 1965 c.285 §52; renumbered 656.732]

**656.413 Certifying direct responsibility employers.** (1) Upon determining that an employer is qualified as a direct responsibility employer under ORS 656.405, the board shall issue a certification to that effect to the employer.

(2) Certifications issued under this section remain in effect until withdrawn by the board as provided in ORS 656.417 and 656.421 or canceled by the employer with the approval of the board. Coverage under guaranty contracts filed under subsection (1) of ORS 656.405 shall become effective on the date so provided in such guaranty contract unless the board denies certification. Coverage for employers qualifying under subsection (2) of ORS 656.405 shall become effective on the date of certification or the date specified in the certificate if so specified.

[1965 c.285 §76(1), (2)]

656.414 [Renumbered 656.718]

656.416 [Amended by 1965 c.285 §53; renumbered 656.722]

**656.417 Withdrawal of certification; effect.** (1) Subject to ORS 656.421, certification of a direct responsibility employer may be withdrawn by the board as provided in

this section and ORS 656.421 upon failure to correct one or more of the following grounds for withdrawal:

(a) The employer no longer meets the requirements of ORS 656.405; or

(b) The deposit required under ORS 656.405 no longer is sufficient, and the employer fails to increase the deposit as ordered by the board; or

(c) The employer intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employes to collect accidental injury claims under ORS 656.001 to 656.794 as off-the-job injury claims, persuades claimants to accept less than the compensation due, or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due; or

(d) The employer is in default in payments of assessments; or

(e) The employer habitually fails to comply with rules and regulations of the board regarding reports or other requirements necessary to carry out the purposes of ORS 656.001 to 656.794.

(2) Any employer whose certification as a direct responsibility employer is withdrawn shall, on the effective date of the withdrawal, become a contributing employer.

[1965 c.285 §76(3), (8)]

656.418 [Repealed by 1965 c.285 §95]

656.420 [Renumbered 656.758]

**656.421 Notice of withdrawal; appeal; effective date; termination.** (1) Before any withdrawal of certification under ORS 656.417 and this section becomes effective, the board shall give the employer notice, by registered or certified mail, that his certification will be withdrawn. The notice shall set forth the grounds for withdrawal. The withdrawal shall become effective within 10 days after receipt of such notice unless within such period of time the employer corrects the ground for withdrawal or appeals in writing to the board.

(2) In the event the employer appeals to the board under subsection (1) of this section, the following procedure shall apply:

(a) The board shall set a date for a hearing within 20 days after receiving the appeal request, and shall give the employer at least five days' notice of the time and place of the hearing.

(b) A record of the hearing shall be kept

but it need not be transcribed unless requested by the employer with the cost of transcription to be charged to the employer.

(c) Within five days after the hearing, the board shall either affirm or disaffirm the withdrawal and give the employer written notice thereof by registered or certified mail. If withdrawal of certification is affirmed, the withdrawal shall become effective within five days after the employer receives notice of the affirmance unless within such period of time the employer corrects the ground for the withdrawal or petitions for judicial review of the affirmance pursuant to provisions of ORS chapter 183.

(3) In the event of affirmance of the withdrawal of certification following judicial review under ORS chapter 183, the withdrawal shall become effective within five days after entry of the final decree of affirmance, unless within such period the employer corrects the ground for withdrawal.

(4) In any case in which the board commences withdrawal action and the ground for withdrawal is the conduct of the insurer of the employer, the board shall terminate withdrawal action under subsection (1) of ORS 656.417, or subsection (1), (2) or (3) of this section, if at any time during the pendency of proceedings thereunder the employer requalifies under ORS 656.405.

[1965 c.285 §76(4), (5), (6), (7)]

656.422 [Amended by 1959 c.450 §5; repealed by 1965 c.285 §95]

656.424 [Renumbered 656.734]

**656.425 Sanctions against insurer's failure to comply with guaranty contracts.** If the board finds, after due notice to any company issuing guaranty contracts (to comply with subsection (1) of ORS 656.405) and providing an opportunity to be heard and present evidence, that such company has failed to comply with its obligations under such contract, the board may request the Insurance Commissioner to suspend or revoke the authorization of such company to issue guaranty contracts. Such suspension or revocation shall not affect the liability of any such company on any guaranty contract in force prior to the suspension or revocation.

[1965 c.285 §76a]

656.426 [Amended by 1965 c.285 §68b; renumbered 656.702]

656.428 [Amended by 1957 c.440 §3; repealed by 1965 c.285 §95]

**656.429 Security to remain on deposit; insurance in lieu of security.** If for any reason the status of an employer under ORS 656.401 is terminated, the security deposited or the guaranty contract filed under ORS 656.405 shall remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a direct responsibility employer in such amount as necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by such security or contract, or to assure the payment of claims for aggravation and payment of claims under ORS 656.278 based on such accidental injuries. At the expiration of such 62 months' period, or such other period as the board may deem proper, the board may accept in lieu of any guaranty contract so filed or security so deposited, a policy of paid-up insurance in a form approved by the Insurance Commissioner and the board.  
[1965 c.285 §77]

**656.431 Reports by direct responsibility employers.** All direct responsibility employers shall report to the board monthly, or at such other intervals as the board may require, accidental injuries and claim disposition and payments made by them under ORS 656.001 to 656.794 pursuant to regulations of the board.  
[1965 c.285 §78]

**656.433 to 656.450** [Reserved for expansion]

**656.452** [Amended by 1965 c.285 §54a; renumbered 656.632]

**656.454** [Renumbered 656.634]

**656.456** [Amended by 1955 c.323 §2; 1957 c.63 §1; 1959 c.178 §1; 1961 c.697 §1; 1965 c.285 §62; renumbered 656.636]

**656.458** [Repealed by 1965 c.285 §95]

**656.460** [Amended by 1953 c.674 §13; 1959 c.517 §3; 1963 c.323 §1; 1965 c.285 §64; renumbered 656.638]

**656.462** [Amended by 1953 c.674 §13; repealed by 1965 c.285 §95]

**656.464** [Amended by 1953 c.674 §13; 1957 c.574 §5; 1959 c.449 §2; 1965 c.285 §68b; renumbered 656.642]

**656.466** [Amended by 1953 c.674 §13; 1959 c.449 §3; 1965 c.285 §67g; renumbered 656.644]

**656.468** [Amended by 1953 c.674 §13; 1965 c.285 §66; renumbered 656.640]

**656.470** [Repealed by 1953 c.674 §13]

**656.472** [Amended by 1953 c.674 §13; 1957 c.574 §6; 1959 c.449 §4; 1965 c.285 §68a; renumbered 656.602]

**656.474** [Amended by 1953 c.674 §13; 1965 c.285 §68c; renumbered 656.604]

**656.476 to 656.500** [Reserved for expansion]

## CHARGES AGAINST 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 Contributing employers' rates, charges, fees and reports.** (1) Every subject employer, other than those employers possessing a certification by the board entitling them to be direct responsibility employers, shall pay to the department on or before the 15th day of each month, for the purpose of payment of compensation and benefits to workmen and their beneficiaries for compensable injuries incurred in the employ of contributing employers, a percentage of his total payroll for the preceding calendar month of subject workmen according to and at the rates promulgated by the department under ORS 656.508 and shall forward to the department on or before the 15th 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. The department may establish other reporting periods and payment-due dates and in lieu of payment based upon a percentage of total payroll may promulgate rates to be paid by contributing employers utilizing a certain number of cents for each man-hour worked by workmen in the contributing employer's employ. Each such employer shall also pay an annual fee, in such amount and at such time as the department shall prescribe, to the Industrial Accident Fund for each calendar year. Each employer who becomes subject to ORS 656.001 to 656.794 may be required to pay a registration fee in such amount and at such time as the department shall prescribe at the time he first becomes subject thereto. The department may, by regulation, vary the amount of these fees by employer groupings, accept them in lieu of the other contributions which are based on the employer's payroll, and may adjust the period of application from a calendar year to a fiscal year.

(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.

[Amended by 1957 c.441 §3; 1959 c.450 §6; 1965 c.285 §69]

**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 department 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 department 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 Two cents a day payable by subject workmen to go to Retroactive Reserve and Second Injury Reserve.** Every employer shall retain from the moneys earned by all subject workmen two cents for each day or part of day the workman is employed and pay the money retained as directed by the board at such intervals as the board shall direct. Three-fourths of the money so deducted from workmen's wages shall be placed in the Retroactive Reserve as provided by subsection (4) of ORS 656.636. One-fourth of the money so deducted from workmen's wages by direct responsibility employers shall be placed in the Second Injury Reserve for such employers and one-fourth of the money so deducted by contributing employers shall be placed in the Second Injury Reserve for such employers.

[Amended by 1955 c.323 §1; 1965 c.285 §70]

**656.507** [1953 c.679 §1; 1959 c.450 §7; repealed by 1965 c.285 §95]

**656.508 Authority of department to fix rates of contribution for employers; group rates.** (1) The department shall classify occupations or industries with respect to their degree of hazard and fix rates of contribution by contributing employers upon each of the occupations or industries sufficient to

provide adequate funds to carry out the purposes of ORS 656.001 to 656.794 and the duties of the department.

(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 department may annually, and at such other times as it deems necessary, readjust, increase or decrease the rates of contributions of contributing employers. Any such readjustment, increase or decrease shall be made and become effective on such dates as the department may determine, and shall be based upon the hazard, claim costs and contributions of each classification of industry. The department shall notify the employer of his rate.

(4) The department may establish a uniform system of rate modification conforming to recognized insurance principles including schedule rating and experience rating, premium discount, and retrospective rating. The department may establish employer groups subject to the conditions provided in paragraphs (a) to (e) of subsection (1) of ORS 736.170.

[Amended by 1957 c.41 §1; 1957 c.386 §1; 1963 c.587 §1; 1965 c.285 §71]

**656.510** [Amended by 1957 c.440 §4; 1963 c.214 §1; 1965 c.546 §1; repealed by 1965 c.285 §95 and 1965 c.546 §4]

**656.512** [Amended by 1957 c.440 §5; repealed by 1965 c.285 §95]

**656.514** [Amended by 1965 c.546 §2; repealed by 1965 c.285 §95 and 1965 c.546 §4]

**656.516** [Amended by 1953 c.674 §13; 1957 c.453 §3; 1959 c.517 §4; 1963 c.323 §2; 1965 c.546 §3; repealed by 1965 c.285 §95 and 1965 c.546 §4]

**656.518** [Amended by 1957 c.440 §6; repealed by 1965 c.285 §95]

**656.520** [Amended by 1957 c.574 §7; repealed by 1965 c.285 §95]

**656.522 Contributing employers' rate modification; procedure for review and re-determination by department.** (1) The rate modification for a contributing employer determined by the department shall be conclusive and binding upon the employer unless, within 30 days after the mailing of the notice required by subsection (3) of ORS 656.508, the employer files with the department an application for review and redetermination of the rate modification as determined by the department, which application shall set forth fully the grounds upon which

the employer claims the determination is in error.

(2) The department 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 bound by any order previously made by a hearing officer, the board or court with respect to any claim.

(4) The department 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 department.

[Amended by 1965 c.285 §71a]

**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 department 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 Dividends from surplus in Industrial Accident Fund to go to contributing employers.** (1) Annually, on July 1, the department shall determine the total liability existing against the Industrial Accident Fund.

(2) If, after the determination required by subsection (1) of this section, the department finds the Industrial Accident Fund, aside from the reserves deemed actuarially necessary, contains a surplus, the department, in its discretion may declare a dividend to be paid to, or credited to the accounts of, contributing employers according to a uniform formula promulgated by the department and filed with the Secretary of State.

(3) To be eligible to receive payment or the credit provided by subsection (2) of this section each employer shall be a contributing employer not in default when the dividend is declared.

[Amended by 1953 c.674 §13; 1955 c.323 §3; 1957 c.574 §8; 1965 c.285 §72]

**656.528 to 656.550** [Reserved for expansion]

### ENFORCEMENT OF CONTRIBUTIONS

**656.552 Deposit of cash or bond with department to secure payment of employer's contributions.** (1) If the department finds it necessary for the protection of the Industrial Accident Fund, it may require any contributing employer, except political subdivisions of the state, to deposit and keep on deposit with the department a sum equal to the contributions due the department upon his estimated payroll for a period of not to exceed six months.

(2) The department 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 a contributing employer, the department 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; 1965 c.285 §81]

**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 department for that purpose, enjoin the employer from further employing workmen under ORS 656.001 to

656.794 until the employer has complied with ORS 656.552.

(2) Upon filing of a suit for such purpose by the department, 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 as an employer subject to ORS 656.001 to 656.794 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 which may be due such fund on account of the performance of the contract or any subcontract thereunder.

[Amended by 1965 c.285 §73]

**656.558** [Amended by 1965 c.285 §66a; renumbered 656.646]

**656.560 Default in payment of contributions; remedies of department.** (1) When any payment of contribution required by ORS 656.001 to 656.794 to be made by a contributing 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 contributing employer fails to make payment of contributions required within 10 days after a written demand by the department and fails to make and maintain the deposit provided in ORS 656.552, such employer is in default and is also 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 department in the same action.

(4) Every contributing 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 acces-

sible to his workmen in such manner as to inform his workmen of such default.

[Amended by 1965 c.285 §73a]

**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 656.001 to 656.794 and all judgments recovered by the department against any employer under ORS 656.001 to 656.794 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 department 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 656.001 to 656.794 in a sum equal to the amount at any time due from such employer to the department on account of labor performed thereon by the workmen of such employer, together with interest and penalty.

(2) The department 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 656.001 to 656.794 an 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 department 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 department. 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 department 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 department 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 department and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the department 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 department 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 department 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.

#### **RECOVERY AGAINST THIRD PERSONS AND NONCOMPLYING EMPLOYERS**

**656.576 "Paying agency" defined.** As used in ORS 656.578 to 656.597, "paying agency" means the employer or department paying benefits to the workman or beneficiaries.

[1965 c.285 §44a]

**656.578 Workmen's election whether to sue third person or noncomplying employer for damages.** If a workman of a noncomplying employer receives a compensable injury in the course of his employment, or if a workman receives a compensable injury due to the negligence or wrong of a third person (other than those exempt from liability under ORS 656.018), entitling 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.

[Formerly 656.312]

**656.580 Payment of compensation notwithstanding cause of action for damages; lien 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 656.001 to 656.794 in the same manner and to the same extent as if no right of action existed against the employer or third party, until damages are recovered from such employer or third party.

(2) The paying agency has a lien against the cause of action as provided by ORS 656.591 or 656.593, which lien shall be preferred to all claims except the cost of recovering such damages.

[Formerly 656.314]

656.582 [Renumbered 656.384]

**656.583 Paying agency may compel election and prompt action.** (1) The paying agency may require the workman or other beneficiaries or the legal representative of a deceased workman to exercise the right of election provided in ORS 656.578 by serving a written demand by registered or certified mail or by personal service upon such workman, beneficiaries or legal representative.

(2) Unless such election is made within 60 days from the receipt or service of such demand and unless, after making such election, an action against such third person is instituted within such time as is granted by the paying agency, the workman, beneficiaries or legal representative is deemed to have assigned his cause of action to the paying agency. The paying agency shall allow the workman, his beneficiaries or legal representative at least 90 days from the making of such election to institute such action. In any case where an insurer of a third person is also the insurer of a direct responsibility employer, notice of this fact must be given in writing by the insurer to the injured workman and to the board within 10 days after the occurrence of any accident which may result in the assertion of the claim against the third person by the injured workman.

[Formerly 656.316]

656.584 [Amended by 1965 c.285 §68d; renumbered 656.624]

656.586 [Renumbered 656.720]

**656.587 Paying agency must join in any compromise.** 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 paying agency or, in the event of a dispute between the parties, by order of the board. ORS 656.236 does not apply to compromises and settlements under ORS 656.578 to 656.597.

[Formerly 656.318]

656.588 [Amended by 1957 c.558 §1; 1965 c.285 §42a; renumbered 656.386]

656.590 [Amended by 1965 c.285 §42b; renumbered 656.388]

**656.591 Election not to bring action operates as assignment of cause of action.**

(1) An election made pursuant to ORS 656.578 not to proceed against the employer or third person operates as an assignment to the paying agency of the cause of action, if any, of the workman, the beneficiaries or legal representative of the deceased workman, against the employer or third person, and the paying agency may bring action against such employer or third person in the name of the injured workman or other beneficiaries.

(2) Any sum recovered by the paying agency in excess of the expenses incurred in making such recovery and the amount expended by the paying agency for compensation, first aid or other medical, surgical or hospital service, together with the present worth of the monthly payments of compensation to which such workman or other beneficiaries may be entitled under ORS 656.001 to 656.794, shall be paid such workman or other beneficiaries.

[Formerly 656.320]

**656.593 Procedure when workman elects to bring action.** (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 paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages recovered from an employer or third person by the workman or beneficiaries shall be subject to a lien of the paying agency 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 at least 25 percent of the balance of such recovery.

(c) The paying agency shall be paid and retain the balance of the recovery, but only to the extent that it is compensated for its expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of its reasonably to be expected future expenditures for compensation and other costs of the workman's claim under ORS 656.001 to 656.794 exclusive of any compensation which may become payable under ORS 656.271 or 656.278.

(d) The balance of the recovery shall be paid to the workman or his beneficiaries forthwith. Any conflict as to the amount of the balance which may be retained by the paying agency shall be resolved by the board.

(2) The amount retained by the workman or his beneficiaries shall be in addition to the compensation or other benefits to which such workman or beneficiaries are entitled under ORS 656.001 to 656.794.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency is authorized to accept such a share of the proceeds as may be just and proper and the workman or his beneficiaries shall receive the amount to which he would be entitled for a recovery under subsections (1) and (2) of this section. Any conflict as to what may be a just and proper distribution shall be resolved by the board.  
[Formerly 656.322]

**656.595 Precedence of cause of action; compensation paid or payable not to be an issue.** (1) Any action brought against a third party or employer, as provided in ORS 656.001 to 656.794, shall have precedence over all other civil cases.

(2) In any third party action brought pursuant to ORS 656.001 to 656.794, the fact that the injured workman or his beneficiaries are entitled to or have received benefits under ORS 656.001 to 656.794 shall not be pleaded or admissible in evidence.

(3) A challenge of the right to bring such third party action shall be made by supplemental pleadings only and such challenge shall be determined by the court as a matter of law.  
[Formerly 656.324]

**656.597 Subrogation rights when injured workman employed jointly by two or more employers, one of whom is not a subject employer.** (1) If a workman is employed jointly by two or more employers, one or more of whom are not subject to ORS 656.001 to 656.794, the filing of a claim by such workman or other beneficiary for compensation under ORS 656.001 to 656.794 constitutes an assignment to the paying agency 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 656.001 to 656.794 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 656.001 to 656.794, the paying agency 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 paying agency under this section, the paying agency may enforce the claim in the manner provided in ORS 656.578 to 656.597 for the enforcement of claims against negligent third parties.  
[Formerly 656.326]

**656.598 and 656.600** [Reserved for expansion]

#### **FUNDS; SOURCE; INVESTMENT; DISBURSEMENT**

##### **(General Provisions)**

**656.602 Disbursement procedures.** All disbursements for administrative expenses from the Administrative Fund and the Industrial Accident Fund, except as provided by ORS 656.618 and 656.642, shall be made only upon warrants drawn by the Secretary of State upon vouchers duly approved by the board or the department, as the case may be.  
[Formerly 656.472]

**656.604 Treasurer liable for 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 Administrative Fund.  
[Formerly 656.474]

**656.606 to 656.610** [Reserved for expansion]

**(Administrative Fund and Reserves)****656.612 Administrative Fund; purposes, administration, assessments and collections.**

(1) The Administrative Fund is created to provide for the payment of all expenses of the board in carrying out its duties under ORS 656.001 to 656.794 and ORS chapter 654; the moneys in the fund are continuously appropriated to the board for such purposes. The board shall administer the fund. The State Treasurer is the custodian of the fund. Except as otherwise provided by statute, all money and securities in the fund shall be held in trust and invested by the treasurer, and shall not be the money or property of this state.

(2) The board shall impose and collect assessments from all subject employers in an amount sufficient to pay the expenses described in subsection (1) of this section. The assessments shall be paid into the Administrative Fund. The assessments against contributing employers shall be collected by the department as a part of the contributions paid by such employers, and the department shall transmit such assessments to the board.

(3) The assessments shall be apportioned among subject employers in direct proportion to the individual contributions of contributing employers and the contributions direct responsibility employers would have paid had they been contributing employers under such systems and procedures as the board, in its discretion determines will reasonably and substantially accomplish such objective at the least possible administrative cost to everyone. The board may use actual claim costs of employers, plus fair and reasonable overhead expenses as a base for computing assessments under this section.

(4) Notwithstanding the provisions of this section, the board may establish a minimum assessment applicable to all subject employers and shall establish the time, manner and method of imposing and collecting assessments subject to applicable budgeting and fiscal laws.

[1965 c.285 §69a]

Note: For provisions relating to payment out of Industrial Accident Fund for certain board functions with respect to claims resulting from accidents that occurred before January 1, 1966, See 1965 c.285 §69f, set out in a note under ORS 656.632.

**656.614 Direct Responsibility Employers Adjustment Reserve.** (1) The Direct Responsibility Employers Adjustment Reserve shall be established within the Administra-

tive Fund. It shall be used to pay the claims of workmen of direct responsibility employers when the board finds that the workman cannot obtain payment from the employer responsible for payment of the claim because of insolvency of such employer and any surety or guarantor of the employer, and exhaustion of security deposited to secure such payment and to meet deficits in the Direct Responsibility Employers Awards Reserve.

(2) If at any time the board finds that the amount of moneys in the Direct Responsibility Employers Adjustment Reserve is not sufficient to carry out the purposes stated in subsection (1) of this section, it may require the direct responsibility employers as a class to pay an assessment computed as in ORS 656.612 sufficient to raise the amount of moneys in the reserve to the point where it can carry out such purposes. If at any time the board finds that there is a surplus in the Direct Responsibility Employers Adjustment Reserve beyond an amount that can reasonably be anticipated as sufficient to carry out the purposes stated in subsection (1) of this section, it may transfer the surplus to the Administrative Fund and reduce the total amount of direct responsibility employer assessment by the amount so transferred.

[1965 c.285 §67a]

**656.616 Rehabilitation Reserve.** The board is authorized to set aside and maintain a reserve in the Administrative Fund in the amount deemed necessary to be known as the Rehabilitation Reserve.

[Formerly 344.810]

**656.618 Emergency Fund for board.** (1) There is created by transfer from the Administrative Fund a revolving fund known as the Emergency Fund, which shall be deposited and maintained with the State Treasurer in the sum of \$100,000.

(2) The Emergency Fund shall be disbursed by checks or orders issued by the board and drawn upon the State Treasurer:

(a) To pay compensation benefits.

(b) To refund to employers amounts paid to the Administrative Fund in excess of the amounts required by ORS 656.001 to 656.794.

(c) To distribute any moneys recovered from an employer or third party in which the board has no equity.

(d) To carry on administrative functions of the board.

(3) The Secretary of State shall issue warrants on the Administrative Fund in favor of the board in the amounts the board certifies it has expended from the Emergency Fund. These warrants shall be deposited in the Emergency Fund.

[1965 c.285 §67e]

**656.620 Petty cash funds for board.** The board may, at its discretion, establish and maintain petty cash funds, not exceeding a total of \$20,000 for the purpose of making change, refunding assessments 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 ORS 656.001 to 656.794.

[1965 c.285 §67f]

**656.622 Second injury program for direct responsibility employers and their workmen; other reserves.** (1) The board shall establish a Second Injury Reserve within the Administrative Fund for the benefit of direct responsibility employers and their workmen and for the purpose of giving direct responsibility employers and their workmen the same benefits given by ORS 656.638.

(2) The Second Injury Reserve shall be made up of and operated with moneys collected from direct responsibility employers and their workmen.

(3) Any payments on claims of workmen or beneficiaries of direct responsibility employers from the Second Injury Reserve shall be to the extent of the moneys available in the reserve for the purpose of the reserve. If the board finds that there is a surplus in the reserve beyond the reasonably anticipated need for the reserve, such surplus may be transferred to the Administrative Fund and the total amount of direct responsibility employer assessment reduced by the amount so transferred.

(4) The board may make such rules as may be required to establish, regulate, manage and disburse the reserve created in accordance with this section, and it may set the amount of contributions of direct responsibility employers to maintain such reserve and require, as a condition for becoming or continuing as a direct responsibility employer, that the employer pay the contributions.

(5) The board may set aside such other reserves within the Administrative Fund as are deemed necessary.

[1965 c.285 §68]

**656.624 Payment of litigation expense by board.** The expense of defending any litigation under ORS 656.384, 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 Administrative Fund, upon the submission of a duly executed voucher therefor approved by the board.

[Formerly 656.584]

656.626 to 656.630 [Reserved for expansion]

**(Industrial Accident Fund and Reserves)**

**656.632 Industrial Accident Fund.** (1) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of general funds of the state.

(2) All moneys received by the department under ORS 656.001 to 656.794, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected under subsection (2) of ORS 656.612 and deposited in the Industrial Accident Fund may thereafter be transferred to the board and deposited in the Administrative Fund.

(3) All payments authorized to be made by the department by ORS 656.001 to 656.794, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

[Formerly 656.452]

Note: 1965 c.285 §69f provides:

**Sec. 69f. Payment out of Industrial Accident Fund for board functions previously performed by commission.** The board shall, with the concurrence of the Department of Finance and Administration, determine the amount of moneys which will be needed out of the Industrial Accident Fund to pay expenses incurred by the board in the performance of duties and functions imposed on it with respect to claims resulting from accidents which occurred before the operative date of this Act [January 1, 1966]. Upon being notified of such determination, the State Treasurer shall transfer such moneys as needed from the Industrial Accident Fund to the Administrative Fund. If later experience indicates the moneys so transferred were insufficient or excessive, the board, with the concurrence of the Department of Finance and Administration, shall direct the State Treasurer to make such transfers between the two funds as are necessary.

**656.634 Trust fund status of Industrial Accident Fund.** (1) The Industrial Accident Fund is a trust fund exclusively for the uses and purposes declared in ORS 656.001 to 656.794.

(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.

[Formerly 656.454]

**656.636 Reserves for awards for permanent disability or death; Retroactive Reserve to supplement awards made under past benefit schedules.** (1) For every case where the department must pay an award or benefits for death or permanent total disability or permanent partial disability, the department forthwith shall set aside in the Industrial Accident Fund in a reserve account to be known as the Contributing Employers Awards Reserve 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. When the claim was for an injury to a workman while in the employ of a direct responsibility employer and the board has determined under ORS 656.268 it is necessary for the employer to deposit cash to assure payment of the award, the board forthwith shall set aside in the Administrative Fund in a reserve account to be known as the Direct Responsibility Employers Awards Reserve the amount so specified by the board and received from the employer.

(2) The respective Awards Reserve shall be charged with the payment of the instalments on claims for which moneys have been set aside in the reserve accounts pursuant to subsection (1) of this section.

(3) Any deficiency in the Direct Responsibility Employers Awards Reserve shall be made good out of the Direct Responsibility Employers Adjustment Reserve and any overplus shall revert to the Direct Responsibility Employers Adjustment Reserve.

(4) (a) Three-fourths of all receipts under ORS 656.506 from contributing employers and three-fourths of all receipts under ORS 656.506 from direct responsibility employers shall be set aside in the Industrial Accident Fund in a special reserve account to be known as the Retroactive Reserve. Notwithstanding the maintenance of the Retroactive Reserve in the Industrial Accident Fund, it shall be available to eligible workmen of both contributing and direct responsibility employers. The cost of administering the Retroactive Reserve shall be charged to it.

(b) The purpose of the Retroactive Reserve is to provide increased benefits to claimants or beneficiaries eligible to receive compensation under benefit schedules which are lower than currently being paid for like injuries. The board shall annually compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined that there are insufficient funds to increase benefits to the level fixed by the board, the board may reduce the level of benefits payable under this paragraph.

(c) Except as payments are increased by the provisions of this subsection, payment of benefits for injuries or deaths under ORS 656.001 to 656.794 shall be continued as authorized and in the amounts provided for by the law in force at the time the injury giving rise to the right to compensation occurred.

[Formerly 656.456]

**656.638 Second Injury Reserve for contributing employers.** (1) The department is authorized to set aside and maintain a reserve in the Industrial Accident Fund in the amount deemed necessary to be known as the Contributing Employers Second Injury Reserve.

(2) The department may reduce, to the extent reasonably justified by the facts, the charge against the experience rating of any contributing employer for any injury resulting in permanent disability or death where the injury is attributable wholly or partially to a preexisting disability of the employe or another employe of the same employer, or where the resultant disability or death is due wholly or partially to a preexisting disability. As used in this subsection, "preexisting

disability" means any known permanent condition due to previous accident or disease or any congenital condition which is or is likely to be a substantial handicap in obtaining or regaining employment. The amount of the reduction shall be charged against the Contributing Employers Second Injury Reserve. [Formerly 656.460]

**656.640 Use of reserves by department.**

(1) The department may set aside such other reserves within the Industrial Accident Fund as are deemed necessary.

(2) If the Industrial Accident Fund becomes exhausted, the department may authorize payment from any reserve account within the Industrial Accident Fund, except the Retroactive Reserve and the Contributing Employers Awards Reserve, of compensation benefits payable to workmen and beneficiaries for an injury received while the workman was in the employ of a contributing employer.

[Formerly 656.468]

**656.642 Emergency Fund for department.** (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 department 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 656.001 to 656.794.

(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 department has no equity.

(3) The Secretary of State shall issue warrants on the Industrial Accident Fund in favor of the department in the amounts the department certifies it has expended from the Emergency Fund. These warrants shall be deposited in the Emergency Fund.

[Formerly 656.464]

**656.644 Department petty cash funds.** The department may, at its discretion, establish and maintain petty cash funds, not exceeding a total of \$20,000 for the purpose of making change, refunding fees and 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.

[Formerly 656.466]

**656.646 Authority to accept government warrants or certificates.** The department 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 department shall become a part of the Industrial Accident Fund.

[Formerly 656.558]

**656.648 to 656.700** [Reserved for expansion]

## ADMINISTRATION

### (General Provisions)

**656.702 Records of board and department open to public.** The records of the board and the department, excepting payrolls and confidential reports, shall be open to public inspection. The accident experience records of the department, for periods prior and subsequent to January 1, 1966, shall be available to a bona fide rating organization to assist in making workmen's compensation rates providing any costs involved in making the records available shall be borne by the rating organization. Accident experience records of direct responsibility employers insuring with insurers issuing guaranty contracts under subsection (1) of ORS 656.405 shall also be available on the same terms to assist in making such rates.

[Formerly 656.426]

**656.704 Application of Administrative Procedures Act.** Where ORS 656.001 to 656.794 does not provide a procedure for administrative or judicial review of actions and orders of the board or department, the provisions of ORS chapter 183 shall apply.

[1965 c.285 §54b]

**656.706 to 656.710** [Reserved for expansion]

### (Workmen's Compensation Board)

**Note:** The former State Industrial Accident Commission is designated the Workmen's Compensation Board. Numerous powers, duties and functions of the former commission are transferred to the State Compensation Department. See note preceding ORS 656.752. All powers, duties and functions not so transferred from the former commission shall remain with the Workmen's Compensation Board. The physical rehabilitation center being operated on August 13, 1965, is under the board. See 1965 c.285 §69b.

1965 c.285 §69c authorizes the Legislative Counsel to substitute for words designating state officers and agencies from which duties, functions or powers are transferred by 1965 c.285 §69b, wherever such words occur in Oregon Revised Statutes, other designations necessary to conform to the legislative intention expressed by 1965 c.285, including but not limited to the substitution of words designating the State Compensation Department or the Workmen's Compensation Board for words designating the former State Industrial Accident Commission.

**656.712 Workmen's Compensation Board; members; qualifications; term; vacancies.** (1) The Workmen's Compensation Board, composed of three members appointed by the Governor, is created. Not more than two members shall belong to one political party and inasmuch as the duties to be performed by the members vitally concern the employers, the employes, as well as the whole people, of the state, it is declared to be the purpose of ORS 656.001 to 656.794 that persons be appointed as members who fairly represent the interests of all concerned in the administration of ORS 656.001 to 656.794.

(2) The former State Industrial Accident Commissioners were appointed for respective terms expiring on the first Monday in January in the years 1915, 1916 and 1917 and thereafter a member of the Workmen's Compensation Board 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 member. Each member shall hold office until his successor is appointed and qualified.

(3) Any vacancy on the board shall be filled by appointment by the Governor.  
[Formerly 656.402]

**656.714 Removal of board member.** (1) The Governor may at any time remove any member of the board appointed by him for inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give the member 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 member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and 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.

[Formerly 656.406]

**656.716 Board members not to engage in political or business activity; oath and bond required.** (1) No member of the board shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

(2) Before entering on the duties of his office, each member 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 member of the board.

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

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

(d) That he holds and while such member 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 members 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.

[Formerly 656.408]

**656.718 Meetings; chairman; quorum.**

(1) Biennially, the members of the board shall meet at the office of the board, 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 members shall constitute a quorum to transact business. The act or decision of any two of the members shall be deemed the act or decision of the board. No vacancy shall impair the right of the remaining members to exercise all the powers of the board.

[Formerly 656.414]

**656.720 Attorney General as adviser of board; prosecution and defense of actions by Attorney General and district attorneys.** The Attorney General shall be the legal adviser of the board. Upon request of the board, 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 656.001 to 656.794, 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 board or the members thereof in their official capacity.

[Formerly 656.586]

**656.722 Board authority to employ subordinates.** (1) The board may employ and terminate the employment of such assistants, experts, field personnel and clerks as may be required in the administration of ORS chapter 654, ORS 656.001 to 656.794 and other duties assigned to it by statute.

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

[Formerly 656.416]

**656.724 Hearing officers.** (1) The board shall appoint hearing officers to hold hearings pursuant to ORS 656.001 to 656.794. The qualifications of such appointees must include the degree of Bachelor of Laws, or an equivalent legal degree, conferred by a law school that is recognized by the Supreme Court of this state for purposes of subsection (3) of ORS 9.220. In addition, a hearing officer prior to his appointment must have successfully completed an examination testing his knowledge of the law of this state relating to workmen's compensation. The examination shall be prepared and administered under the supervision of the Civil Service Commission at reasonable intervals designated by the board. Hearing officers shall qualify in the same manner as members of the board under subsection (2) of ORS 656.722.

(2) Hearing officers are in the unclassified service under ORS chapter 240, and the board shall fix their salaries in accordance with ORS 240.245.

(3) Hearing officers employed by the board shall be appointed for terms of four years each and may be removed by the board on the same grounds and in the same manner as provided for removals under ORS 656.714. The board may appoint hearing officers to serve for a period of one year or

less prior to appointment for a four-year term.

(4) Hearing officers have the same powers granted to board members or assistants under subsection (2) of ORS 656.726. [1965 c.285 §53a; 1965 c.564 §6]

**656.726 Board powers and duties generally.** (1) The board in its name may sue and be sued, and shall have a seal which shall bear the name of the board.

(2) The board hereby is charged with duties of administration, general supervision of accident prevention, rehabilitation, and providing of compensation, regulation and enforcement in connection with ORS chapter 654 and ORS 656.001 to 656.794 and to that end any of its members or assistants authorized thereto by the members shall have power:

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

(b) To administer oaths.

(c) To issue and serve by the board's representatives, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony. The board may require the attendance and testimony of employers, their officers and representatives before any hearing of the board, 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 656.001 to 656.794.

(3) The board may operate and control a physical rehabilitation center or contract with private rehabilitation services in a suitable private rehabilitation center for physical rehabilitation services, the costs of the services in each case to be payable by the direct responsibility employer or department as provided for other medical services under ORS 656.245.

(4) The board may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings and exercising its authority under ORS 656.278. Such rules may provide for informal prehearing conferences in order to expedite claim adjudication,

amicably dispose of controversies, if possible, narrow issues and simplify the method of proof at hearings. The rules shall specify who may appear with parties at prehearing conferences and hearings. ORS chapter 183 is applicable whenever specific procedures covering rule making are not provided for in ORS 656.001 to 656.794.

(5) The board may incur such expenses as it determines are reasonably necessary to perform its authorized functions.

(6) The board and the department shall have the right, not subject to review, to contract for the exchange of, or payment for, such services between them as will reduce the overall cost of administering ORS 656.001 to 656.794.

(7) The board shall have lien and enforcement powers regarding assessments to be paid by subject employers in the same manner and to the same extent as is provided for lien and enforcement of collection of contributions by the department under ORS 656.646 and 656.552 to 656.566.

(8) The board shall have the same powers regarding inspection of books, records and payrolls of employers as are granted the department under ORS 656.758.  
[Formerly 656.410]

**656.728 Vocational rehabilitation of injured workmen.** (1) The board may provide under uniform rules and regulations, for the vocational rehabilitation of men and women injured by accidents arising out of and in the course of their employment while working under protection of ORS 656.001 to 656.794.

(2) The board may expend as much of the Rehabilitation Reserve as may be necessary to accomplish the vocational rehabilitation of men and women injured as described in subsection (1) of this section.

[Subsection (1) formerly 344.820; subsection (2) formerly 344.830]

**656.730 Assigned risk plan.** (1) Upon the request of either the State Compensation Department or a licensed workmen's compensation rating organization, the board and Insurance Commissioner shall promulgate a plan for the equitable apportionment among the department and all members of workmen's compensation rating organizations in the state coverage required by ORS 656.016 for subject employers whose coverage the department, or any members of such rating organizations, object to providing. The plan shall include provisions for reasonable rate modifications for such coverage.

(2) If any insurer issuing guaranty contracts under ORS 656.001 to 656.794 refuses to accept its equitable apportionment under such plan, the Insurance Commissioner shall revoke the insurer's authority to issue guaranty contracts.

[1965 c.285 §94a]

**656.732 Power to compel obedience to subpoenas and punish for misconduct.** The circuit court for any county, or the judge of such court, on application of the board, or any of the board members, their hearing officers or assistants, shall compel obedience to subpoenas issued and served pursuant to ORS 656.726 and shall punish disobedience of any such subpoena or any refusal to testify at any authorized session or hearing or to answer any lawful inquiry of any of the board members, hearing officers or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpoena issued from the court is punished.

[Formerly 656.412]

**656.734 Board to report violations of safety statutes to prosecuting attorney.** The board shall investigate all cases where they have reason to believe that employers subject to ORS 656.001 to 656.794 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 board 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.

[Formerly 656.424]

**656.736 to 656.750** [Reserved for expansion]

### State Compensation Department

**Note:** The powers, duties and functions of the former State Industrial Accident Commission relating to insurance coverage, actuarial determinations, claims processing and payment, contribution collection, safety (except the duties, powers and functions as provided in ORS chapter 654), accounting and all other powers necessary to administer the State Compensation Department as an insurer, including but not limited to ORS 401.805 to 401.890, 655.405 to 655.460, 655.505 to 655.550, 656.505, 656.524, 656.552, 656.554, 656.562, 656.564, 656.566, 656.644, 656.734, 656.806 and 656.824, which are not otherwise transferred by 1965 c.285, are transferred to the State Compensation Department. See 1965 c.285 §69b.

1965 c.285 §69c authorizes the Legislative Counsel to substitute for words designating state officers and agencies from which duties, functions or powers are transferred by 1965 c.285 §69b, wherever such words occur in Oregon Revised Statutes, other designations necessary to conform to the legislative intention expressed by 1965 c.285, including but not limited

to the substitution of words designating the State Compensation Department or the Workmen's Compensation Board for words designating the former State Industrial Accident Commission.

**656.752 State Compensation Department; purpose and functions.** (1) The State Compensation Department is created for the purpose of transacting workmen's compensation insurance business formerly transacted by the State Industrial Accident Commission. The department also may insure a contributing employer against any liability such employer may have to his workman for bodily injury arising out of and in the course of employment.

(2) The functions of the department shall be:

(a) To confer with and solicit employers and to determine, handle, audit and enforce collection of contributions, premiums, assessments and fees of contributing employers;

(b) To receive and handle and process the claims of workmen and beneficiaries of workmen injured in the employ of contributing employers; and

(c) To perform all other functions which the laws of this state specifically authorize or which are necessary or appropriate to carry out the functions expressly authorized.

(3) The department in its name may sue and be sued.

(4) The department may authorize direct responsibility employers to use any physical rehabilitation center operated by the department on such terms as the department deems reasonable.

[1965 c.285 §55; 1965 c.564 §7]

**656.754 Manager of department; appointment and powers.** (1) The department is under the direct supervision of a manager appointed by the Governor. The manager shall serve for a four-year term. He shall qualify in the manner provided for board members in ORS 656.716 except that his bond shall be \$50,000, the premium to be paid out of the Industrial Accident Fund. He may be removed in the same manner as provided for the removal of board members in ORS 656.714.

(2) The manager has such powers as are necessary to carry out the functions of the department.

(3) The manager may employ, terminate and supervise the employment of such assistants, experts, field personnel and clerks as may be required in the administration of the department.

[1965 c.285 §56]

**656.756 Salary of manager.** The manager of the department shall receive such salary as may be fixed by the Governor. The determination of such salary is not subject to ORS 240.240 or 240.245.

[1965 c.285 §56a]

**656.758 Inspection of books, records and payrolls; statement of employment data; civil penalty for misrepresentation; failure to submit books for inspection and refusal to keep correct payroll.** (1) The books, records and payrolls of any employer pertinent to the administration of ORS 656.001 to 656.794 shall always be open to inspection by the department 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 656.001 to 656.794 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 department, upon request, a sworn statement of the same.

(3) Any employer who wilfully misrepresents to the department the amount of his payroll upon which the amount of his contribution to the Industrial Accident Fund is based shall be liable to the department 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 656.001 to 656.794 according to a correct computation of his payroll. Such liability shall be enforced in a civil action in the name of the department 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 department or any of its representatives presenting written authority from the department, or a refusal on the part of an employer to keep a payroll in accordance with this section, when demanded by the department, subjects the offending employer to a penalty of \$100 for each offense, to be collected by a civil action in the name of the department and paid into the Industrial Accident Fund.

[Formerly 656.420]

656.760 to 656.790 [Reserved for expansion]

**(Advisory Committees)**

**656.792 Industrial Accident Advisory Committee.** The Governor shall appoint an Industrial Accident Advisory Committee composed of nine members: Three representing subject workmen, three representing subject employers, one of whom shall represent agriculture, and three from the public at large. This committee shall conduct a continuous study of workmen's compensation benefits and other aspects of workmen's compensation and industrial accidents and report its recommendations biennially to the legislature on or before the first day of each legislative session. The term of each committee member shall be three years commencing on July 1; provided, however, the Governor shall designate one member from each group initially appointed whose term shall expire on June 30, 1966, and one member from each group whose term shall expire on June 30, 1967. A member may be reappointed. The committee members shall serve without compensation but shall be entitled to travel expenses. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the board as it shall need without charge. All expenses of this committee shall be paid out of the Administrative Fund.

[1965 c.285 §29]

**656.794 Advisory committee on medical care.** (1) There shall be created an advisory committee on medical care. This committee shall consist of at least five members and shall be appointed by and serve at the pleasure of the board. Members of the committee shall serve without compensation.

(2) The duties of the committee are:

(a) To advise the board on matters relating to the provision of medical care to injured workmen by direct responsibility employers or the department.

(b) To prepare and submit for consideration by the board appropriate rules and regulations governing the furnishing of medical care to injured workmen by employers or the department under ORS 656.001 to 656.794, including but not limited to reasonable rates to be paid for medical services to be provided to injured workmen, and any supplement or amendment to such rules and regulations. The board, upon its own motion, upon the request of the advisory committee

or upon request of any other interested party, shall in compliance with ORS chapter 183 promulgate such rules and regulations, supplements or amendments, or such modifications thereof as the board determines to be desirable.

(3) Nothing in this section prevents the board on its own motion and in compliance with ORS chapter 183 from promulgating rules and regulations relating to medical care under its general authority under ORS 656.726, but before doing so the board shall submit such rules or regulations to the advisory committee created by this section for its advice.

[1965 c.285 §27]

656.796 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

656.001 to 656.794, 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 are not subject to ORS 656.001 to 656.794, nor shall ORS 654.305 to 654.335 be applicable thereto to actions arising out of occupational disease.

[Amended by 1965 c.285 §87]

**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 Workmen's Compensation Board, 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 board within 10 days after the beginning of such employment.

**656.807 Time for filing of claims for occupational disease; procedure.** (1) Except as otherwise limited for silicosis, all occupational disease claims shall be void unless a claim is filed with the department or direct responsibility employer 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.

(4) The procedure for allowing, denying, processing or closing occupational disease claims shall be the same as provided for accidental injuries under ORS 656.001 to 656.794, except that any review of the claim after a hearing by the hearing officer shall be in accordance with ORS 656.808 to 656.814.

[Amended by 1953 c.440 §2; 1959 c.351 §2; 1965 c.285 §87a.]

**656.808 Rejection of occupational disease claim by hearing officer; appeal to medical board of review.** A final order of the hearing officer in any claim involving occupational disease may be rejected by the claimant or employer, in writing, filed at the office of the Workmen's Compensation Board within 90 days after the date of such order. Such rejection acts as an appeal to the medical board of review.

[Amended by 1957 c.559 §2; 1965 c.285 §88]

**656.810 Medical board of review for occupational disease claim; appointment and procedures.** (1) In every case of the rejection of a final order of the hearing officer 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 department or direct responsibility employer.

(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 such list. If the third doctor cannot be agreed upon, or for any other reason has not been named within such period of time, the Workmen's Compensation Board 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 Workmen's Compensation Board, 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) The medical board of review shall be furnished with a copy of the transcript of the hearing before the hearing officer and any other documents or materials pertinent to its review of the claim.

(4) 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 Workmen's Compensation Board shall within 30 days of the filing of the 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; 1965 c.285 §89]

**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 Workmen's Compensation Board within 60 days after appointment of the third member. A copy thereof shall be mailed to the parties.

[Amended by 1965 c.285 §90]

**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 department or direct responsibility employer within one year after total disability began or within six months after death.

[Amended by 1959 c.351 §5; 1965 c.285 §91]

**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 656.234 and 656.245; 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; 1965 c.285 §92]

**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 Workmen's Compensation Board 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 Workmen's Compensation Board, the dean and the State Health Officer shall each have one vote.

(3) The appointing body shall certify to the Workmen's Compensation Board 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 Workmen's Compensation Board 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 Administrative 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 Administrative Fund.

[Amended by 1965 c.285 §92a]

**656.824 Degree of occupational disease hazard as affecting contribution rates.** (1) In addition to the rate making authority of the department, it may, in fixing rates of contribution, readjust, increase or decrease the rates of all employes subject to ORS 656.001 to 656.794 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 board, department or di-

rect responsibility employer for the purpose of obtaining any benefit or payment under ORS 656.001 to 656.794, either for himself or any other person, or who knowingly misrepresents to the board or the department or any of its representatives the amount of a payroll, or who knowingly submits a false payroll report to the board or the department, is punishable, upon conviction, by imprisonment for a term of not more than one year or by a fine of not more than \$1,000, or by both.

(2) Violation of ORS 656.052 is punishable, upon conviction, by a fine of not less than \$25 nor more than \$100. Each day during which an employer engages in any subject occupation in violation of ORS 656.052 constitutes a separate offense.

(3) Violation of ORS 656.056 is 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 subsection (8) of ORS 656.726 or ORS 656.758 when demanded by the board or department, 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 board or department is a misdemeanor.

(6) Violation of subsection (2) of ORS 656.236 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; 1965 c.285 §93]

### 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 November 15, 1965.

Sam R. Haley  
Legislative Counsel

