

HOUSE AMENDMENTS TO HOUSE BILL 2799

By COMMITTEE ON LABOR AND WORKPLACE STANDARDS

April 10

1 On page 1 of the printed bill, line 2, after the first semicolon delete the rest of the line and
2 delete line 3 and insert “amending ORS 656.386.”.

3 Delete lines 5 through 29 and delete pages 2 through 4 and insert:

4 “**SECTION 1.** ORS 656.386 is amended to read:

5 “656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the
6 denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court
7 shall allow a reasonable attorney fee to the claimant’s attorney. In such cases involving denied
8 claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in
9 a review by the Workers’ Compensation Board, then the Administrative Law Judge or board shall
10 allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instru-
11 mental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge,
12 a reasonable attorney fee shall be allowed.

13 “(b) For purposes of this section, a ‘denied claim’ is:

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

17 “(B) A claim for compensation for a condition omitted from a notice of acceptance, made pur-
18 suant to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within
19 60 days;

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

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

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

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

31 “(b) The court, board or Administrative Law Judge shall determine the reasonableness of wit-
32 ness fees, expenses and costs for the purpose of paragraph (a) of this subsection.

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

35 “(d)(A) Payments for witness fees, expenses and costs ordered under this subsection may not

1 exceed [\$1,500] **\$3,500** unless the claimant demonstrates extraordinary circumstances justifying pay-
2 ment of a greater amount.

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

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

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

17 “(5) In all other cases, attorney fees shall be paid from the increase in the claimant’s compen-
18 sation, if any, except as otherwise expressly provided in this chapter.”.

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