

## Enrolled House Bill 2799

Sponsored by Representative RUIZ, Senator GORSEK; Representatives HUDSON, MUNOZ, Senators CAMPOS, FREDERICK, MEEK (Presession filed.)

CHAPTER .....

### AN ACT

Relating to litigation costs for prevailing claimants; amending ORS 656.386.

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

##### **SECTION 1.** ORS 656.386 is amended to read:

656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, a reasonable attorney fee shall be allowed.

(b) For purposes of this section, a "denied claim" is:

(A) A claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation;

(B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 60 days;

(C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to within 60 days; or

(D) A claim for an initial injury or occupational disease to which the insurer or self-insured employer does not respond within 60 days.

(c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's failure to pay compensation for a previously accepted injury or condition in timely fashion. Attorney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

(2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this section, the court, board or Administrative Law Judge may order payment of the claimant's reasonable expenses and costs for records, expert opinions and witness fees.

(b) The court, board or Administrative Law Judge shall determine the reasonableness of witness fees, expenses and costs for the purpose of paragraph (a) of this subsection.

(c) Payments for witness fees, expenses and costs ordered under this subsection shall be made by the insurer or self-insured employer and are in addition to compensation payable to the claimant.

(d)(A) Payments for witness fees, expenses and costs ordered under this subsection may not exceed [\$1,500] **\$3,500** unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

**(B) The amount that may not be exceeded under this paragraph without demonstrating extraordinary circumstances shall be adjusted annually on July 1 by the percentage increase, if any, in the average weekly wage as most recently computed by the Employment Department under ORS 656.211 and rounded to the nearest multiple of \$100.**

(3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or self-insured employer does not respond within 14 days of the request, or if the claimant, insurer or self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court and the Director of the Department of Consumer and Business Services, Administrative Law Judge, board or court finally determines that the claim should be classified as disabling, the director, Administrative Law Judge, board or court may assess a reasonable attorney fee.

(4) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall award a reasonable assessed attorney fee to the claimant's attorney.

(5) In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter.

**Passed by House April 15, 2025**

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

**Passed by Senate May 15, 2025**

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Rob Wagner, President of Senate

**Received by Governor:**

.....M.,....., 2025

**Approved:**

.....M.,....., 2025

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2025

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Tobias Read, Secretary of State