

A-Engrossed
Senate Bill 386

Ordered by the Senate March 31
Including Senate Amendments dated March 31

Sponsored by COMMITTEE ON GENERAL GOVERNMENT

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.

Modifies process for reexamination of claim in which permanent total disability benefits are being paid and criteria for termination of those benefits. Requires that **reports of medical** examinations and evaluations [*used to support termination of permanent total disability benefits include*] **including** personal observation of worker **be given greater weight than reports or evaluations not based on personal observation when determining termination of benefits.** Authorizes Administrative Law Judge to request medical arbiter examination. Establishes eligibility for vocational benefits for worker when permanent total disability benefits are terminated.

A BILL FOR AN ACT

1
2 Relating to permanent total disability benefits paid in workers' compensation claims; creating new
3 provisions; and amending ORS 656.206, 656.268 and 656.605.

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

5 **SECTION 1.** ORS 656.206, as amended by section 5, chapter 657, Oregon Laws 2003, is amended
6 to read:

7 656.206. (1) As used in this section:

8 (a) **"Essential functions"** means the primary tasks associated with the job.

9 (b) **"Gainful occupation"** means an occupation that provides:

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

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

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

20 (c) **"Materially improved"** means an actual change for the better in the worker's condi-
21 **tion that is supported by objective findings.**

22 [(a)] (d) [*Notwithstanding ORS 656.225,*] **"Permanent total disability"** means, **notwithstanding**
23 **ORS 656.225,** the loss, including preexisting disability, of use or function of any portion of the body
24 which permanently incapacitates the worker from regularly performing work at a gainful and suit-
25 able occupation. [*As used in this section, a gainful occupation is one that pays wages equal to or*

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 *greater than the state mandated hourly minimum wage. As used in this section, a suitable occupation*
 2 *is one that the worker has the ability and the training or experience to perform, or an occupation that*
 3 *the worker is able to perform after rehabilitation.]*

4 **(e) “Regularly performing work” means the ability of the worker to discharge the es-**
 5 **sential functions of the job.**

6 **(f) “Suitable occupation” means one that the worker has the ability and the training or**
 7 **experience to perform, or an occupation that the worker is able to perform after rehabili-**
 8 **tation.**

9 [(b)] **(g) “Wages” means wages as determined under ORS 656.210.**

10 (2) When permanent total disability results from the injury, the worker shall receive during the
 11 period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100
 12 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
 13 amount of \$50, whichever amount is lesser.

14 (3) The worker has the burden of proving permanent total disability status and must establish
 15 that the worker is willing to seek regular gainful employment and that the worker has made rea-
 16 sonable efforts to obtain such employment.

17 (4) When requested by the Director of the Department of Consumer and Business Services, a
 18 worker who receives permanent total disability benefits shall file on a form provided by the director,
 19 a sworn statement of the worker’s gross annual income for the preceding year along with such other
 20 information as the director considers necessary to determine whether the worker regularly performs
 21 work at a gainful and suitable occupation.

22 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
 23 insurer has current payment responsibility to determine whether the worker [*is currently*] **has**
 24 **materially improved, either medically or vocationally, and is no longer** permanently incapaciti-
 25 tated from regularly performing work at a gainful and suitable occupation. Reexamination shall be
 26 conducted every two years or at such other more frequent interval as the director may prescribe.
 27 Reexamination shall include such medical examinations, **vocational evaluations**, reports and other
 28 records as the insurer considers necessary or the director may require.

29 **(6)(a) If a worker receiving permanent total disability benefits is found to be materially**
 30 **improved and capable of regularly performing work at a gainful and suitable occupation, the**
 31 **insurer or self-insured employer shall issue a notice of closure pursuant to ORS 656.268.**
 32 **Permanent total disability benefits shall be paid through the date of the notice of closure.**
 33 **Notwithstanding ORS 656.268, if the worker requests a hearing on the notice of closure be-**
 34 **fore the Hearings Division of the Workers’ Compensation Board within 30 days of the date**
 35 **of the notice of closure, the insurer or self-insured employer shall continue payment of per-**
 36 **manent total disability benefits until an order of the Hearings Division or a subsequent order**
 37 **affirms the notice of closure. If the worker requests a hearing on the notice of closure more**
 38 **than 30 days from the date of the notice of closure but before the 60-day period for re-**
 39 **questing a hearing expires, the insurer or self-insured employer shall resume paying perma-**
 40 **nent total disability benefits from the date the hearing is requested and shall continue**
 41 **payment of benefits until an order of the Hearings Division or a subsequent order affirms**
 42 **the notice of closure or until another order that terminates the worker’s benefits becomes**
 43 **final. If the notice of closure is upheld by the Hearings Division, the insurer or self-insured**
 44 **employer shall be reimbursed from the Workers’ Benefit Fund for the amount of permanent**
 45 **total disability benefits paid after the date of the notice of closure issued under this sub-**

1 section.

2 (b) An insurer or self-insured employer must establish that the condition of a worker
3 who is receiving permanent total disability benefits has materially improved by a prepon-
4 derance of the evidence presented on reconsideration or at hearing.

5 (c) Reports of medical examinations and vocational evaluations used for the issuance of
6 a notice of closure issued under this section that include an interview or examination of the
7 worker during which the author of the report personally observes the worker shall be given
8 greater weight than reports or evaluations that are not based on personal observation by the
9 author.

10 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division
11 of the Workers' Compensation Board may request the director to order a medical arbiter
12 examination of an injured worker who has requested a hearing under this subsection.

13 (7) A worker who has had permanent total disability benefits terminated under this sec-
14 tion by an order that has become final is eligible for vocational assistance pursuant to ORS
15 656.340. Notwithstanding ORS 656.268 (9), when vocational assistance provided under this
16 section ends, the insurer or the self-insured employer shall determine the extent of disability
17 pursuant to ORS 656.214.

18 (8) A worker receiving permanent total disability benefits is required, if requested by the
19 director, the insurer or the self-insured employer, to submit to a vocational evaluation at a
20 time reasonably convenient to the worker as may be provided by the rules of the director.
21 No more than three evaluations may be requested except after notification to and authori-
22 zation by the director. If the worker refuses to submit to or obstructs a vocational evalu-
23 ation, the rights of the worker to compensation shall be suspended with the consent of the
24 director until the evaluation has taken place, and no compensation shall be payable for the
25 period during which the worker refused to submit to or obstructed the evaluation. The
26 insurer or self-insured employer shall pay the costs of the evaluation and related services
27 that are reasonably necessary to allow the worker to attend the evaluation requested under
28 this subsection. As used in this subsection, "related services" includes, but is not limited to,
29 wages, child care, travel, meals and lodging.

30 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent
31 total disability incurs a new compensable injury, the worker's entitlement to compensation
32 for the new injury shall be limited to medical benefits pursuant to ORS 656.245 and perma-
33 nent partial disability benefits for impairment, as determined in the manner set forth in ORS
34 656.214 (2).

35 (10) When a worker eligible for benefits under this section returns to work, if the com-
36 bined total of the worker's post-injury wages plus permanent total disability benefit exceeds
37 the worker's wage at the time of injury, the worker's permanent total disability benefit shall
38 be reduced by the amount the worker's wages plus statutory permanent total disability
39 benefit exceeds the worker's wage at injury.

40 **SECTION 2.** ORS 656.206, as amended by sections 5 and 6, chapter 657, Oregon Laws 2003, is
41 amended to read:

42 656.206. (1) As used in this section:

43 (a) "Essential functions" means the primary tasks associated with the job.

44 (b) "Gainful occupation" means an occupation that provides:

45 (A) For workers employed 52 weeks or more prior to the injury, wages that are the lesser

1 of the most recent federal poverty guidelines for a family of three or 66-2/3 percent of the
2 worker's average weekly wages for the 52 weeks prior to the date of injury.

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

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

10 (c) "Materially improved" means an actual change for the better in the worker's condi-
11 tion that is supported by objective findings.

12 [(a)] (d) [Notwithstanding ORS 656.225,] "Permanent total disability" means, **notwithstanding**
13 **ORS 656.225**, the loss, including preexisting disability, of use or function of any scheduled or un-
14 scheduled portion of the body which permanently incapacitates the worker from regularly perform-
15 ing work at a gainful and suitable occupation. [As used in this section, a gainful occupation is one
16 that pays wages equal to or greater than the state mandated hourly minimum wage. As used in this
17 section, a suitable occupation is one that the worker has the ability and the training or experience to
18 perform, or an occupation that the worker is able to perform after rehabilitation.]

19 (e) "Regularly performing work" means the ability of the worker to discharge the es-
20 sential functions of the job.

21 (f) "Suitable occupation" means one that the worker has the ability and the training or
22 experience to perform, or an occupation that the worker is able to perform after rehabili-
23 tation.

24 [(b)] (g) "Wages" means wages as determined under ORS 656.210.

25 (2) When permanent total disability results from the injury, the worker shall receive during the
26 period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100
27 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
28 amount of \$50, whichever amount is lesser.

29 (3) The worker has the burden of proving permanent total disability status and must establish
30 that the worker is willing to seek regular gainful employment and that the worker has made rea-
31 sonable efforts to obtain such employment.

32 (4) When requested by the Director of the Department of Consumer and Business Services, a
33 worker who receives permanent total disability benefits shall file on a form provided by the director,
34 a sworn statement of the worker's gross annual income for the preceding year along with such other
35 information as the director considers necessary to determine whether the worker regularly performs
36 work at a gainful and suitable occupation.

37 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
38 insurer has current payment responsibility to determine whether the worker [is currently] **has**
39 **materially improved, either medically or vocationally, and is no longer** permanently incapaci-
40 tated from regularly performing work at a gainful and suitable occupation. Reexamination shall be
41 conducted every two years or at such other more frequent interval as the director may prescribe.
42 Reexamination shall include such medical examinations, **vocational evaluations**, reports and other
43 records as the insurer considers necessary or the director may require.

44 (6)(a) **If a worker receiving permanent total disability benefits is found to be materially**
45 **improved and capable of regularly performing work at a gainful and suitable occupation, the**

1 insurer or self-insured employer shall issue a notice of closure pursuant to ORS 656.268.
2 Permanent total disability benefits shall be paid through the date of the notice of closure.
3 Notwithstanding ORS 656.268, if the worker requests a hearing on the notice of closure be-
4 fore the Hearings Division of the Workers' Compensation Board within 30 days of the date
5 of the notice of closure, the insurer or self-insured employer shall continue payment of per-
6 manent total disability benefits until an order of the Hearings Division or a subsequent order
7 affirms the notice of closure. If the worker requests a hearing on the notice of closure more
8 than 30 days from the date of the notice of closure but before the 60-day period for re-
9 questing a hearing expires, the insurer or self-insured employer shall resume paying perma-
10 nent total disability benefits from the date the hearing is requested and shall continue
11 payment of benefits until an order of the Hearings Division or a subsequent order affirms
12 the notice of closure or until another order that terminates the worker's benefits becomes
13 final. If the notice of closure is upheld by the Hearings Division, the insurer or self-insured
14 employer shall be reimbursed from the Workers' Benefit Fund for the amount of permanent
15 total disability benefits paid after the date of the notice of closure issued under this sub-
16 section.

17 (b) An insurer or self-insured employer must establish that the condition of a worker
18 who is receiving permanent total disability benefits has materially improved by a prepon-
19 derance of the evidence presented on reconsideration or at hearing.

20 (c) Reports of medical examinations and vocational evaluations used for the issuance of
21 a notice of closure issued under this section that include an interview or examination of the
22 worker during which the author of the report personally observes the worker shall be given
23 greater weight than reports or evaluations that are not based on personal observation by the
24 author.

25 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division
26 of the Workers' Compensation Board may request the director to order a medical arbiter
27 examination of an injured worker who has requested a hearing under this subsection.

28 (7) A worker who has had permanent total disability benefits terminated under this sec-
29 tion by an order that has become final is eligible for vocational assistance pursuant to ORS
30 656.340. Notwithstanding ORS 656.268 (9), when vocational assistance provided under this
31 section ends, the insurer or self-insured employer shall determine the extent of disability
32 pursuant to ORS 656.214.

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

45 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent

1 **total disability incurs a new compensable injury, the worker's entitlement to compensation**
2 **for the new injury shall be limited to medical benefits pursuant to ORS 656.245 and perma-**
3 **nent partial disability benefits for impairment, as determined in the manner set forth in ORS**
4 **656.214 (2).**

5 **(10) When a worker eligible for benefits under this section returns to work, if the com-**
6 **combined total of the worker's post-injury wages plus permanent total disability benefit exceeds**
7 **the worker's wage at the time of injury, the worker's permanent total disability benefit shall**
8 **be reduced by the amount the worker's wages plus statutory permanent total disability**
9 **benefit exceeds the worker's wage at injury.**

10 **SECTION 3.** ORS 656.268, as amended by section 7, chapter 657, Oregon Laws 2003, is amended
11 to read:

12 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
13 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
14 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
15 Department of Consumer and Business Services, and determine the extent of the worker's permanent
16 disability, provided the worker is not enrolled and actively engaged in training according to rules
17 adopted by the director pursuant to ORS 656.340 and 656.726, when:

18 (a) The worker has become medically stationary and there is sufficient information to determine
19 permanent disability;

20 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
21 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
22 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
23 quential condition or conditions, and there is sufficient information to determine permanent disabil-
24 ity, the likely permanent disability that would have been due to the current accepted condition shall
25 be estimated; [or]

26 (c) Without the approval of the attending physician or nurse practitioner authorized to provide
27 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a
28 period of 30 days or the worker fails to attend a closing examination, unless the worker
29 affirmatively establishes that such failure is attributable to reasons beyond the worker's control[.];
30 **or**

31 **(d) An insurer or self-insured employer finds that a worker who has been receiving per-**
32 **manent total disability benefits has materially improved and is capable of regularly per-**
33 **forming work at a gainful and suitable occupation.**

34 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
35 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
36 duced by any sums earned during the training.

37 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
38 shall be furnished to the worker, if requested by the worker.

39 (4) Temporary total disability benefits shall continue until whichever of the following events
40 first occurs:

41 (a) The worker returns to regular or modified employment;

42 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-
43 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
44 is released to return to regular employment;

45 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-

1 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
2 is released to return to modified employment, such employment is offered in writing to the worker
3 and the worker fails to begin such employment. However, an offer of modified employment may be
4 refused by the worker without the termination of temporary total disability benefits if the offer:

5 (A) Requires a commute that is beyond the physical capacity of the worker according to the
6 worker's attending physician or the nurse practitioner who may authorize temporary disability un-
7 der ORS 656.245;

8 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
9 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
10 or as established by the pattern of employment prior to the injury was that the employer had mul-
11 tiple or mobile work sites and the worker could be assigned to any such site;

12 (C) Is not with the employer at injury;

13 (D) Is not at a work site of the employer at injury;

14 (E) Is not consistent with the existing written shift change policy or is not consistent with
15 common practice of the employer at injury or aggravation; or

16 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
17 gaining agreement; or

18 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
19 or terminated under ORS 656.262 (4) or other provisions of this chapter.

20 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
21 ability in closure of the claim shall be pursuant to the standards prescribed by the director [*of the*
22 *Department of Consumer and Business Services*]. The insurer or self-insured employer shall issue a
23 notice of closure of such a claim to the worker, to the worker's attorney if the worker is repres-
24 ented, and to the director. The notice must inform:

25 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
26 isfied with the terms of the notice;

27 (B) The worker of the amount of any further compensation, including permanent disability
28 compensation to be awarded; of the duration of temporary total or temporary partial disability
29 compensation; of the right of the worker to request reconsideration by the director under this sec-
30 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
31 insured employer to request reconsideration by the director under this section within seven days
32 of the date of the notice of claim closure; of the aggravation rights; and of such other information
33 as the director may require; and

34 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
35 and 656.208.

36 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
37 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
38 self-insured employer shall issue a notice of closure if the requirements of this section have been
39 met or a notice of refusal to close if the requirements of this section have not been met. A notice
40 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
41 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
42 close the claim; of the right to be represented by an attorney; and of such other information as the
43 director may require.

44 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
45 party first must request reconsideration by the director under this section. A worker's request for

1 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
2 consideration by an insurer or self-insured employer may be based only on disagreement with the
3 findings used to rate impairment and must be made within seven days of the date of the notice of
4 closure.

5 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
6 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
7 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
8 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
9 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
10 claimant.

11 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
12 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
13 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
14 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
15 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
16 the claimant. If the increase in compensation results from new information obtained through a
17 medical arbiter examination or from the adoption of a temporary emergency rule, the penalty shall
18 not be assessed.

19 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
20 held on each notice of closure. At the reconsideration proceeding:

21 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
22 worker about the worker's condition at the time of claim closure, shall become part of the recon-
23 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
24 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
25 cost of the court reporter and one original of the transcript of the deposition for the Department
26 of Consumer and Business Services and one copy of the transcript of the deposition for each party
27 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
28 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
29 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
30 pared in time for use in the reconsideration proceeding.

31 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
32 may correct information in the record that is erroneous and may submit any medical evidence that
33 should have been but was not submitted by the attending physician or nurse practitioner authorized
34 to provide compensable medical services under ORS 656.245 at the time of claim closure.

35 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
36 this section, the director may rescind the closure.

37 (b) If necessary, the director may require additional medical or other information with respect
38 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

39 (c) In any reconsideration proceeding under this section in which the worker was represented
40 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
41 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
42 pensation awarded to the worker.

43 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
44 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
45 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-

1 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
2 If an order on reconsideration has not been mailed on or before 18 working days from the date the
3 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
4 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
5 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
6 in subsection (7) of this section when reconsideration is postponed further because the worker has
7 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
8 any further proceedings shall occur as though an order on reconsideration affirming the notice of
9 closure was mailed on the date the order was due to issue.

10 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
11 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
12 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
13 the period for reconsideration begins upon the later of the date of the request for reconsideration
14 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
15 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
16 not to file a separate request for reconsideration, the party does not waive the right to fully par-
17 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
18 if the initiating party withdraws the request for reconsideration.

19 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
20 not prepared in time for use in the reconsideration proceeding.

21 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
22 656.283 within 30 days from the date of the reconsideration order.

23 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
24 with the impairment used in rating of the worker's disability, the director shall refer the claim to
25 a medical arbiter appointed by the director.

26 (b) If neither party requests a medical arbiter and the director determines that insufficient
27 medical information is available to determine disability, the director may refer the claim to a med-
28 ical arbiter appointed by the director.

29 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

30 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
31 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
32 director in consultation with the Board of Medical Examiners for the State of Oregon and the
33 committee referred to in ORS 656.790.

34 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
35 such tests as may be reasonable and necessary to establish the worker's impairment.

36 (B) If the director determines that the worker failed to attend the examination without good
37 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
38 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
39 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
40 or any prior opening of the claim until such time as the worker attends and cooperates with the
41 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
42 good cause must be submitted prior to the conclusion of the 60-day postponement period.

43 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
44 cooperated with a medical arbiter examination or established good cause, there shall be no further
45 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-

1 consideration record shall be closed, and the director shall issue an order on reconsideration based
2 upon the existing record.

3 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
4 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
5 pensation Board or upon court review, shall not be due and payable to the worker.

6 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
7 be paid by the insurer or self-insured employer.

8 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
9 director for reconsideration of the notice of closure.

10 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
11 sible before the director, the Workers' Compensation Board or the courts for purposes of making
12 findings of impairment on the claim closure.

13 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
14 greement with the impairment used in rating the worker's disability, and the director determines
15 that the worker is not medically stationary at the time of the reconsideration or that the closure
16 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
17 to the completion of the reconsideration proceeding.

18 (B) If the worker's condition has substantially changed since the notice of closure, upon the
19 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
20 condition is appropriate for claim closure under subsection (1) of this section.

21 (8) No hearing shall be held on any issue that was not raised and preserved before the director
22 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
23 resolved at hearing.

24 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
25 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
26 any permanent disability payments due for work disability under the closure shall be suspended, and
27 the worker shall receive temporary disability compensation and any permanent disability payments
28 due for impairment while the worker is enrolled and actively engaged in the training. When the
29 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-
30 ployer shall again close the claim pursuant to this section if the worker is medically stationary or
31 if the worker's accepted injury is no longer the major contributing cause of the worker's combined
32 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the
33 duration of temporary total or temporary partial disability compensation. Permanent disability
34 compensation shall be redetermined for work disability only. If the worker has returned to work or
35 the worker's attending physician has released the worker to return to regular or modified employ-
36 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may
37 be appealed only in the same manner as are other notices of closure under this section.

38 (10) If the attending physician or nurse practitioner authorized to provide compensable medical
39 services under ORS 656.245 has approved the worker's return to work and there is a labor dispute
40 in progress at the place of employment, the worker may refuse to return to that employment without
41 loss of reemployment rights or any vocational assistance provided by this chapter.

42 (11) Any notice of closure made under this section may include necessary adjustments in com-
43 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
44 bility payments prematurely made, crediting temporary disability payments against current or future
45 permanent or temporary disability awards or payments and requiring the payment of temporary

1 disability payments which were payable but not paid.

2 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
3 compensation benefits or payments against any further workers' compensation benefits or payments
4 due a worker from that insurer or self-insured employer when the worker admits to having obtained
5 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
6 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
7 fits or payments obtained through fraud by a worker shall not be included in any data used for
8 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
9 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
10 Corporation or the director.

11 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
12 to recover an overpayment from a claim with the same insurer or self-insured employer. When
13 overpayments are recovered from temporary disability or permanent total disability benefits, the
14 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
15 authorization from the worker.

16 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
17 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
18 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
19 death of the worker.

20 (14) Conditions that are direct medical sequelae to the original accepted condition shall be in-
21 cluded in rating permanent disability of the claim unless they have been specifically denied.

22 **SECTION 4.** ORS 656.268, as amended by sections 7 and 8, chapter 657, Oregon Laws 2003, and
23 section 12, chapter 811, Oregon Laws 2003, is amended to read:

24 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
25 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
26 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
27 Department of Consumer and Business Services, and determine the extent of the worker's permanent
28 disability, provided the worker is not enrolled and actively engaged in training according to rules
29 adopted by the director pursuant to ORS 656.340 and 656.726, when:

30 (a) The worker has become medically stationary and there is sufficient information to determine
31 permanent impairment;

32 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
33 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
34 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
35 quential condition or conditions, and there is sufficient information to determine permanent impair-
36 ment, the likely impairment and adaptability that would have been due to the current accepted
37 condition shall be estimated; [or]

38 (c) Without the approval of the attending physician, the worker fails to seek medical treatment
39 for a period of 30 days or the worker fails to attend a closing examination, unless the worker
40 affirmatively establishes that such failure is attributable to reasons beyond the worker's control[.];

41 **or**

42 **(d) An insurer or self-insured employer finds that a worker who has been receiving per-**
43 **manent total disability benefits has materially improved and is capable of regularly per-**
44 **forming work at a gainful and suitable occupation.**

45 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-

1 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
2 duced by any sums earned during the training.

3 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
4 shall be furnished to the worker, if requested by the worker.

5 (4) Temporary total disability benefits shall continue until whichever of the following events
6 first occurs:

7 (a) The worker returns to regular or modified employment;

8 (b) The attending physician advises the worker and documents in writing that the worker is
9 released to return to regular employment;

10 (c) The attending physician advises the worker and documents in writing that the worker is
11 released to return to modified employment, such employment is offered in writing to the worker and
12 the worker fails to begin such employment. However, an offer of modified employment may be re-
13 fused by the worker without the termination of temporary total disability benefits if the offer:

14 (A) Requires a commute that is beyond the physical capacity of the worker according to the
15 worker's attending physician;

16 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
17 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
18 or as established by the pattern of employment prior to the injury was that the employer had mul-
19 tiple or mobile work sites and the worker could be assigned to any such site;

20 (C) Is not with the employer at injury;

21 (D) Is not at a work site of the employer at injury;

22 (E) Is not consistent with the existing written shift change policy or is not consistent with
23 common practice of the employer at injury or aggravation; or

24 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
25 gaining agreement; or

26 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
27 or terminated under ORS 656.262 (4) or other provisions of this chapter.

28 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
29 ability in closure of the claim shall be pursuant to the standards prescribed by the director [*of the*
30 *Department of Consumer and Business Services*]. The insurer or self-insured employer shall issue a
31 notice of closure of such a claim to the worker, to the worker's attorney if the worker is repres-
32 ented, and to the director. The notice must inform:

33 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
34 isfied with the terms of the notice;

35 (B) The worker of the amount of any further compensation, including permanent disability
36 compensation to be awarded; of the duration of temporary total or temporary partial disability
37 compensation; of the right of the worker to request reconsideration by the director under this sec-
38 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
39 insured employer to request reconsideration by the director under this section within seven days
40 of the date of the notice of claim closure; of the aggravation rights; and of such other information
41 as the director may require; and

42 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
43 and 656.208.

44 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
45 request closure. Within 10 days of receipt of a written request from the worker, the insurer or

1 self-insured employer shall issue a notice of closure if the requirements of this section have been
2 met or a notice of refusal to close if the requirements of this section have not been met. A notice
3 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
4 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
5 close the claim; of the right to be represented by an attorney; and of such other information as the
6 director may require.

7 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
8 party first must request reconsideration by the director under this section. A worker's request for
9 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
10 consideration by an insurer or self-insured employer may be based only on disagreement with the
11 findings used to rate impairment and must be made within seven days of the date of the notice of
12 closure.

13 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
14 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
15 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
16 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
17 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
18 claimant.

19 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
20 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
21 for either a scheduled or unscheduled permanent disability and the worker is found upon reconsi-
22 deration to be at least 20 percent permanently disabled, a penalty shall be assessed against the
23 insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all
24 compensation determined to be then due the claimant. If the increase in compensation results from
25 new information obtained through a medical arbiter examination or from the adoption of a tempo-
26 rary emergency rule, the penalty shall not be assessed.

27 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
28 held on each notice of closure. At the reconsideration proceeding:

29 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
30 worker about the worker's condition at the time of claim closure, shall become part of the recon-
31 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
32 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
33 cost of the court reporter and one original of the transcript of the deposition for the Department
34 of Consumer and Business Services and one copy of the transcript of the deposition for each party
35 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
36 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
37 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
38 pared in time for use in the reconsideration proceeding.

39 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
40 may correct information in the record that is erroneous and may submit any medical evidence that
41 should have been but was not submitted by the attending physician at the time of claim closure.

42 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
43 this section, the director may rescind the closure.

44 (b) If necessary, the director may require additional medical or other information with respect
45 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

1 (c) In any reconsideration proceeding under this section in which the worker was represented
2 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
3 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
4 pensation awarded to the worker.

5 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
6 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
7 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
8 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
9 If an order on reconsideration has not been mailed on or before 18 working days from the date the
10 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
11 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
12 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
13 in subsection (7) of this section when reconsideration is postponed further because the worker has
14 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
15 any further proceedings shall occur as though an order on reconsideration affirming the notice of
16 closure was mailed on the date the order was due to issue.

17 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
18 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
19 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
20 the period for reconsideration begins upon the later of the date of the request for reconsideration
21 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
22 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
23 not to file a separate request for reconsideration, the party does not waive the right to fully par-
24 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
25 if the initiating party withdraws the request for reconsideration.

26 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
27 not prepared in time for use in the reconsideration proceeding.

28 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
29 656.283 within 30 days from the date of the reconsideration order.

30 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
31 with the impairment used in rating of the worker's disability, the director shall refer the claim to
32 a medical arbiter appointed by the director.

33 (b) If neither party requests a medical arbiter and the director determines that insufficient
34 medical information is available to determine disability, the director may refer the claim to a med-
35 ical arbiter appointed by the director.

36 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

37 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
38 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
39 director in consultation with the Board of Medical Examiners for the State of Oregon and the
40 committee referred to in ORS 656.790.

41 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
42 such tests as may be reasonable and necessary to establish the worker's impairment.

43 (B) If the director determines that the worker failed to attend the examination without good
44 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
45 postpone the reconsideration proceedings for up to 60 days from the date of the determination that

1 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
2 or any prior opening of the claim until such time as the worker attends and cooperates with the
3 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
4 good cause must be submitted prior to the conclusion of the 60-day postponement period.

5 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
6 cooperated with a medical arbiter examination or established good cause, there shall be no further
7 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
8 consideration record shall be closed, and the director shall issue an order on reconsideration based
9 upon the existing record.

10 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
11 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
12 pensation Board or upon court review, shall not be due and payable to the worker.

13 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
14 be paid by the insurer or self-insured employer.

15 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
16 director for reconsideration of the notice of closure.

17 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
18 sible before the director, the Workers' Compensation Board or the courts for purposes of making
19 findings of impairment on the claim closure.

20 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
21 greement with the impairment used in rating the worker's disability, and the director determines
22 that the worker is not medically stationary at the time of the reconsideration or that the closure
23 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
24 to the completion of the reconsideration proceeding.

25 (B) If the worker's condition has substantially changed since the notice of closure, upon the
26 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
27 condition is appropriate for claim closure under subsection (1) of this section.

28 (8) No hearing shall be held on any issue that was not raised and preserved before the director
29 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
30 resolved at hearing.

31 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
32 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
33 any permanent disability payments due under the closure shall be suspended, and the worker shall
34 receive temporary disability compensation while the worker is enrolled and actively engaged in the
35 training. When the worker ceases to be enrolled and actively engaged in the training, the insurer
36 or self-insured employer shall again close the claim pursuant to this section if the worker is med-
37 ically stationary or if the worker's accepted injury is no longer the major contributing cause of the
38 worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure
39 shall include the duration of temporary total or temporary partial disability compensation. Perma-
40 nent disability compensation shall be redetermined for unscheduled disability only. If the worker has
41 returned to work or the worker's attending physician has released the worker to return to regular
42 or modified employment, the insurer or self-insured employer shall again close the claim. This notice
43 of closure may be appealed only in the same manner as are other notices of closure under this
44 section.

45 (10) If the attending physician has approved the worker's return to work and there is a labor

1 dispute in progress at the place of employment, the worker may refuse to return to that employment
2 without loss of reemployment rights or any vocational assistance provided by this chapter.

3 (11) Any notice of closure made under this section may include necessary adjustments in com-
4 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
5 bility payments prematurely made, crediting temporary disability payments against current or future
6 permanent or temporary disability awards or payments and requiring the payment of temporary
7 disability payments which were payable but not paid.

8 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
9 compensation benefits or payments against any further workers' compensation benefits or payments
10 due a worker from that insurer or self-insured employer when the worker admits to having obtained
11 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
12 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
13 fits or payments obtained through fraud by a worker shall not be included in any data used for
14 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
15 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
16 Corporation or the director.

17 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
18 to recover an overpayment from a claim with the same insurer or self-insured employer. When
19 overpayments are recovered from temporary disability or permanent total disability benefits, the
20 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
21 authorization from the worker.

22 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
23 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
24 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
25 death of the worker.

26 (14) Conditions that are direct medical sequelae to the original accepted condition shall be in-
27 cluded in rating permanent disability of the claim unless they have been specifically denied.

28 **SECTION 5.** ORS 656.605 is amended to read:

29 656.605. (1) The Workers' Benefit Fund is created in the State Treasury, separate and distinct
30 from the General Fund. Moneys in the fund shall be invested in the same manner as other state
31 moneys and investment earnings shall be credited to the fund. The fund shall consist of the follow-
32 ing:

33 (a) Moneys received pursuant to ORS 656.506.

34 (b) Moneys recovered under ORS 656.054.

35 (c) Fines and penalties recovered under ORS 656.735.

36 (d) All moneys received by the Director of the Department of Consumer and Business Services
37 pursuant to law or from any other source for purposes for which the fund may be expended.

38 (2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:

39 (a) Expenses of programs under ORS 656.445, 656.506, 656.622, 656.625, 656.628 and 656.630.

40 (b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.

41 (c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to
42 section 15, chapter 600, Oregon Laws 1985.

43 (d) Payment of supplemental temporary disability benefits for workers employed in more than
44 one job at the time of injury and reimbursement of the costs of administering payments resulting
45 from elections by insurers and self-insured employers as provided by ORS 656.210 (5).

1 (e) Payments made to injured workers pursuant to section 6a, chapter 865, Oregon Laws 2001.

2 (f) Expenses of the Bureau of Labor and Industries for enforcing ORS 659A.040, 659A.043,
3 659A.046, 659A.049 and 659A.052, subject to an agreement between the Director of the Department
4 of Consumer and Business Services and the Commissioner of the Bureau of Labor and Industries.
5 The agreement must include, but is not limited to, the amount of funds to be transferred to the bu-
6 reau for enforcing ORS 659A.040, 659A.043, 659A.046, 659A.049 and 659A.052 and the information
7 relating to the enforcement of ORS 659A.040, 659A.043, 659A.046, 659A.049 and 659A.052 that the
8 bureau must report to the director.

9 **(g) Reimbursement to the insurer or self-insured employer for the amount of permanent**
10 **total disability benefits paid after the date of the notice of closure that was upheld pursuant**
11 **to ORS 656.206.**

12 (3) Subject to the following provisions, all moneys in the fund are appropriated continuously to
13 the Director of the Department of Consumer and Business Services to carry out the activities for
14 which the fund may be expended:

15 (a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS
16 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section
17 15, chapter 600, Oregon Laws 1985.

18 (b) Moneys received pursuant to ORS 656.506 and the transfers of unexpended and unobligated
19 moneys in the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve
20 and Handicapped Workers Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993
21 Edition) may be expended only to carry out the programs referred to in ORS 656.506, 656.622,
22 656.625, 656.628 and 656.630.

23 (4) Notwithstanding any other provision of this chapter, if the director determines at any time
24 that there are insufficient moneys in the Workers' Benefit Fund to pay the expenses of programs for
25 which expenditure of the fund is authorized, the director may reduce the level of benefits payable
26 accordingly.

27 **SECTION 6. The amendments to ORS 656.206, 656.268 and 656.605 by sections 1 to 5 of this**
28 **2005 Act apply to all claims for which a notice closure is issued under ORS 656.206 on or after**
29 **the effective date of this 2005 Act.**

30