Chapter 654

1975 REPLACEMENT PART

Places of Employment; Safety and Health Regulations

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SAFETY AND HEALTH CONDITIONS IN PLACES OF EMPLOYMENT GENERALLY

654.001 Short title. ORS 654.001 to 654.295 and 654.991 may be cited as the Oregon Safe Employment Act.
[1973 c.833 s.2]

654.003 Policy declaration. The purpose of the Oregon Safe Employment Act is to assure as far as possible safe and healthful working conditions for every working man and woman in Oregon, to preserve our human resources and to reduce the substantial burden, in terms of lost production, wage loss, medical expenses, disability compensation payments and human suffering, which is created by occupational injury and disease. To accomplish this purpose the Legislative Assembly intends to provide a procedure which will:

(1) Encourage employers and employes to reduce the number of occupational safety and health hazards and to institute new programs and improve existing programs for providing safe and healthful working conditions.

(2) Authorize the Workmen's Compensation Board and its designees to set reasonable, mandatory, occupational safety and health standards for all employments and places of employment.

(3) Provide an effective program, under the Workmen's Compensation Board, to enforce all laws, regulations, rules and standards adopted for the protection of the life, safety and health of employes.

(4) Establish appropriate reporting and research procedures which will help achieve the objectives of the Oregon Safe Employment Act, identify occupational hazards and unsafe and unhealthy working conditions, and describe the nature of the occupational safety and health problem.

(5) Assure that Oregon assumes fullest responsibility, in accord with the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), for the development, administration and enforcement of safety and health laws and standards.
[1973 c.833 s.3]

654.005 Definitions. As used in this chapter, unless the context requires otherwise:

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

(2) "Board" means the Workmen's Compensation Board created by ORS 656.712 and includes its authorized representatives and designees.

(3) "Employe" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish his services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workmen's compensation coverage as a subject workman pursuant to ORS chapter 656, whether by operation of law or by election.

(4) "Employer" means any person who has one or more employes, or any sole proprietor or member of a partnership who elects workmen's compensation coverage as a subject workman pursuant to ORS 656.128.

(5) "Owner" means and includes every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(6) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions.

(7) "Place of employment" means and includes every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employe works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his employes or by another person engaged in providing living quarters or shelters for employes, but "place of employment" does not include any place where the only employment involves nonsubject workmen employed in or about a private home.
[Amended by 1973 c.833 s.4; 1975 c.102 s.2]

654.010 Employers to furnish safe place of employment. Every employer shall furnish employment and a place of employment which are safe and healthful for employes therein, and shall furnish and use such devices and safeguards, and shall adopt

and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employes.
[Amended by 1973 c.833 s.5]

654.015 Unsafe or unhealthy place of employment prohibited. No employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health.
[Amended by 1973 c.833 s.6]

654.020 Interference with safety devices or methods prohibited. No person shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment.
[Amended by 1973 c.833 s.7]

654.022 Duty to comply with safety and health orders, decisions and rules. Every employer, owner, employe and other person shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the board in connection with the matters specified in ORS 654.001 to 654.295, or in any way relating to or affecting safety and health in employments or places of employment, or to protect the life, safety and health of employes in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, standard, rule or regulation.
[Formerly 654.060]

654.025 Jurisdiction and supervision of Workmen's Compensation Board and other state agencies over employment and places of employment. (1) The board is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws, regulations, rules, standards and lawful orders requiring such employment and place of employment to be safe and healthful, and requiring the protection of the life, safety and health of every employe in such employment or place of employment.

(2) The board may make, establish, promulgate and enforce all necessary and reasonable regulations, rules, standards, orders and other provisions for the purpose of carrying ORS 654.001 to 654.295 into effect, notwithstanding any other statutory provisions which may be to the contrary. Nothing in ORS 654.001 to 654.295, however, shall authorize or require medical examination, immunization or treatment for those who object thereto on religious grounds, except where such is necessary to protect the health or safety of others.

(3) (a) The board may enforce all regulations, rules and standards duly adopted by any other state agency for the safety and health of employes.

(b) This grant of concurrent jurisdiction and authority to the board shall not be construed, however, as repealing or amending, or as derogating in any respect from, the statutory jurisdiction and authority of any other state agency to promulgate and enforce regulations, rules and standards and to conduct inspections and investigations, except that no other state agency shall issue the citations or assess the civil penalties provided in ORS 654.001 to 654.295.

(c) In the event a state of facts or condition constitutes a violation of more than one rule, regulation, standard or order of the board or any other agency pertaining to occupational safety or health, the state of facts or condition shall be the basis for the issuance of only one citation and proceeding or the assessment of only one penalty unless the statute specifically provides that a continuation of a state of facts or a condition constitutes a new violation.

(d) Where another state agency, pursuant to its statutory authority, proposes to adopt a regulation, rule or standard relating to occupational safety or health, such agency shall accord the board an opportunity to review such regulation, rule or standard prior to its adoption for the purpose of assuring that employers will not be asked to comply with contradictory or inconsistent requirements or be burdened with an unnecessary duplication of occupational safety and health codes, inspections or reports.

(4) The board may subpena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, docu-

ments and testimony in any inquiry, investigation, hearing or proceeding in any part of the state, and the board shall provide for defraying the expenses thereof.

(5) The board may do and perform all things, whether specifically designated in ORS 654.001 to 654.295 or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it by ORS 654.001 to 654.295, including but not limited to:

(a) Designating by order or rule any named state employe or category of state employes who shall have authority to exercise any of the duties and powers imposed upon the board by law and whose act as authorized by the order or rule shall be considered to be an official act of the board; and

(b) Instituting any legal or equitable proceeding which would assist in the enforcement of any state occupational safety or health law or any regulation, rule, standard or order promulgated thereunder, including but not limited to seeking injunctive relief to enjoin an employer from operating his place of employment until he has complied with the provisions of such law, regulation, rule, standard or order. Upon the filing of a suit for an injunction by the board, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of such notice.

[Amended by 1973 c.833 s.9]

654.030[Amended by 1973 c.833 s.24; renumbered 654.130]

654.031 Board duty to order correction of unsafe or unhealthy conditions. Whenever the board has reason to believe, after an inspection or investigation, that any employment or place of employment is unsafe or detrimental to health or that the practices, means, methods, operations or processes employed or used in connection therewith are unsafe or detrimental to health, or do not afford adequate protection to the life, safety and health of the employes therein, the board shall issue such citation and order relative thereto as may be necessary to render such employment or place of employment safe and protect the life, safety and health of employes therein. The board may in the order direct that such additions, repairs, improvements or changes be made, and such devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe and healthful, in the manner and within the time specified in the order.

[Formerly 654.045]

654.035 Scope of rules and orders of the board. The board may, by general or special orders, or by regulations, rules, codes or otherwise:

(1) Declare and prescribe what devices, safeguards or other means of protection and what methods, processes or work practices are well adapted to render every employment and place of employment safe and healthful.

(2) Fix reasonable standards and prescribe and enforce reasonable orders for the adoption, installation, use and maintenance of devices, safeguards and other means of protection, and of methods, processes and work practices, to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, safety and health of employes.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe and healthful.

(4) Fix standards for routine, periodic or area inspections of places of employment which are reasonably necessary in order to determine that all occupational safety and health laws and the regulations, rules and standards promulgated thereunder are being complied with.

(5) Require the performance of any other act which the protection of the life, safety and health of employes in employments and places of employment may demand.

[Amended by 1973 c.833 s.11]

654.040[Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.045[Amended by 1973 c.833 s.10; renumbered 654.031]

654.047[Formerly 654.225; 1965 c.285 s.82; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.050[Amended by 1953 c.387 s.2; 1957 c.436 s.1; 1965 c.285 s.69d; 1969 c.534 s.1; 1971 c.251 s.1; repealed by 1973 c.833 s.19 (654.082 and 654.086 enacted in lieu of 654.050)]

654.055[Repealed by 1973 c.833 s.12 (654.056 and 654.078 enacted in lieu of 654.055)]

654.056 Variance from safety or health standards; effect of variance on citations. (1) Any employer may apply to the board, pursuant to regulations and procedures adopted by the board, for an order

granting him a variance from a particular safety or health regulation, rule or standard.

(2) The board may grant a temporary variance only if the employer demonstrates by a preponderance of the evidence that:

(a) He is unable to comply with a new regulation, rule or standard by its effective date;

(b) He has an effective program for complying with the law as quickly as practicable; and

(c) He is taking all available steps in the interim to safeguard his employes against the hazards covered by the regulation, rule or standard.

(3) The board may grant a permanent variance only if the employer demonstrates by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by him will provide employment and a place of employment which are as safe and healthful as those which would prevail if he complied with the regulation, rule or standard.

(4) Where the board proposes to deny a request for a variance, the employer shall be given an opportunity for a hearing in which he may contest the proposed denial.

(5) Where the board proposes to grant a variance, the affected employes shall be given an opportunity for a hearing in which they may contest the proposed variance.

(6) A request for a variance which is filed after an inspection or investigation by the board will not act to stay or dismiss any citation which may result from such inspection or investigation, and an order granting the requested variance shall have no retroactive effect.

(7) An order granting a variance may be modified or revoked by the board upon its own motion or upon the application of the employer or an affected employe or his representative, in the manner prescribed for its issuance at any time after six months from its issuance.

[1973 c.833 s.13 (enacted in lieu of 654.055)]

654.060[Amended by 1973 c.833 s.8; renumbered 654.022]

654.062 Notice of violation to employer by workman; complaint by workman to board; inspection by board; protection of complaining employes. (1) Every employe should notify his employer of any violation of law, regulation or standard pertaining to safety and health in his place of employment when the violation comes to the knowledge of the employe.

(2) However, any employe or his representative may complain to the board or any of its authorized representatives of any violation of law, regulation or standard pertaining to safety and health in his place of employment, whether or not the employe also notifies his employer.

(3) Upon receiving any employe complaint, the board shall make such inquiries, inspections and investigations as it considers reasonable and appropriate. Where an employe has complained in writing of an alleged violation and no resulting citation is issued to the employer, the board shall furnish to the employe or his representative, upon written request, a statement of reasons for its decision.

(4) The board shall establish procedures for keeping confidential the identity of any employe who requests such protection in writing. Where such a request has been made, neither a written complaint from an employe, or his representative, nor a memorandum containing the identity of a complainant shall be construed as a public writing or record under ORS chapter 192.

(5) (a) No person shall bar or discharge from employment or otherwise discriminate against any employe or prospective employe because such employe has opposed any practice forbidden by ORS 654.001 to 654.295, made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295, or has testified or is about to testify in any such proceeding, or because of the exercise of such employe on behalf of himself or others of any right afforded by ORS 654.001 to 654.295.

(b) Any employe or prospective employe who believes that he has been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, by any person in violation of this subsection may, within 30 days after he has reasonable cause to believe that such a violation has occurred, file a complaint with the Labor Commissioner alleging such discrimination under the provisions of ORS 659.040. Upon receipt of such complaint the Labor Commissioner shall process the complaint and case under the procedures, policies and remedies established by ORS 659.010 to 659.110 and the policies established by ORS 654.001 to 654.295 in the same way and to the same extent that the complaint would be processed by the Labor Commissioner if the complaint involved allegations of unlawful employment practices

based upon race, religion, color, national origin, sex or age under subsection (4) of ORS 659.030. The affected employe shall also have the right to bring a suit in any circuit court of the State of Oregon against any person alleged to have violated this subsection. The Labor Commissioner or the circuit court may order all appropriate relief including rehiring or reinstatement of the employe to his former position with back pay.

(c) Within 90 days after the receipt of a complaint filed under this subsection the Labor Commissioner shall notify the complainant of his determination under paragraph (b) of this subsection.

[Formerly 654.235; 1973 c.833 s.14]

654.065[Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.067 Inspection of places of employment; denial of access; warrants; safety and health consultation with employes. (1) In order to carry out the purposes of ORS 654.001 to 654.295, the board, upon presenting appropriate credentials to the owner, employer or agent in charge, is authorized:

(a) To enter without delay and at reasonable times any place of employment; and

(b) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately the owner, employer, agents or employes.

(2) No person shall give an owner, employer, agent or employe advance notice of any inspection to be conducted under ORS 654.001 to 654.295 of any place of employment without authority from the board.

(3) Except in the case of an emergency, or of a place of employment open to the public, if the board is denied access to any place of employment for the purpose of an inspection or investigation, such inspection or investigation shall not be conducted without an inspection warrant obtained pursuant to ORS 654.202 to 654.216, or without such other authority as a court may grant in an appropriate civil proceeding. Nothing contained herein, however, is intended to affect the validity of a constitutionally authorized inspection conducted without an inspection warrant.

(4) A representative of the employer and a representative authorized by his employes shall be given an opportunity to accompany the board during the inspection of any place of employment for the purpose of aiding such inspection. Where there is no employe representative, or the employe representative is not an employe of the employer, the board should consult with a reasonable number of employes concerning matters of safety and health in the place of employment.

[1973 c.833 s.16 (enacted in lieu of 654.047, 654.222 and 654.232)]

654.070[Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.071 Citation for safety or health standard violations; effect of failure to correct violation; posting of citations and notices by employer. (1) If the board or its authorized representative has reason to believe, after inspection or investigation of a place of employment, that an employer has violated any state occupational safety or health law, regulation, standard, rule or order, the board or its authorized representative shall with reasonable promptness issue to such employer a citation, and notice of proposed civil penalty, if any, to be assessed under this chapter, and fix a reasonable time for correction of the alleged violation.

(2) Each citation and notice required by subsection (1) of this section shall be in writing, shall be mailed to or served upon the employer or his registered agent, and shall contain:

(a) The date and place of the alleged violation;

(b) A plain statement of the facts upon which the citation is based;

(c) A reference to the law, regulation, rule, standard or order relied upon;

(d) The amount, if any, of the proposed civil penalty;

(e) The time, if any, fixed for the correction of the alleged violation;

(f) Notice of the employer's right to contest the citation, the proposed civil penalty and the period of time fixed for correction of the alleged violation; and

(g) Notice of any affected employe's right to contest the period of time fixed for correction of the alleged violation.

(3) No citation or notice of proposed civil penalty may be issued under this section after the expiration of 180 days following the board's knowledge of the occurrence of a violation, but this shall not prevent the issuance, at any time, of an order to correct

that violation or the issuance of a citation for a subsequent violation.

(4) If the board has reason to believe that an employer has failed to correct a violation within the period of time fixed for correction, or within the time fixed in a subsequent order granting an extension of time to correct the violation, the board shall consider such failure as a separate and continuing violation and shall issue a citation and notice of proposed civil penalty, if any, to be assessed pursuant to paragraph (d) of subsection (1) of ORS 654.086.

(5) The board may prescribe procedures for the issuance of a notice in lieu of citation to inform an employer and his employes of a minimal violation which has no direct or immediate relationship to occupational safety or health.

(6) Each citation and notice, or copies thereof, issued under ORS 654.001 to 654.295 shall be posted by the employer, immediately upon receipt, in a conspicuous manner in a sufficient number of locations in his place or places of employment to reasonably inform his employes of such citation and notice.
[1973 c.833 s.17]

654.074 Considerations in determining amount of civil penalties and time provided for correction of violations of public employers; application; termination of section. (1) Where a public employer is cited for a violation based upon an unsafe or unhealthy structural or mechanical condition in an existing public building owned by such employer, the board shall consider, in fixing the time for correction of the violation and the payment of civil penalties therefor:

(a) The budgetary process and financial resources of such employer;

(b) The seriousness of the hazard to its employes;

(c) The employer's program for correcting the hazardous condition; and

(d) The steps being taken in the interim to protect adequately the public employes affected.

(2) This section does not apply to leased or rented public buildings, or to public buildings constructed, acquired or occupied after July 22, 1973.

(3) The provisions of this section shall terminate upon July 1, 1975.
[1973 c.833 s.17a]

654.075[Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.078 Contesting violations; hearing; admissibility in criminal or civil proceedings of stipulations involving violations. (1) An employer may contest a citation, a proposed assessment of civil penalty and the period of time fixed for correction of a violation, or any of these, by filing with the board, within 15 days after receipt of the citation, notice or order, a written request for a hearing. Such a request need not be in any particular form, but shall specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(2) An affected employe or representative of such employes may contest the time fixed for correction of a violation by filing with the board, within 15 days after the receipt by his employer of the citation, notice or order which fixes such time for correction, a written request for a hearing. Such a request need not be in any particular form, but shall specify the violation in question and the grounds upon which the employe considers the correcton period to be unreasonable.

(3) A hearing on any question relating to the validity of a citation or the proposed civil penalty to be assessed therefor shall not be granted unless a request for hearing is filed by the employer within the period specified in subsection (1) of this section. If a request for hearing is not so filed, the citation and the assessment of penalty as proposed shall be a final order of the board and shall not be subject to review by any agency or court.

(4) A hearing relating to the reasonableness of the time prescribed for the correction of a violation shall not be granted, except for good cause shown, unless a request for hearing is filed within the period specified in subsections (1) and (2) of this section. If a request for hearing is not so filed the time fixed for correction of the violation shall be a final order of the board and shall not be subject to review by any agency or court.

(5) Where an employer contests, in good faith and not solely for delay or avoidance of penalties, the period of time fixed for correction of a nonserious violation, such period of time shall not run between the date the request for hearing is filed and the date the order of the board becomes final by operation of law or on appeal.

(6) Where an employer or employe contests the period of time fixed for correction of a serious violation, any hearing on that issue shall be conducted as soon as possible and shall take precedence over other

hearings conducted under the provisions of ORS 654.001 to 654.295.

(7) Where informal disposition of a contested case is made by stipulation, agreed settlement or a consent order, such stipulation, settlement or order shall not be pleaded or admissible in evidence as an admission or confession in any criminal prosecution or in any other civil proceeding that may be instituted against the employer, except in the case of a civil proceeding brought to enforce such stipulation, settlement or order.
[1973 c 833 s.18 (enacted in lieu of 654.055)]

654.080[Repealed by 1973 c.833 s.34 (654.290 enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080)]

654.082 Prohibiting use of equipment involved in violation; red warning notice. (1) The board, or an authorized representative thereof with the approval of the board or, pursuant to such rules and procedures as the board may prescribe, with the approval of the Administrator of the Accident Prevention Division, upon finding any violation of any statute, or of any lawful regulation, rule, standard or order, involving failure to install or maintain any safety or health appliance, device or safeguard or to render a place of employment safe and healthful, may prohibit the further use of the machine, equipment, apparatus or place of employment constituting such violation, and when such use is prohibited shall post a red warning notice in an appropriate place in plain view of any person likely to use the same, thereby calling attention to the unsafe condition, defect, lack of safeguard or unsafe place of employment and the fact that further use thereof is prohibited.

(2) No person shall use or operate any place of employment, machine, device, apparatus or equipment, after the red warning notice required by this section is posted, before such place of employment, machine, device, apparatus or equipment is made safe and healthful, and the required safeguards or safety appliances or devices are provided, and authorization for the removal of such red warning notice has been obtained from the board.

(3) No person shall deface, destroy or remove any red warning notice posted pursuant to this section until authorization for the removal of such notice has been obtained from the board.
[1973 c.833 s.20 (enacted in lieu of 654.050); 1975 c.102 s.3]

654.085[Amended by 1973 c.833 s.33; renumbered 654.285]

654.086 Civil penalty for violations; classification of violations; payment and disposition of penalty moneys. (1) The board or its authorized representative is hereby granted the authority to assess civil penalties as provided by this section for violation of the requirements of any state occupational safety or health statute or the lawful regulations, rules, standards or orders adopted or promulgated thereunder.

(a) Any employer who receives a citation for a serious violation of such requirements shall be assessed a civil penalty of not more than $1,000 for each such violation.

(b) Any employer who receives a citation for a violation of such requirements, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than $1,000 for each such violation.

(c) Any employer who wilfully or repeatedly violates such requirements may be assessed a civil penalty of not more than $10,000 for each violation.

(d) Any employer who receives a citation, as provided in subsection (4) of ORS 654.071, for failure to correct a violation may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

(e) Any employer who knowingly makes any false statement, representation or certification regarding the correction of a violation may be assessed a civil penalty of not more than $1,000.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of ORS 654.001 to 654.295, shall be assessed a civil penalty of not more than $1,000 for each violation.

(g) Any person who violates the provisions of subsection (2) or (3) of ORS 654.082 may be assessed a civil penalty of not more than $1,000 for each such violation.

(2) For the purposes of ORS 654.001 to 654.295 a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes

final, it constitutes a judgment and may be filed with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the judgment docket. The penalty provided in the order so docketed shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) Civil penalties collected under ORS 654.001 to 654.295 shall be paid into the Administrative Fund.

[1973 c.833 s.21 (enacted in lieu of 654.050)]

654.090 Occupational safety and health activities; voluntary compliance; consultative services. In order to carry out the purposes of ORS 654.001 to 654.295 and encourage voluntary compliance with occupational safety and health laws, regulations and standards, the board may:

(1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through (a) research, conferences, lectures and the use of public communications media, (b) the collection and dissemination of accident statistics and (c) the publication and distribution of training and accident prevention materials, including audio and visual aids.

(2) Appoint advisers who shall, without compensation, assist the board in establishing standards of safety and health. The board may adopt and incorporate in its regulations, rules and standards such safety and health recommendations as it may receive from such advisers.

(3) Provide consultative services for employers on safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in his place of employment, which will not directly result in a citation and civil penalty.

[Amended by 1965 c.285 s.69h; 1973 c.833 s.22]

654.092[Formerly 654.255; repealed by 1965 c.285 s.95]

654.093[Formerly 654.265; repealed by 1973 c.833 s.48]

654.094[Formerly 654.270; repealed by 1965 c.285 s.95]

654.095[Amended by 1965 c.285 s.69e; repealed by 1973 c.833 s.48]

654.096[Formerly 654.275; repealed by 1967 c.92 s.5]

654.100[Repealed by 1973 c.833 s.31 (654.251 enacted in lieu of 654.100)]

654.105[1957 c.156 s.1; 1959 c.684 s.1; repealed by 1973 c.833 s.29 (654.241 enacted in lieu of 654.105 and 654.226)]

654.110[1957 c.156 s.2; 1959 c.684 s.3; repealed by 1971 c.251 s.2]

654.120 Records of proceedings; confidentiality of certain information; federal reporting requirements. (1) The board shall maintain, for a reasonable time, records of all inspections, investigations, employe complaints, employer reports, citations, hearings, proceedings and any other matters necessary for achieving the purposes of ORS 654.001 to 654.295.

(2) Each employer shall keep records, in the manner prescribed by the board, of work-related deaths and serious injuries and illnesses, and of such other relevant occupational safety and health matters as are reasonably necessary for achieving the purposes of ORS 654.001 to 654.295. Each employer shall notify the board forthwith of the work-related death of any employe of his, and shall make such other reports as the board may reasonably prescribe by rule or order.

(3) All information reported to or otherwise obtained by the board in connection with any matter or proceeding under ORS 654.001 to 654.295 which contains or which might reveal a trade secret referred to in section 1905, title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other officers or employes of the board or other agencies concerned with carrying out their duties under ORS 654.001 to 654.295 or when relevant in any proceeding under ORS 654.001 to 654.295 or 654.991. In any such matter or proceeding the board, the other state agency, the hearing officer or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(4) The board will make reports to the Secretary of Labor of the United States in such form and containing such information as he shall from time to time require pursuant to the Occupational Safety and Health Act of 1970 (Public Law 91-596).

(5) Nothing contained in ORS 654.001 to 654.295 shall relieve an employer from making such reports to the Secretary of Labor of the United States as may be required by federal law.

[1973 c.833 s.23]

654.130 Proceedings against unwilling witnesses. (1) The board, or its authorized representative or designee before whom testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers as required by subpena, may report to the circuit court in the county in which the inquiry, investigation, hearing or other proceeding is pending, by petition setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been subpenaed in the manner prescribed and that the witness has failed and refused to attend or produce the papers required by the subpena or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of the court to compel the witness to attend and testify or produce said papers.

(2) The court, upon receiving the petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended and testified or produced the papers.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpena was regularly issued, the court shall thereupon enter an order that the witness appear before the board or its authorized representative or designee at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.
[Formerly 654.030]

654.150 Sanitary facilities at construction projects; standards; exemptions. (1) At the site of every construction project estimated to cost $500,000 or more the employer or owner of such place of employment shall provide toilet facilities and facilities for maintaining personal cleanliness for the use of employes on the construction project. Flush toilets shall be provided and the washing facilities shall consist of warm water, wash basins and soap. A building or a mobile, self-contained unit may be provided for such facilities. The number, types and maintenance of facilities shall conform to minimum standards set by the board.

(2) Subsection (1) of this section does not apply to highway construction or maintenance projects or to electricity, water, sewer or gas transmission facility construction or maintenance projects.

(3) The board may, by order, exempt or partially exempt. individual or classes of construction projects from the requirements of subsection (1) of this section when conditions are such that compliance is impractical or impossible.
[1975 c.751 s.2]

654.155[Repealed by 1973 c.833 s.48]

654.175[Repealed by 1969 c.534 s.2]

654.180[Repealed by 1969 c.534 s.2]

HEALTH, SANITATION INSPECTIONS

654.202 Issuance of warrants for safety and health inspections. Magistrates authorized to issue search warrants may, upon application of the board, or any public officer, agent or employe thereof acting in the course of his official duties, issue an inspection warrant whenever an inspection or investigation of any place of employment is required or authorized by any state or local statute, ordinance or regulation relating to occupational safety or health. The inspection warrant is an order authorizing the safety or health inspection or investigation to be conducted at a designated place of employment.
[1971 c.405 s.1; 1973 c.833 s.25]

654.205[Repealed by 1959 c.516 s.6]

654.206 Grounds for issuance of inspection warrants; requirements of affidavit. (1) An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant hereunder, the statute, ordinance or regulation requiring or authorizing the inspection or investigation, the place of employment to be inspected or investigated and the purpose for which the inspection or investigation is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

(2) Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect

to the particular place of employment, or there is probable cause to believe that a condition of nonconformity with a safety or health statute, ordinance, regulation, rule, standard or order exists with respect to the particular place of employment, or an investigation is reasonably believed to be necessary in order to determine or verify the cause of an employe's death, injury or illness.
[1971 c.405 s.2; 1973 c.833 s.26]

654.210[Repealed by 1959 c.516 s.6]

654.212 Procedure for issuance of inspection warrant by magistrate. (1) Before issuing an inspection warrant, the magistrate may examine under oath the applicant and any other witness and shall satisfy himself of the existence of grounds for granting such application.

(2) If the magistrate is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, he shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place of employment to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the magistrate has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
[1971 c.405 s.3; 1973 c.833 s.27]

654.215[Repealed by 1959 c.516 s.6]

654.216 Execution of inspection warrants. (1) Except as provided in subsection (2) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present his credentials, authority and purpose to an occupant or person in possession of the place of employment designated in the warrant and show him the warrant or a copy thereof upon request.

(2) In executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of his authority and purpose, as prescribed in subsection (1) of this section, but may promptly enter the designated place of employment if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

(3) A peace officer may be requested to assist in the execution of the inspection warrant.

(4) An inspection warrant must be executed and returned to the magistrate by whom it was issued within 10 days from its date, unless such magistrate before the expiration of such time, by indorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.
[1971 c.405 s.4; 1973 c.833 s.28]

654.220[Repealed by 1959 c.516 s.6]

654.222[1971 c.405 s.5; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.225[Amended by 1959 c.516 s.1; renumbered 654.047]

654.226[1971 c.405 s.6; repealed by 1973 c.833 s.29 (654.241 enacted in lieu of 654.105 and 654.226)]

654.230[Repealed by 1959 c.516 s.6]

654.232[1971 c.405 s.7; repealed by 1973 c.833 s.15 (654.067 enacted in lieu of 654.047, 654.222 and 654.232)]

654.235[Amended by 1959 c.516 s.2; renumbered 654.062]

654.240[Repealed by 1959 c.516 s.6]

654.241 [1973 c.833 s.30 (enacted in lieu of 654.105 and 654.226); repealed by 1975 c.102 s.4]

654.245[Repealed by 1959 c.516 s.6]

654.250[Repealed by 1959 c.516 s.6]

654.251 Assistance to board from other state agencies; inspection of farm labor camps and facilities. (1) The Bureau of Labor, the Department of Commerce and any other state agency which is vested under separate statute with the authority to make inspections of places of employment, or to promulgate regulations, rules or standards relating to particular areas of occupational safety and health, shall render such advice and assistance to the board as it may reasonably request or prescribe in order to carry out the purposes of ORS 654.001 to 654.295. When any state agency completes an inspection of a place of employment, it shall promptly notify the board and the affected employer of any condition that may violate any occupational safety or health law, regulation, rule or standard.

(2) In addition to the inspection authority granted to the board and its representatives and designees by ORS 654.001 to 654.295, the Bureau of Labor may inspect farm labor camps, fields and facilities prior to occupancy and as reasonably necessary or appropriate thereafter, and shall report any

violation of occupational safety or health laws, regulations, rules or standards to the board or its designees.
[1973 c.833 s.32 (enacted in lieu of 654.100)]

654.255[Amended by 1955 c.643 s.1; 1957 c.492 s.1; 1959 c.516 s.3; renumbered 654.092]

654.260[Amended by 1955 c.643 s.2; repealed by 1959 c.516 s.6]

654.265[Amended by 1955 c.644 s.1; renumbered 654.093]

654.270[Renumbered 654.094]

654.275[Amended by 1959 c.516 s.4; renumbered 654.096]

654.285 Admissibility of rules and orders of board in evidence in proceedings under ORS 654.001 to 654.295. Except as provided in subsection (7) of ORS 654.078, every regulation, rule, standard, finding, decision and order of the board, general or special, made and entered under the provisions of ORS 654.001 to 654.295 and which has become final by operation of law or on appeal, shall be admissible as evidence in any hearing, civil proceeding or criminal prosecution conducted under the provisions of this chapter and shall, in every such hearing, proceeding or prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety and health.
[Formerly 654.085]

654.290 Applicability of Administrative Procedures Act; referee qualifications. (1) Promulgation by the board or its designees of regulations, rules and standards authorized by ORS 654.001 to 654.295, and any judicial review thereof, shall be as provided in ORS 183.310 to 183.500.

(2) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders pursuant to ORS 654.001 to 654.295, the conduct of hearings in contested cases and the judicial review thereof shall be as provided in ORS 183.310 to 183.500, except that:

(a) The board shall employ referees to hold hearings in contested cases.

(b) The order of a referee in a contested case shall be deemed to be a final order of the board.

(c) The Accident Prevention Division of the board shall have the same right to judicial review of the order of a referee as any person who is adversely affected or aggrieved by such final order.

(d) Affected employes or their authorized representative shall be accorded an opportunity to participate as parties in hearings.

(3) Referees shall be members in good standing of the Oregon State Bar and possess such other qualifications as the board may prescribe, and shall be employed in accordance with ORS 656.724.
[1973 c.833 s.35 (enacted in lieu of 654.040, 654.065, 654.070, 654.075 and 654.080); 1975 c.759 s.18]

654.293 Representation of employer by attorney permitted. Neither ORS 9.320 nor any provision in the Oregon Safe Employment Act shall be construed to deny an employer the right to be represented by an attorney or any other authorized representative designated by the employer in any proceedings under ORS 654.001 to 654.295.
[1975 c.370 s.2]

654.295 Application of Oregon Safe Employment Act. (1) Nothing contained in ORS 654.001 to 654.295 shall invalidate any existing occupational safety or health regulation, rule, standard or order which is not clearly inconsistent with the purposes and provisions of ORS 654.001 to 654.295.

(2) Where any part of a law, regulation, rule, standard or order is found to be clearly inconsistent with ORS 654.001 to 654.295 and declared to be invalid, it is the intent of the Legislative Assembly that the remaining provisions of such law, regulation, rule, standard or order remain in effect as fully as if the invalid part had not been adopted.
[1973 c.833 s.36]

EMPLOYERS' LIABILITY LAW

654.305 Protection and safety of persons in hazardous employment generally. Generally, all owners, contractors or subcontractors and other persons having charge of, or responsible for, any work involving a risk or danger to the employes or the public, shall use every device, care and precaution which it is practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of the structure, machine or other apparatus or device, and without regard to the additional cost of suitable material or safety appliance and devices.

654.310 Places of employment; compliance with applicable orders, rules. All owners, contractors, subcontractors, or persons whatsoever, engaged in the construction, repairing, alteration, removal or painting of any building, bridge, viaduct or other structure, or in the erection or operation of any machinery, or in the manufacture,

transmission and use of electricity, or in the manufacture or use of any dangerous appliance or substance, shall see that all places of employment are in compliance with every applicable order, decision, direction, standard, rule or regulation made or prescribed by the board pursuant to ORS 654.001 to 654.295.
[Amended by 1975 c.148 s.1]

654.315 Persons in charge of work to see that ORS 654.305 to 654.335 is complied with. The owners, contractors, subcontractors, foremen, architects or other persons having charge of the particular work, shall see that the requirements of ORS 654.305 to 654.335 are complied with.

654.320 Who considered agent of owner. The manager, superintendent, foreman or other person in charge or control of all or part of the construction, works or operation shall be held to be the agent of the employer in all suits for damages for death or injury suffered by an employe.

654.325 Who may prosecute damage action for death; damages unlimited. If there is any loss of life by reason of violations of ORS 654.305 to 654.335 by any owner, contractor or subcontractor or any person liable under ORS 654.305 to 654.335, the surviving spouse and children and adopted children of the person so killed and, if none, then his or her lineal heirs and, if none, then the mother or father, as the case may be, shall have a right of action without any limit as to the amount of damages which may be awarded. If none of the persons entitled to maintain such action reside within the state, the executor or administrator of the deceased person may maintain such action for their respective benefits and in the order above named.

654.330 Fellow servant's negligence as defense. In all actions brought to recover from an employer for injuries suffered by an employe, the negligence of a fellow servant shall not be a defense where the injury was caused or contributed to by any of the following causes:

(1) Any defect in the structure, materials, works, plant or machinery of which the employer or his agent could have had knowledge by the exercise of ordinary care.

(2) The neglect of any person engaged as superintendent, manager, foreman or other person in charge or control of the works, plant, machinery or appliances.

(3) The incompetence or negligence of any person in charge of, or directing the particular work in which the employe was engaged at the time of the injury or death.

(4) The incompetence or negligence of any person to whose orders the employe was bound to conform and did conform and by reason of his having conformed thereto the injury or death resulted.

(5) The act of any fellow servant done in obedience to the rules, instructions or orders given by the employer or any other person who has authority to direct the doing of said act.

654.335 Contributory negligence. The contributory negligence of the person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of the damage.

654.405[Repealed by 1973 c.833 s.48]

654.410[Repealed by 1973 c.833 s.48]

654.415[Repealed by 1973 c.833 s.48]

654.420[Repealed by 1973 c.833 s.48]

654.425[Repealed by 1973 c.833 s.48]

654.430[Repealed by 1973 c.833 s.48]

654.505[Repealed by 1961 c.485 s.29]

654.510[Amended by 1953 c.514 s.5; 1957 c.201 s.1; 1959 c.515 s.1; repealed by 1961 c.485 s.29]

654.515[Repealed by 1961 c.485 s.29]

654.520[Amended by 1953 c.514 s.5; repealed by 1961 c.485 s.29]

654.525[Amended by 1959 c.657 s.1; repealed by 1961 c.485 s.29]

654.530[Amended by 1953 c.514 s.5; 1957 c.201 s.2; repealed by 1961 c.485 s.29]

654.532[1953 c.514 s.5; 1957 c.201 s.3; repealed by 1961 c.485 s.29]

654.535[Amended by 1953 c.514 s.5; 1957 c.201 s.4; repealed by 1961 c.485 s.29]

654.540[Amended by 1957 c.465 s.11; repealed by 1961 c.485 s.29]

654.545[Amended by 1953 c.514 s.5; repealed by 1961 c.485 s.29]

654.550[Amended by 1953 c.514 s.5; 1957 c.201 s.5; repealed by 1961 c.485 s.29]

654.605[Repealed by 1973 c.833 s.48]

654.610[Repealed by 1973 c.833 s.48]

654.705[Repealed by 1967 c.150 s.2]

654.710[Repealed by 1967 c.150 s.2]

REPORTS OF ACCIDENTS TO PUBLIC UTILITY COMMISSIONER

654.715 Report of accidents to Pub-

lic Utility Commissioner; investigation; supplemental reports. (1) Every railroad and public utility shall give immediate notice by telegraph, telephone or personally, to the Public Utility Commissioner of Oregon whenever any accident occurs within this state upon its premises, line of railroad, depot grounds or yards, or directly or indirectly arises from or connected with its maintenance or operation, if the accident is attended by loss of human life or limb or serious injury to person or property.

(2) Every railroad shall also give notice, within 30 days, to the Public Utility Commissioner of Oregon of all other accidents occurring at public highway and private road crossings in which collision occurs between the person or vehicle of a user of the highway and any locomotive, motor, car, train or other vehicle using the railroad, whether resulting in personal injury or not.

(3) The Public Utility Commissioner may, if he deems the public interest requires it, investigate each such accident forthwith, after giving the railroad or public utility involved reasonable notice of the time and place of such investigation.

(4) The Public Utility Commissioner may adopt and amend rules and regulations governing the form and content of reports to enable him to ascertain relevant facts and circumstances attending such accident and the causes thereof. Whenever the original report is insufficient, in the opinion of the commissioner, he may require the railroad or public utility to file supplemental reports of accidents.

[Amended by 1965 c.462 s.2]

654.720 Public inspection or use of reports as evidence prohibited. No report, or any part thereof, required by ORS 654.715, shall be open to public inspection or be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

PENALTIES

654.990[Amended by 1959 c.516 s.5; 1961 c.485 s.28; 1967 c.150 s.1; repealed by 1973 c.833 s.37 (654.991 enacted in lieu of 654.990)]

654.991 Criminal penalties. (1) Any employer who wilfully violates any provision of, or any regulation, rule, standard or order promulgated pursuant to, ORS 654.001 to 654.295, and that violation is found to have caused or materially contributed to the death of any employe, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

(2) Any person who gives advance notice of any inspection to be conducted under ORS 654.001 to 654.295, without authority from the board or its designees, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(3) Whoever knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to ORS 654.001 to 654.295 shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both.

(4) Punishment under this section does not affect or lessen the civil liability of the offender.

[1973 c.833 s.38 (enacted in lieu of 654.990)]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel