



Oregon

Kate Brown, Governor

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Senate Labor and Business Committee

House Bill 2039

Sally Coen, Administrator, Workers' Compensation Division

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Chair Riley, members of the committee, I am Sally Coen, Administrator of the Workers' Compensation Division which is part of the Department of Consumer and Business Services.

The Workers' Compensation Division has identified several statutes that are outdated or inconsistent with current industry practices. HB 2039 makes changes in three areas.

Records storage and claim processing locations

Under the general Insurance Code (ORS 731.475), insurers or their service companies must process workers' compensation claims and keep records at a place of business in Oregon. There are similar requirements in the workers' compensation statutes for self-insured employers. The law does not clearly allow for common industry practices such as cloud storage and telework, which have become common in the insurance industry. The bill would require records be accessible from an insurer's Oregon location and delete the requirement that records be physically retained in the state. Insurers would still be required to provide requested records to workers and to the director, and would continue to be required to have an Oregon location that directs claim processing.

The bill allows the director to write rules describing the details for record storage and remote working. We will use the public rulemaking process to get input from our regulated stakeholders to ensure the rules are balanced and fair.

Licensed landscape contracting businesses coverage alignment

A person that awards a contract (a "prime employer") is responsible for providing workers' compensation coverage to the contractor's employees, as long as (1) the work being contracted is an ordinary part of the prime employer's business, and (2) the contractor does not provide its own coverage.

Under the law, there is an exception to the requirement to provide coverage when the prime employer engages a licensed construction contractor. This is because as a condition of licensure, a construction contractor is required to provide workers' compensation coverage to their employees. The law presumes the contractor license is sufficient proof of workers' compensation coverage, so the prime employer should not be held responsible for the contractor's coverage.

Since this law was enacted, licensed landscape contracting businesses have become similarly regulated and are also required to have workers' compensation coverage as a licensure condition. For consistency and fairness, this bill adds licensed landscape contracting businesses to the exception under ORS 656.021. Prime employers would not be held responsible for the landscape contractor's coverage; instead the contractor would be

responsible for providing coverage to their employees. We consulted the Landscape Contractors Board about this proposal and they support the change.

Repeal outdated civil penalty law

In 2019, you approved a bill that adjusted our civil penalty laws. In the process of implementing the legislation, we found a statute that we should have cleaned up in 2019.

Under ORS 656.750, if a self-insured employer fails to keep records of compensation claims, the director must assess a civil penalty of \$250 a day. A separate law (ORS 656.745) applies when an insurer violates the same record keeping requirements and applies a different penalty. This more general penalty statute also applies to record keeping requirements of self-insured employers.

To reduce confusion, this bill deletes the very specific self-insured employer penalty, removing the inconsistencies and consolidating the civil penalty authority in one location. The change does not remove the requirement for self-insured employers to keep records of their claims, it just changes what penalty applies if they fail to do so.

We ask that you support these regulatory streamlining changes. We have presented this bill to the Management-Labor Advisory Committee and they also recommend you support the bill. I would be happy to answer any questions.