

# House Bill 3528

Sponsored by Representatives BOONE, KRUMMEL

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Adds podiatric physician and surgeon to definition of attending physician for purposes of workers' compensation law.

## A BILL FOR AN ACT

1  
2 Relating to podiatric physicians; amending ORS 656.005.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 656.005 is amended to read:

5 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-  
6 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
7 preceding the fiscal year in which the injury occurred.

8 (2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a  
9 worker, who is entitled to receive payments under this chapter. "Beneficiary" does not include:

10 (a) A spouse of an injured worker living in a state of abandonment for more than one year at  
11 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker  
12 for a period of two years and who has not during that time received or attempted by process of law  
13 to collect funds for support or maintenance is considered living in a state of abandonment.

14 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

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

3 (B) If an otherwise compensable injury combines at any time with a preexisting condition to  
4 cause or prolong disability or a need for treatment, the combined condition is compensable only if,  
5 so long as and to the extent that the otherwise compensable injury is the major contributing cause  
6 of the disability of the combined condition or the major contributing cause of the need for treatment  
7 of the combined condition.

8 (b) "Compensable injury" does not include:

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

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

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

17 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for  
18 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless  
19 there is a reasonable expectation that permanent disability will result from the injury.

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

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

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

25 (10) "Dependent" means any of the following-named relatives of a worker whose death results  
26 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,  
27 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the  
28 accident, are dependent in whole or in part for their support upon the earnings of the worker.  
29 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the  
30 accident other than father, mother, husband, wife or children are not included within the term "de-  
31 pendent."

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

33 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the  
34 healing arts in any country or in any state, territory or possession of the United States within the  
35 limits of the license of the licentiate.

36 (b) Except as otherwise provided for workers subject to a managed care contract, "attending  
37 physician" means a doctor or physician who is primarily responsible for the treatment of a worker's  
38 compensable injury and who is:

39 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the  
40 Board of Medical Examiners for the State of Oregon [*or*], **a podiatric physician and surgeon li-**  
41 **censed under ORS 677.805 to 677.840 by the Board of Medical Examiners for the State of**  
42 **Oregon**, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly  
43 licensed doctor in any country or in any state, territory or possession of the United States; or

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

1 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,  
2 territory or possession of the United States.

3 (c) "Consulting physician" means a doctor or physician who examines a worker or the worker's  
4 medical record to advise the attending physician or nurse practitioner authorized to provide  
5 compensable medical services under ORS 656.245 regarding treatment of a worker's compensable  
6 injury.

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

11 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of  
12 a temporary service provider is not the employer of temporary workers provided by the temporary  
13 service provider.

14 (c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning  
15 for that term provided in ORS 656.850.

16 (14) "Guaranty contract insurer" and "insurer" mean the State Accident Insurance Fund Cor-  
17 poration or an insurer authorized under ORS chapter 731 to transact workers' compensation insur-  
18 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

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

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

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

23 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS  
24 656.017.

25 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or  
26 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and  
27 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-  
28 sponses to physical examinations that are not reproducible, measurable or observable.

29 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the  
30 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
31 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

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

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

44 (23) "Person" includes partnership, joint venture, association, limited liability company and  
45 corporation.

1 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-  
 2 genital abnormality, personality disorder or similar condition that contributes to disability or need  
 3 for treatment, provided that:

4 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the  
 5 worker has been diagnosed with such condition, or has obtained medical services for the symptoms  
 6 of the condition regardless of diagnosis; and

7 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes  
 8 the initial injury;

9 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the  
 10 new medical condition; or

11 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment  
 12 precedes the onset of the worsened condition.

13 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-  
 14 genital abnormality, personality disorder or similar condition that contributes to disability or need  
 15 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim  
 16 for worsening in such claims pursuant to ORS 656.273 or 656.278.

17 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or  
 18 need for treatment if the condition merely renders the worker more susceptible to the injury.

19 (25) "Self-insured employer" means an employer or group of employers certified under ORS  
 20 656.430 as meeting the qualifications set out by ORS 656.407.

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

23 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS  
 24 656.023.

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

27 (29) "Wages" means the money rate at which the service rendered is recompensed under the  
 28 contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
 29 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
 30 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
 31 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
 32 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
 33 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
 34 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
 35 the premium of the employer.

36 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,  
 37 who engages to furnish services for a remuneration, subject to the direction and control of an em-  
 38 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,  
 39 cities, school districts and other public corporations, but does not include any person whose services  
 40 are performed as an inmate or ward of a state institution or as part of the eligibility requirements  
 41 for a general or public assistance grant. For the purpose of determining entitlement to temporary  
 42 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-  
 43 clude a person who has withdrawn from the workforce during the period for which such benefits are  
 44 sought.

45 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

1       **SECTION 2.** ORS 656.005, as amended by section 2, chapter 811, Oregon Laws 2003, is amended  
 2 to read:

3       656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered em-  
 4 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
 5 preceding the fiscal year in which the injury occurred.

6       (2) “Beneficiary” means an injured worker, and the husband, wife, child or dependent of a  
 7 worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

8       (a) A spouse of an injured worker living in a state of abandonment for more than one year at  
 9 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker  
 10 for a period of two years and who has not during that time received or attempted by process of law  
 11 to collect funds for support or maintenance is considered living in a state of abandonment.

12       (b) A person who intentionally causes the compensable injury to or death of an injured worker.

13       (3) “Board” means the Workers’ Compensation Board.

14       (4) “Carrier-insured employer” means an employer who provides workers’ compensation cover-  
 15 age with a guaranty contract insurer.

16       (5) “Child” includes a posthumous child, a child legally adopted prior to the injury, a child to-  
 17 ward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such  
 18 stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent  
 19 upon the worker for support. An invalid dependent child is a child, for purposes of benefits, re-  
 20 gardless of age, so long as the child was an invalid at the time of the accident and thereafter re-  
 21 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,  
 22 an invalid dependent child is considered to be a child under 18 years of age.

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

25       (7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appli-  
 26 ances, arising out of and in the course of employment requiring medical services or resulting in  
 27 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-  
 28 dental means, if it is established by medical evidence supported by objective findings, subject to the  
 29 following limitations:

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

32       (B) If an otherwise compensable injury combines at any time with a preexisting condition to  
 33 cause or prolong disability or a need for treatment, the combined condition is compensable only if,  
 34 so long as and to the extent that the otherwise compensable injury is the major contributing cause  
 35 of the disability of the combined condition or the major contributing cause of the need for treatment  
 36 of the combined condition.

37       (b) “Compensable injury” does not include:

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

40       (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-  
 41 forming, any recreational or social activities primarily for the worker’s personal pleasure; or

42       (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of  
 43 the evidence the injured worker’s consumption of alcoholic beverages or the unlawful consumption  
 44 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of  
 45 such consumption.

1 (c) A “disabling compensable injury” is an injury which entitles the worker to compensation for  
 2 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless  
 3 there is a reasonable expectation that permanent disability will result from the injury.

4 (d) A “nondisabling compensable injury” is any injury which requires medical services only.

5 (8) “Compensation” includes all benefits, including medical services, provided for a compensable  
 6 injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pur-  
 7 suant to this chapter.

8 (9) “Department” means the Department of Consumer and Business Services.

9 (10) “Dependent” means any of the following-named relatives of a worker whose death results  
 10 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,  
 11 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the  
 12 accident, are dependent in whole or in part for their support upon the earnings of the worker.  
 13 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the  
 14 accident other than father, mother, husband, wife or children are not included within the term “de-  
 15 pendent.”

16 (11) “Director” means the Director of the Department of Consumer and Business Services.

17 (12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the  
 18 healing arts in any country or in any state, territory or possession of the United States within the  
 19 limits of the license of the licentiate.

20 (b) Except as otherwise provided for workers subject to a managed care contract, “attending  
 21 physician” means a doctor or physician who is primarily responsible for the treatment of a worker’s  
 22 compensable injury and who is:

23 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the  
 24 Board of Medical Examiners for the State of Oregon [*or*], **a podiatric physician and surgeon li-**  
 25 **censed under ORS 677.805 to 677.840 by the Board of Medical Examiners for the State of**  
 26 **Oregon**, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly  
 27 licensed doctor in any country or in any state, territory or possession of the United States; or

28 (B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits,  
 29 whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners  
 30 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,  
 31 territory or possession of the United States.

32 (c) “Consulting physician” means a doctor or physician who examines a worker or the worker’s  
 33 medical record to advise the attending physician regarding treatment of a worker’s compensable  
 34 injury.

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

39 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of  
 40 a temporary service provider is not the employer of temporary workers provided by the temporary  
 41 service provider.

42 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning  
 43 for that term provided in ORS 656.850.

44 (14) “Guaranty contract insurer” and “insurer” mean the State Accident Insurance Fund Cor-  
 45 poration or an insurer authorized under ORS chapter 731 to transact workers’ compensation insur-

1 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

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

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

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

6 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS  
7 656.017.

8 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or  
9 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and  
10 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-  
11 sponses to physical examinations that are not reproducible, measurable or observable.

12 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the  
13 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
14 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

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

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

27 (23) "Person" includes partnership, joint venture, association, limited liability company and  
28 corporation.

29 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-  
30 genital abnormality, personality disorder or similar condition that contributes to disability or need  
31 for treatment, provided that:

32 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the  
33 worker has been diagnosed with such condition, or has obtained medical services for the symptoms  
34 of the condition regardless of diagnosis; and

35 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes  
36 the initial injury;

37 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the  
38 new medical condition; or

39 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment  
40 precedes the onset of the worsened condition.

41 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-  
42 genital abnormality, personality disorder or similar condition that contributes to disability or need  
43 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim  
44 for worsening in such claims pursuant to ORS 656.273 or 656.278.

45 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or

1 need for treatment if the condition merely renders the worker more susceptible to the injury.

2 (25) "Self-insured employer" means an employer or group of employers certified under ORS  
3 656.430 as meeting the qualifications set out by ORS 656.407.

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

6 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS  
7 656.023.

8 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS  
9 656.027.

10 (29) "Wages" means the money rate at which the service rendered is recompensed under the  
11 contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
12 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
13 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
14 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
15 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
16 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
17 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
18 the premium of the employer.

19 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,  
20 who engages to furnish services for a remuneration, subject to the direction and control of an em-  
21 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,  
22 cities, school districts and other public corporations, but does not include any person whose services  
23 are performed as an inmate or ward of a state institution or as part of the eligibility requirements  
24 for a general or public assistance grant. For the purpose of determining entitlement to temporary  
25 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-  
26 clude a person who has withdrawn from the workforce during the period for which such benefits are  
27 sought.

28 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.  
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