

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1107 SCOMM 33 : WORKERS COMPENSATION, 1979-1982

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VOCATIONAL REHABILITATION COST STUDY

Principal Findings:

- . The development and implementation of vocational rehabilitation plans cost an average of \$4218 during 1975-76, the first two years of the mandatory vocational rehabilitation provision in the California law (see Exhibit 1)
- . More than half of the expense in so-called "plan" cases was paid to the employee as a maintenance benefit while undergoing rehabilitation. Payments to vendors for testing and evaluation services accounted for 28 per cent of plan expenditures, with the remainder paid for tuition, books, tools, transportation and other retraining expenses (Exhibit 1).
- . Vocational rehabilitation plans involving formal school training were the most expensive, an average of \$5707 each, during 1975-76 and were the most frequent type of retraining program (42 per cent of all plans) approved by the Rehabilitation Bureau of the Division of Industrial Accidents. Direct placement programs, often a modified job with the same employer, were the least costly (\$1495) during the same period (Exhibit 1).
- . Formal schooling programs, on-the-job training, or a combination of both, accounted for seven of every ten rehabilitation plans (Exhibit 1).
- . Of the 204 rehabilitation plans reviewed, only seven (3 per cent) did not require expenditures for vocational rehabilitation benefits (Exhibit 1).
- . Plan cases, including plans terminated after initial implementation, approximated 19 per cent of closed files and accounted for nearly two-thirds of rehabilitation expenditures during the study period (Exhibit 2).
- . The remaining third of vocational rehabilitation costs was spent in non-plan cases, in most instances to determine or establish the employee's non-eligibility for vocational rehabilitation benefits (Exhibit 2).
- . Non-plan closings were attributable mainly to cases where the employee's medical condition did not warrant vocational retraining (29 per cent of all closed files), where the employee refused services (22 per cent), or where vocational rehabilitation was not feasible (11 per cent). Collectively these three categories accounted for 28 per cent of all vocational expenditures and nearly 80 per cent of all non-plan case costs (Exhibit 2).

- . More than half of all files closed by the Rehabilitation Bureau required vocational rehabilitation expenditures, even though only one-third of those cases entailed the provision of services pursuant to a rehabilitation plan. Non-plan expenditures occurred most often in closings for non-feasibility, employee refusal of services and medical ineligibility (Exhibit 3).
- . Nearly 80 per cent of the employees in the study sample were represented by an attorney during the pendency of their workers' compensation claim. Although the study did not attempt to measure the extent of attorney involvement in the vocational rehabilitation process, employees were less likely to be represented in plan cases and more likely to be represented where rehabilitation services were refused (Exhibit 5).
- . Bureau conferences were held in 6.5 per cent of all cases, most frequently in plan cases which ultimately were terminated (Exhibit 6). Every fourth plan required one or more conferences, and plan cases accounted for 78 per cent of all conferences. Multiple conferences were held in 56 per cent of all conferenced cases.
- . Information concerning the Work Status Report (Form RB-1) -- required when vocational rehabilitation is necessary or in every case where temporary disability is 120 days or longer -- was not recorded in 18.6 per cent of the files reviewed (Exhibit 7). On a worst cases basis, i.e., assuming the form was not submitted in all these cases, this finding casts doubt on the accuracy of the Bureau's earlier contention that work status reports are not contained in 32 per cent of its files. Moreover, it appears RB-1 reports were not required in nearly 60 per cent of the non-recorded cases.

Description of the Study: Data was compiled from a sample of closed files of the Rehabilitation Bureau selected during March-April 1978 by staff of the Institute. The sampling procedure generally required the selection of every ninth file unless the employer involved was self-insured, in which event the next closed file of an insured employer was selected. However, in order to assure a representative number of plan cases (designated C-4 or C-5 by the Bureau), such cases were over-sampled by selecting every fifth case. Consequently, closed files in each of the Bureau's 15 offices were separated into plan and non-plan files before selecting every fifth and ninth case, respectively. This sampling technique produced inter-office variations (see Exhibit 8) due to client mix, employer mix, caseloads and backlogs, but the committee believes the sample is valid and representative.

The initial sample consisted of 1043 cases (14 per cent of all closed files at the time), of which 23 per cent involved the development, implementation and either the completion or termination of a specific rehabilitation plan. After elimination of incomplete files, worksheets on 1017 cases were prepared and forwarded May 25, 1978 to 53 insurers. By the end of June 786 worksheets had been returned, of which 770 were usable (see Exhibit 9 for composition of the returned sample by Bureau closing mode). Thus the results contained in this report are based on 76 per cent of the a priori sample, far in excess of the 15-20 per cent return necessary for statistical reliability.

One of the subordinate purposes of the study was to verify the accuracy of the Bureau's closing codes. Exhibit 10 shows the results of this test. While the differences generally are not extreme, the committee believes the insurer's assessment of the reason for case closure is more accurate -- particularly considering 24 cases "closed" by the Bureau where benefits still are being provided -- and these designations were used in the preparation of other exhibits contained in this report.

Finally, the over-sampling of plan cases described earlier produced a distribution in which such cases were 164 per cent of what otherwise might be expected in a random sample. In an effort to provide the industry with an approximate overview of vocational rehabilitation during 1975-76, the sample was restructured to eliminate this deliberate bias. The results of this exercise are shown in Exhibits 2 and 3 and, while admittedly not correct statistically, these displays may be useful to industry personnel responsible for delivering vocational rehabilitation benefits.

Limitations: The committee appreciates the limitations of the study data and recognizes the hazards inherent in making recommendations based on history, particularly when the history is biased.

In the first instance, the study was limited to closed files of the Rehabilitation Bureau; it seems reasonable to assume the "easiest" cases may close sooner, so the sample may not be representative of today's reality. Secondly, 60 per cent of the sample consisted of cases where the year of injury was 1975, the first year of mandatory vocational rehabilitation, and employees' and insurers' response to a new benefit and a new procedure probably does not parallel current conditions. Thirdly, the committee concedes -- based in viscera more than fact -- that some costs of a new program may not have been allocated correctly, e.g., the rehabilitation maintenance benefit may have been recorded as temporary disability indemnity, so the per-case costs could be understated.

Nevertheless, the study produced the first industrywide hard data available, and the committee recommends the results -- with appropriate caveats -- be distributed to interested parties.

Marilyn Wilson, R.N., Fireman's Fund Insurance Cos., chairman
Bob Dyer, State Compensation Insurance Fund
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Vocational Rehabilitation Cost Study
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AVERAGE COST BY PLAN TYPE
 (Including terminated plans)

Plan Type	Cases		Average Costs			Total
	#	%	Maint.	Vendor	Other	
OJT	43	21.1	\$1,648	\$1,221	\$ 618	\$3,486
Schooling	86	42.1	3,182	1,323	1,202	5,707
OJT & Schooling	14	6.9	1,794	1,458	1,351	4,603
Direct Placement	32	15.7	705	740	50	1,495
Self-Employment	11	5.4	1,971	1,467	1,329	5,267
Other	18	8.8	1,581	904	269	2,754
	204	100.0	\$2,168	\$1,190	\$ 860	\$4,218
			51.4%	28.2%	20.4%	

DISTRIBUTION AND COSTS BY CLOSING MODE
 (Reconstructed sample)

Closing Mode	#	% of Total	\$ Cost	% of Total
Not medically eligible	200	28.6	61,391	7.1
Not vocationally feasible	80	11.4	84,349	9.8
Pre-1975 injury	53	7.6	18,964	2.2
Other non-QIW	49	7.0	4,797	0.6
Rehabilitation refused	152	21.7	97,385	11.3
Completed plan, RTW	100	14.3	398,840	46.2
Completed plan, no RTW	9	1.3	60,980	7.1
Plan terminated	25	3.6	96,481	11.2
Other	8	1.1	2,091	0.2
Open	24	3.4	37,579	4.3
	700	100.0	\$863,357	100.0

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AVERAGE COST BY CLOSING MODE
(Reconstructed sample)

Closing Mode	# Cases		Average \$ per Case (Cost Cases Only)
	w/Costs	w/o Costs	
Not medically eligible	63	137	\$ 975
Not vocationally feasible	63	17	1,347
Pre-1975 injury	3	50	6,321
Other non-QIW	4	45	1,199
Rehabilitation refused	87	65	1,119
Completed plan, RTW	96	4	4,155
Completed plan, no RTW	9	0	6,777
Plan terminated	24	1	4,020
Other	4	4	523
Open	18	6	2,088
	371	331	\$ 2,327

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% DISTRIBUTION OF COSTS
 (by closing mode)

Closing Mode	% Total VR costs allocated to		
	Maint	Vendor	Other
Not medically eligible	29.5	67.5	3.0
Not vocationally feasible	36.0	61.1	2.9
Pre-1975 injury	62.8	37.0	0.2
Other non-QIW	46.4	49.9	3.7
Rehab refused	42.9	52.8	4.3
Completed plan, RTW	49.3	29.7	21.0
Completed plan, no RTW	59.5	21.2	19.3
Plan terminated	48.8	33.0	18.2
Other	0.0	99.5	0.5
Open	45.3	52.7	2.0

ATTORNEY REPRESENTATION

	Represented?	
	% Yes	% No
All closings	78.8	21.2
Plan cases only	73.0	27.0
Refusal cases only	82.2	17.8

CONFERENCES

Closing mode	% Cases requiring conference	Average number conferences per case
Not medically eligible	0.5	1.0
Not vocationally feasible	3.75	1.7
Pre-1975 injury	--	--
Other non-QIW	--	--
Rehab refused	1.3	1.0
Completed plan, RTW	13.4	1.8
Completed plan, no RTW	53.3	1.3
Plan terminated	68.0	1.8
Other	--	--
Open	20.8	1.3
	6.5	1.6

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DISPOSITION OF CASES
WITHOUT RB-1 INFORMATION

Closing Mode	#	\$
Not medically eligible	28	19.6
Not vocationally feasible	7	4.9
Pre-1975 injury	42	29.3
Other non-QIW	12	8.4
Rehabilitation refused	17	11.9
Plan completed, RTW	14	9.8
Plan completed, no RTW	2	1.4
Plan terminated	5	3.5
Open	7	4.9
Other	9	6.3
	143	100.0

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INITIAL COMPOSITION OF SAMPLE

Bureau Office	# Closed Files	Sample		Completed Plans in Sample	
		#	%	#	%
Bell Gardens	219	32	14.6	9	28.1
Fresno	517	74	14.3	19	25.7
Long Beach	271	42	15.5	14	33.3
Los Angeles	348	47	13.5	16	34.0
Oakland	597	72	12.1	16	22.2
Panorama City	1409	194	13.8	20	10.3
Pomona	683	83	12.2	15	18.1
Sacramento	567	74	13.1	13	17.6
San Bernardino	167	28	16.8	7	25.0
San Diego	148	34	23.0	12	35.3
San Francisco	408	75	18.4	20	26.7
San Jose	700	97	13.9	20	20.6
Santa Ana	583	82	14.1	20	24.4
Santa Rosa	509	70	13.7	15	21.4
Ventura	274	39	14.2	12	30.8
	7300	1043	14.3	244	23.4

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SAMPLE COMPOSITION

Bureau Closing Code	Original Sample	Returned	
		#	%
C1 - Not medically eligible	253	200	79.1
C2 - Not vocationally feasible	112	86	76.8
C3 - Rehab refused	183	133	72.7
C4 - Plan completed, no RTU	26	23	88.5
C5 - Plan completed, RTU	219	161	73.9
C6 - Plan terminated	21	15	71.4
C7 - Pre-1975 injury	59	44	74.6
C8 - Other	80	62	77.5
No code shown	65	46	70.7
	1017	770	75.7

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COMPARISON OF BUREAU CLOSING
 CODE TO INSURER'S RESOLUTION MODE

Reason for case closing	Bureau	Insurer
Not medically eligible	200	200
Not vocationally feasible	86	80
Pre-1975 injury	44	53
Other non-QIW	62	49
Rehab refused	133	152
Plan completed, RTW	161	164
Plan completed, no RTW	23	15
Plan terminated	15	25
Bureau code not shown	46	--
Other closing	--	8
Open cases	--	24
	770	770



Division of Industrial Accidents REHABILITATION BUREAU

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REHABILITATION BUREAU NEWSLETTER

JANUARY 1980

A joint legislative committee hearing was held in Monterey early in November. All sectors of the community interested in the injured worker were present. Testimony was given by over twenty people, one of whom was an injured worker.

Generally, the Bureau was praised for its progress. The Bureau's testimony noted the manner in which the Bureau is organized and detailed its role in this program. The rehabilitation process was briefly outlined.

It was pointed out that less than five years ago the Bureau was created knowing its purpose only in the most general terms, and having no models on whose experience they could draw. With the beginning of 1979, the Bureau had conducted studies which led to:

1. Extensive revisions in the Rules and Regulations already effective;
2. Provision of forms and guidelines for all phases of the rehabilitation process (included here);
3. Changes in internal procedures;
4. Changes in the Policy and Procedure Manual.

* * * * *

RESULTS OF STUDY; SAMPLE OF 1978 CASE CLOSURES OF WORKERS MEDICALLY ELIGIBLE FOR REHABILITATION BENEFITS

Areas of Injury

The information gathered in this study indicated 55% of rehabilitation candidates have incurred back injuries, followed by 6% with knee injuries, 4% each to neck, arm, or leg; 3% each to head, foot or allergy; 2% each to shoulder, elbow, hip, wrist or nervous system; and 1% each to ankle or chest.

Time

On Page 2 we have illustrated the average length of time it took to get through the rehabilitation process for a plan completed in 1978. The total process took 81 weeks. The average time was 42 weeks from the date of injury to report to the Bureau, 25 weeks later than the 120 days reporting requirements in effect at the time these cases were in process. It took an average 7 more weeks

Time (cont'd)

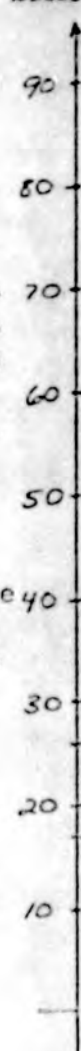
before a provider of rehabilitation services was assigned, and 15 weeks from that point for an evaluation to occur and plans to be submitted. The plans averaged 17 weeks. The graph also shows that there would be a 28% reduction in total time if the new 180-day reporting requirement is met and a case is referred to a provider of rehabilitation services at the same time.

Age

The next illustration gives the percentage of injured workers eligible for rehabilitation that falls into each age category. It also gives the percentage of people in each group who successfully completed a rehabilitation program and returned to work. The highest percentage of people (82%) completing plans were in the 26 to 50 year age groups, yet only 63% of the total population entitled to rehabilitation benefits were in this age group.

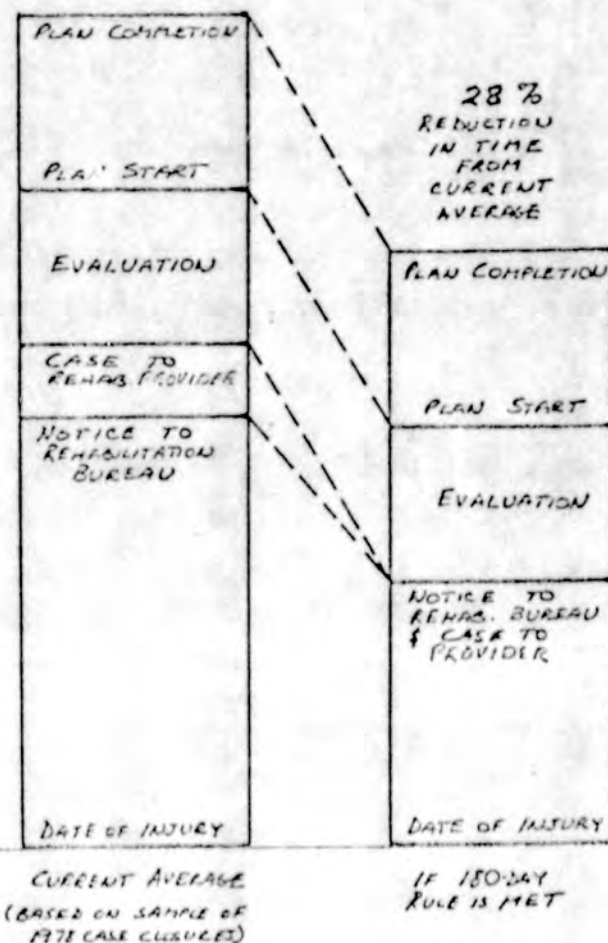
This shows that more workers who drop out rather than complete the rehabilitation process are

WEEKS

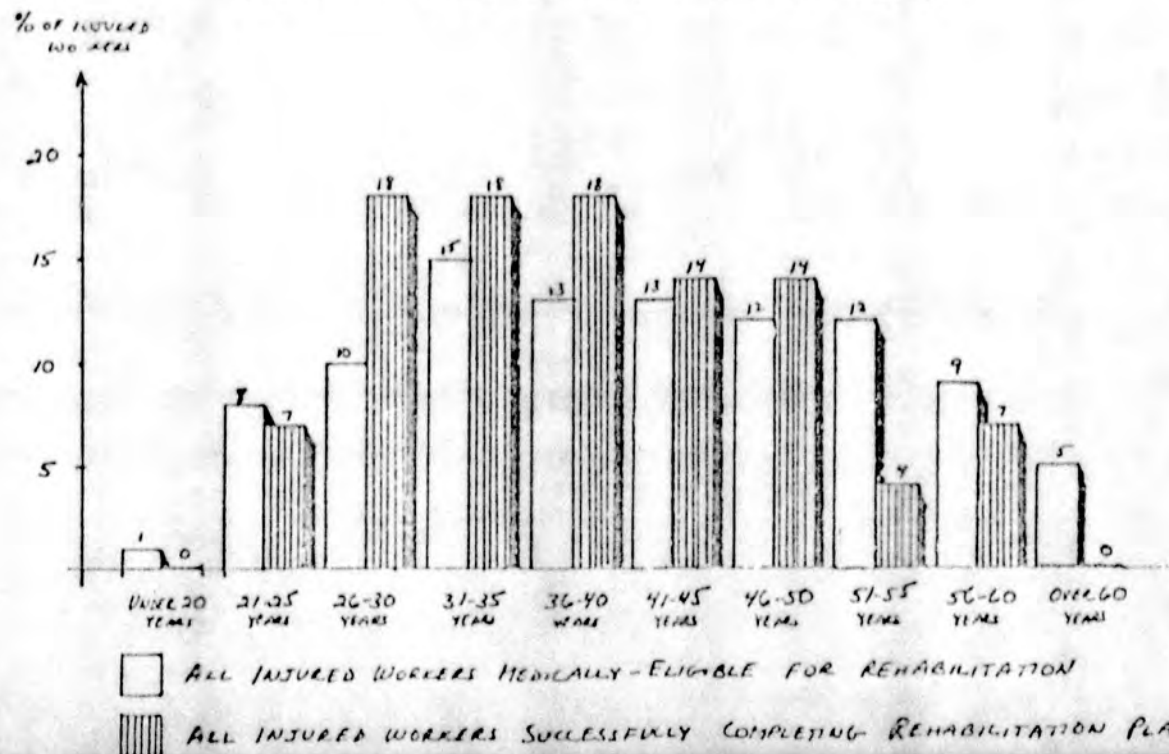


REHABILITATION BUREAU

TIME SPAN OF REHABILITATION CASES
DATE OF INJURY TO PLAN COMPLETION, IN WEEKS



% DISTRIBUTION OF INJURED WORKERS IN REHABILITATION SYSTEM, BY AGE GROUPINGS
(SOURCE: SAMPLE OF 1978 CASE CLOSURES)



either under 26 or over 50. The average age of the successfully rehabilitated worker is 38½ years.

Wages

Fifty-four percent of the injured workers successfully completed a plan to return to the same or increased wages. The median wage was \$225.00 weekly, with a \$40.00 increase for 38% of all workers and a \$36.00 decrease for 45% of the workers. Sixteen percent returned to the same salary as that at the time of injury.

Plan Type

What type of plans are resulting in successful rehabilitation and return to work? According to plans successfully completed in 1978, modified work meets with the highest success of 32%, followed by plans involving formal training at 25%. The next category of plans are those for direct job placement at 16%. A combination of formal training and on-the-job training comprises 11% of the total. On-the-job training alone makes up 9%. Finally, self-employment has the smallest portion of the total with 7%.

* * * * *

OTHER FACTS AND FIGURES

In 1978 only 47% of all Bureau cases resulted from a report by an employer. In January of 1979, through August, this figure rose to 60%.

The Bureau has processed 93,000 Work Status Reports and developed 54,000 cases; 49% of these have flowed into the Bureau in the last 18 months. Presently, the Bureau has an open caseload of 23,000 cases.

In the third quarter the Bureau consultants reported referring an average of two cases per consultant for independent vocational evaluations. Only one counselor received three referrals and two received two; the rest were spread among a variety of counselors.

Ninety-five appeals were reported during this same time period. Four percent for eligibility; 29% for temporary disability issues; 18% for unknown reasons; and 13% for a variety of reasons including further services, statute of limitations, liens, appropriateness of plans, and cross-examination of Agreed Medical Examiners.

* * * * *

PANEL DECISIONS: APPEALS ON BUREAU ORDERS

In a panel decision in the case of Manuel W. Perez vs. Eagle Truck; Zenith National Insurance Company, the WCAB stated the manner in which appeals of decisions and orders of the Rehabilitation Bureau were to be made.

1. A petition is to be filed containing (a) the title and number of the case; (b) the specific issue or issues individually stated, e.g., eligibility, feasibility, temporary disability, etc.;

(d) a copy of the petition must be served on the Bureau.

2. A Declaration of Readiness must be filed together with the petition, giving information such as hearing or conference wanted, number of witnesses, time required, etc.

The decision clearly stated that the Bureau consultant may request that the matter be returned for reconsideration by the Bureau.

* * * * *

NEW FORMS

Attached are the new forms. There may be some changes after they are reviewed by a form designer. Final copies will be sent out later, in the meantime, please use the attached. We suggest that you wait for the final forms before reproducing in great numbers.

Medical Evaluation Form

This form should be used only when a physician is being asked to comment on the need for rehabilitation. It is especially useful when used together with a job description or job analysis. This form is not required, but should be helpful when there is a possibility of a need for rehabilitation and a physician has not previously commented regarding this.

Employee Job Description and Employer Job Description Form

These are non-required, but Bureau recommended forms which may be used by claims personnel or rehabilitation coordinators to:

1. Determine if there is an agreement on the physical demands of the job between the employee and employer.
2. Assist the physician and employee in setting realistic return to work goals.
3. Determine whether or not the employee is medically eligible for rehabilitation services.

The forms are designed to be sent during the first month of disability with a cover letter explaining the positive purpose (#2 above).

When there is general agreement on the physical demands of the job between the employee and employer, the employee's form should be forwarded to the treating physician with a cover letter asking the following questions:

1. Will the employee be physically able to do the job described?
2. Is more information on the physical demands needed? If so, an on-site job analysis can be completed.

If there are major discrepancies on the physical demands of the job between the employee and the employer, you should consider the need for an on-site job analysis. These forms cannot be used in lieu of a job analysis requested by the Bureau.

On-Site Job Analysis

This is another not required, but Bureau recommended form. It must be completed by the carrier/employer personnel trained in this technique, or a vocational rehabilitation provider, and signed by the employee with his/her comments as necessary. This type of analysis may be reported in a narrative style but must meet the minimum requirements as indicated on this form.

New internal procedures have been implemented January 1, 1980; therefore, the Conference and Closure Request Forms ARE REQUIRED!

Request for Conference Form

Requests submitted in any other manner will be returned for proper submission. Anyone may request a conference, however, it is preferred that the employer or the employee (or his/her representative) request conferences when necessary, rather than the rehabilitation provider.

Request for Closure Form

This may be sent by anyone, preferably the employer/insurance carrier. This form is needed by the Bureau both to identify potential closures and to purge cases from the computer.

Vocational Rehabilitation Plan, Work Status Report and Request for Rehabilitation Benefits

These forms are not complete and will not be available until a later date.

* * * * *

SERVICE OF REPORTS ON BUREAU

The Bureau would like to see all reports served by the authorizing party, rather than by the providers of rehabilitation services. For the present, we will not return reports submitted by counselors, but may do so in the future should providers of rehabilitation services continue to serve reports on the Bureau routinely.

Reports should be served on the Bureau at the following times, rather than as each report becomes available:

1. When an injured worker is determined not eligible either for medical or feasibility reasons, and a Bureau decision is necessary;
2. When issues arise and the Bureau must mediate, e.g., a conference is requested;
3. When a plan is submitted;
4. When the Bureau requests information; or
5. When a closure is requested.

The Bureau has no opinion or direction on service of reports to other parties.

MEDICAL EVALUATION
FUNCTIONAL LIMITATION/CAPACITY

IDENTIFYING INFORMATION:

NAME: _____

DATE OF BIRTH: ____/____/____

DATE OF INJURY: ____/____/____

NOTE:

The information on this form is obtained from the physician to be used for the sole purpose of determining the medical qualifications of the injured worker for rehabilitation. The information is intended to include functional limitations pre-existing the industrial injury and the functional limitations resulting from the industrial injury for which this evaluation is required. This form is not designed nor intended to be used for permanent disability rating.

FUNCTIONAL CAPACITIES EVALUATION

NOTE: In terms of an 8 hour workday, "Occasionally" equals 1% to 33%, "Frequently" equals 34% to 66%, and "Continuously" equals 67% to 100%.

I In an 8 hour work day, injured worker can: (Circle full capacity for each activity).

A. Sit	-	Number of Hours:	1	2	3	4	5	6	7	8
B. Stand	-	Number of Hours:	1	2	3	4	5	6	7	8
C. Walk	-	Number of Hours:	1	2	3	4	5	6	7	8

II Injured worker is able to: Not At All. Occasionally. Frequently. Continuously.

A. Bend/Stoop	()	()	()	()
B. Squat	()	()	()	()
C. Crawl	()	()	()	()
D. Climb	()	()	()	()
E. Reach above shoulder level	()	()	()	()
F. Crouch	()	()	()	()
G. Kneel	()	()	()	()
H. Balancing	()	()	()	()
I. Pushing/Pulling	()	()	()	()

III Injured worker can carry: Not At All. Occasionally. Frequently. Continuously.

A. Up to 10 pounds.	()	()	()	()
B. 11 to 24 pounds.	()	()	()	()
C. 25 to 34 pounds.	()	()	()	()
D. 35 to 50 pounds.	()	()	()	()
E. 51 to 74 pounds.	()	()	()	()
F. 75 to 100 pounds.	()	()	()	()

IV Injured worker can lift: Not At All. Occasionally. Frequently. Continuously.

A. Up to 10 pounds.	()	()	()	()
B. 11 to 24 pounds.	()	()	()	()
C. 25 to 34 pounds.	()	()	()	()
D. 35 to 50 pounds.	()	()	()	()
E. 51 to 74 pounds.	()	()	()	()
F. 75 to 100 pounds.	()	()	()	()

V Injured worker can use feet for repetitive movements as in operating foot controls:

Right: ____ Yes ____ No. Left: ____ Yes ____ No. Both: ____ Yes ____ No.

VI Injured worker can use hands for repetitive movements such as:

	<u>Simple Grasping.</u>	<u>Firm Grasping.</u>	<u>Fine Manipulation.</u>
A. Right:	() Yes () No	() Yes () No	() Yes () No
B. Left:	() Ye () No	() Yes () No	() Yes () No

VII Restriction of activities. For example: being around moving machinery; driving automotive equipment; other restrictions required by the physical impairment.

SIGNATURE OF PHYSICIAN: _____ DATE: ____/____/____

PLEASE RETURN TO:

EMPLOYER JOB DESCRIPTION

IDENTIFYING INFORMATION:

EMPLOYEE: _____

ADDRESS : _____

DATE OF INJURY: ____/____/____ CLAIM #: _____

EMPLOYER: _____

CARRIER/AGENT: _____

NOTE: In terms of an 8 hour workday, "Occasionally" equals 1% to 33%, "Frequently" equals 34% to 66%, and "Continuously" equals 67% to 100%.

I In an 8 hour workday, employee is required to: (Circle full capacity for each activity).

A. Sit	-	Number of Hours:	1	2	3	4	5	6	7	8
B. Stand	-	Number of Hours:	1	2	3	4	5	6	7	8
C. Walk	-	Number of Hours:	1	2	3	4	5	6	7	8

II On the job employee must: Not at All. Occasionally. Frequently. Continuously.

A. Bend/Stoop	()	()	()	()
B. Squat	()	()	()	()
C. Crawl	()	()	()	()
D. Climb	()	()	()	()
E. Reach above shoulder level	()	()	()	()
F. Crouch	()	()	()	()
G. Kneel	()	()	()	()
H. Balancing	()	()	()	()
I. Pushing/Pulling	()	()	()	()

III On the job employee is: Not at All. Occasionally. Frequently. Continuously.

A. Up to 10 pounds.	()	()	()	()
B. 11 to 24 pounds.	()	()	()	()
C. 25 to 34 pounds.	()	()	()	()
D. 35 to 50 pounds.	()	()	()	()
E. 51 to 74 pounds.	()	()	()	()
F. 75 to 100 pounds.	()	()	()	()

IV On the job employee lifts: Not at All. Occasionally. Frequently. Continuously.

A. Up to 10 pounds.	()	()	()	()
B. 11 to 24 pounds.	()	()	()	()
C. 25 to 34 pounds.	()	()	()	()
D. 35 to 50 pounds.	()	()	()	()
E. 51 to 74 pounds.	()	()	()	()
F. 75 to 100 pounds.	()	()	()	()

V On the job employee uses feet for repetitive movements as in operating foot controls:

Right: ____ Yes ____ No Left: ____ Yes ____ No Both: ____ Yes ____ No

VI On the job employee uses hands for repetitive action such as:

	<u>Simple Grasping</u>	<u>Firm Grasping</u>	<u>Fine Manipulating</u>
A. Right	() Yes () No	() Yes () No	() Yes () No
B. Left	() Yes () No	() Yes () No	() Yes () No

VII Does job require:

A. Working on unprotected heights.	() Yes () No	Comment: _____
B. Being around moving machinery.	() Yes () No	Comment: _____
C. Exposure to marked changes in temperature and humidity.	() Yes () No	Comment: _____
D. Driving automotive equipment.	() Yes () No	Comment: _____
E. Exposure to dust, fumes, gases.	() Yes () No	Comment: _____

COMMENTS:

SIGNATURE OF EMPLOYER: _____ DATE: ____/____/____

TITLE: _____

PLEASE RETURN TO:

ON-SITE JOB ANALYSIS

EMPLOYER: _____ DATE OF ANALYSIS: ____/____/____

EMPLOYEE: _____ CLAIM NUMBER: _____

1. Exact job title: _____ DOT #: _____

2. Date of Hire: ____/____/____ Date began present position: ____/____/____

3. Training required to perform duties: _____

4. Work hours: From _____ To _____ Number of days per week: _____

Breaks: First _____ To _____ Overtime hours per week: _____

Meal _____ To _____ Overtime: How often: _____

Last _____ To _____

5. Any work restrictions when hired: () Yes () No If yes, specify: _____

6. General description of job: _____

7. Types of machines, tools, office equipment, and other special equipment used in job: _____

8. Vehicles or moving equipment drive as part of job: _____

9. Amount of each day spent:

Standing _____% Walking _____% Sitting _____% Total 100%

10. Employee works: Outside _____% Inside _____% Total 100%

11. While performing job was employee required to:

How often and How long.

Stoop/Bend () Yes () No _____

Squat () Yes () No _____

Kneel () Yes () No _____

Crawl () Yes () No _____

(CONTINUED)

How Often and How Long.

Climb Ladders	() Yes () No	_____
Climb Stairs	() Yes () No	_____
Walk on Uneven Ground	() Yes () No	_____
Work above Ground on:	() Yes () No	_____
_____	() Yes () No	_____
Lift under 10 pounds	() Yes () No	_____
Lift 10 to 25 pounds	() Yes () No	_____
Lift 25 to 50 pounds	() Yes () No	_____
Lift 75 to 100 pounds	() Yes () No	_____
Lif over 100 pounds	() Yes () No	_____
Carry under 10 pounds	() Yes () No	_____
Carry 10 to 25 pounds	() Yes () No	_____
Carry 25 to 50 pounds	() Yes () No	_____
Carry 50 to 75 pounds	() Yes () No	_____
Carry 75 to 100 pounds	() Yes () No	_____
Carry over 100 pounds	() Yes () No	_____
Reach above shoulder height	() Yes () No	_____
Reach at shoulder height	() Yes () No	_____
Reach below shoulder height	() Yes () No	_____

12. The heaviest weight lifted while either sitting or standing in one place weighs:

_____. The object's name is _____
and the estimated times lifted is _____

13. The heaviest weight carried while walking from place to place weighs _____

The object's name is _____ and the estimated items
carried is _____

14. Job required: Description of object, weight, how moved, how often.

Pushing () Yes () No _____

Pulling () Yes () No _____

15. Job can be modified: Temporarily () Yes () No Permanently () Yes () No

If yes, specify: _____

NOTE: The following is to be completed for HAND INJURY ONLY.

16. Hand Coordination Activities:	Right	Left	Both	How Often	How Long
Major Hand	_____	_____	_____	_____	_____
Fine Manipulation	_____	_____	_____	_____	_____

(CONTINUED)

HAND INJURY ONLY

	Right	Left	Both	How Often	How Long
Gross Manipulation	_____	_____	_____	_____	_____
Simple Grasping	_____	_____	_____	_____	_____
Power Grip	_____	_____	_____	_____	_____
Hand Twisting	_____	_____	_____	_____	_____

17. COMMENTS:

COMPLETED BY: _____ TITLE: _____
(Signature)COMPLETED WITH: _____ TITLE: _____
(Signature)

EMPLOYEE COMMENTS/CORRECTIONS:

I have reviewed this job analysis and agree with its content, except for comments/ corrections as noted above.

EMPLOYEE: _____ DATE: ____/____/____
(Signature)

F
R
O
M

REQUEST FOR CONFERENCE

T
O

STATE OF CALIFORNIA • REHABILITATION BUREAU
Division of Industrial Accidents

REHABILITATION BUREAU USE ONLY.

ZIP

C
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M
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E

EMPLOYEE: _____
ADDRESS: _____
DATE BIRTH: ____/____/____ DATE INJURY: ____/____/____
BUREAU #: _____
EMPLOYER: _____
CARRIER/AGENT: _____
CLAIM #: _____

INSTRUCTIONS: Please type or print legibly. Submit form to Rehabilitation Bureau that has the case for which you are requesting conference. Include Bureau Case Number.

N
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In accordance with Article 12, Rule 10007, the Rehabilitation Bureau, either on its own motion or upon the request of either the employer or the employee, may schedule a conference. A conference is intended to resolve questions such as an employee's entitlement to vocational rehabilitation services, or where a vocational rehabilitation plan is not offered by the employer, or where the vocational rehabilitation plan is not acceptable to the employee. The Bureau will generally require that the parties meet and confer without the Bureau's presence prior to the conference in order to try to resolve their problem. A written summary of what took place at these meetings may be required prior to scheduling a conference.

A.

The parties involved are unable to resolve the following problem: _____

B.

The following steps were taken in an attempt to resolve the problem:

_____ Agreed on Medical Evaluator (AME)	_____ Agreed on Vocational Evaluator (AVE)
_____ Agreed to independent evaluation by party to be selected by Rehabilitation Bureau (IVE)	_____ Submitted Work Evaluation
_____ Parties have met and conferred informally	_____ Submitted On-Site Job Analysis
_____ If not, why not: _____	_____ Arranged for Testing
_____	_____ Other: _____
_____	_____
_____	_____

C.

An interpreter will be needed. Yes No. Language: _____
If yes, employer will arrange for services of an interpreter.

C
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D

Copy of this request and all medical and vocational rehabilitation reports have been sent to the following at the time of conference request:

SIGNED: _____ DATE: ____/____/____

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REQUEST FOR CASE CLOSURE

T
O

STATE OF CALIFORNIA * REHABILITATION BUREAU
Division of Industrial Accidents

REHABILITATION BUREAU USE ONLY

ZIP

EMPLOYEE: _____
BUREAU #: _____
EMPLOYER: _____
CARRIER/
AGENT : _____
CLAIM # : _____

INSTRUCTIONS: Please type or print legibly. Submit form to the Rehabilitation Bureau that has the case you are requesting closure on. Include Bureau Case Number.

Temporary Disability is being paid through: ____/____/____ (Date.)

We wish to request that the Rehabilitation Bureau now close this file in the following category: (Check and complete only one.)

- () 01 Worker is not medically eligible for rehabilitation.
- () 02 Worker is not vocationally feasible for rehabilitation.
- () 03 Worker declines (refuses rehabilitation benefits. Attach copy of statement signed by the injured worker, or copy of notice sent to the injured worker.
- () 04 Rehabilitation plan is completed. Worker is not working.
- () 5A Rehabilitation plan is completed. Worker is now working in the new occupation for which he/she was rehabilitated. Fill in information below.

NAME OF EMPLOYER: _____

ADDRESS: _____

JOB TITLE: _____

DATE OF HIRE: _____

() SALARY (Circle One): \$ _____ PER W H S M O
WEEK HOUR SEMI- MONTH OTHER: PLEASE DESCRIBE ABOVE.

- () 5B The rehabilitation plan is completed. Worker is now working in an occupation other than that for which he/she was rehabilitated. Fill in information above.

- () 06 Rehabilitation services terminated.
- () 08 Suspension requested. (Attach information verifying need for suspension.)
- () 09 Issues of injury or lack of jurisdiction.
- () 19 Other: _____
- () Bureau use only: _____

ATTACH: Copy of employer advice to employee explaining the action taken. (Rules and Regulations 10004) Any pertinent information (medical or vocational) and documentation of the above action and criteria on which the decision was made.

SIGNED: _____ DATE: ____/____/____

Casualty Insurance Marketing — 1979

- Workers' Compensation
- General Liability
- Medical Malpractice

MARKETING TRENDS in 1979 for workers' compensation, general liability and medical malpractice insurance are surveyed in this issue, continuing our series of annual reviews of major lines of property/casualty business. The three classes covered this month produced nearly \$23.9 billion in premiums in 1979, representing 26.5% of the total property/casualty insurance volume. In 1978, these classes accounted for 26.1% of the total; in 1977, 24.9%; and in 1976, 23%.

WORKERS' COMPENSATION

An 18% gain in premiums for workers' compensation in 1979, on top of a 22% gain in 1978, a 27% gain in 1977 and a 23% gain in 1976 brought this line to more than \$14.3

billion in premiums. Five years earlier, workers' compensation premiums were \$5.6 billion. This line now represents 15.9% of the total property/casualty insurance volume. In 1974 it was 12.9%. Despite the rapid growth in premium volume, workers' compensation still suffers from a combined loss and expense ratio in excess of 100%. However, the pure loss ratio in 1979 improved by 2.7 points to 75.3% from 78% in 1978.

The main problem in workers' compensation continues to be the near impossibility of securing adequate rates to keep up with higher benefits and increasingly liberal interpretations of what is compensable.

The national agency companies increased their workers' compensation premiums at the industry average

of 18%, while the regional/specialty companies were ahead 25%, and the direct writers gained 13%. This slip by the direct writers, which have been steadily increasing their market share until now, cost them a full point in the market to 25.7%. The national agency companies gained two-tenths of a point to 57.7% and the regional/specialty companies went to 16.6%. The movement in market share over the last five years looks like this:

	1974	1975	1976	1977	1978	1979
National Agency Cos.	53.7	57.5	58.0	59.4	59.0	57.7
Regional/Specialty Cos.	16.6	15.7	15.7	15.6	15.9	16.6
Direct Writers	29.7	26.8	26.2	24.9	24.2	25.7

The Old Republic Group, the largest regional/specialty writer in this field, showed the greatest percentage gain in premiums among the top 50 writers of workers' compensation as it advanced 85% and moved up seven places in the rankings to 14th. It had far and away the largest increase as the next largest was the 34% gain of CNA Insurance Group. There were no decreases in premiums among the top 50 writers.

Among the 10 leading writers of workers' compensation, the top four were the same as in 1978. The number five spot was taken by the Hartford, which moved up one place on a 16% gain, while Fireman's Fund dropped to sixth on an 8% gain. Home Insurance, on a 28% premium increase, moved to eighth place from ninth, displacing U.S.F.&G., which fell one place to ninth position.

The top 10 writers of workers' compensation insurance in 1979 ac-

(Continued)

Leading Writers of Workers' Compensation Insurance

	1979 Direct Premiums*	1979 % of Market Share	1978 % of Market Share	1977 % of Market Share	1976 % of Market Share	1979 Gain Premiums*	1979 % Gain	Loss Ratios 1979	Loss Ratios 1978	% of Total Premiums
Liberty Mutual	1,300,372	9.1	9.7	8.9	8.2	123,306	10	75.0	86.5	43.3
Aetna L&C	836,280	5.8	5.7	5.5	4.7	142,738	21	79.0	80.6	22.1
Travelers	823,423	5.7	5.6	6.2	7.8	138,807	20	85.5	96.8	20.6
INA	689,904	4.8	4.7	4.2	3.8	120,334	21	84.5	89.4	26.2
Hartford Group	536,014	3.7	3.8	3.8	4.0	74,203	16	72.5	85.8	20.3
Fireman's Fund	531,868	3.7	4.1	4.2	4.1	39,240	8	82.0	87.6	22.3
Waushara Group	528,106	3.7	3.6	4.3	4.6	87,963	20	79.1	88.6	52.5
Home Group	442,976	3.1	2.8	2.9	2.8	97,034	28	68.2	83.3	28.8
U.S.F.&G.	437,593	3.1	3.2	3.1	3.0	52,074	14	74.7	71.0	22.6
Cum and Forster	399,649	2.8	2.8	3.1	3.2	64,037	19	65.1	66.7	24.4
CNA	351,608	2.7	2.4	2.4	2.3	99,058	34	79.2	94.2	26.4
Continental	349,465	2.4	2.6	3.0	3.7	31,407	10	74.4	72.1	14.3
Kemper Group	345,321	2.4	2.5	2.4	2.1	45,772	15	73.7	73.4	26.3
Old Republic	285,457	2.0	1.3	1.4	2.2	131,361	85	158.9	55.5	75.2
AIG	277,704	1.9	1.8	1.3	1.0	58,167	26	57.6	68.1	13.8

*In dollars, 000 omitted.

Notes: Loss ratio is losses incurred to premiums earned, not including loss adjustment expense, but adjusted for dividends to policyholders.

% of total premiums is percent of workers' compensation premiums to insurer's total property/casualty premium volume.

counted for 45.5% of the business, five-tenths of a point less than they handled in 1978. Six of the top 10 companies showed increases better than the industry average of 18% and only one — Fireman's Fund — had an increase of less than 10%.

In addition to the more than \$14 billion of workers' compensation business written by insurance companies, approximately \$3 billion is handled by state insurance funds, some of it on a monopolistic basis. In many states, including California (which is the leading state in workers' compensation premiums for insurance

companies), the state funds are the largest single writers of compensation business. Other states where this is true are Arizona, Colorado, Nevada, New York, Ohio, Oregon, and Washington. Nationally, the funds handle about 20% of the more than \$17 billion aggregate workers' compensation insurance that is purchased in this country.

Leading states in workers' compensation premiums written by insurance companies are California, Texas, Pennsylvania, New York and Illinois. The volume of workers' compensation is influenced by legislation, the nature of the economy of the state and the presence or absence of state insurance

funds (although in three of the top five states, the funds play an important competitive role — in California, the state fund wrote \$457 million in premiums; in New York, the fund wrote \$463 million; and in Pennsylvania, the fund was the second largest writer with \$129 million in direct premium writings). The five leading states account for 44.6% of the workers' compensation business handled by insurance companies.

In California, where more than 15% of the commercial workers' compensation business is conducted, premiums rose 13%, with the national agency companies advancing the aver-

(Continued)

Workers' Compensation Insurance Premium Distribution and Leading Writers by State

Rank	State	Total Direct Prem.*	% of U.S. Total	Loss Ratio %	Market Share			Leading Writer	% of State Market	Second and Third Leaders and Market Share			
					National Cos.	Regional Cos.	Direct Writers						
26	Alabama	144,113	1.0	70.3	58.9	18.7	22.4	Liberty Mutual	11.2	U.S.F.&G.	10.7	Travelers	8.0
37	Alaska	77,265	.5	87.4	75.2	16.2	8.6	INA	45.6	Providence Wash.	14.3	Crum and Forster	10.2
24	Arizona	176,130	1.2	56.9	54.9	28.7	16.4	Mission Group	12.4	Crum and Forster	8.2	Fremont General	8.1
30	Arkansas	105,667	.7	74.9	63.6	15.6	20.8	Aetna L&C	5.9	Hartford Group	5.7	Travelers	5.7
1	California	2,195,460	15.3	67.5	53.1	26.6	20.3	INA	7.7	Fremont General	6.5	Fireman's Fund	6.5
34	Colorado	80,807	.6	63.8	67.5	8.7	23.8	Liberty Mutual	8.0	Employers of Wausau	7.8	U.S.F.&G.	6.4
16	Connecticut	251,747	1.8	77.1	71.2	4.8	24.0	Aetna L&C	15.7	Liberty Mutual	15.0	Travelers	11.7
41	Delaware	39,096	.3	71.6	51.5	13.7	34.8	Liberty Mutual	11.5	Pa. Manufacturers	8.2	Aetna L&C	7.8
28	D.C.	120,951	.8	84.7	70.5	1.4	22.1	Liberty Mutual	19.1	Kemper Group	15.2	Aetna L&C	12.6
7	Florida	669,728	4.7	53.9	58.6	19.4	21.9	Liberty Mutual	9.8	Travelers	7.2	Aetna L&C	6.3
14	Georgia	270,134	1.9	73.6	55.3	15.3	29.3	Liberty Mutual	14.9	Aetna L&C	6.2	Travelers	5.0
36	Hawaii	79,584	.6	82.8	65.2	27.9	6.8	Continental	21.8	Hawaiian Group	15.3	Hartford Group	11.2
40	Idaho	47,742	.3	78.0	54.4	23.3	22.4	Telodyne Group	19.8	Crum and Forster	15.3	Employers of Wausau	10.4
5	Illinois	801,468	6.3	89.4	61.6	15.8	22.6	Liberty Mutual	8.0	Travelers	6.8	Aetna L&C	5.5
23	Indiana	177,255	1.2	66.4	61.3	17.6	21.1	Liberty Mutual	6.6	U.S.F.&G.	6.4	Employers of Wausau	5.9
25	Iowa	171,847	1.2	69.6	45.5	31.4	23.1	Liberty Mutual	7.2	Employers Mutual	7.0	Aetna L&C	5.7
29	Kansas	118,972	.8	74.3	69.8	11.4	18.8	Travelers	12.0	U.S.F.&G.	7.3	Hartford Group	6.5
12	Kentucky	320,918	2.2	123.8	45.1	33.5	21.4	Old Republic	27.7	Liberty Mutual	11.0	Travelers	6.4
10	Louisiana	283,439	2.7	88.9	59.4	24.3	16.4	Aetna L&C	8.0	Highlands Group	6.9	Liberty Mutual	6.6
33	Maine	86,170	.6	112.3	64.7	3.0	32.3	Liberty Mutual	19.8	Aetna L&C	10.7	Comm. Union	10.6
15	Maryland	252,311	1.8	86.8	68.8	8.9	22.3	Travelers	10.3	Liberty Mutual	9.7	Home Group	6.2
11	Massachusetts	367,392	2.6	91.2	57.7	5.8	36.4	Liberty Mutual	21.3	Aetna L&C	10.4	Travelers	6.9
6	Michigan	860,317	6.0	61.4	68.5	9.1	22.4	Mich. Mutual	8.7	Liberty Mutual	8.4	Travelers	5.9
9	Minnesota	422,788	3.0	83.3	58.0	11.3	30.8	Liberty Mutual	8.5	Travelers	8.1	Employers of Wausau	8.1
32	Mississippi	86,340	.6	74.5	75.5	8.0	16.5	U.S.F.&G.	23.8	Travelers	10.0	Liberty Mutual	8.3
20	Missouri	202,759	1.4	76.8	64.0	9.6	26.5	Liberty Mutual	11.6	Aetna L&C	5.6	Employers of Wausau	5.3
42	Montana	25,992	.2	85.3	61.5	19.5	18.9	INA	13.6	Capri Group	9.3	U.S.F.&G.	6.3
39	Nebraska	59,653	.4	83.5	59.3	24.4	16.3	Travelers	6.3	Aetna L&C	6.2	U.S.F.&G.	5.5
50	Nevada	1,116	.0	52.4	73.3	2.8	23.8	Aetna L&C	60.2	Liberty Mutual	18.7	Hartford Group	5.6
35	New Hampshire	79,820	.6	70.5	68.1	6.5	25.4	Liberty Mutual	12.8	Home Group	11.6	Comm. Union	8.9
8	New Jersey	573,735	4.0	84.0	47.1	8.2	44.7	N.J. Manufacturers	26.6	Liberty Mutual	8.6	Aetna L&C	6.5
31	New Mexico	87,168	.6	75.2	65.2	20.8	13.9	Mountain States	9.4	U.S.F.&G.	9.2	Travelers	8.5
4	New York	936,814	6.6	68.2	67.4	11.2	21.4	Liberty Mutual	10.1	Travelers	7.0	Aetna L&C	7.0
22	North Carolina	177,482	1.2	82.5	57.1	11.1	31.8	Liberty Mutual	19.0	Aetna L&C	10.8	Travelers	5.3
61	North Dakota	342	.0	56.2	81.8	4.5	13.7	Aetna L&C	32.3	Hartford Group	17.8	Home Group	16.5
43	Ohio	25,574	.2	70.4	50.7	43.5	5.8	Old Republic	38.6	Aetna L&C	27.8	ERC Corp.	6.3
21	Oklahoma	177,636	1.2	65.3	62.5	19.5	18.0	Home Group	10.4	Liberty Mutual	7.9	U.S.F.&G.	7.5
19	Oregon	202,883	1.4	61.4	35.4	8.9	55.6	Employee Benefits	32.8	Crum and Forster	13.2	Liberty Mutual	8.4
3	Pennsylvania	1,114,476	7.8	75.9	45.6	24.7	29.7	Pa. Manufacturers	13.3	Liberty Mutual	9.4	Old Republic	7.8
38	Rhode Island	63,631	.4	109.1	62.3	7.1	30.7	Liberty Mutual	21.0	Aetna L&C	19.4	Travelers	8.0
27	South Carolina	121,282	.9	72.2	58.7	7.7	33.6	Liberty Mutual	19.8	U.S.F.&G.	10.6	Aetna L&C	7.5
45	South Dakota	23,210	.2	61.6	65.3	15.4	19.3	Western Group	10.6	St. Paul Cos.	6.8	Employers of Wausau	5.9
18	Tennessee	207,239	1.4	64.2	69.7	9.0	21.4	Liberty Mutual	12.4	Aetna L&C	9.0	Travelers	8.7
2	Texas	1,233,580	8.6	69.1	56.2	10.9	32.8	Texas Employers	18.1	Liberty Mutual	6.0	Travelers	5.3
47	Utah	18,991	.1	60.8	71.1	6.4	22.5	Liberty Mutual	14.6	INA	12.9	Travelers	7.3
44	Vermont	24,760	.2	64.8	70.2	6.8	23.1	Aetna L&C	9.8	Liberty Mutual	8.3	AIG	8.1
13	Virginia	294,542	2.1	86.6	59.3	18.6	22.1	Liberty Mutual	12.6	Old Republic	11.6	Travelers	7.9
46	Washington	19,300	.1	127.4	74.9	9.1	15.9	INA	42.3	Aetna L&C	19.6	Employers of Wausau	10.9
49	West Virginia	1,325	.0	99.9	33.4	15.8	50.9	Liberty Mutual	36.6	Old Republic	14.3	Travelers	11.8
17	Wisconsin	243,072	1.7	77.7	44.0	13.2	42.8	Employers of Wausau	23.8	Liberty Mutual	6.9	Aetna L&C	6.4
48	Wyoming	2,022	.0	101.9	48.3	40.2	11.4	Aetna L&C	45.5	Old Republic	36.2	Amer. Mut. Liab.	4.1
Total		14,325,534	100.0	75.3	57.7	16.6	25.7	Liberty Mutual	9.1	Aetna L&C	5.8	Travelers	5.7

*In dollars, 000 omitted.

Note: Loss ratio is losses incurred to premiums earned, not including loss adjustment expense, but adjusted for dividends to policy holders.

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INSURANCE
AGENCY

ALASKA WORKERS' COMPENSATION

(000 OMITTED)

CALENDAR YEAR	1973*		1974		1975		1976		1977		1978		1979		TOTAL	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
1- STANDARD EARNED PREMIUM	17,335		19,443		32,996		58,806		76,357		68,005		74,039		347,011	
2- NET EARNED PREMIUM (est.)	16,122	100.0	17,670	100.0	29,159	100.0	51,585	100.0	67,490	100.0	62,423	100.0	63,835	100.0	306,284	100.0
3- PROVISION IN RATES FOR:																
4- LOSSES	10,175	63.1	11,452	64.8	19,468	66.8	34,754	67.4	45,221	67.0	40,327	64.6	44,349	69.5	205,746	66.7
5- EXPENSES & LOSS ADJUSTMENT	5,544	34.4	5,776	32.7	8,952	30.7	15,541	30.1	20,582	30.5	20,536	32.9	17,899	28.0	94,830	30.8
6- PROFIT & CONTINGENCY	403	2.5	442	2.5	729	2.5	1,290	2.5	1,667	2.5	1,561	2.5	1,596	2.5	7,708	2.5
7- TOTAL	16,122	100.0	17,670	100.0	29,159	100.0	51,585	100.0	67,490	100.0	62,423	100.0	63,835	100.0	306,284	100.0
8- ACTUAL INCURRED LOSSES	10,435	64.7	16,309	92.3	19,731	67.7	41,216	79.9	46,611	69.1	60,465	96.9	50,573	82.2	245,340	79.6
9- PROVISION FOR LOSSES MINUS TOTAL	(259)	(1.6)	(4,857)	(27.5)	(263)	(.9)	(6,462)	(12.5)	(1,390)	(2.1)	(20,138)	(32.3)	(6,224)	(9.8)	(39,594)	(12.6)

SOURCE: NCCI CIRCULARS COMPENSATION EXPERIENCE AS OF DECEMBER 31 FOR 1973-1979, AND NCCI RATE FILINGS.

DETAIL MAY NOT ADD TO TOTALS DUE TO ROUNDING.

*INCLUDES ALEYESKA.

11/11/80
DCC:bh

G-2 The Anchorage Times, Wednesday, November 12, 1980

Asbestosis victim tries to aid others

by Naomi Kaufman
Associated Press

San Francisco — When Jim Vermeulen was 50 years old, "a time bomb went off" in his chest. Now permanently disabled and perhaps dying from exposure to asbestos, Vermeulen wants to help millions of similar victims.

"Because of what we did then, we were injured and are dying now," said the Soquel, Calif. organizer of a

group called Asbestos Victims of America. "We're cast adrift and in limbo."

The 54-year-old Vermeulen is a victim of asbestosis, an incurable progressive lung disease caused by exposure to asbestos fibers. He worked with asbestos at a Stockton factory from 1957 to 1966. His disease was diagnosed in 1976.

His breath comes now in frequent, short gasps, and he carries

portable oxygen tanks with him: "It's like taking years to drown."

Vermeulen is not alone. More than 11 million people — shipbuilders, construction workers and others — have been heavily exposed to asbestos since the early 1940s, according to federal experts.

At least half may die of asbestos-related diseases, experts say. Among the diseases is mesothelioma, the type of lung cancer

contracted by actor Steve McQueen, which is associated with asbestos exposure. McQueen died last week of a heart attack.

"When that time bomb went off in my chest, I was finished," Vermeulen said. "It's really a frightening thing when you're diagnosed and you're all alone as I was."

He found little information and support available for asbestosis sufferers. So he started AVA in March.

Vermeulen, who has filed for workers' compensation, operates his organization on a shoestring budget, paying expenses out of his Social Security disability income and donations. He has a small office in Capitola, 60 miles south of San Francisco. The group, which claims 1,200 members, charges \$5 a year in dues and asks nothing from victims who cannot pay.



Pacific Coast Office:
Thomas E. Conneely
Regional Vice President

Alliance of American Insurers
160 Sansome Street, Suite 1411
San Francisco, California 94104
415-362-0870

Rehabilitation - Workers' Compensation Model Approach

One of the primary purposes of the Workers' Compensation Act shall be the restoration of the disabled employee to gainful employment, preferably that for which there has been previous training or experience. While the frequency of work related disability severe enough to warrant physical and/or vocational rehabilitation is relatively low, when the need exists, it must be met promptly and directly by insurers and/or employers.

I. DEFINITION OF REHABILITATIVE SERVICES

A. Rehabilitation services are those services designed to restore the individual to an optimum level of physical and emotional recovery. Vocational rehabilitation services are those training services designed to return the individual to (1) a job related to former employment; or (2) a job in a nonrelated work field which produces an economic status similar to that enjoyed prior to the disability; or (3) a job producing a higher economic status than pre-disability if, as a practical matter, and because of physical limitations this is the only vocation for which the individual can be trained.

II. SUPERVISION OF REHABILITATION SERVICES

A. There shall be established a rehabilitation section. The Commission shall be authorized to employ a qualified Administrator of Rehabilitation and such other assistance, including clerical help, as may be deemed necessary, and to fix the compensation of all persons

so employed. The Administrator shall be responsible to the Director of Workers' Compensation. The compensation paid shall reflect the training, experience and background of the individual and shall be consistent with the compensation paid to those persons employed to do similar work in other state departments.

- B. To assist the Administrator of Rehabilitation in assuring that all persons requiring rehabilitation services receive them in timely fashion, there shall be established a Rehabilitation Panel. All matters pertaining to rehabilitation under the Workmen's Compensation Law, shall be the responsibility of the Rehabilitation Panel. This panel shall be composed of the Administrator of Rehabilitation, Medical Director, physicians, and representatives of other medical specialties, all to be qualified by experience and training and appointed by the Director of Workers' Compensation in consultation with an advisory committee. The advisory committee shall be appointed by the Governor, and shall be composed of equal representation from labor, employers, insurers, vocational rehabilitation, and the medical community, and each of whom shall be qualified by experience and training.

- C. The supervision of the delivery of all rehabilitation services shall be the responsibility of the Administrator of Rehabilitation. The Panel shall continuously study rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all private and public rehabilitation facilities. The Administrator, in consultation with the Panel, shall approve as qualified such facilities, institutions and physicians as are capable of rendering competent rehabilitation service to injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped and staffed with trained and qualified personnel. Physical rehabilitation must be supervised by a physician qualified to render such service. No physician shall be considered qualified unless he has the experience and training specified by the Director of Worker's Compensation.
- D. The Panel shall also be responsible for developing and recommending rehabilitation regulations and activities to the Administrator of Rehabilitation.

E. Reporting Procedures

1. Physician's Responsibility

The physician should report to the state workers' compensation agency (rehabilitation section) with a copy to the employer-insurance carrier within 90 days post accident on all cases where it appears likely that the employee will not return to his regular employment within 30 days thereafter.

2. Employer-Insurance Carrier Responsibility

Within 120 days from the accident, or when the employer-insurance carrier has medical information that an injured employee will be unable to return to his pre-injury occupation or employment for which he has previous training or experience, the employer-insurance carrier must file a completed rehabilitation questionnaire with the workmen's compensation agency, rehabilitation section. Since the employer/insurer bears the burden of financing the rehabilitation of the employee, they should be entitled to copies of all reports that show the type of rehabilitation services being rendered and the progress achieved.

III. SPECIFIC RESPONSIBILITIES

A. Employers Responsibility - the employer's responsibilities for rehabilitation services must include:

1. Medical care and physical restoration, consistent with the needs of a disability without regard to:
 - a. duration of time
 - b. total expenditure
2. Assistance in returning the individual to gainful employment.
3. Vocational evaluation, counseling, training and job placement. It is the responsibility of the employer to provide a total vocational rehabilitative training period that will not exceed 26 weeks, subject to extension by special order of the Director when the employee demonstrates satisfactory progress.
4. The employer is responsible for paying for the cost of those rehabilitation services supplied by a state Division of Vocational Rehabilitation only if the employer-insurer initiates them, or the state administrative authority orders them. In the event that an employer-insurance carrier voluntarily develops a rehabilitation program in agreement with the disabled worker the employer-insurance carrier will submit appropriate information to the state agency (medical-rehabilitation panel) including periodic progress reports.

B. Employee's Responsibility - The employee's responsibility for rehabilitation must include:

1. Submission to all reasonable requests for examinations and evaluations as required by the employer-insurance carrier, and/or the state agency (medical-rehabilitation panel) as may be necessary to determining need for, or to develop a plan for rehabilitation.
2. Cooperation in conjunction with a reasonable timetable once a plan has been developed and/or filed with the state agency (medical-rehabilitation panel) following consultation with all involved individuals.

IV. DEVELOPMENT AND IMPLEMENTATION OF A REHABILITATION PROGRAM

A. Rehabilitation Plans

The employer-insurance carrier must develop and file with the state agency (medical-rehabilitation panel) a rehabilitation plan for the disabled employee on all cases when because of the disability it appears likely that the employee will not return to his regular employment or work for which he has previous training and experience. In developing the plan, consideration must be given to the employee's age, education, previous work history and skills.

B. Change of Plans

Upon application for a hearing by either party to the agreed upon rehabilitation program, the state agency (medical-rehabilitation panel) can suspend, terminate or change an agreed upon rehabilitation program for good and sufficient reasons including but not limited to:

1. A physical impairment that will not allow the worker to follow the vocation being trained for;
2. The workers' performance level indicates he cannot complete the course satisfactorily;
3. The worker fails or refuses to cooperate in the program;
4. The worker requests termination of the program in favor of a different program because he feels he is not suited for the type of work for which training is being provided. A change of program for this reason shall only be allowed once, and only if the request is made by the worker within 90 days after commencement of the training period.

C. Disputes

If rehabilitation services are not voluntarily offered by the employer or if offered and not accepted by the employee, the administrator, on his own motion, or upon application affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation. Such evaluation shall include the practicability of, need for, and type of service, treatment or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of such evaluation report, and after affording the parties an opportunity to be heard by the Commission, the Director, in consultation with the panel, may order the services and treatment recommended in the report, or such other rehabilitation treatment or services he may deem necessary, be provided at the expense of the employer. If any party refuses to accept rehabilitation pursuant to an order of the state workers' compensation agency, they shall lose disability compensation benefits for each week of the period of such refusal.

D. Lump Sum Settlements

-9-

The monetary value of a rehabilitation plan tendered to the employee by the employer/insurer or recommended by the Administrator of Rehabilitation and refused by the employee shall not be subject to consideration as a part of any lump sum settlement.

E. Job Placement Services

The employer-insurance carrier will be obligated to pay the cost of any job placement services as may reasonably be required by the disabled employee at the end of the rehabilitation period. If the employee refuses to accept the position for which he has received training and for which he is physically able to perform, his right to further weekly compensation benefits will be suspended.

V. FINANCIAL RESPONSIBILITY FOR REHABILITATION SERVICES

- A. The employer is responsible for all costs of rehabilitation services and supplies necessary for the implementation of the plan voluntarily devised by the employer-insurance carrier in conjunction with the disabled worker, or the plan ordered by the state agency (medical-rehabilitation panel) subject to the limitations set forth in IV (B), (1-4).

- B. All fees and other charges for vocational rehabilitation services shall not be higher than the charges that prevail in similar communities for similar services to injured persons of like status and shall be subject to review by the administrator.
- C. Where rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, reasonable costs of his board, lodging or travel shall be paid for by the employer.
- D. The administrative costs, salaries and reasonable travel expenses of state agency personnel required to staff the rehabilitation panel shall be a part of the operating cost of the workers' compensation agency and will be funded in like manner to that agency.
- E. All members of the rehabilitation panel, with the exception of the Administrator shall be compensated at a reasonable per diem rate consistent with other state agencies plus reasonable expenses as approved by the Administrator of Rehabilitation and consistent with state allowances for other similar travel.

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VI. OTHER STATE AGENCIES

The director and rehabilitation panel may cooperate on a reciprocal basis with the vocational rehabilitation section of the (Department of Education) and the employment service of the (Division of Employment Security).

/sj/le

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT**

MEMORANDUM

October 29, 1980

To: Licia Piceno
From: Bob Williams *BW*
Re: Miscellaneous

Enclosed is a copy of the Khrest Bill from Oregon, as we discussed. Also, a copy of my phone bill is included. I just got it.



Workers' Compensation Department

ADMINISTRATIVE SERVICES DIVISION

LABOR AND INDUSTRIES BUILDING, SALEM, OREGON 97310 PHONE 378-8093

January 24, 1980

RECEIVED

JAN 28 1980

Judy G. DuBois
Special Assistant to the Commissioner
Department of Labor
State of Alaska
P.O. Box 1149
Juneau, Alaska 99811

OFFICE OF THE COMMISSIONER

Dear Ms. DuBois:

Your letter of January 14 to Chairman M. Keith Wilson of the Workers' Compensation Board, regarding Oregon House Bill 3125, was referred to me.

HB 3125, sponsored by the Committee on Labor at the request of Representative Jim Chrest and known as the Workers' Recovery Act, was re-referred to the House Labor Committee on June 30, 1979. It "died" when the Legislature adjourned on July 4, 1979. The bill, however, is far from dead! It continues to receive study by the House Interim Committee on Labor and the Governor's Task Force on Workers' Compensation. A similar version undoubtedly will be introduced in the 1981 Legislature.

The Interim Labor Committee will hold meetings on February 21-22, 1980, beginning at 9:30 a.m. in Hearing Room F at the Capitol. Dick Goss, the attorney who helped draft the bill, will provide an explanation of HB 3125 A-Engrossed (1979 Legislative Session) at the Committee meeting--which is open to the public.

The Chairman of the Committee is Representative Jim Chrest. Committee staff consist of the Administrator, Diane Kolb, and an Assistant, Vicki Gridley. Their telephone number is (503) 378-8816.

The Governor's Task Force on Workers' Compensation was appointed in January 1979 and is to make its final report no later than December 1, 1980. It is to recommend changes that will provide the maximum benefit to the injured worker at the least possible cost. It made a preliminary report to the Governor in May 1979. The recommendations contained in that preliminary report were conservatively estimated by the Task Force to amount to \$39 million.

F.F. "Monte" Montgomery is Chairman of the Governor's Task Force on Workers' Compensation and Jan Perry is its Administrative Assistant. Their office is located in Room S-401 at the Capitol; their telephone number is 378-3632.

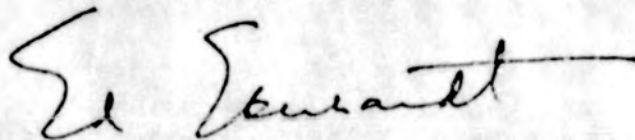
A status Report from the Task Force also will be made at the February 21-22 meeting of the House Interim Committee on Labor.

Jan. 24, 1980

Members of the Task Force and House Interim Committee on Labor are cooperating in the task of seeking to obtain beneficial and cost reducing changes for the Oregon workers' compensation system. You may wish to contact both groups for their guidance regarding HB 3125 and pertinent new bills now under consideration to modify Alaska's workers' compensation laws. *

In the meanwhile, you may find the enclosed copies of HB 3125 A-Engrossed and a seven-page summary of it, prepared by Associated Oregon Industries, to be useful.

Sincerely,



Ed Eberhardt
Informational Representative

Enclosures: Two

ELE:dr

DEC 28 1979

SUMMARY OF

WC3/ASD INFORMATION

A-Engrossed
HOUSE BILL 3125

- Section 1. Adds to and makes Sections 2 to 7 and 19 of this Act a part of ORS 656.001 to 656.794 (current Oregon Workers' Compensation Law).
- Section 2. Provides that the injured worker shall be reinstated by the employer to the former position of employment, without reduction in wages, if the worker is able to perform the primary duties of the position. This is applicable only when a worker is employed by an employer who employs 10 or more subject workers. If the worker is not able to perform the primary duties of the former position, the worker shall be reinstated to any other position in the employer's operation, the primary duties of which the worker is able to perform. Exempts an employer from this section if the worker's position has been eliminated by a reduction in force or two years after the date of injury or aggravation have lapsed. Provides that this section shall prevail over the terms of any collective bargaining agreement entered into after the effective date of this Act.
- Section 3. Provides that when the department determines that the worker will not be able to return to the worker's previous employment, the department, as soon as practicable, shall commence employment search, retraining or vocational rehabilitation for the purpose of reemploying the worker at a wage as close as possible to the worker's wage at the time of injury.
- Section 4. Provides that an employer who fails to comply with the reinstatement provisions shall be liable for all wages, fringe benefits and other remuneration which would have been payable had the worker been reinstated, accruing from the date the employer received notice of the worker's desire to return to work until such time as the employer reinstates the worker or the worker obtains other employment. Prohibits the employer from insuring against this liability. Provides that a worker who refuses to accept reinstatement without good cause and despite ability to perform the work shall lose the right to employment reinstatement and shall lose all benefits except for medical services for conditions causally related to the injury.
- Section 5. Provides for total wage loss benefits when a compensable injury incapacitates a worker from performing any work for the employer. Defines "total wage loss benefits" as equal to 66 2/3 percent of wages at the time of injury, but not more than 200 percent of the average weekly wage. Provides that "weekly wages at time of injury" shall be determined from the worker's historical earnings over the 365 days immediately preceding the date of injury. Provides that a worker who has a decrease in wages proximately caused by a compensable injury but is not eligible for total wage loss benefits shall receive wage differential benefits. Defines "wage differential benefits" as equal to specific percentages of the difference between wages at the time of injury less wages after injury for the given ratios of wages after injury to wages at time of injury. Provides that no worker shall receive wage differential benefits after the worker's 70th birthday, after the worker has voluntarily left the labor market, after any two-year period during which time wage differential benefits or total wage loss benefits have not been payable during at least three consecutive months, or after 10 years of first receipt of wage differential benefits, except that for those injuries occurring after July 1, 1987, the maximum period shall be 20 years.

Section 6. Prescribes that the director servitors for the treatment of industrially injured workers and prescribe rules covering the following areas: (a) time of recuperation standards to correspond to usual healing periods for those illnesses and injuries which the director finds necessary; (b) particular treatment regimens for particular illnesses or injuries; and (c) requirement of prior approval of the medical director for certain elective surgical procedures. Requires the State Accident Insurance Fund to set up a billing schedule based on specific statutory standards based on the 85th percentile of the range of all billings for that service category and the historical billing of the provider for that service.

Section 7. Provides for specific lump sum payments for loss by amputation or permanent or complete loss of function equivalent to amputation. ✓

Section 8. Changes the name of the Workers' Compensation Department to the Workers' Recovery Department; Workers' Compensation Board to Workers' Recovery Board; Workers' Compensation Law to Workers' Recovery Law.

Section 9. Provides that ORS 656.001 to 656.794 may be cited as the Workers' Recovery Law.

Section 10. Provides for changes in definitions to conform to Section 8 and 9; eliminates references to "carrier-insured employer", etc.

Section 11. Removes "insurance carrier" from that section of the law pertaining to treatment by certain religious practitioners.

Section 12. This section was deleted by amendment. Subsequent sections were not renumbered.

Section 13. Removes reference to "carrier-insured employer" from that section of the law pertaining to an employer electing to be a contributing employer.

Section 13a. Conforms the Civil Rights Law to the reinstatement rights of the injured worker under this Act.

Section 14. Removes reference to "guaranty contract insurer" from that section of the law pertaining to application for coverage.

Section 15. Conforms that section of the law pertaining to owner-operators of certain equipment to changes in definitions and coverage requirements under this Act.

Section 16. This section was deleted by amendment. Subsequent sections were not renumbered.

Section 17. Provides for death benefits for certain dependents if the injured worker dies while receiving total wage loss benefits and after having received total wage loss benefits continuously for four years, unless the worker is participating in vocational rehabilitation at the time of the death. 7

Section 18. Provides that with the authorization of the board the amount of any total wage loss benefits payable to an injured worker shall be reduced by the amount of any disability benefits the worker receives from federal social security. ✓

Section 19. Provides that if an injured worker dies while receiving total wage loss benefits or wage differential benefits, the persons who would have been entitled to receive death benefits if the compensable injury had been fatal shall receive that amount which equals 52 times the average weekly wage, but only if no other death benefits are payable under this chapter.

Section 20. This section was deleted by amendment. Subsequent sections were not renumbered.

Section 21. Provides that for every compensable injury, the direct responsibility employer or the State Accident Insurance Fund shall cause to be provided medical services for conditions resulting from the injury. Eliminates the following language from the current law: "for such period as the nature of the injury or the process of the recovery requires, including such medical services as may be required after a determination of permanent disability." Provides that the worker may choose his own attending doctor or physician within the State of Oregon, subject to section 6 of this Act.

Section 22. Removes reference to "carrier" under that section of the law pertaining to certain medical reporting requirements.

Section 23. Removes reference to "the guaranty contract insurers" under that section of the law pertaining to the use of certain medical report forms.

Section 24. Provides that the contributing employer shall pay to the worker directly the total wage loss benefits provided in this chapter which shall be reimbursed by the State Accident Insurance Fund upon receipt of documentation of those payments, except that in the case of an aggravation of a prior compensable injury which occurred while the worker was not employed by the employer at the time of aggravation, the insurer or self-insured employer shall pay the total wage loss benefits. Provides for a hearing and certain penalties if a denial or delay in payments was unreasonable.

Section 25. Removes reference to "guaranty contract insurers" and "other insurers" from that section of the law pertaining to certain reporting requirements of the director.

Section 26. Provides that the primary purpose of the Workers' Recovery Law 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. Claims shall not be closed nor wage loss benefits terminated until one of the following occurs: (a) the attending physician has approved the worker's return to regular employment; (b) the worker refuses to comply with the return to work-rehabilitation plan ordered by the director; (c) the worker commences employment; or (d) the worker is able to perform work at a gainful and suitable occupation. Outlines reporting requirements by the worker, State Accident Insurance Fund or the self-insured employer when the worker is eligible for wage differential benefits.

Section 27. Provides that a claim for aggravation must be filed within five years after the determination fixing the maximum wage differential benefit was made or, if no such determination was made, the claim for aggravation must be filed within five years after last receipt of total wage loss benefits.

sation hearing when there is an issue regarding whether the worker is able to perform work at a gainful and suitable occupation or whether the worker is eligible for vocational rehabilitation.

Section 29. This section was deleted by amendment. Subsequent sections were not renumbered.

Section 30. Provides that a claimant may accept and cash any check given in payment of any award or compensation without affecting his right to a hearing and removes the exception that the right of hearing on any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on his own application.

Section 31. Removes reference to "insurer" in that section of the law where there is an issue regarding which of several subject employers is the true employer of a claimant worker; responsibility between two or more employers involving payment of compensation for two or more accidental injuries; or joint employment by two or more employers.

Section 32. This section was deleted by amendment. Subsequent sections were not renumbered.

Section 33. Deletes language which allows the suspension of compensation where the worker refuses to submit himself for medical examination, if requested by the director, State Accident Insurance Fund or a direct responsibility employer. Deletes language stating that a worker who has received an award for unscheduled permanent total or unscheduled partial disability should be encouraged to make a reasonable effort to reduce his disability.

Section 34. Deletes current language pertaining to criteria for determining attorney fees and provides that the self-insured employer or the State Accident Insurance Fund shall pay to the claimant or the claimant's attorney a reasonable attorney fee at any hearing, board or court review in which the claimant prevails. If a contributing employer has caused the fund to be charged such fees, the fund may charge such fees to the employer.

Section 35. Removes from the law the provision that when there has been a dispute over the amount of an attorney fee and the presiding judge of the circuit court in the county in which the claimant resides determines the amount of such fee, the approved claim shall be a lien upon compensation.

Section 36. Removes reference to "insurance obtained by a carrier-insured employer" from section of law pertaining to responsibility for claims administration and payment of compensation.

Section 37. Removes reference to "carrier-insured employer" from section of law pertaining to qualifying as a direct responsibility employer.

Section 38. Removes reference to "guaranty contract insurer" from section of law pertaining to the issuance of guaranty contracts, permitting only the State Accident Insurance Fund to issue such contracts.

- Section 39. Removes reference to "insurer" other than the State Accident Insurance Fund from section of the law pertaining to cancellation of coverage.
- Section 40. Removes reference to "guaranty contract" in section of law pertaining to termination of surety bond, etc.
- Section 41. Removes reference to "guaranty contract" and "carrier-insured employer" in section of law pertaining to default by a direct responsibility employer in payment of compensation or other payments due to the director under the Act.
- Section 42. Removes reference to an insurer other than the State Accident Insurance Fund from that section of the law pertaining to providing consultative services designed to promote occupational safety and reduce occupational health hazards.
- Section 43. Removes reference to "costs incurred by the Insurance Commissioner" from that section of the law pertaining to assessments for the Administrative Fund.
- Section 44. Removes reference to "guarantor" in section of law pertaining to Direct Responsibility Employers Adjustment Reserve.
- Section 45. This section was deleted by amendment. Subsequent sections were not renumbered.
- Section 46. Provides that the director may offset from the Second Injury Reserve the additional amount paid in compensation with respect to any injury resulting in total wage loss benefits exceeding 26 weeks or resulting in death where the injury is attributable wholly or partially to a preexisting disability of the employee. Defines "preexisting disability" to mean any permanent condition due to previous accident or disease or any congenital condition which is or likely to be a substantial handicap in obtaining or regaining employment. Provides that financing of the Second Injury Reserve shall be from employer assessments of the Administrative Fund, as well as current employee contributions.
- Section 47. Removes certain references to "permanent total disability" and "permanent partial disability" from that section of the law pertaining to the Direct Responsibility Employers Awards Reserve. Conforms the section of the law pertaining to Retroactive Reserve to changes made in benefits under this Act.
- Section 48. Removes reference to a "bona fide rating organization" in that section of the law pertaining to the records of the State Accident Insurance Fund.
- Section 49. Removes reference to "insurance carrier" from that section of the law pertaining to rights of the State Accident Insurance Fund in cases dealing with alleged noncomplying employers.
- Section 50. Removes reference to "insurer" in that section of the law pertaining to civil penalties against employers.
- Section 51. Removes reference to "insurer" other than the State Accident Insurance Fund from that section of the law pertaining to civil penalties for failing to provide consultative services.

Section 52. Removes reference to "private insurance carrier" in that section of the law pertaining to the purpose and operations of the State Accident Insurance Fund.

Section 53. Removes reference to "other carriers who are qualified to write workers' compensation insurance in Oregon" from that section of the law pertaining to the Industrial Accident Advisory Committee.

Section 53a. Substitutes "fire fighters" for "firemen" under the section of the law pertaining to occupational disease. Removes language pertaining to basis for denying a fire fighter's claim for an occupational disease.

Section 53b. Provides that a fire fighter who is disabled by an occupational disease subsequently starts rehabilitation and suffers a reoccurrence, as determined by physical examination, shall have the reoccurrence treated as an original injury.

Section 54. Exempts the State Accident Insurance Fund from complying with Insurance Code requirements pertaining to membership in a rating organization.

Section 55. Removes from the Insurance Code that section of the law pertaining to a private insurance carrier having to provide safety and health consultative services.

Section 56. Removes from the Insurance Code that section of the law pertaining to reciprocal insurers covering workers' compensation insurance.

Section 57. Removes from the Insurance Code that section of the law pertaining to certain deposits made by workers' compensation insurance carriers.

Section 58. Removes from the Insurance Code that section of the law pertaining to certain deposits made by workers' compensation insurance carriers.

Section 59. Removes from the Insurance Code that section of the law pertaining to certain deposits made by workers' compensation insurance carriers.

Section 60. Removes from the Insurance Code pertaining to the Oregon Insurance Guaranty Association references to covered claims arising out of workers' compensation policies.

Section 61. Removes from the Insurance Code references to certain recovery rights on workers' compensation claims.

Section 62. Removes from the Insurance Code certain references requiring insurers to be members of a workers' compensation rating organization and adhere to the rates, rating systems and policy forms of the rating organization.

Section 63. Removes from the Insurance Code relating to the making and use of rates certain references to workers' compensation insurance.

Section 64. Removes from the Insurance Code relating to rate filings certain references to workers' compensation insurance.

- Section 65. Removes from the Insurance Code relating to membership in a workers' compensation rating organization the requirement that any insurer must become a member of or a subscriber to any rating organization.
- Section 66. Removes from the Insurance Code relating to certain health insurance policies references to workers' compensation insurance policies.
- Section 67. Removes from the Insurance Code relating to certain health insurance policies references to workers' compensation.
- Section 68. Removes from the Insurance Code relating to certain health insurance policies references to workers' compensation.
- Section 69. Provides that sections 70 to 72 of this Act are added to and made a part of the Workers' Recovery Law.
- Section 70. Provides that any direct responsibility employer who provided coverage for workers' compensation by contracting with an insurance carrier on or before the operative date of this Act can continue such coverage for the remainder of the term of the contract. Bans such contracts from private insurance carriers after the operative date of this Act.
- Section 71. Provides that after the effective date of the Act, an insurance carrier that issued guaranty contracts to direct responsibility employers to provide the coverage required by law shall not provide coverage under such a contract for a period longer than one calendar year.
- Section 72. Provides that nothing in the Act relieves any insurance carrier that issued a guaranty contract to a direct responsibility employer to provide the coverage required by law, prior to the operative date of the Act, from any duty to administer and pay claims or any other liability or obligation prescribed by law prior to the operative date of the Act.
- Section 73. Repeals various sections of the current Workers' Compensation Law pertaining to the determination and payment of TTD, PTD, TPD and PPD; medical service rates; certain attorney fees; sanctions against private carriers; assigned risk plan; and various sections of the Insurance Code dealing with insurers issuing guaranty contracts.
- Section 74. Provides that certain sections of the current workers' compensation law are to be added to and made a part of the Workers' Recovery Act.
- Section 75. Provides that the Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and the Act takes effect on its passage. However, sections 1 to 70 and 72 to 74 of the Act first become operative on January 1, 1980.

~~Engrossed~~

House Bill 3125

Ordered by the House June 29
(Including Amendments by House June 29)

Sponsored by COMMITTEE ON LABOR (at the request of Representative Chrest)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises manner of providing compensation for industrial injuries to emphasize loss of wages as the measure of benefits. Establishes program to encourage early reemployment of injured workers. Revises delivery and rate schedule for providing certain medical and rehabilitative services. Changes names of Workers' Compensation Department, Workers' Compensation Board and Workers' Compensation Law to Workers' Recovery Department, Workers' Recovery Board and Workers' Recovery Law. Establishes "two-way" system for providing benefit coverage by eliminating coverage by private insurers. Makes transitional and other technical and administrative changes.

Declares emergency with private insurance carrier restrictions effective on passage and other changes becoming operative January 1, 1980.

A BILL FOR AN ACT

1
2 Relating to workers' compensation; creating new provisions; amending ORS 656.001, 656.005, 656.010,
3 656.039, 656.121, 656.128, 656.140, 656.208, 656.209, 656.245, 656.252, 656.254, 656.262, 656.264, 656.268,
4 656.273, 656.287, 656.304, 656.307, 656.325, 656.382, 656.388, 656.403, 656.407, 656.419, 656.423, 656.427,
5 656.443, 656.451, 656.612, 656.614, 656.622, 656.636, 656.702, 656.740, 656.745, 656.750, 656.752, 656.790,
6 656.802, 656.807, 731.028, 731.418, 731.566, 731.608, 731.620, 731.640, 734.570, 734.640, 737.265, 737.310,
7 737.320, 737.560, 743.402, 743.459 and 743.462; repealing ORS 656.206, 656.210, 656.212, 656.214, 656.216,
8 656.218, 656.222, 656.230, 656.248, 656.386, 656.447, 656.728, 656.730, 731.480, 731.628 and 731.832; and
9 declaring an emergency.

10 Be It Enacted by the People of the State of Oregon:

11 SECTION 1. Sections 2 to 7 and 19 of this Act are added to and made a part of ORS 656.001 to 656.794.

12 SECTION 2. (1) When a worker who is employed by an employer who employs 10 or more subject workers
13 incurs a compensable injury:

14 (a) The worker shall be reinstated by the employer to the former position of employment, without
15 reduction in wage, if the worker is able to perform the primary duties of the position.

16 (b) If the worker is not able to perform the primary duties of the former position, the worker shall be
17 reinstated to any other position in the employer's operation, the primary duties of which the worker is able to
18 perform.

19 (c) As used in this chapter, "primary duties" are those activities which comprise the substantial amount of
20 time for, and are essential to, the performance of that position after the employer has made reasonable
21 accommodations for the worker's impairments.

22 (2) The department may require reasonable modification of the job site of a subject employer's operation if
23 the modification would enable the worker and employer to comply with subsection (1) of this section.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with SECTION.

1 (3) A worker may present a certificate of the worker's attending physician that the worker is able to
2 perform described types of activity which shall be prima facie evidence of such ability.

3 (4) An employer is relieved of the obligation to reemploy an injured worker:

4 (a) If the worker's position has been eliminated by a reduction in force, but only so long as the reduction in
5 force lasts; or

6 (b) Two years after the date of injury or aggravation, but a worker who suffers an aggravation has no
7 reinstatement privileges unless employed by the employer at the time of the original injury.

8 (5) An employer shall not discriminate against a worker with respect to hire or tenure or any term or
9 condition of employment because the worker has applied for benefits, is receiving wage differential benefits or
10 has invoked or utilized the procedures provided for in this chapter or given testimony pursuant thereto.
11 However, nothing in this subsection prevents an employer from terminating a worker for cause unrelated to the
12 purposes of this chapter.

13 (6) A worker may enforce the provisions of this section by requesting a hearing as provided in ORS
14 656.283.

15 (7) An employer is not excused from complying with this section because a vacancy does not exist or the
16 injured worker lacks seniority to fill a position. However, if a seniority system is in use, an employer need not
17 demote or terminate another worker with greater seniority in order to place the injured worker.

18 (8) The provisions of this section prevail over the terms of any collective bargaining agreement entered into
19 after the effective date of this 1979 Act.

20 SECTION 3. When the department determines that the worker will not be able to return to the worker's
21 previous employment, the department, as soon as is practicable, shall commence employment search,
22 retraining or vocational rehabilitation for the purpose of reemploying the worker at a wage as close as possible
23 to the worker's wage at the time of injury.

24 SECTION 4. (1) An employer who fails to comply with section 2 of this 1979 Act shall be liable for all
25 wages, fringe benefits and other remuneration which would have been payable had the worker been reinstated,
26 accruing from the date the employer received notice of the worker's desire to return to employment until such
27 time as the employer reinstates the worker or the worker obtains other employment, whichever occurs first.
28 An employer is prohibited from insuring against this liability or in any way transferring the responsibility for
29 the payment of damages arising out of this subsection. The State Accident Insurance Fund shall have a lien
30 against any such damages for the sum of wage loss benefits paid pursuant to subsection (2) of this section.

31 (2) The State Accident Insurance fund or self-insured employer shall pay the worker total wage loss
32 benefits from the date of a request for a hearing for employment reinstatement, or from the date the employer
33 receives notice of the worker's desire to be reinstated, whichever occurs first, notwithstanding that the worker
34 is able to perform work at a gainful and suitable occupation. However, the worker must request a hearing for
35 employment reinstatement within 30 days of the day the employer provides notice in writing to the worker of
36 rejection. Total wage loss benefits shall continue until the employer reinstates the worker, the worker obtains
37 other employment or there is a decision adverse to the worker, whichever occurs first. However, benefits shall
38 be reinstated when a decision adverse to the worker is reversed. If the worker prevails, the employer shall
39 reimburse the State Accident Insurance Fund for all wage-loss benefits paid under this subsection.

40 (3) An employer may be relieved of the duty to reinstate an injured worker by filing a request for a hearing
41 stating the grounds for relief. If the worker is receiving total wage loss benefits, the worker shall continue to

1 receive such benefits until a decision adverse to the worker is rendered. However, the employer is not liable
2 for wages, fringe benefits or other remuneration prior to a decision adverse to the employer.

3 (4) A worker who refuses to accept reinstatement without good cause and despite ability to perform the
4 work shall lose the right to employment reinstatement and shall lose all benefits except for medical services for
5 conditions causally related to the injury. "Good cause" may include any violation of this chapter by the
6 employer. A worker who returns to work but is unable to perform primary duties shall not have benefits
7 terminated.

8 SECTION 5. (1) (a) When a compensable injury incapacitates a worker from performing any work for the
9 employer and until that time provided in subsection (1) of ORS 656.268, the worker shall receive total wage loss
10 benefits and any medical insurance or benefits which the worker was receiving as remuneration at the time of
11 the injury. "Total wage loss benefits" shall be equal to 66-2/3 percent of wages at time of injury, but not more
12 than 200 percent of the average weekly wage. Notwithstanding the limitation imposed by this subsection, an
13 injured worker who is not eligible to receive an increase in benefits for the fiscal year in which compensation is
14 paid shall have benefits increased each fiscal year by the percentage which the applicable average weekly wage
15 has increased since the previous fiscal year.

16 (b) "Weekly wages at time of injury" shall be equal to one fifty-second of all wages earned during the 365
17 days immediately preceding the date of injury, which wages shall include all wages subject to withholding
18 pursuant to the personal income tax laws of this state or of the United States, and any other wages earned while
19 covered by workers' compensation insurance, or its equivalent, in any jurisdiction. If the worker was
20 employed for less than 176 days of the preceding 12 months, the director shall set a reasonable weekly wage to
21 be used as wages at time of injury under this section, but in no instance shall weekly wages be less than 40
22 times the federal hourly minimum wage.

23 (c) If the injured worker has been employed by the employer continuously during the 365 days immediately
24 preceding the date of the injury, the employer may compute the total wage loss benefit from the employer's
25 payroll records. However, the worker may present documentation of additional wages from other employment
26 during that period, in which case the benefit shall be based on the total lost wages of the worker. If the injured
27 worker was not employed by the employer continuously during the 365 days immediately preceding injury, the
28 employer shall notify the worker or his representative to produce documentation of any other wages. If the
29 worker or his representative states that there are no other wages, the employer shall compute the benefit from
30 the payroll records. The worker shall have 30 days to produce documentation of other wages during which time
31 the benefit shall be based on the worker's average weekly wage paid by that employer, after which time the
32 employer may presume that there are no other wages until the worker presents documentation to the contrary.
33 In any case where the worker was employed less than 176 days of the preceding 365 days, the employer shall
34 request that the director set a reasonable weekly wage. The employer may make adjustments to benefits or
35 wages at a rate not to exceed 20 percent of the benefits or wages per week if there has been a prior
36 overpayment. In claims for aggravation, "weekly wages at time of injury" shall be equal to one fifty-second of
37 all wages earned during the 365 days immediately preceding the date of filing the claim for aggravation if it
38 results in a greater benefit for the worker.

39 (d) "Documentation" may include W-2 forms, unemployment insurance determinations, payroll check
40 stubs, income tax reporting forms and letters of prior employers, any one of which shall be prima facie evidence
41 of wages. The worker may submit as documentation an affidavit, in a form provided by the department, if

other documentation is unavailable. With the worker's consent the employer may request a verification by the department of any wages alleged to be earned in Oregon and the Employment Division of the Department of Human Resources shall provide such information to the Workers' Recovery Department.

(2) (a) A worker who has a decrease in wages proximately caused by a compensable injury but is not eligible for total wage loss benefits shall receive wage differential benefits.

(b) "Wage differential benefits" shall be equal to the following percentages of the difference between wages at time of injury less wages after injury for the given ratios of wages after injury to wages at time of injury:

Percentage of difference	Ratio
95%	Greater than 74% but less than 91%
80%	Greater than 49% but less than 75%
50%	Greater than 25% but less than 50%
33-1/3%	Less than 25%

However, a worker who has been employed subsequent to the injury shall continue to receive during any period of unemployment, when the worker is otherwise eligible for benefits, that amount which the worker received as wage differential benefits the month preceding the month the worker became unemployed.

(c) No worker shall receive wage differential benefits after the worker's 70th birthday, after the worker has voluntarily left the labor market, after any two-year period during which time wage differential benefits or total wage loss benefits have not been payable during at least three consecutive months, or after 10 years of first receipt of wage differential benefits, except that for those injuries occurring after July 1, 1987, this maximum period shall be 20 years.

(d) Beginning with the 25th month after the date of first payment of wage differential benefits, for purposes of computing wage differential benefits, wages after injury shall be discounted by the percentage by which the average weekly wage on that date has increased since the date of the injury. Wage differential benefits shall be so indexed at the end of each two-year period thereafter. A worker who is ineligible for wage differential benefits because wages after injury exceed 90 percent of wages at time of injury shall not have wages after injury discounted unless wages after injury subsequently decreases to less than 90 percent of wages at time of injury.

(3) No total wage loss benefit is recoverable for the first three calendar days after the worker leaves work as a result of a compensable injury unless eligibility for total wage loss benefits continues for a period of 14 days or the worker is an inpatient in a hospital. If the worker leaves work the day of the injury, that day shall be considered the first day of the three-day period.

(4) A worker who suffers a subsequent compensable injury during the period in which the worker is eligible for wage differential benefits from a prior injury shall receive as total wage loss benefits the amount which represents the greatest benefit for which the worker is eligible. No worker shall receive more than one wage differential benefit nor shall the worker receive total wage loss benefits and wage differential benefits simultaneously. For purposes of determining "wages at time of injury" in paragraph (b) of subsection (1) of this section, wage differential benefits and total wage loss benefits shall be included as wages.

1 **SECTION 6. (1) The medical director, in consultation with the advisory committee on medical care, shall**
2 compile a roster of consultants of physicians, psychologists or other medical personnel who treat industrially
3 injured or ill patients. The roster need not include every practitioner but may be limited to those recognized by
4 their peers as excelling in their respective specialties.

5 (2) The Director of the Workers' Recovery Department, in consultation with the medical director, the
6 advisory committee on medical care and with other medical practitioners who treat industrially ill or injured
7 workers, shall promulgate rules:

8 (a) Prescribing time of recuperation standards to correspond to usual healing periods for those illnesses and
9 injuries which the director finds necessary, taking into consideration the early return to work standard of this
10 1979 Act;

11 (b) Prohibiting particular treatment regimens for particular illnesses or injuries; and

12 (c) Requiring prior approval of the medical director for certain elective surgical procedures.

13 (3) The medical director may order the worker to appear for examination by one or more consultants from
14 the roster of consultants if the worker does not report for work within the applicable time of recuperation
15 standard. The department, after consultation with the consultants, the worker, the treating physician and the
16 employer, shall order a return to work-rehabilitation plan. If the worker refuses to comply with such order, the
17 director may order cessation of any or all benefits until compliance or until such order is reversed on appeal.

18 (4) A physician shall obtain the approval of the medical director prior to those elective surgical procedures
19 that have been specified by rule. The medical director shall not deny approval unless the worker has been
20 examined by a physician from the roster of consultants who advises that the proposed surgery is not indicated.

21 (5) The medical director may order the worker to change treating physicians or to change a treatment
22 regimen after the worker has been examined by a physician from the roster of consultants who advises that the
23 treatment regimen is not indicated.

24 (6) If the medical director orders a worker to be examined, the worker may choose from the roster of
25 consultants any consultant within those specialties the medical director determines has applicability to the
26 worker's injury or illness. The worker may choose to be examined by a second consultant from the roster in
27 that specialty if the worker disagrees with the diagnosis of the first consultant.

28 (7) The director may prohibit payment for future medical services for treatment of an injured worker by a
29 physician who is found, after notice and hearing, to have violated any section of this chapter or of any rule
30 promulgated thereunder. The period of prohibition of payment for medical services under this subsection shall
31 be no less than six months nor more than five years. Exceptions to this subsection may be allowed for
32 emergency medical services which were not otherwise available, after review and approval by the medical
33 director. The medical director may consult with the advisory committee prior to approving or disapproving
34 payment for emergency medical care.

35 (8) A "return to work-rehabilitation plan" may include:

36 (a) Physical rehabilitation and other treatment regimens or therapies;

37 (b) Admission to medical and rehabilitation facilities;

38 (c) Prohibitions against insanitary or injurious practices or treatment regimens;

39 (d) Gradual, intermittent or immediate return to employment;

40 (e) Light, sedentary or structured duties of employment;

41 (f) Physical, psychological, intelligence and skill examinations;

1 (g) Vocational or on the job training;

2 (h) Hygienic instruction;

3 (i) A schedule of one or more of such activities or the requirement for regularly reporting to one or more of
4 such activities; or

5 (j) Any combination of such activities, except admission to a state mental hospital.

6 (9) The worker shall report to the employer at the earliest date when light or sedentary duty at intervals of
7 one-half day does not interfere with healing.

8 (10) A referee may select from the roster of consultants one or more physicians to give expert testimony in
9 those cases in which the issue of medical causation of the injury or illness is disputed. No physician who has
10 had previous experience with the case shall be eligible for such selection. The insurer or self-insured employer
11 shall pay for the fees of the consultants.

12 (11) The State Accident Insurance Fund shall collect and record each fee for medical services billed to the
13 fund and categorize them according to nature of service and according to the provider. The fund shall construct
14 a profile of each provider by recording the billing history for each service category for that provider. The fund
15 shall also construct a composite profile for each service category by all providers.

16 (12) The State Accident Insurance Fund shall not pay any more of a billing than the sum which equals the
17 85th percentile of the range of all billings for that service category nor shall the fund pay any more of a billing
18 which exceeds that sum the provider has historically billed for that service. In no instance shall the fund pay
19 the provider more than the usual fee charged by that provider for similar services. The provider shall not
20 charge or have a cause of action against a patient for the difference between the billing and the amount
21 determined payable under this section.

22 (13) The fund may use any source of the data required by this section or may purchase the services
23 required by this section. The fund shall make such data available, upon request and payment therefor, to
24 self-insured employers.

25 (14) Self-insured employers are not required to make payment for medical services that exceed the
26 amounts prescribed by this section.

27 SECTION 7. (1) As used in this section "loss" means amputation or permanent or complete loss of
28 function equivalent to amputation. Determination of benefits under this section shall be made by the
29 Evaluation Division pursuant to ORS 656.268.

30 (2) A worker who sustains a compensable injury and suffers the following losses as a result of such injury
31 shall receive in a lump sum, in addition to any other benefits the worker is entitled to under this chapter, an
32 amount equal to the average weekly wage at time of injury multiplied by the factor stated for each loss as
33 follows:

34 (a) For the loss of two hands, two feet, or one hand and one foot, 120.

35 (b) For the loss of both hands and both feet, 240.

36 (c) For the loss of one arm at or above the elbow joint, 64.

37 (d) For the loss of one forearm at or above the wrist joint, or the loss of one hand, 50.

38 (e) For the loss of one leg, at or above the knee joint, 50.

39 (f) For the loss of one foot, 45.

40 (g) For the loss of a great toe, 6; of any other toe, 2.

41 (h) For the loss of a thumb, 16.

(f) For the loss of a first finger, 8; of a second finger, 7; of a third finger, 4; of a fourth finger, 2.

(j) For complete loss of hearing in one ear, 20.

(k) For complete loss of hearing in both ears, 64.

(L) For complete loss of vision of one eye, 33.

(m) For complete loss of vision of both eyes, 120.

SECTION 8. (1) The name of the Workers' Compensation Department is changed to the Workers' Recovery Department. Any reference in the statute sections published in Oregon Revised Statutes to the Workers' Compensation Department shall be considered a reference to the Workers' Recovery Department.

(2) The name of the Workers' Compensation Board is changed to the Workers' Recovery Board. Any reference in the statute sections published in Oregon Revised Statutes to the Workers' Compensation Board shall be considered a reference to the Workers' Recovery Board.

(3) The name of the Workers' Compensation Law is changed to the Workers' Recovery Law. Any reference in the statute sections published in Oregon Revised Statutes to the Workers' Compensation Law shall be considered a reference to the Workers' Recovery Law.

(4) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute, for words designating:

(a) The Workers' Compensation Department, wherever such words occur in Oregon Revised Statutes, words designating the Workers' Recovery Department.

(b) The Workers' Compensation Board, wherever such words occur in Oregon Revised Statutes, words designating the Workers' Recovery Board.

(c) The Workers' Compensation Law, wherever such words occur in Oregon Revised Statutes, words designating the Workers' Recovery Law.

Section 9. ORS 656.001 is amended to read:

656.001. ORS 656.001 to 656.794 may be cited as the Workers' [Compensation] Recovery Law.

Section 10. ORS 656.005 is amended to read:

656.005. (1) "Administrative Fund" means the fund created by ORS 656.612.

(2) "Average weekly wage" means the Oregon average weekly wage in covered employment, as determined by the Employment Division of the Department of Human Resources, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(3) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under this chapter. However, a spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently is not a beneficiary. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time, received or attempted by process of law to collect funds for support or maintenance, is considered living in a state of abandonment.

(4) "Board" means the Workers' [Compensation] Recovery Board.

[(5) "Carrier-insured employer" means an employer who provides workers' compensation coverage with a guaranty contract insurer.]

[(6)] (5) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child toward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support. An

1 invalid dependent child is a child, for purposes of benefits, regardless of age, so long as the child was an invalid
2 at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support.
3 For purposes of this chapter, an invalid dependent child is considered to be a child under 18 years of age.

4 [(7)] (6) "Claim" means a written request for compensation from a subject worker or someone on the
5 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

6 [(8)] (7) (a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appliances,
7 arising out of and in the course of employment requiring medical services or resulting in disability or death; an
8 injury is accidental if the result is an accident, whether or not due to accidental means.

9 (b) A "disabling compensable injury" is an injury which entitles the worker to compensation for disability
10 or death.

11 (c) A "nondisabling compensable injury" is any injury which requires medical services only.

12 [(9)] (8) "Compensation" includes all benefits, including medical services, provided for a compensable
13 injury to a subject worker or the worker's beneficiaries by a direct responsibility employer or the State
14 Accident Insurance Fund pursuant to this chapter.

15 [(10)] (9) "Contributing employer" means an employer who provides workers' compensation coverage
16 with the State Accident Insurance Fund.

17 [(11)] (10) "Department" means the Workers' [Compensation] Recovery Department.

18 [(12)] (11) "Dependent" means any of the following-named relatives of a worker whose death results from
19 any injury and who leaves surviving no widow, widower or child under the age of 18 years: Father, mother,
20 grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half
21 brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support
22 upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United
23 States at the time of the accident other than father, mother, husband, wife or children are not included within
24 the term "dependent."

25 [(13)] (12) "Direct responsibility employer" means a self-insured employer or a carrier-insured employer.

26 [(14)] (13) "Director" means the Director of the Workers' [Compensation] Recovery Department.

27 [(15)] (14) "Doctor" or "physician" means a person duly licensed to practice one or more of the healing
28 arts in this state within the limits of the license of the licentiate.

29 [(16)] (15) "Employer" means any person, including receiver, administrator, executor or trustee, and the
30 state, state agencies, counties, municipal corporations, school districts and other public corporations or
31 political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the
32 services of any person.

33 [(17)] "Guaranty contract insurer" means an insurer that is authorized under ORS chapter 731 to transact
34 insurance in this state and to sell workers' compensation insurance.]

35 [(18)] (16) "Insurer" means the State Accident Insurance Fund or a guaranty contract insurer.

36 [(19)] (17) "Insured employer" means a contributing employer or a carrier-insured employer.

37 [(20)] (18) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

38 [(21)] (19) "Noncomplying employer" means a subject employer who has failed to comply with ORS
39 656.017 or who is in default under ORS 656.560 in the payment of contributions required by ORS 656.504.

40 [(22)] (20) "Party" means a claimant for compensation, the employer of the injured worker at the time of
41 injury and the insurer, if any, of such employer.

1 [(23)] (21) "Payroll" means a record of wages payable to workers for their services and includes vacation
2 pay, bonus pay, commissions, value of exchange labor, amounts payable under profit sharing agreements and
3 the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

4 [(24)] (22) "Person" includes partnership, joint venture, association and corporation.

5 [(25)] (23) "Self-insured employer" means an employer who has been certified under ORS 656.430 that he
6 meets the qualifications of a self-insured employer set out by ORS 656.407.

7 [(26)] (24) "State Accident Insurance Fund" and "fund" mean the State Accident Insurance Fund created
8 under ORS 656.752.

9 [(27)] (25) "Subject employer" means an employer who is subject to this chapter as provided by ORS
10 656.023.

11 [(28)] (26) "Subject worker" means a worker who is subject to this chapter as provided by ORS 656.027.

12 [(29)] (27) "Wages" means the money rate at which the service rendered is recompensed under the
13 contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing,
14 lodging or similar advantage received from the employer. The State Accident Insurance Fund may establish
15 assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any
16 worker shall be carried upon the payroll of the employer for the purpose of determining the contribution of the
17 employer.

18 [(30)] (28) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who
19 engages to furnish services for a remuneration, subject to the direction and control of an employer and includes
20 salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other
21 public corporations, but does not include any person whose services are performed as an inmate or ward of a
22 state institution.

23 Section 11. ORS 656.010 is amended to read:

24 656.010. Nothing in this chapter shall be construed to require a worker who in good faith relies on or is
25 treated by prayer or spiritual means by a duly accredited practitioner of a well-recognized church to undergo
26 any medical or surgical treatment nor shall such worker or his dependents be deprived of any compensation
27 payments to which he would have been entitled if medical or surgical treatment were employed, and the
28 employer or *[insurance carrier]* State Accident Insurance Fund may pay for treatment by prayer or spiritual
29 means.

30 NOTE: Section 12 was deleted by amendment. Subsequent sections were not renumbered.

31 Section 13. ORS 656.039 is amended to read:

32 656.039. (1) An employer of one or more persons defined as nonsubject workers or not defined as subject
33 workers may elect to make them subject workers. If the employer is or becomes a contributing employer, the
34 election shall be made by filing written notice thereof with the State Accident Insurance Fund with a copy to
35 the director. The election becomes effective when the written notice is received by an authorized
36 representative of the fund. *[If the employer is or becomes a carrier-insured employer, the election shall be made*
37 *by filing written notice thereof with the insurer with a copy to the director.]* The effective date of coverage is
38 governed by subsection (4) of ORS 656.419. If the employer is or becomes a self-insured employer, the election
39 shall be made by filing written notice thereof with the director, the effective date of coverage to be the date
40 specified in the notice.

1 (2) Any election under subsection (1) of this section may be canceled by written notice thereof to the
2 insurer or, in the case of a self-insured employer, by notice thereof to the director. The cancellation is effective
3 at 12 midnight ending the day the notice is received by the insurer or the director, unless a later date is specified
4 in the notice. The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a
5 copy of the notice to the director.

6 (3) When necessary the insurer or the director shall fix assumed minimum or maximum wages for persons
7 made subject workers under this section.

8 Section 13a. ORS 656.121 is amended to read:

9 659.121. (1) Any person claiming to be aggrieved by an unlawful employment practice prohibited by ORS
10 659.024, 659.026, 659.030, 659.410, ~~659.415~~ or subsection (1) of 659.425 may file a civil suit in circuit court for
11 injunctive relief and the court may order such other equitable relief as may be appropriate, including but not
12 limited to reinstatement or the hiring of employees with or without back pay. Back pay liability shall not accrue
13 from a date more than two years prior to the filing of a complaint with the Labor Commissioner, pursuant to
14 ORS 659.040, or if no such complaint has first been filed, then, more than two years prior to the filing of the
15 civil suit provided for in ORS 659.040, 659.045, 659.095 and this section. In any suit brought under this
16 subsection, the court may allow the prevailing party costs and reasonable attorney fees.

17 (2) Any person claiming to be aggrieved by alleged violations of subsection (1) or (2) of ORS 659.033,
18 subsection (2) of 659.425 or ORS 659.430 may file a civil action in circuit court to recover compensatory
19 damages or \$200, whichever is greater, and punitive damages not to exceed \$2,500. The court may provide such
20 equitable relief as it deems appropriate. In any action brought under this subsection, the court may allow the
21 prevailing party costs and reasonable attorney fees.

22 (3) Where no complaint has been filed pursuant to subsection (1) of ORS 659.040 or subsection (1) of
23 659.045 and except as otherwise provided herein, the civil suit or action shall be commenced within one year of
24 the occurrence of the alleged unlawful employment practice. Where a complaint has been filed pursuant to
25 subsection (1) of ORS 659.040 or subsection (1) of 659.045 the civil suit or action provided for herein shall be
26 commenced only in accordance with the time limitations provided for in ORS 659.095. The filing of a complaint
27 with the commissioner under subsection (1) of ORS 659.040 or subsection (1) of 659.045 shall not be a condition
28 precedent to the filing of civil suit or action under this section.

29 (4) This section shall not be construed to limit or alter in any way the authority or power of the
30 commissioner or to limit or alter in any way any of the rights of an individual complainant until and unless the
31 complainant commences civil suit or action. The filing of a civil suit or action shall constitute both an election
32 of remedies as to the rights of that individual with respect to those matters alleged in the complaint filed with
33 the commissioner, and a waiver with respect to the right to file a complaint with the commissioner pursuant to
34 subsection (1) of ORS 659.040 or subsection (1) of 659.045.

35 Section 14. ORS 656.128 is amended to read:

36 656.128. (1) Any person who is a sole proprietor, or a member of a partnership, may make written
37 application to the State Accident Insurance Fund or a guaranty contract insurer to become entitled as a subject
38 worker to compensation benefits. Thereupon, the fund shall[, or the guaranty contract insurer may,] accept
39 such application and fix a classification and an assumed monthly wage at which such person shall be carried on

1 the payroll as a worker for purposes of computations under this chapter. If the person making application to the
2 fund under this section is an employer of subject workers, his application shall not be accepted unless he is a
3 contributing employer.

4 (2) When the application is accepted, such person thereupon is subject to the provisions and entitled to the
5 benefits of this chapter. He shall promptly notify the insurer whenever his status as an employer of subject
6 workers changes. Any subject worker employed by such a person after the effective date of his election shall,
7 upon being employed, be considered covered automatically by the same guaranty contract that covers such
8 person.

9 (3) No claim shall be allowed or paid under this section, except upon corroborative evidence in addition to
10 the evidence of the claimant.

11 (4) Any person subject to this chapter as a worker as provided in this section may cancel such election by
12 giving written notice to the insurer. The cancellation shall become effective at 12 midnight ending the day of
13 filing the notice with the insurer.

14 Section 15. ORS 656.140 is amended to read:

15 656.140. (1) Any person, or persons operating as partners, who have an ownership or leasehold interest in
16 equipment and are engaged in the business of operating such equipment for hire, may elect to cover themselves
17 under the Workers' [Compensation] Recovery Law by qualifying as a contributing employer [or a direct
18 responsibility employer] pursuant to this chapter and by filing with the State Accident Insurance Fund [or
19 another insurer] a written application to become entitled as subject workers to the benefits of the Workers'
20 [Compensation] Recovery Law.

21 (2) As used in this section "equipment" means:

22 (a) A motor vehicle used in the transportation of logs, poles or pilings.

23 (b) A motor vehicle used in the transportation of rocks, gravel, sand or dirt.

24 (c) A backhoe or other similar equipment used for digging and filling ditches or trenches.

25 (d) A tractor.

26 (e) Any other motor vehicle or heavy equipment of a kind commonly operated for hire.

27 (3) The fund shall[, or the other insurer may,] accept such application and fix a classification and an
28 assumed monthly wage at which such person, or persons operating as partners, shall be carried on the payroll
29 as workers for purposes of computations under this chapter.

30 (4) When the application is accepted, such person, or persons operating as partners, become subject
31 workers. Thereupon, such person, or persons operating as partners, shall be subject to this chapter as a subject
32 employer notwithstanding ORS 656.023 and shall be entitled to benefits as subject workers.

33 (5) No claim shall be allowed or paid under this section, except upon corroborative evidence in addition to
34 the evidence of the claimant.

35 (6) Any person, or persons operating as partners, electing coverage under this section, have the same
36 duties and responsibilities of any other subject employer in the event they hire one or more subject workers.

37 (7) The rights given to a person, or persons operating as partners, and their beneficiaries pursuant to this
38 section for injuries compensable under this chapter are in lieu of any remedies they might otherwise have for

1 such injuries against the person for whom services are being performed.

2 NOTE: Section 16 was deleted by amendment. Subsequent sections were not renumbered.

3 Section 17. ORS 656.208 is amended to read:

4 656.208. (1) If the injured worker dies *[during the period of permanent total disability]* while receiving total
5 wage loss benefits and after having received total wage loss benefits continuously for four years, unless the worker
6 is participating in vocational rehabilitation at the time of the death, whatever the cause of death, leaving:

7 (a) A spouse who was the husband or wife of the worker either at the time of the injury causing the
8 disability or within two years thereafter; or

9 (b) Any dependents listed in ORS 656.204, payment shall be made in the same manner and in the same
10 amounts as provided in ORS 656.204.

11 (2) If any surviving spouse to whom the provisions of this section apply remarries, the payments on
12 account of a child or children shall continue to be made to the child or children the same as before the
13 remarriage.

14 Section 18. ORS 656.209 is amended to read:

15 656.209. (1) With the authorization of the board, the amount of any *[permanent total disability]* total wage
16 loss benefits payable to an injured worker shall be reduced by the amount of any disability benefits the worker
17 receives from federal social security.

18 (a) If the benefit amount to which the worker is entitled pursuant to ORS 656.001 to 656.794 exceeds the
19 worker's federal disability benefit limitation determined pursuant to 42 USC 424(a), the reduction in worker's
20 compensation benefits authorized by this subsection shall not be administered in such manner as to lower the
21 amount the worker would have received pursuant to ORS 656.001 to 656.794 had such reduction not been
22 made.

23 (b) If the benefit amount to which the worker is entitled pursuant to ORS 656.001 to 656.794 is less than the
24 worker's federal disability benefit limitation determined pursuant to 42 USC 424(a), the reduction in worker's
25 compensation benefits authorized by this subsection shall not be administered in such manner as to lower the
26 amount of combined benefits the worker receives below the federal benefit limitation.

27 (2) No reduction of *[permanent total disability]* total wage loss benefits shall be made pursuant to this
28 section unless authorized by the board.

29 (3) No reduction of benefits shall be authorized pursuant to this section except upon actual receipt of
30 federal social security disability benefits by the injured worker.

31 SECTION 19. If an injured worker dies while receiving total wage loss benefits or wage differential
32 benefits, the persons who would have been entitled to receive death benefits if the compensable injury had
33 been fatal shall receive that amount which equal 52 times the average weekly wage, but only if no other death
34 benefits are payable under this chapter.

35 NOTE: Section 20 was deleted by amendment. Subsequent sections were not renumbered.

36 Section 21. ORS 656.245 is amended to read:

37 656.245. (1) For every compensable injury, the direct responsibility employer or the State Accident
38 Insurance Fund shall cause to be provided medical services for conditions resulting from the injury. *[for such*
39 *period as the nature of the injury or the process of the recovery requires, including such medical services as may*
40 *be required after a determination of permanent disability.]* Such medical services shall include medical, surgical,

1 hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic
2 appliances, braces and supports and where necessary, physical restorative services.

3 (2) Subject to section 6 of this 1979 Act, the worker may choose his own attending doctor or physician within
4 the State of Oregon.

5 Section 22. ORS 656.252 is amended to read:

6 656.252. (1) In order to insure the prompt reporting and payment of compensation in compensable injuries
7 the director shall make rules and regulations governing reports of attending and examining physicians. Such
8 rules and regulations shall include, but not necessarily be limited to:

9 (a) Requiring attending physicians to make the State Accident Insurance Fund [or carrier] a first report of
10 injury within a specified time after the first service rendered.

11 (b) Requiring attending physicians to submit follow-up reports within specified time limits or upon the
12 request of an interested party.

13 (c) Requiring examining physicians to submit their reports, and to whom, within a specified time.

14 (d) Such other reporting requirements as the director may deem necessary to insure that payments of
15 compensation be prompt and that all interested parties be given information necessary to the prompt
16 determination of claims.

17 (2) In promulgating the rules and regulations regarding medical reporting the director may consult and
18 confer with physicians and members of medical associations and societies.

19 Section 23. ORS 656.254 is amended to read:

20 656.254. (1) The director shall establish medical report forms, in duplicate snap-outs where applicable, to
21 be used by the State Accident Insurance Fund, [the guaranty contract insurers,] the self-insured employers and
22 the physicians, including in such forms information necessary to establish facts required in the determination of
23 the claim.

24 (2) The director shall establish sanctions for the enforcement of medical reporting requirements.

25 Section 24. ORS 656.262 is amended to read:

26 656.262. (1) Processing of claims and providing compensation for a worker in the employ of a contributing
27 employer shall be the responsibility of the State Accident Insurance Fund, and when the worker is injured
28 while in the employ of a direct responsibility employer, such employer shall be responsible. However, the
29 contributing employer shall pay to the worker directly the total wage loss benefits provided in this chapter which
30 shall be reimbursed by the State Accident Insurance Fund upon receipt of documentation of those payments,
31 except that in the case of an aggravation of a prior compensable injury which occurred while the worker was not
32 employed by the employer at the time of aggravation, the insurer or self-insured employer shall pay the total wage
33 loss benefits. However, all employers shall assist the fund [or their insurers] in processing claims as required in
34 this chapter.

35 (2) The compensation due under this chapter from the fund or direct responsibility employer shall be paid
36 periodically, promptly and directly to the person entitled thereto upon the employer's receiving notice or
37 knowledge of a claim, except where the right to compensation is denied by the direct responsibility employer or
38 fund.

39 (3) Contributing employers [and carrier-insured employers] shall, immediately and not later than five days
40 after notice or knowledge of any claims or accidents which may result in a compensable injury claim, report the
41 same to the fund [or other insurer]. The report shall include:

- 1 (a) The date, time, cause and nature of the accident and injuries.
- 2 (b) Whether the accident arose out of and in the course of employment.
- 3 (c) Whether the employer recommends or opposes acceptance of the claim, and his reasons.
- 4 (d) Any other details the fund or other insurer may require.

5 Failure to so report subjects the offending employer to a charge for reimbursing the fund for any penalty the
6 fund is required to pay under subsection (8) of this section because of such failure.

7 *[(4) The first instalment of compensation shall be paid no later than the 14th day after the subject employer*
8 *has notice or knowledge of the claim. Thereafter, compensation shall be paid at least once each two weeks,*
9 *except where the director determines that payment in instalments should be made at some other interval. The*
10 *director may by regulation convert monthly benefit schedules to weekly or other periodic schedules.]*

11 (4) The first instalment of wage loss benefits shall be paid by the employer on the next regular payday of the
12 injured worker and on each regular payday thereafter until such time that either the employer or the worker
13 declares that the worker will not return to that employment, which declaration the employer shall report to the
14 department.

15 (5) Written notice of acceptance or denial of the claim shall be furnished to the claimant by the fund or
16 direct responsibility employer within 60 days after the employer has notice or knowledge of the claim. The fund
17 shall also furnish the contributing employer a copy of the notice of acceptance. The notice of acceptance
18 shall[.] inform the claimant of the rights to reemployment, wage differential and hearing, the early return to work
19 standard and aggravation rights.

20 *[(a) Advise the claimant whether the claim is considered disabling or nondisabling.]*

21 *[(b) Inform the claimant of hearing and aggravation rights concerning nondisabling injuries including the*
22 *right to object to a decision that his injury is nondisabling by requesting a determination thereon pursuant to*
23 *ORS 656.268.]*

24 (6) If the State Accident Insurance Fund, the direct responsibility employer itself *[or its guaranty contract*
25 *insurer]* or any other duly authorized agent of such employer for such purpose on record with the Director of
26 the Workers' *[Compensation]* Recovery Department denies a claim for compensation, written notice of such
27 denial, stating the reason for the denial, and informing the worker of hearing rights under ORS 656.283, shall be
28 given to the claimant. A copy of the notice of denial shall be mailed to the director and to the contributing
29 employer by the fund. The worker may request a hearing on the denial at any time within 60 days after the
30 mailing of the notice of denial.

31 (7) Merely paying or providing compensation shall not be considered acceptance of a claim or an admission
32 of liability, nor shall mere acceptance of such compensation be considered a waiver of the right to question the
33 amount thereof.

34 (8) If the fund or direct responsibility employer *[or its insurer]* unreasonably delays or unreasonably
35 refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, the fund or direct
36 responsibility employer shall be liable for an additional amount up to 25 percent of the amounts then due plus
37 any attorney fees which may be assessed under ORS 656.382.

38 (9) The fund may authorize contributing employers to pay compensation to injured workers and shall
39 reimburse employers for compensation so paid.

40 (10) The fund and all direct responsibility employers shall report every claim for disabling injury to the
41 director within 21 days after the date the employer has notice or knowledge of such injury. If within one year

1 after the injury, a worker claims a nondisabling injury has become disabling, the fund or direct responsibility
2 employer shall report the claim to the director immediately after receiving notice or knowledge of such claim. A
3 claim that a nondisabling injury has become disabling, if made more than one year after the date of injury, shall
4 be made pursuant to ORS 656.273 as for a claim for aggravation.

5 (11) If it appears to the director that a subject worker has sustained a compensable injury and the contributing
6 employer fails to pay wage loss benefits as required by subsection (1) of this section, the director shall order the
7 State Accident Insurance Fund to commence paying the worker wage loss benefits immediately and schedule a
8 hearing. If the denial or delay was unreasonable, the contributing employer shall be liable for an additional sum
9 equal to one month's wage loss plus any attorney fees which may be assessed under ORS 656.382.

10 Section 25. ORS 656.264 is amended to read:

11 656.264. (1) The State Accident Insurance Fund[, *guaranty contract insurers*] and self-insured employers
12 shall report to the director compensable injuries, claims disposition and payments made by them under this
13 chapter.

14 (2) The director may require the fund[, *other insurers*] and such employers to report other information as
15 required to carry out this chapter.

16 (3) The director may prescribe the interval and the form of such reports and establish sanctions for the
17 enforcement of reporting requirements.

18 Section 26. ORS 656.268 is amended to read:

19 656.268. (1) [One] The primary purpose of this chapter is to restore the injured worker as soon as possible
20 and as near as possible to a condition of self support and maintenance as an able-bodied worker. Claims shall
21 not be closed nor [temporary disability compensation terminated if the worker's condition has not become
22 medically stationary or if the worker is enrolled and actively engaged in an authorized program of vocational
23 rehabilitation that has been provided according to rules adopted pursuant to ORS 656.728, provided however,
24 that temporary disability compensation shall be proportionately reduced by any sums earned during the
25 vocational rehabilitation period.] wage loss benefits terminated until one of the following occurs:

26 (a) The attending physician has approved the worker's return to regular employment;

27 (b) The worker refuses to comply with the return to work-rehabilitation plan ordered by the director;

28 (c) The worker commences employment; or

29 (d) The worker is able to perform work at a gainful and suitable occupation. As used in this paragraph, a
30 suitable occupation is one which the worker has the ability and the training and experience to perform, or an
31 occupation which the worker is able to perform after rehabilitation.

32 [(2) When the injured worker's condition resulting from a disabling injury has become medically stationary,
33 unless he is enrolled and actively engaged in an authorized program of vocational rehabilitation, the State
34 Accident Insurance Fund or direct responsibility employer shall so notify the Evaluation Division, the worker,
35 and contributing employer, if any, and request the claim be examined and further compensation, if any, be
36 determined. A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
37 necessary to make such determination also shall be furnished to the Evaluation Division and to the worker and
38 to the contributing employer, if requested by such worker or employer. If the attending physician has not
39 approved the worker's return to his regular employment, the fund or direct responsibility employer must continue
40 to make temporary total disability payments until termination of such payments is authorized following
41 examination of the medical reports submitted to the Evaluation Division under this section.]

1 (2) When the worker commences employment or the attending physician has approved the worker's return to
2 regular employment and the regular employment is available, the wage loss benefits may be terminated by the fund
3 or self-insured employer without approval of the director. In all other instances wage loss benefits may not be
4 terminated without approval of the director. At the termination of any wage loss benefits the State Accident
5 Insurance Fund or self-insured employer shall issue a notice to the worker stating the cause for the termination, the
6 right of the worker to present evidence to the director that such cause does not exist, and inform the worker of
7 hearing and aggravation rights and of such other information as the director may require. Within one year of the
8 date of the notice of such a termination, a determination order subsequently may be issued on the claim at the
9 request of the worker or by the director upon review of the claim if the director finds the claim was terminated
10 improperly.

11 [(3) Within 30 days after the Evaluation Division receives the medical and vocational reports relating to a
12 disabling injury, the claim shall be examined and further compensation, including permanent disability award, if
13 any, determined under the director's supervision. If necessary the Evaluation Division may require additional
14 medical or other information with respect to the claim, and may postpone the determination for not more than 60
15 additional days. Any determination under this subsection may include necessary adjustments in compensation
16 paid or payable prior to the determination, including disallowance of permanent disability payments prematurely
17 made, crediting temporary disability payments against permanent disability awards and payment of temporary
18 disability payments which were payable but not paid. The Evaluation Division shall reconsider determinations
19 made pursuant to this subsection whenever one of the parties makes request therefor and presents medical
20 information regarding the claim that was not available at the time the original determination was made.
21 However, any such request for reconsideration must be made prior to the time a request for hearing is made
22 pursuant to ORS 656.283. The time from request for reconsideration until decision on reconsideration shall not
23 be counted in any limitation on the time allowed for requesting a hearing pursuant to ORS 656.283.]

24 (3) The worker who is eligible for wage differential benefits shall be provided with necessary forms on which to
25 report earnings monthly to the State Accident Insurance Fund or the self-insured employer who shall remit the
26 appropriate wage differential benefit within 14 days after receipt of the report. The insurer or self-insured
27 employer shall perform wage differential computations each month, making adjustments for increases and
28 decreases. The director by rule may require that insurers and self-insured employers report such computations to
29 the department. If the worker voluntarily limits income or fails to accept employment commensurate with the
30 worker's ability, the wages after injury shall be considered to be the amount which would have been earned if the
31 worker had not limited income or accepted appropriate employment. The director may make such a determination
32 only after the worker has been notified of the request for such a determination and of the reasons advanced
33 therefor and has been notified to respond thereto. A worker who is disqualified from unemployment compensation
34 benefits under subsection (2) of ORS 657.176 is also disqualified from wage differential benefits until such time as
35 the worker commences employment.

36 [(4) If, after the determination made pursuant to subsection (3) of this section, the director authorizes a
37 program of vocational rehabilitation for an injured worker, any permanent disability payments due under the
38 determination shall be suspended, and the worker shall receive temporary disability compensation while he is
39 enrolled in the authorized vocational rehabilitation program. When the worker ceases to be enrolled and actively
40 engaged in an authorized vocational rehabilitation program, the Evaluation Division shall redetermine the claim
41 pursuant to subsection (3) of this section unless the worker's condition is not medically stationary.]

(4) The director may prescribe the rules for the reporting of income by a worker receiving wage loss or wage differential only as is necessary to prevent overpayments.

(5) The Evaluation Division shall mail a copy of the determination to all interested parties. Any such party may request a hearing under ORS 656.283 on the determination made under subsection (3) of this section within one year after copies of the determination are mailed.

(6) If the claim resulted from an injury to a worker while in the employ of a contributing employer, the fund shall set aside in the Contributing Employers Awards Reserve an amount of money sufficient to pay the award or benefits. If the claim resulted from an injury to a worker while in the employ of a direct responsibility employer, the director may, in the event of:

(a) The insolvency or threatened insolvency of such employer or his surety or guarantor, and

(b) The inadequacy of cash, bond or securities otherwise on deposit by any of them to secure such payment,

require the employer to deposit cash, securities or other assets in such amount as it deems necessary to assure ultimate payment of the award.

(7) Upon receipt of a request made pursuant to subsection (5) of ORS 656.262, the Evaluation Division shall determine whether the claim is disabling or nondisabling. A copy of such determination shall be mailed to all interested parties in accordance with subsection (5) of this section.

Section 27. ORS 656.273 is amended to read:

656.273. (1) After the last award or arrangement of compensation, an injured worker is entitled to additional compensation, including medical services, for worsened conditions resulting from the original injury.

(2) To obtain additional medical services or disability compensation, the injured worker must file a claim for aggravation with the State Accident Insurance Fund or the direct responsibility employer. In the event the direct responsibility employer cannot be located, is unknown, or has ceased to exist, the claim shall be filed with the director.

(3) A physician's report indicating a need for further medical services or additional compensation is a claim for aggravation.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection, the claim for aggravation must be filed within five years after the [first] determination fixing the maximum wage differential benefit was made [under subsection (3) of ORS 656.268].

(b) If no such determination was made, the claim for aggravation must be filed within five years after the [date of injury] last receipt of total wage loss benefits.

(c) If a nondisabling injury did not become disabling within at least one year from the termination of medical services, the claim for aggravation must be filed within five years from the date of injury rather than the date of any determination issued in the claim.

(5) The director may, in his discretion, order the claimant, the State Accident Insurance Fund or the direct responsibility employer to pay for such medical opinion.

(6) A claim submitted in accordance with this section shall be processed by the direct responsibility employer or the State Accident Insurance Fund in accordance with the provisions of ORS 656.262[except that the first instalment of compensation due under subsection (4) of ORS 656.262 shall be paid no later than the 14th day after the subject employer has notice or knowledge of medically verified inability to work resulting from the worsened condition].

1 (4) The director may prescribe rules for the reporting of income by a worker receiving wage loss or wage
2 differential only as is necessary to prevent overpayments.

3 (5) The Evaluation Division shall mail a copy of the determination to all interested parties. Any such party
4 may request a hearing under ORS 656.283 on the determination made under subsection (3) of this section within
5 one year after copies of the determination are mailed.

6 (6) If the claim resulted from an injury to a worker while in the employ of a contributing employer, the
7 fund shall set aside in the Contributing Employers Awards Reserve an amount of money sufficient to pay the
8 award or benefits. If the claim resulted from an injury to a worker while in the employ of a direct responsibility
9 employer, the director may, in the event of:

10 (a) The insolvency or threatened insolvency of such employer or his surety or guarantor, and

11 (b) The inadequacy of cash, bond or securities otherwise on deposit by any of them to secure such
12 payment,

13 require the employer to deposit cash, securities or other assets in such amount as it deems necessary to assure
14 ultimate payment of the award.

15 (7) Upon receipt of a request made pursuant to subsection (5) of ORS 656.262, the Evaluation Division
16 shall determine whether the claim is disabling or nondisabling. A copy of such determination shall be mailed to
17 all interested parties in accordance with subsection (5) of this section.

18 Section 27. ORS 656.273 is amended to read:

19 656.273. (1) After the last award or arrangement of compensation, an injured worker is entitled to
20 additional compensation, including medical services, for worsened conditions resulting from the original injury.

21 (2) To obtain additional medical services or disability compensation, the injured worker must file a claim
22 for aggravation with the State Accident Insurance Fund or the direct responsibility employer. In the event the
23 direct responsibility employer cannot be located, is unknown, or has ceased to exist, the claim shall be filed
24 with the director.

25 (3) A physician's report indicating a need for further medical services or additional compensation is a claim
26 for aggravation.

27 (4) (a) Except as provided in paragraphs (b) and (c) of this subsection, the claim for aggravation must be
28 filed within five years after the *[first]* determination fixing the maximum wage differential benefit was made
29 *[under subsection (3) of ORS 656.268]*.

30 (b) If no such determination was made, the claim for aggravation must be filed within five years after the
31 *[date of injury]* last receipt of total wage loss benefits.

32 (c) If a nondisabling injury did not become disabling within at least one year from the termination of
33 medical services, the claim for aggravation must be filed within five years from the date of injury rather than
34 the date of any determination issued in the claim.

35 (5) The director may, in his discretion, order the claimant, the State Accident Insurance Fund or the direct
36 responsibility employer to pay for such medical opinion.

37 (6) A claim submitted in accordance with this section shall be processed by the direct responsibility
38 employer or the State Accident Insurance Fund in accordance with the provisions of ORS 656.262, *except that*
39 *the first instalment of compensation due under subsection (4) of ORS 656.262 shall be paid no later than the 14th*
40 *day after the subject employer has notice or knowledge of medically verified inability to work resulting from the*
41 *worsened condition*].

(7) A request for hearing on any issue involving a claim for aggravation must be made to the [department] Hearings Division in accordance with ORS 656.283. Adequacy of the physician's report is not jurisdictional. If the evidence as a whole shows a worsening of the claimant's condition the claim shall be allowed.

Section 28. ORS 656.287 is amended to read:

656.287. (1) Where there is an issue regarding [loss of earning capacity] whether the worker is able to perform work at a gainful and suitable occupation or whether the worker is eligible for vocational rehabilitation, reports from vocational consultants in governmental agencies or private vocational consultants regarding job opportunities, the fitness of claimant to perform certain jobs, wage levels, or other information relating to claimant's employability shall be admitted into evidence at compensation hearings, provided such information is submitted to claimant [10 days prior to hearing] within such time as the board by rule may require and that upon demand from the adverse party the person preparing such report shall be made available for testimony and cross-examination.

(2) The board shall establish rules and regulations to govern the admissibility of reports from vocational experts, including guidelines to establish the competency of vocational experts.

NOTE: Section 29 was deleted by amendment. Subsequent sections were not renumbered.

Section 30. ORS 656.304 is amended to read:

656.304. A claimant may accept and cash any check given in payment of any award or compensation without affecting his right to a hearing[, except that the right of hearing on any award shall be waived by acceptance of a lump sum award by a claimant where such lump sum award was granted on his own application under ORS 656.230]. This section shall not be construed as a waiver of the necessity of complying with ORS 656.283 to 656.301.

Section 31. ORS 656.307 is amended to read:

656.307. (1) Where there is an issue regarding:

(a) Which of several subject employers is the true employer of a claimant worker;

[(b) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker,]

[(c)] (b) Responsibility between two or more employers [or their insurers] involving payment of compensation for two or more accidental injuries; or

[(d)] (c) Joint employment by two or more employers,

the director shall, by order, designate who shall pay the claim, if the claim is otherwise compensable. Payments shall begin in any event as provided in subsection (4) of ORS 656.262. When a determination of the responsible paying party has been made, the director shall direct any necessary monetary adjustment between the parties involved. Any failure to obtain reimbursement from a direct responsibility employer or its insurer shall be recovered from the Direct Responsibility Employers Adjustment Reserve.

(2) No employer [or its insurer] shall be joined in any proceeding under this section regarding its responsibility for any claim subject to ORS 656.273 unless the issue is entitled to hearing on application of the worker.

1 (3) The claimant shall be joined in any proceedings under this section as a necessary party, but may elect to
2 be treated as a nominal party.

3 NOTE: Section 32 was deleted by amendment. Subsequent sections were not renumbered.

4 Section 33. ORS 656.325 is amended to read:

5 656.325. *[(1) Any worker entitled to receive compensation under ORS 656.001 to 656.794 is required, if
6 requested by the director, State Accident Insurance Fund or a direct responsibility employer, to submit himself
7 for medical examination at a time and from time to time at a place reasonably convenient for the worker and as
8 may be provided by the rules of the director. If the worker refuses to submit to any such examination, or
9 obstructs the same, his rights to compensation shall be suspended with the consent of the director until the
10 examination has taken place, and no compensation shall be payable during or for account of such period.]*

11 *[(2)] (1) For any period of time during which any worker commits insanitary or injurious practices which
12 tend to either imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as is
13 reasonably essential to promote his recovery, his right to compensation shall be suspended with the consent of
14 the director and no payment shall be made for such period. The period during which such worker would
15 otherwise be entitled to compensation may be reduced with the consent of the director to such an extent as his
16 disability has been increased by such refusal.*

17 *[(3)] A worker who has received an award for unscheduled permanent total or unscheduled partial disability
18 should be encouraged to make a reasonable effort to reduce his disability; and his award shall be subject to
19 periodic examination and adjustment in conformity with ORS 656.268.]*

20 *[(4)] (2) When the employer of an injured worker, or the employer's insurer determines that the injured
21 worker has failed to follow medical advice from his treating physician or has failed to participate in or complete
22 physical restoration or vocational rehabilitation programs prescribed for the worker pursuant to ORS 656.001 to
23 656.794, the employer or insurer may petition the director for reduction of any benefits awarded the worker.
24 Notwithstanding any other provision of ORS 656.001 to 656.794, if the director finds that the worker has failed
25 to accept treatment as provided in this subsection, the director may reduce any benefits awarded the worker by
26 such amount as the director considers appropriate.*

27 *[(5)] (3) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283.*

28 Section 34. ORS 656.382 is amended to read:

29 656.382. *[(1) If a direct responsibility employer or the State Accident Insurance Fund refuses to pay
30 compensation due under an order of a referee, board or court, or otherwise unreasonably resists the payment of
31 compensation, the employer or fund shall pay to the claimant or his attorney a reasonable attorney's fee as
32 provided in subsection (2) of this section. To the extent a contributing employer has caused the fund to be
33 charged such fees, such employer may be charged with those fees.]*

34 *[(2) If a request for hearing, request for review or court appeal is initiated by an employer or the fund, and
35 the referee, board or court finds that the compensation awarded to a claimant should not be disallowed or
36 reduced, the employer or fund shall be required to pay to the claimant or his attorney a reasonable attorney's fee
37 in an amount set by the referee, board or the court for legal representation by an attorney for the claimant at the
38 hearing, review or appeal.]*

39 *[(3) If upon reaching a decision on a request for hearing initiated by an employer it is found by the referee
40 that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable
41 ground, the referee may order the employer to pay to the claimant such penalty not exceeding \$750 and not less*

1 *than \$100 as may be reasonable in the circumstances.) The self-insured employer or the State Accident Insurance*
2 *Fund shall pay to the claimant or the claimant's attorney a reasonable attorney fee at any hearing, board or court*
3 *review in which the claimant prevails. If a contributing employer has caused the fund to be charged such fees, the*
4 *fund may charge such fees to the employer.*

5 Section 35. ORS 656.388 is amended to read:

6 656.388. (1) No claim for legal services or for any other services rendered before a referee or the board, as
7 the case may be, in respect to any claim or award for compensation, to or on account of any person, shall be
8 valid unless approved by the referee or board, or if proceedings on appeal from the order of the board in
9 respect to such claim or award are had before any court, unless approved by such court.

10 (2) If an attorney and the referee or board cannot agree upon the amount of the fee, each forthwith shall
11 submit a written statement of the services rendered to the presiding judge of the circuit court in the county in
12 which the claimant resides. The judge shall, in a summary manner, without the payment of filing, trial or court
13 fees, determine the amount of such fee. This controversy shall be given precedence over other proceedings.

14 *[(3) Any claim so approved shall, in the manner and to extent fixed by the hearing officer, board or such*
15 *court, be a lien upon such compensation.]*

16 *[(4)] (3) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish*
17 *a suggested schedule of fees for attorneys representing a worker under ORS 656.001 to 656.794.*

18 Section 36. ORS 656.403 is amended to read:

19 656.403. (1) A subject employer who is qualified as a direct responsibility employer directly assumes the
20 responsibility for providing compensation due his subject workers and their beneficiaries under this chapter.

21 (2) The claims of subject workers and their beneficiaries resulting from injuries while employed by a direct
22 responsibility employer shall be handled in the manner provided by this chapter. A direct responsibility
23 employer is subject to the rules of the director with respect to such claims.

24 (3) *[Insurance obtained by a carrier-insured employer and]* Security deposited by a self-insured employer
25 shall not relieve any such employer from full and primary responsibility for claims administration and payment
26 of compensation under this chapter. *[This subsection applies to a self-insured employer even though he insures*
27 *or reinsures all or any portion of his risks under this chapter with an insurance company authorized to do*
28 *business in this state or with any other insurer with whom insurance can be placed or secured pursuant to ORS*
29 *744.305 to 744.405.]*

30 Section 37. ORS 656.407 is amended to read:

31 656.407. (1) To qualify as a direct responsibility employer, an employer must have sufficient financial
32 ability and qualified staff to be able to make certain the prompt payment of all compensation and all other
33 payments that may become due from such employer under this chapter. An employer shall establish proof with
34 the director that he is so qualified *[either:]*

35 *[(a) As a carrier-insured employer by causing a contract issued by a guaranty contract insurer to be filed*
36 *with the director; or]*

37 *[(b)] as a self-insured employer by establishing proof that he has an adequate staff qualified to process*
38 *claims promptly and that he has the financial ability to make certain the prompt payment of all compensation*
39 *and other payments that may become due to the board under this chapter.*

40 (2) A self-insured employer shall establish proof of financial ability by depositing in a depository,
41 designated by the director, money, government securities or a surety bond written by a surety insurer

1 authorized to transact insurance in this state. The money, securities or bond shall be in an amount reasonably
2 sufficient to insure payment of compensation and other payments that may become due to the director but not
3 less than the employer's normal expected annual claim liabilities and in no event less than \$100,000. In arriving
4 at the amount of money, securities or bond required under this subsection, the director may take into
5 consideration the financial ability of the employer to pay compensation and other payments and his probable
6 continuity of operation. The money, securities or bond so deposited shall be held by the director to secure the
7 payment of compensation for injuries to subject workers of the employer and to secure other payments that
8 may become due from the employer to the director under this chapter. The amount of security may be
9 increased or decreased from time to time by the director.

10 Section 38. ORS 656.419 is amended to read:

11 656.419. (1) A guaranty contract issued by the State Accident Insurance Fund [*or a guaranty contract*
12 *insurer*] shall provide that the insurer agrees to assume, without monetary limit, the liability of the employer,
13 arising during the period the guaranty contract is in effect, for prompt payment of:

14 (a) All compensation for compensable injuries that may become due under this chapter to subject workers
15 and their beneficiaries; and

16 (b) All assessments, contributions and other obligations imposed on the insured employer and his subject
17 workers under this chapter that may become due from such employer to the director, except the obligation to
18 pay a penalty assessed against the employer under ORS 656.745.

19 (2) A guaranty contract issued by the State Accident Insurance Fund [*or a guaranty contract insurer*] shall
20 be filed with the director by the insurer within 30 days after workers' compensation coverage of the employer is
21 effective. A guaranty contract shall contain:

22 (a) The name and address of the employer;

23 (b) A description of the occupation in which the employer is engaged or proposes to engage;

24 (c) The effective date of the workers' compensation coverage;

25 (d) A specific statement that a named sole proprietor, partner or corporate officer is covered by the
26 contract by reason of an election to be covered, if such is the case, and, if coverage extends to any other person
27 by reason of an election of his employer, a statement of that fact; and

28 (e) Such other information as the director may from time to time require.

29 (3) Workers' compensation coverage is effective when the application of the subject employer for
30 coverage together with any required fees or premium are[.]

31 [*(a) received by an authorized representative of the State Accident Insurance Fund[; or].*

32 [*(b) Accepted by an authorized representative of a guaranty contract insurer.*]

33 (4) If the name or address of an insured employer is changed, the insurer shall, within 30 days after the date
34 the change is received by the insurer, file a change-of-name or change-of-address notice with the director
35 setting forth the correct name and address of the employer.

36 (5) Coverage of an employer under a guaranty contract continues until canceled or terminated as provided
37 by ORS 656.423 or 656.427.

38 Section 39. ORS 656.423 is amended to read:

39 656.423. (1) An insured employer may cancel his coverage with the State Accident Insurance Fund or
40 other insurer by giving the insurer at least 30 days' written notice, unless a shorter period is permitted by
41 subsection (3) of this section.

(2) Cancellation of coverage is effective at 12 midnight 30 days after the date the cancellation notice is received by an authorized representative of the insurer, unless a later date is specified.

(3) An employer may cancel his coverage effective less than 30 days after written notice is received by an agent of the insurer *[by providing other coverage or]* by becoming a self-insured employer. A cancellation under this subsection is effective immediately upon the effective date of the other coverage or the effective date of certification as a self-insured employer.

(4) The State Accident Insurance Fund *[or other insurer]* shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director.

Section 40. ORS 656.427 is amended to read:

656.427. (1) An insurer other than the State Accident Insurance Fund that issues *[a guaranty contract or]* a surety bond to an employer under this chapter may terminate liability on its *[contract or]* bond, *as the case may be,* by giving the employer written notice of termination. If a contributing employer fails to pay any required contribution, fees, premiums or deposits on or before the due date, the fund shall terminate coverage of the employer by giving the employer written notice of termination. *[When an employer ceases to be a member of a group that is insured by one guaranty contract, the insurer shall terminate liability for such employer under its guaranty contract by giving the employer written notice of termination. A notice of termination shall state the effective date and hour of termination.]*

(2) A termination under this section is effective at 12 midnight not less than 30 days after the date the notice is mailed. However, termination of the coverage of a contributing employer does not take effect if, prior to the effective date, the employer pays the contributions, fees, premiums and deposits due together with any penalty imposed under ORS 656.560.

(3) Notice under this section shall be given by mail, addressed to the employer at his last-known address. If the employer is a partnership, notice may be given to any of the partners. If the employer is a corporation, notice may be given to any agent or officer of the corporation under whom legal process may be served. When notice is given under this section, a copy shall at the same time be sent to the director. The fund shall also notify the director if a contributing employer, after notice is given, pays the sums due and termination does not take effect.

(4) Termination shall in no way limit liability that was incurred under the *[guaranty contract or]* surety bond prior to the effective date of the termination.

Section 41. ORS 656.443 is amended to read:

656.443. (1) If a direct responsibility employer defaults in payment of compensation or other payments due to the director under this chapter, the director may, on notice to the employer and any insurer providing a *[guaranty contract or]* surety bond to such employer, use money or interest and dividends on securities, sell securities or institute legal proceedings on any surety bond *[or guaranty contract]* deposited or filed with the director to the extent necessary to make such payments.

(2) Prior to any default by the employer, the employer is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer is canceled or terminated, *or the coverage of a carrier-insured employer is canceled or terminated,* the security deposited *[or the guaranty contract filed]* with the director shall remain on deposit *[or in effect, as the case may be,]* for a period of at least 62 months

1 after the employer ceases to be a self-insured *[or a carrier-insured]* employer. The security *[or contract]* shall
2 be maintained in such amount as is necessary to secure the outstanding and contingent liability arising from the
3 accidental injuries secured by such security *[or contract,]* and to assure the payment of claims for aggravation
4 and claims under ORS 656.278 based on such accidental injuries. At the expiration of the 62 months' period, or
5 such other period as the director may consider proper, the director may accept in lieu of any such security *[or*
6 *contract]* a policy of paid-up insurance in a form approved by the Insurance Commissioner and the director.

7 Section 42. ORS 656.451 is amended to read:

8 656.451. (1) The State Accident Insurance Fund *[and any insurer that issues guaranty contracts to subject*
9 *employers pursuant to this chapter]* shall, in accordance with a program approved by the director, furnish
10 occupational safety and health consultative services to its insured employers. Such consultative services shall
11 be designed to promote occupational safety and reduce occupational health hazards.

12 *[(2) A guaranty contract insurer may furnish any of the services required by subsection (1) of this section*
13 *through an independent contractor that is approved by the director.]*

14 *[(3)]* (2) The program of *[an insurer, including]* the State Accident Insurance Fund, for furnishing
15 consultative services as required by this section shall be adequate to meet the minimum standards prescribed by
16 the director by rule from time to time. An application for approval of a program, or a proposed change in an
17 approved program, shall be filed with the director. Upon approval of an application, the director shall notify
18 the applicant *[and, upon approval of the application of a guaranty contract insurer, send a copy of such notice*
19 *to the Insurance Commissioner].*

20 Section 43. ORS 656.612 is amended to read:

21 656.612. (1) The Administrative Fund is created to provide for the payment of all expenses of the
22 department in carrying out its duties under this chapter and ORS chapter 654. *[and for the costs incurred by the*
23 *Insurance Commissioner under subsection (4) of ORS 737.320;]* The moneys in the fund are continuously
24 appropriated to the department for such purposes. The director shall administer the fund subject to the
25 instructions of the board with respect to its expenses. The State Treasurer is the custodian of the fund. Except
26 as otherwise provided by statute, all money and securities in the fund shall be held in trust and invested by the
27 treasurer, and shall not be the money or property of this state.

28 (2) The director shall impose and collect assessments from all subject employers in an amount sufficient to
29 pay the expenses described in subsection (1) of this section. The assessments shall be paid in such manner and
30 at such intervals as the director may direct and when collected shall be deposited in the Administrative Fund.

31 (3) The assessments shall be apportioned among subject employers in direct proportion to the individual
32 contributions of contributing employers and the contributions direct responsibility employers would have paid
33 had they been contributing employers under such systems and procedures as the board, in its discretion
34 determines will reasonably and substantially accomplish such objective at the least possible administrative cost
35 to everyone. The director may use actual claim costs of employers, plus fair and reasonable overhead expenses
36 as a base for computing assessments under this section.

37 (4) Notwithstanding the provisions of this section, the director may establish a minimum assessment
38 applicable to all subject employers and shall establish the time, manner and method of imposing and collecting

2 Section 44. ORS 656.614 is amended to read:

3 656.614. (1) The Direct Responsibility Employers Adjustment Reserve shall be established within the
4 Administrative Fund. It shall be used to pay the claims of workers of direct responsibility employers when the
5 director finds that the worker cannot obtain payment from the employer responsible for payment of the claim
6 because of insolvency of such employer [and] or any surety [or guarantor] of the employer, and exhaustion of
7 security deposited to secure such payment and to meet deficits in the Direct Responsibility Employers Awards
8 Reserve.

9 (2) If at any time the director finds that the amount of moneys in the Direct Responsibility Employers
10 Adjustment Reserve is not sufficient to carry out the purposes stated in subsection (1) of this section, he may
11 impose and collect from all the direct responsibility employers as a class an assessment computed as in ORS
12 656.612 sufficient to raise the amount of moneys in the reserve to the point where it can carry out such
13 purposes. If at any time the director finds that there is a surplus in the Direct Responsibility Employers
14 Adjustment Reserve beyond an amount that can reasonably be anticipated as sufficient to carry out the
15 purposes stated in subsection (1) of this section, he may transfer the surplus to the Administrative Fund and
16 reduce the total amount of direct responsibility employer assessment by the amount so transferred.

17 (3) Assessments imposed under this section shall be paid to the director in the manner and at such times as
18 the director may direct.

19 NOTE: Section 45 was deleted by amendment. Subsequent sections were not renumbered.

20 Section 46. ORS 656.622 is amended to read:

21 656.622. (1) The director shall establish a Second Injury Reserve within the Administrative Fund for the
22 benefit of employers and their workers and for the purpose of:

23 (a) Giving employers and their workers the benefits provided in subsection (2) of this section.

24 (b) Assisting sheltered workshops as provided in ORS 656.530.

25 (c) Establishing or constructing a physical rehabilitation facility within the limit of the available funds
26 including those transferred as provided in ORS 656.638. Prior to the construction of any buildings or other
27 facilities pursuant to ORS 656.506, 656.530, 656.622, 656.636 and 656.638 the Director of the Workers'
28 [Compensation] Recovery Department shall submit plans for such construction for review and approval to the
29 Emergency Board or the Joint Ways and Means Committee if the legislature is then in session.

30 (2) In order to encourage the employment of individuals who have incurred compensable injuries that
31 result in permanent disability which may be a substantial obstacle to employment, the director may provide, to
32 employers who employ such individuals, assistance from the Second Injury Reserve in such manner and
33 amount as the director considers appropriate. Notwithstanding any other provision of law, determinations by
34 the director regarding assistance pursuant to this subsection are not subject to review by any court or other
35 administrative body. The director may offset, to the extent reasonably justified by the facts, within such rules as
36 are promulgated by the director, the additional amount paid in compensation with respect to any injury resulting
37 in total wage loss benefits exceeding 26 weeks or resulting in death where the injury is attributable wholly or
38 partially to a preexisting disability of the employee or another employee of the same employer or where the resultant
39 disability or death is due wholly or partially to a preexisting disability. As used in this subsection, "preexisting
40 disability" means any permanent condition due to previous accident or disease or any congenital condition which is

1 or is likely to be a substantial handicap in obtaining or regaining employment. The amount of the reimbursement
2 shall be paid to the employer from the Second Injury Reserve.

3 [(3) The Second Injury Reserve shall be made up of and operated with moneys collected as provided in ORS
4 656.506. The director may also transfer from any surplus in the Administrative Fund to the Second Inju-
5 Reserve in any fiscal year an amount not exceeding the receipts of the reserve in that year from ORS 656.506.]

6 (3) The Second Injury Reserve shall be made up of and operated with moneys from assessments as provided in
7 ORS 656.612 together with moneys collected as provided in ORS 656.506.

8 [(4) Any assistance from the Second Injury Reserve shall be to the extent of the moneys available in the
9 reserve for the purpose of the reserve.]

10 [(5)] (4) The director may make such rules as may be required to establish, regulate, manage and disburse
11 the reserve created in accordance with the intent of this section, including the nature and extent of injuries
12 which qualify for assistance.

13 [(6)] (5) The director may set aside such other reserves within the Administrative Fund as are deemed
14 necessary.

15 Section 47. ORS 656.636 is amended to read:

16 656.636. (1) For every case where the State Accident Insurance Fund must pay an award or benefits for
17 death or permanent total disability or permanent partial disability, the State Accident Insurance Fund forthwith
18 shall set aside in the Industrial Accident Fund in a reserve account to be known as the Contributing Employers
19 Awards Reserve the amount required to equal, together with the anticipated interest increment, the present
20 worth of the instalments payable on account of that injury. The number of instalments shall be computed [in
21 case of permanent total disability or death] according to the ages of the beneficiaries, and according to the
22 actuarial practices in the insurance field as recommended by the Insurance Commissioner [and, in the case of
23 permanent partial disability, according to the schedule in ORS 656.214 and 656.216]. When the claim was for an
24 injury to a worker while in the employ of a direct responsibility employer and the director has determined under
25 ORS 656.268 it is necessary for the employer to deposit cash to assure payment of the award, the director
26 forthwith shall set aside in the Administrative Fund in a reserve account to be known as the Direct
27 Responsibility Employers Awards Reserve the amount so specified by the director and received from the
28 employer.

29 (2) The respective Awards Reserve shall be charged with the payment of the instalments on claims for
30 which moneys have been set aside in the reserve accounts pursuant to subsection (1) of this section.

31 (3) Any deficiency in the Direct Responsibility Employers Awards Reserve shall be made good out of the
32 Direct Responsibility Employers Adjustment Reserve and any overplus shall revert to the Direct Responsibility
33 Employers Adjustment Reserve.

34 (4) (a) Three-fourths of all receipts under ORS 656.506 shall be set aside in the Administrative Fund in a
35 special reserve account to be known as the Retroactive Reserve. The existing funds in the special reserve
36 Retroactive Reserve of the Industrial Accident Fund are transferred to the Administrative Fund in the
37 Retroactive Reserve. The cost of administering the Retroactive Reserve shall be charged to it.

38 (b) The purpose of the Retroactive Reserve is to provide increased benefits to claimants or beneficiaries
39 eligible to receive compensation [under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210
40 which are] lower than currently being paid for like injuries. However, benefits payable under ORS 656.210
41 shall not be increased by the Retroactive Reserve for claimants whose injury occurred on or after April 1, 1974.

1 Notwithstanding the formulas for computing benefits provided in [ORS 656.204, 656.206, 656.208 and 656.210]
2 this chapter, the increased benefits payable under this subsection shall be in such amount as the director
3 considers appropriate. The director shall annually compute the amount which may be available during the
4 succeeding year for payment of such increased benefits and determine the level of benefits to be paid during
5 such year. If, during such year, it is determined that there are insufficient funds to increase benefits to the level
6 fixed by the director, the director may reduce the level of benefits payable under this paragraph. The increase
7 in benefits to workers shall be payable in the first instance by the State Accident Insurance Fund or direct
8 responsibility employer subject to reimbursement from the Retroactive Reserve by the director.

9 Section 48. ORS 656.702 is amended to read:

10 656.702. The records of the State Accident Insurance Fund, excepting employer account records and
11 dividend schedules and formulas, shall be open to public inspection. [*The accident experience records of the*
12 *fund shall be available to a bona fide rating organization to assist in making workers' compensation rates but*
13 *any costs involved in making the records available shall be borne by the rating organization. Accident experience*
14 *records of carrier-insured employers shall also be available on the same terms to assist in making such rates.*]

15 Section 49. ORS 656.740 is amended to read:

16 656.740. (1) A person may contest a proposed order of the director declaring that person to be a
17 noncomplying employer, or a proposed assessment of civil penalty, by filing with the department, within 20
18 days of receipt of notice thereof, a written request for a hearing. Such a request need not be in any particular
19 form, but shall specify the grounds upon which the person contests the proposed order or assessment.

20 (2) Where [*any insurance carrier, including*] the State Accident Insurance Fund, is alleged by an employer
21 to have contracted to provide him with workers' compensation coverage for the period in question, the board
22 shall join [*such insurance carrier*] the fund as a necessary party to any hearing relating to such employer's
23 alleged noncompliance and shall serve the [*carrier*] fund, at least 30 days prior to such hearing, with notice
24 thereof. If the [*carrier*] fund does not file with the board, within 20 days of receipt of such notice, a written
25 denial of such coverage, the [*carrier*] fund shall be conclusively presumed to have so insured the employer.

26 (3) A hearing relating to a proposed order declaring a person to be a noncomplying employer, or to a
27 proposed assessment of civil penalty under ORS 656.735, shall be held by a referee of the board's Hearings
28 Division; but a hearing shall not be granted unless a request for hearing is filed within the period specified in
29 subsection (1) of this section, and if a request for hearing is not so filed, the order or penalty, or both, as
30 proposed shall be a final order of the department and shall not be subject to review by any agency or court.

31 (4) Notwithstanding subsection (1) of ORS 183.315, the issuance of orders assessing civil penalties
32 pursuant to this chapter, the conduct of hearings and the judicial review thereof shall be as provided in ORS
33 183.310 to 183.500, except that:

34 (a) The order of a referee in a contested case shall be deemed to be a final order of the board.

35 (b) The director shall have the same right to judicial review of the order of a referee as any person who is
36 adversely affected or aggrieved by such final order.

37 Section 50. ORS 656.745 is amended to read:

38 656.745. (1) The director may assess a civil penalty against an employer [*or insurer*] who:

39 (a) Intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries,
40 causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept
41 less than the compensation due or makes it necessary for claimants to resort to proceedings against the

1 employer to secure compensation due;

2 (b) Fails to pay assessments or other payments due to the director under this chapter and is in default; or

3 (c) Habitually fails to comply with rules and orders of the director regarding reports or other requirements
4 necessary to carry out the purposes of this chapter.

5 (2) A civil penalty shall be not more than \$2,000 for each violation or \$10,000 in the aggregate for all
6 violations within any three-month period. Each violation, or each day a violation continues, shall be considered
7 a separate violation.

8 (3) Subsections (5) to (7) of ORS 656.735 and ORS 656.740 also apply to orders and penalties assessed
9 under this section against the corporation.

10 Section 51. ORS 656.750 is amended to read:

11 656.750. (1) The director may assess against the State Accident Insurance Fund [*or any other insurer who*],
12 if the fund fails to comply with ORS 656.451, or against an employer who fails to comply with ORS 656.455, a
13 civil penalty of not more than \$250 a day for each day such failure continues.

14 (2) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the
15 amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be
16 filed with the county clerk in any county of this state. The clerk shall thereupon record the name of the fund,
17 the insurer or employer incurring the penalty and the amount of the penalty in the judgment docket. The
18 penalty provided in the order so docketed shall become a lien upon the title to any interest in property owned
19 by the fund, insurer or employer named, and execution may be issued upon the order in the same manner as
20 execution upon the judgment of a court of record.

21 (3) All money collected under this section shall be paid into the Administrative Fund.

22 Section 52. ORS 656.752 is amended to read:

23 656.752. (1) The State Accident Insurance Fund is created for the purpose of transacting workers'
24 compensation insurance business formerly transacted by the State Industrial Accident Commission. The State
25 Accident Insurance Fund also may insure a contributing employer against any liability such employer may have
26 on account of bodily injury to his worker arising out of and in the course of employment[, *as fully as any*
27 *private insurance carrier*].

28 (2) The functions of the State Accident Insurance Fund shall be:

29 (a) To confer with and solicit employers and to determine, handle, audit and enforce collection of
30 contributions, premiums, assessments and fees of contributing employers;

31 (b) To receive and handle and process the claims of workers and beneficiaries of workers injured in the
32 employ of contributing employers; and

33 (c) To perform all other functions which the laws of this state specifically authorize or which are necessary
34 or appropriate to carry out the functions expressly authorized.

35 (3) The State Accident Insurance Fund in its name may sue and be sued.

36 (4) The State Accident Insurance Fund may authorize direct responsibility employers to use any physical
37 rehabilitation center operated by the State Accident Insurance Fund on such terms as the State Accident
38 Insurance Fund deems reasonable.

39 (5) The State Accident Insurance Fund in its own name, for the purpose of providing adequate housing and
40 space for its offices and operational facilities, the cost of which shall be paid out of the Industrial Accident
41 Fund may:

1 (a) Acquire, lease, rent, own and manage real property;

2 (b) Construct, equip, and furnish such buildings or other structures as may be deemed necessary to
3 accommodate its immediate and reasonably anticipated future needs;

4 (c) Subject to the provisions of ORS 276.004, lease or rent space not needed for its immediate
5 requirements;

6 (d) Rent space in any such buildings in order of priority, first to other public agencies, then to private
7 citizens provided the building may in the first instance contain space for private concessions;

8 (e) Sell or otherwise dispose of any property acquired pursuant to this subsection after consultation with
9 the Joint Committee on Ways and Means and the Emergency Board; and

10 (f) Moneys received by the State Accident Insurance Fund in accordance with the provisions of paragraphs
11 (c), (d) and (e) of this subsection shall be deposited in the Industrial Accident Fund.

12 (6) Any real property acquired and owned by the State Accident Insurance Fund under this section shall be
13 subject to ad valorem taxation.

14 (7) The State Accident Insurance Fund may furnish advice, services and excess workers' compensation
15 and employer liability insurance to any political subdivision qualified as a self-insured employer under the
16 provisions of ORS 656.017, on such terms and conditions as the State Accident Insurance Fund deems
17 reasonable.

18 Section 53. ORS 656.790 is amended to read:

19 656.790. (1) The director may appoint an Industrial Accident Advisory Committee composed of nine
20 members: Three representing subject workers, three representing subject employers, and three ex officio
21 members, without a vote, representing *[each of the following:]* the State Accident Insurance Fund, *other*
22 *carriers who are qualified to write workers' compensation insurance in Oregon,* and self-insured employers.

23 (2) The director may recommend areas of the law which he desires to have studied or the committee may
24 study such aspects of the law as the committee shall determine require their consideration. The committee shall
25 report its findings to the director for such action as the director deems appropriate.

26 (3) The members of the committee shall be appointed for a term of two years and shall serve without
27 compensation, but shall be entitled to travel expenses. The committee may hire, subject to approval of the
28 director, such experts as it may require to discharge its duties. All expenses of the committee shall be paid out
29 of the Administrative Fund.

30 Section 53a. ORS 656.802 is amended to read:

31 656.802. (1) As used in ORS 656.802 to 656.824, "occupational disease" means:

32 (a) Any disease or infection which arises out of and in the scope of the employment, and to which an
33 employe is not ordinarily subjected or exposed other than during a period of regular actual employment therein.

34 (b) Death, disability or impairment of health of *[firemen]* fire fighters of any political division who have
35 completed five or more years of employment as *[firemen]* fire fighters, caused by any disease of the lungs or
36 respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as
37 *[firemen]* fire fighters.

38 (2) Any condition or impairment of health arising under paragraph (b) of subsection (1) of this section shall
39 be conclusively presumed to result from a *[fireman's]* fire fighter's employment. However, any such *[fireman]*
40 fire fighter must have taken a physical examination upon becoming a *[fireman]* fire fighter, or subsequently
41 thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted his

1 employment. [Limit of a claim for any condition or impairment of health arising under paragraph (1) of
2 subsection (1) of this section must be on the basis of medical or other evidence that the cause of the condition or
3 impairment is unrelated to the fireman's employment.]

4 Section 53b. ORS 656.807 is amended to read:

5 656.807. (1) Except as otherwise limited for silicosis, all occupational disease claims shall be void unless a
6 claim is filed with the State Accident Insurance Fund or direct responsibility employer within five years after
7 the last exposure in employment subject to the Workers' Compensation Law and within 180 days from the date
8 the claimant becomes disabled or is informed by a physician that he is suffering from an occupational disease
9 whichever is later.

10 (2) If the occupational disease results in death, a claim may be filed within 180 days after the date of the
11 death; and the provisions of subsection (1) of this section do not limit the filing of a claim in fatal cases to less
12 than 180 days from the date of death.

13 (3) The limitation of five years shall be extended to 10 years in claims for radiation injury.

14 (4) The procedure for processing occupational disease claims shall be the same as provided for accidental
15 injuries under ORS 656.001 to 656.794.

16 (5) A fire fighter who is disabled under ORS 656.802, who subsequently starts rehabilitation as per the
17 Workers' Recovery Law, ORS 656.001 to 656.794, and suffers a reoccurrence, as determined by physical
18 examination, shall for the purpose of the 1979 Act, have said reoccurrence treated as an original injury.

19 Section 54. ORS 731.028 is amended to read:

20 731.028. The State Accident Insurance Fund is subject as a domestic insurer to ORS 731.256, 731.260,
21 731.296, 731.300 to 731.316, 731.574, 733.010 to 733.060, 733.140 to 733.170, 733.210, 737.205 to 737.340,
22 [737.560,] 746.075, 746.110 and 746.145 to 746.155 to the extent that such provisions are not inconsistent with
23 the express provisions of ORS chapter 656. However:

24 (1) ORS 731.300 and 731.574 first apply to the State Accident Insurance Fund after December 31, 1972.

25 (2) The requirements of the Insurance Commissioner under ORS 733.010 to 733.060, 733.140 to 733.170 and
26 733.210 govern in the case of a conflict between those requirements and the requirements of any accounting
27 system prescribed by the Executive Department.

28 (3) The filing requirements of ORS 737.205 to 737.340 [and 737.560] are in lieu of any similar filing
29 requirements prescribed by any other law of this state.

30 Section 55. ORS 731.418 is amended to read:

31 731.418. (1) The commissioner may refuse to continue or may suspend or revoke an insurer's certificate of
32 authority if he finds after a hearing that the insurer:

33 (a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the
34 Insurance Code other than those for which suspension or revocation is mandatory.

35 (b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its
36 business, as to render its further transaction of insurance in this state hazardous or injurious to its
37 policyholders or to the public.

38 (c) Has failed, after written request by the commissioner, to remove or discharge an officer or director
39 who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a
40 misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws
41 of the United States, in any of which cases the record of his conviction shall be conclusive evidence.

1 (d) Is affiliated with and under the same general management, interlocking directorate or ownership as
2 another insurer that transacts direct insurance in this state without having a certificate of authority therefor,
3 except as permitted under the Insurance Code.

4 (e) Refuses to be examined; or its directors, officers, employees or representatives refuse to submit to
5 examination relative to its affairs, or to produce its accounts, records, and files for examination by the
6 commissioner when required, or refuse to perform any legal obligation relative to the examination.

7 (f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond,
8 recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or
9 within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before
10 final determination, whichever date is the later.

11 (g) Fails to comply with subsection (1) of ORS 743.925.

12 *[(h) Has failed to comply with subsection (1) of ORS 656.451.]*

13 (2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the
14 certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation,
15 or other delinquency proceedings, have been commenced in any state by the public insurance supervisory
16 official of such state.

17 Section 56. ORS 731.566 is amended to read:

18 731.566. (1) To qualify for authority to transact insurance in this state, a reciprocal insurer shall possess
19 and thereafter maintain a surplus of not less than \$500,000, *and any reciprocal insurer which exchanges policies*
20 *of insurance covering workers' compensation insurance shall possess and thereafter maintain a surplus of not*
21 *less than \$1,500,000.*

22 *[(2) A reciprocal insurer holding a valid certificate of authority to transact insurance other than workers'*
23 *compensation insurance in this state immediately prior to January 1, 1975, shall maintain a surplus of not less*
24 *than \$50,000 until January 1, 1978, after which date it shall comply with subsection (1) of this section.]*

25 *[(3)]* (2) Notwithstanding *[subsections (1) and (2)]* subsection (1) of this section, a domestic reciprocal
26 insurer which exchanges policies of insurance covering only wet marine hull insurance for individuals whose
27 earned income is at least 50 percent derived from taking and selling food resources living in an ocean, bay or
28 river shall possess and thereafter maintain a surplus of not less than \$5,000.

29 Section 57. ORS 731.608 is amended to read:

30 731.608. (1) Except as provided in subsection (2) of this section, deposits made in this state under ORS
31 731.624 shall be held for the faithful performance by the insurer of all insurance obligations, including claims
32 for unearned premiums, with respect to domestic risks pertaining to the particular class of insurance for which
33 the deposit was made. However, there shall be excluded from each such obligation the same amount as is
34 excluded in determining the obligation of the Oregon Insurance Guaranty Association under ORS 734.510 to
35 734.710.

36 (2) If at any time a deposit made under ORS 731.624 by a particular insurer is insufficient to perform the
37 insurance obligations upon the faithful performance of which the deposit was conditioned, then any other
38 deposit made under ORS 731.624 by that insurer shall be so used to the extent that such other deposit is not
39 used to perform the insurance obligations upon the faithful performance of which such other deposit was
40 conditioned.

1 ~~[(3) Deposits made in this state under ORS 731.628 shall be held for the payment of compensation benefits~~
2 ~~to workers employed by direct responsibility employers to whom the insurer has issued a guaranty contract under~~
3 ~~ORS 656.001 to 656.794.]~~

4 ~~[(4)]~~ (3) A deposit made in this state by a domestic insurer transacting insurance in another jurisdiction, and
5 as required by the laws of such jurisdiction, shall be held for the purpose or purposes required by such laws.

6 ~~[(5)]~~ (4) Deposits of foreign and alien insurers required pursuant to ORS 731.854 shall be held for such
7 purposes as are required by such law, and as specified by the commissioner's order by which the deposit is
8 required.

9 ~~[(6)]~~ (5) Deposits of domestic reciprocal insurers required pursuant to ORS 731.632 shall be held for the
10 benefit of subscribers wherever located.

11 Section 58. ORS 731.620 is amended to read:

12 731.620. (1) ~~[Except for deposits made in accordance with ORS 731.628,]~~ The insurer shall assign in trust to
13 the commissioner and his successors in office all securities being deposited through him under the Insurance
14 Code that are not negotiable by delivery; or, in lieu of such assignment, the insurer may give the commissioner
15 an irrevocable power of attorney authorizing him to transfer the securities or any part thereof for any purpose
16 within the scope of the Insurance Code.

17 (2) Upon release to the insurer, or other person entitled thereto, of any such security the commissioner
18 shall reassign the security to such insurer or person; or, in the case of power of attorney given pursuant to
19 subsection (1) of this section, the commissioner shall deliver the power of attorney, together with the securities
20 covered thereby, to the insurer or person entitled thereto.

21 Section 59. ORS 731.640 is amended to read:

22 731.640. (1) Deposits which are required or permitted under the Insurance Code shall consist only of the
23 following:

24 (a) Cash;

25 (b) Amply secured obligations of the United States, a state or a political subdivision thereof[.];

26 (c) Certificates of deposit or other investments described in subsection (4) of ORS 733.650 to the extent
27 such investments are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan
28 Insurance Corporation[.]; or

29 (d) A surety bond, approved by the commissioner, executed by an authorized surety insurer that is not
30 under common ownership, management or control with the person making the deposit. This paragraph does not
31 apply to deposits made by surety insurers ~~[or to workmen's compensation deposits made under ORS 731.628].~~

32 (2) Deposits of domestic insurers made pursuant to the laws of other jurisdictions shall consist of cash or
33 securities as required or permitted by the laws of such jurisdictions.

34 Section 60. ORS 734.570 is amended to read:

35 734.570. The association shall:

36 (1) Be obligated to pay covered claims existing at the time of determination of insolvency of an insurer or
37 arising within 30 days after the determination of insolvency. ~~[Except for covered claims arising out of workers'~~
38 ~~compensation policies,]~~ Such obligation shall include only that amount of each covered claim that is less than
39 \$300,000. ~~[The association shall pay the full amount of any covered claim arising out of a workers'~~
40 ~~compensation policy.]~~ In no event shall the association be obligated in an amount in excess of the obligation of