

Enrolled
House Bill 2336

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to workers' compensation for self-insured employers; creating new provisions; and amending ORS 656.443, 656.591 and 656.593.

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

SECTION 1. ORS 656.443 is amended to read:

656.443. (1) If an employer or self-insured employer group defaults in payment of compensation or other payments due to the Director of the Department of Consumer and Business Services under this chapter, the director may, on notice to the employer or self-insured employer group and any insurer providing workers' compensation insurance coverage, a surety bond or other security to the employer or self-insured employer group, use money or interest and dividends on securities, sell securities or institute legal proceedings on any insurance policy, surety bond or other security for which a notice of coverage has been filed with the director to the extent necessary to make such payments.

(2) [Prior to] **Before** any default by the employer or self-insured employer group, the employer or group is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director [shall] **must** remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer. The surety bond or other security [shall] **must** be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security[,] and to [assure] **ensure** the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. At the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.

(4) If a **self-insured employer or** self-insured employer group is in default, is decertified by the director or cancels [its] **the employer's or the group's** certification under ORS 656.434, the director may:

(a) Order members of the group to pay an assessment for the continuing claim liabilities as specified in ORS 656.430 (7)(a)(D)(i); and

(b) Determine the claims processing agent that [shall process] **processes** claims of the **self-insured employer or self-insured employer** group. The claims processing agent may be the assigned claims agent selected under ORS 656.054.

(5) Member assessments collected under subsection (4) of this section *[shall]* **must** be deposited in the Consumer and Business Services Fund created in ORS 705.145.

(6) Failure to pay an assessment ordered under subsection (4) of this section subjects members of the self-insured employer group to civil penalties as provided in ORS 656.745.

(7) A claims processing agent that the director designates under subsection (4) of this section, other than the State Accident Insurance Fund Corporation, may choose the legal counsel the claims processing agent employs for representation under this section.

SECTION 2. ORS 656.591 is amended to read:

656.591. (1) An election made pursuant to ORS 656.578 not to proceed against *[the]* **an** employer or third person operates as an assignment to the paying agency of the cause of action, if any, of *[the]* **a** worker[,] **or** the beneficiaries or legal representative of *[the]* **a** deceased worker[,] against the employer or third person, and the paying agency may bring action against *[such]* **the** employer or third person in the name of the *[injured]* worker or other beneficiaries.

(2) Any sum *[recovered by]* the paying agency **recovers** in excess of the expenses **the paying agency** incurred in making *[such]* **the** recovery and the amount *[expended by]* the paying agency **expended** for compensation, first aid or other medical, surgical or hospital service, together with the present *[worth]* **value** of the monthly payments of compensation to which *[such]* **the** worker or other beneficiaries may be entitled under this chapter, *[shall]* **must** be paid *[such]* **to the** worker or other beneficiaries.

(3) A paying agency shall repay the Department of Consumer and Business Services for any expenditures from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve or the Workers' Benefit Fund that the department makes, together with the present value of any reasonably expected future expenditures from the funds or reserves that the department may make, to reimburse the paying agency for the paying agency's costs and to compensate or pay other costs of a worker's claim because of a self-insured employer's or self-insured employer group's insolvency, default or decertification.

SECTION 3. ORS 656.593 is amended to read:

656.593. (1) If *[the]* **a** worker or the beneficiaries of the worker elect to recover damages from *[the]* **an** employer or third person, **the worker or beneficiaries shall give** notice of *[such]* **the** election *[shall be given]* **to** the paying agency by personal service or by registered or certified mail. The paying agency likewise *[shall]* **must** be given notice of the name of the court in which *[such]* **the** action is brought, and a return showing service of *[such]* **the** notice on the paying agency *[shall]* **must** be filed with the clerk of the court but *[shall not be]* **is not** a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages *[recovered]* **the worker or beneficiaries recover** from an employer or third person *[by the worker or beneficiaries shall be]* **are** subject to a lien of the paying agency for *[its]* **the paying agency's** share of the proceeds as set forth in this section. *[When]* **If** the proceeds are paid in a series of payments, each payment *[shall]* **must** be distributed proportionately to each recipient according to the formula provided in this section, unless **the parties** otherwise *[agreed by the parties]* **agree**. The total proceeds *[shall]* **must** be distributed as follows:

(a) Costs and attorney fees incurred *[shall]* **must** be paid, *[such]* **and the** attorney fees *[in no event to]* **may not** exceed the advisory schedule of fees established by the Workers' Compensation Board for such actions.

(b) The worker or the beneficiaries of the worker *[shall]* **must** receive at least 33-1/3 percent of the balance of *[such]* **the** recovery.

(c) The paying agency *[shall]* **must** be paid and retain the balance of the recovery, but only to the extent that *[it]* **the paying agency** is compensated for *[its]* **the paying agency's** expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of *[its]* reasonably *[to be]* expected future expenditures **the paying agency makes** for compensation and other costs of the worker's claim under this chapter. *[Such]* Other costs include expenditures *[of]* **that** the Department of Consumer and Business Services **makes** from the Consumer and Busi-

ness Services Fund, the Self-Insured Employer Adjustment Reserve, **the Self-Insured Employer Group Adjustment Reserve** and the Workers' Benefit Fund *[in reimbursement of]* **to reimburse** the costs of the paying agency. *[Such]* Other costs also include assessments for the Workers' Benefit Fund,] and *[include]* any compensation *[which]* **that** may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery *[shall]* **must** be paid to the worker or the beneficiaries of the worker forthwith. **The board shall resolve** any conflict as to the amount of the balance *[which]* **that the paying agency** may *[be retained by the paying agency shall be resolved by the board]* **retain**.

(2) The amount *[retained by]* the worker or the beneficiaries of the worker *[shall]* **retain must** be in addition to the compensation or other benefits to which *[such]* **the** worker or beneficiaries are entitled under this chapter.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency *[is authorized to]* **may** accept *[such]* a share of the proceeds *[as may be]* **that is** just and proper and the worker or the beneficiaries of the worker *[shall]* **must** receive the amount to which the worker would be entitled for a recovery under subsections (1) and (2) of this section. **The board shall resolve** any conflict as to what may be a just and proper distribution *[shall be resolved by the board]*.

(4) As used in this section, "paying agency" includes the Department of Consumer and Business Services with respect to *[its]* expenditures from the **Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve, the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund** *[in reimbursement of]* **the department makes, together with the present value of any reasonably expected future expenditures from the funds or reserves that the department may make, to reimburse** the costs of another paying agency *[for vocational assistance and the costs of claims of noncomplying employers.]* **and to compensate or pay other costs of a worker's claim because of a self-insured employer's or self-insured employer group's insolvency, default or decertification.**

(5) The department *[shall]* **must** be repaid for *[its]* **the department's** expenditures from the proceeds **the paying agency** recovered *[by the paying agency]* in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. **The department shall deposit** all moneys *[received by]* the department **receives** under this section *[shall be deposited]* in the same fund from which the *[paying agency's costs originally had been reimbursed]* **department's expenditures originated.**

(6) *[Prior to]* **Before**, and instead of, the distribution of proceeds *[as]* described in subsection (1) of this section, *[when the]* **if a** worker or the beneficiaries of *[the]* **a** worker are entitled to receive payment pursuant to a judgment or a settlement in *[the]* **a** third party action in the amount of \$1 million or more, the worker or the beneficiaries of the worker may elect to release the paying agency from all further liability on the workers' compensation claim, thereby canceling the lien of the paying agency as to the present value of *[its]* **the paying agency's** reasonably expected future expenditures for workers' compensation and other costs of the worker's claim, if all of the following conditions are met as part of the claim release:

(a) The worker or the beneficiaries of the worker are represented by an attorney.

(b) The release of the claim is presented in writing and is filed with the Workers' Compensation Board, with a copy served on the paying agency, including the Department of Consumer and Business Services with respect to *[its]* **the department's** expenditures from *[the Workers' Benefit Fund,]* the Consumer and Business Services Fund, *[and]* the Self-Insured Employer Adjustment Reserve, **the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund.**

(c) The claim release specifies that the worker or the beneficiaries of the worker understand that the claim release means that no further benefits of any nature whatsoever *[shall]* **will** be paid to the worker or the beneficiaries of the worker.

(d) The release of the claim is accompanied by a settlement stipulation with the paying agency, outlining terms of reimbursement to the paying agency, covering [its] **the paying agency's** incurred expenditures for compensation, first aid or other medical, surgical or hospital service and for expenditures from [the Workers' Benefit Fund,] the Consumer and Business Services Fund, [and] the Self-Insured Employer Adjustment Reserve, **the Self-Insured Employer Group Adjustment Reserve and the Workers' Benefit Fund** to the date the release becomes final or the order of the board becomes final. If the payment of such incurred expenditures is in dispute, the release of the claim [shall] **must** be accompanied by a written submission of the dispute by the worker or the beneficiaries of the worker to the board for resolution of the dispute by order of the board under procedures allowing for board resolution under ORS 656.587, in which case the release of the claim [shall not be] **is not** final until such time as the order of the board becomes final. In such a case, the only issue to be decided by the board is the amount of incurred expenses by the paying [agent] **agency**.

(e) If a service, item or benefit has been provided but a bill for that service, item or benefit has not been received by the paying agency before the release or order becomes final, the reimbursement payment [shall] **must** cover the bill [pursuant to] **in accordance with** the following process:

(A) The paying agency may maintain a contingency fund in an amount reasonably sufficient to cover reimbursement for the billing.

(B) If a dispute arises as to reimbursement for any bill first received by the paying agency not later than 180 days after the date the release or order became final, the dispute [shall] **must** be resolved by order of the board.

(C) Any amount remaining in the contingency fund after the 180-day period [shall] **must** be paid to the worker or the beneficiaries of the worker.

(D) Any billing for a service, item or benefit that is first received by the paying agency more than 180 days after the date the release or order became final is unenforceable by the person who issued the bill.

(f) The settlement or judgment proceeds are available for payment or actually have been paid out and are available in a trust fund or similar account, or are available through a legally enforceable structured settlement agreement if sufficient funds are available to make payment to the paying agency.

(g) The agreed-upon payment to the paying agency, or the payment to the paying agency ordered by the board, is made within 30 days of the filing of the withdrawal of the claim with the board or within 30 days after the board has entered a final order resolving any dispute with the paying agency.

(7) [When] **If** a release of further liability on a claim, as provided in subsection (6) of this section, has been filed, and [when] **if** payment to the paying agency has been made, the effect of the release is that the worker or **the** beneficiaries of the worker [shall] have no further right to seek benefits [pursuant to] **under** the original claim, or any independent workers' compensation claim regarding the same circumstances, and the claim [shall] **may** not be reasserted, refiled or reestablished through any legal proceeding.

SECTION 4. The amendments to ORS 656.443, 656.591 and 656.593 by sections 1 to 3 of this 2017 Act apply to determinations as to a claims processing agent for, and expenditures that occur to or on behalf of, any self-insured employer or self-insured employer group that is insolvent or in default, that has canceled the employer's or group's certification under ORS 656.434 or that the Director of the Department of Consumer and Business Services has decertified, regardless of the date on which the insolvency, default, cancellation or decertification occurred.

Passed by House March 2, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State