

SB 991-1
(LC 4257)
3/17/25 (ASD/ps)

Requested by Senator LINTHICUM

**PROPOSED AMENDMENTS TO
SENATE BILL 991**

On page 1 of the printed bill, delete lines 4 through 29 and delete pages 2 through 8 and insert:

“SECTION 1. ORS 656.268 is amended to read:

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

“[(a)] (A) The worker has become medically stationary and there is sufficient information to determine permanent disability. Notwithstanding any other provision of this chapter, a physician or nurse practitioner may not retroactively determine a worker to be medically stationary more than 60 days prior to the date of the determination except in the case of claims that are subject to subsection (13) of this section. An insurer or self-insured employer must mail or deliver written notice to a worker and to the worker’s attorney, if the worker is represented, within seven days following receipt of information that the worker is medically stationary.

1 “[*(b)*] (B) The accepted injury is no longer the major contributing cause
2 of the worker’s combined or consequential condition or conditions pursuant
3 to ORS 656.005 (7). When the claim is closed because the accepted injury is
4 no longer the major contributing cause of the worker’s combined or conse-
5 quential condition or conditions, and there is sufficient information to de-
6 termine permanent disability, the likely permanent disability that would
7 have been due to the current accepted condition shall be estimated.

8 “[*(c)*] (C) Without the approval of the attending physician or nurse prac-
9 titioner authorized to provide compensable medical services under ORS
10 656.245, the worker fails to seek medical treatment for a period of 30 days
11 or the worker fails to attend a closing examination, unless the worker
12 affirmatively establishes that such failure is attributable to reasons beyond
13 the worker’s control.

14 “[*(d)*] (D) An insurer or self-insured employer finds that a worker who
15 has been receiving permanent total disability benefits has materially im-
16 proved and is capable of regularly performing work at a gainful and suitable
17 occupation.

18 **“(b) For purposes of this section, modified employment may include**
19 **work performed not at a work site of the employer at injury if:**

20 **“(A) The worker remains an employee of the employer pursuant to**
21 **a written agreement;**

22 **“(B) The employer provides coverage for the worker while working**
23 **at the work site;**

24 **“(C) Benefits, including but not limited to sick leave, vacation**
25 **leave, retirement benefits and health insurance, accrue as they would**
26 **if the worker performed the modified work at a work site of the em-**
27 **ployer; and**

28 **“(D) The worker remains subject to the employer’s human re-**
29 **sources and attendance policies.**

30 **“(2) If the worker is enrolled and actively engaged in training according**

1 to rules adopted pursuant to ORS 656.340 and 656.726, the temporary disa-
2 bility compensation shall be proportionately reduced by any sums earned
3 during the training.

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

7 “(4) Temporary total disability benefits shall continue until whichever of
8 the following events first occurs:

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

10 “(b) The attending physician or nurse practitioner who has authorized
11 temporary disability benefits for the worker under ORS 656.245 advises the
12 worker and documents in writing that the worker is released to return to
13 regular employment;

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

21 “(A) Requires a commute that is beyond the physical capacity of the
22 worker according to the worker’s attending physician or the nurse practi-
23 tioner who may authorize temporary disability under ORS 656.245;

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

29 “[C] *Is not with the employer at injury;*]

30 “[D] *Is not at a work site of the employer at injury;*]

1 “[*(E)*] **(C)** Is not consistent with the existing written shift change policy
2 or is not consistent with common practice of the employer at injury or ag-
3 gravation; or

4 “[*(F)*] **(D)** Is not consistent with an existing shift change provision of an
5 applicable collective bargaining agreement;

6 “(d) Any other event that causes temporary disability benefits to be law-
7 fully suspended, withheld or terminated under ORS 656.262 (4) or other pro-
8 visions of this chapter; or

9 “(e) Notwithstanding paragraph [*(c)(C), (D), (E) and (F)*] **(c)(C) and (D)**
10 of this subsection, the attending physician or nurse practitioner who has
11 authorized temporary disability benefits under ORS 656.245 for a home care
12 worker or a personal support worker who has been made a subject worker
13 pursuant to ORS 656.039 advises the home care worker or personal support
14 worker and documents in writing that the home care worker or personal
15 support worker is released to return to modified employment, appropriate
16 modified employment is offered in writing by the Home Care Commission or
17 a designee of the commission to the home care worker or personal support
18 worker for any client of the Department of Human Services who employs a
19 home care worker or personal support worker and the worker fails to begin
20 the employment.

21 “(5)(a) Findings by the insurer or self-insured employer regarding the ex-
22 tent of the worker’s disability in closure of the claim shall be pursuant to
23 the standards prescribed by the director.

24 “(b) The insurer or self-insured employer shall issue a notice of closure
25 of the claim to the worker and to the worker’s attorney if the worker is re-
26 presented. The insurer or self-insured employer shall notify the director of
27 the closure in the manner the director prescribes by rule. If the worker is
28 deceased at the time the notice of closure is issued, the insurer or self-
29 insured employer shall mail the worker’s copy of the notice of closure, ad-
30 dressed to the estate of the worker, to the worker’s last known address and

1 may mail copies of the notice of closure to any known or potential benefi-
2 ciaries to the estate of the deceased worker.

3 “(c) The notice of closure must inform:

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

6 “(B) The worker of:

7 “(i) The amount of any further compensation, including permanent disa-
8 bility compensation to be awarded;

9 “(ii) The duration of temporary total or temporary partial disability
10 compensation;

11 “(iii) The right of the worker or beneficiaries of the worker who were
12 mailed a copy of the notice of closure under paragraph (b) of this subsection
13 to request reconsideration by the director under this section within 60 days
14 of the date of the notice of closure;

15 “(iv) The right of beneficiaries who were not mailed a copy of the notice
16 of closure under paragraph (b) of this subsection to request reconsideration
17 by the director under this section within one year of the date the notice of
18 closure was mailed to the estate of the worker under paragraph (b) of this
19 subsection;

20 “(v) The right of the insurer or self-insured employer to request recon-
21 sideration by the director under this section within seven days of the date
22 of the notice of closure;

23 “(vi) The aggravation rights; and

24 “(vii) Any other information as the director may require; and

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

27 “(d) If the insurer or self-insured employer has not issued a notice of
28 closure, the worker may request closure. Within 10 days of receipt of a
29 written request from the worker, the insurer or self-insured employer shall
30 issue a notice of closure if the requirements of this section have been met

1 or a notice of refusal to close if the requirements of this section have not
2 been met. A notice of refusal to close shall advise the worker of:

3 “(A) The decision not to close;

4 “(B) The right of the worker to request a hearing pursuant to ORS 656.283
5 within 60 days of the date of the notice of refusal to close;

6 “(C) The right to be represented by an attorney; and

7 “(D) Any other information as the director may require.

8 “(e) If a worker, a worker’s beneficiary, an insurer or a self-insured em-
9 ployer objects to the notice of closure, the objecting party first must request
10 reconsideration by the director under this section. A worker’s request for
11 reconsideration must be made within 60 days of the date of the notice of
12 closure. If the worker is deceased at the time the notice of closure is issued,
13 a request for reconsideration by a beneficiary of the worker who was mailed
14 a copy of the notice of closure under paragraph (b) of this subsection must
15 be made within 60 days of the date of the notice of closure. A request for
16 reconsideration by a beneficiary to the estate of a deceased worker who was
17 not mailed a copy of the notice of closure under paragraph (b) of this sub-
18 section must be made within one year of the date the notice of closure was
19 mailed to the estate of the worker under paragraph (b) of this subsection.
20 A request for reconsideration by an insurer or self-insured employer may be
21 based only on disagreement with the findings used to rate impairment and
22 must be made within seven days of the date of the notice of closure.

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

30 “(g) If, upon reconsideration of a claim closed by an insurer or self-

1 insured employer, the director orders an increase by 25 percent or more of
2 the amount of compensation to be paid to the worker for permanent disabili-
3 ty and the worker is found upon reconsideration to be at least 20 percent
4 permanently disabled, a penalty shall be assessed against the insurer or
5 self-insured employer and paid to the worker in an amount equal to 25 per-
6 cent of all compensation determined to be then due the claimant. If the in-
7 crease in compensation results from information that the insurer or
8 self-insured employer demonstrates the insurer or self-insured employer could
9 not reasonably have known at the time of claim closure, from new informa-
10 tion obtained through a medical arbiter examination or from a determination
11 order issued by the director that addresses the extent of the worker's per-
12 manent disability that is not based on the standards adopted pursuant to
13 ORS 656.726 (4)(f), the penalty shall not be assessed.

14 “(6)(a) Notwithstanding any other provision of law, only one reconsider-
15 ation proceeding may be held on each notice of closure. At the reconsider-
16 ation proceeding:

17 “(A) A deposition arranged by the worker, limited to the testimony and
18 cross-examination of the worker about the worker's condition at the time of
19 claim closure, shall become part of the reconsideration record. The deposi-
20 tion must be conducted subject to the opportunity for cross-examination by
21 the insurer or self-insured employer and in accordance with rules adopted
22 by the director. The cost of the court reporter, interpreter services, if nec-
23 essary, and one original of the transcript of the deposition for the Depart-
24 ment of Consumer and Business Services and one copy of the transcript of
25 the deposition for each party shall be paid by the insurer or self-insured
26 employer. The reconsideration proceeding may not be postponed to receive
27 a deposition taken under this subparagraph. A deposition taken in accord-
28 ance with this subparagraph may be received as evidence at a hearing even
29 if the deposition is not prepared in time for use in the reconsideration pro-
30 ceeding.

1 “(B) Pursuant to rules adopted by the director, the worker or the insurer
2 or self-insured employer may correct information in the record that is erro-
3 neous and may submit any medical evidence that should have been but was
4 not submitted by the attending physician or nurse practitioner authorized to
5 provide compensable medical services under ORS 656.245 at the time of claim
6 closure.

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

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

12 “(c) In any reconsideration proceeding under this section in which the
13 worker was represented by an attorney, the director shall order the insurer
14 or self-insured employer to pay to the attorney, out of the additional com-
15 pensation awarded, an amount equal to 10 percent of any additional com-
16 pensation awarded to the worker.

17 “(d) Except as provided in subsection (7) of this section, the reconsider-
18 ation proceeding shall be completed within 18 working days from the date
19 the reconsideration proceeding begins, and shall be performed by a special
20 evaluation appellate unit within the department. The deadline of 18 working
21 days may be postponed by an additional 60 calendar days if within the 18
22 working days the department mails notice of review by a medical arbiter. If
23 an order on reconsideration has not been mailed on or before 18 working
24 days from the date the reconsideration proceeding begins, or within 18
25 working days plus the additional 60 calendar days where a notice for medical
26 arbiter review was timely mailed or the director postponed the reconsider-
27 ation pursuant to paragraph (b) of this subsection, or within such additional
28 time as provided in subsection (8) of this section when reconsideration is
29 postponed further because the worker has failed to cooperate in the medical
30 arbiter examination, reconsideration shall be deemed denied and any further

proceedings shall occur as though an order on reconsideration affirming the notice of closure was mailed on the date the order was due to issue.

“(e) The period for completing the reconsideration proceeding described in paragraph (d) of this subsection begins upon receipt by the director of a worker’s or a beneficiary’s request for reconsideration pursuant to subsection (5)(e) of this section. If the insurer or self-insured employer requests reconsideration, the period for reconsideration begins upon the earlier of the date of the request for reconsideration by the worker or beneficiary, the date of receipt of a waiver from the worker or beneficiary of the right to request reconsideration or the date of expiration of the right of the worker or beneficiary to request reconsideration. If a party elects not to file a separate request for reconsideration, the party does not waive the right to fully participate in the reconsideration proceeding, including the right to proceed with the reconsideration if the initiating party withdraws the request for reconsideration.

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

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

“(7)(a) The director may delay the reconsideration proceeding and toll the reconsideration timeline established under subsection (6) of this section for up to 45 calendar days if:

“(A) A request for reconsideration of a notice of closure has been made to the director within 60 days of the date of the notice of closure;

“(B) The parties are actively engaged in settlement negotiations that include issues in dispute at reconsideration;

“(C) The parties agree to the delay; and

“(D) Both parties notify the director before the 18th working day after the

1 reconsideration proceeding has begun that they request a delay under this
2 subsection.

3 “(b) A delay of the reconsideration proceeding granted by the director
4 under this subsection expires:

5 “(A) If a party requests the director to resume the reconsideration pro-
6 ceeding before the expiration of the delay period;

7 “(B) If the parties reach a settlement and the director receives a copy of
8 the approved settlement documents before the expiration of the delay period;

9 or

10 “(C) On the next calendar day following the expiration of the delay period
11 authorized by the director.

12 “(c) Upon expiration of a delay granted under this subsection, the
13 timeline for the completion of the reconsideration proceeding shall resume
14 as if the delay had never been granted.

15 “(d) Compensation due the worker shall continue to be paid during the
16 period of delay authorized under this subsection.

17 “(e) The director may authorize only one delay period for each reconsid-
18 eration proceeding.

19 “(8)(a) If the basis for objection to a notice of closure issued under this
20 section is disagreement with the impairment used in rating of the worker’s
21 disability, the director shall refer the claim to a medical arbiter appointed
22 by the director.

23 “(b) If the director determines that insufficient medical information is
24 available to determine disability, the director may appoint, and refer the
25 claim to, a medical arbiter.

26 “(c) At the request of either of the parties, the director shall appoint a
27 panel of as many as three medical arbiters in accordance with criteria that
28 the director sets by rule.

29 “(d) The arbiter, or panel of medical arbiters, must be chosen from among
30 a list of physicians qualified to be attending physicians referred to in ORS

1 656.005 (12)(b)(A) whom the director selected in consultation with the Oregon
2 Medical Board and the committee referred to in ORS 656.790.

3 “(e)(A) The medical arbiter or panel of medical arbiters may examine the
4 worker and perform such tests as may be reasonable and necessary to es-
5 tablish the worker’s impairment.

6 “(B) If the director determines that the worker failed to attend the ex-
7 amination without good cause or failed to cooperate with the medical arbi-
8 ter, or panel of medical arbiters, the director shall postpone the
9 reconsideration proceedings for up to 60 days from the date of the determi-
10 nation that the worker failed to attend or cooperate, and shall suspend all
11 disability benefits resulting from this or any prior opening of the claim until
12 such time as the worker attends and cooperates with the examination or the
13 request for reconsideration is withdrawn. Any additional evidence regarding
14 good cause must be submitted prior to the conclusion of the 60-day
15 postponement period.

16 “(C) At the conclusion of the 60-day postponement period, if the worker
17 has not attended and cooperated with a medical arbiter examination or es-
18 tablished good cause, the worker may not attend a medical arbiter examina-
19 tion for this claim closure. The reconsideration record must be closed, and
20 the director shall issue an order on reconsideration based upon the existing
21 record.

22 “(D) All disability benefits suspended under this subsection, including all
23 disability benefits awarded in the order on reconsideration, or by an Ad-
24 ministrative Law Judge, the Workers’ Compensation Board or upon court
25 review, are not due and payable to the worker.

26 “(f) The insurer or self-insured employer shall pay the costs of examina-
27 tion and review by the medical arbiter or panel of medical arbiters.

28 “(g) The findings of the medical arbiter or panel of medical arbiters must
29 be submitted to the director for reconsideration of the notice of closure.

30 “(h) After reconsideration, no subsequent medical evidence of the

1 worker's impairment is admissible before the director, the Workers' Com-
2 pensation Board or the courts for purposes of making findings of impairment
3 on the claim closure.

4 "(i)(A) If the basis for objection to a notice of closure issued under this
5 section is a disagreement with the impairment used in rating the worker's
6 disability, and the director determines that the worker is not medically sta-
7 tionary at the time of the reconsideration or that the closure was not made
8 pursuant to this section, the director is not required to appoint a medical
9 arbiter before completing the reconsideration proceeding.

10 "(B) If the worker's condition has substantially changed since the notice
11 of closure, upon the consent of all the parties to the claim, the director shall
12 postpone the proceeding until the worker's condition is appropriate for claim
13 closure under subsection (1) of this section.

14 "(9) No hearing shall be held on any issue that was not raised and pre-
15 served before the director at reconsideration. However, issues arising out
16 of the reconsideration order may be addressed and resolved at hearing.

17 "(10) If, after the notice of closure issued pursuant to this section, the
18 worker becomes enrolled and actively engaged in training according to rules
19 adopted pursuant to ORS 656.340 and 656.726, any permanent disability pay-
20 ments due for work disability under the closure shall be suspended, and the
21 worker shall receive temporary disability compensation and any permanent
22 disability payments due for impairment while the worker is enrolled and
23 actively engaged in the training. When the worker ceases to be enrolled and
24 actively engaged in the training, the insurer or self-insured employer shall
25 again close the claim pursuant to this section if the worker is medically
26 stationary or if the worker's accepted injury is no longer the major contrib-
27 uting cause of the worker's combined or consequential condition or condi-
28 tions pursuant to ORS 656.005 (7). The closure shall include the duration of
29 temporary total or temporary partial disability compensation. Permanent
30 disability compensation shall be redetermined for work disability only. If the

1 worker has returned to work or the worker's attending physician has re-
2 leased the worker to return to regular or modified employment, the insurer
3 or self-insured employer shall again close the claim. This notice of closure
4 may be appealed only in the same manner as are other notices of closure
5 under this section.

6 “(11) If the attending physician or nurse practitioner authorized to pro-
7 vide compensable medical services under ORS 656.245 has approved the
8 worker's return to work and there is a labor dispute in progress at the place
9 of employment, the worker may refuse to return to that employment without
10 loss of reemployment rights or any vocational assistance provided by this
11 chapter.

12 “(12) Any notice of closure made under this section may include necessary
13 adjustments in compensation paid or payable prior to the notice of closure,
14 including disallowance of permanent disability payments prematurely made,
15 crediting temporary disability payments against current or future permanent
16 or temporary disability awards or payments and requiring the payment of
17 temporary disability payments which were payable but not paid.

18 “(13) An insurer or self-insured employer may take a credit or offset of
19 previously paid workers' compensation benefits or payments against any
20 further workers' compensation benefits or payments due a worker from that
21 insurer or self-insured employer when the worker admits to having obtained
22 the previously paid benefits or payments through fraud, or a civil judgment
23 or criminal conviction is entered against the worker for having obtained the
24 previously paid benefits through fraud. Benefits or payments obtained
25 through fraud by a worker may not be included in any data used for
26 ratemaking or individual employer rating or dividend calculations by an
27 insurer, a rating organization licensed pursuant to ORS chapter 737, the
28 State Accident Insurance Fund Corporation or the director.

29 “(14)(a) An insurer or self-insured employer may offset any compensation
30 payable to the worker to recover an overpayment from a claim with the same

1 insurer or self-insured employer. When overpayments are recovered from
2 temporary disability or permanent total disability benefits, the amount re-
3 covered from each payment shall not exceed 25 percent of the payment,
4 without prior authorization from the worker.

5 “(b) An insurer or self-insured employer may suspend and offset any
6 compensation payable to the beneficiary of the worker, and recover an
7 overpayment of permanent total disability benefits caused by the failure of
8 the worker’s beneficiaries to notify the insurer or self-insured employer
9 about the death of the worker.

10 “(15) Conditions that are direct medical sequelae to the original accepted
11 condition shall be included in rating permanent disability of the claim unless
12 they have been specifically denied.

13 “(16)(a) Except as provided under subsection (13) of this section, an
14 insurer or self-insured employer may not recover an overpayment from a
15 worker’s permanent partial disability compensation for overpayments, offsets
16 or credits of wage loss in an amount that exceeds 50 percent of the total
17 compensation awarded to the worker.

18 “(b) An insurer or self-insured employer may not declare an overpayment
19 of any compensation that was paid more than two years prior to the date
20 of the declaration.”.