

House Bill 3479

Sponsored by COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

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**.

Modifies authority of Workers' Compensation Board and of board chairperson. Limits term of employment of certain employees of Workers' Compensation Board. Requires Employment Relations Board to make determination if Administrative Law Judge employed by Workers' Compensation Board may be terminated.

A BILL FOR AN ACT

1
2 Relating to workers' compensation administrative agencies; amending ORS 654.290, 656.214, 656.268,
3 656.307, 656.712, 656.718, 656.722, 656.724 and 656.726.

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

5 **SECTION 1.** ORS 654.290 is amended to read:

6 654.290. (1) Promulgation by the Director of the Department of Consumer and Business Services
7 or by the Workers' Compensation Board of regulations, rules and standards authorized by ORS
8 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, and any judicial review thereof, shall
9 be as provided in ORS chapter 183.

10 (2) Notwithstanding ORS 183.315 (1), the issuance of orders pursuant to ORS 654.001 to 654.295,
11 654.412 to 654.423 and 654.750 to 654.780, the conduct of hearings in contested cases and the judicial
12 review thereof shall be as provided in ORS chapter 183, except that:

13 (a) The [*chairperson of the Workers' Compensation Board or the designee of the chairperson*]
14 **board** shall employ Administrative Law Judges to hold hearings in contested cases.

15 (b) The order of an Administrative Law Judge in a contested case shall be deemed to be a final
16 order of the board.

17 (c) The director shall have the same right to judicial review of the order of an Administrative
18 Law Judge as any person who is adversely affected or aggrieved by such final order.

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

21 (3) Administrative Law Judges shall be members in good standing of the Oregon State Bar and
22 possess such other qualifications as the board may prescribe, and shall be employed in accordance
23 with ORS 656.724.

24 **SECTION 2.** ORS 656.214 is amended to read:

25 656.214. (1) As used in this section:

26 (a) "Impairment" means the loss of use or function of a body part or system due to the
27 compensable industrial injury or occupational disease determined in accordance with the standards
28 provided under ORS 656.726, expressed as a percentage of the whole person.

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

30 (c) "Permanent partial disability" means:

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) Permanent impairment resulting from the compensable industrial injury or occupational
 2 disease; or

3 (B) Permanent impairment and work disability resulting from the compensable industrial injury
 4 or occupational disease.

5 (d) "Regular work" means the job the worker held at injury.

6 (e) "Work disability" means impairment modified by age, education and adaptability to perform
 7 a given job.

8 (2) When permanent partial disability results from a compensable injury or occupational disease,
 9 benefits shall be awarded as follows:

10 (a) If the worker has been released to regular work by the attending physician or nurse practi-
 11 tioner authorized to provide compensable medical services under ORS 656.245 or has returned to
 12 regular work at the job held at the time of injury, the award shall be for impairment only. Impair-
 13 ment shall be determined in accordance with the standards provided by the Director of the Depart-
 14 ment of Consumer and Business Services pursuant to ORS 656.726 [(4)] (3). Impairment benefits are
 15 determined by multiplying the impairment value times 100 times the average weekly wage as defined
 16 by ORS 656.005.

17 (b) If the worker has not been released to regular work by the attending physician or nurse
 18 practitioner authorized to provide compensable medical services under ORS 656.245 or has not re-
 19 turned to regular work at the job held at the time of injury, the award shall be for impairment and
 20 work disability. Work disability shall be determined in accordance with the standards provided by
 21 the director pursuant to ORS 656.726 [(4)] (3). Impairment shall be determined as provided in par-
 22 agraph (a) of this subsection. Work disability benefits shall be determined by multiplying the
 23 impairment value, as modified by the factors of age, education and adaptability to perform a given
 24 job, times 150 times the worker's weekly wage for the job at injury as calculated under ORS 656.210
 25 (2). The factor for the worker's weekly wage used for the determination of the work disability may
 26 be no more than 133 percent or no less than 50 percent of the average weekly wage as defined in
 27 ORS 656.005.

28 (3) Impairment benefits awarded under subsection (2)(a) of this section shall be expressed as a
 29 percentage of the whole person. Impairment benefits for the following body parts may not exceed:

30 (a) For the loss of one arm at or above the elbow joint, 60 percent.

31 (b) For the loss of one forearm at or above the wrist joint, or the loss of one hand, 47 percent.

32 (c) For the loss of one leg, at or above the knee joint, 47 percent.

33 (d) For the loss of one foot, 42 percent.

34 (e) For the loss of a great toe, six percent; for loss of any other toe, one percent.

35 (f) For partial or complete loss of hearing in one ear, that proportion of 19 percent which the
 36 loss bears to normal monaural hearing.

37 (g) For partial or complete loss of hearing in both ears, that proportion of 60 percent which the
 38 combined binaural hearing loss bears to normal combined binaural hearing. For the purpose of this
 39 paragraph, combined binaural hearing loss shall be calculated by taking seven times the hearing loss
 40 in the less damaged ear plus the hearing loss in the more damaged ear and dividing that amount
 41 by eight. In the case of individuals with compensable hearing loss involving both ears, either the
 42 method of calculation for monaural hearing loss or that for combined binaural hearing loss shall be
 43 used, depending upon which allows the greater award of impairment.

44 (h) For partial or complete loss of vision of one eye, that proportion of 31 percent which the loss
 45 of monocular vision bears to normal monocular vision. For the purposes of this paragraph, the term

1 “normal monocular vision” shall be considered as Snellen 20/20 for distance and Snellen 14/14 for
 2 near vision with full sensory field.

3 (i) For partial loss of vision in both eyes, that proportion of 94 percent which the combined
 4 binocular visual loss bears to normal combined binocular vision. In all cases of partial loss of sight,
 5 the percentage of said loss shall be measured with maximum correction. For the purpose of this
 6 paragraph, combined binocular visual loss shall be calculated by taking three times the visual loss
 7 in the less damaged eye plus the visual loss in the more damaged eye and dividing that amount by
 8 four. In the case of individuals with compensable visual loss involving both eyes, either the method
 9 of calculation for monocular visual loss or that for combined binocular visual loss shall be used,
 10 depending upon which allows the greater award of impairment.

11 (j) For the loss of a thumb, 15 percent.

12 (k) For the loss of a first finger, eight percent; of a second finger, seven percent; of a third fin-
 13 ger, three percent; of a fourth finger, two percent.

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

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

26 (6) All permanent disability contemplates future waxing and waning of symptoms of the condi-
 27 tion. The results of waxing and waning of symptoms may include, but are not limited to, loss of
 28 earning capacity, periods of temporary total or temporary partial disability, or inpatient
 29 hospitalization.

30 **SECTION 3.** ORS 656.268 is amended to read:

31 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
 32 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
 33 insurer or self-insured employer shall close the worker’s claim, as prescribed by the Director of the
 34 Department of Consumer and Business Services, and determine the extent of the worker’s permanent
 35 disability, provided the worker is not enrolled and actively engaged in training according to rules
 36 adopted by the director pursuant to ORS 656.340 and 656.726, when:

37 (a) The worker has become medically stationary and there is sufficient information to determine
 38 permanent disability;

39 (b) The accepted injury is no longer the major contributing cause of the worker’s combined or
 40 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
 41 the accepted injury is no longer the major contributing cause of the worker’s combined or conse-
 42 quential condition or conditions, and there is sufficient information to determine permanent disabili-
 43 ty, the likely permanent disability that would have been due to the current accepted condition shall
 44 be estimated;

45 (c) Without the approval of the attending physician or nurse practitioner authorized to provide

1 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a
 2 period of 30 days or the worker fails to attend a closing examination, unless the worker
 3 affirmatively establishes that such failure is attributable to reasons beyond the worker's control; or

4 (d) An insurer or self-insured employer finds that a worker who has been receiving permanent
 5 total disability benefits has materially improved and is capable of regularly performing work at a
 6 gainful and suitable occupation.

7 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
 8 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
 9 duced by any sums earned during the training.

10 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
 11 shall be furnished to the worker, if requested by the worker.

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

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

15 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-
 16 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
 17 is released to return to regular employment;

18 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-
 19 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
 20 is released to return to modified employment, such employment is offered in writing to the worker
 21 and the worker fails to begin such employment. However, an offer of modified employment may be
 22 refused by the worker without the termination of temporary total disability benefits if the offer:

23 (A) Requires a commute that is beyond the physical capacity of the worker according to the
 24 worker's attending physician or the nurse practitioner who may authorize temporary disability un-
 25 der ORS 656.245;

26 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
 27 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
 28 or as established by the pattern of employment prior to the injury was that the employer had mul-
 29 tiple or mobile work sites and the worker could be assigned to any such site;

30 (C) Is not with the employer at injury;

31 (D) Is not at a work site of the employer at injury;

32 (E) Is not consistent with the existing written shift change policy or is not consistent with
 33 common practice of the employer at injury or aggravation; or

34 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
 35 gaining agreement;

36 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
 37 or terminated under ORS 656.262 (4) or other provisions of this chapter; or

38 (e) Notwithstanding paragraph (c)(C), (D), (E) and (F) of this subsection, the attending physician
 39 or nurse practitioner who has authorized temporary disability benefits under ORS 656.245 for a home
 40 care worker who has been made a subject worker pursuant to ORS 656.039 advises the home care
 41 worker and documents in writing that the home care worker is released to return to modified em-
 42 ployment, appropriate modified employment is offered in writing by the Home Care Commission or
 43 a designee of the commission to the home care worker for any client of the Department of Human
 44 Services who employs a home care worker and the home care worker fails to begin the employment.

45 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-

1 ability in closure of the claim shall be pursuant to the standards prescribed by the director. The
 2 insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the
 3 worker's attorney if the worker is represented, and to the director. The notice must inform:

4 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
 5 isfied with the terms of the notice;

6 (B) The worker of the amount of any further compensation, including permanent disability
 7 compensation to be awarded; of the duration of temporary total or temporary partial disability
 8 compensation; of the right of the worker to request reconsideration by the director under this sec-
 9 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
 10 insured employer to request reconsideration by the director under this section within seven days
 11 of the date of the notice of claim closure; of the aggravation rights; and of such other information
 12 as the director may require; and

13 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
 14 and 656.208.

15 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
 16 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
 17 self-insured employer shall issue a notice of closure if the requirements of this section have been
 18 met or a notice of refusal to close if the requirements of this section have not been met. A notice
 19 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
 20 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
 21 close the claim; of the right to be represented by an attorney; and of such other information as the
 22 director may require.

23 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
 24 party first must request reconsideration by the director under this section. A worker's request for
 25 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
 26 consideration by an insurer or self-insured employer may be based only on disagreement with the
 27 findings used to rate impairment and must be made within seven days of the date of the notice of
 28 closure.

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

35 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
 36 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
 37 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
 38 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
 39 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
 40 the claimant. If the increase in compensation results from information that the insurer or self-
 41 insured employer demonstrates the insurer or self-insured employer could not reasonably have
 42 known at the time of claim closure, from new information obtained through a medical arbiter ex-
 43 amination or from a determination order issued by the director that addresses the extent of the
 44 worker's permanent disability that is not based on the standards adopted pursuant to ORS 656.726
 45 [(4)(f)] **(3)(f)**, the penalty shall not be assessed.

1 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
 2 held on each notice of closure. At the reconsideration proceeding:

3 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
 4 worker about the worker's condition at the time of claim closure, shall become part of the recon-
 5 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
 6 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
 7 cost of the court reporter and one original of the transcript of the deposition for the Department
 8 of Consumer and Business Services and one copy of the transcript of the deposition for each party
 9 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
 10 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
 11 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
 12 pared in time for use in the reconsideration proceeding.

13 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
 14 may correct information in the record that is erroneous and may submit any medical evidence that
 15 should have been but was not submitted by the attending physician or nurse practitioner authorized
 16 to provide compensable medical services under ORS 656.245 at the time of claim closure.

17 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
 18 this section, the director may rescind the closure.

19 (b) If necessary, the director may require additional medical or other information with respect
 20 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

21 (c) In any reconsideration proceeding under this section in which the worker was represented
 22 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
 23 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
 24 pensation awarded to the worker.

25 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
 26 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
 27 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
 28 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
 29 If an order on reconsideration has not been mailed on or before 18 working days from the date the
 30 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
 31 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
 32 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
 33 in subsection (7) of this section when reconsideration is postponed further because the worker has
 34 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
 35 any further proceedings shall occur as though an order on reconsideration affirming the notice of
 36 closure was mailed on the date the order was due to issue.

37 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
 38 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
 39 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
 40 the period for reconsideration begins upon the earlier of the date of the request for reconsideration
 41 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
 42 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
 43 not to file a separate request for reconsideration, the party does not waive the right to fully par-
 44 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
 45 if the initiating party withdraws the request for reconsideration.

1 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
2 not prepared in time for use in the reconsideration proceeding.

3 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
4 656.283 within 30 days from the date of the reconsideration order.

5 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
6 with the impairment used in rating of the worker's disability, the director shall refer the claim to
7 a medical arbiter appointed by the director.

8 (b) If neither party requests a medical arbiter and the director determines that insufficient
9 medical information is available to determine disability, the director may refer the claim to a med-
10 ical arbiter appointed by the director.

11 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

12 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
13 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
14 director in consultation with the Oregon Medical Board and the committee referred to in ORS
15 656.790.

16 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
17 such tests as may be reasonable and necessary to establish the worker's impairment.

18 (B) If the director determines that the worker failed to attend the examination without good
19 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
20 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
21 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
22 or any prior opening of the claim until such time as the worker attends and cooperates with the
23 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
24 good cause must be submitted prior to the conclusion of the 60-day postponement period.

25 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
26 cooperated with a medical arbiter examination or established good cause, there shall be no further
27 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
28 consideration record shall be closed, and the director shall issue an order on reconsideration based
29 upon the existing record.

30 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
31 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
32 pensation Board or upon court review, shall not be due and payable to the worker.

33 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
34 be paid by the insurer or self-insured employer.

35 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
36 director for reconsideration of the notice of closure.

37 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
38 sible before the director, the Workers' Compensation Board or the courts for purposes of making
39 findings of impairment on the claim closure.

40 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
41 greement with the impairment used in rating the worker's disability, and the director determines
42 that the worker is not medically stationary at the time of the reconsideration or that the closure
43 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
44 to the completion of the reconsideration proceeding.

45 (B) If the worker's condition has substantially changed since the notice of closure, upon the

1 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
2 condition is appropriate for claim closure under subsection (1) of this section.

3 (8) No hearing shall be held on any issue that was not raised and preserved before the director
4 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
5 resolved at hearing.

6 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
7 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
8 any permanent disability payments due for work disability under the closure shall be suspended, and
9 the worker shall receive temporary disability compensation and any permanent disability payments
10 due for impairment while the worker is enrolled and actively engaged in the training. When the
11 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-
12 ployer shall again close the claim pursuant to this section if the worker is medically stationary or
13 if the worker's accepted injury is no longer the major contributing cause of the worker's combined
14 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the
15 duration of temporary total or temporary partial disability compensation. Permanent disability
16 compensation shall be redetermined for work disability only. If the worker has returned to work or
17 the worker's attending physician has released the worker to return to regular or modified employ-
18 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may
19 be appealed only in the same manner as are other notices of closure under this section.

20 (10) If the attending physician or nurse practitioner authorized to provide compensable medical
21 services under ORS 656.245 has approved the worker's return to work and there is a labor dispute
22 in progress at the place of employment, the worker may refuse to return to that employment without
23 loss of reemployment rights or any vocational assistance provided by this chapter.

24 (11) Any notice of closure made under this section may include necessary adjustments in com-
25 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
26 bility payments prematurely made, crediting temporary disability payments against current or future
27 permanent or temporary disability awards or payments and requiring the payment of temporary
28 disability payments which were payable but not paid.

29 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
30 compensation benefits or payments against any further workers' compensation benefits or payments
31 due a worker from that insurer or self-insured employer when the worker admits to having obtained
32 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
33 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
34 fits or payments obtained through fraud by a worker shall not be included in any data used for
35 ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-
36 tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the
37 director.

38 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
39 to recover an overpayment from a claim with the same insurer or self-insured employer. When
40 overpayments are recovered from temporary disability or permanent total disability benefits, the
41 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
42 authorization from the worker.

43 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
44 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
45 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the

1 death of the worker.

2 (14) Conditions that are direct medical sequelae to the original accepted condition shall be in-
 3 cluded in rating permanent disability of the claim unless they have been specifically denied.

4 **SECTION 4.** ORS 656.307 is amended to read:

5 656.307. (1)(a) Where there is an issue regarding:

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

7 (B) Which of more than one insurer of a certain employer is responsible for payment of com-
 8 pensation to a worker;

9 (C) Responsibility between two or more employers or their insurers involving payment of com-
 10 pensation for one or more accidental injuries; or

11 (D) Joint employment by two or more employers,

12
 13 the Director of the Department of Consumer and Business Services shall, by order, designate who
 14 shall pay the claim, if the employers and insurers admit that the claim is otherwise compensable.
 15 Payments shall begin in any event as provided in ORS 656.262 (4).

16 (b) At the time of claim closure, all parties to an order issued pursuant to paragraph (a) of this
 17 subsection shall have reconsideration and appeal rights.

18 (2) The director then shall request the Workers' Compensation Board [*chairperson*] to appoint
 19 an Administrative Law Judge to determine the responsible paying party. The proceedings shall be
 20 conducted in the same manner as any other hearing and any further appeal shall be conducted
 21 pursuant to ORS 656.295 and 656.298.

22 (3) When a determination of the responsible paying party has been made, the director shall di-
 23 rect any necessary monetary adjustment between the parties involved. Any monetary adjustment not
 24 reimbursed by an insurer or self-insured employer shall be recovered from the Consumer and Busi-
 25 ness Services Fund. Any stipulation or agreement under subsection (6) of this section shall not ob-
 26 ligate the Consumer and Business Services Fund for reimbursement without prior approval of the
 27 Director of the Department of Consumer and Business Services.

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

31 (5) The claimant shall be joined in any proceeding under this section as a necessary party, but
 32 may elect to be treated as a nominal party. If the claimant appears at any such proceeding and ac-
 33 tively and meaningfully participates through an attorney, the Administrative Law Judge may require
 34 that a reasonable fee for the claimant's attorney be paid by the employer or insurer determined by
 35 the Administrative Law Judge to be the party responsible for paying the claim.

36 (6)(a) Notwithstanding subsection (2) of this section, parties to a responsibility proceeding under
 37 this section may agree to resolution of the dispute by mediation or arbitration by a private party.
 38 Any settlement stipulation, arbitration decision or other resolution of matters in dispute resulting
 39 from mediation or arbitration proceedings shall be filed with the Hearings Division and shall be
 40 given the same force and effect as an order of an Administrative Law Judge made pursuant to sub-
 41 section (2) of this section. However, any such settlement stipulation, arbitration decision or other
 42 resolution is binding on the parties and is not subject to review by the director, an Administrative
 43 Law Judge, the board or any court or other administrative body, unless required pursuant to para-
 44 graph (d) of this subsection or subsection (3) of this section.

45 (b) For purposes of this subsection, mediation is a process of discussion and negotiation, with

1 the mediator playing a central role in seeking a consensus among the parties. Such consensus may
 2 be reflected in a final mediation settlement stipulation, signed by all the parties and fully binding
 3 upon the parties with the same effect as a final order of an Administrative Law Judge, when the
 4 signed mediation settlement stipulation is filed with the Hearings Division of the Workers' Com-
 5 pensation Board.

6 (c) For purposes of this subsection, arbitration is an agreement to submit the matter to a binding
 7 decision by an arbitrator, through a process mutually agreed upon in advance. Once all the parties
 8 have agreed in writing to proceed with arbitration, no party may withdraw from the arbitration
 9 process except as provided in the written arbitration agreement.

10 (d) A mediation settlement stipulation may include matters beyond the responsibility issues. If
 11 other matters are included, the settlement agreement shall be submitted to the Hearings Division
 12 of the Workers' Compensation Board for review and approval, under this chapter, as to such addi-
 13 tional matters beyond the responsibility issues.

14 (e) Any arbitration decision shall be limited to a decision as to responsibility and, where ap-
 15 propriate, the payment of associated costs and attorney fees. The arbitrator's decision shall have the
 16 same effect as a final order of an Administrative Law Judge when the signed decision is filed with
 17 the Hearings Division.

18 (f) When the parties have reported to the Hearings Division that they have agreed upon a me-
 19 diation or arbitration process, the hearing shall be deferred for 90 days to allow the mediation or
 20 arbitration process to occur. Once 90 days have passed, the matter shall again be docketed for
 21 hearing unless the parties advise the Hearings Division in writing that progress has been made and
 22 request an extension of time of up to 90 days, which extension of time shall be granted as a matter
 23 of right. Once the second 90 days have passed, the matter shall again be docketed for hearing, and
 24 the hearing shall proceed before an Administrative Law Judge as though there had been no medi-
 25 ation or arbitration process, unless the parties present a mediation settlement stipulation or signed
 26 arbitration decision before the hearing begins.

27 (g) All parties must agree in writing to pursue mediation or arbitration and must agree upon the
 28 selection of the mediator or arbitrator. The mediator or arbitrator shall not be an employee of any
 29 insurer or self-insured employer that is a party to the proceedings. The mediator or arbitrator must
 30 be an attorney admitted to practice law in the State of Oregon. The mediator or arbitrator may
 31 serve as a mediator or arbitrator, even if the mediator or arbitrator separately represents any
 32 insurer or self-insured employer in other proceedings, provided that all parties are advised of such
 33 representation and consent in writing that the mediator or arbitrator may so serve despite such
 34 other representation. Such written consent supersedes any legal ethics restrictions otherwise pro-
 35 vided for in law or regulation.

36 (h) If the claimant is represented by an attorney, the other parties must arrange for payment
 37 of a reasonable attorney fee for the claimant's attorney's services during the mediation or arbi-
 38 tration. Any mediation or arbitration agreement shall specify the terms of the fee arrangement.

39 (i) If the claimant is not represented by an attorney, the mediation process cannot include any
 40 issue other than responsibility. A nonrepresented claimant must be advised in writing of the fol-
 41 lowing before the mediation or arbitration proceeds:

42 (A) The claimant's right to refuse to participate in mediation or arbitration proceedings and to,
 43 instead, proceed to a hearing before an Administrative Law Judge;

44 (B) The present rate of temporary total disability benefits for each alleged date of injury;

45 (C) The present rate of permanent partial disability benefits for each alleged date of injury;

1 (D) The estimated date of expiration of aggravation rights for each alleged date of injury; and

2 (E) The claimant's right to be represented by counsel of the claimant's choice at no expense to
 3 the claimant.

4 (j) Notwithstanding any other provision of law, any insurer or self-insured employer may be re-
 5 presented by a certified claims examiner rather than by an attorney in any mediation or arbitration
 6 hereunder. Any separate insured for the same insurer shall be represented by a separate claims
 7 examiner, if the insured has a continuing financial exposure as to the claim; where no continuing
 8 financial exposure exists, a single certified claims examiner may represent more than one insured
 9 for the same insurer in the mediation or arbitration proceeding.

10 (k) Any other procedures as to mediation or arbitration shall be subject to agreement among the
 11 parties. The Workers' Compensation Board may adopt rules as to the process for deferral and
 12 docketing of hearings where mediation or arbitration occurs, the filing of arbitration decisions as
 13 orders of the Hearings Division, the filing of mediation settlement stipulations regarding responsi-
 14 bility as orders of the Hearings Division, and review and approval of mediation settlement stipu-
 15 lations that extend beyond the issues of responsibility and associated attorney fees and costs. The
 16 Workers' Compensation Board shall not enact rules that restrict the mediation or arbitration pro-
 17 cess except to the extent provided within this section.

18 **SECTION 5.** ORS 656.712 is amended to read:

19 656.712. (1) The Workers' Compensation Board, composed of five members appointed by the
 20 Governor, is created within the Department of Consumer and Business Services. Not more than
 21 three members shall belong to one political party and inasmuch as the duties to be performed by the
 22 members vitally concern the employers, the employees, as well as the whole people, of the state,
 23 persons shall be appointed as members who fairly represent the interests of all concerned. All board
 24 members shall impartially apply the law in each case and shall not represent any special interest.
 25 However, at least two members shall be selected from among persons with background and under-
 26 standing as to the concerns of employers and at least two members of the board shall be selected
 27 from among persons with background and understanding as to the concerns of employees. One
 28 member shall represent the interests of the public [*and shall serve as the board chairperson*].

29 (2) A member of the board shall be appointed for a term of four years from the date of ap-
 30 pointment and qualification. Each member shall hold office until a successor is appointed and qual-
 31 ified. [*However, all board members serve at the pleasure of the Governor and may be removed in*
 32 *accordance with the provisions of ORS 656.714.*]

33 (3) Any vacancy on the board shall be filled by appointment by the Governor.

34 (4) All appointments of members of the board by the Governor are subject to confirmation by
 35 the Senate pursuant to section 4, Article III of the Oregon Constitution.

36 **SECTION 6.** ORS 656.718 is amended to read:

37 656.718. [*(1) The board chairperson shall supervise and manage the Workers' Compensation Board*
 38 *and the Hearings Division. The chairperson serves at the pleasure of the Governor and may be re-*
 39 *moved in accordance with the provisions of ORS 656.714.*]

40 **(1) The Workers' Compensation Board shall biennially elect a member of the board as the**
 41 **board chairperson. The chairperson shall serve for a term of two years and until a successor**
 42 **is chosen.**

43 (2) A majority of the board's members shall constitute a quorum to transact the board's business.
 44 No vacancy shall impair the right of the remaining members to exercise all the powers of the board.

45 (3)(a) In exercise of authority to decide individual cases, members of the board may sit together

1 or in panels.

2 (b) When sitting en banc, the concurrence of a majority of the members participating is neces-
 3 sary for a decision.

4 (c) A panel must consist of two members with different backgrounds and understanding. One of
 5 the members of a panel may be the board member that represents the interests of the public if either
 6 a member with background and understanding as to the concerns of employers or a member with
 7 background and understanding as to the concerns of employees is unavailable. If the members of a
 8 panel cannot agree on a decision in an individual case, the case shall be decided by a panel of three
 9 members, two of whom have different backgrounds and understanding and one who represents the
 10 interests of the public.

11 (d) A board member may not review any case in which the member acted as an Administrative
 12 Law Judge in the case.

13 **SECTION 7.** ORS 656.722 is amended to read:

14 656.722. (1) The Workers' Compensation Board [*chairperson*] may employ and terminate the em-
 15 ployment of such assistants, experts, field personnel and clerks as may be required in the adminis-
 16 tration of ORS chapter 654 and this chapter and other duties assigned to the board [*or the board*
 17 *chairperson*] by statute.

18 **(2) A staff attorney, law clerk or paralegal employed by the board may serve for no more**
 19 **than four years and may not be reappointed to a staff attorney, law clerk or paralegal posi-**
 20 **tion with the board after expiration of the term of employment specified in this section.**

21 **SECTION 8.** ORS 656.724 is amended to read:

22 656.724. (1) The Workers' Compensation Board [*chairperson, after consultation with the board,*]
 23 shall employ Administrative Law Judges to hold such hearings as may be prescribed by law. An
 24 Administrative Law Judge must be a member in good standing of the Oregon State Bar, or the bar
 25 of the highest court of record in any other state or currently admitted to practice before the federal
 26 courts in the District of Columbia. Administrative Law Judges shall qualify in the same manner as
 27 members of the board under ORS 656.716 (2). The board [*chairperson, after consultation with the*
 28 *board,*] may appoint Administrative Law Judges to serve for a probationary period of 18 months or
 29 less prior to regular employment.

30 (2) Administrative Law Judges are in the unclassified service under ORS chapter 240, and the
 31 board shall fix their salaries in accordance with ORS 240.245.

32 (3)(a) The board [*chairperson, after consultation with the board,*] shall establish criteria whereby
 33 each Administrative Law Judge shall receive an annual performance evaluation. Such criteria shall
 34 include, but not be limited to, work quality and productivity.

35 (b) The employment of each Administrative Law Judge shall be subject to formal review by the
 36 board [*chairperson*] every four years. Complaints and comments filed with the board [*chairperson*]
 37 regarding the official conduct, competence or fitness of an Administrative Law Judge, as well as the
 38 board's records, shall be reviewed by the board. [*chairperson. Not less than 90 days prior to the ex-*
 39 *piration of the probationary period, or within 180 days but not less than 90 days prior to each four-year*
 40 *review, the board chairperson shall solicit comments from attorneys practicing in the field of workers'*
 41 *compensation. These comments and all complaints and other records filed with the board chairperson*
 42 *regarding the official conduct, competence or fitness of an Administrative Law Judge shall be reviewed*
 43 *by the board. The board chairperson shall conduct an annual survey of all attorneys regularly partic-*
 44 *ipating in workers' compensation cases, in such manner as to allow the attorneys to remain anonymous*
 45 *while rating the Administrative Law Judges as to knowledge of workers' compensation law, judicial*

1 *temperament, capability to handle hearings, diligence, efficiency and other similar factors. The results*
 2 *of the survey shall be published by the board chairperson, listing each Administrative Law Judge by*
 3 *name.]*

4 (c) [Notwithstanding ORS 240.240 and in accordance with ORS 240.555 and 240.560,] **In accord-**
 5 **ance with paragraph (d) of this subsection**, an Administrative Law Judge may be removed at any
 6 time, for official misconduct, incompetence, inefficiency, indolence, malfeasance or other unfitness
 7 to render effective service.

8 **(d) If the board believes there is reasonable cause to remove an Administrative Law**
 9 **Judge, the record of complaints, comments and other data considered by the board shall be**
 10 **submitted to the Employment Relations Board. The Employment Relations Board shall ex-**
 11 **amine the record and, if it believes the charges warrant, conduct a hearing on whether the**
 12 **Administrative Law Judge should be dismissed. If the Employment Relations Board con-**
 13 **cludes that a hearing is not warranted, the charges shall be dismissed. The record and the**
 14 **hearing shall be confidential unless the Administrative Law Judge elects otherwise. The de-**
 15 **cision of the Employment Relations Board shall be final.**

16 (4) Administrative Law Judges have the same powers granted to board members or assistants
 17 under ORS 656.726 (2)(a), (b), (c) and (d).

18 (5) A presiding Administrative Law Judge shall be appointed by the board [*chairperson*] and
 19 shall serve as presiding Administrative Law Judge at the pleasure of the board [*chairperson*]. The
 20 presiding Administrative Law Judge shall perform such administrative duties as the board [*chair-*
 21 *person*] may delegate. The board [*chairperson*] may designate another Administrative Law Judge to
 22 serve as acting presiding Administrative Law Judge during any period when the presiding Admin-
 23 istrative Law Judge is absent or disabled.

24 (6) Notwithstanding subsections (1) to (5) of this section, the board [*chairperson, after consulta-*
 25 *tion with the board,*] may employ any member of the Oregon State Bar to serve as an Administrative
 26 Law Judge on a temporary basis, not to exceed one year, when the board [*chairperson*] determines
 27 that such employment is necessary in the conduct of the business of the Hearings Division. Criteria
 28 and procedures for selecting and employing such Administrative Law Judges shall be identical to
 29 those established for regularly employed Administrative Law Judges.

30 (7) It is the declared purpose of this section to foster and protect the Administrative Law
 31 Judges' ability to provide full, fair and speedy hearings and decisions.

32 **SECTION 9.** ORS 656.726 is amended to read:

33 656.726. (1) The Workers' Compensation Board in its name and the Director of the Department
 34 of Consumer and Business Services in the director's name as director may sue and be sued, and each
 35 shall have a seal.

36 (2) The board hereby is charged with **the administration and the responsibility for the**
 37 **Hearings Division and for** reviewing appealed orders of Administrative Law Judges in controver-
 38 sies concerning a claim arising under this chapter, exercising own motion jurisdiction under this
 39 chapter and providing such policy advice as the director may request, and providing such other re-
 40 view functions as may be prescribed by law. To that end any of its members or assistants authorized
 41 thereto by the members shall have power to:

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

43 (b) Administer oaths.

44 (c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attend-
 45 ance of witnesses and the production of papers, contracts, books, accounts, documents and testimony

1 before any hearing under ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and this
 2 chapter.

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

4 [(3) *The board chairperson is hereby charged with the administration of and responsibility for the*
 5 *Hearings Division.*]

6 [(4)] (3) The director hereby is charged with duties of administration, regulation and enforce-
 7 ment of ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and this chapter. To that end
 8 the director may:

9 (a) Make and declare all rules and issue orders which are reasonably required in the perform-
 10 ance of the director's duties. Unless otherwise specified by law, all reports, claims or other docu-
 11 ments shall be deemed timely provided to the director or board if mailed by regular mail or
 12 delivered within the time required by law. Notwithstanding any other provision of this chapter, the
 13 director may adopt rules to allow for the electronic transmission and filing of reports, claims or
 14 other documents required to be filed under this chapter and to require the electronic transmission
 15 and filing of proof of coverage required under ORS 656.419, 656.423 and 656.427. Notwithstanding
 16 ORS 183.310 to 183.410, if a matter comes before the director that is not addressed by rule and the
 17 director finds that adoption of a rule to accommodate the matter would be inefficient, unreasonable
 18 or unnecessarily burdensome to the public, the director may resolve the matter by issuing an order,
 19 subject to review under ORS 656.704. Such order shall not have precedential effect as to any other
 20 situation.

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

22 (c) Administer oaths.

23 (d) Issue and serve by representatives of the director, or by any sheriff, subpoenas for the at-
 24 tendance of witnesses and the production of papers, contracts, books, accounts, documents and tes-
 25 timony in any inquiry, investigation, proceeding or rulemaking hearing conducted by the director
 26 or the director's representatives. The director may require the attendance and testimony of em-
 27 ployers, their officers and representatives in any inquiry under this chapter, and the production by
 28 employers of books, records, papers and documents without the payment or tender of witness fees
 29 on account of such attendance.

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

31 (f) Provide standards for the evaluation of disabilities. The following provisions apply to the
 32 standards:

33 (A) The criterion for evaluation of permanent impairment under ORS 656.214 is the loss of use
 34 or function of a body part or system due to the compensable industrial injury or occupational dis-
 35 ease. Permanent impairment is expressed as a percentage of the whole person. The impairment value
 36 may not exceed 100 percent of the whole person.

37 (B) Impairment is established by a preponderance of medical evidence based upon objective
 38 findings.

39 (C) The criterion for evaluation of work disability under ORS 656.214 is permanent impairment
 40 as modified by the factors of age, education and adaptability to perform a given job.

41 (D) When, upon reconsideration of a notice of closure pursuant to ORS 656.268, it is found that
 42 the worker's disability is not addressed by the standards adopted pursuant to this paragraph,
 43 notwithstanding ORS 656.268, the director shall, in the order on reconsideration, determine the ex-
 44 tent of permanent disability that addresses the worker's impairment.

45 (E) Notwithstanding any other provision of this section, only impairment benefits shall be

1 awarded under ORS 656.214 if the worker has been released to regular work by the attending phy-
 2 sician or nurse practitioner authorized to provide compensable medical services under ORS 656.245
 3 or has returned to regular work at the job held at the time of injury.

4 (g) Prescribe procedural rules for and conduct hearings, investigations and other proceedings
 5 pursuant to ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and this chapter regarding
 6 all matters other than those specifically allocated to the board or the Hearings Division.

7 (h) Participate fully in any proceeding before the Hearings Division, board or Court of Appeals
 8 in which the director determines that the proceeding involves a matter that affects or could affect
 9 the discharge of the director's duties of administration, regulation and enforcement of ORS 654.001
 10 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and this chapter.

11 [(5)] (4) The board may make and declare all rules which are reasonably required in the per-
 12 formance of its duties, including but not limited to rules of practice and procedure in connection
 13 with hearing and review proceedings and exercising its authority under ORS 656.278. The board
 14 shall adopt standards governing the format and timing of the evidence. The standards shall be uni-
 15 formly followed by all Administrative Law Judges and practitioners. The rules may provide for in-
 16 formal prehearing conferences in order to expedite claim adjudication, amicably dispose of
 17 controversies, if possible, narrow issues and simplify the method of proof at hearings. The rules shall
 18 specify who may appear with parties at prehearing conferences and hearings.

19 [(6)] (5) The director and the board [*chairperson*] may incur such expenses as they respectively
 20 determine are reasonably necessary to perform their authorized functions.

21 [(7)] (6) The director, the board [*chairperson*] and the State Accident Insurance Fund Corpo-
 22 ration shall have the right, not subject to review, to contract for the exchange of, or payment for,
 23 such services between them as will reduce the overall cost of administering this chapter.

24 [(8)] (7) The director shall have lien and enforcement powers regarding assessments to be paid
 25 by subject employers in the same manner and to the same extent as is provided for lien and
 26 enforcement of collection of premiums and assessments by the corporation under ORS 656.552 to
 27 656.566.

28 [(9)] (8) The director shall have the same powers regarding inspection of books, records and
 29 payrolls of employers as are granted the corporation under ORS 656.758. The director may disclose
 30 information obtained from such inspections to the Director of the Department of Revenue to the
 31 extent the Director of the Department of Revenue requires such information to determine that a
 32 person complies with the revenue and tax laws of this state and to the Director of the Employment
 33 Department to the extent the Director of the Employment Department requires such information to
 34 determine that a person complies with ORS chapter 657.

35 [(10)] (9) The director shall collect hours-worked data information in addition to total payroll for
 36 workers engaged in various jobs in the construction industry classifications described in the job
 37 classification portion of the Workers' Compensation and Employers Liability Manual and the Oregon
 38 Special Rules Section published by the National Council on Compensation Insurance. The informa-
 39 tion shall be collected in the form and format necessary for the National Council on Compensation
 40 Insurance to analyze premium equity.