

# Senate Bill 268

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## 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**.

Makes timeliness of service of petition for judicial review of order of Workers' Compensation Board jurisdictional.

Authorizes board to enter orders implementing settlement of issue during pendency of petition for judicial review with Court of Appeals. Allows appellate court to dismiss petition for judicial review if settlement disposes of all issues or to limit scope of judicial review to issues not disposed of by settlement.

## A BILL FOR AN ACT

1  
2 Relating to judicial review of orders of the Workers' Compensation Board; creating new provisions;  
3 and amending ORS 656.236 and 656.298.

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

5 **SECTION 1.** ORS 656.298 is amended to read:

6 656.298. (1) Within the time limit specified in ORS 656.295, any party affected by an order of the  
7 Workers' Compensation Board, including orders issued pursuant to ORS 656.278, may request judi-  
8 cial review of the order by the Court of Appeals.

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

11 (3) The judicial review shall be commenced by serving a copy of a petition for judicial review  
12 on the board and on the parties who appeared in the review proceedings, and by filing with the clerk  
13 of the Court of Appeals the original petition for judicial review with proof of service indorsed  
14 thereon. The petition for judicial review shall state:

15 (a) The name of the person [*appealing*] **requesting judicial review** and of all other parties.

16 (b) The date **of the filing of** the order [*appealed from was filed*] **for which judicial review is**  
17 **requested.**

18 (c) A statement that the [*order is being appealed to*] **person is requesting judicial review by**  
19 **the Court of Appeals.**

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

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

23 (5) The following requirements of subsection (3) of this section are jurisdictional and may not  
24 be waived or extended:

25 (a) Service of the petition for judicial review on all parties identified in the petition for judicial  
26 review as adverse parties or, if the petition for judicial review does not identify adverse parties, on  
27 all parties who have appeared in the proceeding before the board, **within the time limits imposed**  
28 **by ORS 656.295 (8) and by subsection (4) of this section.**

**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 (b) Filing of the original petition for judicial review with the Court of Appeals within the time  
 2 limits imposed by ORS 656.295 (8) and by subsection (4) of this section.

3 (6) Within 30 days after service of a petition for judicial review on the board, the board shall  
 4 forward to the clerk of the Court of Appeals:

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

6 (b) All exhibits.

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

8 (7) The review by the Court of Appeals shall be on the entire record forwarded by the board.  
 9 Review shall be as provided in ORS 183.482 (7) and (8).

10 (8) Review under this section shall be given precedence on the docket over all other cases, ex-  
 11 cept those given equal status by statute.

12 **(9)(a) If the parties to a petition for judicial review of an order of the board settle all or**  
 13 **part of the matter during the pendency of the petition for judicial review, the board has ju-**  
 14 **risdiction to enter any orders that may be necessary to implement the settlement.**

15 **(b) If the settlement disposes of all issues during the pendency of the petition for judicial**  
 16 **review, the appellate court may dismiss the petition for judicial review.**

17 **(c) If the settlement disposes of part of the issues during the pendency of the petition for**  
 18 **judicial review, the appellate court may limit judicial review to the issues not disposed of by**  
 19 **the settlement.**

20 **SECTION 2.** ORS 656.236 is amended to read:

21 656.236. (1)(a) The parties to a claim, by agreement, may make such disposition of any or all  
 22 matters regarding a claim, except for medical services, as the parties consider reasonable, subject  
 23 to such terms and conditions as the Workers' Compensation Board may prescribe. For the purposes  
 24 of this section, "matters regarding a claim" includes the disposition of a beneficiary's independent  
 25 claim for compensation under this chapter. Unless otherwise specified, a disposition resolves all  
 26 matters and all rights to compensation, attorney fees and penalties potentially arising out of claims,  
 27 except medical services, regardless of the conditions stated in the agreement. Any such disposition  
 28 shall be filed for approval with the board. If the worker is not represented by an attorney, the  
 29 worker may, at the worker's request, personally appear before the board. Submission of a disposition  
 30 shall stay all other proceedings and payment obligations, except for medical services, on that claim.  
 31 The disposition shall be approved in a final order unless:

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

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

35 (C) Within 30 days of submitting the disposition for approval, the worker, the insurer or self-  
 36 insured employer requests the board to disapprove the disposition.

37 (b) Notwithstanding paragraph (a)(C) of this subsection, a disposition may provide for waiver of  
 38 the provisions of that subparagraph if the worker was represented by an attorney at the time the  
 39 worker signed the disposition.

40 (2) Notwithstanding any other provision of this chapter, an order approving disposition of a  
 41 claim pursuant to this section is not subject to review. However, an order disapproving a disposition  
 42 is subject to review pursuant to ORS 656.298. The board shall file with the Department of Consumer  
 43 and Business Services a copy of each disposition that the board approves. If the board does not  
 44 approve a disposition the board shall enter an order setting aside the disposition.

45 (3) Unless the terms of the disposition expressly provide otherwise, no payments, except for

1 medical services, pursuant to a disposition are payable until the board approves the disposition.  
 2 [*The Court of Appeals or Supreme Court shall remand to the board cases in which proposed dispo-*  
 3 *sitions are submitted to the court for approval.*]

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

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

9 (6) Any claim in which the parties enter into a disposition under this section shall not be eligi-  
 10 ble for reimbursement of expenditures authorized by law from the Workers' Benefit Fund without  
 11 the prior approval of the Director of the Department of Consumer and Business Services.

12 (7) Insurers or self-insured employers who are parties to an approved claim disposition agree-  
 13 ment under this section shall not be joined as parties in subsequent proceedings under this chapter  
 14 to determine responsibility for payment for any matter for which disposition is made by the agree-  
 15 ment. Insurers or self-insured employers may be joined as parties in subsequent proceedings under  
 16 this chapter to determine responsibility for medical services for claim conditions for which dispo-  
 17 sition is made by an approved claim disposition agreement, but no order in any subsequent pro-  
 18 ceedings may alter the obligations of an insurer or self-insured employer set forth in an approved  
 19 claims disposition agreement, except as those obligations concern medical services.

20 (8) No release by a worker or beneficiary of any rights under this chapter is valid, except pur-  
 21 suant to a claim disposition agreement under this section or a release pursuant to ORS 656.593.

22 (9) Notwithstanding ORS 656.005 (21), as used in this section, "party" does not include a non-  
 23 complying employer.

24 **SECTION 3. (1) The amendments to ORS 656.298 (3) and (5) by section 1 of this 2007 Act**  
 25 **apply to petitions for judicial review filed on or after the effective date of this 2007 Act.**

26 **(2) The provisions of ORS 656.298 (9) apply to petitions for judicial review pending with**  
 27 **the appellate court on the effective date of this 2007 Act and to petitions for judicial review**  
 28 **filed on or after the effective date of this 2007 Act.**

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