

## SENATE AMENDMENTS TO SENATE BILL 386

By COMMITTEE ON COMMERCE

March 31

1 On page 1 of the printed bill, delete lines 8 through 11 and insert:

2 “(a) ‘Essential functions’ means the primary tasks associated with the job.

3 “(b) ‘Gainful occupation’ means an occupation that provides:

4 “(A) For workers employed 52 weeks or more prior to the injury, wages that are the lesser of  
5 the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the worker’s  
6 average weekly wages for the 52 weeks prior to the date of injury.

7 “(B) For workers employed less than 52 weeks prior to the date of injury, wages that are the  
8 lesser of the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the  
9 worker’s average weekly wages based on the weeks of actual employment, excluding any extended  
10 periods of unemployment.

11 “(C) For workers employed less than four weeks prior to the date of injury, wages that are the  
12 lesser of the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the  
13 average weekly wages intended by the parties at the time of initial hire.”.

14 In line 12, delete “(b)” and insert “(c)”.

15 In line 14, delete “(c)” and insert “(d)”.

16 After line 20, insert:

17 “(e) ‘Regularly performing work’ means the ability of the worker to discharge the essential  
18 functions of the job.”.

19 In line 21, delete “(d)” and insert “(f)”.

20 In line 24, delete “(e)” and insert “(g)”.

21 On page 2, delete lines 14 through 24 and insert:

22 “(6)(a) If a worker receiving permanent total disability benefits is found to be materially im-  
23 proved and capable of regularly performing work at a gainful and suitable occupation, the insurer  
24 or self-insured employer shall issue a notice of closure pursuant to ORS 656.268. Permanent total  
25 disability benefits shall be paid through the date of the notice of closure. Notwithstanding ORS  
26 656.268, if the worker requests a hearing on the notice of closure before the Hearings Division of  
27 the Workers’ Compensation Board within 30 days of the date of the notice of closure, the insurer  
28 or self-insured employer shall continue payment of permanent total disability benefits until an order  
29 of the Hearings Division or a subsequent order affirms the notice of closure. If the worker requests  
30 a hearing on the notice of closure more than 30 days from the date of the notice of closure but be-  
31 fore the 60-day period for requesting a hearing expires, the insurer or self-insured employer shall  
32 resume paying permanent total disability benefits from the date the hearing is requested and shall  
33 continue payment of benefits until an order of the Hearings Division or a subsequent order affirms  
34 the notice of closure or until another order that terminates the worker’s benefits becomes final. If  
35 the notice of closure is upheld by the Hearings Division, the insurer or self-insured employer shall

1 be reimbursed from the Workers' Benefit Fund for the amount of permanent total disability benefits  
2 paid after the date of the notice of closure issued under this subsection.”.

3 In line 28, delete “to support” and insert “for”.

4 In line 29, delete “must” and insert “that”.

5 In line 30, before the period insert “shall be given greater weight than reports or evaluations  
6 that are not based on personal observation by the author”.

7 Delete line 35 and insert “tion by an order that has become final is eligible for vocational as-  
8 sistance pursuant to ORS 656.340. Notwithstanding ORS 656.268 (9), when vocational assistance  
9 provided under this section ends, the insurer or the self-insured employer shall determine the extent  
10 of disability pursuant to ORS 656.214.

11 “(8) A worker receiving permanent total disability benefits is required, if requested by the di-  
12 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-  
13 sonably convenient to the worker as may be provided by the rules of the director. No more than  
14 three evaluations may be requested except after notification to and authorization by the director.  
15 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to  
16 compensation shall be suspended with the consent of the director until the evaluation has taken  
17 place, and no compensation shall be payable for the period during which the worker refused to  
18 submit to or obstructed the evaluation. The insurer or self-insured employer shall pay the costs of  
19 the evaluation and related services that are reasonably necessary to allow the worker to attend the  
20 evaluation requested under this subsection. As used in this subsection, ‘related services’ includes,  
21 but is not limited to, wages, child care, travel, meals and lodging.

22 “(9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent total  
23 disability incurs a new compensable injury, the worker’s entitlement to compensation for the new  
24 injury shall be limited to medical benefits pursuant to ORS 656.245 and permanent partial disability  
25 benefits for impairment, as determined in the manner set forth in ORS 656.214 (2).

26 “(10) When a worker eligible for benefits under this section returns to work, if the combined  
27 total of the worker’s post-injury wages plus permanent total disability benefit exceeds the worker’s  
28 wage at the time of injury, the worker’s permanent total disability benefit shall be reduced by the  
29 amount the worker’s wages plus statutory permanent total disability benefit exceeds the worker’s  
30 wage at injury.”.

31 Delete lines 39 through 42 and insert:

32 “(a) ‘Essential functions’ means the primary tasks associated with the job.

33 “(b) ‘Gainful occupation’ means an occupation that provides:

34 “(A) For workers employed 52 weeks or more prior to the injury, wages that are the lesser of  
35 the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the worker’s  
36 average weekly wages for the 52 weeks prior to the date of injury.

37 “(B) For workers employed less than 52 weeks prior to the date of injury, wages that are the  
38 lesser of the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the  
39 worker’s average weekly wages based on the weeks of actual employment, excluding any extended  
40 periods of unemployment.

41 “(C) For workers employed less than four weeks prior to the date of injury, wages that are the  
42 lesser of the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the  
43 average weekly wages intended by the parties at the time of initial hire.”.

44 In line 43, delete “(b)” and insert “(c)”.

45 In line 45, delete “(c)” and insert “(d)”.

1 On page 3, line 3, after the period delete the rest of the line and line 4.

2 After line 6, insert:

3 “(e) ‘Regularly performing work’ means the ability of the worker to discharge the essential  
4 functions of the job.”.

5 In line 7, delete “(d)” and insert “(f)”.

6 In line 10, delete “(e)” and insert “(g)”.

7 Delete lines 30 through 40 and insert:

8 “(6)(a) If a worker receiving permanent total disability benefits is found to be materially im-  
9 proved and capable of regularly performing work at a gainful and suitable occupation, the insurer  
10 or self-insured employer shall issue a notice of closure pursuant to ORS 656.268. Permanent total  
11 disability benefits shall be paid through the date of the notice of closure. Notwithstanding ORS  
12 656.268, if the worker requests a hearing on the notice of closure before the Hearings Division of  
13 the Workers’ Compensation Board within 30 days of the date of the notice of closure, the insurer  
14 or self-insured employer shall continue payment of permanent total disability benefits until an order  
15 of the Hearings Division or a subsequent order affirms the notice of closure. If the worker requests  
16 a hearing on the notice of closure more than 30 days from the date of the notice of closure but be-  
17 fore the 60-day period for requesting a hearing expires, the insurer or self-insured employer shall  
18 resume paying permanent total disability benefits from the date the hearing is requested and shall  
19 continue payment of benefits until an order of the Hearings Division or a subsequent order affirms  
20 the notice of closure or until another order that terminates the worker’s benefits becomes final. If  
21 the notice of closure is upheld by the Hearings Division, the insurer or self-insured employer shall  
22 be reimbursed from the Workers’ Benefit Fund for the amount of permanent total disability benefits  
23 paid after the date of the notice of closure issued under this subsection.”.

24 In line 44, delete “to support” and insert “for”.

25 In line 45, delete “must” and insert “that”.

26 On page 4, line 1, before the period insert “shall be given greater weight than reports or eval-  
27 uations that are not based on personal observation by the author”.

28 Delete line 6 and insert “tion by an order that has become final is eligible for vocational as-  
29 sistance pursuant to ORS 656.340. Notwithstanding ORS 656.268 (9), when vocational assistance  
30 provided under this section ends, the insurer or self-insured employer shall determine the extent of  
31 disability pursuant to ORS 656.214.

32 “(8) A worker receiving permanent total disability benefits is required, if requested by the di-  
33 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-  
34 sonably convenient to the worker as may be provided by the rules of the director. No more than  
35 three evaluations may be requested except after notification to and authorization by the director.  
36 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to  
37 compensation shall be suspended with the consent of the director until the evaluation has taken  
38 place, and no compensation shall be payable for the period during which the worker refused to  
39 submit to or obstructed the evaluation. The insurer or self-insured employer shall pay the costs of  
40 the evaluation and related services that are reasonably necessary to allow the worker to attend the  
41 evaluation requested under this subsection. As used in this subsection, ‘related services’ includes,  
42 but is not limited to, wages, child care, travel, meals and lodging.

43 “(9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent total  
44 disability incurs a new compensable injury, the worker’s entitlement to compensation for the new  
45 injury shall be limited to medical benefits pursuant to ORS 656.245 and permanent partial disability

1 benefits for impairment, as determined in the manner set forth in ORS 656.214 (2).

2       “(10) When a worker eligible for benefits under this section returns to work, if the combined  
3 total of the worker’s post-injury wages plus permanent total disability benefit exceeds the worker’s  
4 wage at the time of injury, the worker’s permanent total disability benefit shall be reduced by the  
5 amount the worker’s wages plus statutory permanent total disability benefit exceeds the worker’s  
6 wage at injury.”.

7

---