Chapter 656

1993 EDITION

Workers' Compensation

GENERAL PROVISIONS

656.001 Short title

656.003 Application of definitions to construction of chapter

656.005 Definitions

656.006 Effect on employers' liability law

656.008 Extension of laws relating to workers' compensation to federal lands and projects within state

656.010 Treatment by spiritual means

656.012 Findings and policy

COVERAGE

(Temporary provisions relating to Combined Health Coverage Pilot Program are compiled as notes preceding ORS 656.017)

656.017 Employer required to pay compensation and perform other duties; state not authorized to be direct responsibility employer

656.018 Effect of providing coverage; exclusive remedy

656.020 Damage actions by workers against noncomplying employers; defenses outlawed

656.021 Person performing work under ORS chapter 701 as subject employer

656.023 Who are subject employers

656.025 Individuals engaged in commuter ridesharing not subject workers; conditions

656.027 Who are subject workers

656.029 Obligation of person letting contract to provide coverage for workers under contract; exceptions; effect of failure to provide coverage

656.031 Coverage for municipal volunteer personnel

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

656.035 Status of workers in separate occupations of employer

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

656.039 Employer may elect to provide coverage for workers not subject to law; procedure; cancellation

656.041 City or county may elect to provide coverage for jail inmates

656.043 Governmental agency paying wages responsible for providing coverage

656.044 SAIF Corporation may insure liability under Longshoremen's and Harbor Workers' Compensation Act; procedure; cancellation

656.046 Coverage of persons in college work experience and vocational education programs

656.052 Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply; joint and several liability of corporation, officers and directors

656.054 Claim of injured worker of noncomplying employer; procedure for disputing acceptance of claim; notice of proposed penalty; recovery of costs from noncomplying employer; restrictions

656.056 Subject employers must post notice of manner of compliance

656.070 Definitions for ORS 656.027 and 656.075

656.075 Exemption from coverage for newspaper carriers; casualty insurance and other requirements

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

656.128 Sole proprietors, partners, independent contractors may elect coverage by insurer; cancellation

656.132 Coverage of minors

656.135 Coverage of deaf school, blind school work experience trainees

656.138 Coverage of apprentices, trainees participating in related instruction classes

656.140 Coverage of persons operating equipment for hire

656.154 Injury due to negligence or wrong of a person not in the same employ as injured worker; remedy against such person

656.156 Intentional injuries

656.160 Effect of incarceration on receipt of compensation

COMPENSATION AND MEDICAL BENEFITS

656.202 Compensation payable to subject worker in accordance with law in effect at time of injury; exceptions; notice regarding payment

656.204 Death

656.206 Permanent total disability

656.208 Death during permanent total disability

656.209 Offsetting permanent total disability benefits against social security benefits

656.210 Temporary total disability; payment during medical treatment

656.211 "Average weekly wage" defined

656.212 Temporary partial disability

656.214 Permanent partial disability

656.216 Permanent partial disability; method of payment; effect of prior receipt of temporary disability payments

656.218 Continuance of permanent partial disability payments to survivors; effect of death prior to final claim disposition; burial allowance

656.222 Compensation for additional accident

656.226 Cohabitants and children entitled to compensation

656.228 Payments directly to beneficiary or custodian

656.230 Accelerating award payments with approval of director

656.232 Payments to aliens residing outside of United States

656.234 Compensation not assignable nor to pass by operation of law; certain benefits subject to child support obligations

656.236 Compromise and release of claim matters except for medical benefits; approval by board; approval of director for certain reserve reimbursements; restriction on charging costs to workers

656.240 Deduction of benefits from sick leave payments paid to employees

656.245 Medical services to be provided; palliative care limitation; use of generic drugs; services by providers not members of managed care organizations; authorizing temporary disability compensation and making finding of impairment for disability rating purposes by certain providers

656.248 Medical service fee schedules; utilization and treatment standards for medical services; exemption from fee schedules; resolution of fee disputes

656.250 Limitation on compensability of physical therapist services

656.252 Medical report regulation; duties of attending physician; disclosure of information; notice of changing attending physician; copies of medical service billings to be furnished to worker

656.254 Medical report forms; procedure for declaring health care practitioner ineligible for workers' compensation reimbursement

656.256 Considerations for rules regarding certain rural hospitals

656.258 Vocational assistance service payments

656.260 Certification procedure for managed health care provider; confidentiality of certain information; immunity from liability; rules

PROCEDURE FOR OBTAINING COMPENSATION

656.262 Processing of claims and payment of compensation; payment by employer; acceptance and denial of claim; reporting claims; penalty for unreasonable payment delay

656.263 To whom notices sent under ORS 656.262, 656.265, 656.268 to 656.289, 656.295 to 656.325 and 656.382 to 656.388

656.264 Compensable injury, claim and other reports

656.265 Notice of accident from worker

656.266 Burden upon worker to prove compensability and nature and extent of disability

656.268 Procedure for determining awards; claim closure; termination of temporary total disability benefits; reconsideration required before hearing; procedure, penalty and attorney fee on reconsideration; medical arbiter to make findings of impairment for reconsideration; credit or offset for fraudulently obtained benefits

656.270 Contents of notice required in determination or closure

656.273 Aggravation for worsened conditions; procedure; limitations; additional compensation

656.277 Nondisabling injury claim procedure

656.278 Board has continuing authority to alter earlier action on claim; limitations

656.283 Hearing rights and procedure; modification of vocational assistance actions; use of standards for evaluation of disability

656.285 Protection of witnesses at hearings

656.287 Use of vocational reports in determining loss of earning capacity at hearing

656.289 Orders of referee; review; disposition of claim when compensability disputed; approval of director required for reimbursement from certain reserves

656.291 Expedited Claim Service; jurisdiction; procedure; representation

656.295 Board review of referee orders; application of standards for evaluation of disability

656.298 Court of Appeals review of board orders

656.304 When acceptance of compensation precludes hearing

656.307 Determination of issues regarding responsibility for compensation payment

656.308 Responsibility for payment of claims; effect of new injury; procedure for joining employers and insurers

656.310 Presumption concerning notice of injury and self-inflicted injuries; reports as evidence

656.313 Stay of compensation pending request for hearing or board or court review; procedure for denial of claim for medical services

656.319 Time within which hearing must be requested

656.325 Required medical examination; claimant's duty to reduce disability; suspension or reduction of benefits

656.327 Medical review of treatment of worker; findings; review; costs

656.329 Continuing education program for attending physicians

656.331 Contact, medical examination of worker represented by attorney prohibited without prior written notice; rules

656.335 Reports regarding injured workers for whom claim closure or determination order has not been issued; disability prevention services

656.340 Vocational assistance procedure; eligibility criteria; service providers

LEGAL REPRESENTATION

656.382 Penalties and attorney fees payable by insurer or employer in processing claim

656.386 Recovery of attorney fees in appeal on denied claim; attorney fees in other cases

656.388 Approval of attorney fees required; fee schedule; report of legal service costs

656.390 Frivolous appeals or motions; expenses and attorney fee

SELF-INSURED AND CARRIER-INSURED EMPLOYERS; INSURERS AND GUARANTY CONTRACTS

656.403 Obligations of self-insured employer

656.407 Qualifications of insured employers

656.419 Guaranty contracts

656.423 Cancellation of coverage by employer; notice required; exception

656.427 Termination of guaranty contract or surety bond liability by insurer

656.430 Certification of self-insured employer; employer groups; insurance policy requirements; revocation of certification; rules

656.434 Certification effective until canceled or revoked; revocation of certificate

656.440 Notice of certificate revocation; appeal; effective date; termination

656.443 Procedure upon default by employer

656.447 Sanctions against insurer for failure to comply with contracts, orders or rules

656.455 Self-insured employers required to keep records of compensation claims; location and inspection; expenses of audits and inspections

CHARGES AGAINST EMPLOYERS AND WORKERS

656.502 Definition of fiscal year

656.504 Rates, charges, fees and reports by employers insured by SAIF Corporation

656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of premiums and assessments

656.506 Assessments for Retroactive Reserve and Reemployment Assistance Reserve; use of reserves; determination by director of benefit level

656.508 Authority to fix premium rates for employers

656.526 Distribution of dividends from surplus in Industrial Accident Fund

656.530 Rehabilitation facility premium refunds

656.532 Assessment for Reopened Claims Reserve

656.536 Premium charges for coverage of reforestation cooperative workers based on prevailing wage; manner of determining prevailing wage

656.538 Assessment for Handicapped Workers Reserve and Reemployment Assistance Reserve

ENFORCEMENT OF PREMIUM PAYMENTS

656.552 Deposit of cash or bond to secure payment of employer's premiums

656.554 Injunction against employer failing to comply with deposit requirements

656.556 Liability of person letting a contract for amounts due from contractor

656.560 Default in payment of premiums, fees, assessments or deposit; remedies

656.562 Moneys due Industrial Accident Fund as preferred claims; moneys due department as taxes due state

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

656.566 Lien on property of employer for amounts due

RECOVERY AGAINST THIRD PERSONS AND NONCOMPLYING EMPLOYERS

656.576 "Paying agency" defined

656.578 Workers' election whether to sue third person or noncomplying employer for damages

656.580 Payment of compensation notwithstanding cause of action for damages; lien on cause of action for compensation paid

656.583 Paying agency may compel election and prompt action

656.587 Paying agency must join in any compromise

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

656.593 Procedure when worker elects to bring action

656.595 Precedence of cause of action; compensation paid or payable not to be an issue

656.596 Damage recovery as offset against compensation; recovery procedure; notice to paying agent

FUNDS; SOURCE; INVESTMENT; DISBURSEMENT

(General Provisions)

656.602 Disbursement procedures

(Consumer and Business Services Fund and Reserves)

656.612 Assessments for department activities; amount; collection procedure

656.614 Self-Insured Employer Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve

656.622 Reemployment Assistance Reserve; use; claim data not to be used for insurance rating

Note Physical Rehabilitation Phase Out--1985 c.770 §11

Note Physical Rehabilitation Financing--1985 c.770 §§16,17

656.625 Reopened Claims Reserve

656.628 Handicapped Workers Reserve; use of funds; conditions and limitations

656.630 Center for Occupational Disease Research funding; report of activities

(Industrial Accident Fund and Reserves)

656.632 Industrial Accident Fund

656.634 Trust fund status of Industrial Accident Fund

656.635 Reserve accounts in Industrial Accident Fund

656.636 Reserves in Industrial Accident Fund for awards for permanent disability or death

656.640 Creation of reserves

656.642 Emergency Fund

656.644 Petty cash funds

ADMINISTRATION

(General Provisions)

656.702 Records of corporation, department and insurers open to public

656.704 Application of Administrative Procedures Act; authority of director and board

656.708 Hearings Division; duties

656.709 Ombudsman for injured workers; ombudsman for small business; duties

656.712 Workers' Compensation Board; members; qualifications; confirmation; term; vacancies

656.714 Removal of board member

656.716 Board members not to engage in political or business activity; oath and bond required

656.718 Meetings; chairman; quorum; panels

656.720 Prosecution and defense of actions by Attorney General and district attorneys

656.722 Board authority to employ subordinates

656.724 Referees; appointment; qualifications; term; performance survey; removal procedure

656.726 Duties and powers to carry out workers' compensation and occupational safety laws

656.727 Rules for administration of benefit offset

656.730 Assigned risk plan

656.732 Power to compel obedience to subpoenas and punish for misconduct

656.735 Civil penalty for noncomplying employers; amount; liability of corporate officers; effect of final order; penalty as preferred claim; disposition of moneys collected

656.740 Review of proposed order declaring noncomplying employer, proposed assessment or civil penalty; insurer as party; hearing

656.745 Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure

656.750 Civil penalty for failure to maintain records of compensation claims; amount; disposition of funds

(State Accident Insurance Fund Corporation)

656.751 State Accident Insurance Fund Corporation created; board; members' qualifications; terms; compensation; expenses; function; report

656.752 State Accident Insurance Fund Corporation; purpose and functions

656.753 State Accident Insurance Fund Corporation exempt from certain financial administration laws; contracts with state agencies for services

656.754 Manager; appointment; functions

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

656.760 Notice to Secretary of State regarding action on audit report

(Claims Examiner Certification)

656.780 Certification for claims examiners; lists of examiners; department inspection of list; fee for certification

(Advisory Committees)

656.790 Workers' Compensation Management-Labor Advisory Committee; membership; duties; expenses

656.794 Advisory committee on medical care

656.796 State Advisory Council on Occupational Safety and Health; membership; terms; compensation and expenses; annual report of activities

OCCUPATIONAL DISEASE LAW

656.802 "Occupational disease" defined

656.804 Occupational disease as an injury under Workers' Compensation Law

656.806 Preemployment medical examination; result to be filed with director

656.807 Time for filing of claims for occupational disease; procedure

WORKER LEASING COMPANIES

656.850 License; compliance with workers' compensation and safety laws

656.855 Rules; dedication of moneys received

PENALTIES

656.990 Penalties

CROSS REFERENCES

Administrative Procedures Act, 183.315

Benefits for search and rescue activity participants, 401.580

Combination of employees for dividend purposes, 746.145

Continuation of health insurance benefits after injury or illness for which claim filed, 743.530

Discrimination against optometrist prohibited, 683.035

Economic Opportunity Act of 1964, personnel in program are not workers, 190.230

Employment discrimination because of use of workers' compensation procedures prohibited, 659.410

Independent contractor, standards, 670.600

Joint payroll collection of workday assessments, 292.180

Liability of public bodies for contributions arising from public contracts, 279.542

Open meeting law not applicable to Workers' Compensation Board hearings of contested cases, 192.690

Reduction of motor vehicle liability insurance benefits, 742.526

Rehabilitation services agencies, applicability of employment agency licensing requirements, 658.019

Reinstatement of injured worker by employer required, 659.415, 659.420

Unemployment benefits, extensions of base year, effect of receipt of worker's compensation benefits, 657.170

Worker exposed to infectious disease, procedure, 433.407 to 433.423

656.006

Employers' liability law generally, 654.305 to 654.335

Rehabilitation facilities, 344.710 to 344.730

Work release program, 144.480

656.017

Damage action on public contract for failure to comply, 279.073

656.037

Statement of intent, 696.007

656.128

Judicial notice of foreign laws, 40.090

656.132

Certificates needed for employment of minor, 653.310

656.403 to 656.455

Ratemaking procedures, 737.310, 737.322

Required records, 737.225

Workers' compensation insurers, premium audit programs, 737.318

656.502 to 656.538

Workers' compensation insurers required to be rating organization members, 737.265

656.552

Bonds of public contractors, 279.526 to 279.542

Contractor and subcontractor bond to include obligation to make contributions to State Industrial Accident Fund, 701.430

656.602

Designation of officer to approve disbursements, 293.330

656.612

Insurance premium tax offset for assessments, 731.832

Investment of fund, 293.701 to 293.820

656.632

Fund subject to certain provisions of Insurance Code, 731.028

Investment of Industrial Accident Fund, 293.701 to 293.820

656.634

Administrative expenditures from trust funds, necessity for allotment, 291.238

656.712

Jurisdiction of board over employment and places of employment, 654.025

State agencies generally, Ch. 182

656.722

Procedure for payment of officers and employees, 292.039

656.752

Benefits for injured occupationally limited trainees, 655.605, 655.615

Coupling devices for combinations of vehicles, regulation, 818.150 to 818.170

Indigents injured in motor vehicle accidents, Ch. 445

Inmates of penal and correctional institutions, benefits, 655.535

Vehicles used to transport workers, regulation, 820.010 to 820.070

656.754

Office space, 276.420 to 276.429

656.802 to 656.807

Center for Occupational Disease Research, 352.073

GENERAL PROVISIONS

656.001 Short title. This chapter 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 [Repealed by 1981 c.535 §28, (656.012 enacted in lieu of 656.004)]

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

(2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under this chapter. 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.

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

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

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

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

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

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

(B) If a compensable injury combines with a preexisting disease or condition to cause or prolong disability or a need for treatment, the resultant condition is compensable only to the extent the compensable injury is and remains the major contributing cause of the disability or need for treatment.

(b) "Compensable injury" does not include:

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

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

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

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

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

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

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

(10) "Dependent" means any of the following-named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower or child under the age of 18 years: Father, mother, grand-

father, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term "dependent."

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

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

(b) "Attending physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury and who is:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a board certified oral surgeon licensed by the Oregon Board of Dentistry; or

(B) For a period of 30 days from the date of first visit on the claim or for 12 visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon.

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

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

(14) "Guaranty contract insurer" and "insurer" mean the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

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

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

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

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

(19) "Objective findings" in support of medical evidence include, but are not limited to, range of motion, atrophy, muscle strength, muscle spasm and diagnostic evidence substantiated by clinical findings.

(20) "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.

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

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

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

(24) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident Insurance Fund Corporation created under ORS 656.752.

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

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

(27) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and includes the amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips reported, which-

ever amount is greater. The State Accident Insurance Fund Corporation may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the premium of the employer.

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

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

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

656.008 Extension of laws relating to workers' compensation to federal lands and projects within state. Where not inconsistent with the Constitution and laws of the United States, the laws of this state relating to workers' compensation and the duties and powers of the department 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 the dependents of the worker be deprived of any compensation payments to which the worker would have been entitled if medical or surgical treatment were employed, and the employer or insurance carrier may pay for treatment by prayer or spiritual means. [1965 c.285 §41c]

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

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

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

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

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

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

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

(d) To encourage maximum employer implementation of accident study, analysis and prevention programs to reduce the economic loss and human suffering caused by industrial accidents. [1981 c.535 §29 (enacted in lieu of 656.004)]

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)]

(Combined Health Coverage Pilot Program)

Note: Sections 1 to 6, chapter 758, Oregon Laws 1993, provide:

Sec. 1. (1) The Director of the Department of Consumer and Business Services may initiate a pilot program under which participating employers may meet the requirements to provide medical coverage under ORS chapter 656 along with nonwork-connected health care provided by the employer by providing the coverage through a health or workers' compensation insurance policy or plan or self-funded health plan.

(2) The director may authorize participation by an employer, insurer or health care service contractor in the pilot program on or before July 1, 1994, for a period not to exceed four years. The director may revoke the authority at any time at the discretion of the director.

(3) On January 1, 1995, and each six months thereafter during the pilot period, the director shall report to the President of the Senate and the Speaker of the House of Representatives for referral to appropriate interim or standing committees of the Legislative Assembly on the status of the pilot program, including any recommendation for legislation, if necessary, to improve the efficiency of the program.

(4) The director by rule shall adopt standards to govern the pilot program. Participating employers, insurers and health care service contractors must comply with applicable provisions of ORS chapters 654, 656 and 659, and the Insurance Code. Except as otherwise provided in this subsection, for the purposes of the pilot program, the director by rule may exempt participating employers, insurers and health care service contractors from administrative provisions of ORS chapter 656, including, but not limited to, ORS 656.248, 656.252 and 656.254. The director shall not establish exemptions affecting benefits or other rights of a subject worker or other person whose benefits or other rights derive from the subject worker.

(5) The presentation of a medical bill to the carrier or the employer under the pilot program authorized under subsection (1) of this section does not in itself constitute a claim under ORS chapter 656. A claim for coverage under ORS chapter 656 must be filed in the manner prescribed in ORS chapter 656. [1993 c.758 §1]

Sec. 2. (1) For the purpose of participating in the pilot program described in section 1 of this Act, an insurer transacting health insurance may offer medical coverage required under ORS chapter 656 as part of the health insurance coverage offered under a health insurance policy under the Insurance Code. However, except as the director provides by rule under section 1 of this Act, for purposes of providing medical coverage required under ORS chapter 656, such an insurer is subject to the requirements of ORS chapter 656.

(2) An insurer offering medical coverage as provided in subsection (1) of this section is not required to obtain authorization under its certificate of authority to transact workers' compensation insurance in order to offer the medical coverage.

(3) An insurer to whom this section applies is not subject to ORS 731.554 (2), 731.628 or 742.041 with respect to the coverage offered under this section.

(4) This section does not authorize an insurer to provide workers' compensation disability coverage unless the certificate of authority of the insurer authorizes the insurer to transact workers' compensation insurance. [1993 c.758 §2]

Sec. 3. (1) For the purpose of participating in the pilot program described in section 1 of this Act, a health care service contractor as defined in ORS 750.005 may offer medical coverage required under ORS chapter 656 as part of the health care services as defined in ORS 750.005 provided by the health care service contractor. However, except as the director provides by rule under section 1 of this Act, for purposes of providing the medical coverage, such a health care service contractor is subject to the requirements of ORS chapter 656.

(2) A health care service contractor offering medical coverage as provided in subsection (1) of this section is not required to obtain separate authority to transact workers' compensation insurance in order to offer the medical coverage as part of the health care services provided by the health care service contractor.

(3) This section does not authorize a health care service contractor to provide workers' compensation disability coverage under its certificate of authority. [1993 c.758 §3]

Sec. 4. (1) For the purpose of participating in the pilot program described in section 1 of this Act, an insurer transacting workers' compensation coverage may offer health insurance governed by the provisions of the Insurance Code in conjunction with the workers' compensation coverage meeting the requirements of ORS chapter 656.

(2) An insurer offering health insurance as provided in subsection (1) of this section is not required to obtain authorization under its certificate of authority to transact health insurance in order to offer health insurance.

(3) An insurer to whom this section applies is not subject to ORS 731.554 (1) or 742.041 with respect to the coverage offered under this section. [1993 c.758 §4]

Sec. 5. The Director of the Department of Consumer and Business Services shall establish an advisory committee to assist in the implementation and evaluation of the pilot program described in section 1 of this Act. The advisory committee shall include representatives of employers, workers and their representatives, insurers and health care providers. [1993 c.758 §5]

Sec. 6. This Act is repealed on July 1, 1998. [1993 c.758 §6]

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

(a) As a carrier-insured employer; or

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

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

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

656.018 Effect of providing coverage; exclusive remedy. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1) is exclusive and in place of all other liability arising out of compensable injuries to the subject workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such injuries or

claims resulting therefrom, specifically including claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such injuries, except as specifically provided otherwise in this chapter.

(b) This subsection shall not apply to claims for indemnity or contribution asserted by a corporation, individual or association of individuals which is subject to regulation pursuant to ORS chapter 757, 759 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 July 19, 1977, are void.

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

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

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

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

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

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

(5) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers or their beneficiaries in excess of the compensation required to be paid under this chapter. [1965 c.285 §6; 1975 c.115 §1; 1977 c.514 §1; 1977 c.804 §3a; 1987 c.447 §110; 1989 c.600 §1; 1993 c.628 §6]

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

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

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

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

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

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 this chapter. [1965 c.285 §8]

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

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

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

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

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

(2) As used in this section "voluntary commuter ridesharing arrangement" means a carpool or vanpool arrangement in which participation is not required as a condition of employment and in which not more than 15 persons are transported to and from their

places of employment, in a single daily round trip where the driver also is on the way to or from the driver's place of employment. [1981 c.227 §4]

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 this chapter except those nonsubject workers described in the following subsections:

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

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

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

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

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

(b) For the purpose of this subsection, "casual" refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than $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 this chapter except for the provisions of ORS 656.802 to 656.807.

(7) Sole proprietors. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

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

(9) Corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS 215.203 and ORS chapter 308, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

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

(A) Two corporate officers; or

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

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

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

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

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

(13) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent

Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

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

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

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

(c) A motor vehicle operated as a taxicab as defined in ORS 767.025.

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

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

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

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

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

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

(21) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course. [1965 c.285 §9; 1971 c.386 §1; 1977 c.683 §1; 1977 c.817 §2; 1977 c.835 §7; 1979 c.821 §1; 1981 c.225 §1; 1981 c.444 §1; 1981 c.535 §3; 1981 c.839 §1; 1983 c.341 §1; 1983 c.541 §1; 1983 c.579 §3; 1985 c.431 §1; 1985 c.706 §2; 1987 c.94 §168; 1987 c.414 §161; 1987 c.800 §2; 1989 c.762 §4; 1990 c.2 §4; 1991 c.469 §1; 1991 c.707 §1; 1993 c.18 §138a; 1993 c.494 §2; 1993 c.777 §10]

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

656.029 Obligation of person letting contract to provide coverage for workers under contract; exceptions; effect of failure to provide coverage. (1) If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

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

(3) As used in this section:

(a) "Person" includes partnerships, joint ventures, associations, corporations, governmental agencies and sole proprietorships.

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

656.030 [Repealed by 1959 c.448 §14]

656.031 Coverage for municipal volunteer personnel. (1) All municipal personnel, other than those employed full-time, part-time, or substitutes therefor, shall, for the purpose of this chapter, be known as volunteer personnel and shall not be considered

as workers unless the municipality has filed the election provided by this section.

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

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

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

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

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

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

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

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

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

(3) The premium cost for coverage under this section shall be based on an assumed hourly wage which is approved by the Director of the Department of Consumer and Business Services. Such assumed wage is to be used only for calculation purposes under this chapter and without regard to ORS chapter 652 or ORS 653.010 to 653.545 and 653.991. A self-insured district shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

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

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

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

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

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

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

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

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

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

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

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 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 ORS 656.419 (3). If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

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

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

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to a guaranty contract insurer for coverage. An insurer other than the State Accident Insurance Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool. [1965 c.285 §11; 1975 c.556 §22; 1979 c.839 §1; 1981 c.854 §6; 1983 c.816 §1; 1985 c.212 §2]

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. "Inmate" includes a person who performs community service pursuant to ORS 137.128, whether or not the person is incarcerated.

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

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

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

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

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

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

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

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

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

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

656.046 Coverage of persons in college work experience and vocational education programs. (1) All persons registered at a college and participating as unpaid trainees in a work experience program who are subject to the direction of noncollege-employed supervisors, and those trainees participating in college directed vocational education projects, are considered workers of the college subject to this chapter for purposes of

this section. However, trainees who are covered by the Federal Employees Compensation Act shall not be subject to the provisions of this section.

(2) A college conducting a work experience program or college directed vocational education project shall submit a written statement to the insurer, or in the case of self-insurers, to the director, that includes a description of the work to be performed by such persons and an estimate of the total number of persons enrolled in the program or project.

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

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

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

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

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

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

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

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

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

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

(3) If any person fails to comply with ORS 656.017 after an order declaring the person to be a noncomplying employer has become final by operation of law or on appeal, the circuit court of the county in which the person resides or in which the person employs workers shall, upon the commencement of a suit by the director for that purpose, enjoin the person from further employing subject workers until the person 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 days from the service of the notice.

(4) When the director prevails in any suit brought pursuant to subsection (3) of this section, the director is entitled to recover from the noncomplying employer court costs and attorney fees incurred by the director. If the noncomplying employer is a corporation, other than a nonprofit corporation, the corporation and the officers and directors thereof shall be jointly and severally liable for such court costs and attorney fees. [Amended by 1957 c.574 §2; 1965 c.285 §14; 1967 c.341 §4; 1973 c.447 §1; 1987 c.234 §1; 1990 c.2 §5]

656.054 Claim of injured worker of noncomplying employer; procedure for

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

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

(3) In addition to, and not in lieu of, any civil penalties assessed pursuant to ORS 656.735, all costs to the Industrial Accident Fund of a claim processed under subsection (1) of this section shall be a liability of the noncomplying employer. Such costs include compensation, reasonable administrative costs and any attorney fees awarded to the claimant, but do not include assessments for reserves in the Consumer and Business Services Fund. The director shall recover such costs from the employer. The director shall provide by regulation for the Consumer and Business Services Fund to reimburse, on a periodic basis, the Industrial Accident Fund for any costs it incurs under this section. When the director prevails in any action brought pursuant to this subsection, the director is entitled to recover from the noncomplying employer court costs and attorney fees incurred by the director.

(4) Periodically the director shall audit the files of the State Accident Insurance Fund Corporation to validate the amount reimbursed pursuant to subsection (3) of this section. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

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

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

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

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

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

(5) The State Accident Insurance Fund Corporation may appeal any disapproval of reimbursement made by the director under this section pursuant to ORS 183.310 to 183.550 and such procedural rules as the director may prescribe. [Amended by 1959 c.448 §9; 1965 c.285 §15; 1967 c.341 §5; 1971 c.72 §1; 1973 c.447 §2; 1979 c.839 §2; 1981 c.854 §8; 1983 c.816 §2; 1987 c.234 §2; 1987 c.250 §3; 1991 c.679 §1]

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 this chapter and the manner of their compliance with this chapter.

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

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

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

(2) "Newspaper carrier" means an individual age 18 years or younger who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public

and performs or undertakes any necessary or attendant functions related thereto, but receives no salary or wages, other than sales incentives or bonuses, for the performance of those duties from the newspaper publishing company or independent newspaper dealer or contractor. "Newspaper carrier" includes any individual appointed or utilized on a temporary basis by a newspaper carrier, a newspaper publishing company or independent newspaper dealer or contractor to perform any or all of the duties of a newspaper carrier. [1977 c.835 §3; 1981 c.535 §52]

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

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

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

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

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

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

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

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

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

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 this chapter temporarily leaves the state incidental to that employment and receives an accidental injury arising out of and in the course of employment, the worker, or beneficiaries of the worker if the injury results in death, is entitled to the benefits of this chapter as though the worker were injured within this state.

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

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

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

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

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

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

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

(5) The director 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 Ore-

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

(6) For the purpose of this section, "temporary workplace" does not include a single location within this state where the employer's work is performed by one or more workers for more than 30 days in a calendar year. [Amended by 1955 c.723 §1; 1957 c.474 §1; 1977 c.804 §4; 1989 c.684 §1]

656.128 Sole proprietors, partners, independent contractors may elect coverage by insurer; cancellation. (1) Any person who is a sole proprietor, or a member of a partnership, or an independent contractor pursuant to ORS 310.800, may make written application to an insurer to become entitled as a subject worker to compensation benefits. Thereupon, the insurer may accept such application and fix a classification and an assumed monthly wage at which such person shall be carried on the payroll as a worker for purposes of computations under this chapter.

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

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

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

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 this chapter. No other person shall have any cause of action or right to compensation for an injury to such minor worker, except as expressly provided in this chapter, but in the event of a lump-sum payment becoming due under this chapter to such minor worker, the control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

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

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

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

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

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

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

(5) The Department of Education shall furnish the corporation with a list of the names of those enrolled in work experience programs in the schools and shall notify the corporation of any changes therein. Only those persons whose names appear on such list prior to their personal injury by accident

are entitled to the benefits of this chapter and they are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work experience program, provided the duties being performed are among those:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A tractor.

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

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

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

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

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

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

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, the spouse, children or other dependents, as the case may be, may elect to seek a remedy against such third person. [Amended by 1959 c.504 §1; 1975 c.152 §1; 1985 c.212 §4]

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

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

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

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

COMPENSATION AND MEDICAL BENEFITS

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

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

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

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

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

(6) Notwithstanding subsection (2) of this section the increase in benefits to the surviving spouse of an injured worker made by the amendment to ORS 656.204 (2)(c) by section 1, chapter 108, Oregon Laws 1985, applies to a surviving spouse who remarries after September 20, 1985, regardless of the date of injury or death of the worker. [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; 1981 c.770 §1; subsection (4) enacted as 1981 c.723 §8; 1985 c.108 §3; 1985 c.600 §6; 1985 c.706 §6; 1985 c.770 §6]

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

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

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

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

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

(1) The cost of burial, including transportation of the body, shall be paid, not to exceed $3,000 in any case.

(2) If the worker is survived by a spouse with children of the deceased, 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. If the worker is survived by a spouse with no children of the deceased, monthly benefits shall be paid in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs. The surviving spouse also shall be paid $150 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 133-1/3 percent of the average weekly wage.

(c) Upon remarriage, a surviving spouse shall be paid 24 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payments for each child shall continue as before.

(d) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (10) of this section.

(e) If the surviving spouse dies before all the children of the deceased worker become 18 years of age, then each child under 18 years of age shall be paid $400 per month until the child becomes 18 years of age.

(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, $150 per month shall be paid for each such child until the child becomes 18 years of age. However:

(a) If there are more than two such children the divorced husband or wife 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 as provided in subsection (10) of this section.

(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, $400 per month shall be paid to each such child until the child 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 as provided in subsection (10) of this section.

(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 as provided in subsection (10) of this section. 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 death and leaves neither widow, widower, nor child, the parents of the worker shall be paid, in a lump sum, an amount equal to $75 per month from the death of the worker until the time at which the worker 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 $150 shall be made to each such child until the child 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 as provided in subsection (10) of this section.

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

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

shall be paid as provided in subsection (10) of this section.

(10) Benefits under this section which are to be paid as provided in this subsection shall be paid for the child or dependent until the child or dependent becomes 19 years of age. If, however, the child or dependent is 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 the child or dependent 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; 1981 c.535 §4; 1981 c.874 §15; 1985 c.108 §1; 1987 c.235 §1; 1991 c.473 §1]

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 the worker is able to perform after rehabilitation.

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

(2)(a) 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.

(b) In addition, the worker shall receive $5 per week for each additional beneficiary not to exceed five. However:

(A) If the beneficiary is a child under the age of 18 years at the time of the compensable injury, the benefits for such child shall cease when the child becomes 18 years of age.

(B) If the beneficiary is a child who has become 18 years of age and who is a full-time high school student, benefits shall be paid for such child until the child becomes 19 years of age or graduates from high school, whichever is earlier.

(C) If the beneficiary is a child who 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 the child becomes 23 years of age or graduates from such an institute or program, whichever is earlier.

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

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

(5) Each insurer shall reexamine periodically each permanent total disability claim for which the insurer has current payment responsibility to determine whether the worker is currently permanently incapacitated from regularly performing work at a gainful and suitable occupation. Reexamination shall be conducted every two years or at such other more frequent interval as the director may prescribe. Reexamination shall include such medical examinations, reports and other records as the insurer considers necessary or the director may require. The insurer shall forward to the director 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; 1981 c.874 §12; 1983 c.816 §3]

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 spouse or any dependents listed in ORS 656.204, payment shall be made in the same manner and in the same amounts as provided in ORS 656.204.

(2) If any surviving spouse to whom the provisions of this section apply remarries, the payments on account of a child or children shall continue to be made to the child or children the same as before the remarriage. [Amended by 1957 c.453 §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; 1985 c.108 §2]

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

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

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

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

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

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

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

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

(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.

(b) For the purpose of this section:

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

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

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

(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 the 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.

(4) When an injured worker with an accepted disabling compensable injury is required to leave work for a period of four hours or more to receive medical consultation, examination or treatment with regard to the compensable injury, the worker shall receive temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent, until such time as the worker is determined to be medically stationary. However, benefits under this subsection are not payable if wages are paid for the period of absence by the employer. [Amended by 1955 c.713 §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; 1985 c.507 §3; 1987 c.521 §1; 1987 c.713 §7]

656.211 "Average weekly wage" defined. As used in ORS 656.210 (1), "average weekly wage" means the average weekly

wage of workers in covered employment in Oregon, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which compensation is paid and as computed by the Employment Department as of May 15 of each year. [1973 c.614 §4; 1990 c.2 §6]

Note: See note under 656.202.

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 the loss of earning power at any kind of work bears to the 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 criteria for the rating of disability shall be the permanent loss of use or function of the injured member due to the industrial injury. The worker shall receive $305 for each degree stated against such disability in subsections (2) to (4) of this section as follows:

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

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

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

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

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

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

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

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

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

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

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

(3) The loss of one phalange of a thumb, including the adjacent epiphyseal region of the proximal phalange, is considered equal to the loss of one-half of a thumb. The loss of one phalange of a finger, including the adjacent epiphyseal region of the middle phalange, is considered equal to the loss of one-half of a finger. The loss of two phalanges of a finger, including the adjacent epiphyseal region of the proximal phalange of a finger, is considered equal to the loss of

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

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

(5) In all cases of injury resulting in permanent partial disability, other than those described in subsections (2) to (4) of this section, the criteria for rating of disability shall be the permanent loss of earning capacity due to the compensable injury. Earning capacity is to be calculated using the standards specified in ORS 656.726 (3)(f). The number of degrees of disability shall be a maximum of 320 degrees determined by the extent of the disability compared to the worker before such injury and without such disability. For the purpose of this subsection, the value of each degree of disability is $100. [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; 1979 c.839 §27; 1981 c.535 §27; 1985 c.506 §3; 1987 c.884 §36; 1990 c.2 §7]

Note: See note under 656.202.

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

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

(2)(a) Notwithstanding the method of calculating permanent partial disability benefit amounts provided in ORS 656.214 (5), for injuries occurring during the period beginning January 1, 1992, and ending January 1, 1996, the worker shall receive an amount equal to:

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

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

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

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

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

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

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

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

(2) If a worker, who is entitled to compensation for a permanent disability, has received compensation for a temporary disability by reason of the same injury, compensation for such permanent disability shall be in addition to the payments which the worker has received on account of such temporary disability. [Amended by 1967 c.529 §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 eligibility therefor or the amount thereof have been determined, payments shall be made for the period during which the worker, if surviving, would have been entitled thereto.

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

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

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

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

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

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, the award of compensation for such further accident shall be made with regard to the combined effect of the injuries of the worker and past receipt of money for such disabilities.

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

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

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

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

656.230 Accelerating award payments with approval of director. (1) Where a worker has been awarded compensation for permanent partial disability, and the award has become final by operation of law or waiver of the right to appeal its adequacy, the director may, in the director's discretion, upon the worker's application order all or any part of the remaining unpaid award to be paid to the worker 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 64 degrees, the insurer or the self-insured employer shall pay all of the award to the worker in a lump sum. [Amended by 1957 c.574 §4; 1959 c.449 §1; 1965 c.285 §23a; 1973 c.221 §1; 1981 c.854 §13; 1983 c.816 §15]

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

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

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

from seizure on execution, attachment or garnishment, or by the process of any court.

(2) Notwithstanding any other provision of this section:

(a) Moneys payable pursuant to ORS 656.210 and 656.212 are subject to an order to enforce child support obligations, and spousal support when there is a current support obligation for a joint child of the obligated parent and the person to whom spousal support is owed, pursuant to ORS 25.311; and

(b) Moneys payable pursuant to ORS 656.206, 656.214, 656.236 and 656.289 (4) are subject to an order to enforce child support obligations pursuant to ORS 25.311.

(3) Notwithstanding the provisions of ORS 25.311 and 25.351, the amount of child support obligation subject to enforcement shall not exceed:

(a) One-fourth of moneys paid under ORS 656.210 and 656.212 or the amount of the current support to be paid as continuing support, whichever is less;

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

(c) One-fourth of the net proceeds paid to the worker in a disputed claim settlement under ORS 656.289 (4). [Amended by 1967 c.468 §1; 1989 c.520 §2; 1991 c.758 §3; 1993 c.48 §1; 1993 c.798 §22]

656.236 Compromise and release of claim matters except for medical benefits; approval by board; approval of director for certain reserve reimbursements; restriction on charging costs to workers. (1) The parties to a claim, by agreement, may make such disposition of any or all matters regarding a claim, except for medical services, as the parties consider reasonable, subject to such terms and conditions as the director may prescribe. Any such disposition shall be filed for approval with the board. If the worker is not represented by an attorney, the worker may, at the worker's request, personally appear before the board. Submission of a disposition shall stay all other proceedings and payment obligations, except for medical services, on that claim. The disposition shall be approved in a final order unless:

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

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

(c) Within 30 days of submitting the disposition for approval, the worker requests the board to disapprove the disposition.

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

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

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

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

(6) Any claim in which the parties enter into a disposition under this section shall not be eligible for reimbursement from the Reemployment Assistance Reserve, the Handicapped Workers Reserve, the Reopened Claims Reserve or the Retroactive Reserve without the prior approval of the director. [1965 c.285 §28; 1985 c.212 §5; 1987 c.250 §4; 1990 c.2 §9]

656.240 Deduction of benefits from sick leave payments paid to employees. Notwithstanding any other law, an employer, with the consent of the worker, may deduct from any sick leave payments made to an individual amounts equal to benefits received by the individual under this chapter with respect to the same injury that gave rise to the sick leave. However, the deduction of sick leave shall not exceed an amount determined by taking the worker's daily wage for the period less daily time loss benefits received under this chapter divided by the worker's daily wage. [1969 c.398 §2; 1983 c.816 §5]

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; palliative care limitation; use of generic drugs; services by providers not members of managed care organizations; authorizing temporary disability compensation and making finding of impairment for disability rating purposes by certain providers. (1)(a) For every compensable injury, the insurer or the self-insured employer 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.

(b) Notwithstanding paragraph (a) of this subsection, after the worker has become medically stationary, palliative care is not compensable, except when provided to a worker who has been determined to have permanent total disability, when necessary to monitor administration of prescription medication required to maintain the worker in a medically stationary condition or to monitor the status of a prosthetic device. If the worker's attending physician referred to in ORS 656.005 (12)(b)(A) believes that palliative care which would otherwise not be compensable under this paragraph is appropriate to enable the worker to continue current employment, the attending physician must first request approval from the insurer or self-insured employer for such treatment. If approval is not granted, the attending physician may request approval from the director for such treatment. The director shall appoint a panel of physicians pursuant to ORS 656.327 (3) to review the treatment.

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

(2) When the time for submitting a claim under ORS 656.273 has expired, any claim for medical services referred to in this section shall be submitted to the insurer or self-insured employer. If the claim for medical services is denied, the worker may submit to the board a request for hearing pursuant to ORS 656.283. In the event the worker cannot locate the insurer or self-insured employer, if the worker does not know who the insurer or self-insured employer is, or if the insurer or self-insured employer has ceased to exist, the claim shall be submitted to the director.

(3)(a) The worker may choose an attending doctor or physician within the State of Oregon. The worker may choose the initial attending physician and may subsequently change attending physician two times without approval from the director. If the worker thereafter selects another attending physician, the insurer or self-insured employer may require the director's approval of the selection and, if requested, the director shall determine with the advice of one or more physicians, whether the selection by the worker shall be approved.

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

(A) A medical service provider who is not qualified to be an attending physician may provide compensable medical service to an injured worker for a period of 30 days from the date of injury or occupational disease or for 12 visits, whichever first occurs, without the authorization of an attending physician. Thereafter, medical service provided to an injured worker without the written authorization of an attending physician is not compensable.

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

(4) Notwithstanding any other provision of this chapter, the director, by rule, upon the advice of the committee created by ORS 656.794 and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment the director finds to be unscientific, unproven, outmoded or experimental.

(5) Notwithstanding paragraph (a) of subsection (3) of this section, when a self-insured employer or the insurer of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for medical services required by this chapter to be provided to injured workers, those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract. Each such contract must comply with the certification standards provided in ORS 656.260. However, a worker may receive immediate emergency medical treatment that is compensable from a medical service provider who is not a member of the managed care organization. Insurers or self-insured employers who contract with a managed care organization for medical services shall give notice to the workers of eligible medical service providers and such other information regarding the contract and manner of receiving medical services as the director may prescribe.

(6) Notwithstanding any other provision of this chapter, the director, by rule, shall authorize nurse practitioners certified by the Oregon State Board of Nursing and physician assistants registered by the Board of Medical Examiners for the State of Oregon who practice in areas served by Type A or Type B rural hospitals described in ORS 442.470 to authorize the payment of temporary disabil-

ity compensation for injured workers for a period not to exceed 30 days from the date of the first visit on the claim. In addition, the director, by rule, may authorize such practitioners and assistants who practice in areas served by a Type C rural hospital described in ORS 442.470 to authorize such payment. [1965 c.285 §23; 1979 c.839 §32; 1981 c.535 §31; 1981 c.854 §14; 1985 c.739 §4; 1987 c.884 §24; 1990 c.2 §10]

Note: See note under 656.260.

656.246 [Repealed by 1965 c.285 §95]

656.248 Medical service fee schedules; utilization and treatment standards for medical services; exemption from fee schedules; resolution of fee disputes. (1) The director, in compliance with ORS 183.310 to 183.550 and 656.794, shall promulgate rules for medical fee schedules. These schedules shall represent the 75th percentile of usual and customary fees as determined by the director who shall determine those fees on the basis of current procedural terminology.

(2) Medical fees equal to or less than the 75th percentile shall be paid when the vendor submits a billing for medical services. In no event shall that portion of a medical fee be paid that exceeds the 75th percentile.

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

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

(5) The director may, in compliance with ORS 183.310 to 183.550 and 656.794, promulgate a reasonable rate of markup for the sale of medical devices.

(6) Notwithstanding subsection (1) or (2) of this section, such rates or fees provided in subsections (1) and (2) of this section shall be adequate to insure at all times to the injured workers the standard of services and care intended by this chapter.

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

(a) A statistically valid survey by the director of usual and customary medical fees or upon the basis of that information provided to the director by any state agency having access to usual and customary medical fee information; or

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

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

(9) The director may, by rule, establish a fee schedule for reimbursement for specific inpatient hospital services based on diagnostic related groups.

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

(11) In accordance with ORS 183.310 to 183.550, the director shall establish utilization and treatment standards for all medical services provided under this chapter.

(12) Notwithstanding any other provision of this section, the director may exclude from the application of medical fee schedules and hospital services, those services performed by a managed care organization certified pursuant to ORS 656.260.

(13) When a dispute exists between an insurer or self-insured employer and a medical service provider regarding the amount of a fee for medical services, notwithstanding any other provision of this chapter, the director may resolve the dispute in such summary manner as the director may prescribe. Determinations of the director pursuant to this subsection are subject to review as provided in ORS 183.310 to 183.550.

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

Note: Sections 2 and 3, chapter 771, Oregon Laws 1991, provide:

Sec. 2. (1) Notwithstanding ORS 656.248:

(a) During calendar year 1992, a hospital that, as of December 1, 1991, is participating in a managed care organization certified pursuant to section 12, chapter 2, Oregon Laws 1990 [656.260], shall have the fee schedule adopted by the director under ORS 656.248 (9) enhanced in accordance with a formula prescribed by the director.

(b) During calendar year 1993, a hospital that provides inpatient hospital and outpatient surgical services to injured workers is not subject to the fee schedule established for those services for calendar year 1993 if 60 percent or more of the injured workers treated by the hospital during the preceding calendar year were treated through a managed care organization certified pursuant to section 12, chapter 2, Oregon Laws 1990.

(c) During calendar year 1994 and each year thereafter, a hospital that provides inpatient hospital and outpatient surgical services to injured workers is not

subject to the fee schedule established for those services for that calendar year if 75 percent or more of the injured workers treated by the hospital during the preceding calendar year were treated through a managed care organization certified pursuant to section 12, chapter 2, Oregon Laws 1990.

(2) Hospitals shall provide to the director such verifiable information and records as the director may require to determine the eligibility of a hospital for the enhancement and exemption provided in subsection (1) of this section. [1991 c.771 §2]

Sec. 3. Section 2 of this Act is repealed June 30, 1995. [1991 c.771 §3]

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

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

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

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

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

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

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

(2) The attending physician shall do the following:

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

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

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

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

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

(5) Whenever an injured worker changes attending physicians, the newly selected attending physician shall so notify the responsible insurer or self-insured employer not later than five days after the date of the change or the date of first treatment. Every attending physician who refers a worker to a consulting physician promptly shall notify the responsible insurer or self-insured employer of the referral.

(6) When a provider of medical services, including hospital services, submits a billing to the insurer or self-insured employer, the provider shall also submit a copy of the billing to the worker for whom the service was performed. [1967 c.626 §§2, 5; 1979 c.839 §3; 1981 c.535 §6; 1981 c.874 §17; 1987 c.884 §3]

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

(2) The director shall establish sanctions for the enforcement of medical reporting requirements. Such sanctions may include, but are not limited to, forfeiture of fees and pen-

alty not to exceed $1,000 for each occurrence.

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

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

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

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

(d) Has failed after January 1, 1989, to participate in a continuing education program that meets the requirements of ORS 656.329, the director may impose a sanction that includes forfeiture of fees and may declare the health care practitioner ineligible for reimbursement for treating workers' compensation claimants until the health care practitioner participates in the continuing education program.

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

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

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

Note: 656.256 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 Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Provides adequate methods of peer review, service utilization review and dispute resolution to prevent inappropriate or excessive treatment, to exclude from participation in the plan those individuals who violate these treatment standards and to provide for the resolution of such medical disputes as the director considers appropriate.

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

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

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

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

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

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

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

(6) Utilization review, quality assurance and peer review activities pursuant to this section and authorization of medical services to be provided by other than an attending physician pursuant to ORS 656.245 (3) shall be subject solely to review by the director or the director's designated representatives. Data generated by or received in connection with these activities, including written reports, notes or records of any such activities, or of the director's review thereof, shall be confidential, and shall not be disclosed except as considered necessary by the director in the administration of this chapter. The director may report professional misconduct to an appropriate licensing board.

(7) No data generated by utilization review, quality assurance or peer review activities pursuant to this section or the director's review thereof shall be used in any action, suit or proceeding except to the extent considered necessary by the director in the administration of this chapter.

(8) A person participating in utilization review, quality assurance or peer review activities pursuant to this section shall not be examined as to any communication made in

the course of such activities or the findings thereof, nor shall any person be subject to an action for civil damages for affirmative actions taken or statements made in good faith.

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

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

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

(12) As used in this section, ORS 656.245, 656.248 and 656.327, "medical service provider" means a person duly licensed to practice one or more of the healing arts in this state. [1990 c.2 §12]

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

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

PROCEDURE FOR OBTAINING COMPENSATION

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

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

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

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

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

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

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

(e) Any other details the insurer may require.

Failure to so report subjects the offending employer to a charge for reimbursing the insurer for any penalty the insurer is required to pay under subsection (10) of this section because of such failure. As used in this subsection, "health insurance" has the meaning for that term provided in ORS 731.162.

(4)(a) The first installment of 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 installments should be made at some other interval. The director may by rule convert monthly benefit schedules to weekly or other periodic schedules.

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

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

(d) If the insurer or self-insured employer has requested and failed to receive from the worker's attending physician verification of

the worker's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician are not compensable until the attending physician submits such verification.

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

(6) Written notice of acceptance or denial of the claim shall be furnished to the claimant by the insurer or self-insured employer within 90 days after the employer has notice or knowledge of the claim. However, if the insurer or self-insured employer accepts a claim in good faith but later obtains evidence that the claim is not compensable or evidence that the paying agent is not responsible for the claim, the insurer or self-insured employer, at any time up to two years from the date of claim acceptance, may revoke the claim acceptance and issue a formal notice of claim denial. However, if the worker requests a hearing on such denial, the insurer or self-insured employer must prove by clear and convincing evidence that the claim is not compensable or that the paying agent is not responsible for the claim. Notwithstanding any other provision of this chapter, if a denial of a previously accepted claim is set aside by a referee, the board or the court, temporary total disability benefits are payable from the date any such benefits were terminated under the denial. Pending acceptance or denial of a claim, compensation payable to a claimant does not include the costs of medical benefits or burial expenses. The insurer shall also furnish the employer a copy of the notice of acceptance. The notice of acceptance shall:

(a) Specify what conditions are compensable.

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

(c) Inform the claimant of the Expedited Claim Service, of hearing and aggravation rights concerning nondisabling injuries, including the right to object to a decision that the injury of the claimant is nondisabling by requesting a determination thereon pursuant to ORS 656.268 within one year of the date of injury.

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

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

(7) The State Accident Insurance Fund Corporation in processing claims under ORS 656.054 shall send notice of acceptance or denial to the noncomplying employer.

(8) If an insurer or any other duly authorized agent of the employer for such purpose, on record with the Director of the Department of Consumer and Business Services denies a claim for compensation, written notice of such denial, stating the reason for the denial, and informing the worker of the Expedited Claim Service and of hearing rights under ORS 656.283, shall be given to the claimant. A copy of the notice of denial shall be mailed to the director and to the employer by the insurer. The worker may request a hearing pursuant to ORS 656.319.

(9) 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.

(10)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due. Notwithstanding any other provision of this chapter, the director shall have exclusive jurisdiction over proceedings regarding solely the assessment and payment of the additional amount described in this subsection. The entire additional amount shall be paid to the worker if the worker is not represented by an attorney. If the worker is represented by an attorney, the worker shall be paid one-half the additional amount and the worker's attorney shall receive one-half the additional amount, in lieu of an attorney fee. The director's action and review thereof shall be subject to ORS 183.310 to 183.550 and such other procedural rules as the director may prescribe.

(b) When the director does not have exclusive jurisdiction over proceedings regarding the assessment and payment of the additional amount described in this subsection, the provision for attorney fees provided in this subsection shall apply in the other proceeding.

(11) The insurer may authorize an employer to pay compensation to injured work-

ers and shall reimburse employers for compensation so paid.

(12) Insurers and self-insured employers shall report every claim for disabling injury to the director within 21 days after the date the employer has notice or knowledge of such injury. [1965 c.285 §30; 1969 c.399 §1; 1973 c.620 §2; 1975 c.556 §41; 1981 c.535 §7; 1981 c.854 §16; 1981 c.874 §4; 1983 c.809 §1; 1983 c.816 §7; 1985 c.600 §7; 1987 c.884 §19; 1990 c.2 §15]

656.263 To whom notices sent under ORS 656.262, 656.265, 656.268 to 656.289, 656.295 to 656.325 and 656.382 to 656.388. All notices of proceedings required to be sent under ORS 656.262, 656.265, 656.268 to 656.289, 656.295 to 656.325, 656.382 to 656.388 and this section shall be sent to the employer and the insurer, if any. [1967 c.97 §2; 1975 c.556 §42]

656.264 Compensable injury, claim and other reports. (1) 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 insurers and self-insured employers to report other information as required to carry out this chapter.

(3) The director may prescribe the interval and the form of such reports and establish sanctions for the enforcement of reporting requirements. [1975 c.556 §39; 1981 c.854 §17]

656.265 Notice of accident from worker. (1) Notice of an accident resulting in an injury or death shall be given immediately by the worker or a dependent of the worker to the employer, but not later than 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 the doctor of the worker and signed by the worker, concerning an accident which may involve a compensable injury shall be considered notice from the worker and the employer shall forthwith furnish the worker a copy of any such report or statement.

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

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

(a) The employer had knowledge of the injury or death, or the insurer or self-insured employer has not been prejudiced by failure to receive the notice; or

(b) The insurer or self-insured employer has begun payments as required under this chapter; or

(c) The notice is given within one year after the date of the accident and the worker or beneficiaries of the worker establish in a hearing that the worker 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 behalf of the worker. 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; 1981 c.854 §18]

656.266 Burden upon worker to prove compensability and nature and extent of disability. The burden of proving that an injury or occupational disease is compensable and of proving the nature and extent of any disability resulting therefrom is upon the worker. The worker cannot carry the burden of proving that an injury or occupational disease is compensable merely by disproving other possible explanations of how the injury or disease occurred. [1987 c.713 §2]

656.268 Procedure for determining awards; claim closure; termination of temporary total disability benefits; reconsideration required before hearing; procedure, penalty and attorney fee on reconsideration; medical arbiter to make findings of impairment for reconsideration; credit or offset for fraudulently obtained benefits. (1) One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker. Claims shall not be closed if the worker's condition has not become medically stationary or if the worker is enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726, provided however, that temporary disability compensation shall be

proportionately reduced by any sums earned during the training.

(2)(a) Unless the insurer or self-insured employer has elected to close the claim pursuant to this section, when the injured worker's condition resulting from an accepted disabling injury has become medically stationary, unless the injured worker is enrolled and actively engaged in training, the insurer or self-insured employer shall so notify the Department of Consumer and Business Services, the worker, and the employer, if any, and request the claim be examined and further compensation, if any, be determined.

(b) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors shall be furnished to the Department of Consumer and Business Services and to the worker and to the employer, if requested by the worker or employer.

(3) Temporary total disability benefits shall continue until whichever of the following events first occurs:

(a) The worker returns to regular or modified employment;

(b) The attending physician gives the worker a written release to return to regular employment; or

(c) The attending physician gives the worker a written release to return to modified employment, such employment is offered in writing to the worker and the worker fails to begin such employment.

(4)(a) When the worker's condition resulting from an accepted disabling injury has become medically stationary, and the worker has returned to work or the worker's attending physician releases the worker to return to regular or modified employment, the claim may be closed by the insurer or self-insured employer, without the issuance of a determination order by the Department of Consumer and Business Services.

(b) Findings by the insurer or self-insured employer regarding the extent of the worker's disability in closure of the claim shall be pursuant to the standards prescribed by the Department of Consumer and Business Services. The insurer or self-insured employer shall issue a notice of closure of such a claim to the worker and to the Department of Consumer and Business Services. The notice shall inform the parties, in capital letters and boldfaced type, of the proper manner in which to proceed if they are dissatisfied with the terms of the notice. The notice must inform the worker of the amount of any further compensation, including permanent disability compensation to be awarded; of the amount and duration of temporary total or temporary partial disability compensation; of the obligation of the worker to request reconsideration by the Department of Consumer and Business Services under this section; of the right of the worker to request a hearing pursuant to ORS 656.283 within 180 days of the date of the notice of claim closure; of the aggravation rights; and of such other information as the director may require.

(c) All medical reports and reports of vocational rehabilitation agencies or counselors shall be furnished to the worker and to the employer, if requested by the worker or employer.

(d) If the worker has returned to work but the insurer or self-insured employer has not issued a notice of closure, the worker may request closure. Within 10 days of receipt of a written request from the worker, if the insurer or self-insured employer has not yet notified the Department of Consumer and Business Services, the insurer or self-insured employer shall forward the request for closure and all medical reports and reports of vocational rehabilitation agencies or counselors to the Department of Consumer and Business Services or shall issue a notice of closure if the worker is medically stationary or a notice of refusal to close if the worker is not medically stationary. A notice of refusal to close shall advise the worker of the decision not to close; of the right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to close the claim; of the right to be represented by an attorney; and of such other information as the director may require.

(e) If a worker objects to the notice of closure, the worker first must request reconsideration by the department under this section.

(f) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant to this subsection, if the correctness of that notice of closure or refusal to close is at issue in a hearing on the claim and if a finding is made at the hearing that the notice of closure or refusal to close was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all compensation determined to be then due the claimant.

(g) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the department orders an increase by 25 percent or more of the amount of compensation to be paid to the worker for permanent disability and the worker is found upon reconsideration to be at least 20 percent permanently disabled, a penalty shall be assessed against the insurer or self-insured

employer and paid to the worker in an amount equal to 25 percent of all compensation determined to be then due the claimant.

(5) Within 10 working days after the department receives the medical and vocational reports relating to an accepted 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 department may require additional medical or other information with respect to the claim, and may postpone the determination or reconsideration for not more than 60 additional days. If the worker, the insurer or self-insured employer objects to a determination order issued by the department, the objecting party must first request reconsideration of the order. At the reconsideration proceeding, the worker or the insurer or self-insured employer may correct information in the record that is erroneous and may submit any medical evidence that should have been but was not submitted by the physician serving as the attending physician at the time of claim closure.

(6)(a) In any reconsideration proceeding under this section in which the worker was represented by an attorney, the department shall order the insurer or self-insured employer to pay to the attorney, out of the additional compensation awarded, an amount equal to 10 percent of any additional compensation awarded to the worker. Reconsideration shall be completed within 18 working days from the date of receipt of the request therefor and shall be performed by a special evaluation appellate unit within the department. The deadline of 18 working days may be postponed by an additional 60 days if within the 18 working days the department mails notice of review by a medical arbiter. If an order on reconsideration has not been mailed on or before 18 working days from the date of the receipt of the request for reconsideration, or within 75 days where a notice for medical arbiter review was timely mailed, reconsideration shall be deemed denied and any further proceedings shall occur as though an order on reconsideration affirming the notice of closure or the determination order was mailed on the 18th working day or where an order was timely mailed on the 75th day. Any medical arbiter report may be received as evidence at a hearing even if the report is not prepared in time for use in the reconsideration proceeding.

(b) If any party objects to the reconsideration order, the party may request a hearing under ORS 656.283 within 180 days after copies of notice of closure or the determination order are mailed, whichever is applicable. The time from the request for reconsideration until the reconsideration is made shall not be counted in any limitation on the time allowed for the request for hearing.

(7) If the basis for objection to a notice of closure or determination order issued under this section is disagreement with the impairment used in rating of the worker's disability, the director shall refer the claim to a medical arbiter appointed by the director. At the request of either of the parties, a panel of three medical arbiters shall be appointed. The arbiter, or panel of the medical arbiters, shall be chosen from among a list of physicians qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the director in consultation with the Board of Medical Examiners for the State of Oregon and the committee referred to in ORS 656.790. The medical arbiter or panel of medical arbiters may examine the worker and perform such tests as may be reasonable and necessary to establish the worker's impairment. The costs of examination and review by the medical arbiter or panel of medical arbiters shall be paid by the insurer or self-insured employer. The findings of the medical arbiter or panel of medical arbiters shall be submitted to the department for reconsideration of the determination order or notice of closure,. and no subsequent medical evidence of the worker's impairment is admissible before the department, the board or the courts for purposes of making findings of impairment on the claim closure.

(8) If, after the determination made or notice of closure issued pursuant to this section, the worker becomes enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726, any permanent disability payments due under the determination or closure shall be suspended, and the worker shall receive temporary disability compensation while the worker is enrolled and actively engaged in the training. When the worker ceases to be enrolled and actively engaged in the training, the Department of Consumer and Business Services shall reconsider the claim pursuant to this section unless the worker's condition is not medically stationary. If the worker has returned to work, the insurer or self-insured employer may reevaluate and close the claim without the issuance of a determination order by the Department of Consumer and Business Services.

(9) The Department of Consumer and Business Services 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 within 180 days after copies of the determination are mailed.

(10) If the claim resulted from an injury to a worker while in the employ of an employer insured by the State Accident Insurance Fund Corporation, the corporation shall set aside 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 self-insured employer or an employer insured with a carrier other than the State Accident Insurance Fund Corporation, the director may, in the event of:

(a) The insolvency or threatened insolvency of such employer or the employer's 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 the director deems necessary to assure ultimate payment of the award.

(11) Upon receipt of a request made pursuant to ORS 656.262, this section or ORS 656.277, the Department of Consumer and Business Services shall determine whether the claim is disabling or nondisabling. A copy of such determination shall be mailed to all interested parties in accordance with this section.

(12) If the attending physician has approved the worker's return to work and there is a labor dispute in progress at the place of employment, the worker may refuse to return to that employment without loss of reemployment rights or any vocational assistance provided by this chapter.

(13) Any determination or notice of closure made under this section may include necessary adjustments in compensation paid or payable prior to the determination or notice of closure, 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.

(14) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data used for ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the department. [1965 c.285 §31; 1973 c.620 §3; 1973 c.634 §2; 1977 c.804 §5; 1977 c.862 §1; 1979 c.839 §4; 1981 c.535 §7a; 1981 c.854 §19; 1981 c.874 §13; 1985 c.425 §1; 1985 c.600 §8; 1987 c.884 §10; 1990 c.2 §16; 1991 c.502 §1]

656.270 Contents of notice required in determination or closure. Each determination or closure made pursuant to ORS 656.268 shall contain a notice in capital letters and boldfaced type that informs the parties of the proper manner in which to proceed if they are dissatisfied with the determination or closure. The notice shall include information on the rights and duties of the parties to obtain reconsideration and hearing on the determination or closure, the right of the worker to consult with the ombudsman for injured workers and of the right of the worker to be represented by an attorney. The notice also may include such other relevant information as the director prescribes. [1971 c.155 §2; 1977 c.804 §6; 1979 c.839 §5; 1990 c.2 §17]

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 Aggravation for worsened conditions; procedure; limitations; additional compensation. (1) After the last award or arrangement of compensation, an injured worker is entitled to additional compensation, including medical services, for worsened conditions resulting from the original injury. A worsened condition resulting from the original injury is established by medical evidence supported by objective findings. However, if the major contributing cause of the worsened condition is an injury not occurring within the course and scope of employment, the worsening is not compensable. A worsened condition is not presumed to have been established by either or both of the following:

(a) The worker's absence from work for any given amount of time as a result of the worker's condition from the original injury; or

(b) Inpatient treatment of the worker at a hospital for the worker's condition from the original injury.

(2) To obtain additional medical services or disability compensation, the injured worker must file a claim for aggravation with the insurer or self-insured employer. In the event the insurer or self-insured employer cannot be located, is unknown, or has ceased to exist, the claim shall be filed with the director.

(3) A physician's report establishing the worsened condition by written medical evidence supported by objective findings is a claim for aggravation.

(4)(a) The claim for aggravation must be filed within five years after the first determination or the first notice of closure made under ORS 656.268.

(b) If the injury has been in a nondisabling status for one year or more after the date of injury, the claim for aggravation must be filed within five years after the date of injury.

(5) The director may order the claimant, the insurer or self-insured employer to pay for such medical opinion.

(6) A claim submitted in accordance with this section shall be processed by the insurer or self-insured employer in accordance with the provisions of ORS 656.262, except that the first installment of compensation due under ORS 656.262 shall be paid no later than the 14th day after the subject employer has notice or knowledge of medically verified inability to work resulting from a compensable worsening under subsection (1) or (8) of this section.

(7) A request for hearing on any issue involving a claim for aggravation must be made to the board in accordance with ORS 656.283.

(8) If the worker submits a claim for aggravation of an injury or disease for which permanent disability has been previously awarded, the worker must establish that the worsening is more than waxing and waning of symptoms of the condition contemplated by the previous permanent disability award. [1973 c.620 §5 (enacted in lieu of 656.271); 1975 c.497 §1; 1977 c.804 §7; 1979 c.839 §6; 1981 c.854 §20; 1987 c.884 §23; 1989 c.171 §76; 1990 c.2 §18]

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]

656.277 Nondisabling injury claim procedure. Claims for nondisabling injuries shall be processed in the same manner as claims for disabling injuries, except that:

(1) If within one year after the injury, the worker claims a nondisabling injury is disabling, the insurer or self-insured employer, upon receiving notice or knowledge of such a claim, shall report the claim to the director for determination pursuant to ORS 656.268.

(2) 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 a claim for aggravation.

(3) A claim for a nondisabling injury shall not be reported to the director by the insurer or self-insured employer except:

(a) When a notice of claim denial is filed;

(b) When the status of the claim is as described in subsection (1) or (2) of this section;

(c) When the worker objects to a decision that the injury is nondisabling and requests a determination thereon; or

(d) When otherwise required by the director. [1990 c.2 §48]

Note: 656.277 was added to and made a part of ORS chapter 656 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

656.278 Board has continuing authority to alter earlier action on claim; limitations. (1) Except as provided in subsection (5) of this section, 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 in those cases in which:

(a) There is a worsening of a compensable injury that requires either inpatient or outpatient surgery or other treatment requiring hospitalization. In such cases, the board may authorize the payment of temporary disability compensation from the time the worker is actually hospitalized or undergoes outpatient surgery until the worker's condition becomes medically stationary, as determined by the board; or

(b) The date of injury is earlier than January 1, 1966. In such cases, in addition to the payment of temporary disability compensation, the board may authorize payment of medical benefits.

(2) 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 appeal any order or award made by the board on its own motion, except when the order diminishes or terminates a former award. The employer may appeal from an order which increases the award.

(4) The insurer or self-insured employer may voluntarily reopen any claim to provide benefits or grant additional medical or hospital care to the claimant.

(5) The provisions of this section do not authorize the board, on its own motion, to modify, change or terminate former findings or orders:

(a) That a claimant incurred no injury or incurred a noncompensable injury; or

(b) Approving disposition of a claim under ORS 656.236 or 656.289 (4). [Amended by

1955 c.718 §1; 1957 c.559 §1; 1965 c.285 §33; 1981 c.535 §32; 1985 c.212 §6; 1987 c.884 §37; 1990 c.2 §19]

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; modification of vocational assistance actions; use of standards for evaluation of disability. (1) Subject to subsection (2) of this section and ORS 656.319, any party or the director may at any time request a hearing on any question concerning a claim.

(2) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding vocational assistance, the worker must first apply to the director for administrative review of the matter before requesting a hearing on that matter. Such application must be made not later than the 60th day after the date the worker was notified of the action. The director shall complete the review within a reasonable time, unless the worker's dissatisfaction is otherwise resolved. The decision of the director may be modified only if it:

(a) Violates a statute or rule;

(b) Exceeds the statutory authority of the agency;

(c) Was made upon unlawful procedure; or

(d) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

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

(4) The board shall refer the request for hearing to a referee for determination as expeditiously as possible. The hearing shall be scheduled for a date not more than 90 days after receipt by the board of the request for hearing. The hearing shall not be postponed except in extraordinary circumstances beyond the control of the requesting party.

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

(6) A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the order of the referee. Transcription shall be in written form as provided by ORS 656.295 (3).

(7) Except as otherwise provided in this section and rules of procedure established by the board, the 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. Evaluation of the worker's disability by the referee shall be as of the date of issuance of the reconsideration order pursuant to ORS 656.268. Any finding of fact regarding the worker's impairment must be established by medical evidence that is supported by objective findings. The referee shall apply to the hearing of the claim such standards for evaluation of disability as may be adopted by the director pursuant to ORS 656.726. Nothing in this section shall be construed to prevent or limit the right of a worker, insurer or self-insured employer to present evidence at hearing and to establish by a preponderance of the evidence that the standards adopted pursuant to ORS 656.726 for evaluation of the worker's permanent disability were incorrectly applied in the reconsideration order pursuant to ORS 656.268. If the referee finds that the claim has been closed prematurely, the referee shall issue an order rescinding the determination order or notice of closure.

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

(9) After a party requests a hearing and before the hearing commences, the board, by rule, may require the requesting party, if represented by an attorney, to notify the referee in writing that the attorney has conferred with the other party and that settlement has been achieved, subject to board approval, or that settlement cannot be achieved. [1965 c.285 §34; 1979 c.839 §7; 1981 c.535 §33; 1981 c.860 §§1, 5; 1985 c.600 §9; 1987 c.884 §11; 1990 c.2 §20]

Note: See note under 656.202.

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. ORCP 36 C shall apply to workers' compensation cases, except that the referee shall make the determinations and orders required of the court in ORCP 36 C, and in addition attorney fees shall not be declared as a matter of course but only in cases of harassment or hardship. [1973 c.652 §1; 1977 c.358 §11; 1979 c.284 §187]

656.287 Use of vocational reports in determining loss of earning capacity at hearing. (1) Where there is an issue regarding loss of earning capacity, reports from vocational consultants employed by governmental agencies, insurers or self-insured employers, or from private vocational consultants, regarding job opportunities, the

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

(2) The board shall establish rules to govern the admissibility of reports from vocational experts, including guidelines to establish the competency of vocational experts. [1973 c.581 §§1, 2; 1985 c.600 §10]

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

656.289 Orders of referee; review; disposition of claim when compensability disputed; approval of director required for reimbursement from certain reserves. (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 the referee's 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.

(5) Any claim in which the parties enter into a disposition under subsection (4) of this section shall not be eligible for reimbursement from the Reemployment Assistance Reserve, the Handicapped Workers Reserve, the Reopened Claims Reserve or the Retroactive Reserve without the prior approval of the director. [1965 c.285 §35; 1969 c.212 §1; 1977 c.804 §9; 1983 c.809 §3; 1990 c.2 §21]

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

656.291 Expedited Claim Service; jurisdiction; procedure; representation. (1) The board, by rule, shall establish an Expedited Claim Service to provide for prompt, informal disposition of claims.

(2) The board shall assign to the service those claims:

(a) For which a hearing has been requested when the only matters unresolved do not include compensability of the claim and the amount in controversy is $1,000 or less; or

(b) For which the only matters unresolved are attorney fees or penalties.

(3)(a) The amount in controversy shall be deemed less than $1,000 if the party requesting hearing so indicates, the other party does not disagree and the referee does not conclude, based on the evidence, that the amount in controversy exceeds $1,000. In a case assigned pursuant to paragraph (a) of subsection (2) of this section, if the referee finds that the amount in controversy exceeds $1,000, the referee shall refer the case for disposition under the ordinary hearing process.

(b) Cases assigned to the Expedited Claim Service pursuant to paragraph (a) of subsection (2) of this section shall be heard within 30 days of the request for hearing, and an order shall be issued within 10 days of the close of the hearing.

(c) No hearing shall be held in cases assigned to the Expedited Claim Service pursuant to paragraph (b) of subsection (2) of this section unless the referee finds that the dispute cannot be decided on stipulated facts.

(4) The board, by rule, shall establish the procedures for disposition of claims by the Expedited Claim Service to insure fair and just treatment of workers in all such proceedings.

(5) Notwithstanding ORS 9.320 or any provision of this chapter, an individual who is not an attorney may represent oneself or other persons who consent to such representation at any proceeding before the Expedited Claim Service.

(6) Any compromises, agreements, admissions, stipulations, statements of fact that are made or other such action taken by the representative is binding on those represented to the same extent as if done by an attorney. A person so represented may not thereafter claim that any such proceeding or meeting was legally defective because the person was not represented by an attorney.

(7) An individual who is not an attorney may not represent a claimant for a fee at any proceeding under this chapter.

(8) As used in this subsection, "attorney" has the meaning for that term provided in ORS 9.005. [1987 c.884 §18]

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; application of standards for evaluation of disability. (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. The original transcript shall be certified to be true, accurate and complete by the transcriber. A list of all exhibits received by the referee shall be furnished to the parties in interest along with a copy of the transcribed record.

(4) Notice of the review shall be given to the parties by mail. The board shall set a date for review as expeditiously as possible. Review shall be scheduled for a date not later than 90 days after receipt by the board of the request for review. Review shall not be postponed except in extraordinary circumstances beyond the control of the requesting party.

(5) The review by the board shall be based upon the record submitted to it under subsection (3) of this section and such oral or written argument as it may receive. Evaluation of the worker's disability by the board shall be as of the date of issuance of the reconsideration order pursuant to ORS 656.268. Any finding of fact regarding the worker's impairment must be established by medical evidence that is supported by objective findings. If the board finds that the claim has been closed prematurely, the board shall issue an order rescinding the determination order or notice of closure. The board shall apply to the review of the claim such standards for the evaluation of disability as may be adopted by the director pursuant to ORS 656.726. Nothing in this section shall be construed to prevent or limit the right of a worker, insurer or self-insured employer to present evidence to establish by a preponderance of the evidence that the standards adopted pursuant to ORS 656.726 for evaluation of the worker's permanent disability were incorrectly applied in the reconsideration order pursuant to ORS 656.268. However, if the board determines that a case has been improperly, incompletely or otherwise insufficiently developed or heard by the 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; 1987 c.884 §12; 1990 c.2 §22; 1991 c.293 §1]

Note: See note under 656.202.

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 by the Court of Appeals.

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

(3) The judicial review shall be commenced by serving, 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. Review shall be as provided in ORS 183.482 (7) and (8).

(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; 1987 c.884 §12a]

Note: Section 12b, chapter 884, Oregon Laws 1987, provides:

Sec. 12b. The amendments to ORS 656.298 by section 12a of this Act do not apply to appeals of which the Court of Appeals acquired jurisdiction before the effective date of this Act. [July 20, 1987]

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 the right to a hearing, except that the right of hearing on any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on the claimant's own application under ORS 656.230. This section shall not be construed as a waiver of the necessity of complying with ORS 656.283 to 656.298. [Formerly 656.294]

656.307 Determination of issues regarding responsibility for compensation payment. (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 employers and insurers admit that the claim is otherwise compensable. Payments shall begin in any event as provided in ORS 656.262 (4).

(2) The director then shall request the board to appoint a referee to act as an arbitrator to determine the responsible paying party. The arbitration proceeding shall be conducted in such manner as the board may prescribe. The costs of the proceeding shall be shared by the parties in such manner as the director may prescribe. The determination of the arbitrator may be reviewed by the board, and then by the Court of Appeals within the same period of time as provided for review of an order after hearing. Review of the determination of the arbitrator by the board and by the Court of Appeals is limited to questions of law and is not thereafter subject to review by any other court or administrative body. However, if the claimant can establish, on the arbitration record, that the determination resolves a matter concerning a claim as defined in ORS 656.704 (3), review of the determination of the arbitrator by the board and the Court of Appeals shall be as provided for matters concerning a claim.

(3) When a determination of the responsible paying party has been made, the director shall direct any necessary monetary adjustment between the parties involved. Any failure to obtain reimbursement from an insurer or self-insured employer shall be recovered from the Consumer and Business Services Fund.

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

(5) The claimant shall be joined in any proceeding under this section as a necessary party, but may elect to be treated as a nominal party. If the claimant appears at any such proceeding and actively and meaningfully participates through an attorney, the arbitrator may require that a reasonable fee for the claimant's attorney be paid by the employer or insurer determined by the arbitrator to be the party responsible for paying the claim. [1965 c.285 §39; 1971 c.70 §1; 1979 c.839 §8; 1987 c.713 §5]

656.308 Responsibility for payment of claims; effect of new injury; procedure for joining employers and insurers. (1) When a worker sustains a compensable injury, the responsible employer shall remain responsible for future compensable medical services and disability relating to the compensable condition unless the worker sustains a new compensable injury involving the same condition. If a new compensable injury occurs, all further compensable medical services and disability involving the same condition shall be processed as a new injury claim by the subsequent employer.

(2) No employer or insurer shall be joined in any workers' compensation proceeding unless the worker has first filed a timely written claim for benefits against that employer or insurer, or the employer or insurer has consented to the issuance of an order designating a paying agent under ORS 656.307. Any employer or insurer which in-

tends to disclaim responsibility for a given injury or disease claim on the basis of an injury or exposure with another employer or insurer shall mail a written notice to the worker as to this position within 30 days of actual knowledge of being named or joined in the claim. The notice shall specify which employer or insurer the disclaiming party believes is responsible for the injury or disease. The worker shall have 60 days from the date of mailing of the notice to file a claim with such other employer or insurer. Any employer or insurer against whom a claim is filed may assert, as a defense, that the actual responsibility lies with another employer or insurer, regardless of whether or not the worker has filed a claim against that other employer or insurer, if that notice was given as provided in this subsection. [1990 c.2 §49]

Note: 656.308 was added to and made a part of ORS chapter 656 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

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

(b) The injury was not occasioned by the willful intention of the injured worker to commit self-injury or suicide.

(2) The contents of medical, surgical and hospital reports presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein; so, also, shall such reports presented by the insurer or self-insured employer, provided that the doctor rendering medical and surgical reports consents to submit to cross-examination. This subsection shall also apply to medical or surgical reports from any treating or examining doctor who is not a resident of Oregon, provided that the claimant, self-insured employer or the insurer shall have a reasonable time, but no less than 30 days after receipt of notice that the report will be offered in evidence at a hearing, to cross-examine such doctor by deposition or by written interrogatories to be settled by the referee. [1965 c.285 §40; 1969 c.447 §1; 1981 c.854 §21]

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

656.313 Stay of compensation pending request for hearing or board or court review; procedure for denial of claim for medical services. (1)(a) Filing by an employer or the insurer of a request for hearing on a reconsideration order or a request for board review or court appeal stays payment of the compensation appealed, except for:

(A) Temporary disability benefits that accrue from the date of the order appealed from until closure under ORS 656.268, or until the order appealed from is itself reversed, whichever event first occurs; and

(B) Permanent total disability benefits that accrue from the date of the order appealed from until the order appealed from is reversed.

(b) If ultimately found payable under a final order, benefits withheld under this subsection shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed from through the date of payment. The board shall expedite review of appeals in which payment of compensation has been stayed under this section.

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

(3) If an insurer or self-insured employer denies the compensability of all or any portion of a claim submitted for medical services, the insurer or self-insured employer shall send notice of the denial to each provider of such medical services and to any provider of health insurance for the injured worker. After receiving notice of the denial, a medical service provider may submit medical reports and bills for the disputed medical services to the provider of health insurance for the injured worker. The health insurance provider shall pay all such bills in accordance with the limits, terms and conditions of the policy. If the injured worker has no health insurance, such bills may be submitted to the injured worker. A provider of disputed medical services shall make no further effort to collect disputed medical service bills from the injured worker until the issue of compensability of the medical services has been finally determined.

(4)(a) When the compensability issue has been finally determined or when disposition or settlement of the claim has been made pursuant to ORS 656.236 or 656.289 (4), the insurer or self-insured employer shall notify each affected service provider and health insurance provider of the results of the disposition or settlement.

(b) If the services are determined to be compensable, the insurer or self-insured employer shall reimburse each health insurance provider for the amount of claims paid by the health insurance provider pursuant to this section. Such reimbursement shall be in ad-

dition to compensation or medical benefits the worker receives. Medical service reimbursement shall be paid directly to the health insurance provider.

(c) If the services are settled pursuant to ORS 656.289 (4), the insurer or self-insured employer shall reimburse, out of the settlement proceeds, each medical service provider for billings received by the insurer or self-insured employer on and before the date on which the terms of settlement are agreed as specified in the settlement document that are not otherwise partially or fully reimbursed.

(d) Reimbursement under this section shall be made only for medical services related to the claim that would be compensable under this chapter if the claim were compensable and shall be made at one-half the amount provided under ORS 656.248. In no event shall reimbursement made to medical service providers exceed 20 percent of the total present value of the settlement amount, except with the consent of the worker. If the settlement proceeds are insufficient to allow each medical service provider the reimbursement amount authorized under this subsection, the insurer or self-insured employer shall reduce each provider's reimbursement by the same proportional amount.

(5) As used in this section, "health insurance" has the meaning for that term provided in ORS 731.162. [1965 c.285 §41; 1979 c.673 §1; 1981 c.535 §8; 1981 c.854 §22; 1983 c.809 §2; 1990 c.2 §23; 1993 c.521 §1]

Note: Section 2, chapter 521, Oregon Laws 1993, provides:

Sec. 2. The amendments to ORS 656.313 by section 1 of this Act apply to all settlements with a date of agreement in ORS 656.313 (4)(c) on or after the effective date of this Act [November 4, 1993]. [1993 c.521 §2]

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) Notwithstanding subsection (1) of this section, a hearing shall be granted even if a request therefor is filed after the time specified in subsection (1) of this section if the claimant can show lack of mental competency to file the request within that time. The period for filing under this subsection shall not be extended more than five years by lack of mental competency, nor shall it extend in any case longer than one year after the claimant regains mental competency.

(3) With respect to subsection (2) of this section, lack of mental competency shall apply only to an individual suffering from such mental disorder, mental illness or nervous disorder as is required for commitment or voluntary admission to a treatment facility pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380 and the rules of the Mental Health and Developmental Disability Services Division.

(4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such objections shall not be granted unless a request for hearing is filed within 180 days after the copies of the determination or notice of closure were mailed to the parties.

(5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after copies of the notice of refusal to close were mailed to the parties. [1965 c.285 §41a; 1969 c.206 §1; 1975 c.497 §4; 1983 c.819 §1; 1987 c.884 §14; 1990 c.2 §24]

Note: See note under 656.202.

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; claimant's duty to reduce disability; suspension or reduction of benefits. (1)(a) Any worker entitled to receive compensation under this chapter is required, if requested by the director, the insurer or self-insured employer, to submit to a 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. However, no more than three examinations may be requested except after notification to and authorization by the director. If the worker refuses to submit to any such examination, or obstructs the same, the rights of the worker to compensation shall be suspended with the consent of the director until the examination has taken place, and no compensation shall be payable during or for account of such period. The provisions of this paragraph are subject to the limitations on

medical examinations provided in ORS 656.268.

(b) The insurer or self-insured employer shall pay the costs of the medical examination and related services which are reasonably necessary to allow the worker to submit to any examination requested under this section. As used in this subsection, "related services" includes, but is not limited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost wages for the period during which the worker is absent if the worker does not receive benefits pursuant to ORS 656.210 (4) during the period of absence. A claim for "related services" described in this section shall be made in the manner prescribed by the director.

(2) For any period of time during which any worker commits insanitary or injurious practices which tend to either imperil or retard recovery of the worker, or refuses to submit to such medical or surgical treatment as is reasonably essential to promote recovery, or fails to participate in a program of physical rehabilitation, the right of the worker to compensation shall be suspended with the consent of the director and no payment shall be made for such period. The period during which such worker would otherwise be entitled to compensation may be reduced with the consent of the director to such an extent as the disability has been increased by such refusal.

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

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

(5) Notwithstanding ORS 656.268, an insurer or self-insured employer shall cease making payments pursuant to ORS 656.210 and shall commence making payment of such amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning employment prior to claim determination and the worker's attending physician, after being notified by the employer of the specific duties to be performed by the injured worker, agrees that the injured worker is capable of performing the employment offered.

(6) 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; 1979 c.839 §29; 1981 c.535 §10; 1981 c.723 §4; 1981 c.854 §23; 1983 c.816 §8; 1985 c.770 §7; 1987 c.884 §43; 1989 c.598 §1; 1990 c.2 §25]

Note: See note under 656.202.

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

656.327 Medical review of treatment of worker; findings; review; costs. (1)(a) If an injured worker, an insurer or self-insured employer or the director believes that an injured worker is receiving medical treatment that is excessive, inappropriate, ineffectual or in violation of rules regarding the performance of medical services and wishes review of the treatment by the director, the injured worker, insurer or self-insured employer shall so notify the parties and the director.

(b) Unless the director issues an order finding that no bona fide medical services dispute exists, the director shall review the matter as provided in this section. Appeal of an order finding that no bona fide medical services dispute exists shall be made directly to the board within 30 days after issuance of the order. The board shall set aside or remand the order only if the board finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding in the order when the record, reviewed as a whole, would permit a reasonable person to make that finding. The decision of the board is not subject to review by any other court or administrative agency.

(c) The insurer or self-insured employer shall not deny the claim for medical services nor shall the worker request a hearing on any issue that is subject to the jurisdiction of the director under this section until the director issues an order under subsection (2) of this section.

(2) The director shall review medical information and records regarding the treatment. The director may cause an appropriate medical service provider to perform reasonable and appropriate tests, other than invasive tests, upon the worker and may examine the worker. Notwithstanding ORS 656.325 (1), the worker may refuse a test without sanction. Review of the medical treatment shall be completed and the findings of the director shall be submitted to the parties within 30 days of the request for review. The findings of the director regard-

ing the treatment in question shall be prepared in such form and manner and shall contain such information as the director may prescribe. Within 10 days of making the findings, the director shall issue an order based upon the findings. If the worker, insurer, self-insured employer or medical service provider is dissatisfied with that order, the dissatisfied party may request a hearing on the order. If the director issues an order declaring medical treatment to be not compensable, the worker is not obligated to pay for such treatment. Review of the order shall be as provided in ORS 656.283 in accordance with expedited hearing procedures established by the board, except that the order of the director may be modified only if the order is not supported by substantial evidence in the record.

(3) Upon request of either party, the director may delegate to a panel of three physicians the review of medical treatment under this section. At least one member of any such panel shall be a practitioner of the healing art of the medical service provider whose treatment is being reviewed. No member of any such panel shall be a physician whose treatment is the subject of review. The panel shall be chosen in such manner as the director may prescribe, in consultation with the committee referred to in ORS 656.790. The panel shall submit findings to the director in the same manner and within the time limits as prescribed in subsection (2) of this section.

(4) Members of the panel of physicians and the medical arbiter or panel of medical arbiters appointed pursuant to ORS 656.268 acting pursuant to the authority of the director are agents of the department and are subject to the provisions of ORS 30.260 to 30.300. The findings of the panel of physicians, the medical arbiter or panel of medical arbiters, all of the records and all communications to or before a panel or arbiter are privileged and are not discoverable or admissible in any proceeding other than those proceedings under this chapter. No member of a panel or a medical arbiter shall be examined or subject to administrative or civil liability regarding participation in or the findings of the panel or medical arbiter or any matter before the panel or medical arbiter other than in proceedings under this chapter.

(5) The costs of review of medical treatment by the panel of physicians pursuant to this section and costs incurred by the worker in attending any examination required under this section, including child care, transportation, lodging and meals, shall be paid by the insurer or self-insured employer. [1987 c.884 §29; 1990 c.2 §26]

656.329 Continuing education program for attending physicians. Professional associations of licensed medical service providers, including those who are eligible to be attending physicians under this chapter, not later than July 1, 1988, shall establish a continuing education program in a manner prescribed by the director to instruct such providers on the requirements of the Workers' Compensation Law and rules. The rules shall specify the associations that must provide such programs. The program shall be made available by a professional association to all persons licensed in the discipline whether or not they are members of the association. [1987 c.884 §33]

656.330 [1977 c.868 §2; repealed by 1985 c.660 §2 and 1985 c.770 §5]

656.331 Contact, medical examination of worker represented by attorney prohibited without prior written notice; rules. (1) Notwithstanding any other provision of this chapter, if an injured worker is represented by an attorney and the attorney has given written notice of such representation:

(a) The director, the insurer or self-insured employer shall not request the worker to submit to an independent medical examination without giving prior or simultaneous written notice to the worker's attorney.

(b) An insurer or self-insured employer shall not contact the worker without giving prior or simultaneous written notice to the worker's attorney if the contact affects the denial, reduction or termination of the worker's benefits.

(2) The director shall adopt rules necessary to carry out the provisions of subsection (1)(b) of this section. [1985 c.706 §8]

656.335 Reports regarding injured workers for whom claim closure or determination order has not been issued; disability prevention services. (1) Notwithstanding any other provision of this chapter, when a worker has incurred a disabling compensable injury for which a determination order or notice of closure pursuant to ORS 656.268 has not been issued, the insurer or self-insured employer, within 120 days of the date of injury or the date a claim for aggravation was made, shall ascertain whether the worker has returned to work and, if not:

(a) Whether the worker's attending physician believes the worker is capable of undertaking physical rehabilitation services; and

(b) Whether the worker is presently participating in any program of disability prevention services.

(2) The insurer or self-insured employer shall report such findings to the director not later than 135 days from the date of injury or the date a claim for aggravation was made and, if appropriate, shall refer the worker for disability prevention services.

(3) The director may order insurers and self-insured employers to provide a program of disability prevention services unless:

(a) Medical evidence indicates that physical rehabilitation services would be harmful to the worker; or

(b) The worker is receiving disability prevention services approved by the department.

(4) As used in this section, "disability prevention services" means services provided to an injured worker to prevent the injury from causing continuing disability. Such services include physical restoration and psychologic, psychiatric and vocational evaluation and counseling. [1981 c.723 §7; 1985 c.600 §3; 1985 c.770 §7a]

656.340 Vocational assistance procedure; eligibility criteria; service providers. (1)(a) The insurer or self-insured employer shall cause vocational assistance to be provided to an injured worker who is eligible for assistance in returning to work.

(b) For this purpose the insurer or self-insured employer shall contact a worker with a claim for a disabling compensable injury for evaluation of the worker's eligibility for vocational assistance within five days of:

(A) Having knowledge of the worker's likely eligibility for vocational assistance, from a medical or investigation report, notification from the worker, or otherwise; or

(B) The time the worker is medically stationary, if the worker has not returned to the worker's regular employment or other suitable employment with the employer at the time of injury and the worker is not receiving vocational assistance.

(c) Eligibility may be redetermined by the insurer or self-insured employer upon receipt of new information that would change the eligibility determination.

(2) Contact under subsection (1) of this section shall include informing the worker about reemployment rights, the responsibility of the insurer to request reemployment, and wage subsidy and job site modification assistance and the provisions of the preferred worker program pursuant to rules adopted by the director.

(3) Within five days after notification that the attending physician has released a worker to return to work, the insurer or self-insured employer shall inform the worker about reemployment rights and the responsibility of the insurer to request reinstatement, and shall request reinstatement on behalf of the worker, to the worker's former position of employment or to any other employment with the employer who employed the worker at the time of injury which is available and suitable if the former position is not available. Such a request shall be considered a demand for reinstatement or reemployment by the worker for the purposes of ORS 659.415 and 659.420. The request shall inform the employer of the worker's reemployment rights, wage subsidy and the job site modification assistance and the provisions of the preferred worker program.

(4) As soon as possible, and not more than 30 days after the contact required by subsection (1) of this section, the insurer or self-insured employer shall cause an individual certified by the director to provide vocational assistance to determine whether the worker is eligible for vocational assistance. The insurer or self-insured employer shall notify the worker of the decision regarding the worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the worker is not eligible, the worker may apply to the director for review of the decision as provided in ORS 656.283 (2). A worker determined ineligible upon evaluation under subparagraph (B) of paragraph (b) of subsection (1) of this section may not be found eligible thereafter unless that eligibility determination is rejected by the director under ORS 656.283 (2) or the worker's condition worsens substantially.

(5) The objectives of vocational assistance are to return the worker to employment which is as close as possible to the worker's regular employment at a wage as close as possible to the worker's wage at the time of injury.

(6)(a) A worker is eligible for vocational assistance if the worker will not be able to return to the previous employment or to any other available and suitable employment with the employer at the time of injury, and the worker has a substantial handicap to employment.

(b) As used in this subsection:

(A) A "substantial handicap to employment" exists when the worker, because of the injury, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment.

(B) "Suitable employment" means:

(i) Employment of the kind for which the worker has the necessary physical capacity, knowledge, skills and abilities;

(ii) Employment that is located where the worker customarily worked or is within rea-

sonable commuting distance of the worker's residence; and

(iii) Employment that produces a wage within 20 percent of that currently being paid for employment which was the worker's regular employment.

(7) Vocational evaluation, help in directly obtaining employment and training shall be available under conditions prescribed by the director. The director may establish other conditions for providing vocational assistance, including those relating to the worker's availability for assistance, participation in previous assistance programs connected with the same claim and the nature and extent of assistance that may be provided. Such conditions shall give preference to direct employment assistance over training.

(8) An insurer or self-insured employer may utilize its own staff or may engage any other individual certified by the director to perform the vocational evaluation required by subsection (4) of this section.

(9) The director shall adopt rules providing:

(a) Standards for and methods of certifying individuals and authorizing vocational assistance providers qualified by education, training, experience and plan of operation to provide vocational assistance to injured workers;

(b) Conditions and procedures under which the certification of an individual or the authorization of a vocational assistance provider to provide vocational assistance services may be suspended or revoked for failure to maintain compliance with the certification or authorization standards;

(c) Standards for the nature and extent of services a worker may receive, for plans for return to work and for determining when the worker has returned to work; and

(d) Procedures, schedules and conditions relating to the payment for services performed by a vocational assistance provider, which shall be based on payment for specific services performed and not fees for services performed on an hourly basis. Fee schedules shall reflect a reasonable rate for direct worker purchases and for all vocational assistance providers and shall be the same within suitable geographic areas.

(10) Insurers and self-insured employers shall maintain records and make reports to the director of vocational assistance actions at such times and in such manner as the director may prescribe. Such requirements shall be for the purpose of assisting the department in monitoring compliance with this section to insure that workers receive timely and appropriate vocational assistance. The director shall minimize to the greatest extent possible the number, extent and kinds of reports required. The director shall compile a list of the organizations or agencies authorized to provide vocational assistance. A current list shall be distributed by the director to all insurers and self-insured employers. The insurer shall send the list to each worker with the notice of eligibility or ineligibility.

(11) When a worker is eligible to receive vocational assistance, the worker and the insurer or self-insured employer shall attempt to agree on the choice of a vocational assistance provider. If the worker agrees, the insurer or self-insured employer may utilize its own staff to provide vocational assistance. If they are unable to agree on a vocational assistance provider, the insurer or self-insured employer shall notify the director and the director shall select a provider. Any change in the choice of vocational assistance provider is subject to the approval of the director.

(12) Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary disability compensation for a maximum of 16 months, subject to extension to 21 months by order of the director for good cause shown. The costs related to vocational assistance training programs may be paid for periods longer than 21 months, but in no event may temporary disability benefits be paid for a period longer than 21 months.

(13) As used in this section, "vocational assistance provider" means a public or private organization or agency which provides vocational assistance to injured workers.

(14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the same type or extent of assistance.

(b) Training shall not be provided to an eligible worker solely because the worker cannot obtain employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of this section unless such training will enable the worker to find employment which will produce a wage significantly closer to that prescribed in subsection (6) of this section.

(c) Nothing in this section shall be interpreted to expand the availability of training under this section.

(15) A physical capacities evaluation shall be performed in conjunction with vocational assistance or determination of eligibility for such assistance at the request of the insurer or self-insured employer or worker. Such request shall be made to the attending physician. The attending physician, within 20 days of the request, shall perform a physical

capacities evaluation or refer the worker for such evaluation or advise the insurer or self-insured employer and the worker in writing that the injured worker is incapable of participating in a physical capacities evaluation. [1981 c.535 §2; 1985 c.600 §11; 1987 c.884 §15; 1990 c.2 §27]

LEGAL REPRESENTATION

656.382 Penalties and attorney fees payable by insurer or employer in processing claim. (1) If an insurer or self-insured employer refuses to pay compensation due under an order of a referee, board or court, or otherwise unreasonably resists the payment of compensation, the employer or insurer shall pay to the claimant or the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer or insurer, and the referee, board or court finds that the compensation awarded to a claimant should not be disallowed or reduced, the employer or insurer shall be required to pay to the claimant or the attorney of the claimant a reasonable attorney fee in an amount set by the referee, board or the court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

(3) If upon reaching a decision on a request for hearing initiated by an employer it is found by the 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; 1981 c.854 §24; 1983 c.568 §1; 1987 c.884 §34; 1990 c.2 §28]

Note: See note under 656.202.

656.384 [Formerly 656.582; 1977 c.290 §4; 1977 c.804 §13; repealed by 1987 c.250 §1]

656.386 Recovery of attorney fees in appeal on denied claim; attorney fees in other cases. (1) In all cases involving accidental injuries where a claimant finally prevails in an appeal to the Court of Appeals or petition for review to the Supreme Court from an order or decision denying the 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. If an attorney is instrumental in obtaining compensation for a claimant and a hearing by the referee is not held, a reasonable attorney fee shall be allowed. Attorney fees provided for in this section shall be paid by the insurer or self-insured 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; 1981 c.854 §25; 1983 c.568 §2; 1990 c.2 §29; 1991 c.312 §1]

Note: Section 3, chapter 312, Oregon Laws 1991, provides:

Sec. 3. The amendments to ORS 656.386 by section 1 of this 1991 Act apply to all claims for which an order relating to the issue on which attorney fees are sought has not become final on or before the effective date of this 1991 Act [June 19, 1991], regardless of the date of injury. [1991 c.312 §3]

656.388 Approval of attorney fees required; fee schedule; report of legal service costs. (1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before 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 with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the referee, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum.

(2) Any claim for payment to a claimant's attorney by the claimant so approved shall, in the manner and to the extent fixed by the referee, board or such court, be a lien upon compensation.

(3) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter.

(4) The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant in connection with the same proceeding under ORS 656.268.

(5) Insurers and self-insured employers shall make an annual report to the director reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the direc-

tor prescribes. [Formerly 656.590; 1983 c.568 §3; 1987 c.884 §35; 1990 c.2 §30]

656.390 Frivolous appeals or motions; expenses and attorney fee. Notwithstanding ORS 656.236, if either party appeals for review of the claim to the Court of Appeals or to the Supreme Court, or files a motion for reconsideration of the decision of the Court of Appeals or the Supreme Court, and the court finds that the appeal or motion for reconsideration was frivolous or was filed in bad faith or for the purpose of harassment, the court may impose an appropriate sanction upon the attorney who filed the appeal or motion. The sanction may include an order to pay to the other party the amount of the reasonable expenses incurred by reason of the appeal or motion, including a reasonable attorney fee. [1987 c.884 §31]

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]

SELF-INSURED AND CARRIER-INSURED EMPLOYERS; INSURERS AND GUARANTY CONTRACTS

656.403 Obligations of self-insured employer. (1) A self-insured employer directly assumes the responsibility for providing compensation due subject workers and their beneficiaries under this chapter.

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

(3) Security deposited by a self-insured employer shall not relieve any such employer from full and primary responsibility for claims administration and payment of compensation under this chapter. This subsection applies to a self-insured employer even though the self-insured employer insures or reinsures all or any portion of risks under this chapter with an insurance company authorized to do business in this state or with any other insurer with whom insurance can be placed or secured pursuant to ORS 744.305 to 744.405 (1985 Replacement Part).

(4) When a self-insured employer is a worker leasing company required to be licensed pursuant to ORS 656.850 and 656.855, the company also shall comply with the worker leasing company regulatory provisions of ORS chapters 656 and 737 and with such rules as may be adopted pursuant to ORS 656.726 and 731.244 for the supervision and regulation of worker leasing companies. [1975 c.556 §26 (enacted in lieu of 656.401); 1981 c.854 §26; 1993 c.628 §7]

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 insured employers. (1) An employer shall establish proof with the director that the employer is qualified either:

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

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

(2) Except as provided in subsection (3) of this section, a self-insured employer shall establish proof of financial ability by depositing in a depository, designated by the director, money, government securities or other surety which the director may, by rule, determine acceptable. The money, securities or other surety shall be in an amount reasonably sufficient to insure payment of compensation and other payments that may become due to the director but not less than the employer's normal expected annual claim liabilities and in no event less than $100,000. In arriving at the amount of money, securities or other surety required under this subsection, the director may take into consideration the financial ability of the employer to pay compensation and other payments and probable continuity of operation. The money, securities or other surety so deposited shall be held by the director to secure the payment of compensation for injuries to subject workers of the employer and to secure other payments that may become due from the employer to the director under this chapter. Moneys so deposited shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The amount of security may be increased or decreased from time to time by the director.

(3)(a) A city or county that wishes to be exempt from subsection (2) of this section may make written application therefor to the director. The application shall include a copy of the city's or county's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740, information regarding the establishment of a loss reserve account for the payment of compensation to injured workers and such other information

as the director may require. The director shall approve the application and the city or county shall be exempt from subsection (2) of this section if the director finds that:

(A) The city or county has been a self-insured employer in compliance with subsection (2) of this section for more than three consecutive years prior to making the application referred to in this subsection as an independently self-insured employer and not as part of a self-insured group.

(B) The city or county has in effect a loss reserve account:

(i) That is actuarially sound and that is adequately funded as determined by an annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director pursuant to this chapter. A copy of the annual audit shall be filed with the director. Upon a finding that there is probable cause to believe that the loss reserve account is not actuarially sound, the director may require a city or county to obtain an independent actuarial audit of the loss reserve account. The requirements of this subsection are in addition to and not in lieu of any other audit or reporting requirement otherwise prescribed by or pursuant to law.

(ii) That is dedicated to and may be expended only for the payment of compensation and amounts due the director by the city or county under this chapter.

(b) The director shall have the first lien and priority right to the full amount of the loss reserve account required to pay the present discounted value of all present and future claims under this chapter.

(c) The city or county shall notify the director no later than 60 days prior to any action to discontinue the loss reserve account. The city or county shall advise the director of the city's or county's plans to submit the surety deposits required in subsection (2) of this section, or obtain coverage as a carrier-insured employer prior to the date the loss reserve account ceases to exist. If the city or county elects to discontinue self-insurance, it shall submit such surety as the director may require to insure payment of all compensation and amounts due the director for the period the city or county was self-insured.

(d) In order to requalify as a self-insured employer, the city or county must deposit prior to discontinuance of the loss reserve account such surety as is required by the director pursuant to subsection (2) of this section.

(e) Notwithstanding ORS 656.440, if prior to the date of discontinuance of the loss reserve account the director has not received the surety deposits required in subsection (2) of this section, the city's or county's certificate of self-insurance is automatically revoked as of that date. [1975 c.556 §27; 1979 c.839 §28; 1981 c.854 §27; 1985 c.212 §7; 1989 c.966 §67; 1991 c.648 §1; 1993 c.18 §140]

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 [1975 c.556 §28; 1979 c.348 §1; repealed by 1981 c.854 §1]

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 [1975 c.556 §30; repealed by 1981 c.854 §1]

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 an insurer shall provide that the insurer agrees to assume, without monetary limit, the liability of the employer, arising during the period the guaranty contract is in effect, for prompt payment of:

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

(b) All assessments and other obligations imposed on the insured employer and 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 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. The filing shall be in such form and manner as the director may prescribe. A guaranty contract shall contain:

(a) The name and address of the employer;

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

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

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

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

(3) Workers' compensation coverage is effective when the application of the subject employer for coverage together with any required fees or premium are received and accepted by an authorized representative of an insurer.

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

(5) Coverage of an employer under a guaranty contract continues until canceled or terminated as provided by ORS 656.423 or 656.427. [1975 c.556 §29; 1977 c.405 §7; 1981 c.854 §28; 1987 c.237 §1]

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 coverage with the insurer by giving the insurer at least 30 days' written notice, unless a shorter period is permitted by subsection (3) of this section.

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

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

(4) The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director. [1975 c.556 §31; 1981 c.854 §29]

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. (1) An insurer that issues a guaranty contract or a surety bond to an employer under this chapter may terminate liability on its contract or bond, as the case may be, by giving the employer and the director written notice of termination. A notice of termination shall state the effective date and hour of termination.

(2) An insurer may terminate liability under this section as follows:

(a) If the termination is for reasons other than those set forth in paragraph (b) of this subsection, it is effective at 12 midnight not less than 30 days after the date the notice is received by the director.

(b) If the termination is based on the insurer's decision not to offer insurance to employers within a specific premium category, it is effective not sooner than 90 days after the date the notice is received by the director.

(3) Notice under this section shall be given by mail, addressed to the employer at the last-known address of the employer. If the employer is a partnership, notice may be given to any of the partners. If the employer is a corporation, notice may be given to any agent or officer of the corporation under whom legal process may be served.

(4) Termination shall in no way limit liability that was incurred under the guaranty contract or surety bond prior to the effective date of the termination.

(5) If, before the effective date of a termination under this section, the employer gives notice to the insurer that it has not obtained coverage from another insurer and intends to become insured under the assigned risk plan established under ORS 656.730, the insurer shall insure that continuing coverage is provided to the employer under the plan without further application by the employer, transferring the risk to the plan as of the effective date of termination. If the insurer is a servicing carrier under the plan, it shall continue to provide coverage for the employer as a servicing carrier, at least until another servicing carrier is provided for the employer in the normal course of administering the plan. If the insurer is not a servicing carrier, it shall apply to the plan for coverage on the employer's behalf. Nothing in this section is intended to limit the authority of administrators of the plan to require the employer to provide deposits or to make payments consistent with plan requirements. However, the rules of the plan shall allow any deposit requirements imposed by the plan to be deferred for as long as one year. [1975 c.556 §32; 1981 c.854 §30; 1981 c.874 §5; 1981 c.876 §6; 1985 c.212 §8; 1990 c.1 §1]

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; employer groups; insurance policy requirements; revocation of certif-

ication; rules. (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 may be combined regardless of the number of entities in succession.

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

(5) If an entity other than a partnership:

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

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

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

(6) If the entity is a partnership, majority interest shall be determined in accordance with the participation of each general partner in the profits of the partnership.

(7) Notwithstanding any other provision of this section, the director may certify five or more subject employers in the same industry as a self-insured employer group, which shall be considered an employer for purposes of this chapter, if:

(a) The director finds that the employers as a group meet the requirements of ORS 656.407 (1)(b) and (2);

(b) The director determines that:

(A) If the employers as a group have insurance coverage with a retention of $100,000 or more, the employers have a combined net worth of $1 million or more; or

(B) If the employers as a group have insurance coverage with a retention of less than $100,000, the employers have a combined net worth at least equal to the proportion of $1 million that the retention bears to $100,000;

(c) The director finds that the grouping is likely to improve accident prevention and claims handling for the employer;

(d) Each employer executes and files with the designated entity a written agreement, in such form as the director may prescribe, in which:

(A) The employer agrees to be jointly and severally liable for the payment of any compensation and other amounts due to the department under this chapter incurred by a member of the group; or

(B) The employer, if a city, county, special district described and listed in ORS 198.010 or 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized under ORS 570.505 to 570.575, intergovernmental agency created under ORS 225.050, school district as defined in ORS 255.005 (8), public housing authority created under ORS chapter 456 or regional council of governments created under ORS chapter 190, agrees to be individually liable for the payment of any compensation and other amounts due to the department under this chapter incurred by the employer during the period of group self-insurance;

(e) The director finds that the employer group is organized as a corporation or cooperative pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to 190.110 and the bylaws require the governing group to obtain fidelity bonds;

(f) The director finds that the employer group has designated an entity within or for the group responsible for centralized claims processing, payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require; and

(g) The employer has presented a method approved by the director to notify the department of:

(A) The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

(B) Whether an employer who terminates membership in the group continues to be a subject employer.

(8) A self-insured employer must have excess insurance coverage appropriate for the employer's potential liability under this chapter with an insurer authorized to do business in this state. A self-insured employer certified prior to November 1, 1981, must have excess insurance coverage appropriate for the employer's potential liability under this chapter either with an insurer authorized to do business in this state or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be submitted

at the time application is made for self-insured certification in the form of an insurance binder providing the appropriate coverage effective the date of certification. The policy providing such coverage must be filed with the director not later than 30 days after the date the coverage is effective. Any changes in the insurer or the coverage must be filed with the department not later than 30 days after the effective date of the change. With respect to such coverage:

(a) The policy must include a provision, approved by the director, for reimbursement to the department of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the policy limitations on amounts and limits of liability to the insured employer; and

(b) The period of coverage must be continuous and remain in effect until the certification is revoked or canceled.

(9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured employer after giving 30 days' written notice if the employer:

(a) Fails to comply with subsection (8) of this section; or

(b) In the case of an employer described in subsection (7) of this section, fails to comply with that subsection.

(10) A self-insured employer must have an occupational safety and health loss control program as required by ORS 654.097.

(11) The director, by rule shall:

(a) Prescribe methods for determining and approving net worth.

(b) Prescribe the types and approve the retention and limitation levels of excess insurance policies.

(c) Establish reporting requirements.

(d) Prescribe information to be submitted in applications for self-insured employer certifications.

(e) Prescribe the form and manner of reporting commencement or termination in a self-insured employer group.

(f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

(g) Prescribe such other requirements as the director considers necessary so that employers certified as self-insured employers will meet the financial responsibilities under this chapter.

(12) For the purpose of certification as a self-insured employer group, cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005 (8), public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190 shall be considered by the director to be of the same industry. [1975 c.556 §33; 1979 c.845 §1; 1981 c.535 §38; 1983 c.816 §9; 1985 c.739 §6; 1987 c.94 §107; 1987 c.800 §1; 1987 c.884 §58; 1989 c.602 §1; 1993 c.817 §2]

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

656.432 [1977 c.659 §2; 1979 c.815 §8; repealed by 1981 c.854 §1]

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

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

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

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

(a) The employer fails to comply with ORS 656.407 or 656.430; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

(3) When the certification of a self-insured employer is revoked, or when an employer terminates in a self-insured employer group, that employer must immediately comply with ORS 656.017 (1). If the employer fails to so comply, notwithstanding ORS 656.052 (3), the director immediately may file suit in the circuit court of the county in which the employer resides or employs workers. Upon filing of such a suit, the court shall set a date for hearing and shall cause notice thereof to be served on the employer. The hearing shall be not less than five nor more than 15 days from the date of service of the notice. Upon commencement of the suit, the circuit court shall enjoin the employer from further employing workers until the employer complies with ORS 656.017 (1). [1975 c.556 §34; 1979 c.845 §2; 1981 c.535 §39]

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 the certification will be revoked stating the grounds for the revocation. The notice shall be served on the employer in the manner provided by ORS 656.427 (3). The revocation shall become effective within 10 days after receipt of such notice by the employer unless within such period of time the employer corrects the

grounds for the revocation or appeals in writing to the department.

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

(3) If revocation is affirmed on review by the director, the revocation is effective five days after the employer receives notice of the affirmance unless within such period of time the employer corrects the grounds for the revocation or petitions for judicial review of the affirmance pursuant to ORS 183.310 to 183.550.

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

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

656.443 Procedure upon default by employer. (1) If an 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 director. [1975 c.556 §36; 1981 c.854 §31; 1987 c.373 §32]

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 director may suspend or revoke the authorization of a guaranty contract insurer to issue guaranty contracts if the director, after notice to the company and giving the company an opportunity to be heard and present evidence, finds that:

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

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

(2) A suspension or revocation shall not affect the liability of any such company on any guaranty contract in force prior to the suspension or revocation. [1975 c.556 §37; 1977 c.430 §2; 1987 c.373 §33]

656.451 [1975 c.585 §6; 1981 c.854 §32; 1987 c.373 §34; 1987 c.884 §59; 1989 c.654 §1; 1991 c.640 §1; renumbered 654.097]

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 ORS 731.475 (3), keep such records in this state at places operated by service companies. The records shall be retained in, and may be removed from, this state or disposed of, in accordance with the rules of the director adopted pursuant to ORS 731.475. Such records shall be available to the director for examination and audit at all reasonable times upon notice by the director to the employer.

(2) With the permission of the director, a self-insured employer may keep all claims records and process claims from a location outside of the state. The director shall by rule prescribe the conditions and procedure

for obtaining permission of the director. The director may revoke permission for failure of the employer to comply with the rules. If the permission of an employer is revoked by the director, the employer shall be allowed 60 days after the order of revocation becomes final to comply with subsection (1) of this section. The expenses of the director to examine and audit the records of a self-insured employer outside of this state shall be paid by the employer.

(3) Notwithstanding subsection (1) of this section, a self-insured employer may not have at any one time more than three locations where claims are processed or records are maintained. [1975 c.585 §8; 1989 c.630 §2]

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 Rates, charges, fees and reports by employers insured by SAIF Corporation. (1) Every employer insured by the State Accident Insurance Fund Corporation shall pay to the State Accident Insurance Fund Corporation on or before the 15th day of each month, for insurance coverage, a percentage of the employer's total payroll for the preceding calendar month of subject workers according to and at the rates promulgated by the State Accident Insurance Fund Corporation under ORS 656.508 and shall forward to the State Accident Insurance Fund Corporation on or before the 15th day of each month a signed statement showing the employer's total payroll for the preceding calendar month, the kind of work performed, the number of workers and the number of days worked. The State Accident Insurance Fund Corporation may establish other reporting periods and payment-due dates and in lieu of payment based upon a percentage of total payroll may promulgate rates to be paid by employers insured with the State Accident Insurance Fund Corporation utilizing a certain number of cents for each work-hour worked by workers in such employer's employ. Each such employer shall also pay an annual fee, deposit and minimum premium in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe, to the Industrial Accident Fund for each calendar year. Each such employer may be required to pay a registration fee in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe. The State Accident Insurance Fund Corporation may vary the amount of these fees and minimum premium by employer groupings, accept them in lieu of the other premiums which are based on the employer's payroll, and may adjust the period of application from a calendar year to a fiscal year.

(2) The State Accident Insurance Fund Corporation may provide for a short rate premium applicable to employers who cancel their coverage with the State Accident Insurance Fund Corporation prior to the expiration of the coverage period using a standard short rate table. [Amended by 1957 c.441 §3; 1959 c.450 §6; 1965 c.285 §69; 1967 c.341 §8; 1979 c.348 §2; 1981 c.535 §11; 1981 c.854 §33]

656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of premiums and assessments. (1) In every case where an employer fails or refuses to file any report of payroll required by ORS 656.504 and fails or refuses to pay the premiums and assessments due on such unreported payroll the State Accident Insurance Fund Corporation shall have authority to estimate such payroll and make a demand for premiums and assessments due thereon.

(2) If the report required and the premiums and assessments due thereon are not made within 30 days from the mailing of such demand the employer shall be in default as provided in ORS 656.560, and the corporation may have and recover judgment or file liens for such estimated premiums and assessments or the actual premium and assessment, whichever is greater. [1953 c.679 §2; 1979 c.348 §3; 1981 c.854 §34]

656.506 Assessments for Retroactive Reserve and Reemployment Assistance Reserve; use of reserves; determination by director of benefit level. (1) Every employer shall retain from the moneys earned by all subject workers 11 cents for each day or part of day the worker is employed and pay the money retained in the manner and at such intervals as the director shall direct.

The amount produced by nine cents of the money so deducted from workers' wages shall be set aside in the Consumer and Business Services Fund in a special reserve account to be known as the Retroactive Reserve. The amount produced by two cents of the money so deducted from workers' wages shall be placed in the Reemployment Assistance Reserve.

(2) In addition to all moneys retained under subsection (1) of this section, the director shall assess each subject employer nine 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 director may direct. All moneys received from this assessment shall be placed in the Retroactive Reserve.

(3) 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 annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers shall be payable in the first instance by the insurer or self-insured employer subject to reimbursement from the Retroactive Reserve by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Reserve benefits, such benefits shall be payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Retroactive Reserve by the director. [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; 1979 c.845 §5; 1983 c.391 §1; 1985 c.739 §1; 1990 c.2 §31; 1993 c.760 §1]

Note: The amendments to 656.506 by section 1, chapter 760, Oregon Laws 1993, become operative January 1, 1995. See section 8, chapter 760, Oregon Laws 1993. The text that is operative on and after January 1, 1995, is set forth for the user's convenience.

656.506 (1) As used in this section:

(a) "Employee" has the meaning for that term provided in ORS 657.015.

(b) "Employer" has the meaning for that term provided in ORS 657.025.

(2) Every employer shall retain from the moneys earned by all employees an amount not to exceed two cents for each hour or part of an hour the employee is employed and pay the money retained in the manner and at such intervals as the director shall direct.

(3) In addition to all moneys retained under subsection (2) of this section, the director shall assess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The assessment shall be paid in such manner and at such intervals as the director may direct.

(4) Moneys collected pursuant to subsections (2) and (3) of this section shall be allocated to the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve and Handicapped Workers Reserve in such manner as the director, by rule, may prescribe. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the needs of the reserves referred to in this subsection, in such manner as the director, by rule, may prescribe. Factors to be considered in making such allocations or adjustment of the assessments shall include, but not be limited to, the reserves' fund balances and estimated expenditures and revenues.

(5) Every employer required to pay the assessments referred to in this section shall make and file a quarterly report of employee hours worked and amounts due under this section upon a combined quarterly report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue at the times and in the manner prescribed in ORS 316.168 and 316.171.

(6) 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 annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers shall be payable in the first instance by the insurer or self-insured employer subject to reimbursement from the Retroactive Reserve by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Reserve benefits, such benefits shall be payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Retroactive Reserve by the director.

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

656.508 Authority to fix premium rates for employers. (1) The State Accident Insurance Fund Corporation shall classify occupations or industries with respect to their degree of hazard and fix premium rates upon each of the occupations or industries sufficient to provide adequate funds to carry out the purposes of this chapter and the duties of the State Accident Insurance Fund Corporation.

(2) The State Accident Insurance Fund Corporation may annually, and at such other times as it deems necessary, readjust, increase or decrease the premium rates of employers insured with the State Accident Insurance Fund Corporation. Any such readjustment, increase or decrease shall be made and become effective on such dates as the State Accident Insurance Fund Corporation may determine. The State Accident Insurance Fund Corporation shall notify the employer of the rate.

(3) The State Accident Insurance Fund Corporation may establish a uniform system of rate modification conforming to recognized insurance principles including schedule rating and experience rating, premium discount and retrospective rating. [Amended by 1957 c.41 §1; 1957 c.386 §1; 1963 c.587 §1; 1965 c.285 §71; 1977 c.405 §8; 1981 c.854 §35]

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 [Amended by 1965 c.285 §71a; repealed by 1981 c.854 §1 and 1981 c.876 §1]

656.524 [Amended by 1979 c.562 §29; repealed by 1981 c.854 §1 and 1981 c.876 §1]

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

(2) If, after the determination required by subsection (1) of this section, the State Accident Insurance Fund Corporation finds the Industrial Accident Fund, aside from the reserves deemed actuarially necessary according to recognized insurance principles, contains a surplus, the State Accident Insurance Fund Corporation in its discretion may, after providing for any payments to the state, taxes or other dispositions of surplus provided by law, declare a dividend to be paid to, or credited to the accounts of, employers who were insured by the State Accident Insurance Fund Corporation during all or part of the period for which the dividend is declared. Any dividend so declared shall give due consideration to the solvency of the Industrial Accident Fund, not be unfairly discriminatory and not be promised in advance of such declaration.

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

(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; 1981 c.854 §36; 1982 s.s.3 c.2 §3]

656.530 Rehabilitation facility premium refunds. (1) As soon as practicable after each calendar quarter, the director shall pay from the Reemployment Assistance Reserve to each rehabilitation facility that was an employer during all or part of the preceding calendar quarter, an amount equal to 75 percent of the premiums paid by such facility during that quarter pursuant to any guaranty contract filed with the director under ORS 656.419.

(2) As used in this section, "rehabilitation facility" means a nonprofit facility es-

tablished 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; 1981 c.535 §23; 1990 c.2 §32; 1991 c.93 §10]

656.532 Assessment for Reopened Claims Reserve. (1) The director shall assess each subject employer two 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 director shall direct.

(2) All moneys received by the director pursuant to this section shall be deposited in the Reopened Claims Reserve.

(3) The director may suspend imposition of the assessment if the director determines that moneys in the reserve exceed the amounts necessary to carry out the provisions of ORS 656.625. [1987 c.884 §40]

Note: ORS 656.532 is repealed January 1, 1995. See section 8, chapter 760, Oregon Laws 1993.

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

656.536 Premium charges for coverage of reforestation cooperative workers based on prevailing wage; manner of determining prevailing wage. (1) The premiums charged by an insurer for coverage under this chapter for members of a workers' cooperative engaged primarily in reforestation work and all computations for benefits payable to such individuals under this chapter shall be based on the prevailing rate of wage paid to individuals performing the same work in the same locality as members of the workers' cooperative.

(2) Each time a cooperative contracts for services, the cooperative shall determine the prevailing rate of wage of each job category involved in performance of the contract. The determination of the prevailing rate of wage shall be filed with the insurer and used during the term of the contract. If a dispute arises between the workers' cooperative and the insurer concerning the propriety of the prevailing rate of wage determination by the workers' cooperative, the director shall determine the appropriate prevailing rate of wage.

(3) The determination of the prevailing rate of wage shall be based on the best evidence available concerning wages paid to employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative. If no such work is being performed in the same locality at the time the workers' cooperative engages in a contract for services, the best evidence available from the latest such contract for services for the same work under similar conditions in the nearest locality shall be used by the workers' cooperative to determine the prevailing rate of wage.

(4) Notwithstanding any other provision of this section, in no case shall the prevailing rate of wage used for the purpose of this section be less than the rate of wage specified in the contract for services as the minimum wage to be paid for services performed under the contract. If no such minimum wage requirement is specified in the contract for services, the most recent such contract for services for the same work under similar conditions in the nearest locality which specifies minimum wages shall be used to determine the prevailing rate of wage.

(5) As used in this section:

(a) "Prevailing rate of wage" means the average wage paid to employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative.

(b) "Workers' cooperative" means an enterprise:

(A) Formed pursuant to ORS chapter 62.

(B) The membership of which is limited to individuals who maintain and operate the enterprise.

(C) The members of which each have equal voting power in the control of the enterprise.

(D) The profits of which are distributed to each member on the basis of the quantity or value of the services performed by that individual as a member of the cooperative.

(E) Which makes no dividend or financial or monetary return or any other payment based on capital investment except as provided in subparagraph (D) of this paragraph or at a strictly limited rate of interest agreed upon at the time the capital is invested.

(F) Receives not less than 80 percent of its gross income from engaging in reforestation work and related activity, including but not limited to tree planting, brush clearing, precommercial thinning, trail building, trail maintenance, fire fighting, timber stand examinations, cone picking, tubing, conifer release and roadside brush clearing. [1981 c.279 §2]

656.538 Assessment for Handicapped Workers Reserve and Reemployment Assistance Reserve. (1) The director shall assess all subject employers three cents per day for each day or part of a day each subject worker is employed.

(2) Every employer shall retain from the moneys earned by all subject workers three cents for each day or part of a day the worker is employed.

(3) Moneys assessed and retained pursuant to this section shall be paid to the director in such manner and at such intervals as the director may prescribe. One-fourth of such moneys received by the director shall be credited to the Handicapped Workers Reserve and three-fourths of such moneys shall be credited to the Reemployment Assistance Reserve. [1983 c.816 §11; 1987 c.373 §§35, 35a; 1987 c.884 §21; 1990 c.2 §33]

Note: ORS 656.538 is repealed January 1, 1995. See section 8, chapter 760, Oregon Laws 1993.

ENFORCEMENT OF PREMIUM PAYMENTS

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

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

(3) If an employer ceases to be insured by the State Accident Insurance Fund Corporation, the State Accident Insurance Fund Corporation shall, upon receipt of all payments due the Industrial Accident Fund, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section. [Amended by 1959 c.450 §8; 1965 c.285 §81; 1981 c.854 §37]

656.554 Injunction against employer failing to comply with deposit requirements. (1) If an employer fails to comply with ORS 656.552, the circuit court of the county in which the employer resides or in which the employer employs workers shall, upon the commencement of a suit by the State Accident Insurance Fund Corporation for that purpose, enjoin the employer from further employing workers under this chapter until the employer has complied with ORS 656.552.

(2) Upon filing of a suit for such purpose by the State Accident Insurance Fund Corporation, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

656.556 Liability of person letting a contract for amounts due from contractor. If any person lets a contract and the person to whom the contract was let, while performing the contract, engages as an employer subject to this chapter at the plant of the person letting the contract, upon premises owned, leased or controlled by such person or upon premises where such person is conducting business, the person letting the contract shall be liable to the Industrial Accident Fund for the payment of all premiums, fees and assessments which may be due such fund on account of the performance of the contract or any subcontract thereunder. [Amended by 1965 c.285 §73; 1981 c.854 §38]

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

656.560 Default in payment of premiums, fees, assessments or deposit; remedies. (1) When any payment of premiums, fees and assessments required by this chapter to be made by an employer insured with the State Accident Insurance Fund Corporation on the account of the employer or on account of workers employed by that employer becomes due, interest at the rate of one percent per month or fraction thereof shall be added to the amount of such payment commencing with the first day of the month following the date upon which such payment became due.

(2) If any employer insured with the State Accident Insurance Fund Corporation fails to make and maintain the deposit provided in ORS 656.552 or fails to make payment of premiums, fees and assessments required within 30 days after a written demand by the State Accident Insurance Fund Corporation, such employer is in default and is also subject to a penalty of 10 percent of the amount then due. The written demand shall be mailed to the employer at the last-known address of the employer by registered or certified mail. A copy of the demand shall at the same time be sent to the director.

(3) The amount at any time due, together with interest thereon, and penalty for nonpayment thereof, may be collected by the State Accident Insurance Fund Corporation in the same action.

(4) Every employer in default, as provided in this section, upon receipt of notice

thereof, shall display such notice of default by posting it in a place accessible to the workers in such manner as to inform the workers of such default. [Amended by 1965 c.285 §73a; 1969 c.248 §1; 1971 c.73 §1; 1975 c.556 §44; 1981 c.854 §39]

656.562 Moneys due Industrial Accident Fund as preferred claims; moneys due department as taxes due state. (1) All premiums, fees, assessments, interest charges, penalties or amounts due the Industrial Accident Fund from any employer under this chapter and all judgments recovered by the State Accident Insurance Fund Corporation against any employer under this chapter shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, proceedings for the administration of estates and receiverships involving the employer liable therefor or the property of such employer.

(2) All assessments, interest charges, penalties or amounts due the department shall be considered taxes due the State of Oregon. [Amended by 1979 c.839 §11; 1981 c.854 §40]

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

(2) The insurer shall also have a lien on all lumber, sawlogs, spars, piles, ties or other timber, and upon all other manufactured articles of whatsoever kind or nature, and upon all machinery, tools and equipment of the employer used in connection with the employment on which contributions, premiums or assessments are due, in a sum equal to the amount at any time due from any employer subject to this chapter on account of labor performed by the workers of such employer, together with interest and penalty.

(3) In order to avail itself of the lien created by this section, the insurer shall, within 60 days after the employer is in default, as provided in ORS 656.560, file with the county clerk of the county within which such property is then situated a statement in writing describing the property upon which a lien is claimed and stating the amount of the lien claimed by the insurer. If a lien is claimed on real property not then owned by the employer, the statement must be filed within 60 days from the completion of the work.

(4) The insurer shall, within six months from the filing of the statement, commence a suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

(5) The lien created by this section shall be prior to all other liens and encumbrances, except labor liens and liens for taxes and other amounts due the State of Oregon. [Amended by 1979 c.815 §6; 1981 c.535 §40]

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

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

(3) The employer against whose property the lien has been filed may cause the property to be released by filing with the county clerk of the county wherein the lien is recorded a bond in a sum double the amount claimed in the lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest, to be approved by the circuit judge of the district in which the lien is filed, or in the event of absence from the county in which the lien is filed, then by the county judge of said county, running to the State Accident Insurance Fund Corporation and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the State Accident Insurance Fund Corporation against the employer or that may be found to be a lien upon or against the property of such employer. The clerk shall issue to such employer a certificate stating that the bond is substituted in lieu of the property

of the employer and that the lien on the property is forever released and discharged. A marginal entry of the release and bond shall be made in the lien docket containing the original record of statement of claim. If the State Accident Insurance Fund Corporation establishes the validity of its lien by a suit to foreclose the lien, it shall be entitled to judgment or decree against the sureties upon the bond.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property. Unless a suit is instituted by the State Accident Insurance Fund Corporation to foreclose such lien within two years from the date of filing, the lien shall expire.

(5) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of notice of claim of lien, except taxes and labor liens. [Amended by 1981 c.854 §41]

RECOVERY AGAINST THIRD PERSONS AND NONCOMPLYING EMPLOYERS

656.576 "Paying agency" defined. As used in ORS 656.578 to 656.595, "paying agency" means the self-insured employer or insurer paying benefits to the worker or beneficiaries. [1965 c.285 §44a; 1981 c.854 §42]

656.578 Workers' election whether to sue third person or noncomplying employer for damages. If a worker of a noncomplying employer receives a compensable injury in the course of employment, or if a worker receives a compensable injury due to the negligence or wrong of a third person (other than those exempt from liability under ORS 656.018), entitling the worker under ORS 656.154 to seek a remedy against such third person, such worker or, if death results from the injury, the other beneficiaries shall elect whether to recover damages from such employer or third person. If a worker leaves beneficiaries who are minors, the right of election shall be exercised by their surviving parent, if any; otherwise, such election shall be exercised by the guardian. [Formerly 656.312]

656.580 Payment of compensation notwithstanding cause of action for damages; lien on cause of action for compensation paid. (1) The worker or beneficiaries of the worker, as the case may be, shall be paid the benefits provided by this chapter in the same manner and to the same extent as if no right of action existed against the employer or third party, until damages are recovered from such employer or third party.

(2) The paying agency has a lien against the cause of action as provided by ORS 656.591 or 656.593, which lien shall be preferred to all claims except the cost of recovering such damages. [Formerly 656.314]

656.582 [Renumbered 656.384]

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

(2) Unless such election is made within 60 days from the receipt or service of such demand and unless, after making such election, an action against such third person is instituted within such time as is granted by the paying agency, the worker, beneficiaries or legal representative is deemed to have assigned the cause of action to the paying agency. The paying agency shall allow the worker, the beneficiaries or legal representative of the worker at least 90 days from the making of such election to institute such action. In any case where an insurer of a third person is also the insurer of the employer, notice of this fact must be given in writing by the insurer to the injured worker and to the director within 10 days after the occurrence of any accident which may result in the assertion of the claim against the third person by the injured worker. [Formerly 656.316; 1981 c.854 §43]

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. [Formerly 656.318; 1990 c.2 §34]

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 this chapter, 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 the beneficiaries of the worker elect to recover damages from the employer or third person, notice of such election shall be given the paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages recovered from an employer or third person by the worker or beneficiaries shall be subject to a lien of the paying agency for its share of the proceeds as set forth in this section 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 the beneficiaries of the worker shall receive at least 33-1/3 percent of the balance of such recovery.

(c) The paying agency shall be paid and retain the balance of the recovery, but only to the extent that it is compensated for its expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of its reasonably to be expected future expenditures for compensation and other costs of the worker's claim under this chapter. Such other costs include expenditures of the department from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Handicapped Workers Reserve, the Reemployment Assistance Reserve, the Retroactive Reserve and the Reopened Claims Reserve in reimbursement of the costs of the paying agency. Such other costs also include assessments for reserves in the Consumer and Business Services Fund, but do not include any compensation which may become payable under ORS 656.273 or 656.278.

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

(2) The amount retained by the worker or the beneficiaries of the worker shall be in addition to the compensation or other benefits to which such worker or beneficiaries are entitled under this chapter.

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

(4) As used in this section, "paying agency" includes the Department of Consumer and Business Services with respect to its expenditures from the Consumer and Business Services Fund in reimbursement of the costs of another paying agency for vocational assistance and the costs of claims of noncomplying employers.

(5) The department shall be repaid for its expenditures from the proceeds recovered by the paying agency in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. All moneys received by the department under this section shall be deposited in the same reserve or fund from which the paying agency's costs originally had been reimbursed. [Formerly 656.322; 1977 c.804 §16; 1979 c.839 §12; 1981 c.540 §1; 1985 c.600 §12; 1987 c.373 §35b; 1993 c.445 §1]

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

(2) In any third party action brought pursuant to this chapter, the fact that the injured worker or the beneficiaries of the injured worker are entitled to or have received benefits under this chapter shall not be pleaded or admissible in evidence.

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

656.596 Damage recovery as offset against compensation; recovery procedure; notice to paying agent. (1) If no workers' compensation claim has been filed or accepted at the time a worker or the beneficiaries of a worker recover damages from

a third person or noncomplying employer pursuant to ORS 656.576 to 656.596, the amount of the damages shall constitute an offset against compensation due the worker or beneficiaries of the worker for the injuries for which the recovery is made to the extent of any lien that would have been authorized by ORS 656.576 to 656.596 if a workers' compensation claim had been filed and accepted at the time of recovery of damages.

(2) The offset created by subsection (1) of this section shall be recoverable only as follows:

(a) Out of compensation due prior to the filing of a workers' compensation claim; and

(b) In the manner provided for adjustments in compensation under ORS 656.268 (13).

(3) The worker or the beneficiaries of the worker shall notify the paying agency or potential paying agency of the amount of any damages recovered from a third person or noncomplying employer at the time of recovery or when the worker or the beneficiaries of a worker file a workers' compensation claim that is subject to ORS 656.576 to 656.596. [1993 c.644 §2]

Note: Section 3, chapter 644, Oregon Laws 1993, provides:

Sec. 3. This Act [656.596] shall apply to all workers' compensation claims where the date of injury is after the effective date of this Act [November 4, 1993]. [1993 c.644 §3]

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 Industrial Accident Fund, except as provided by ORS 656.642, shall be made only upon warrants drawn by the Oregon Department of Administrative Services upon vouchers duly approved by the State Accident Insurance Fund Corporation. [Formerly 656.472; 1977 c.804 §17; 1983 c.740 §243; 1985 c.212 §9; 1987 c.373 §36]

656.604 [Formerly 656.474; repealed by 1987 c.373 §85]

(Consumer and Business Services Fund and Reserves)

656.612 Assessments for department activities; amount; collection procedure. (1) The director shall impose and collect assessments from all insurers, self-insured employers and self-insured employer groups in an amount sufficient to pay the expenses of the department under this chapter and ORS chapter 654 and under the Insurance Code. The assessments shall be paid in such manner and at such intervals as the director may direct and when collected shall be deposited in the Consumer and Business Services Fund. Such receipts in the account are continuously appropriated to the department for the purpose described in this subsection.

(2) The assessments shall be levied against the insurers' direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers. The assessments shall be developed under such systems and procedures as the director, in the discretion of the director, determines will reasonably and substantially accomplish such objective at the least possible administrative cost to everyone.

(3) Notwithstanding subsection (2) of this section, the director may impose and collect an additional assessment from self-insured employer groups in an amount sufficient to pay the additional expenses involved in administering the group self-insured program.

(4) Notwithstanding the provisions of this section, the director may establish a minimum assessment applicable to all insurers, self-insured employers and self-insured employer groups and shall establish the time, manner and method of imposing and collecting assessments subject to applicable budgeting and fiscal laws. [1965 c.285 §69a; 1973 c.353 §2; 1975 c.556 §45; 1977 c.804 §18; 1979 c.839 §13; 1981 c.535 §41; 1981 c.854 §44; 1985 c.506 §1; 1987 c.373 §37; 1987 c.884 §22; 1989 c.413 §21; 1990 c.2 §35]

656.614 Self-Insured Employer Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve. (1) The Self-Insured Employer Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve shall be established within the Consumer and Business Services Fund. These reserves shall be used to pay the claims of workers of self-insured employers when the director finds that the worker cannot obtain payment from the employer responsible for payment of the claim because of insolvency of such employer or the excess insurer of the employer, and exhaustion of the excess insurance and security deposited to secure such payment.

(2) If at any time the director finds that the amount of moneys in the reserves is not sufficient to carry out the purposes stated in subsection (1) of this section, the director may impose and collect from self-insured employers assessments sufficient to raise the amount of moneys in the reserves to the point where it can carry out such purposes. If at any time the director finds that there is a surplus in the reserves beyond an amount that can reasonably be anticipated as sufficient to carry out the purposes stated in subsection (1) of this section, the director

may transfer the surplus to the Consumer and Business Services Fund and reduce the total amount of self-insured employer assessment by the amount so transferred.

(3) Notwithstanding the provisions of this section, the director may impose a differential assessment between the two employers adjustment reserves in order to collect sufficient moneys in the reserves as provided in subsection (2) of this section.

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

(5) Notwithstanding subsection (1) of this section, the director may use the reserves to assure timely payment of compensation pending payment from the excess insurance or security deposit. The director shall recover these costs from the excess insurance or the security deposit, up to their limits. [1965 c.285 §67a; 1975 c.556 §46; 1979 c.845 §3; 1981 c.535 §42; 1983 c.816 §12]

656.616 [Formerly 344.810; repealed by 1985 c.600 §15]

656.618 [1965 c.285 §67e; 1977 c.804 §19; repealed by 1987 c.373 §85]

656.620 [1965 c.285 §67f; 1977 c.804 §20; 1979 c.839 §14; repealed by 1987 c.373 §85]

656.622 Reemployment Assistance Reserve; use; claim data not to be used for insurance rating. (1) The director shall establish a Reemployment Assistance Reserve within the Consumer and Business Services 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 rehabilitation facilities as provided in ORS 656.530.

(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 Reemployment Assistance Reserve in such manner and amount as the director considers appropriate.

(3) In addition to such assistance as the director may provide under subsection (2) of this section, the director shall provide to self-insured employers or to the insurers of employers who hire preferred workers reimbursement of the claim costs of injuries incurred by those workers for the first three years from the date of hire. As used in this subsection, "preferred worker" means a worker who, because of a permanent disability resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment, whether or not an order has been issued awarding permanent disability. A worker may not waive eligibility for preferred worker status in the claim by agreement pursuant to ORS 656.236.

(4) Notwithstanding any other provision of law, determinations by the director regarding assistance pursuant to this section are not subject to review by any court or other administrative body.

(5) The Reemployment Assistance Reserve shall be made up of and operated with moneys collected as provided in ORS 656.506 and 656.538.

(6) Any assistance from the Reemployment Assistance Reserve shall be to the extent of the moneys available in the reserve for the purpose of the reserve.

(7) 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. Such rules shall include, but are not limited to, the eligibility criteria to receive assistance under this section and the issuance of identity cards to preferred workers to assist employers in the administration of the program.

(8) Claims costs incurred as a result of an injury sustained by a preferred worker during the three years after that worker is hired shall not be included in any data used for ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the department. Neither insurance premiums nor premium assessments under this chapter are payable for preferred workers.

(9) The director may set aside such other reserves within the Consumer and Business Services Fund as are deemed necessary.

(10) Any funds from the Reemployment Assistance Reserve reimbursed to an agency for costs incurred in reemploying injured state workers in the manner described in ORS 659.412 or in providing wage subsidies for the reemployment of injured state workers shall be outside the biennial expenditure limitation imposed on the agency by the Legislative Assembly and shall be available for expenditure by the agency as a continuous appropriation. [1965 c.285 §68; 1969 c.536 §3; 1971 c.768 §3; 1977 c.557 §2; 1981 c.854 §60; 1983 c.391 §4; 1983 c.816 §13; 1985 c.600 §13; 1985 c.770 §2; 1987 c.884 §20; 1990 c.2 §36; 1991 c.93 §11; 1991 c.496 §1; 1991 c.694 §1; 1993 c.760 §3]

Note: The amendments to 656.622 by section 3, chapter 760, Oregon Laws 1993, become operative January 1, 1995. See section 8, chapter 760, Oregon Laws

1993. The text that is operative on and after January 1, 1995, is set forth for the user's convenience.

656.622 (1) The director shall establish a Reemployment Assistance Reserve within the Consumer and Business Services 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 rehabilitation facilities as provided in ORS 656.530.

(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 Reemployment Assistance Reserve in such manner and amount as the director considers appropriate.

(3) In addition to such assistance as the director may provide under subsection (2) of this section, the director shall provide to self-insured employers or to the insurers of employers who hire preferred workers reimbursement of the claim costs of injuries incurred by those workers for the first three years from the date of hire. As used in this subsection, "preferred worker" means a worker who, because of a permanent disability resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment, whether or not an order has been issued awarding permanent disability. A worker may not waive eligibility for preferred worker status in the claim by agreement pursuant to ORS 656.236.

(4) Notwithstanding any other provision of law, determinations by the director regarding assistance pursuant to this section are not subject to review by any court or other administrative body.

(5) The Reemployment Assistance Reserve shall be made up of and operated with moneys collected as provided in ORS 656.506.

(6) Any assistance from the Reemployment Assistance Reserve shall be to the extent of the moneys available in the reserve for the purpose of the reserve.

(7) 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. Such rules shall include, but are not limited to, the eligibility criteria to receive assistance under this section and the issuance of identity cards to preferred workers to assist employers in the administration of the program.

(8) Claims costs incurred as a result of an injury sustained by a preferred worker during the three years after that worker is hired shall not be included in any data used for ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the department. Neither insurance premiums nor premium assessments under this chapter are payable for preferred workers.

(9) The director may set aside such other reserves within the Consumer and Business Services Fund as are deemed necessary.

(10) Any funds from the Reemployment Assistance Reserve reimbursed to an agency for costs incurred in reemploying injured state workers in the manner described in ORS 659.412 or in providing wage subsidies for the reemployment of injured state workers shall be outside the biennial expenditure limitation imposed on the agency by the Legislative Assembly and shall be available for expenditure by the agency as a continuous appropriation.

(Physical Rehabilitation Phase Out)

Note: Sections 11, 16 and 17, chapter 770, Oregon Laws 1985, and sections 7 and 8 (1), chapter 760, Oregon Laws 1993, provide:

Sec. 11. (1) The Director of the Department of Consumer and Business Services shall phase out the activities for injured workers conducted at the physical rehabilitation facility for injured workers operated by the director. Prior to July 1, 1986, all treatment of injured workers at the facility shall cease and the director shall implement a plan to insure that the services provided to injured workers at the facility are provided through other governmental or private sources in a cost efficient manner. The facility, along with the real property upon which the facility is situated, shall be transferred to the Oregon Department of Administrative Services in accordance with the law controlling disposition of state property. The director shall make periodic reports regarding this subsection to those committees of the Legislative Assembly that function in the interim between the Sixty-third and Sixty-fourth Legislative Assemblies and that have workers' compensation subject matter responsibility.

(2) The Governor shall appoint a committee of such persons as the Governor considers appropriate, including two legislative members, one to be appointed by the President of the Senate and one to be appointed by the Speaker of the House of Representatives, to recommend the most productive use of the physical rehabilitation facility. Final disposition or alternative use of the facility shall be subject to Emergency Board review and approval. [1985 c.770 §11]

(Physical Rehabilitation Financing)

Sec. 16. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is transferred and appropriated continuously to the Department of Higher Education, from the Workers' Reemployment Reserve, the sum of $250,000. Such sum may only be expended to pay the expenses of carrying out the provisions of sections 13 and 14 of this 1985 Act. Any amount of such moneys that remain unobligated and unexpended when the plan required by section 13 of this 1985 Act has been approved shall be expended for paying the expenses of the Center for Occupational Disease Research. [1985 c.770 §16]

Sec. 17. (1) Upon approval by the Legislative Assembly, or the Emergency Board if the Legislative Assembly is not then in session, of the plan for the Center for Occupational Disease Research referred to in section 13 of this 1985 Act, there is transferred to and appropriated continuously to the Department of Higher Education, the following amounts from the following sources:

(a) $750,000 from the Workers' Reemployment Reserve.

(b) The amount of revenue produced by one-half of one cent of the money deducted from workers' wages pursuant to ORS 656.506.

(c) An amount equal to the amount raised by paragraph (b) of this subsection from those assessments made pursuant to ORS 656.612 (2).

(2) The moneys referred to in subsection (1) of this section may only be used for paying the expenses of the Center for Occupational Disease Research. [1985 c.770 §17]

Sec. 7. Section 17, chapter 770, Oregon Laws 1985, is repealed. [1993 c.760 §7]

Sec. 8. Section 7 of this Act first becomes operative December 31, 1994. [1993 c.760 §8 (1)]

Note: Section 2, chapter 549, Oregon Laws 1993, provides:

Sec. 2. (1) There is transferred to the Vocational Rehabilitation Division of the Department of Human

Resources, from the Reemployment Assistance Reserve, for the biennium beginning July 1, 1993, an amount sufficient to match available federal funds. Such transferred sum may only be expended to carry out the provisions of this section. However, the amount transferred from the Reemployment Assistance Reserve shall not exceed $709,946, and no amount shall be transferred if federal funds are not obtained.

(2) The moneys referred to in subsection (1) of this section may be used by the Vocational Rehabilitation Division only to provide services to a worker who has had a disabling compensable injury while employed by an Oregon employer, subject to the following conditions:

(a) The worker has permanent disability and is unable to return to regular employment as a result of the injury.

(b) The worker is no longer eligible for any vocational assistance under ORS 656.340 and the respective rules adopted pursuant thereto.

(c) The worker receives any applicable assistance available from the Reemployment Assistance Reserve as provided under ORS 656.622 and the respective rules adopted pursuant thereto.

(d) The Vocational Rehabilitation Division provides to the director information regarding the worker and the services provided to the worker that the director determines is necessary to evaluate the effectiveness of the services provided under this section and to insure that there is no inappropriate duplication of vocational services provided to an injured worker.

(e) Any other conditions required by and in accordance with an interagency agreement between the director and the Vocational Rehabilitation Division. [1993 c.549 §2]

656.624 [Formerly 656.584; 1983 c.740 §244; repealed by 1987 c.250 §1]

656.625 Reopened Claims Reserve. (1) The director shall establish a Reopened Claims Reserve within the Consumer and Business Services Fund, for the purpose of reimbursing the additional amounts of compensation payable to injured workers that results from any award made by the board pursuant to ORS 656.278 after January 1, 1988.

(2) Notwithstanding any other provision of law, any reimbursement from the Reopened Claims Reserve shall be in such amounts as the board prescribes and only to the extent that funds are available in the reserve.

(3) The director, by rule, shall prescribe the form and manner of requesting reimbursement under this section, the amount payable and such other matters as may be necessary for the administration of this section. [1987 c.884 §39]

656.628 Handicapped Workers Reserve; use of funds; conditions and limitations. (1) The director shall establish in the Consumer and Business Services Fund a Handicapped Workers Reserve for the benefit of complying employers and their workers. The purpose of the reserve is to encourage the employment or reemployment of handicapped workers.

(2) As used in this section, "handicapped worker" means a worker who is afflicted with or subject to any permanent physical or mental impairment, whether congenital or due to an injury or disease, including periodic impairment of consciousness or muscular control of such character that the impairment would prevent the worker from obtaining or retaining employment.

(3) Any employer of a worker who claims or has received compensation under this chapter, or whose dependents have claimed or received such compensation, may file an application with the director requesting the director to make the determinations referred to in subsection (4) of this section.

(4) When the director receives a request referred to in subsection (3) of this section, the director shall determine:

(a) Whether the injured worker was a handicapped worker and whether the injury, disease or death sustained by the worker would not have been sustained except for the handicap; or

(b) Whether the injured worker was a handicapped worker and whether the injury, disease or death sustained by the worker would have been sustained without regard to the handicap but that:

(A) Any resulting disability was substantially greater by reason of the handicap; or

(B) The handicap contributed substantially to the worker's death; and

(C) Whether the injury, disease or death of the worker would not have occurred except for the act or omission of a handicapped worker employed by the same employer and that the act or omission of the handicapped worker would not have occurred except for the handicapped worker's impairment.

(5) If the director determines that any of the conditions described in subsection (4) of this section exist, the director may reimburse the paying agency for compensation amounts in excess of $1,000 per claimant for all subsequent injuries throughout the claimant's working career, paid as the result of the condition.

(6) The reimbursement paid from the Handicapped Workers Reserve shall not be included in any data used for rate making or individual employer rating or dividend calculations by a guaranty contract insurer, a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the department.

(7) Notwithstanding any other provision of law:

(a) Any reimbursement to employers from the Handicapped Workers Reserve shall be in such amounts as the director prescribes

and only to the extent of moneys available in the reserve.

(b) Determinations made by the director regarding reimbursement from the Handicapped Workers Reserve are not subject to review by any court or administrative body.

(c) After a determination has been made by the director that an employer will receive reimbursement from the Handicapped Workers Reserve, any settlement of the claim by the parties is void unless made with the written approval of the director.

(8) The director by rule shall prescribe the form and manner of requesting determinations under this section, the amount of reimbursement payable and such other matters as may be necessary for the administration of this section. [1981 c.535 §14]

656.630 Center for Occupational Disease Research funding; report of activities. (1) There is transferred to and continuously appropriated to the Center for Occupational Disease Research of the Department of Higher Education, the following amounts from the following sources:

(a) The amount of revenue produced by one-sixteenth of one cent of the money deducted from workers' wages pursuant to ORS 656.506 (2).

(b) An amount equal to the amount raised by paragraph (a) of this subsection from those assessments made pursuant to ORS 656.612 (2).

(2) The moneys referred to in subsection (1) of this section may only be used for paying the expenses of the Center for Occupational Disease Research.

(3) Annually, the Center for Occupational Disease Research shall file a report with the State Board of Higher Education, with a copy to the director, describing the activities in sufficient detail for which moneys received under this section during the year have been obligated or expended. [1993 c.760 §6]

Note: 656.630 becomes operative January 1, 1995. See section 8, chapter 760, Oregon Laws 1993.

(Industrial Accident Fund and Reserves)

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

(2) All moneys received by the State Accident Insurance Fund Corporation under this chapter, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected for the director under this chapter and deposited in the Industrial Accident Fund may thereafter be transferred to the director and deposited in the Consumer and Business Services Fund.

(3) All payments authorized to be made by the State Accident Insurance Fund Corporation by this chapter, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund. [Formerly 656.452; 1975 c.556 §47]

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

(2) Subject to the right of the State of Oregon to direct legislatively the disposition of any surplus in excess of reserves and surplus deemed actuarially necessary according to recognized insurance principles, and necessary in addition thereto to assure continued fiscal soundness of the State Accident Insurance Fund Corporation both for current operations and for future capital needs, the State of Oregon declares that it has no proprietary interest in the Industrial Accident Fund or in the contributions made to the fund by the state prior to June 4, 1929. The state disclaims any right to reclaim those contributions and waives any right of reclamation it may have had in that fund. [Formerly 656.454; 1967 c.335 §55; 1982 s.s.3 c.2 §4]

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

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

656.636 Reserves in Industrial Accident Fund for awards for permanent disability or death. For every case where the State Accident Insurance Fund Corporation must pay an award or benefits for death or permanent total disability or permanent par-

tial disability, the State Accident Insurance Fund Corporation forthwith shall set aside in the Industrial Accident Fund in a reserve account the amount required to equal, together with the anticipated interest increment, the present worth of the installments payable on account of that injury. The number of installments shall be computed in case of permanent total disability or death according to the ages of the beneficiaries, and according to the actuarial practices in the insurance field as recommended by the Director of the Department of Consumer and Business Services and, in the case of permanent partial disability, according to the schedule in ORS 656.214 and 656.216. [Formerly 656.456; 1971 c.768 §4; 1973 c.614 §7; 1974 s.s. c.41 §10; 1977 c.200 §1; 1977 c.804 §21; 1979 c.839 §15; 1979 c.845 §4; 1981 c.854 §45; 1983 c.391 §2; 1985 c.739 §2]

656.637 [1979 c.334 §2; 1983 c.391 §3; repealed by 1985 c.739 §3]

656.638 [Formerly 656.460; 1969 c.536 §4; 1971 c.768 §5; 1977 c.804 §22; repealed by 1981 c.854 §1]

656.640 Creation of reserves. The State Accident Insurance Fund Corporation may set aside such other reserves within the Industrial Accident Fund as are deemed necessary. [Formerly 656.468; 1981 c.854 §46]

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

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

(a) To pay compensation benefits.

(b) To refund to employers amounts paid to the Industrial Accident Fund in excess of the amounts required by this chapter.

(c) To distribute any surplus to employers as required by ORS 656.526.

(d) To distribute any moneys recovered from an employer or third party in which the State Accident Insurance Fund Corporation has no equity.

(e) To pay administrative expenses. [Formerly 656.464; 1971 c.357 §1; 1983 c.740 §245]

656.644 Petty cash funds. The State Accident Insurance Fund Corporation may, at its discretion, establish and maintain petty cash funds, not exceeding a total of $20,000 for the purpose of making change, refunding fees and premiums and assessments paid in error, the advance of traveling expense to employees and claimants, and paying miscellaneous legal fees and other petty incidental expenses in the administration of the Workers' Compensation Law. [Formerly 656.466; 1981 c.854 §47]

656.646 [Formerly 656.558; repealed by 1981 c.876 §1]

656.648 [1974 s.s. c.41 §12; repealed by 1981 c.854 §1 and 1981 c.876 §1]

ADMINISTRATION
(General Provisions)

656.702 Records of corporation, department and insurers open to public. (1) The records of the State Accident Insurance Fund Corporation, excepting employer account records and claimant files, shall be open to public inspection. The accident experience records of the corporation shall be available to a bona fide rating organization to assist in making workers' compensation rates but any costs involved in making the records available shall be borne by the rating organization. Accident experience records of carrier-insured employers shall also be available on the same terms to assist in making such rates.

(2) Disclosure of workers' compensation claim records of the department is governed by ORS 192.502 (18). [Formerly 656.426; 1973 c.794 §33a; 1975 c.556 §48; 1987 c.884 §47; 1993 c.817 §3]

656.704 Application of Administrative Procedures Act; authority of director and board. (1) Actions and orders of the director, and administrative and judicial review thereof, regarding matters concerning a claim under this chapter are subject to the procedural provisions of this chapter and such procedural rules as the board may prescribe.

(2) Actions and orders of the director and the conduct of hearings and other proceedings pursuant to this chapter, and judicial review thereof, regarding all matters other than those concerning a claim under this chapter, are subject only to ORS 183.310 to 183.550 and such procedural rules as the director may prescribe. The director may make arrangements with the board pursuant to ORS 656.726 to obtain the services of referees to conduct such proceedings or may make other arrangements to obtain personnel to conduct such proceedings. The director by rule shall prescribe the classes of orders issued by referees and other personnel that are final, appealable orders and those orders that are preliminary orders subject to revision by the director.

(3) For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue. However, such matters do not

include any proceeding for resolving a dispute regarding medical treatment or fees for which a procedure is otherwise provided in this chapter. [1965 c.285 §54b; 1977 c.804 §23; 1979 c.839 §16; 1981 c.874 §11; 1985 c.770 §8; 1987 c.373 §38a; 1990 c.2 §37]

656.708 Hearings Division; duties. 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 654.750 to 654.780, all cases, disputes and controversies regarding matters concerning a claim under this chapter, and for conducting such other hearings and proceedings as may be prescribed by law. [1977 c.804 §25; 1979 c.839 §17; 1987 c.373 §39]

656.709 Ombudsman for injured workers; ombudsman for small business; duties. (1) The office of ombudsman for injured workers is created in the department. The ombudsman shall report directly to the director. The ombudsman shall act as an advocate for injured workers by accepting complaints concerning matters related to workers' compensation, investigating them and attempting to resolve them. The ombudsman shall also provide information to injured workers to enable them to protect their rights in the workers' compensation system.

(2) The office of ombudsman for small business is created in the department. The ombudsman shall report directly to the director. The ombudsman shall provide information and assistance to small businesses with regard to workers' compensation insurance and claims processing matters. [1987 c.884 §60b; 1990 c.2 §38]

656.710 [1977 c.699 §2; 1979 c.839 §18; repealed by 1981 c.535 §26]

656.712 Workers' Compensation Board; members; qualifications; confirmation; term; vacancies. (1) The Workers' Compensation Board, composed of five members appointed by the Governor, is created within the department. Not more than three members shall belong to one political party and inasmuch as the duties to be performed by the members vitally concern the employers, the employees, as well as the whole people, of the state, persons shall be appointed as members who fairly represent the interests of all concerned. Two members shall be selected from among persons representing the interests of employees. Two members shall be selected from among persons representing the interests of employers. One member shall not represent the interests of either employees or employers.

(2) A member of the board shall be appointed for a term of four years from the date of appointment and qualification. Each member shall hold office until a successor is appointed and qualified.

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

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. [Formerly 656.402; 1973 c.792 §28; 1977 c.109 §3; 1977 c.804 §26; 1981 c.535 §43; 1987 c.373 §40; 1993 c.462 §1]

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

(2) If the member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the findings thereon, with a record of the proceedings.

(3) The power of removal is absolute and there is no right of review in any court whatsoever. [Formerly 656.406; 1989 c.1094 §3]

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

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

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

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

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

(d) That the member 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 shall also, before entering upon the duties of office, execute a bond payable to the State of Oregon, in the penal sum of $10,000, with sureties to be approved by the Governor,

conditioned for the faithful discharge of the duties of office. The bond, when so executed and approved, shall be filed in the office of the Secretary of State. [Formerly 656.408; 1977 c.804 §27; 1987 c.373 §41]

656.718 Meetings; chairman; quorum; panels. (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 a successor is chosen.

(2) A majority of the members shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining members to exercise all the powers of the board.

(3) In exercise of authority to decide individual cases, members of the board may sit together or in panels. A decision of a panel shall be by a majority of the panel. When sitting en banc, the concurrence of a majority of the members participating is necessary for a decision. No board member shall review any case in which the member acted as a referee in the case. [Formerly 656.414; 1967 c.2 §4; 1993 c.462 §2]

656.720 Prosecution and defense of actions by Attorney General and district attorneys. Upon request of the director the Attorney General or, under direction of the Attorney General, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of this chapter, when such actions or proceedings are within the county in which such district attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the department or its employees in their official capacity. [Formerly 656.586; 1971 c.418 §18; 1977 c.804 §28]

656.722 Board authority to employ subordinates. The board may employ and terminate the employment of such assistants, experts, field personnel and clerks as may be required in the administration of ORS chapter 654 and this chapter and other duties assigned to the board by statute. [Formerly 656.416; 1977 c.804 §29; 1981 c.860 §§2, 6; 1987 c.373 §42]

656.724 Referees; appointment; qualifications; term; performance survey; removal procedure. (1) The board shall employ referees to hold such hearings as may be prescribed by law. 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 ORS 656.716 (2). The board may appoint referees to serve for a probationary period of 18 months 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 board shall establish criteria whereby each referee shall receive an annual performance evaluation. Such criteria shall include, but not be limited to, work quality and productivity.

(b) 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. Not less than 90 days prior to the expiration of the probationary period, or within 180 days but not less than 90 days prior to each four-year review, the board shall solicit comments from attorneys practicing in the field of workers' compensation. These comments and all complaints and other records filed with the board regarding the official conduct, competence or fitness of a referee, shall be reviewed by the board. The board shall conduct an annual survey of all attorneys regularly participating in workers' compensation cases, in such manner as to allow the attorneys to rate anonymously the referees as to knowledge of workers' compensation law, judicial temperament, capability to handle hearings, diligence, efficiency and other similar factors.

(c) In accordance with paragraph (d) 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.

(d) 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 Employment Relations Board and it shall conduct a hearing on whether the referee should be dismissed. The Employment Relations Board 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 Employment Relations Board after hearing shall be final.

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

(5) A presiding referee shall be appointed by the board and shall serve as presiding referee at the pleasure of the board. The

presiding referee shall perform such administrative duties as the board may delegate. The board may designate another referee to serve as acting presiding referee during any period when the presiding referee is absent or disabled.

(6) Notwithstanding subsections (1) to (5) of this section, the board may employ any member of the Oregon State Bar to serve as a referee on a temporary basis, not to exceed one year, when the board determines that such employment is necessary in the conduct of the business of the Hearings Division. Criteria and procedures for selecting and employing such referees shall be identical to those established for regularly employed referees.

(7) 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; 1979 c.677 §1; 1979 c.839 §19; 1981 c.535 §44; 1985 c.212 §11; 1987 c.884 §13; 1989 c.1094 §4; 1990 c.2 §39]

656.726 Duties and powers to carry out workers' compensation and occupational safety laws. (1) The board in its name and the director in the director's name as director may sue and be sued, and each shall have a seal.

(2) The board hereby is charged with the administration and the responsibility for the Hearings Division and for reviewing appealed orders of referees in controversies concerning a claim arising under this chapter, exercising own motion jurisdiction under this chapter and providing such policy advice as the director may request, and providing such other review functions as may be prescribed by law. To that end any of its members or assistants authorized thereto by the members shall have power to:

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

(b) Administer oaths.

(c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony before any hearing under ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter.

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

(3) The director hereby is charged with duties of administration, regulation and enforcement of ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. To that end the director may:

(a) Make and declare all rules which are reasonably required in the performance of the director's duties.

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

(c) Administer oaths.

(d) Issue and serve by representatives of the director, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony in any inquiry, investigation, proceeding or rulemaking hearing conducted by the director or the director's representatives. The director may require the attendance and testimony of employers, their officers and representatives in any inquiry under this chapter, and the production by employers of books, records, papers and documents without the payment or tender of witness fees on account of such attendance.

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

(f) Provide standards for the evaluation of disabilities. The following provisions apply to the standards:

(A) The criteria for evaluation of disabilities under ORS 656.214 (5) shall be permanent impairment due to the industrial injury as modified by the factors of age, education and adaptability to perform a given job.

(B) Impairment is established by a preponderance of medical evidence based upon objective findings.

(C) When, upon reconsideration of a determination order or notice of closure pursuant to ORS 656.268, it is found that the worker's disability is not addressed by the standards adopted pursuant to this paragraph, notwithstanding ORS 656.268, the director shall stay further proceedings on the reconsideration of the claim and shall adopt temporary rules amending the standards to accommodate the worker's impairment. When the director adopts temporary rules amending the standards, the director shall submit those temporary rules to the Workers' Compensation Management-Labor Advisory Committee for review at their next meeting.

(g) Prescribe procedural rules for and conduct hearings, investigations and other proceedings pursuant to ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter regarding all matters other than those specifically allocated to the board or the Hearings Division.

(4) The board may make and declare all rules which are reasonably required in the performance of its duties, including but not

limited to rules of practice and procedure in connection with hearing and review proceedings and exercising its authority under ORS 656.278. 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.

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

(6) The director, the board and the State Accident Insurance Fund Corporation shall have the right, not subject to review, to contract for the exchange of, or payment for, such services between them as will reduce the overall cost of administering this chapter.

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

(8) The director shall have the same powers regarding inspection of books, records and payrolls of employers as are granted the corporation under ORS 656.758. The director may disclose information obtained from such inspections to the Director of the Department of Revenue to the extent the Director of the Department of Revenue requires such information to determine that a person complies with the revenue and tax laws of this state and to the Director of the Employment Department to the extent the Director of the Employment Department requires such information to determine that a person complies with ORS chapters 657 and 657A.

(9) The director shall collect hours-worked data information in addition to total payroll for workers engaged in various jobs in the construction industry classifications described in the job classification portion of the Workers' Compensation and Employers Liability Manual and the Oregon Special Rules Section published by the National Council on Compensation Insurance. The information shall be collected in the form and format necessary for the National Council on Compensation Insurance to analyze premium equity. [Formerly 656.410; 1977 c.804 §30; 1979 c.677 §2; 1979 c.839 §20; 1981 c.535 §45; 1981 c.723 §5; 1981 c.854 §49a; 1981 c.876 §9; 1985 c.600 §16; 1985 c.706 §4; 1985 c.770 §4; 1987 c.884 §2; 1990 c.2 §40]

Note: See note under 656.202.

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

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

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

(3) A procedure for ordering reduction of benefits or such other sanctions as the department considers appropriate to insure that injured workers comply with rules promulgated pursuant to this section. [1977 c.430 §7; 1979 c.117 §4]

656.728 [Subsection (1) formerly 344.820; subsection (2) formerly 344.830; 1973 c.634 §3; 1977 c.862 §2; 1981 c.854 §50; 1981 c.874 §6; 1981 c.535 §12; repealed by 1985 c.600 §2]

656.729 [1981 c.723 §2; repealed by 1985 c.770 §5]

656.730 Assigned risk plan. (1) The director shall promulgate a plan for the equitable apportionment among the State Accident Insurance Fund Corporation and all members of workers' compensation rating organizations in the state coverage required by ORS 656.017 for subject employers whose coverage the fund, or any members of such rating organizations, object to providing. The plan shall include provisions authorized pursuant to ORS 737.265 (2), except that:

(a) Regardless of the rating plans adopted by any rating organization, the plan shall provide a rating structure with differing rate tiers for insureds too small to qualify for experience rating and for insureds large enough to be experience rated; and

(b) The plan shall seek and be entitled to receive approval for all classification exceptions approved by the director for any insurer.

(2) If any insurer issuing guaranty contracts under this chapter refuses to accept its equitable apportionment under such plan, the director shall revoke the insurer's authority to issue guaranty contracts. [1965 c.285 §94a; 1979 c.673 §2; 1990 c.1 §2]

656.732 Power to compel obedience to subpoenas and punish for misconduct. The circuit court for any county, or the judge of such court, on application of the director, the board, or any of the board members, their referees or assistants, shall compel obedience to subpoenas issued and served pursuant to ORS 656.726 and shall

punish disobedience of any such subpoena or any refusal to testify at any authorized session or hearing or to answer any lawful inquiry of the director or any of the board members, referees or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpoena issued from the court is punished. [Formerly 656.412; 1979 c.839 §21]

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 ORS 656.052 (1) a civil penalty of not more than $1,000.

(2) The director may assess any person who continues to violate ORS 656.052 (1), after an order issued pursuant to ORS 656.052 (2) has become final, a civil penalty, in addition to any penalty assessed under subsection (1) of this section, of not more than $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 recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

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

(7) All moneys collected under this section shall be paid into the Consumer and Business Services Fund. [1973 c.447 §4; 1977 c.73 §1; 1983 c.696 §23]

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. An order by the director under this subsection is prima facie correct and the burden is upon the employer to prove that the order is incorrect.

(2) Where any insurance carrier, including the State Accident Insurance Fund Corporation, is alleged by an employer to have contracted to provide the employer with workers' compensation coverage for the period in question, the 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 ORS 183.315 (1), the issuance of orders declaring a person to be a noncomplying employer or assessing civil penalties pursuant to this chapter, the con-

duct of hearings and the judicial review thereof shall be as provided in ORS 183.310 to 183.550, except that:

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

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

(c) When an order declaring a person to be a noncomplying employer is contested at the same hearing as a matter concerning a claim pursuant to ORS 656.283 and 656.704, the review thereof shall be as provided for a matter concerning a claim.

(5) If a person against whom an order is issued pursuant to this section prevails at hearing or on appeal, the person is entitled to reasonable attorney fees to be paid by the director from the Consumer and Business Services Fund. [1973 c.447 §5; 1975 c.341 §1; 1975 c.759 §19; 1977 c.804 §31; 1979 c.839 §22; 1983 c.816 §14; 1987 c.234 §3]

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 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(2) The director may assess a civil penalty against an employer or insurer who:

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

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

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

(4) ORS 656.735 (5) to (7) and 656.740 also apply to orders and penalties assessed under this section. [1975 c.556 §38; 1979 c.839 §31; 1987 c.233 §2; 1987 c.884 §46]

656.750 Civil penalty for failure to maintain records of compensation claims; amount; disposition of funds. (1) The director shall assess against a self-insured employer who fails to comply with ORS 656.455, a civil penalty of $250 a day for each day such failure continues.

(2) ORS 656.735 (5) to (7) and 656.740 also apply to orders and penalties assessed under this section. [1975 c.585 §9; 1983 c.696 §24; 1987 c.233 §3; 1987 c.884 §60; 1991 c.640 §3]

(State Accident Insurance Fund Corporation)

656.751 State Accident Insurance Fund Corporation created; board; members' qualifications; terms; compensation; expenses; function; report. (1) The State Accident Insurance Fund Corporation is created as an independent public corporation. The corporation shall be governed by a board of five directors appointed by the Governor. Two members shall be chosen to represent the public. Of the remaining three members, a board member must be insured by the State Accident Insurance Fund Corporation at the time of appointment and for one year prior to appointment, or an employee of such an employer. Members of the board are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(2) No member of the board of directors shall have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of appointment to the board, in any corporation or other business entity doing business in the workers' compensation insurance industry.

(3) The term of office of a member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board of directors is entitled to compensation and expenses as provided in ORS 292.495.

(5) The board of directors shall select one of its members as chairman and another as vice chairman, for such terms and with such duties and powers as the board of directors considers necessary for performance of the functions of those offices. A majority of the members of the board of directors constitutes a quorum for the transaction of business.

(6) The board of directors shall meet at least once every three months at a time and place determined by the board of directors. The board of directors shall meet at such other times and places specified by the call

of the chairman or of a majority of the members of the board of directors.

(7) It is the function of the board of directors to establish the policies for the operation of the State Accident Insurance Fund Corporation, consistent with all applicable provisions of law.

(8) The board shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the State Accident Insurance Fund Corporation for the preceding year. [1979 c.829 §2; 1981 c.854 §51]

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

(2) The functions of the State Accident Insurance Fund Corporation shall be:

(a) To confer with and solicit employers and to determine, handle, audit and enforce collection of premiums, assessments and fees of insured employers insured with the State Accident Insurance Fund Corporation;

(b) To make insurance available to as many Oregon employers as inexpensively as may be consistent with the overall integrity of the Industrial Accident Fund, in accordance with ORS 656.634 and sound principles of insurance;

(c) To receive and handle and process the claims of workers and beneficiaries of workers injured in the employ of insured employers insured with the State Accident Insurance Fund Corporation; and

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

(3) The State Accident Insurance Fund Corporation in its name may sue and be sued.

(4) The State Accident Insurance Fund Corporation may authorize self-insured employers or other insurers to use any physical rehabilitation center operated by the State Accident Insurance Fund Corporation on such terms as the State Accident Insurance Fund Corporation deems reasonable.

(5) The State Accident Insurance Fund Corporation in its own name, may acquire, lease, rent, own and manage real property. It may construct, equip and furnish buildings or other structures as are necessary to accommodate its needs. It may purchase, rent, lease or otherwise acquire for its use all supplies, materials, equipment and services necessary to carry out its functions. It may sell or otherwise dispose of any property acquired under this subsection.

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

(7) The State Accident Insurance Fund Corporation may furnish advice, services and excess workers' compensation and employer liability insurance to any employer qualified as a self-insured employer under the provisions of ORS 656.407, on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable.

(8) With the approval of the Director of the Department of Consumer and Business Services, the State Accident Insurance Fund Corporation may provide reinsurance coverage to Oregon employers on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable. [1965 c.285 §55; 1965 c.564 §7; 1967 c.253 §1; 1969 c.247 §2; 1971 c.262 §1; 1977 c.659 §3; 1979 c.815 §10; 1979 c.829 §5a; 1981 c.854 §52; 1981 c.876 §7; 1990 c.1 §3]

656.753 State Accident Insurance Fund Corporation exempt from certain financial administration laws; contracts with state agencies for services. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, 279, 282, 283, 291, 292 and 293 do not apply to the State Accident Insurance Fund Corporation.

(2) In carrying out the duties, functions and powers imposed by law upon the State Accident Insurance Fund Corporation, the board of directors or the manager of the State Accident Insurance Fund Corporation may contract with any state agency for the performance of such duties, functions and powers as the corporation considers appropriate.

(3) Notwithstanding subsection (1) or (2) of this section, ORS 293.240 except for appeals pursuant to ORS 737.318, ORS 293.260, 293.262 and 293.505 (2) shall apply to the directors, manager, assistants and accounts of the State Accident Insurance Fund Corporation and any subsidiary corporation formed or acquired by the State Accident Insurance Fund Corporation.

(4) Notwithstanding subsection (1) or (2) of this section, ORS 243.305, 279.053 and 659.025 apply to the directors, manager and employees of the State Accident Insurance Fund Corporation. [1979 c.829 §4; 1981 c.876 §8; subsection (3) enacted as 1983 c.412 §2; subsection (4) enacted as 1983 c.808 §4; 1987 c.884 §5]

656.754 Manager; appointment; functions. (1) The State Accident Insurance Fund Corporation is under the direct supervision of a manager appointed by the board of directors of the State Accident Insurance Fund Corporation. The manager serves at the pleasure of the board of directors. The manager shall qualify in the manner provided for board members in ORS 656.716 except that no bond shall be required.

(2) The manager has such powers as are necessary to carry out the functions of the State Accident Insurance Fund Corporation, subject to policy direction by the board of directors.

(3) The manager may employ, terminate and supervise the employment of such assistants, experts, field personnel and clerks as may be required in the administration of the State Accident Insurance Fund Corporation. [1965 c.285 §56; 1973 c.792 §29; 1979 c.829 §6]

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 this chapter shall always be open to inspection by the State Accident Insurance Fund Corporation or its agent for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary in the administration of said statutes.

(2) Every employer subject to this chapter shall keep a true and accurate record of the number of workers and the wages paid by the employer, the occupations at which and the number of days or parts of days any of the workers are employed, and shall furnish to the State Accident Insurance Fund Corporation, upon request, a sworn statement of the same.

(3) Any employer who willfully misrepresents to the State Accident Insurance Fund Corporation the amount of the payroll upon which the amount of premium is based shall be liable to the State Accident Insurance Fund Corporation in a sum equal to 10 times the amount of the difference between the amount of such premium computed according to the representation thereof by such employer and the amount for which the employer is liable under this chapter according to a correct computation of the payroll. Such liability shall be enforced in a civil action in the name of the State Accident Insurance Fund Corporation and any amount so collected shall become a part of the Industrial Accident Fund.

(4) Failure on the part of the employer to submit such books, records and payrolls for inspection to any member of the State Accident Insurance Fund Corporation or any of its representatives presenting written authority from the State Accident Insurance Fund Corporation, or a refusal on the part of an employer to keep a payroll in accordance with this section, when demanded by the State Accident Insurance Fund Corporation, subjects the offending employer to a penalty of $100 for each offense, to be collected by a civil action in the name of the State Accident Insurance Fund Corporation and paid into the Industrial Accident Fund. [Amended by 1981 c.854 §53]

656.760 Notice to Secretary of State regarding action on audit report. Not later than the 90th day after the Secretary of State completes and delivers to the appropriate authority an audit under ORS 297.210, the State Accident Insurance Fund Corporation or any subsidiary corporation formed or acquired by the State Accident Insurance Fund Corporation shall notify the Secretary of State in writing of the measures taken and proposed to be taken, if any, to respond to the recommendations of the audit report. The Secretary of State may extend the 90-day period for good cause. [1983 c.412 §3]

(Claims Examiner Certification)

656.780 Certification for claims examiners; lists of examiners; department inspection of list; fee for certification. (1) Not later than January 1, 1991, the director shall establish a certification program to instruct workers' compensation claims examiners on the requirements of this chapter and on the rules adopted pursuant thereto. The director may certify individuals, or the director may certify programs administered by insurers or self-insured employers or their professional associations.

(2) Each insurer or self-insured employer shall maintain a list of the insurer's or self-insured employer's workers' compensation claims examiners. The list shall be subject to inspection and review by the director.

(3) Individuals with more than one year of workers' compensation claim examination experience on January 1, 1991, shall be certified by the director without having to undergo the certification program. Individuals with less than one year of workers' compensation claims examination experience on January 1, 1991, shall have until January 1, 1992, to satisfactorily complete a certification program.

(4) The director may prescribe a fee in an amount not to exceed $25 for issuing certifications. [1990 c.2 §52]

(Advisory Committees)

656.790 Workers' Compensation Management-Labor Advisory Committee; membership; duties; expenses. (1) The Governor shall appoint a Workers' Compensation Management-Labor Advisory Committee composed of 14 appointed members. Seven members from organized labor shall represent subject workers and seven members shall represent subject employers. In addition to the appointed members, the director shall serve ex-officio as a member of the committee. The appointment of members of the committee is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The director may recommend areas of the law which the director desires to have studied or the committee may study such aspects of the law as the committee shall determine require their consideration. The committee periodically shall review the standards for evaluation of permanent disability adopted under ORS 656.726 and shall recommend to the director factors to be included or such other modification of application of the standards as the committee considers appropriate. The committee shall report its findings to the director for such action as the director deems appropriate. The committee may report to the Legislative Assembly such findings and recommendations as the committee considers 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 Consumer and Business Services Fund. [1969 c.448 §2; 1975 c.556 §49; 1977 c.804 §32; 1990 c.2 §41]

Note: See note under 656.202.

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 nine members and shall be appointed by and serve at the pleasure of the director. The committee shall include six physicians who are qualified to be attending physicians, including two medical doctors, one naturopathic physician, one chiropractic physician, one osteopathic physician and one dentist, and shall include one representative of insurers, one representative of employers and one representative of workers. Members of the committee shall be paid travel and other necessary expenses for service as a member. Such payments shall be made from the Consumer and Business Services Fund.

(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 insurers or self-insured employers.

(b) To review proposed standards for medical evaluation of disabilities and to make recommendations to the director.

(c) To prepare and submit for consideration by the director appropriate rules governing the furnishing of medical care to injured workers by employers or insurers under this chapter, including but not limited to the rates to be paid for medical services to be provided to injured workers, and any supplement or amendment to such rules. The director, upon the motion of the director, upon the request of the advisory committee or upon request of any other interested party, shall in compliance with ORS 183.310 to 183.550 promulgate such rules, supplements or amendments, or such modifications thereof as the director determines to be desirable.

(3) Nothing in this section prevents the director on the motion of the director and in compliance with ORS 183.310 to 183.550 from promulgating rules relating to medical care under its general authority under ORS 656.726, but before doing so the director shall submit such rules to the advisory committee created by this section for its advice. [1965 c.285 §27; 1981 c.535 §46; 1981 c.854 §54; 1987 c.884 §26]

656.796 State Advisory Council on Occupational Safety and Health; membership; terms; compensation and expenses; annual report of activities. (1) To assist the director in the effective development of policies and programs with respect to occupational safety and health, there hereby is created an advisory council within the department to be known as the State Advisory Council on Occupational Safety and Health.

(2) The council shall consist of nine members appointed by the Governor and shall be composed of men and women representing employers and employees in equal numbers, and representatives of the public who shall elect their chairman. The director shall serve as an ex officio member of the council.

(3) The members of the council shall be appointed for a term of two years and are entitled to compensation and expenses as provided in ORS 292.495. Such amounts shall be paid from the Consumer and Business Services Fund.

(4) The council shall meet once each month at a time and place determined by the

council, and at such other times and places as are determined by the chairman or a majority of the members of the council.

(5) The council shall submit to the Governor and to the Legislative Assembly an annual report that covers the activities of the department with regard to occupational safety and health programs. [1981 c.535 §50]

OCCUPATIONAL DISEASE LAW

656.802 "Occupational disease" defined. (1) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(a) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(b) Any mental disorder which requires medical services or results in physical or mental disability or death.

(c) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(2) The worker must prove that employment conditions were the major contributing cause of the disease or its worsening. Existence of the disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter:

(a) Unless the employment conditions producing the mental disorder exist in a real and objective sense.

(b) Unless the employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment.

(c) Unless there is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) Unless there is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of fire fighters of any political division who have completed five or more years of employment as fire fighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as fire fighters is an "occupational disease." Any condition or impairment of health arising under this subsection shall be presumed to result from a fire fighter's employment. However, any such fire fighter must have taken a physical examination upon becoming a fire fighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the fire fighter's employment. [Amended by 1959 c.351 §1; 1961 c.583 §1; 1973 c.543 §1; 1977 c.734 §1; 1983 c.236 §1; 1987 c.713 §4; 1990 c.2 §43]

656.804 Occupational disease as an injury under Workers' Compensation Law. An occupational disease, as defined in ORS 656.802, is considered an injury for employees of employers who have come under this chapter, except as otherwise provided in ORS 656.802 to 656.807. [Amended by 1965 c.285 §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 Department of Consumer and Business Services, and paid by such prospective employer. In every case in which such right is exercised, and the applicant is subsequently employed, the employer shall file a true copy of the written direction for and the doctor's findings resulting from the physical examination, with the director within 10 days after the beginning of such employment.

656.807 Time for filing of claims for occupational disease; procedure. (1) All occupational disease claims shall be void unless a claim is filed with the insurer or self-insured employer by whichever is the later of the following dates:

(a) One year from the date the worker first discovered, or in the exercise of reasonable care should have discovered, the occupational disease; or

(b) One year from the date the claimant becomes disabled or is informed by a physician that the claimant is suffering from an occupational disease.

(2) If the occupational disease results in death, a claim may be filed within one year from the date that the worker's beneficiary

first discovered, or in the exercise of reasonable care should have discovered, that the cause of the worker's death was due to an occupational disease.

(3) The procedure for processing occupational disease claims shall be the same as provided for accidental injuries under this chapter. [Amended by 1953 c.440 §2; 1959 c.351 §2; 1965 c.285 §87a; 1973 c.543 §3; 1981 c.535 §47; 1981 c.854 §55; 1985 c.212 §10; 1987 c.713 §6]

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 [Repealed by 1981 c.854 §1]

WORKER LEASING COMPANIES

656.850 License; compliance with workers' compensation and safety laws. (1) As used in this section and ORS 656.018, 656.403, 656.855 and 737.270, "worker leasing company" means a person who provides workers, by contract and for a fee, to work for a client but does not include a person who provides workers to a client on a temporary basis to supplement the existing work force in special situations such as employee absences, professional skill shortages, seasonal workloads and special assignments and projects with the expectation that the position or positions will be terminated upon completion of the special situation.

(2) No person shall perform services as a worker leasing company in this state without first having obtained a license therefor from the director. No person required by this section to obtain a license shall fail to comply with this section or ORS 656.855, or any rule adopted pursuant thereto.

(3) When a worker leasing company provides workers to a client, the worker leasing company shall satisfy the requirements of ORS 656.017 and 656.407 and provide workers' compensation coverage for those workers and any subject workers employed by the client unless during the term of the lease arrangement the client has an active guaranty contract on file with the director that extends coverage to subject workers employed by the client and any workers leased by the client. If the client allows the guaranty contract to terminate and continues to employ subject workers or has leased workers, the client shall be considered a noncomplying employer unless the worker leasing company has complied with subsection (5) of this section.

(4) When a worker leasing company provides workers for a client, the worker leasing company shall assure that the client provides adequate training, supervision and instruction for those workers to meet the requirements of ORS chapter 654.

(5) When a worker leasing company provides subject workers to work for a client and also provides workers' compensation coverage for those workers, the worker leasing company shall notify the director in writing. The notification shall be given in such manner as the director may prescribe. A worker leasing company may terminate its obligation to provide workers' compensation coverage for workers provided to a client by giving to the client and the director written notice of the termination. A notice of termination shall state the effective date and hour of the termination, but the termination shall be effective not less than 30 days after the notice is received by the director. Notice to the client under this section shall be given by mail, addressed to the client at its last-known address. If the client is a partnership, notice may be given to any of the partners. If the client is a corporation, notice may be given to any agent or officer of the corporation upon whom legal process may be served. [1993 c.628 §2]

656.855 Rules; dedication of moneys received. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, the director, by rule, shall establish a licensing system for worker leasing companies. Such system shall include, but not be limited to:

(a) Prescribing the form and content of and the times and procedures for submitting applications for license issuance or renewal.

(b) Prescribing the term of the license and the fee for original issuance and renewal of the license. The fees shall be set in an amount necessary to support the administration of this section and ORS 656.850.

(c) Prescribing those violations of this section or of ORS 656.850 for which the director may refuse to issue or renew or may suspend or revoke a license.

(d) Prescribing the form and contents of records a licensee is required to maintain and specifying the times, places and manner of audit by the director of those records.

(2) All moneys received by the director pursuant to this section shall be credited to the Consumer and Business Services Fund and are appropriated continuously to the di-

rector to carry out the provisions of this section and ORS 656.850. [1993 c.628 §3]

PENALTIES

656.990 Penalties. (1) Any person who knowingly makes any false statement or representation to the board or its employees, the director or employees of the director, the insurer or self-insured employer for the purpose of obtaining any benefit or payment under this chapter, either for self or any other person, or who knowingly misrepresents to the board, the director or the corporation or any of their representatives the amount of a payroll, or who knowingly submits a false payroll report to the board, the director or the corporation, is punishable, upon conviction, by imprisonment for a term of not more than one year or by a fine of not more than $1,000, or by both.

(2) Violation of ORS 656.052 is 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 ORS 656.726 or 656.758 when demanded by the director or corporation, is punishable, upon conviction, by a fine of not more than $100 or by imprisonment in the county jail for not more than 90 days, or by both. Circuit courts and justice courts shall have concurrent jurisdiction of this offense.

(5) Failure on the part of an employer to send the signed payroll statement required by ORS 656.504 within 30 days after receipt of notice by the director or corporation is a misdemeanor.

(6) Violation of ORS 656.560 (4) is 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; 1981 c.535 §48; 1981 c.854 §56; 1985 c.770 §9; 1990 c.2 §44]