

Senate Bill 280

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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 **as introduced**.

Requires that subpoenas issued under authority of Workers' Compensation Board requiring production of individually identifiable health information be in conformity with requirements of Oregon Rules of Civil Procedure.

A BILL FOR AN ACT

1
2 Relating to subpoenas issued under authority of Workers' Compensation Board; amending ORS
3 656.726.

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

5 **SECTION 1.** ORS 656.726, as amended by section 3, chapter 657, Oregon Laws 2003, is amended
6 to read:

7 656.726. (1) The Workers' Compensation Board in its name and the Director of the Department
8 of Consumer and Business Services in the director's name as director may sue and be sued, and each
9 shall have a seal.

10 (2) The board hereby is charged with reviewing appealed orders of Administrative Law Judges
11 in controversies concerning a claim arising under this chapter, exercising own motion jurisdiction
12 under this chapter and providing such policy advice as the director may request, and providing such
13 other review functions as may be prescribed by law. To that end any of its members or assistants
14 authorized thereto by the members shall have power to:

15 (a) Hold sessions at any place within the state.

16 (b) Administer oaths.

17 (c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attend-
18 ance of witnesses and the production of papers, contracts, books, accounts, documents and testimony
19 before any hearing under ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. **Subpoenas**
20 **issued pursuant to this paragraph that require the production of individually identifiable**
21 **health information must be issued in conformity with the requirements of ORCP 55 H.**

22 (d) Generally provide for the taking of testimony and for the recording of proceedings.

23 (3) The board chairperson is hereby charged with the administration of and responsibility for the
24 Hearings Division.

25 (4) The director hereby is charged with duties of administration, regulation and enforcement of
26 ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. To that end the director may:

27 (a) Make and declare all rules and issue orders which are reasonably required in the perform-
28 ance of the director's duties. Unless otherwise specified by law, all reports, claims or other docu-
29 ments shall be deemed timely provided to the director or board if mailed by regular mail or
30 delivered within the time required by law. Notwithstanding any other provision of this chapter, the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 director may adopt rules to allow for the electronic transmission and filing of reports, claims or
2 other documents required to be filed under this chapter. Notwithstanding ORS 183.310 to 183.410,
3 if a matter comes before the director that is not addressed by rule and the director finds that
4 adoption of a rule to accommodate the matter would be inefficient, unreasonable or unnecessarily
5 burdensome to the public, the director may resolve the matter by issuing an order, subject to review
6 under ORS chapter 183. Such order shall not have precedential effect as to any other situation.

7 (b) Hold sessions at any place within the state.

8 (c) Administer oaths.

9 (d) Issue and serve by representatives of the director, or by any sheriff, subpoenas for the at-
10 tendance of witnesses and the production of papers, contracts, books, accounts, documents and tes-
11 timony in any inquiry, investigation, proceeding or rulemaking hearing conducted by the director
12 or the director's representatives. The director may require the attendance and testimony of em-
13 ployers, their officers and representatives in any inquiry under this chapter, and the production by
14 employers of books, records, papers and documents without the payment or tender of witness fees
15 on account of such attendance.

16 (e) Generally provide for the taking of testimony and for the recording of such proceedings.

17 (f) Provide standards for the evaluation of disabilities. The following provisions apply to the
18 standards:

19 (A) The criterion for evaluation of permanent impairment under ORS 656.214 is the loss of use
20 or function of a body part or system due to the compensable industrial injury or occupational dis-
21 ease. Permanent impairment is expressed as a percentage of the whole person. The impairment value
22 may not exceed 100 percent of the whole person.

23 (B) Impairment is established by a preponderance of medical evidence based upon objective
24 findings.

25 (C) The criterion for evaluation of work disability under ORS 656.214 is permanent impairment
26 as modified by the factors of age, education and adaptability to perform a given job.

27 (D) When, upon reconsideration of a notice of closure pursuant to ORS 656.268, it is found that
28 the worker's disability is not addressed by the standards adopted pursuant to this paragraph,
29 notwithstanding ORS 656.268, the director shall stay further proceedings on the reconsideration of
30 the claim and shall adopt temporary rules amending the standards to accommodate the worker's
31 impairment.

32 (E) Notwithstanding any other provision of this section, only impairment benefits shall be
33 awarded under ORS 656.214 if:

34 (i) The worker returns to regular work at the job held at the time of injury;

35 (ii) The attending physician or nurse practitioner authorized to provide compensable medical
36 services under ORS 656.245 releases the worker to regular work at the job held at the time of injury
37 and the job is available but the worker fails or refuses to return to that job; or

38 (iii) The attending physician or nurse practitioner authorized to provide compensable medical
39 services under ORS 656.245 releases the worker to regular work at the job held at the time of injury
40 but the worker's employment is terminated for cause unrelated to the injury.

41 (g) Prescribe procedural rules for and conduct hearings, investigations and other proceedings
42 pursuant to ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter regarding all matters other
43 than those specifically allocated to the board or the Hearings Division.

44 (h) Participate fully in any proceeding before the Hearings Division, board or Court of Appeals
45 in which the director determines that the proceeding involves a matter that affects or could affect

1 the discharge of the director's duties of administration, regulation and enforcement of ORS 654.001
2 to 654.295 and 654.750 to 654.780 and this chapter.

3 (5) The board may make and declare all rules which are reasonably required in the performance
4 of its duties, including but not limited to rules of practice and procedure in connection with hearing
5 and review proceedings and exercising its authority under ORS 656.278. The board shall adopt
6 standards governing the format and timing of the evidence. The standards shall be uniformly fol-
7 lowed by all Administrative Law Judges and practitioners. The rules may provide for informal pre-
8 hearing conferences in order to expedite claim adjudication, amicably dispose of controversies, if
9 possible, narrow issues and simplify the method of proof at hearings. The rules shall specify who
10 may appear with parties at prehearing conferences and hearings.

11 (6) The director and the board chairperson may incur such expenses as they respectively de-
12 termine are reasonably necessary to perform their authorized functions.

13 (7) The director, the board chairperson and the State Accident Insurance Fund Corporation shall
14 have the right, not subject to review, to contract for the exchange of, or payment for, such services
15 between them as will reduce the overall cost of administering this chapter.

16 (8) The director shall have lien and enforcement powers regarding assessments to be paid by
17 subject employers in the same manner and to the same extent as is provided for lien and enforce-
18 ment of collection of premiums and assessments by the corporation under ORS 656.552 to 656.566.

19 (9) The director shall have the same powers regarding inspection of books, records and payrolls
20 of employers as are granted the corporation under ORS 656.758. The director may disclose infor-
21 mation obtained from such inspections to the Director of the Department of Revenue to the extent
22 the Director of the Department of Revenue requires such information to determine that a person
23 complies with the revenue and tax laws of this state and to the Director of the Employment De-
24 partment to the extent the Director of the Employment Department requires such information to
25 determine that a person complies with ORS chapter 657.

26 (10) The director shall collect hours-worked data information in addition to total payroll for
27 workers engaged in various jobs in the construction industry classifications described in the job
28 classification portion of the Workers' Compensation and Employers Liability Manual and the Oregon
29 Special Rules Section published by the National Council on Compensation Insurance. The informa-
30 tion shall be collected in the form and format necessary for the National Council on Compensation
31 Insurance to analyze premium equity.

32 **SECTION 2.** ORS 656.726, as amended by sections 3 and 4, chapter 657, Oregon Laws 2003, and
33 section 18, chapter 811, Oregon Laws 2003, is amended to read:

34 656.726. (1) The Workers' Compensation Board in its name and the Director of the Department
35 of Consumer and Business Services in the director's name as director may sue and be sued, and each
36 shall have a seal.

37 (2) The board hereby is charged with reviewing appealed orders of Administrative Law Judges
38 in controversies concerning a claim arising under this chapter, exercising own motion jurisdiction
39 under this chapter and providing such policy advice as the director may request, and providing such
40 other review functions as may be prescribed by law. To that end any of its members or assistants
41 authorized thereto by the members shall have power to:

42 (a) Hold sessions at any place within the state.

43 (b) Administer oaths.

44 (c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attend-
45 ance of witnesses and the production of papers, contracts, books, accounts, documents and testimony

1 before any hearing under ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. **Subpoenas**
2 **issued pursuant to this paragraph that require the production of individually identifiable**
3 **health information must be issued in conformity with the requirements of ORCP 55 H.**

4 (d) Generally provide for the taking of testimony and for the recording of proceedings.

5 (3) The board chairperson is hereby charged with the administration of and responsibility for the
6 Hearings Division.

7 (4) The director hereby is charged with duties of administration, regulation and enforcement of
8 ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. To that end the director may:

9 (a) Make and declare all rules and issue orders which are reasonably required in the perform-
10 ance of the director's duties. Unless otherwise specified by law, all reports, claims or other docu-
11 ments shall be deemed timely provided to the director or board if mailed by regular mail or
12 delivered within the time required by law. Notwithstanding any other provision of this chapter, the
13 director may adopt rules to allow for the electronic transmission and filing of reports, claims or
14 other documents required to be filed under this chapter. Notwithstanding ORS 183.310 to 183.410,
15 if a matter comes before the director that is not addressed by rule and the director finds that
16 adoption of a rule to accommodate the matter would be inefficient, unreasonable or unnecessarily
17 burdensome to the public, the director may resolve the matter by issuing an order, subject to review
18 under ORS chapter 183. Such order shall not have precedential effect as to any other situation.

19 (b) Hold sessions at any place within the state.

20 (c) Administer oaths.

21 (d) Issue and serve by representatives of the director, or by any sheriff, subpoenas for the at-
22 tendance of witnesses and the production of papers, contracts, books, accounts, documents and tes-
23 timony in any inquiry, investigation, proceeding or rulemaking hearing conducted by the director
24 or the director's representatives. The director may require the attendance and testimony of em-
25 ployers, their officers and representatives in any inquiry under this chapter, and the production by
26 employers of books, records, papers and documents without the payment or tender of witness fees
27 on account of such attendance.

28 (e) Generally provide for the taking of testimony and for the recording of such proceedings.

29 (f) Provide standards for the evaluation of disabilities. The following provisions apply to the
30 standards:

31 (A) The criteria for evaluation of disabilities under ORS 656.214 (5) shall be permanent impair-
32 ment due to the industrial injury as modified by the factors of age, education and adaptability to
33 perform a given job.

34 (B) Impairment is established by a preponderance of medical evidence based upon objective
35 findings.

36 (C) When, upon reconsideration of a notice of closure pursuant to ORS 656.268, it is found that
37 the worker's disability is not addressed by the standards adopted pursuant to this paragraph,
38 notwithstanding ORS 656.268, the director shall stay further proceedings on the reconsideration of
39 the claim and shall adopt temporary rules amending the standards to accommodate the worker's
40 impairment.

41 (D) Notwithstanding any other provision of this section, impairment is the only factor to be
42 considered in evaluation of the worker's disability under ORS 656.214 (5) if:

43 (i) The worker returns to regular work at the job held at the time of injury;

44 (ii) The attending physician releases the worker to regular work at the job held at the time of
45 injury and the job is available but the worker fails or refuses to return to that job; or

1 (iii) The attending physician releases the worker to regular work at the job held at the time of
2 injury but the worker's employment is terminated for cause unrelated to the injury.

3 (g) Prescribe procedural rules for and conduct hearings, investigations and other proceedings
4 pursuant to ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter regarding all matters other
5 than those specifically allocated to the board or the Hearings Division.

6 (h) Participate fully in any proceeding before the Hearings Division, board or Court of Appeals
7 in which the director determines that the proceeding involves a matter that affects or could affect
8 the discharge of the director's duties of administration, regulation and enforcement of ORS 654.001
9 to 654.295 and 654.750 to 654.780 and this chapter.

10 (5) The board may make and declare all rules which are reasonably required in the performance
11 of its duties, including but not limited to rules of practice and procedure in connection with hearing
12 and review proceedings and exercising its authority under ORS 656.278. The board shall adopt
13 standards governing the format and timing of the evidence. The standards shall be uniformly fol-
14 lowed by all Administrative Law Judges and practitioners. The rules may provide for informal pre-
15 hearing conferences in order to expedite claim adjudication, amicably dispose of controversies, if
16 possible, narrow issues and simplify the method of proof at hearings. The rules shall specify who
17 may appear with parties at prehearing conferences and hearings.

18 (6) The director and the board chairperson may incur such expenses as they respectively de-
19 termine are reasonably necessary to perform their authorized functions.

20 (7) The director, the board chairperson and the State Accident Insurance Fund Corporation shall
21 have the right, not subject to review, to contract for the exchange of, or payment for, such services
22 between them as will reduce the overall cost of administering this chapter.

23 (8) The director shall have lien and enforcement powers regarding assessments to be paid by
24 subject employers in the same manner and to the same extent as is provided for lien and enforce-
25 ment of collection of premiums and assessments by the corporation under ORS 656.552 to 656.566.

26 (9) The director shall have the same powers regarding inspection of books, records and payrolls
27 of employers as are granted the corporation under ORS 656.758. The director may disclose infor-
28 mation obtained from such inspections to the Director of the Department of Revenue to the extent
29 the Director of the Department of Revenue requires such information to determine that a person
30 complies with the revenue and tax laws of this state and to the Director of the Employment De-
31 partment to the extent the Director of the Employment Department requires such information to
32 determine that a person complies with ORS chapter 657.

33 (10) The director shall collect hours-worked data information in addition to total payroll for
34 workers engaged in various jobs in the construction industry classifications described in the job
35 classification portion of the Workers' Compensation and Employers Liability Manual and the Oregon
36 Special Rules Section published by the National Council on Compensation Insurance. The informa-
37 tion shall be collected in the form and format necessary for the National Council on Compensation
38 Insurance to analyze premium equity.

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