

Enrolled Senate Bill 678

Sponsored by Senators THOMSEN, MONNES ANDERSON, KNOPP, Representative CLEM; Senators BAERTSCHIGER JR, GEORGE, HANSELL, JOHNSON, OLSEN, ROBLAN, STEINER HAYWARD, WHITSETT, Representatives BAILEY, BARTON, BUCKLEY, CAMERON, DAVIS, DOHERTY, FAGAN, FREDERICK, GALLEGOS, GELSER, GOMBERG, GORSEK, GREENLICK, HANNA, HOYLE, KOMP, LIVELY, MATTHEWS, MCKEOWN, READ, REARDON, TOMEI, UNGER, VEGA PEDERSON, WILLIAMSON, WITT

CHAPTER

AN ACT

Relating to exclusive remedy protections of workers' compensation statutes; creating new provisions; amending ORS 656.018; and declaring an emergency.

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

SECTION 1. ORS 656.018 is amended to read:

656.018. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1) is exclusive and in place of all other liability arising out of injuries, diseases, symptom complexes or similar conditions arising out of and in the course of employment that are sustained by subject workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the employer on account of such conditions or claims resulting therefrom, specifically including claims for contribution or indemnity asserted by third persons from whom damages are sought on account of such conditions, except as specifically provided otherwise in this chapter.

(b) This subsection shall not apply to claims for indemnity or contribution asserted by a railroad, as defined in ORS 824.020, or by a corporation, individual or association of individuals which is subject to regulation pursuant to ORS chapter 757 or 759.

(c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary to the provisions of paragraph (a) of this subsection entered into after July 19, 1977, are void.

(2) The rights given to a subject worker and the beneficiaries of the subject worker under this chapter for injuries, diseases, symptom complexes or similar conditions arising out of and in the course of employment are in lieu of any remedies they might otherwise have for such injuries, diseases, symptom complexes or similar conditions against the worker's employer under ORS 654.305 to 654.336 or other laws, common law or statute, except to the extent the worker is expressly given the right under this chapter to bring suit against the employer of the worker for an injury, disease, symptom complex or similar condition.

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

(a) *[Where]* **If the willful and unprovoked aggression by a person otherwise exempt under this subsection is a substantial factor in causing** the injury, disease, symptom complex or similar condition *[is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection];*

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

(c) *[Where]* **If the failure of the employer to comply with a notice posted pursuant to ORS 654.082 is a substantial factor in causing** the injury, disease, symptom complex or similar condition *[is proximately caused by failure of the employer to comply with the notice posted pursuant to ORS 654.082.]; or*

(d) If the negligence of a person otherwise exempt under this subsection is a substantial factor in causing the injury, disease, symptom complex or similar condition and the negligence occurs outside of the capacity that qualifies the person for exemption under this section.

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

(5)(a) The exemption from liability given an employer under this section applies to a temporary service provider, as that term is used in ORS 656.850, and also extends to the client to whom workers are provided when the temporary service provider complies with ORS 656.017.

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

(A) *[When]* **If the willful and unprovoked aggression by a person otherwise exempt under this subsection is a substantial factor in causing** the injury, disease, symptom complex or similar condition *[is proximately caused by willful and unprovoked aggression by the person otherwise exempt under this subsection];*

(B) *[When]* If the worker and the person otherwise exempt under this subsection are not engaged in the furtherance of a common enterprise or the accomplishment of the same or related objectives; *[or]*

(C) *[When]* **If the failure of the client to comply with a notice posted pursuant to ORS 654.082 is a substantial factor in causing** the injury, disease, symptom complex or similar condition *[is proximately caused by failure of the client to comply with the notice posted pursuant to ORS 654.082.]; or*

(D) If the negligence of a person otherwise exempt under this subsection is a substantial factor in causing the injury, disease, symptom complex or similar condition and the negligence occurs outside of the capacity that qualifies the person for exemption under this subsection.

(6) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers or their beneficiaries in excess of the compensation required to be paid under this chapter.

(7) The exclusive remedy provisions and limitation on liability provisions of this chapter apply to all injuries and to diseases, symptom complexes or similar conditions of subject workers arising out of and in the course of employment whether or not they are determined to be compensable under this chapter.

SECTION 2. The amendments to ORS 656.018 by section 1 of this 2013 Act apply to all claims or causes of action arising on or after the effective date of this 2013 Act.

SECTION 3. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate April 30, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 12, 2013

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State