

HB 3188-2
(LC 3492)
4/6/21 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3188**

1 On page 1 of the printed bill, line 2, after “656.005” insert “, 656.027,
2 656.278 and 656.506”.

3 Delete lines 4 through 32 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 656.005 is amended to read:

5 “656.005. (1) ‘Average weekly wage’ means the Oregon average weekly
6 wage in covered employment, as determined by the Employment Department,
7 for the last quarter of the calendar year preceding the fiscal year in which
8 the injury occurred.

9 “(2)(a) ‘Beneficiary’ means an injured worker, and the spouse in a mar-
10 riage, child or dependent of a worker, who is entitled to receive payments
11 under this chapter.

12 “(b) ‘Beneficiary’ does not include:

13 “(A) A spouse of an injured worker living in a state of abandonment for
14 more than one year at the time of the injury or subsequently. A spouse who
15 has lived separate and apart from the worker for a period of two years and
16 who has not during that time received or attempted by process of law to
17 collect funds for support or maintenance is considered living in a state of
18 abandonment.

19 “(B) A person who intentionally causes the compensable injury to or
20 death of an injured worker.

21 “(3) ‘Board’ means the Workers’ Compensation Board.

1 “(4) ‘Carrier-insured employer’ means an employer who provides workers’
2 compensation coverage with the State Accident Insurance Fund Corporation
3 or an insurer authorized under ORS chapter 731 to transact workers’ com-
4 pensation insurance in this state.

5 “(5) ‘Child’ means a child of an injured worker, including:

6 “(a) A posthumous child;

7 “(b) A child legally adopted before the injury;

8 “(c) A child toward whom the worker stands in loco parentis;

9 “(d) A child born out of wedlock;

10 “(e) A stepchild, if the stepchild was, at the time of the injury, a member
11 of the worker’s family and substantially dependent upon the worker for
12 support; and

13 “(f) A child of any age who was an invalid at the time of the accident
14 and thereafter remains an invalid substantially dependent on the worker for
15 support.

16 “(6) ‘Claim’ means a written request for compensation from a subject
17 worker or someone on the worker’s behalf, or any compensable injury of
18 which a subject employer has notice or knowledge.

19 “(7)(a) A ‘compensable injury’ is an accidental injury, or accidental injury
20 to prosthetic appliances, arising out of and in the course of employment re-
21 quiring medical services or resulting in disability or death. An injury is ac-
22 cidental if the result is an accident, whether or not due to accidental means,
23 if it is established by medical evidence supported by objective findings, sub-
24 ject to the following limitations:

25 “(A) An injury or disease is not compensable as a consequence of a
26 compensable injury unless the compensable injury is the major contributing
27 cause of the consequential condition.

28 “(B) If an otherwise compensable injury combines at any time with a
29 preexisting condition to cause or prolong disability or a need for treatment,
30 the combined condition is compensable only if, so long as and to the extent

1 that the otherwise compensable injury is the major contributing cause of the
2 disability of the combined condition or the major contributing cause of the
3 need for treatment of the combined condition.

4 “(b) ‘Compensable injury’ does not include:

5 “(A) Injury to any active participant in assaults or combats that are not
6 connected to the job assignment and that amount to a deviation from cus-
7 tomary duties;

8 “(B) Injury incurred while engaging in or performing, or as the result of
9 engaging in or performing, any recreational or social activities primarily for
10 the worker’s personal pleasure; or

11 “(C) Injury the major contributing cause of which is demonstrated to be
12 by a preponderance of the evidence the injured worker’s consumption of al-
13 coholic beverages or cannabis or the unlawful consumption of any controlled
14 substance, unless the employer permitted, encouraged or had actual knowl-
15 edge of such consumption.

16 “(c) A ‘disabling compensable injury’ is an injury that entitles the worker
17 to compensation for disability or death. An injury is not disabling if no
18 temporary benefits are due and payable, unless there is a reasonable expect-
19 tation that permanent disability will result from the injury.

20 “(d) A ‘nondisabling compensable injury’ is any injury that requires
21 medical services only.

22 “(8) ‘Compensation’ includes all benefits, including medical services, pro-
23 vided for a compensable injury to a subject worker or the worker’s benefi-
24 ciaries by an insurer or self-insured employer pursuant to this chapter.

25 “(9) ‘Department’ means the Department of Consumer and Business Ser-
26 vices.

27 “(10)(a) ‘Dependent’ means any of the following relatives of the worker
28 who, at the time of an accident, depended in whole or in part for the
29 relative’s support on the earnings of a worker who dies as a result of an
30 injury:

1 “(A) A parent, grandparent or stepparent;

2 “(B) A grandson or granddaughter;

3 “(C) A brother or sister or half-brother or half-sister; and

4 “(D) A niece or nephew.

5 “(b) ‘Dependent’ does not include an alien who does not reside within the
6 United States at the time of the accident, other than a parent, a spouse or
7 children, unless a treaty provides otherwise.

8 “(11) ‘Director’ means the Director of the Department of Consumer and
9 Business Services.

10 “(12)(a) ‘Doctor’ or ‘physician’ means a person duly licensed to practice
11 one or more of the healing arts in any country or in any state, territory or
12 possession of the United States within the limits of the license of the
13 licensee.

14 “(b) Except as otherwise provided for workers subject to a managed care
15 contract, ‘attending physician’ means a doctor, physician or physician as-
16 sistant who is primarily responsible for the treatment of a worker’s
17 compensable injury and who is:

18 “(A) A physician licensed under ORS 677.100 to 677.228 by the Oregon
19 Medical Board, or a podiatric physician and surgeon licensed under ORS
20 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial
21 surgeon licensed by the Oregon Board of Dentistry or a similarly licensed
22 doctor in any country or in any state, territory or possession of the United
23 States; or

24 “(B) For a cumulative total of 60 days from the first visit on the initial
25 claim or for a cumulative total of 18 visits, whichever occurs first, to any
26 of the medical service providers listed in this subparagraph, a:

27 “(i) Doctor or physician licensed by the State Board of Chiropractic Ex-
28 aminers for the State of Oregon under ORS chapter 684 or a similarly li-
29 censed doctor or physician in any country or in any state, territory or
30 possession of the United States;

1 “(ii) Physician assistant licensed by the Oregon Medical Board in ac-
2 cordance with ORS 677.505 to 677.525 or a similarly licensed physician as-
3 sistant in any country or in any state, territory or possession of the United
4 States; or

5 “(iii) Doctor of naturopathy or naturopathic physician licensed by the
6 Oregon Board of Naturopathic Medicine under ORS chapter 685 or a simi-
7 larly licensed doctor or physician in any country or in any state, territory
8 or possession of the United States.

9 “(c) Except as otherwise provided for workers subject to a managed care
10 contract, ‘attending physician’ does not include a physician who provides
11 care in a hospital emergency room and refers the injured worker to a pri-
12 mary care physician for follow-up care and treatment.

13 “(d) ‘Consulting physician’ means a doctor or physician who examines a
14 worker or the worker’s medical record to advise the attending physician or
15 nurse practitioner authorized to provide compensable medical services under
16 ORS 656.245 regarding treatment of a worker’s compensable injury.

17 “(13)(a) ‘Employer’ means any person, including receiver, administrator,
18 executor or trustee, and the state, state agencies, counties, municipal corpo-
19 rations, school districts and other public corporations or political subdi-
20 visions, that contracts to pay a remuneration for [*and secures the right to*
21 *direct and control*] the services of any [*person*] **worker**.

22 “(b) Notwithstanding paragraph (a) of this subsection, for purposes of this
23 chapter, the client of a temporary service provider is not the employer of
24 temporary workers provided by the temporary service provider.

25 “(c) As used in paragraph (b) of this subsection, ‘temporary service pro-
26 vider’ has the meaning for that term provided in ORS 656.850.

27 “**(d) For the purposes of this chapter, ‘subject employer’ means an**
28 **employer that is subject to this chapter as provided in ORS 656.023.**

29 “(14) ‘Insurer’ means the State Accident Insurance Fund Corporation or
30 an insurer authorized under ORS chapter 731 to transact workers’ compen-

1 sation insurance in this state or an assigned claims agent selected by the
2 director under ORS 656.054.

3 “(15) ‘Consumer and Business Services Fund’ means the fund created by
4 ORS 705.145.

5 “(16) ‘Invalid’ means one who is physically or mentally incapacitated from
6 earning a livelihood.

7 “(17) ‘Medically stationary’ means that no further material improvement
8 would reasonably be expected from medical treatment or the passage of time.

9 “(18) ‘Noncomplying employer’ means a subject employer that has failed
10 to comply with ORS 656.017.

11 “(19) ‘Objective findings’ in support of medical evidence are verifiable
12 indications of injury or disease that may include, but are not limited to,
13 range of motion, atrophy, muscle strength and palpable muscle spasm. ‘Ob-
14 jective findings’ does not include physical findings or subjective responses
15 to physical examinations that are not reproducible, measurable or observa-
16 ble.

17 “(20) ‘Palliative care’ means medical service rendered to reduce or mod-
18 erate temporarily the intensity of an otherwise stable medical condition, but
19 does not include those medical services rendered to diagnose, heal or per-
20 manently alleviate or eliminate a medical condition.

21 “(21) ‘Party’ means a claimant for compensation, the employer of the in-
22 jured worker at the time of injury and the insurer, if any, of the employer.

23 “(22) ‘Payroll’ means a record of wages payable to workers for their ser-
24 vices and includes commissions, value of exchange labor and the reasonable
25 value of board, rent, housing, lodging or similar advantage received from the
26 employer. However, ‘payroll’ does not include overtime pay, vacation pay,
27 bonus pay, tips, amounts payable under profit-sharing agreements or bonus
28 payments to reward workers for safe working practices. Bonus pay is limited
29 to payments that are not anticipated under the contract of employment and
30 that are paid at the sole discretion of the employer. The exclusion from

1 payroll of bonus payments to reward workers for safe working practices is
2 only for the purpose of calculations based on payroll to determine premium
3 for workers' compensation insurance, and does not affect any other calcu-
4 lation or determination based on payroll for the purposes of this chapter.

5 “(23) ‘Person’ includes a partnership, joint venture, association, limited
6 liability company and corporation.

7 “(24)(a) ‘Preexisting condition’ means, for all industrial injury claims, any
8 injury, disease, congenital abnormality, personality disorder or similar con-
9 dition that contributes to disability or need for treatment, provided that:

10 “(A) Except for claims in which a preexisting condition is arthritis or an
11 arthritic condition, the worker has been diagnosed with the condition, or has
12 obtained medical services for the symptoms of the condition regardless of
13 diagnosis; and

14 “(B)(i) In claims for an initial injury or omitted condition, the diagnosis
15 or treatment precedes the initial injury;

16 “(ii) In claims for a new medical condition, the diagnosis or treatment
17 precedes the onset of the new medical condition; or

18 “(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the
19 diagnosis or treatment precedes the onset of the worsened condition.

20 “(b) ‘Preexisting condition’ means, for all occupational disease claims, any
21 injury, disease, congenital abnormality, personality disorder or similar con-
22 dition that contributes to disability or need for treatment and that precedes
23 the onset of the claimed occupational disease, or precedes a claim for wors-
24 ening in such claims pursuant to ORS 656.273 or 656.278.

25 “(c) For the purposes of industrial injury claims, a condition does not
26 contribute to disability or need for treatment if the condition merely renders
27 the worker more susceptible to the injury.

28 “(25) ‘Self-insured employer’ means an employer or group of employers
29 certified under ORS 656.430 as meeting the qualifications set out by ORS
30 656.407.

1 “(26) ‘State Accident Insurance Fund Corporation’ and ‘corporation’ mean
2 the State Accident Insurance Fund Corporation created under ORS 656.752.

3 “[(27) ‘Subject employer’ means an employer that is subject to this chapter
4 as provided by ORS 656.023.]

5 “[(28) ‘Subject worker’ means a worker who is subject to this chapter as
6 provided by ORS 656.027.]

7 “[(29)] **(27)** ‘Wages’ means the money rate at which the service rendered
8 is recompensed under the contract of hiring in force at the time of the ac-
9 cident, including reasonable value of board, rent, housing, lodging or similar
10 advantage received from the employer, and includes the amount of tips re-
11 quired to be reported by the employer pursuant to section 6053 of the Inter-
12 nal Revenue Code of 1954, as amended, and the regulations promulgated
13 pursuant thereto, or the amount of actual tips reported, whichever amount
14 is greater. The State Accident Insurance Fund Corporation may establish
15 assumed minimum and maximum wages, in conformity with recognized in-
16 surance principles, at which any worker shall be carried upon the payroll
17 of the employer for the purpose of determining the premium of the employer.

18 “[(30)] **(28)(a)** ‘Worker’ means any person, **other than an independent**
19 **contractor, who engages to furnish services for a remuneration**, in-
20 cluding a minor whether lawfully or unlawfully employed[, *who engages to*
21 *furnish services for a remuneration, subject to the direction and control of an*
22 *employer and includes*] **and** salaried, elected and appointed officials of the
23 state, state agencies, counties, cities, school districts and other public cor-
24 porations, but does not include any person whose services are performed as
25 an adult in custody or ward of a state institution or as part of the eligibility
26 requirements for a general or public assistance grant.

27 “**(b)** For the purpose of determining entitlement to temporary disability
28 benefits or permanent total disability benefits under this chapter, ‘worker’
29 does not include a person who has withdrawn from the workforce during the
30 period for which such benefits are sought.

1 “(c) For the purposes of this chapter, ‘subject worker’ means a
2 worker who is subject to this chapter as provided in ORS 656.027.

3 “[(31)] (29) ‘Independent contractor’ has the meaning for that term pro-
4 vided in ORS 670.600.

5 “**SECTION 2.** ORS 656.027 is amended to read:

6 “656.027. All workers are subject to this chapter except those nonsubject
7 workers described in the following subsections:

8 “(1) A worker employed as a domestic servant in or about a private home.
9 For the purposes of this subsection ‘domestic servant’ means any worker
10 engaged in household domestic service by private employment contract, in-
11 cluding, but not limited to, home health workers.

12 “(2) A worker employed to do gardening, maintenance, repair, remodeling
13 or similar work in or about the private home of the person employing the
14 worker.

15 “(3)(a) A worker whose employment is casual and either:

16 “(A) The employment is not in the course of the trade, business or pro-
17 fession of the employer; or

18 “(B) The employment is in the course of the trade, business or profession
19 of a nonsubject employer.

20 “(b) For the purpose of this subsection, ‘casual’ refers only to employ-
21 ments where the work in any 30-day period, without regard to the number
22 of workers employed, involves a total labor cost of less than [500] **\$1,000.**
23 **The total labor cost below which employment is casual under this**
24 **paragraph must be adjusted annually on July 1 by the same percentage**
25 **increase, if any, as is made to the average weekly wage, as defined in**
26 **ORS 656.211.**

27 “(4) A person for whom a rule of liability for injury or death arising out
28 of and in the course of employment is provided by the laws of the United
29 States.

30 “(5) A worker engaged in the transportation in interstate commerce of

1 goods, persons or property for hire by rail, water, aircraft or motor vehicle,
2 and whose employer has no fixed place of business in this state.

3 “(6) Firefighter and police employees of any city having a population of
4 more than 200,000 that provides a disability and retirement system by ordi-
5 nance or charter.

6 “(7)(a) Sole proprietors, except those described in paragraph (b) of this
7 subsection. When labor or services are performed under contract, the sole
8 proprietor must qualify as an independent contractor.

9 “(b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When
10 labor or services are performed under contract for remuneration, notwith-
11 standing ORS 656.005 [(30)] **(28)**, the sole proprietor must qualify as an in-
12 dependent contractor. Any sole proprietor licensed under ORS 671.525 or
13 701.021 and involved in activities subject thereto is conclusively presumed
14 to be an independent contractor.

15 “(8) Except as provided in subsection (23) of this section, partners who
16 are not engaged in work performed in direct connection with the con-
17 struction, alteration, repair, improvement, moving or demolition of an im-
18 provement on real property or appurtenances thereto. When labor or services
19 are performed under contract, the partnership must qualify as an independ-
20 ent contractor.

21 “(9) Except as provided in subsection (25) of this section, members, in-
22 cluding members who are managers, of limited liability companies, regardless
23 of the nature of the work performed. However, members, including members
24 who are managers, of limited liability companies with more than one mem-
25 ber, while engaged in work performed in direct connection with the con-
26 struction, alteration, repair, improvement, moving or demolition of an
27 improvement on real property or appurtenances thereto, are subject workers.
28 When labor or services are performed under contract, the limited liability
29 company must qualify as an independent contractor.

30 “(10) Except as provided in subsection (24) of this section, corporate offi-

1 cers who are directors of the corporation and who have a substantial own-
2 ership interest in the corporation, regardless of the nature of the work
3 performed by such officers, subject to the following limitations:

4 “(a) If the activities of the corporation are conducted on land that re-
5 ceives farm use tax assessment pursuant to ORS chapter 308A, corporate of-
6 ficer includes all individuals identified as directors in the corporate bylaws,
7 regardless of ownership interest, and who are members of the same family,
8 whether related by blood, marriage or adoption.

9 “(b) If the activities of the corporation involve the commercial harvest
10 of timber and all officers of the corporation are members of the same family
11 and are parents, daughters or sons, daughters-in-law or sons-in-law or
12 grandchildren, then all such officers may elect to be nonsubject workers. For
13 all other corporations involving the commercial harvest of timber, the max-
14 imum number of exempt corporate officers for the corporation shall be
15 whichever is the greater of the following:

16 “(A) Two corporate officers; or

17 “(B) One corporate officer for each 10 corporate employees.

18 “(c) When labor or services are performed under contract, the corporation
19 must qualify as an independent contractor.

20 “(11) A person performing services primarily for board and lodging re-
21 ceived from any religious, charitable or relief organization.

22 “(12) A newspaper carrier utilized in compliance with the provisions of
23 ORS 656.070 and 656.075.

24 “(13) A person who has been declared an amateur athlete under the rules
25 of the United States Olympic Committee or the Canadian Olympic Committee
26 and who receives no remuneration for performance of services as an athlete
27 other than board, room, rent, housing, lodging or other reasonable incidental
28 subsistence allowance, or any amateur sports official who is certified by a
29 recognized Oregon or national certifying authority, which requires or pro-
30 vides liability and accident insurance for such officials. A roster of recog-

1 nized Oregon and national certifying authorities will be maintained by the
2 Department of Consumer and Business Services, from lists of certifying or-
3 ganizations submitted by the Oregon School Activities Association and the
4 Oregon Park and Recreation Society.

5 “(14) Volunteer personnel participating in the ACTION programs, organ-
6 ized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known
7 as the Foster Grandparent Program and the Senior Companion Program,
8 whether or not the volunteers receive a stipend or nominal reimbursement
9 for time and travel expenses.

10 “(15) A person who has an ownership or leasehold interest in equipment
11 and who furnishes, maintains and operates the equipment. As used in this
12 subsection ‘equipment’ means:

13 “(a) A motor vehicle used in the transportation of logs, poles or piling.

14 “(b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt
15 or asphalt concrete.

16 “(c) A motor vehicle used in the transportation of property by a for-hire
17 motor carrier that is required under ORS 825.100 or 825.104 to possess a
18 certificate or permit or to be registered.

19 “(16) A person engaged in the transportation of the public for recreational
20 down-river boating activities on the waters of this state pursuant to a federal
21 permit when the person furnishes the equipment necessary for the activity.
22 As used in this subsection, ‘recreational down-river boating activities’ means
23 those boating activities for the purpose of recreational fishing, swimming or
24 sightseeing utilizing a float craft with oars or paddles as the primary source
25 of power.

26 “(17) A person who receives no wage other than ski passes or other non-
27 cash remuneration for performing volunteer:

28 “(a) Ski patrol activities; or

29 “(b) Ski area program activities sponsored by a ski area operator, as de-
30 fined in ORS 30.970, or by a nonprofit corporation or organization.

1 “(18) A person 19 years of age or older who contracts with a newspaper
2 publishing company or independent newspaper dealer or contractor to dis-
3 tribute newspapers to the general public and perform or undertake any nec-
4 essary or attendant functions related thereto.

5 “(19) A person performing foster parent or adult foster care duties pur-
6 suant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or
7 443.

8 “(20) A person performing services on a volunteer basis for a nonprofit,
9 religious, charitable or relief organization, whether or not such person re-
10 ceives meals or lodging or nominal reimbursements or vouchers for meals,
11 lodging or expenses.

12 “(21) A person performing services under a property tax work-off program
13 established under ORS 310.800.

14 “(22) A person who performs service as a caddy at a golf course in an
15 established program for the training and supervision of caddies under the
16 direction of a person who is an employee of the golf course.

17 “(23)(a) Partners who are actively licensed under ORS 671.525 or 701.021
18 and who have a substantial ownership interest in a partnership. If all part-
19 ners are members of the same family and are parents, spouses, sisters,
20 brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren,
21 all such partners may elect to be nonsubject workers. For all other partner-
22 ships licensed under ORS 671.510 to 671.760 or 701.021, the maximum number
23 of exempt partners shall be whichever is the greater of the following:

24 “(A) Two partners; or

25 “(B) One partner for each 10 partnership employees.

26 “(b) When labor or services are performed under contract for
27 remuneration, notwithstanding ORS 656.005 [(30)] **(28)**, the partnership qual-
28 ifies as an independent contractor. Any partnership licensed under ORS
29 671.525 or 701.021 and involved in activities subject thereto is conclusively
30 presumed to be an independent contractor.

1 “(24)(a) Corporate officers who are directors of a corporation actively li-
2 censed under ORS 671.525 or 701.021 and who have a substantial ownership
3 interest in the corporation, regardless of the nature of the work performed.
4 If all officers of the corporation are members of the same family and are
5 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or
6 sons-in-law or grandchildren, all such officers may elect to be nonsubject
7 workers. For all other corporations licensed under ORS 671.510 to 671.760
8 or 701.021, the maximum number of exempt corporate officers shall be
9 whichever is the greater of the following:

10 “(A) Two corporate officers; or

11 “(B) One corporate officer for each 10 corporate employees.

12 “(b) When labor or services are performed under contract for
13 remuneration, notwithstanding ORS 656.005 [(30)] **(28)**, the corporation qual-
14 ifies as an independent contractor. Any corporation licensed under ORS
15 671.525 or 701.021 and involved in activities subject thereto is conclusively
16 presumed to be an independent contractor.

17 “(25)(a) Limited liability company members who are members of a com-
18 pany actively licensed under ORS 671.525 or 701.021 and who have a sub-
19 stantial ownership interest in the company, regardless of the nature of the
20 work performed. If all members of the company are members of the same
21 family and are parents, spouses, sisters, brothers, daughters or sons,
22 daughters-in-law or sons-in-law or grandchildren, all such members may elect
23 to be nonsubject workers. For all other companies licensed under ORS
24 671.510 to 671.760 or 701.021, the maximum number of exempt company
25 members shall be whichever is the greater of the following:

26 “(A) Two company members; or

27 “(B) One company member for each 10 company employees.

28 “(b) When labor or services are performed under contract for
29 remuneration, notwithstanding ORS 656.005 [(30)] **(28)**, the company qualifies
30 as an independent contractor. Any company licensed under ORS 671.525 or

1 701.021 and involved in activities subject thereto is conclusively presumed
2 to be an independent contractor.

3 “(26) A person serving as a referee or assistant referee in a youth or adult
4 recreational soccer match whose services are retained on a match-by-match
5 basis.

6 “(27) A person performing language translator or interpreter services that
7 are provided for others through an agent or broker.

8 “(28) A person who operates, and who has an ownership or leasehold in-
9 terest in, a passenger motor vehicle that is operated as a taxicab or for
10 nonemergency medical transportation. As used in this subsection:

11 “(a) ‘Lease’ means a contract under which the lessor provides a vehicle
12 to a lessee for consideration.

13 “(b) ‘Leasehold’ includes, but is not limited to, a lease for a shift or a
14 longer period.

15 “(c) ‘Passenger motor vehicle that is operated as a taxicab’ means a ve-
16 hicle that:

17 “(A) Has a passenger seating capacity that does not exceed seven persons;

18 “(B) Is transporting persons, property or both on a route that begins or
19 ends in Oregon; and

20 “(C)(i) Carries passengers for hire when the destination and route trav-
21 eled may be controlled by a passenger and the fare is calculated on the basis
22 of any combination of an initial fee, distance traveled or waiting time; or

23 “(ii) Is in use under a contract to provide specific service to a third party
24 to transport designated passengers or to provide errand services to locations
25 selected by the third party.

26 “(d) ‘Passenger motor vehicle that is operated for nonemergency medical
27 transportation’ means a vehicle that:

28 “(A) Has a passenger seating capacity that does not exceed seven persons;

29 “(B) Is transporting persons, property or both on a route that begins or
30 ends in Oregon; and

1 “(C) Provides medical transportation services under contract with or on
2 behalf of a mass transit or transportation district.

3 **“SECTION 3.** ORS 656.278 is amended to read:

4 “656.278. (1) Except as provided in subsection (7) of this section, the power
5 and jurisdiction of the Workers’ Compensation Board shall be continuing,
6 and it may, upon its own motion, from time to time modify, change or ter-
7 minate former findings, orders or awards if in its opinion such action is
8 justified in those cases in which:

9 “(a) There is a worsening of a compensable injury that results in the in-
10 ability of the worker to work and requires hospitalization or inpatient or
11 outpatient surgery, or other curative treatment prescribed in lieu of
12 hospitalization that is necessary to enable the injured worker to return to
13 work. In such cases, the payment of temporary disability compensation in
14 accordance with ORS 656.210, 656.212 (2) and 656.262 (4) may be provided
15 from the time the attending physician authorizes temporary disability com-
16 pensation for the hospitalization, surgery or other curative treatment until
17 the worker’s condition becomes medically stationary;

18 “(b) The worker submits and obtains acceptance of a claim for a
19 compensable new medical condition or an omitted medical condition pursu-
20 ant to ORS 656.267 and the claim is initiated after the rights under ORS
21 656.273 have expired. In such cases, the payment of temporary disability
22 compensation in accordance with the provisions of ORS 656.210, 656.212 (2)
23 and 656.262 (4) may be provided from the time the attending physician au-
24 thorizes temporary disability compensation for the hospitalization, surgery
25 or other curative treatment until the worker’s condition becomes medically
26 stationary, and the payment of permanent disability benefits may be provided
27 after application of the standards for the evaluation and determination of
28 disability as may be adopted by the Director of the Department of Consumer
29 and Business Services pursuant to ORS 656.726; or

30 “(c) The date of injury is earlier than January 1, 1966. In such cases, in

1 addition to the payment of temporary disability compensation, the payment
2 of medical benefits may be provided.

3 “(2) Benefits provided under subsection (1) of this section:

4 “(a) Do not include vocational assistance benefits under ORS 656.340;

5 “(b) Do not include temporary disability compensation for periods of time
6 during which the claimant did not qualify as a ‘worker’ pursuant to ORS
7 656.005 [(30)] (28);

8 “(c) Do not include medical services provided pursuant to ORS 656.245
9 except as provided under subsection (1)(c) of this section; and

10 “(d) May include permanent disability benefits for additional impairment
11 to an injured body part that has previously been the basis of a permanent
12 partial disability award, but only to the extent that the permanent partial
13 disability rating exceeds the permanent partial disability rated by the prior
14 award or awards.

15 “(3) An order or award made by the board during the time within which
16 the claimant has the right to request a hearing on aggravation under ORS
17 656.273 is not an order or award, as the case may be, made by the board on
18 its own motion.

19 “(4) Pursuant to ORS 656.298, any party may appeal an order or award
20 made by the board on its own motion.

21 “(5) The insurer or self-insured employer may voluntarily reopen any
22 claim to provide benefits allowable under this section or to grant additional
23 medical or hospital care to the claimant. The board shall establish proce-
24 dures for the resolution of disputes arising out of a voluntary reopening of
25 a claim under this section.

26 “(6) Any claim reopened under this section shall be closed by the insurer
27 or self-insured employer in a manner prescribed by the board, including,
28 when appropriate, an award of permanent disability benefits as determined
29 under subsections (1)(b) and (2)(d) of this section. The board shall also pre-
30 scribe a process to be followed if the worker objects to the claim closure.

1 “(7) The provisions of this section do not authorize the board, on its own
2 motion, to modify, change or terminate former findings or orders:

3 “(a) That a claimant incurred no injury or incurred a noncompensable
4 injury; or

5 “(b) Approving disposition of a claim under ORS 656.236 or 656.289 (4).

6 **“SECTION 4.** ORS 656.506 is amended to read:

7 “656.506. (1) As used in this section:

8 “(a) ‘Employee’ means a subject worker as defined in ORS 656.005 (28).

9 “(b) ‘Employer’ means a subject employer as defined in ORS 656.005
10 [(27)] **(13)**.

11 “(2) Every employer shall retain from the moneys earned by all employees
12 an amount determined by the Director of the Department of Consumer and
13 Business Services for each hour or part of an hour the employee is employed
14 and pay the money retained in the manner and at such intervals as the di-
15 rector shall specify.

16 “(3) In addition to all moneys retained under subsection (2) of this sec-
17 tion, the director shall assess each employer an amount equal to that as-
18 sessed pursuant to subsection (2) of this section. The assessment must be
19 paid in such manner and at such intervals as the director may specify.

20 “(4) The Department of Consumer and Business Services shall deposit
21 moneys collected pursuant to subsections (2) and (3) of this section, and any
22 accrued cash balances, into the Workers’ Benefit Fund. Subject to the limi-
23 tations in subsections (2) and (3) of this section, the amount of the hourly
24 assessments provided in subsections (2) and (3) of this section annually may
25 be adjusted to meet the needs of the Workers’ Benefit Fund for the expend-
26 itures of the department in carrying out the department’s functions and du-
27 ties pursuant to subsection (7) of this section and ORS 656.445, 656.622,
28 656.625, 656.628 and 656.630. Factors to be considered in making such ad-
29 justment of the assessments must include, but not be limited to, the cash
30 balance as determined by the director and estimated expenditures and reve-

1 nues of the Workers' Benefit Fund.

2 “(5) The Legislative Assembly intends that the department set rates for
3 the collection of assessments pursuant to subsections (2) and (3) of this sec-
4 tion in a manner so that at the end of the period for which the rates are
5 effective, the balance of the Workers' Benefit Fund is an amount of not less
6 than 12 months of projected expenditures from the fund in regard to the
7 department's functions and duties under subsection (7) of this section and
8 ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in a manner that minimizes
9 the volatility of the rates assessed. If the department determines that the
10 balance of the fund will fall below the balance required under this sub-
11 section, the department shall devise and report to the Workers' Compens-
12 sation Management-Labor Advisory Committee a plan to increase the
13 balance to the required amount. The department may set the assessment rate
14 at a higher level if the department determines that a higher rate is necessary
15 to avoid unintentional program or benefit reductions in the time period im-
16 mediately following the period for which the rate is being set.

17 “(6) Every employer required to pay the assessments referred to in this
18 section shall make and file a report of employee hours worked and amounts
19 due under this section upon a combined report form prescribed by the De-
20 partment of Revenue. The report must be filed with the Department of Rev-
21 enue:

22 “(a) At the times and in the manner prescribed in ORS 316.168 and
23 316.171; or

24 “(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

25 “(7) There is established a Retroactive Program for the purpose of pro-
26 viding increased benefits to claimants or beneficiaries eligible to receive
27 compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and
28 656.210 that are lower than currently being paid for like injuries. However,
29 benefits payable under ORS 656.210 may not be increased by the Retroactive
30 Program for claimants whose injury occurred on or after April 1, 1974. Not-

1 withstanding the formulas for computing benefits provided in ORS 656.204,
2 656.206, 656.208 and 656.210, the increased benefits payable under this sub-
3 section must be in such amount as the director considers appropriate. The
4 director annually shall compute the amount which may be available during
5 the succeeding year for payment of such increased benefits and determine the
6 level of benefits to be paid during such year. If, during such year, it is de-
7 termined by the director that there are insufficient funds to increase benefits
8 to the level fixed by the director, the director may reduce the level of bene-
9 fits payable under this subsection. The increase in benefits to workers is
10 payable in the first instance by the insurer or self-insured employer subject
11 to reimbursement from the Workers' Benefit Fund by the director. If the
12 insurer is a member of the Oregon Insurance Guaranty Association and be-
13 comes insolvent and the Oregon Insurance Guaranty Association assumes the
14 insurer's obligations to pay covered claims of subject workers, including
15 Retroactive Program benefits, the benefits are payable in the first instance
16 by the Oregon Insurance Guaranty Association, subject to reimbursement
17 from the Workers' Benefit Fund by the director.".

18
