Chapter 656

1977 REPLACEMENT PART

Workers' Compensation

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GENERAL PROVISIONS

656.001 Short title. ORS 656.001 to 656.794 may be cited as the Workers' Compensation Law.
[1965 c.285 §1; 1977 c.109 §1]

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1957 c.718 §1; 1959 c.448 §1; 1965 c.285 §4; 1967 c.341 §2; 1969 c.125 §1; 1969 c.247 §1; 1973 c.497 §1; 1973 c.620 §1; repealed by 1975 c.556 §1 (656.003, 656.005 enacted in lieu of 656.002)]

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

656.004 Preamble to Workers' 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 workers, 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 workers, a great and unnecessary cost is now incurred in litigation which cost is divided between the workers, 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 workers 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.

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

(2) "Average weekly wage" means the Oregon average weekly wage in covered employment, as determined by the Employment Division of the Department of Human Resources, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(3) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under this chapter. However, a spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently is not a beneficiary. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time, received or attempted by process of law to collect funds for support or maintenance, is considered living in a state of abandonment.

(4) "Board" means the Workers' Compensation Board.

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

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

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

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

(b) A "disabling compensable injury" is an injury which entitles the worker to compensation for disability or death.

(c) A "nondisabling compensable injury" is any injury which requires medical services only.

(9) "Compensation" includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries by a direct responsibility employer or the State Accident Insurance Fund pursuant to this chapter.

(10) "Contributing employer" means an employer who provides workers' compensation

coverage with the State Accident Insurance Fund.

(11) "Department" means the Workers' Compensation Department.

(12) "Dependent" means any of the following-named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower or child under 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 worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term "dependent."

(13) "Direct responsibility employer" means a self-insured employer or a carrier-insured employer.

(14) "Director" means the Director of the Workers' Compensation Department.

(15) "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.

(16) "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.

(17) "Guaranty contract insurer" means an insurer that is authorized under ORS chapter 731 to transact insurance in this state and to sell workers' compensation insurance.

(18) "Insurer" means the State Accident Insurance Fund or a guaranty contract insurer.

(19) "Insured employer" means a contributing employer or a carrier-insured employer.

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

(21) "Noncomplying employer" means a subject employer who has failed to comply with ORS 656.017 or who is in default under ORS 656.560 in the payment of contributions required by ORS 656.504.

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

(23) "Payroll" means a record of wages payable to workers for their services and includes 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.

(24) "Person" includes partnership, joint venture, association and corporation.

(25) "Self-insured employer" means an employer who has been certified under ORS 656.430 that he meets the qualifications of a self-insured employer set out by ORS 656.407.

(26) "State Accident Insurance Fund" and "fund" mean the State Accident Insurance Fund created under ORS 656.752.

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

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

(29) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer. The State Accident Insurance Fund may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the contribution of the employer.

(30) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an inmate or ward of a state institution.

[1975 c 556 §§2 to 19 (enacted in lieu of 656 002); 1977 c.109 §2; 1977 c.804 §1]

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

656.010 Treatment by spiritual means. Nothing in this chapter shall be construed to require a worker who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical treatment nor shall such worker or 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]

COVERAGE

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

656.017 Employer required to pay compensation and perform other obligations and duties. (1) Every employer subject to this chapter shall maintain assurance with the director that his subject workers and their beneficiaries will receive compensation for compensable injuries as provided by this chapter and that the employer will perform all duties and pay other obligations required of him under this chapter, by qualifying:

(a) As a direct responsibility employer as provided by ORS 656.407; or

(b) As a contributing employer as provided by ORS 656.411.

(2) This state and political subdivisions of this state may not become direct responsibility employers, except any political subdivision having an annual standard premium of $250,000 or greater may elect to become a self-insured employer as provided in paragraph (b) of subsection (1) of ORS 656.407.

(3) Any employer required by the statutes of this state other than this chapter or by the rules, regulations, contracts or procedures of any agency of the Federal Government, this state or a political subdivision of this state to provide or agree to provide workers' compensation coverage, either directly or through bond requirements, may provide such coverage by any method provided by this section.
[1975 c.556 §21 (enacted in lieu of 656 016); 1977 c 659 §1]

656.018 Effect of providing coverage; exclusive remedy. (1) (a) The liability of every employer who satisfies the duty required by subsection (1) of ORS 656.017 is exclusive and in place of all other liability arising out of compensable injuries to his subject workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such injuries or claims resulting therefrom, specifically including claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such injuries, except as specifically provided otherwise in ORS 656.001 to 656.794.

(b) This subsection shall not apply to claims for indemnity or contribution asserted by a corporation, individual or association of individuals which is subject to regulation pursuant to ORS chapter 757 or 760.

(c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary to the provisions of paragraph (a) of this subsection entered into after September 1, 1977, are void.

(2) The rights given to a subject worker 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 worker's employer under ORS 654.305 to 654.335 or other laws, common law or statute, except to the extent the worker is expressly given the right under 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 department, and the employes, officers and directors of the

employer, the employer's insurer and the department 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;

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

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

(4) Nothing in ORS 656.001 to 656.794 shall prohibit payment, voluntarily or otherwise, to injured workers or their beneficiaries in excess of the compensation required to be paid under ORS 656.001 to 656.794.
[1965 c.285 §6; 1975 c.115 §1; 1977 c.514 §1; 1977 c 804 §3a]

656.020 Damage actions by workers against noncomplying employers; defenses outlawed. Actions for damages may be brought by an injured worker or his legal representative against any employer who has failed to comply with ORS 656.017 or is in default under ORS 656.560. Except for the provisions of ORS 656.578 to 656.593 and this section, such noncomplying employer is liable as 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 worker.

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

(3) The injured worker had knowledge of the danger or assumed the risk that resulted in 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 workers 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 workers. All workers are subject to ORS 656.001 to 656.794 except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection "domestic servant" means any worker engaged in household domestic service.

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

(3) A worker 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 nonsubject 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 workers employed, involves a total labor cost of less than $200.

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

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

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

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

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

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

(10) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no

remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance.

(11) A person who engages in transportation by motor vehicle of logs, poles and piling and who both furnishes and maintains the vehicle used in such transportation.

[1965 c.285 §9; 1971 c.386 §1; 1977 c.683 §1; 1977 c.817 §2; 1977 c.835 §7]

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, part 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 workers 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 workers for purposes of ORS 656.001 to 656.794. Such election shall be made by a written application to the State Accident Insurance Fund that includes a description of the work to be performed by such personnel. The application shall also state the total number of volunteer personnel on the roster for each separate category for which coverage is requested. The county, city or other municipality shall notify the fund of any changes in the total number of volunteers.

(3) Upon receiving the written application the fund 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, and shall require the regular payment of contributions based upon the total numbers of such volunteers carried on the roster for each category being covered.

(4) The county, city or municipality shall maintain separate official membership rosters for each category of volunteers showing the date each volunteer became a member. A certified copy of the official membership roster shall be furnished the fund upon request. Except as provided in ORS 656.120, only those persons whose names appear on the official membership roster 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, if the duties being performed are among those:

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

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

[Formerly 656.088; amended by 1969 c.527 §1; 1977 c.72 §1]

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

656.033 Coverage for trainees in work experience program. (1) All persons participating as trainees in a work experience program of a school district in which such persons are enrolled are considered as workers of the district subject to ORS 656.001 to 656.794 for purposes of this section.

(2) A school district conducting a work experience program shall submit a written statement to the State Accident Insurance Fund that includes a description of the work to be performed by such persons.

(3) Upon receiving the written statement the fund may fix assumed wage rates for the persons enrolled in the work experience program, without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991, which may be used only for purposes of computations under ORS 656.001 to 656.794.

(4) The school district shall furnish the fund with a list of the names of those enrolled in its work experience program and shall notify the fund of any changes therein. Only those persons whose names appear on such list prior to their personal injury by accident are entitled to the benefits of ORS 656.001 to 656.794 and they are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program, provided the duties being performed are among those:

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

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

(5) The filing of claims for benefits under this section is the exclusive remedy of a trainee or his beneficiary for injuries compensable under ORS 656.001 to 656.794 against the state, its political subdivisions, the school district board, its members, officers and

employes, or any employer, regardless of negligence.

(6) The provisions of this section shall be inapplicable to any trainee who has earned wages for such employment.
[1967 c.374 §2]

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

656.035 Status of workers in separate occupations of employer. If an employer is engaged in an occupation in which he employes one or more subject workers and is also engaged in a separate occupation in which there are no subject workers, he is not subject to ORS 656.001 to 656.794 as to that separate occupation, nor are his workers 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 workers not subject to law; procedure; cancellation. (1) An employer of one or more persons defined as nonsubject workers or not defined as subject workers may elect to make them subject workers. If the employer is or becomes a contributing employer, the election shall be made by filing written notice thereof with the State Accident Insurance Fund with a copy to the director. The election becomes effective when the written notice is received by an authorized representative of the fund. If the employer is or becomes a carrier-insured employer, the election shall be made by filing written notice thereof with the insurer with a copy to the director. The effective date of coverage is governed by subsection (4) of ORS 656.419. If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

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

(3) When necessary the insurer or the director shall fix assumed minimum or maximum wages for persons made subject workers under this section.
[1965 c.285 §11; 1975 c.556 §22]

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

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

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

(b) "Inmate" means a person sentenced by any court or legal authority, whether in default of the payment of a fine or committed for a definite number of days, to serve sentence in a city or county jail or other place of incarceration except state and federal institutions.

(2) A city or county may elect to have inmates performing authorized employment considered as subject workers of the city or county for purposes of ORS 656.001 to 656.794. Such election shall be made by a written application to the State Accident Insurance Fund that includes a description of the work to be performed by such inmates. The application shall also state the total number of inmates for which coverage is requested. The county or city shall notify the fund of any changes in the total number of inmates performing authorized employment.

(3) Upon receiving the written application the fund may fix assumed wage rates for the inmates, which may be used only for purposes of computations under ORS 656.001 to 656.794, and shall require the regular payment of contributions based upon the total number of such inmates for which coverage is requested.

(4) The city or county shall maintain a separate list of inmates performing authorized employment. A certified copy of the list shall be furnished the fund upon request. Only those inmates whose names appear on 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 participation in the authorized employment, provided the duties being performed are among those described on the application of the city or county.

(5) The filing of claims for benefits under this section is the exclusive remedy of an inmate or his beneficiary for injuries compensable under ORS 656.001 to 656.794 against a city or county and its officers and employes, regardless of negligence.
[1967 c.472 §§2, 3; 1977 c.807 §1]

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

656.044 Fund may insure liability under Longshoremen's and Harbor Workers' Compensation Act; procedure; cancellation. (1) The State Accident Insurance Fund 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 State Accident Insurance Fund may, from time to time, fix rates of contributions to be paid by such employers. These rates shall be based upon the costs of inspection and other administration, the hazard of the occupation and the accident experience of the employers. The State Accident Insurance Fund may require a minimum annual premium, contributions, assessments and fees from such employers.

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

(4) The State Accident Insurance Fund 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]

656.052 Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply. (1) No person shall engage as a subject employer unless and until he has provided coverage pursuant to ORS 656.017 for subject workers he employs.

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

(3) If any person fails to comply with ORS 656.017 after an order declaring him to be a noncomplying employer has become final by operation of law or on appeal, the circuit court of the county in which he resides or in which he employs workers shall, upon the commencement of a suit by the director for that purpose, enjoin him from further employing subject workers until he has complied with ORS 656.017. Upon the filing of such a suit, the court shall set a day for hearing and shall cause notice thereof to be served upon the noncomplying employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.
[Amended by 1957 c.574 §2; 1965 c.285 §14; 1967 c.341 §4; 1973 c.447 §1]

656.054 Claim of injured worker of noncomplying employers; notice of proposed penalty; recovery of costs from noncomplying employer. (1) A compensable injury to a subject worker while in the employ of a noncomplying employer is compensable to the same extent as if the employer had complied with ORS 656.001 to 656.794. A claim for compensation made by such a worker shall be processed by the State Accident Insurance Fund in the same manner as a claim made by a worker employed by a contributing employer, except that the time within which the first instalment of compensation is to be paid, pursuant to subsection (4) of ORS 656.262, shall not begin to run until the director has referred the claim to the State Accident Insurance Fund.

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

(3) In addition to, and not in lieu of, any civil penalties assessed pursuant to ORS 656.735, all costs to the Industrial Accident Fund, including reasonable administrative costs and any attorney fees awarded to the claimant, of a claim processed under subsection (1) of this section shall be a liability of the noncomplying employer. The director shall recover such costs from the employer. The director shall provide by regulation for the Administrative Fund to reimburse, on a periodic basis, the Industrial Accident Fund for any costs it incurs under this section.
[Amended by 1959 c.448 §9; 1965 c.285 §15; 1967 c.341 §5; 1971 c.72 §1; 1973 c.447 §2]

656.056 Subject employers must post notice of manner of compliance. (1) All subject employers shall display in a conspicuous manner about their works, and in a sufficient number of places reasonably to inform their workers of the fact, printed notices furnished by the director 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]

656.070 Definitions for ORS 656.027 and 656.075. As used in subsection (9) of ORS 656.027, ORS 656.075 and this section.

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

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

656.075 Exemption from coverage for newspaper carriers; casualty insurance and other requirements. An individual qualifies for the exemption provided in subsection (9) of ORS 656.027 only if the newspaper publishing company or independent newspaper dealer or contractor utilizing the individual:

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

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

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

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

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

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

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

656.082 [Repealed by 1965 c.285 §95]

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

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

656.120 Coverage of emergency volunteer firemen. (1) As used in this section "emergency volunteer fireman" means any person enlisted at or near the site of a fire or other disaster by an officer in charge of volunteer firemen, for the purpose of assisting such volunteer firemen in the performance of their duties.

(2) If a county, city or other municipality employing volunteer firemen has elected under ORS 656.031 to have such volunteer firemen considered as subject workers for purposes of ORS 656.001 to 656.794, such county, city or other municipality may also elect to have emergency volunteer firemen considered as subject workers for the purpose of ORS 656.001 to 656.794. Such election shall be made by a written application to the State Accident Insurance Fund that includes a description of the work to be performed by such emergency volunteer firemen.

(3) Upon receiving the written application, the fund shall fix assumed wage rates for emergency volunteer firemen, which may be used only for purposes of computations under ORS 656.001 to 656.794 and shall require the regular payment of contributions by the county, city or municipality based in each case on an assumed number of persons to be considered emergency volunteer firemen. In establishing such assumed numbers, the fund

shall take into account the size of the fire district, the population and area served, and any other relevant factors.

(4) If the county, city or other municipality has elected to consider emergency volunteer firemen as subject workers pursuant to this section, such persons are entitled to benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their employment as emergency volunteer firemen, if the duties being performed are among those:

(a) Described on the application of the county, city or municipality employing such emergency volunteer firemen; and

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

(5) As soon as possible after any persons have been enlisted as emergency volunteer firemen, the county, city or other municipality shall furnish to the fund a list of the names of those persons so enlisted.

(6) No person may be considered a subject worker pursuant to this section:

(a) If he regularly serves as a volunteer fireman in the county, city or other municipality where a fire or other disaster occurs.

(b) If he has an ownership or possessory interest in the property where a fire or other disaster occurs.

[1969 c.527 §3]

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 while temporarily in or out of state; judicial notice of other state's laws; agreements between states relating to conflicts of jurisdiction. (1) If a worker 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 worker from another state and his employer in that other state are exempted from the provisions of ORS 656.001 to 656.794 while that worker is temporarily within this state doing work for his employer:

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

(b) If the extraterritorial provisions of ORS 656.001 to 656.794 are recognized in that other state; and

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

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

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

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

(5) The director shall have authority to enter into agreements with the workers' compensation agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of workers hired in such other state and injured while temporarily in Oregon, or hired in Oregon and injured while temporarily in another state, or where the jurisdiction is otherwise uncertain, shall be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements.

[Amended by 1955 c.723 §1; 1957 c.474 §1; 1977 c.804 §4]

656.128 Sole proprietors, partners may elect coverage by fund or by private insurer; cancellation. (1) Any person who is a sole proprietor, or a member of a partnership, may make written application to the State Accident Insurance Fund or a guaranty contract insurer to become entitled as a sub-

ject worker to compensation benefits. Thereupon, the fund shall, or the guaranty contract insurer may, accept such application and fix a classification and an assumed monthly wage at which such person shall be carried on the payroll as a worker for purposes of computations under this chapter. If the person making application to the fund under this section is an employer of subject workers, his application shall not be accepted unless he is a contributing employer.

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

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

(4) Any person subject to this chapter as a worker as provided in this section may cancel such election by giving written notice to the insurer. The cancellation shall become effective at 12 midnight ending the day of filing the notice with the insurer.

[Amended by 1957 c.440 §2; 1959 c.448 §12; 1965 c.285 §18; 1969 c.400 §1; 1975 c.556 §23]

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 worker, 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 worker, the control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

(2) If an employer subject to 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 director 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 director 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]

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

(2) All persons participating as trainees in a work experience program of a school in which such persons are enrolled are considered as workers of the school subject to ORS 656.001 to 656.794 for purposes of this section.

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

(4) Upon receiving the written statement, the fund may fix assumed wage rates for the persons enrolled in the work experience program, without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991, which may be used only for purposes of computations under ORS 656.001 to 656.794.

(5) The Department of Education shall furnish the fund with a list of the names of those enrolled in work experience programs in the schools and shall notify the fund of any changes therein. Only those persons whose names appear on such list prior to their personal injury by accident are entitled to the benefits of ORS 656.001 to 656.794 and they are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work

experience program, provided the duties being performed are among those:

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

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

(6) The filing of claims for benefits under this section is the exclusive remedy of a trainee or his beneficiary for injuries compensable under ORS 656.001 to 656.794 against the state, the school, the department, its officers and employes, or any employer, regardless of negligence.

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

656.138 Coverage of apprentices, trainees participating in related instruction classes. (1) All persons registered as apprentices or trainees and participating in related instruction classes conducted by a school district, community college district or area education district in accordance with the requirements of ORS chapter 660 or section 50, title 29, United States Code as of September 13, 1975, are considered as workers of the school district, community college district or area education district subject to ORS 656.001 to 656.794.

(2) A school district, community college district or area education district conducting related instruction classes shall submit a written statement to the State Accident Insurance Fund that includes a description of the related instruction to be given to such apprentices or trainees.

(3) Upon receiving the written statement, the fund may fix assumed wage rates for those apprentices or trainees participating in related instruction classes, which may be used only for the purposes of computations under ORS 656.001 to 656.794.

(4) The State Apprenticeship and Training Council shall furnish the fund with a list of the names of those apprentices or trainees approved by it for participation in related instruction classes and shall notify the fund of any changes therein. Only those apprentices or trainees whose names appear on such list prior to their personal injury by accident and who incur a compensable injury while performing duties that arise out of their participation in related instruction classes and that are among the duties described in the standards for such classes prescribed pursuant to ORS chapter 660 or section 50, title 29, United States Code as of September 13, 1975, are entitled to benefits under ORS 656.001 to 656.794.

(5) The filing of claims for benefits under the authority of this section is the exclusive remedy of apprentices or trainees or their beneficiaries for injuries compensable under ORS 656.001 to 656.794 against the state, its political subdivisions, the school district, community college district or area education district, their members, officers and employes, or any employer, regardless of negligence.

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

656.140 Coverage of persons operating equipment for hire. (1) Any person, or persons operating as partners, who have an ownership or leasehold interest in equipment and are engaged in the business of operating such equipment for hire, may elect to cover themselves under the Workers' Compensation Law by qualifying as a contributing employer or a direct responsibility employer pursuant to this chapter and by filing with the State Accident Insurance Fund or another insurer a written application to become entitled as subject workers to the benefits of the Workers' Compensation Law.

(2) As used in this section "equipment" means:

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

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

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

(d) A tractor.

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

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

(4) When the application is accepted, such person, or persons operating as partners, become subject workers. Thereupon, such person, or persons operating as partners, shall

be subject to this chapter as a subject employer notwithstanding ORS 656.023 and shall be entitled to benefits as subject workers.

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

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

(7) The rights given to a person, or persons operating as partners, and their beneficiaries pursuant to this section for injuries compensable under this chapter are in lieu of any remedies they might otherwise have for such injuries against the person for whom services are being performed.

[1969 c.463 §2; 1975 c.556 §24]

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 worker; remedy against such person. If the injury to a worker is due to the negligence or wrong of a third person not in the same employ, the injured worker, or if death results from the injury, his widow, children or other dependents, as the case may be, may elect to seek a remedy against such third person.

[Amended by 1959 c.504 §1; 1975 c.152 §1]

656.156 Intentional injuries. (1) If injury or death results to a worker from the deliberate intention of the worker himself to produce such injury or death, neither the worker nor the widow, widower, child or dependent of the worker shall receive any payment whatsoever under ORS 656.001 to 656.794.

(2) If injury or death results to a worker from the deliberate intention of his employer to produce such injury or death, the worker, the widow, widower, child or dependent of the worker 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]

COMPENSATION AND MEDICAL BENEFITS

656.202 Compensation payable to subject worker in accordance with law in force at time of injury. (1) If any subject worker sustains a compensable injury, he or his beneficiaries, if the injury results in death, shall receive compensation as provided in ORS 656.001 and 656.794.

(2) Except as otherwise provided by law, 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; 1977 c.430 §6]

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 $1,000 in any case.

(2) If the worker is survived by a spouse, monthly benefits shall be paid in an amount equal to 4.35 times 50 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs. The surviving spouse also shall be paid $100 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 $50 per month for each child in excess of two.

(b) In no event shall the total monthly benefits provided for in this subsection exceed 4.35 times 100 percent of the average weekly wage.

(c) Upon remarriage, a surviving spouse shall be paid $5,000 as final payment of the claim, but the monthly payments for each child shall continue as before.

(d) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid for such child until he becomes 19 years of age or graduates from high school, whichever is earlier. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he be-

comes 23 years of age or graduates from such an institute or program, whichever is earlier.

(3) If a worker leaves a child under the age of 18 years by a divorced husband or wife, and the child is in the custody of the divorced husband or wife, $100 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 $50 per month for each child in excess of two.

(b) In no event shall the total benefits provided for in this subsection exceed 4.35 times 66-2/3 percent of the average weekly wage.

(c) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid for such child until he becomes 19 years of age or graduates from high school, whichever is earlier. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he becomes 23 years of age or graduates from such an institute or program, whichever is earlier.

(4) If the worker leaves neither wife nor husband, but a child under the age of 18 years other than one described in subsection (3) of this section, $100 per month shall be paid to each such child until he becomes 18 years of age. However, if a child who has become 18 years of age is a full-time high school student, benefits shall be paid for such child until he becomes 19 years of age. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he becomes 23 years of age or graduates from such an institute or program, whichever is earlier.

(5) If the worker leaves neither widow, widower nor child for whom compensation may be paid, 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 worker 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 $150 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. However, if the dependent who has become 18 years of age is a full-time high school student, benefits shall be paid to such dependent until he becomes 19 years of age. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he becomes 23 years of age or graduates from such an institute or program, whichever is earlier. 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 worker is under the age of 21 years at the time of his death and leaves neither widow, widower, nor child, the parents of the worker 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 worker, a monthly payment of $100 shall be made to each such child until he becomes 18 years of age. However, if a child who has become 18 years of age is a full-time high school student, benefits shall be paid to such child until he becomes 19 years of age. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he becomes 23 years of age or graduates from such an institute or program, whichever is earlier.

(8) If a child is an invalid at the time he otherwise becomes ineligible for benefits under this section, 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 worker, 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. However, if after such period the child is a full-time high school student, benefits shall be paid for such child until he becomes 19 years of age. If, however, a child is enrolled, or enrolls within six months of the date the child leaves high school, as a full-time student in an accredited institution of higher education, a technical institute, or an approved on-the-job training or apprenticeship program, benefits shall be paid until he becomes 23 years of age or graduates from such an institute or program, whichever is earlier.

[Amended by 1957 c.453 §1; 1965 c 285 §22; 1967 c.286 §1; 1969 c.521 §1; 1971 c.415 §1; 1973 c.497 §2; 1974 s.s. c 41 §4]

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

(a) "Permanent total disability" means the loss, including preexisting disability, of use or function of any scheduled or unscheduled portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation. As used in this section, a suitable occupation is one which the worker has the ability and the training or experience to perform, or an occupation which he is able to perform after rehabilitation.

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

(2) When permanent total disability results from the injury, the worker shall receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of $50, whichever amount is lesser. In addition, the worker shall receive $5 per week for each additional beneficiary not to exceed five.

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

(4) By April 15 of each year, a worker who receives permanent total disability benefits shall file with the board, on a form provided by the board, a sworn statement of the worker's gross annual income for the preceding year along with such other information as the board considers necessary to determine whether the worker regularly performs work at a gainful and suitable occupation.

(5) Each insurer shall reexamine periodically each permanent total disability claim for which the insurer has current payment responsibility to determine whether the worker is currently permanently incapacitated from regularly performing work at a gainful and suitable occupation. Reexamination shall be conducted every two years or at such other more frequent interval as the board may prescribe. Reexamination shall include such medical examinations and reports as the insurer considers necessary or the board may require. The insurer shall forward to the board the results of each reexamination.

[Amended by 1953 c.670 §4; 1955 c.553 §1; 1957 c.452 §1; 1959 c.517 §1; 1965 c.285 §22a; 1969 c.500 §2; 1973 c.614 §2; 1974 s.s. c.41 §5; 1975 c.506 §1; 1977 c.430 §1]

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

656.208 Death during permanent total disability. (1) If the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving:

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

(b) Any dependents listed in ORS 656.204, payment shall be made in the same manner and in the same amounts as provided in ORS 656.204.

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

[Amended by 1957 c.453 §2; 1959 c.450 §2; 1965 c.285 §22b; 1969 c.521 §2; 1971 c.415 §2; 1973 c 497 §3; 1975 c.497 §2]

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

(a) If the benefit amount to which the worker is entitled pursuant to ORS 656.001 to 656.794 exceeds the worker's federal disability benefit limitation determined pursuant to 42 USC 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such manner as to lower the amount the worker would have received pursuant to ORS 656.001 to 656.794 had such reduction not been made.

(b) If the benefit amount to which the worker is entitled pursuant to ORS 656.001 to 656.794 is less than the worker's federal disability benefit limitation determined pursuant to 42 USC 424(a), the reduction in worker's compensation benefits authorized by this subsection shall not be administered in such manner as to lower the amount of combined benefits the worker receives below the federal benefit limitation.

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

(3) No reduction of benefits shall be authorized pursuant to this section except upon actual receipt of federal social security disability benefits by the injured worker.
[1977 c.430 §5]

Note: Section 8, chapter 430 Oregon Laws 1977, provides:

Sec. 8. The reduction in benefits authorized by section 5 of this 1977 Act applies:

(1) To benefits for injuries incurred prior to the effective date of this 1977 Act [October 4, 1977], on July 1, 1978, and thereafter.

(2) To benefits for injuries incurred on or after the effective date of this 1977 Act, on the effective date of this 1977 Act and thereafter.

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

(2) For the purpose of this section, the weekly wage of workers shall be ascertained by multiplying the daily wage the worker was receiving at the time of his injury:

(a) By 3, if the worker was regularly employed not more than three days a week.

(b) By 4, if the worker was regularly employed four days a week.

(c) By 5, if the worker was regularly employed five days a week.

(d) By 6, if the worker was regularly employed six days a week.

(e) By 7, if the worker was regularly employed seven days a week.

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

(3) No disability payment is recoverable for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of his compensable injury unless the total disability continues for a period of 14 days or the worker is an inpatient in a hospital. If the worker 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; 1969 c.183 §1; 1969 c.500 §1; 1971 c.204 §1; 1973 c.614 §1; 1974 s.s. c.41 §6; 1975 c.507 §1; 1975 c.663 §1]

656.211 "Average weekly wage" defined. As used in subsection (1) of ORS 656.210, "average weekly wage" means the average weekly wage of workers in covered employment in Oregon, as determined by the Employment Division of the Department of Human Resources, for the last quarter of the calendar year preceding the fiscal year in which compensation is paid.
[1973 c 614 §4]

656.212 Temporary partial disability. When the disability is or becomes partial only and is temporary in character, the worker 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) As used in this section:

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

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

(2) When permanent partial disability results from an injury, the worker shall receive $85 for each degree stated against such disability as follows:

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

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

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

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

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

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

(g) For partial or complete loss of hearing in both ears, that proportion of 192 degrees which the combined binaural hearing loss bears to normal combined binaural hearing. For the purpose of this paragraph, combined binaural hearing loss shall be calculated by taking seven times the hearing loss in the less damaged ear plus the hearing loss in the more damaged ear and dividing that amount by eight. In the case of individuals with compensable hearing loss involving both ears, either the method of calculation for monaural hearing loss or that for combined binaural hearing loss shall be used, depending upon which allows the greater award of disability.

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

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

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

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

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

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

(5) In all other cases of injury resulting in permanent partial disability, the number of degrees of disability shall be a maximum of 320 degrees determined by the extent of the disability compared to the worker before such injury and without such disability.

[Amended by 1953 c.669 §4; 1955 c.716 §1; 1957 c.449 §1; 1965 c.285 §22d; 1967 c.529 §1; 1971 c.178 §1; 1977 c.557 §1]

656.216 Permanent partial disability; method of payment; effect of prior receipt of temporary disability payments. (1) Compensation for permanent partial disabili-

ty may be paid monthly at 4.35 times the rate per week as provided for compensation for temporary total disability at the time the determination is made. In no case shall such payments be less than $108.75 per month.

(2) If a worker, who is entitled to compensation for a permanent disability, has received compensation for a temporary disability by reason of the same injury, compensation for such permanent disability shall be in addition to the payments which he has received on account of such temporary disability.

[Amended by 1967 c.529 §2; 1973 c.459 §1; 1974 s.s. c.41 §7]

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

(2) If the worker's death occurs prior to a determination having been made under ORS 656.268, the State Accident Insurance Fund or direct responsibility employer shall so notify the director and request the claim be examined and compensation for permanent partial disability, if any, be determined.

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

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

(5) The payments provided in subsections (1), (2), (3) and (4) of this section shall be made to the persons who would have been entitled to receive death benefits if the injury causing the disability had been fatal. In the absence of persons so entitled, a burial allowance may be paid not to exceed the lesser of either the unpaid award or the amount payable by ORS 656.204.

(6) This section does not entitle any person to double payments on account of the death of a worker and a continuation of payments for permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

[Amended by 1959 c.450 §3; 1973 c.355 §1; 1975 c.497 §3]

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

656.222 Compensation for additional accident. Should a further accident occur to a worker who is receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, 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 worker, the State Accident Insurance Fund 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 worker who is a minor prior to receipt of notice by the State Accident Insurance Fund 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) Where a worker has been awarded compensation for permanent partial disability, and the award has become final by operation of law or waiver of the right to appeal its adequacy, the board may, in its discretion, upon the worker's application order all or any part of the remaining unpaid award to be paid to him in a

lump sum. Any remaining balance shall be paid pursuant to ORS 656.216.

(2) In all cases where the award for permanent partial disability does not exceed 32 degrees, the State Accident Insurance Fund or direct responsibility employer may, in its discretion, pay all or any part of the award to the worker in a lump sum.
[Amended by 1957 c.574 §4; 1959 c.449 §1; 1965 c.285 §23a; 1973 c.221 §1]

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

(2) If a beneficiary is an alien residing outside of the United States or its dependencies, the director may, in lieu of awarding such beneficiary compensation in the amount provided by 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 director, 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 director shall determine the amount of compensation benefits upon the basis of the rate of exchange between the United States and any foreign country as determined by the Federal Reserve Bank as of January 1 and July 1 of the year when paid.

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

656.234 Compensation not assignable, nor to pass by operation of law and is exempt from process. No moneys payable under ORS 656.001 to 656.824 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.
[Amended by 1967 c.468 §1]

656.236 Prohibition against releases; charging costs. (1) No release by a worker 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 workers' compensation to employers under ORS 656.001 to 656.794 shall be charged to a subject worker.
[1965 c.285 §28]

656.240 Deduction of sick leave payments from benefits paid to school district employes. Notwithstanding any other law, a school district may deduct from any sick leave payments made to an individual amounts equal to benefits received by the individual under ORS 656.001 to 656.824 with respect to the same injury that gave rise to the sick leave. However, the deduction of sick leave shall not exceed an amount determined by taking the teacher's regular pay for the period less benefits received under ORS 656.001 to 656.824 divided by the individual's daily wage.
[1969 c.398 §2]

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 State Accident Insurance Fund 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 worker 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. (1) The director, upon his 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. The director may readjust,

increase or decrease such rates in compliance with ORS chapter 183.

(2) Notwithstanding subsection (1) of this section, the director, if he deems appropriate, may prescribe, in compliance with ORS chapter 183 and ORS 656.794 that the payment for medical services rendered pursuant to ORS 656.245 be the usual fee charged by a vendor for similar services. The director, upon his own motion or upon request by any party in interest, may review and readjust, increase or decrease a billing for such medical services rendered pursuant to this subsection.

(3) Such rates or fees provided in subsections (1) and (2) of this section shall be adequate to insure at all times to the injured workers the standard of services and care intended by ORS 656.001 to 656.794.

[Amended by 1965 c.285 §26; 1969 c.611 §1; 1971 c.329 §1]

656.252 Director to regulate medical reports; consultation with physicians. (1) In order to insure the prompt reporting and payment of compensation in compensable injuries the director shall make rules and regulations governing reports of attending and examining physicians. Such rules and regulations shall include, but not necessarily be limited to:

(a) Requiring attending physicians to make the State Accident Insurance Fund or carrier a first report of injury within a specified time after the first service rendered.

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

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

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

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

[1967 c.626 §§2, 5]

656.254 Medical report forms; sanctions. (1) The director shall establish medical report forms, in duplicate snap-outs where applicable, to be used by the State Accident Insurance Fund, the guaranty contract insurers, the self-insured employers and the physicians, including in such forms information necessary to establish facts required in the determination of the claim.

(2) The director shall establish sanctions for the enforcement of medical reporting requirements.

[1967 c.626 §§3, 4; 1975 c.556 §40]

PROCEDURE FOR OBTAINING COMPENSATION

656.262 Responsibility for processing and payment of compensation; acceptance and denial of claim; reporting claims; penalties for payment delays. (1) Processing of claims and providing compensation for a worker in the employ of a contributing employer shall be the responsibility of the State Accident Insurance Fund, and when the worker is injured while in the employ of a direct responsibility employer, such employer shall be responsible. However, all employers shall assist the fund or their insurers in processing claims as required in this chapter.

(2) The compensation due under this chapter from the fund 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 fund.

(3) Contributing employers and carrier-insured 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 fund or other insurer. The report shall include:

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

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

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

(d) Any other details the fund or other insurer may require.

Failure to so report subjects the offending employer to a charge for reimbursing the fund for any penalty the fund 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 director determines that payment in instalments should be made at some other interval. The director 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 by the fund or direct responsibility employer within 60 days after the employer has notice or knowledge of the claim. The fund shall also furnish the contributing employer a copy of the notice of acceptance. The notice of acceptance shall:

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

(b) Inform the claimant of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that his injury is nondisabling by requesting a determination thereon pursuant to ORS 656.268.

(6) If the State Accident Insurance Fund, the direct responsibility employer itself or its guaranty contract insurer or any other duly authorized agent of such employer for such purpose on record with the Director of the Workers' Compensation Department denies a claim for compensation, written notice of such denial, stating the reason for the denial, and informing the worker of hearing rights under ORS 656.283, shall be given to the claimant. A copy of the notice of denial shall be mailed to the director and to the contributing employer by the fund. The worker 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 fund or direct responsibility employer or its insurer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, the fund or direct responsibility employer 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 fund may authorize contributing employers to pay compensation to injured workers and shall reimburse employers for compensation so paid.

(10) The fund and all direct responsibility employers shall report every claim for disabling injury to the director within 21 days after the date the employer has notice or knowledge of such injury. If within one year after the injury, a worker claims a nondisabling injury has become disabling, the fund or direct responsibility employer shall report the claim to the director immediately after receiving notice or knowledge of such claim. A claim that a nondisabling injury has become disabling, if made more than one year after the date of injury, shall be made pursuant to ORS 656.273 as for a claim for aggravation.

[1965 c.285 §30; 1969 c.399 §1; 1973 c.620 §2; 1975 c.556 §41]

656.263 To whom notices sent under ORS 656.262 to 656.388. All notices of proceedings required to be sent under ORS 656.262, 656.265 to 656.388 and this section shall be sent to the employer and his insurer, if any.

[1967 c.97 §2; 1975 c.556 §42]

656.264 Compensable injury, claim and other reports. (1) The State Accident Insurance Fund, guaranty contract insurers and self-insured employers shall report to the director compensable injuries, claims disposition and payments made by them under this chapter.

(2) The director may require the fund, other insurers and such employers to report other information as required to carry out this chapter.

(3) The director may prescribe the interval and the form of such reports and establish sanctions for the enforcement of reporting requirements.

[1975 c.556 §39]

Note: 656.264 was enacted into law by the Legislative Assembly but was not added to or made a part of 656.001 to 656.794 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

656.265 Notice of accident from worker. (1) Notice of an accident resulting in an injury or death shall be given immediately by the worker or 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 worker. A report or statement secured from a worker, or

from his doctor and signed by the worker, concerning an accident which may involve a compensable injury shall be considered notice from the worker and the employer shall forthwith furnish the worker a copy of any such report or statement.

(3) Notice shall be given to the employer by mail, addressed to the employer at 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 director and referred to the State Accident Insurance Fund 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 fund or direct responsibility employer has not been prejudiced by failure to receive the notice; or

(b) The fund 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 worker 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 director shall promulgate and prescribe uniform forms to be used by workers in reporting their injuries to their employers. These forms shall be supplied by all employers to injured workers upon request of the injured worker or some other person on his behalf. Nothing contained in this section, however, shall defeat the claim of any worker who does not use the suggested form but otherwise substantially complies with this section.
[1965 c.285 §30a; 1971 c.386 §2]

656.268 Procedure for determining awards for permanent disability; vocational rehabilitation; setting aside funds to pay awards. (1) One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker. Claims shall not be closed nor temporary disability compensation terminated if the worker's condition has not become medically stationary or if the worker is enrolled and actively engaged in an authorized program of vocational rehabilitation that has been provided according to rules adopted pursuant to ORS 656.728, provided however, that temporary disability compensation shall be proportionately reduced by any sums earned during the vocational rehabilitation period.

(2) When the injured worker's condition resulting from a disabling injury has become medically stationary, unless he is enrolled and actively engaged in an authorized program of vocational rehabilitation, the State Accident Insurance Fund or direct responsibility employer shall so notify the Evaluation Division, the worker, and contributing employer, if any, and request the claim be examined and further compensation, if any, be determined. A copy of all medical reports and reports of vocational rehabilitation agencies or counselors necessary to make such determination also shall be furnished to the Evaluation Division and to the worker and to the contributing employer, if requested by such worker or employer. If the attending physician has not approved the worker's return to his regular employment, the fund 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 Evaluation Division under this section.

(3) Within 30 days after the Evaluation Division receives the medical and vocational reports relating to a disabling injury, the claim shall be examined and further compensation, including permanent disability award, if any, determined under the director's supervision. If necessary the Evaluation Division 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. The Evaluation Division shall reconsider determinations made pursuant to this subsection whenever one of the parties makes request therefor and presents medical information regarding the claim that was not available at the time the original determination was made. However, any such request for reconsideration must be made prior to the

time a request for hearing is made pursuant to ORS 656.283. The time from request for reconsideration until decision on reconsideration shall not be counted in any limitation on the time allowed for requesting a hearing pursuant to ORS 656.283.

(4) If, after the determination made pursuant to subsection (3) of this section, the director authorizes a program of vocational rehabilitation for an injured worker, any permanent disability payments due under the determination shall be suspended, and the worker shall receive temporary disability compensation while he is enrolled in the authorized vocational rehabilitation program. When the worker ceases to be enrolled and actively engaged in an authorized vocational rehabilitation program, the Evaluation Division shall redetermine the claim pursuant to subsection (3) of this section unless the worker's condition is not medically stationary.

(5) The Evaluation Division 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.

(6) If the claim resulted from an injury to a worker while in the employ of a contributing employer, the fund 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 worker while in the employ of a direct responsibility employer, the director 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.

(7) Upon receipt of a request made pursuant to subsection (5) of ORS 656.262, the Evaluation Division shall determine whether the claim is disabling or nondisabling. A copy of such determination shall be mailed to all interested parties in accordance with subsection (5) of this section.

[1965 c.285 §31; 1973 c.620 §3; 1973 c.634 §2; 1977 c.804 §5; 1977 862 §1]

656.270 Contents of notice required in determination order. Each determination made pursuant to ORS 656.268 shall contain the following notice in capital letters and boldface type:

IF YOU ARE DISSATISFIED WITH THIS DETERMINATION YOU HAVE THE RIGHT TO OBTAIN RECONSIDERATION OF THE DETERMINATION AND A HEARING AND REVIEW IN THE MANNER PROVIDED IN ORS 656.262, 656.263 and 656.265 to 656.388. YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY, AND IF YOU ARE REPRESENTED BY AN ATTORNEY, THE PAYMENT OF HIS FEE IS SUBJECT TO ORS 656.388.

[1971 c.155 §2; 1977 c.804 §6]

656.271 [1965 c.285 §32; 1969 c.171 §1; repealed by 1973 c.620 §4 (656.273 enacted in lieu of 656.271)]

656.272 [Repealed by 1965 c.285 §95]

656.273 Increased compensation and medical services for aggravated disability; claim for aggravation. (1) After the last award or arrangement of compensation, an injured worker is entitled to additional compensation, including medical services, for worsened conditions resulting from the original injury.

(2) To obtain additional medical services or disability compensation, the injured worker must file a claim for aggravation with the State Accident Insurance Fund or the direct responsibility employer. In the event the direct responsibility employer cannot be located, is unknown, or has ceased to exist, the claim shall be filed with the director.

(3) A physician's report indicating a need for further medical services or additional compensation is a claim for aggravation.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection, the claim for aggravation must be filed within five years after the first determination made under subsection (3) of ORS 656.268.

(b) If no determination was made, the claim for aggravation must be filed within five years after the date of injury.

(c) If a nondisabling injury did not become disabling within at least one year from the termination of medical services, the claim for aggravation must be filed within five years from the date of injury rather than the date of any determination issued in the claim.

(5) The director may, in his discretion, order the claimant, the State Accident Insurance Fund or the direct responsibility employer to pay for such medical opinion.

(6) A claim submitted in accordance with this section shall be processed by the direct responsibility employer or the State Accident Insurance Fund in accordance with the provisions of ORS 656.262, except that the first instalment of compensation due under subsection (4) of ORS 656.262 shall be paid no later than the 14th day after the subject employer has notice or knowledge of medically verified inability to work resulting from the worsened condition.

(7) A request for hearing on any issue involving a claim for aggravation must be made to the department in accordance with ORS 656.283. Adequacy of the physician's report is not jurisdictional. If the evidence as a whole shows a worsening of the claimant's condition the claim shall be allowed.
[1973 c.620 §5 (enacted in lieu of 656.271); 1975 c.497 §1; 1977 c.804 §7]

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 656.273 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 referee 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 worker resided at the time of the injury or such other place selected by the referee.

(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 referee.

(6) Except as otherwise provided in this section and rules of procedure established by the board, the referee 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 subpenas under the provisions of paragraph (c) of subsection (2) of ORS 656.726. Any party or his representative may serve such subpenas.
[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]

656.285 Protection of witnesses at hearings. ORS 41.618 shall apply to workers' compensation cases, except that the referee shall make the determinations and orders required of the court in ORS 41.618, and in addition attorney fees shall not be declared as a matter of course but only in cases of harassment or hardship.
[1973 c.652 §1; 1977 c.358 §11]

Note: 656.285 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 656 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

656.287 Use of vocational reports in determining loss of earning capacity at hearing. (1) Where there is an issue regarding loss of earning capacity, reports from

vocational consultants in governmental agencies or private vocational consultants regarding job opportunities, the fitness of claimant to perform certain jobs, wage levels, or other information relating to claimant's employability shall be admitted into evidence at compensation hearings, provided such information is submitted to claimant 10 days prior to hearing and that upon demand from the adverse party the person preparing such report shall be made available for testimony and cross-examination.

(2) The board shall establish rules and regulations to govern the admissibility of reports from vocational experts, including guidelines to establish the competency of vocational experts.
[1973 c.581 §§1, 2]

Note: 656.287 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 656 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

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

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

(2) A copy of the order shall be sent forthwith by mail to the director and to all parties in interest.

(3) The order is final unless, within 30 days after the date on which a copy of the order is mailed to the parties, one of the parties requests a review by the board under ORS 656.295. When one party requests a review by the board, the other party or parties shall have the remainder of the 30-day period and in no case less than 10 days in which to request board review in the same manner. The 10-day requirement may carry the period of time allowed for requests for board reviews beyond the 30th day. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.295.

(4) 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 referee, the board or the court, by agreement make such disposition of the claim as is considered reasonable.
[1965 c.285 §35; 1969 c.212 §1; 1977 c.804 §9]

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 referee orders. (1) The request for review by the board of an order of a referee need only state that the party requests a review of the order.

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

(3) When review has been requested, the record of such oral proceedings at the hearings before the referee 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 referee. 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 referee, it may remand the case to the referee for further evidence taking, correction or other necessary action.

(6) The board may affirm, reverse, modify or supplement the order of the referee and make such disposition of the case as it determines to be appropriate. It shall make its decision within 30 days after the review.

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

(8) An order of the board is final unless within 30 days after the date of mailing of copies of such order to the parties, one of the parties appeals to the Court of Appeals for judicial review pursuant to ORS 656.298. The order shall contain a statement explaining the rights of the parties under this subsection and ORS 656.298.
[1965 c.285 §35a; 1977 c.804 §10]

656.298 Court of Appeals 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 Court of Appeals.

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

(3) The judicial review shall be commenced by serving, by registered or certified mail, a copy of a notice of appeal on the board and on the parties who appeared in the review proceedings, and by filing with the clerk of the Court of Appeals the original 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 Court of Appeals.

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

(4) Within 10 days after service of 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 Court of Appeals:

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

(b) All exhibits.

(c) Copies of all decisions and orders entered during the hearing and review proceedings.

(6) The review by the Court of Appeals shall be on the entire record forwarded by the board. The court may remand the case to the referee for further evidence taking, correction or other necessary action. However, the court may hear additional evidence concerning disability that was not obtainable at the time of the hearing. The court may affirm, reverse, modify or supplement the order appealed from, and make such disposition of the case as the court 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; 1977 c.804 §11]

656.301 [Formerly 656.292; repealed by 1977 c.804 §55]

656.304 When acceptance of compensation precludes hearing. A claimant may accept and cash any check given in payment of any award or compensation without affecting 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 Determination of issues regarding responsibility for compensation payment. (1) Where there is an issue regarding:

(a) Which of several subject employers is the true employer of a claimant worker;

(b) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(c) Responsibility between two or more employers or their insurers involving payment of compensation for two or more accidental injuries; or

(d) Joint employment by two or more employers,

the director shall, by order, designate who shall pay the claim, if the claim is otherwise compensable. Payments shall begin in any event as provided in subsection (4) of ORS 656.262. When a determination of the responsible paying party has been made, the director shall direct any necessary monetary adjustment between the parties involved. Any failure to obtain reimbursement from a direct responsibility employer or its insurer shall be recovered from the Direct Responsibility Employers Adjustment Reserve.

(2) No employer or its insurer shall be joined in any proceeding under this section regarding its responsibility for any claim subject to ORS 656.273 unless the issue is entitled to hearing on application of the worker.

(3) The claimant shall be joined in any proceedings under this section as a necessary party, but may elect to be treated as a nominal party.

[1965 c.285 §39; 1971 c.70 §1]

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 compensa-

tion 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 worker 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 State Accident Insurance Fund or direct responsibility employers, provided that the doctor rendering medical and surgical reports consents to subject himself to cross-examination. This subsection shall also apply to medical or surgical reports from any treating or examining doctor who is not a resident of Oregon, provided that the claimant, employer or State Accident Insurance Fund shall have a reasonable time, but no less than 30 days after receipt of notice that the report will be offered in evidence at a hearing, to cross-examine such doctor by deposition or by written interrogatories to be settled by the referee.
[1965 c.285 §40; 1969 c.447 §1]

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

656.313 Employer or fund request for board or court review shall not stay compensation. (1) Filing by an employer or the State Accident Insurance Fund 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) With respect to objection by a claimant to denial of a claim for compensation under ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

(a) A request for hearing is filed not later than the 60th day after the claimant was notified of the denial; or

(b) The request is filed not later than the 180th day after notification of denial and the claimant establishes at a hearing that there was good cause for failure to file the request by the 60th day after notification of denial.

(2) 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.
[1965 c.285 §41a; 1969 c.206 §1; 1975 c.497 §4]

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; reduction of benefits for failure to participate in rehabilitation. (1) Any worker entitled to receive compensation under ORS 656.001 to 656.794 is required, if requested by the director, State Accident Insurance Fund 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 worker and as may be provided by the rules of the director. If the worker refuses to submit to any such examination, or obstructs the same, his rights to compensation shall be suspended with the consent of the director until the examination has taken place, and no compensation shall be payable during or for account of such period.

(2) For any period of time during which any worker commits insanitary 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 director and no payment shall be made for such period. The period during which such worker would otherwise be entitled to compensation may be reduced with the consent of the director to such an extent as his disability has been increased by such refusal.

(3) A worker who has received an award for unscheduled permanent total or unscheduled partial disability should be encouraged

to make a reasonable effort to reduce his disability; and his award shall be subject to periodic examination and adjustment in conformity with ORS 656.268.

(4) When the employer of an injured worker, or the employer's insurer determines that the injured worker has failed to follow medical advice from his treating physician or has failed to participate in or complete physical restoration or vocational rehabilitation programs prescribed for the worker pursuant to ORS 656.001 to 656.794, the employer or insurer may petition the director for reduction of any benefits awarded the worker. Notwithstanding any other provision of ORS 656.001 to 656.794, if the director finds that the worker has failed to accept treatment as provided in this subsection, the director may reduce any benefits awarded the worker by such amount as the director considers appropriate.

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

[Formerly 656.280; 1977 c.804 §12; 1977 c.868 §4]

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

656.330 Disability prevention services; contact with injured worker; reports. (1) In order to assist the board in determining whether an injured worker should receive disability prevention services, the insurer or self-insured employer of a worker who incurs a disabling compensable injury shall report the circumstances of the injury to the board in each of the following situations:

(a) When the worker incurs a serious disabling compensable injury, the report shall be made no later than the 14th day after the employer has notice or knowledge of the claim.

(b) When the worker incurs a disabling compensable injury for which the insurer or self-insured employer determines that disability prevention services should be provided, the report shall be made at the time of such determination.

(c) When the worker incurs a disabling compensable injury for which a determination pursuant to ORS 656.268 has not been made and the worker has not returned to work within 180 days of the date of injury, the report shall be made not later than 190 days after the date of the injury.

(2) Reports of disabling compensable injuries required by subsection (1) of this section shall be in such form and contain such information as the board may require.

(3) The board has the responsibility to contact promptly all workers admitted as inpatients at hospitals who may be vocationally handicapped as the result of serious disabling compensable injuries.

(4) As used in subsection (1) of this section:

(a) "Disability prevention services" means services provided to injured workers to prevent the injury from causing long-term total disability. Such services include physical restoration, psychological and psychiatric evaluation, counseling and vocational rehabilitation.

(b) "Serious disabling compensable injury" means a disabling compensable injury which the board determines is likely to cause the worker to be totally disabled for a period of 90 days or more.

[1977 c.868 §2]

LEGAL REPRESENTATION

656.382 Penalties and attorney fees payable by employer or fund for misconduct. (1) If a direct responsibility employer or the State Accident Insurance Fund refuses to pay compensation due under an order of a referee, board or court, or otherwise unreasonably resists the payment of compensation, the employer or fund 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 fund 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 fund, and the referee, board or court finds that the compensation awarded to a claimant should not be disallowed or reduced, the employer or fund shall be required to pay to the claimant or his attorney a reasonable attorney's fee in an amount set by the referee, 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 referee that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the referee 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 worker in his employ, or by the guardian, personal representative or beneficiary of such worker, on account of injuries received by such worker 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 director shall request the Attorney General to defend the employer in such litigation. The Attorney General shall cooperate with the director 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 Workers' 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 Workers' Compensation Law, until such defense has been finally determined by the court. An appeal to the Court of Appeals from the order or judgment finally disposing of such defense may be taken by either party as in other cases.
[Formerly 656.582; 1977 c.290 §4; 1977 c.804 §13]

656.386 Recovery of attorney 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 Court of Appeals from a board order denying his claim for compensation, the court shall allow a reasonable attorney fee to the claimant's attorney. In such rejected cases where the claimant prevails finally in a hearing before the referee or in a review by the board itself, then the referee or board shall allow a reasonable attorney fee; however, in the event a dispute arises as to the amount allowed by the referee 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 attorney fees shall continue to be paid from the claimant's award of compensation except as otherwise provided in ORS 656.382.
[Formerly 656.588; 1977 c.804 §14]

656.388 Approval of amount of attorney fees; suggested fee schedule. (1) No claim for legal services or for any other services rendered before a referee 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 referee 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 referee 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 worker under ORS 656.001 to 656.794.
[Formerly 656.590]

656.401 [1965 c.285 §74; 1967 c.359 §699; repealed by 1975 c.556 §25 (656.403 enacted in lieu of 656.401)]

656.402 [Renumbered 656.712]

DIRECT RESPONSIBILITY AND CONTRIBUTING EMPLOYERS; INSURERS AND GUARANTY CONTRACTS

656.403 Obligations of direct responsibility employer. (1) A subject employer who is qualified as a direct responsibility employer directly assumes the reponsibility for providing compensation due his subject workers and their beneficiaries under this chapter.

(2) The claims of subject workers and their beneficiaries resulting from injuries while employed by a direct responsibility employer shall be handled in the manner provided by this chapter. A direct responsibility employer is subject to the rules of the director with respect to such claims.

(3) Insurance obtained by a carrier-insured employer and security deposited by a self-insured employer shall not relieve any such employer from full and primary responsibility for claims administration and payment of compensation under this chapter. This subsection applies to a self-insured employer even though he insures or reinsures all or any portion of his risks under this chapter with an insurance company authorized to do business in this state or with any other insurer with whom insurance can be placed or secured pursuant to ORS 744.305 to 744.405.
[1975 c.556 §26 (enacted in lieu of 656.401)]

656.404 [Repealed by 1959 c.449 §5]

656.405 [1965 c.285 §75 (1); 1967 c.359 §700; repealed by 1975 c.556 §54]

656.406 [Renumbered 656.714]

656.407 Qualifications of a direct responsibility employer. (1) To qualify as a direct responsibility employer, an employer must have sufficient financial ability and qualified staff to be able to make certain the prompt payment of all compensation and all other payments that may become due from such employer under this chapter. An employer shall establish proof with the director that he is so qualified either:

(a) As a carrier-insured employer by causing a contract issued by a guaranty contract insurer to be filed with the director; or

(b) As a self-insured employer by establishing proof that he has an adequate staff qualified to process claims promptly and that he has the financial ability to make certain the prompt payment of all compensation and other payments that may become due to the board under this chapter.

(2) A self-insured employer shall establish proof of financial ability by depositing in a depository, designated by the director, money, government securities or a surety bond written by a surety insurer authorized to transact insurance in this state. The money, securities or bond shall be in an amount reasonably sufficient to insure payment of compensation and other payments that may become due to the director but not less than the employer's normal expected annual claim liabilities and in no event less than $100,000. In arriving at the amount of money, securities or bond required under this subsection, the director may take into consideration the financial ability of the employer to pay compensation and other payments and his probable continuity of operation. The money, securities or bond so deposited shall be held by the director to secure the payment of compensation for injuries to subject workers of the employer and to secure other payments that may become due from the employer to the director under this chapter. The amount of security may be increased or decreased from time to time by the director.
[1975 c.556 §27]

Note: 656.407 to 656.455 were enacted into law by the Legislative Assembly but were not added to or made a part of 656.001 to 656.794 by legislative action. Further, 656.432 was not added to ORS chapter 656 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

656.408 [Renumbered 656.716]

656.409 [1965 c.285 §75(2), (3); repealed by 1975 c.556 §54]

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

656.411 Qualifying as a contributing employer. Any subject employer may be a contributing employer. To qualify as a contributing employer:

(1) An employer shall file with the State Accident Insurance Fund an application to contribute to the Industrial Accident Fund under subsection (1) of ORS 656.504 and pay such annual fee, minimum premium and registration fee as the State Accident Insurance Fund by regulation may require; and

(2) The State Accident Insurance Fund shall issue a guaranty contract for such employer and cause it to be filed with the director.
[1975 c.556 §28]

Note: See note under 656.407.

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

656.413 [1965 c.285 §76(1), (2); repealed by 1975 c.556 §54]

656.414 [Renumbered 656.718]

656.415 Fund to furnish statement of renewal fee and minimum premium. The State Accident Insurance Fund shall, at least 30 days prior to the anniversary date of his coverage, mail each contributing employer a statement of the fees or premiums required to continue coverage and the due date thereof.
[1975 c.556 §30]

Note: See note under 656.407.

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

656.417 [1965 c 285 §76 (3), (8); 1967 c.341 §6; repealed by 1975 c.556 §54]

656.418 [Repealed by 1965 c.285 §95]

656.419 Guaranty contracts. (1) A guaranty contract issued by the State Accident Insurance Fund or a guaranty contract insurer shall provide that the insurer agrees to assume, without monetary limit, the liability of the employer, arising during the period the guaranty contract is in effect, for prompt payment of:

(a) All compensation for compensable injuries that may become due under this chapter to subject workers and their beneficiaries; and

(b) All assessments, contributions and other obligations imposed on the insured employer and his subject workers under this chapter that may become due from such employer to the director, except the obligation to pay a penalty assessed against the employer under ORS 656.745.

(2) A guaranty contract issued by the State Accident Insurance Fund or a guaranty contract insurer shall be filed with the director by the insurer within 30 days after workers' compensation coverage of the employer is effective. A guaranty contract shall contain:

(a) The name and address of the employer;

(b) A description of the occupation in which the employer is engaged or proposes to engage;

(c) The effective date of the workers' compensation coverage;

(d) A specific statement that a named sole proprietor, partner or corporate officer is covered by the contract by reason of an election to be covered, if such is the case, and, if coverage extends to any other person by reason of an election of his employer, a statement of that fact; and

(e) Such other information as the director may from time to time require.

(3) Workers' compensation coverage is effective when the application of the subject employer for coverage together with any required fees or premium are:

(a) Received by an authorized representative of the State Accident Insurance Fund; or

(b) Accepted by an authorized representative of a guaranty contract insurer.

(4) If the name or address of an insured employer is changed, the insurer shall, within 30 days after the date the change is received by the insurer, file a change-of-name or change-of-address notice with the director setting forth the correct name and address of the employer.

(5) Coverage of an employer under a guaranty contract continues until canceled or terminated as provided by ORS 656.423 or 656.427.

[1975 c.556 §29; 1977 c.405 §7]

Note: See note under 656.407.

656.420 [Renumbered 656.758]

656.421 [1965 c.285 §76(4), (5), (6), (7); repealed by 1975 c.556 §54]

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

656.423 Cancellation of coverage by employer; notice required; exception. (1) An insured employer may cancel his coverage with the State Accident Insurance Fund or other insurer by giving the insurer at least 30 days' written notice, unless a shorter period is permitted by subsection (3) of this section.

(2) Cancellation of coverage is effective at 12 midnight 30 days after the date the cancellation notice is received by an authorized representative of the insurer, unless a later date is specified.

(3) An employer may cancel his coverage effective less than 30 days after written notice is received by an agent of the insurer by providing other coverage or by becoming a self-insured employer. A cancellation under this subsection is effective immediately upon the effective date of the other coverage or the effective date of certification as a self-insured employer.

(4) The State Accident Insurance Fund or other insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director.

[1975 c.556 §31]

Note: See note under 656.407.

656.424 [Renumbered 656.734]

656.425 [1965 c.285 §76a; repealed by 1975 c.556 §54]

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

656.427 Termination of guaranty contract or surety bond liability by insurer; termination of coverage by fund. (1) An insurer other than the State Accident Insurance Fund that issues a guaranty contract or a surety bond to an employer under this chapter may terminate liability on its contract or bond, as the case may be, by giving the employer written notice of termination. If a

contributing employer fails to pay any required contribution, fees, premiums or deposits on or before the due date, the fund shall terminate coverage of the employer by giving the employer written notice of termination. When an employer ceases to be a member of a group that is insured by one guaranty contract, the insurer shall terminate liability for such employer under its guaranty contract by giving the employer written notice of termination. A notice of termination shall state the effective date and hour of termination.

(2) A termination under this section is effective at 12 midnight not less than 30 days after the date the notice is mailed. However, termination of the coverage of a contributing employer does not take effect if, prior to the effective date, the employer pays the contributions, fees, premiums and deposits due together with any penalty imposed under ORS 656.560.

(3) Notice under this section shall be given by mail, addressed to the employer at his last-known address. If the employer is a partnership, notice may be given to any of the partners. If the employer is a corporation, notice may be given to any agent or officer of the corporation under whom legal process may be served. When notice is given under this section, a copy shall at the same time be sent to the director. The fund shall also notify the director if a contributing employer, after notice is given, pays the sums due and termination does not take effect.

(4) Termination shall in no way limit liability that was incurred under the guaranty contract or surety bond prior to the effective date of the termination.
[1975 c.556 §32]

Note: See note under 656.407.

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

656.429 [1965 c.285 §77; repealed by 1975 c.556 §54]

656.430 Certification of self-insured employer; effective date. (1) Upon determining that an employer has qualified as a self-insured employer under ORS 656.407, the director shall issue a certificate to that effect to the employer.

(2) Coverage of a self-insured employer is effective on the date of certification unless a later date is specified in the certificate.

(3) Two or more entities shall not be included in the certification of one employer unless in each entity the same person, or group of persons, or corporation owns a majority interest. If an entity owns a majority interest in another entity which in turn owns the majority interest in another entity, all entities so related shall be combined regardless of the number of entities in succession.

(4) In the term "majority interest," as used in this section, "majority" means more than 50 percent.

(5) If an entity other than a partnership:

(a) Has issued voting stock, "majority interest" means a majority of the issued voting stock;

(b) Has not issued voting stock, "majority interest" means a majority of the members; or

(c) Has not issued voting stock and has no members, "majority interest" means a majority of the board of directors or comparable governing body.

(6) If the entity is a partnership, majority interest shall be determined in accordance with the participation of each general partner in the profits of the partnership.
[1975 c.556 §33]

Note: See note under 656.407.

656.431 [1965 c.285 §78; 1973 c.620 §6; repealed by 1975 c.556 §54]

656.432 Direct responsibility employers authorized to elect self-insurance coverage. Direct responsibility employers as provided in subsection (2) of ORS 656.017 may elect, subject to approval of the Workers' Compensation Board, to self insure coverage as specified in ORS 656.031, 656.033, 656.041, 656.120 and 656.138.
[1977 c.659 §2]

Note: See note under 656.407.

656.434 Certification effective until canceled or revoked; revocation of certificate. (1) A certification issued under ORS 656.430 remains in effect until:

(a) Revoked by the director as provided by this section and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) The director may revoke the certification of a self-insured employer if:

(a) The employer fails to comply with ORS 656.407; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.
[1975 c.556 §34]

Note: See note under 656.407.

656.440 Notice of certificate revocation; appeal; effective date; termination. (1) Before revocation of certification under ORS 656.434 becomes effective, the director shall give the employer notice that his certification will be revoked stating the grounds for the revocation. The notice shall be served on the employer in the manner provided by subsection (3) of ORS 656.427. The revocation shall become effective within 10 days after receipt of such notice by the employer unless within such period of time the employer corrects the grounds for the revocation or appeals in writing to the department.

(2) If the employer appeals , the board shall set a date for a hearing, which date shall be within 20 days after receiving the appeal request, and shall give the employer at least five days' notice of the time and place of the hearing. A record of the hearing shall be kept but it need not be transcribed unless requested by the employer; and the cost of transcription shall be charged to the employer. Within five days after the hearing, the board shall either affirm or disaffirm the revocation and give the employer written notice thereof by registered or certified mail.

(3) If revocation is affirmed on review by the board, the revocation is effective five days after the employer receives notice of the affirmance unless within such period of time the employer corrects the grounds for the revocation or petitions for judicial review of the affirmance pursuant to ORS chapter 183.

(4) If the revocation is affirmed following judicial review, the revocation is effective five days after entry of the final decree of affirmance, unless within such period the employer corrects the grounds for the revocation.
[1975 c.556 §35; 1977 c.804 §15]

Note: See note under 656.407.

656.442 [1967 c.341 §7; repealed by 1975 c.556 §54]

656.443 Procedure upon default by direct responsibility employer. (1) If a direct responsibility employer defaults in payment of compensation or other payments due to the director under this chapter, the director may, on notice to the employer and any insurer providing a guaranty contract or surety bond to such employer, use money or interest and dividends on securities, sell securities or institute legal proceedings on any surety bond or guaranty contract deposited or filed with the director to the extent necessary to make such payments.

(2) Prior to any default by the employer, the employer is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer is canceled or terminated, or the coverage of a carrier-insured employer is canceled or terminated, the security deposited or the guaranty contract filed with the director shall remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured or a carrier-insured employer. The security or contract shall be maintained in such amount as is necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by such security or contract, and to assure the payment of claims for aggravation and claims under ORS 656.278 based on such accidental injuries. At the expiration of the 62 months' period, or such other period as the director may consider proper, the director may accept in lieu of any such security or contract a policy of paid-up insurance in a form approved by the Insurance Commissioner and the director.
[1975 c.556 §36]

Note: See note under 656.407.

656.444 [1967 c.341 §9; repealed by 1975 c.556 §54]

656.446 [1967 c.341 §10; repealed by 1975 c.556 §54]

656.447 Sanctions against insurer for failure to comply with contracts, orders or rules. (1) The board may request the Insurance Commissioner to suspend or to revoke the authorization of a guaranty contract insurer to issue guaranty contracts if the board, after notice to the company and giving the company an opportunity to be heard and present evidence, finds that:

(a) The company has failed to comply with its obligations under any such contract; or

(b) The company has failed to comply with the orders of the board or the provisions of this chapter or any rule promulgated pursuant thereto.

(2) A suspension or revocation shall not affect the liability of any such company on any guaranty contract in force prior to the suspension or revocation.
[1975 c.556 §37; 1977 c.430 §2]

Note: See note under 656.407.

656.451 Fund and insurers to furnish safety and health consultative services; standards; notice to Insurance Commis-

sioner. (1) The State Accident Insurance Fund and any insurer that issues guaranty contracts to subject employers pursuant to this chapter shall, in accordance with a program approved by the director, furnish occupational safety and health consultative services to its insured employers. Such consultative services shall be designed to promote occupational safety and reduce occupational health hazards.

(2) A guaranty contract insurer may furnish any of the services required by subsection (1) of this section through an independent contractor that is approved by the director.

(3) The program of an insurer, including the State Accident Insurance Fund, for furnishing consultative services as required by this section shall be adequate to meet the minimum standards prescribed by the director by rule from time to time. An application for approval of a program, or a proposed change in an approved program, shall be filed with the director. Upon approval of an application, the director shall notify the applicant and, upon approval of the application of a guaranty contract insurer, send a copy of such notice to the Insurance Commissioner.
[1975 c.585 §6]

Note: See note under 656.407.

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

656.454 [Renumbered 656.634]

656.455 Self-insured employers required to keep records of compensation claims; location and inspection; expenses of audits and inspections. (1) Every self-insured employer shall maintain a place of business in this state where the employer shall keep complete records of all claims for compensation made to the employer under this chapter or a self-insured employer may, under the conditions prescribed by paragraphs (a) and (b) of subsection (3) of ORS 731.475, keep such records in this state at a place operated by a service company. The records shall be retained in, and may be removed from, this state or disposed of, in accordance with the rules of the director adopted pursuant to ORS 731.475. Such records shall be available to the director for examination and audit at all reasonable times upon notice by the director to the employer.

(2) With the permission of the director, a self-insured employer may keep all claims records and process claims from a location outside of the state. The director shall by rule prescribe the conditions and procedure for obtaining his permission. The director may revoke his permission for failure of the employer to comply with the rules. If the permission of an employer is revoked by the director, the employer shall be allowed 60 days after the order of revocation becomes final to comply with subsection (1) of this section. The expenses of the director to examine and audit the records of a self-insured employer outside of this state shall be paid by the employer.
[1975 c.585 §8]

Note: See note under 656.407.

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 §66b; 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]

CHARGES AGAINST EMPLOYERS AND WORKERS

656.502 Definition of fiscal year. As used in ORS 656.502 to 656.530, "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 contributing employer shall pay to the State Accident Insurance Fund on or before the 15th day of each month, for the purpose of payment of compensation and benefits to workers 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 workers according to and at the rates promulgated by the State Accident Insurance Fund under ORS 656.508 and shall forward to the State Accident Insurance Fund 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 per-

formed, the number of men and the number of days worked. The State Accident Insurance Fund 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 workers in the contributing employer's employ. Each such employer shall also pay an annual fee and minimum premium in such amount and at such time as the State Accident Insurance Fund shall prescribe, to the Industrial Accident Fund for each calendar year. Each employer may be required to pay a registration fee in such amount and at such time as the State Accident Insurance Fund shall prescribe at the time he first qualifies as a contributing employer. The State Accident Insurance Fund may, by regulation, vary the amount of these fees and minimum premium 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 workers 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 worker engaged for the same employer in two or more occupations during any one day shall, for the purpose of determining the employer's rate of contribution, be deemed engaged solely in the occupation taking the higher rate.

(3) The State Accident Insurance Fund may provide by regulation for a short rate premium applicable to employers who cancel their coverage with the State Accident Insurance Fund prior to the expiration of the coverage period using a standard short rate table.

[Amended by 1957 c.441 §3; 1959 c.450 §6; 1965 c.285 §69; 1967 c.341 §8]

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 State Accident Insurance Fund 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 fund 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 Eight cents a day payable by subject workers to go to Retroactive Reserve, Second Injury Reserve and Administrative Fund. Every employer shall retain from the moneys earned by all subject workers eight cents for each day or part of day the worker is employed and pay the money retained as directed by the director at such intervals as the director shall direct. Three-fourths of the money so deducted from workers' wages shall be placed in the Retroactive Reserve as provided by subsection (4) of ORS 656.636. If at any time that portion of the funds dedicated to the Retroactive Reserve are no longer needed for that purpose, the Director of the Workers' Compensation Department shall transfer the funds to the Administrative Fund for the administration, acquisition of equipment and staffing of a rehabilitation facility, or to the Second Injury Reserve. One-eighth of the money so deducted from workers' wages shall be placed in the Second Injury Reserve. One-eighth of the money so deducted from workers' wages shall be placed in the Administrative Fund for the administration, acquisition of equipment and staffing of the rehabilitation facility. If at any time that portion of the funds dedicated to the Administrative Fund are no longer needed for administration, acquisition of equipment and staffing of the rehabilitation facility, the Director of the Workers' Compensation Department shall have authority to transfer the funds to the Retroactive Reserve or the Second Injury Reserve.

[Amended by 1955 c.323 §1; 1965 c.285 §70; 1971 c.768 §1; 1973 c.55 §1; 1974 s.s. c.41 §8; 1977 c.143 §2]

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

656.508 Authority to fix rates of contribution for employers. (1) The State Accident Insurance Fund 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 State Accident Insurance Fund.

(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 State Accident Insurance Fund 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 State Accident Insurance Fund may determine, and shall be based upon the hazard, claim costs and contributions of each classification of industry. The State Accident Insurance Fund shall notify the employer of his rate.

(4) The State Accident Insurance Fund may establish a uniform system of rate modification conforming to recognized insurance principles including schedule rating and experience rating, premium discount, and retrospective rating.

[Amended by 1957 c.41 §1; 1957 c.386 §1; 1963 c.587 §1; 1965 c.285 §71; 1977 c.405 §8]

656.509 [1973 c.614 §6; 1974 s.s. c.41 §9; repealed by 1974 s.s. c.41 §9]

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 redetermination. (1) The rate modification for a contributing employer determined by the State Accident Insurance Fund 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 fund an application for review and redetermination of the rate modification as determined by the fund, which application shall set forth fully the grounds upon which the employer claims the determination is in error.

(2) The fund 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 worker 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 referee, the board or court with respect to any claim.

(4) The fund 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 fund.

[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 State Accident Insurance Fund 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 Distribution of dividends from surplus in Industrial Accident Fund. (1) Periodically, the State Accident Insurance Fund shall determine the total liability existing against the Industrial Accident Fund.

(2) If, after the determination required by subsection (1) of this section, the State Accident Insurance Fund finds the Industrial Accident Fund, aside from the reserves deemed actuarially necessary according to recognized insurance principles, contains a surplus, the State Accident Insurance Fund in

its discretion may declare a dividend to be paid to, or credited to the accounts of, employers who were contributing employers during all or part of the period for which the dividend is declared. Any dividend so declared shall give due consideration to the solvency of the Industrial Accident Fund, not be unfairly discriminatory and not be promised in advance of such declaration.

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

(4) Dividends payable to agencies of this state that are supported wholly or in substantial part from General Fund moneys shall be paid into the General Fund and be available for general governmental purposes. Such payments shall include all interest earned on such dividends after the time of their declaration and prior to the time of payment. An agency which has, during the period for which dividends are computed, an administrative budget supported by a General Fund contribution which constitutes less than five percent of its total administrative budget shall not be considered as being supported in substantial part from General Fund moneys for purposes of paying such dividends and interest to the General Fund under this subsection.

(5) For the purposes of subsection (4) of this section, the administrative budget of an agency also includes:

(a) All receipts and expenditures attributable to federal payments.

(b) All receipts and expenditures attributable to higher education construction projects financed under Article XI-F(1) of the Oregon Constitution.

(c) The administrative budgets of all self-supporting divisions, boards and commissions within the agency.

[Amended by 1953 c.674 §13; 1955 c.323 §3; 1957 c.574 §8; 1965 c.285 §72; 1967 c.252 §1; 1969 c.589 §1; 1971 c.385 §3; 1971 c.725 §1]

656.530 Sheltered workshop contribution refunds. (1) Annually as soon as practicable after July 1, the director shall pay from the Second Injury Reserve to each sheltered workshop that was an employer during all or part of the preceding fiscal year, an amount equal to 75 percent of the premiums paid by such workshop during that fiscal year pursuant to any guaranty contract filed with the director under ORS 656.419.

(2) As used in this section, "sheltered workshop" means a nonprofit facility established and operated by a private organization, agency or institution to provide vocational training, employment opportunity and employment for disabled and severely handicapped individuals, but does not include a facility established or operated by this state or a political subdivision within this state.

[1969 c.536 §2; 1971 c.768 §2; 1975 c.556 §43]

Note: Sections 2 and 3, chapter 726, Oregon Laws 1977, provide:

Sec. 2. Notwithstanding any other provision of ORS 656.001 to 656.794 or any other law regarding the establishment of insurance rates, the State Accident Insurance Fund or any insurer that provides coverage for the compensation required to be paid to injured workers by ORS 656.001 to 656.794 shall charge any employer who employs subject workers in an occupation subject to the general farming classification code 0006, or subject to those classes into which classification 0006 has been divided by the National Council on Compensation Insurance, a rate for those classifications of $14.50 per $100 of payroll. However, a minimum premium not to exceed $50 may be charged. Payroll or premium generated under such classifications shall be used for experience rating and premium discount purposes.

Sec. 3. This Act is repealed June 30, 1979.

656.535 [1973 c.669 §2; repealed by 1973 c.669 §4]

ENFORCEMENT OF CONTRIBUTIONS

656.552 Deposit of cash or bond to secure payment of employer's contributions. (1) If the State Accident Insurance Fund 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 State Accident Insurance Fund a sum equal to the contributions due the State Accident Insurance Fund upon his estimated payroll for a period of not to exceed six months.

(2) The State Accident Insurance Fund 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 State Accident Insurance Fund shall, upon receipt of all payments due the Industrial Accident Fund, refund to the employer all deposits remaining to the em-

ployer'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 workers shall, upon the commencement of a suit by the State Accident Insurance Fund for that purpose, enjoin the employer from further employing workers 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 State Accident Insurance Fund, 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 or deposit; remedies. (1) When any payment of contribution required by this chapter to be made by a contributing employer on his own account or on account of workers 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 and maintain the deposit provided in ORS 656.552 or fails to make payment of contributions required within 30 days after a written demand by the State Accident Insurance Fund, such employer is in default and is also subject to a penalty of 10 percent of the amount of the contribution then due. The written demand shall be mailed to the contributing employer at his last-known address by registered or certified mail. A copy of the demand shall at the same time be sent to the director.

(3) The amount of such contribution at any time due, together with interest thereon, and penalty for nonpayment thereof, may be collected by the State Accident Insurance Fund 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 accessible to his workers in such manner as to inform his workers of such default.
[Amended by 1965 c.285 §73a; 1969 c.248 §1; 1971 c.73 §1; 1975 c.556 §44]

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 State Accident Insurance Fund 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 workers of employer. (1) A lien hereby is created in favor of the State Accident Insurance Fund upon all real property within this state and any structure or improvement thereon and upon any mine, lode, deposit, mining claim, or any road, tramway, trail, flume, ditch, pipeline, building, or other structure or equipment on or pertaining thereto, upon which labor is performed by the workers of any employer subject to ORS 656.001 to 656.794 in a sum equal to the amount at any time due from such employer to the fund on account of labor performed thereon by the workers of such employer, together with interest and penalty.

(2) The fund 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 on account of labor performed by the workers of such employer, together with interest and penalty.

(3) In order to avail itself of the lien created by this section, the fund 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 fund. 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 fund shall, within six months from the filing of the statement, commence a suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

(5) The lien created by this section shall be prior to all other liens and encumbrances, except labor liens.

656.566 Lien on property of employer for contributions due. (1) If any employer liable for the payment of contributions to the Industrial Accident Fund is placed in default as provided by ORS 656.560, the amount due the fund, including interest and penalty, is a lien in favor of the State Accident Insurance Fund upon all property, whether real or personal, belonging to such employer.

(2) The lien attaches upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the demand, after deducting all just credits and offsets, and the default of such employer. The county clerk shall record the claim of lien in a book kept for that purpose, which record shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

(3) The employer against whose property the lien has been filed may cause his property to be released by filing with the county clerk of the county wherein the lien is recorded a bond in a sum double the amount claimed in the lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest, to be approved by the circuit judge of the district in which the lien is filed, or in the event of his absence from the county in which the lien is filed, then by the county judge of said county, running to the State Accident Insurance Fund and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the State Accident Insurance Fund against the employer or that may be found to be a lien upon or against the property of such employer. The clerk shall issue to such employer a certificate stating that the bond is substituted in lieu of the property of the employer and that the lien on the property is forever released and discharged. A marginal entry of the release and bond shall be made in the lien docket containing the original record of statement of claim. If the State Accident Insurance Fund establishes the validity of its lien by a suit to foreclose the lien, it shall be entitled to judgment or decree against the sureties upon the bond.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property. Unless a suit is instituted by the State Accident Insurance Fund 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 State Accident Insurance Fund paying benefits to the worker or beneficiaries.
[1965 c.285 §44a]

656.578 Workers' election whether to sue third person or noncomplying employer for damages. If a worker of a noncomplying employer receives a compensable injury in the course of his employment, or if a worker receives a compensable injury due to the negligence or wrong of a third person (other than those exempt from liability under ORS 656.018), entitling him under ORS 656.154 to seek a remedy against such third person, such worker or, if death results from the injury, the other beneficiaries shall elect whether to

recover damages from such employer or third person. If a worker leaves beneficiaries who are minors, the right of election shall be exercised by their surviving parent, if any; otherwise, such election shall be exercised by the guardian.
[Formerly 656.312]

656.580 Payment of compensation notwithstanding cause of action for damages; lien on cause of action for compensation paid. (1) The worker or 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 worker or other beneficiaries or the legal representative of a deceased worker to exercise the right of election provided in ORS 656.578 by serving a written demand by registered or certified mail or by personal service upon such worker, beneficiaries or legal representative.

(2) Unless such election is made within 60 days from the receipt or service of such demand and unless, after making such election, an action against such third person is instituted within such time as is granted by the paying agency, the worker, beneficiaries or legal representative is deemed to have assigned his cause of action to the paying agency. The paying agency shall allow the worker, 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 worker and to the director within 10 days after the occurrence of any accident which may result in the assertion of the claim against the third person by the injured worker.
[Formerly 656.316]

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 worker or other beneficiaries or the legal representative of the deceased worker of any right of action against an employer or third party is void unless made with the written approval of the paying agency or, in the event of a dispute between the parties, by order of the 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 worker, the beneficiaries or legal representative of the deceased worker, against the employer or third person, and the paying agency may bring action against such employer or third person in the name of the injured worker or other beneficiaries.

(2) Any sum recovered by the paying agency in excess of the expenses incurred in making such recovery and the amount expended by the paying agency for compensation, first aid or other medical, surgical or hospital service, together with the present worth of the monthly payments of compensation to which such worker or other beneficiaries may be entitled under ORS 656.001 to 656.794, shall be paid such worker or other beneficiaries.
[Formerly 656.320]

656.593 Procedure when worker elects to bring action. (1) If the worker 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 worker or beneficiaries shall be subject to a lien of the paying agency for its share of the proceeds as

set forth in this section 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 fees established by the board for such actions.

(b) The worker 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 worker's claim under ORS 656.001 to 656.794 exclusive of any compensation which may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery shall be paid to the worker or 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 worker or his beneficiaries shall be in addition to the compensation or other benefits to which such worker 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 worker 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; 1977 c.804 §16]

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 worker 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 [Formerly 656.326; repealed by 1971 c.70 §2]

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 director, the board or the State Accident Insurance Fund, as the case may be.

[Formerly 656.472; 1977 c.804 §17]

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]

(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 department in carrying out its duties under this chapter and ORS chapter 654 and for the costs incurred by the Insurance Commissioner under subsection (4) of ORS 737.320; the moneys in the fund are continuously appropriated to the department for such purposes. The director shall administer the fund subject to the instructions of the board with respect to its expenses. 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 director 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 in such manner and at such intervals as the director may direct and when collected shall be deposited in the Administrative Fund.

(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 director 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 director 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; 1973 c.353 §2; 1975 c.556 §45; 1977 c.804 §18]

656.614 Direct Responsibility Employers Adjustment Reserve. (1) The Direct Responsibility Employers Adjustment Reserve shall be established within the Administrative Fund. It shall be used to pay the claims of workers of direct responsibility employers when the director finds that the worker 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 director 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, he may impose and collect from all the direct responsibility employers as a class 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 director 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, he may transfer the surplus to the Administrative Fund and reduce the total amount of direct responsibility employer assessment by the amount so transferred.

(3) Assessments imposed under this section shall be paid to the director in the manner and at such times as the director may direct.

[1965 c.285 §67a; 1975 c.556 §46]

656.616 Rehabilitation Reserve. The director 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. (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 or director 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 department has no equity.

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

(3) Warrants on the Administrative Fund in favor of the department in the amounts the director certifies have been expended from the Emergency Fund shall be issued in the manner provided by law. These warrants shall be deposited in the Emergency Fund.

[1965 c.285 §67e; 1977 c.804 §19]

656.620 Petty cash funds. The director and the board may, at their 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; 1977 c.804 §20]

656.622 Second injury program for employers; other reserves. (1) The director shall establish a Second Injury Reserve within the Administrative Fund for the benefit of employers and their workers and for the purpose of:

(a) Giving employers and their workers the benefits provided in subsection (2) of this section.

(b) Assisting sheltered workshops as provided in ORS 656.530.

(c) Establishing or constructing a physical rehabilitation facility within the limit of the available funds including those transferred as provided in ORS 656.638. Prior to the construction of any buildings or other facilities pursuant to ORS 656.506, 656.530, 656.622, 656.636 and 656.638 the Director of the Workers' Compensation Department shall submit plans for such construction for review and approval to the Emergency Board or the Joint Ways and Means Committee if the legislature is then in session.

(2) In order to encourage the employment of individuals who have incurred compensable injuries that result in permanent disability which may be a substantial obstacle to employment, the director may provide, to employers who employ such individuals, assistance from the Second Injury Reserve in such manner and amount as the director considers appropriate. Notwithstanding any other provision of law, determinations by the director regarding assistance pursuant to this subsection are not subject to review by any court or other administrative body.

(3) The Second Injury Reserve shall be made up of and operated with moneys collected as provided in ORS 656.506. The director may also transfer from any surplus in the Administrative Fund to the Second Injury Reserve in any fiscal year an amount not exceeding the receipts of the reserve in that year from ORS 656.506.

(4) Any assistance from the Second Injury Reserve shall be to the extent of the moneys available in the reserve for the purpose of the reserve.

(5) The director may make such rules as may be required to establish, regulate, manage and disburse the reserve created in accordance with the intent of this section, including the nature and extent of injuries which qualify for assistance.

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

[1965 c.285 §68; 1969 c.536 §3; 1971 c.768 §3; 1977 c.557 §2]

Note: Section 4, chapter 557, Oregon Laws 1977, provides:

Sec. 4. In addition to those purposes for which the Second Injury Reserve may be used after the effective date of this 1977 Act [October 4, 1977], the board shall continue to make expenditures from the reserve in accordance with the law in force prior to the effective date of this 1977 Act for payment to those employers for whom the board had issued an order determining eligibility for such payment prior to the effective date of this 1977 Act.

656.624 Payment of litigation expense by department. 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 director.

[Formerly 656.584]

(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 State Accident Insurance Fund under this chapter, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected for the director under this chapter and deposited in the Industrial Accident Fund may thereafter be transferred to the director and deposited in the Administrative Fund.

(3) All payments authorized to be made by the State Accident Insurance Fund by this chapter, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

[Formerly 656 452; 1975 c.556 §47]

656.634 Trust fund status of Industrial Accident Fund. (1) The Industrial Accident Fund is a trust fund exclusively for the uses and purposes declared in ORS 656.001 to 656.794, except that this provision shall not be deemed to amend or impair the force or effect of any law of this state specifically authorizing the investment of moneys from the fund.

(2) 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 recla-

mation it may have had in that fund.
[Formerly 656.454; 1967 c.335 §55]

656.635 Reserve accounts in Industrial Accident Fund. (1) The State Accident Insurance Fund may set aside, out of interest and other income received through investment of the Industrial Accident Fund, such part of the income as the State Accident Insurance Fund considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the State Accident Insurance Fund to offset gains and losses of invested capital.

(2) The State Accident Insurance Fund may provide for amortizing gains and losses of invested capital in such instances as the State Accident Insurance Fund determines that amortization is preferable to a reserve account provided for in subsection (1) of this section.
[1967 c.335 §57]

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 State Accident Insurance Fund must pay an award or benefits for death or permanent total disability or permanent partial disability, the State Accident Insurance Fund 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 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 worker while in the employ of a direct responsibility employer and the director has determined under ORS 656.268 it is necessary for the employer to deposit cash to assure payment of the award, the director 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 director 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 shall be set aside in the Administrative Fund in a special reserve account to be known as the Retroactive Reserve. The existing funds in the special reserve Retroactive Reserve of the Industrial Accident Fund are transferred to the Administrative Fund in the Retroactive Reserve. 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 the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries. However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Reserve for claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for computing benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable under this subsection shall be in such amount as the director considers appropriate. The director 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 director, the director may reduce the level of benefits payable under this paragraph. The increase in benefits to workers shall be payable in the first instance by the State Accident Insurance Fund or direct responsibility employer subject to reimbursement from the Retroactive Reserve by the director.
[Formerly 656.456; 1971 c.768 §4; 1973 c.614 §7; 1974 s.s. c.41 §10; 1977 c.200 §1; 1977 c.804 §21]

Note: Section 1, chapter 143, Oregon Laws 1977, provides:

Sec. 1. (1) The Workers' Compensation Board shall assess each subject employer six cents per day for each worker employed for each day or part of a day. The assessment shall be paid in such manner and at such intervals as the board may direct. All moneys received from the assessment shall be placed in the Retroactive Reserve.

(2) This section is repealed on July 1, 1979.

656.638 Reserve for certain second injury obligations. The State Accident Insurance Fund is authorized to maintain a reserve in the Industrial Accident Fund in the amount deemed necessary to satisfy obligations heretofore committed to the Contributing Employers Second Injury Reserve. The remainder of the existing Contributing Employers Second Injury Reserve is transferred to the Administrative Fund for the purposes set forth in ORS 656.622.
[Formerly 656.460; 1969 c.536 §4; 1971 c.768 §5; 1977 c.804 §22]

656.640 Use of reserves. (1) The State Accident Insurance Fund may set aside such other reserves within the Industrial Accident Fund as are deemed necessary.

(2) If the Industrial Accident Fund becomes exhausted, the State Accident Insurance Fund 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 workers and beneficiaries for an injury received while the worker was in the employ of a contributing employer.
[Formerly 656.468]

656.642 Emergency Fund. (1) There is created a revolving fund known as the Emergency Fund, which shall be deposited and maintained with the State Treasurer in the sum of $200,000.

(2) The Emergency Fund shall be disbursed by checks or orders issued by the State Accident Insurance Fund 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 State Accident Insurance Fund has no equity.

(e) To pay administrative expenses.

(3) The Secretary of State shall issue warrants on the Industrial Accident Fund in favor of the State Accident Insurance Fund in the amounts the State Accident Insurance Fund certifies it has expended from the Emergency Fund. These warrants shall be deposited in the Emergency Fund.
[Formerly 656.464; 1971 c.357 §1]

656.644 Petty cash funds. The State Accident Insurance Fund 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 Workers' Compensation Law.
[Formerly 656.466]

656.646 Authority to accept government warrants or certificates. The State Accident Insurance Fund 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 State Accident Insurance Fund shall become a part of the Industrial Accident Fund.
[Formerly 656.558]

656.648 When payments to certain employers or fund may be deferred; interest on deferred payment. If the director at any time determines that there are insufficient funds to reimburse the direct responsibility employers or the State Accident Insurance Fund on any quarterly request for reimbursement for benefits paid in the first instance by the direct responsibility employers or the fund, the director may defer reimbursement of the State Accident Insurance Fund until July 1, 1976, or until a later date when funds are available. The director shall pay the State Accident Insurance Fund interest on such deferred payments at the rate of six percent per annum from the date of the request for reimbursement by the fund.
[1974 s.s. c.41 §12]

ADMINISTRATION
(General Provisions)

656.702 Records of fund and insurers open to public. The records of the State Accident Insurance Fund, excepting employer account records and dividend schedules and formulas, shall be open to public inspection. The accident experience records of the fund shall be available to a bona fide rating organization to assist in making workers' compensation rates but any costs involved in making

the records available shall be borne by the rating organization. Accident experience records of carrier-insured employers shall also be available on the same terms to assist in making such rates.
[Formerly 656.426; 1973 c.794 §33a; 1975 c.556 §48]

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 department or State Accident Insurance Fund, the provisions of ORS chapter 183 shall apply to the board review and judicial review of such actions and orders.
[1965 c.285 §54b; 1977 c.804 §23]

(Workers' Compensation Department)

656.708 Workers' Compensation Department; Evaluation Division; Hearings Division; director; appointment; authority. (1) There is created the Workers' Compensation Department. The department consists of the board, the director and all their assistants and employes.

(2) The Evaluation Division is created within the department. The division has the responsibility for initially evaluating claims for compensable injuries, determining the extent of disability resulting therefrom and prescribing the amount of benefits awarded therefor.

(3) The Hearings Division is continued within the board. The division has the responsibility for providing an impartial forum for deciding all cases, disputes and controversies arising under ORS 654.001 to 654.295 and 656.001 to 656.794, and for conducting such other hearings and proceedings as may be prescribed by law.

(4) The director shall be appointed by the Governor, from among persons recommended by the board, which appointment is subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The term of the director is four years. However, the director serves at the pleasure of the Governor. Except as otherwise provided by law, the director shall receive a salary fixed by the Governor. In addition to his salary, subject to any applicable law regulating travel and other expenses of state officers and employes, the director shall be reimbursed for actual and necessary travel and other expenses incurred by him in the performance of his official duties.

(5) The director shall have all the administrative, regulatory and rulemaking duties, functions and powers of the department except those specifically reserved to the board. The director shall provide such administrative fiscal and personnel services as are required by the board.
[1977 c.804 §25]

656.710 Field Services Division; functions. In addition to such other divisions as may be established within the department by law or administrative rule or order, the Field Services Division is established within the department. The division has the responsibility to contact promptly and to provide assistance to those injured workers referred to the division by insurers or other sources, to assist the workers to return to the work force as soon as their condition permits. The director, with the assistance of the division, has the responsibility for maintaining contact between the department and each worker who has incurred a serious disabling compensable injury from the time of injury until the worker returns to work or the worker's condition is determined to have resulted in permanent total disability.
[1977 c.699 §2]

656.712 Workers' Compensation Board; members; qualifications; confirmation; term; vacancies. (1) The Workers' 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, persons shall be appointed as members who fairly represent the interests of all concerned.

(2) A member of the 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.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.
[Formerly 656.402; 1973 c.792 §28; 1977 c.109 §3; 1977 c.804 §26]

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 and director not to engage in political or business activity; oath and bond required. (1) No member of the board nor the director 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 and the director 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 his office .

(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 of the board and the director 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; 1977 c.804 §27]

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 capital, 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; 1967 c 2 §4]

656.720 Prosecution and defense of actions by Attorney General and district attorneys. Upon request of the director 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 department or its employes in their official capacity.
[Formerly 656.586; 1971 c.418 §18; 1977 c.804 §28]

656.722 Department authority to employ subordinates. The board and the director 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 the board and the director by statute.
[Formerly 656.416; 1977 c.804 §29]

656.724 Referees; appointment; qualifications; term; removal procedure. (1) The board shall employ referees to hold hearings pursuant to ORS 656.001 to 656.990. A referee must be a member in good standing of the Oregon State Bar, or the bar of the highest court of record in any other state or currently admitted to practice before the federal courts in the District of Columbia. Referees shall qualify in the same manner as members of the board under subsection (2) of ORS 656.722. The board may appoint referees to serve for a probationary period of one year or less prior to regular employment.

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

(3) (a) The employment of each referee shall be subject to formal review by the board every four years. Complaints and comments filed with the board regarding the official conduct, competence or fitness of a referee, as

well as the board's records, shall be reviewed by the board.

(b) In accordance with paragraph (c) of this subsection, a referee may be removed at the time of such formal review or at any time, for official misconduct, incompetence, inefficiency, indolence, malfeasance or other unfitness to render effective service.

(c) If the board believes there is reasonable cause to remove a referee, the record of complaints, comments and other data considered by the board shall be submitted to the Chief Judge of the Court of Appeals. He shall thereupon convene a review panel consisting of himself, the presiding judge of the Multnomah County Circuit Court and the President of the Oregon Circuit Judges Association. The panel shall examine the record and, if it believes the charges warrant, conduct a hearing on whether the referee should be dismissed; otherwise the charges shall be dismissed. The record and the hearing shall be confidential unless the referee elects otherwise. The decision of the review panel after hearing shall be final.

(4) Referees have the same powers granted to board members or assistants under paragraphs (a), (b), (c) and (d) of subsection (2) of ORS 656.726.

(5) A presiding referee shall be elected by a majority vote of the referees; but if a majority of the referees are unable to agree upon a presiding referee, the presiding referee shall be appointed by the board. The term of a presiding referee under any one election or appointment shall not extend for a period of more than one year. The presiding referee shall administer the Hearings Division and shall be responsible solely and directly to the board. The presiding referee may designate another referee to serve as acting presiding referee during any period when the presiding referee is absent or disabled.

(6) It is the declared purpose of this section to foster and protect the referees' ability to provide full, fair and speedy hearings and decisions.

[1965 c.285 §53a; 1965 c.564 §6; 1967 c.180 §1; 1971 c.695 §9; 1973 c.774 §1]

656.726 Department powers and duties generally. (1) The board in its name and the director in his name as director may sue and be sued, and each shall have a seal.

(2) The board hereby is charged with responsibility for the Hearings Division and for reviewing appealed orders of referees in controversies arising under ORS 656.001 to 656.794, exercising own motion jurisdiction under ORS 656.001 to 656.794, providing general guidelines for the evaluation of permanent disabilities, reevaluating permanent total disability awards, providing such policy advice as the director may request, and providing such other review functions as may be prescribed by law. To that end any of its members or assistants authorized thereto by the members shall have power to:

(a) Hold sessions at any place within the state.

(b) Administer oaths.

(c) Issue and serve by the board's representatives, or by any sheriff, subpenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony before any hearing under ORS 654.001 to 654.295 and 656.001 to 656.794.

(d) Generally provide for the taking of testimony and for the recording of proceedings.

(3) The director hereby is charged with duties of administration, general supervision of occupational accident and disease prevention, rehabilitation, and providing of compensation, regulation and enforcement in connection with ORS 654.001 to 654.295 and 656.001 to 656.794. To that end the director may:

(a) Make and declare all rules and regulations which are reasonably required in the performance of his duties.

(b) Hold sessions at any place within the state.

(c) Administer oaths.

(d) Issue and serve by his representatives, or by any sheriff, subpenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony before any rulemaking hearing conducted by the director or his representatives. The director may require the attendance and testimony of employers, their officers and representatives in any inquiry under ORS 656.001 to 656.794, and the production by employers of books, records, papers and documents without the payment or tender of witness fees on account of such attendance.

(e) Generally provide for the taking of testimony and for the recording of such proceedings.

(4) The director 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 the State Accident Insurance Fund as provided for other medical services under ORS 656.245.

(5) 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 rulemaking are not provided for in ORS 656.001 to 656.794.

(6) The director and the board may incur such expenses as they respectively determine are reasonably necessary to perform their authorized functions.

(7) The director, the board and the State Accident Insurance Fund 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.

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

(9) The director shall have the same powers regarding inspection of books, records and payrolls of employers as are granted the fund under ORS 656.758.
[Formerly 656.410; 1977 c.804 §30]

656.727 Rules for administration of benefit offset. In carrying out the provisions of ORS 656.209, the board shall promulgate rules that include, but are not limited to:

(1) Requiring injured workers to make application for federal social security disability benefits.

(2) Requiring injured workers to file with the appropriate agency that administers the federal social security program a release authorizing the federal agency to make disclosure to the board of such information regarding the injured worker as will enable the board to carry out the provisions of ORS 656.209.

(3) A procedure for ordering reduction of benefits or such other sanctions as the board considers appropriate to insure that injured workers comply with rules promulgated pursuant to this section.

(4) A procedure for preventing injured workers from receiving benefit amounts in excess of the amounts authorized by ORS 656.209.
[1977 c.430§7]

656.728 Vocational rehabilitation of injured workers; reimbursement of temporary disability compensation. (1) The director 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 director 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.

(3) The director shall by rule provide for reimbursement to the direct responsibility employer or the State Accident Insurance Fund from the Rehabilitation Reserve any sums paid as temporary disability compensation after the date the worker is determined to be medically stationary until a program of rehabilitation has been terminated as provided by ORS 656.268. The director may deny reimbursement pursuant to this section if the direct responsibility employer or State Accident Insurance Fund has delayed beyond 14 days the referral of an injured worker for disability prevention services after receipt by the direct responsibility employer or the State Accident Insurance Fund:

(a) Of a doctor's report indicating a possible inability of the worker to return to his former employment;

(b) Of an investigative report indicating a possible need by the worker for disability prevention services; or

(c) Of any other information indicating a possible need by the worker for disability prevention services.

(4) The director may provide by rule that when reimbursement is denied the insurer shall not charge the costs of temporary disability compensation to the employer by means

of assessment, increased premium or change in classification or experience rating.
[Subsection (1) formerly 344.820; subsection (2) formerly 344.830; 1973 c.634 §3; 1977 c.862 §2]

656.730 Assigned risk plan. (1) Upon the request of either the State Accident Insurance Fund or a licensed workers' compensation rating organization, the director and Insurance Commissioner shall promulgate a plan for the equitable apportionment among the State Accident Insurance Fund and all members of workers' compensation rating organizations in the state coverage required by ORS 656.017 for subject employers whose coverage the fund, or any members of such rating organizations, object to providing. The plan shall include provisions 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 subpenas 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 referees or assistants, shall compel obedience to subpenas issued and served pursuant to ORS 656.726 and shall punish disobedience of any such subpena or any refusal to testify at any authorized session or hearing or to answer any lawful inquiry of any of the board members, referees or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpena issued from the court is punished.
[Formerly 656.412]

656.734 [Formerly 656.424; repealed by 1973 c.833 §48]

656.735 Civil penalty for noncomplying employers; amount; liability of corporate officers; effect of final order; penalty as preferred claim; disposition of moneys collected. (1) The director may assess any person who violates subsection (1) of ORS 656.052 a civil penalty of not more than $1,000.

(2) The director may assess any person who continues to violate subsection (1) of ORS 656.052, after an order issued pursuant to subsection (2) of ORS 656.052 has become final, a civil penalty, in addition to any penalty assessed under subsection (1) of this section, of not more than $25 for each day such violation continues.

(3) In addition to any other penalties assessed under this section, where a subject worker receives a compensable injury while in the employ of a noncomplying employer, the director shall assess such employer a civil penalty of not less than $100 and not more than:

(a) $500 if the worker suffers no disability;

(b) $1,000 if the worker suffers a temporary disability;

(c) $2,500 if the worker suffers a permanent partial disability; or

(d) $5,000 if the worker dies or suffers permanent total disability.

(4) When a noncomplying employer is a corporation, such corporation and the officers and directors thereof shall be jointly and severally liable for any civil penalties assessed under this section and any claim costs incurred under ORS 656.054.

(5) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be 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.

(6) Civil penalties, and judgments entered thereon, due to the director under this section from any person shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, and proceedings for the administration of estates and receiverships involving the person liable therefor or the property of such person.

(7) All moneys collected under this section shall be paid into the Administrative Fund.
[1973 c.447 §4; 1977 c.73 §1]

656.740 Review of proposed order declaring noncomplying employer, proposed assessment or civil penalty; insurer as party; hearing. (1) A person may contest a proposed order of the director declaring that person to be a noncomplying employer, or a

proposed assessment of civil penalty, by filing with the department, within 20 days of receipt of notice thereof, a written request for a hearing. Such a request need not be in any particular form, but shall specify the grounds upon which the person contests the proposed order or assessment.

(2) Where any insurance carrier, including the State Accident Insurance Fund, is alleged by an employer to have contracted to provide him with workers' compensation coverage for the period in question, the board shall join such insurance carrier as a necessary party to any hearing relating to such employer's alleged noncompliance and shall serve the carrier, at least 30 days prior to such hearing, with notice thereof. If the carrier does not file with the board, within 20 days of receipt of such notice, a written denial of such coverage, the carrier shall be conclusively presumed to have so insured the employer.

(3) A hearing relating to a proposed order declaring a person to be a noncomplying employer, or to a proposed assessment of civil penalty under ORS 656.735, shall be held by a referee of the board's Hearings Division; but a hearing shall not be granted unless a request for hearing is filed within the period specified in subsection (1) of this section, and if a request for hearing is not so filed, the order or penalty, or both, as proposed shall be a final order of the department and shall not be subject to review by any agency or court.

(4) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders assessing civil penalties pursuant to this chapter, the conduct of hearings and the judicial review thereof shall be as provided in ORS 183.310 to 183.500, except that:

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

(b) The director 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.

[1973 c.447 §5; 1975 c.341 §1; 1975 c.759 §19; 1977 c.804 §31]

656.745 Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure. (1) The director may assess a civil penalty against an employer or insurer who:

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

(b) Fails to pay assessments or other payments due to the director under this chapter and is in default; or

(c) Habitually fails to comply with rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of this chapter.

(2) A civil penalty shall be not more than $2,000 for each violation or $10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate violation.

(3) Subsections (5) to (7) of ORS 656.735 and ORS 656.740 also apply to orders and penalties assessed under this section against the corporation.

[1975 c.556 §38]

Note: 656.745 and 656.750 were enacted into law by the Legislative Assembly but were not added to or made a part of 656.001 to 656.794 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

(State Accident Insurance Fund)

656.750 Civil penalty for failure to supply health and safety consultative services or maintain records of compensation claims; amount; procedure; disposition of funds. (1) The director may assess against the State Accident Insurance Fund or any other insurer who fails to comply with ORS 656.451, or against an employer who fails to comply with ORS 656.455, a civil penalty of not more than $250 a day for each day such failure continues.

(2) 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 fund, the insurer or employer 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 fund, insurer or employer named, and execution may be issued upon the

order in the same manner as execution upon the judgment of a court of record.

(3) All money collected under this section shall be paid into the Administrative Fund.
[1975 c.585 §9]

Note: See note under 656.745.

656.752 State Accident Insurance Fund; purpose and functions. (1) The State Accident Insurance Fund is created for the purpose of transacting workers' compensation insurance business formerly transacted by the State Industrial Accident Commission. The State Accident Insurance Fund also may insure a contributing employer against any liability such employer may have on account of bodily injury to his worker arising out of and in the course of employment, as fully as any private insurance carrier.

(2) The functions of the State Accident Insurance Fund 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 workers and beneficiaries of workers 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 State Accident Insurance Fund in its name may sue and be sued.

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

(5) The State Accident Insurance Fund in its own name, for the purpose of providing adequate housing and space for its offices and operational facilities, the cost of which shall be paid out of the Industrial Accident Fund may:

(a) Acquire, lease, rent, own and manage real property;

(b) Construct, equip, and furnish such buildings or other structures as may be deemed necessary to accommodate its immediate and reasonably anticipated future needs;

(c) Subject to the provisions of ORS 276.004, lease or rent space not needed for its immediate requirements;

(d) Rent space in any such buildings in order of priority, first to other public agencies, then to private citizens provided the building may in the first instance contain space for private concessions;

(e) Sell or otherwise dispose of any property acquired pursuant to this subsection after consultation with the Joint Committee on Ways and Means and the Emergency Board; and

(f) Moneys received by the State Accident Insurance Fund in accordance with the provisions of paragraphs (c), (d) and (e) of this subsection shall be deposited in the Industrial Accident Fund.

(6) Any real property acquired and owned by the State Accident Insurance Fund under this section shall be subject to ad valorem taxation.

(7) The State Accident Insurance Fund may furnish advice, services and excess workers' compensation and employer liability insurance to any political subdivision qualified as a self-insured employer under the provisions of ORS 656.017, on such terms and conditions as the State Accident Insurance Fund deems reasonable.
[1965 c.285 §55; 1965 c.564 §7; 1967 c 253 §1; 1969 c 247 §2; 1971 c 262 §1; 1977 c.659 §3]

656.754 Manager; appointment, confirmation and powers. (1) The State Accident Insurance Fund is under the direct supervision of a manager appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. 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 State Accident Insurance Fund.

(3) The manager may employ, terminate and supervise the employment of such assistants, experts, field personnel and clerks as may be required in the administration of the State Accident Insurance Fund.
[1965 c.285 §56; 1973 c.792 §29]

656.756 [1965 c.285 §56a; repealed by 1967 c.7 §40]

656.758 Inspection of books, records and payrolls; statement of employment data; civil penalty for misrepresentation; failure to submit books for inspection and refusal to keep correct payroll. (1) The books, records and payrolls of any employer pertinent to the administration of ORS 656.001 to 656.794 shall always be open to inspection by the State Accident Insurance Fund 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 workers and the wages paid by him, the occupations at which and the number of days or parts of days any of his workers are employed, and shall furnish to the State Accident Insurance Fund, upon request, a sworn statement of the same.

(3) Any employer who wilfully misrepresents to the State Accident Insurance Fund the amount of his payroll upon which the amount of his contribution to the Industrial Accident Fund is based shall be liable to the State Accident Insurance Fund 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 State Accident Insurance Fund and any amount so collected shall become a part of the Industrial Accident Fund.

(4) Failure on the part of the employer to submit such books, records and payrolls for inspection to any member of the State Accident Insurance Fund or any of its representatives presenting written authority from the State Accident Insurance Fund, or a refusal on the part of an employer to keep a payroll in accordance with this section, when demanded by the State Accident Insurance Fund, subjects the offending employer to a penalty of $100 for each offense, to be collected by a civil action in the name of the State Accident Insurance Fund and paid into the Industrial Accident Fund.

(Advisory Committees)

656.790 Industrial Accident Advisory Committee; membership; duties; powers; compensation. (1) The director may appoint an Industrial Accident Advisory Committee composed of nine members: Three representing subject workers, three representing subject employers, and three ex officio members, without a vote, representing each of the following: The State Accident Insurance Fund, other carriers who are qualified to write workers' compensation insurance in Oregon, and self-insured employers.

(2) The director may recommend areas of the law which he desires to have studied or the committee may study such aspects of the law as the committee shall determine require their consideration. The committee shall report its findings to the director for such action as the director deems appropriate.

(3) The members of the committee shall be appointed for a term of two years and shall serve without compensation, but shall be entitled to travel expenses. The committee may hire, subject to approval of the director, such experts as it may require to discharge its duties. All expenses of the committee shall be paid out of the Administrative Fund.
[1969 c.448 §2; 1975 c.556 §49; 1977 c.804 §32]

656.792 [1965 c.285 §29; 1969 c 314 §69; repealed by 1969 c.448 §3]

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 director. Members of the committee shall serve without compensation.

(2) The duties of the committee are:

(a) To advise the director on matters relating to the provision of medical care to injured workers by direct responsibility employers or the State Accident Insurance Fund.

(b) To prepare and submit for consideration by the director appropriate rules and regulations governing the furnishing of medical care to injured workers by employers or the State Accident Insurance Fund 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 workers, and any supplement or amendment to such rules and regulations. The director, upon his 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 director determines to be desirable.

(3) Nothing in this section prevents the director on his 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 director shall submit such rules or regulations to the advisory committee created by this section for its advice.
[1965 c.285 §27]

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) 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 (b) of subsection (1) of this section shall be presumed to result from a fireman's employment. However, 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. Denial of a claim for any condition or impairment of health arising under paragraph (b) of subsection (1) of this section must be on the basis of medical or other evidence that the cause of the condition or impairment is unrelated to the fireman's employment.
[Amended by 1959 c.351 §1; 1961 c.583 §1; 1973 c.543 §1; 1977 c.734 §1]

656.804 Occupational disease as an injury under Workers' Compensation Law. An occupational disease, as defined in ORS 656.802, is considered an injury for employes of employers who have come under ORS 656.001 to 656.794, except as otherwise provided in ORS 656.802 to 656.824.
[Amended by 1965 c.285 §87; 1973 c.543 §2]

656.806 Preemployment medical examination; result to be filed with director. As a prerequisite to employment in any case, a prospective employer may, by written direction, require any applicant for such employment to submit to a physical examination by a doctor to be designated by the Director of the Workers' Compensation Department, and paid by such prospective employer. In every case in which such right is exercised, and the applicant is subsequently employed, the employer shall file a true copy of the written direction for and the doctor's findings resulting from the physical examination, with the director within 10 days after the beginning of such employment.

656.807 Time for filing of claims for occupational disease; procedure. (1) Except as otherwise limited for silicosis, all occupational disease claims shall be void unless a claim is filed with the State Accident Insurance Fund or direct responsibility employer within five years after the last exposure in employment subject to the Workers' 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 five years shall be extended to 10 years in claims for radiation injury.

(4) The procedure for processing occupational disease claims shall be the same as provided for accidental injuries under ORS 656.001 to 656.794.
[Amended by 1953 c.440 §2; 1959 c.351 §2; 1965 c.285 §87a; 1973 c.543 §3]

656.808 [Amended by 1957 c.559 §2; 1965 c.285 §88; repealed by 1973 c.543 §4]

656.810 [Amended by 1959 c.351 §3; 1965 c.285 §89; repealed by 1973 c.543 §4]

656.812 [Amended by 1959 c.351 §4; repealed by 1973 c.543 §4]

656.814 [Amended by 1965 c.285 §90; repealed by 1973 c 543 §4]

656.816 [Amended by 1959 c.351 §5; 1965 c.285 §91; repealed by 1973 c.543 §4]

656.818 [Amended by 1959 c.351 §6; 1965 c.285 §92; repealed by 1973 c.543 §4]

656.820 [Repealed by 1973 c.543 §4]

656.822 [Amended by 1965 c.285 §92a; repealed by 1973 c.543 §4]

656.824 Degree of occupational disease hazard as affecting contribution rates. (1) In addition to the rate making authority of the State Accident Insurance Fund, 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.

PENALTIES

656.990 Penalties. (1) Any person who knowingly makes any false statement or representation to the board or its employes, the director or his employes, State Accident Insurance Fund or direct responsiblity 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, the director or the fund or any of their representatives the amount of a payroll, or who knowingly submits a false payroll report to the board, the director or the fund, 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 (9) of ORS 656.726 or ORS 656.758 when demanded by the director or fund, is punishable, upon conviction, by a fine of not more than $100 or by imprisonment in the county jail for not more than 90 days, or by both. Circuit courts and justice courts shall have concurrent jurisdiction of this offense.

(5) Failure on the part of an employer to send the signed payroll statement required by ORS 656.504 within 30 days after receipt of notice by the director or fund 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; 1977 c.804 §33]

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, 1977.

Thomas G. Clifford
Legislative Counsel