

## HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 386

By COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS

June 9

1 On page 1 of the printed A-engrossed bill, line 3, after “656.268” insert “, 656.319”.

2 Delete lines 9 through 19.

3 In line 20, delete “(c)” and insert “(b)” and after “improved” insert “medically” and after  
4 “worker’s” insert “medical”.

5 After line 21, insert:

6 “(c) ‘Materially improved vocationally’ means an actual change for the better in the:

7 “(A) Worker’s vocational capability; or

8 “(B) Likelihood that the worker can return to work in a gainful and suitable occupation.”.

9 On page 2, line 33, delete “656.268,” and insert “656.268 (5), if a worker objects to a notice of  
10 closure issued under this subsection, the worker must request a hearing.”.

11 In line 37, before the period insert “or until another order that terminates the worker’s benefits  
12 becomes final”.

13 On page 3, line 4, delete “on reconsideration or”.

14 Delete lines 5 through 9 and insert:

15 “(c) Medical examinations or vocational evaluations used to support the issuance of a notice of  
16 closure under this subsection must include at least one report in which the author personally ob-  
17 served the worker.”.

18 In line 15, after the comma insert “if a worker has enrolled in and is actively engaged in a  
19 training program,”.

20 In line 16, after “ends” insert “or the worker ceases to be enrolled and actively engaged in the  
21 training program”.

22 After line 39, insert:

23 “(11) For purposes of this section:

24 “(a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

25 “(A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides  
26 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three  
27 that are applicable to Oregon residents and that are published annually in the Federal Register by  
28 the United States Department of Health and Human Services or 66-2/3 percent of the worker’s av-  
29 erage weekly wages from all employment for the 52 weeks prior to the date of injury.

30 “(B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-  
31 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly  
32 wages that are the lesser of the most recent federal poverty guidelines for a family of three that  
33 are applicable to Oregon residents and that are published annually in the Federal Register by the  
34 United States Department of Health and Human Services or 66-2/3 percent of the worker’s average  
35 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of

1 actual employment, excluding any extended periods of unemployment.

2 “(C) Employed for less than four weeks prior to the date of injury with no other employment  
3 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that  
4 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable  
5 to Oregon residents and that are published annually in the Federal Register by the United States  
6 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended  
7 by the parties at the time of initial hire.

8 “(b) A gainful occupation for workers with a date of injury on or after January 1, 2006, who  
9 were:

10 “(A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides  
11 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three  
12 that are applicable to Oregon residents and that are published annually in the Federal Register by  
13 the United States Department of Health and Human Services or 66-2/3 percent of the worker’s av-  
14 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by  
15 the percentage of change in the applicable federal poverty guidelines for a family of three from the  
16 date of injury to the date of evaluation of the extent of the worker’s disability.

17 “(B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-  
18 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly  
19 wages that are the lesser of the most recent federal poverty guidelines for a family of three that  
20 are applicable to Oregon residents and that are published annually in the Federal Register by the  
21 United States Department of Health and Human Services or 66-2/3 percent of the worker’s average  
22 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of  
23 actual employment, excluding any extended periods of unemployment and as adjusted by the per-  
24 centage of change in the applicable federal poverty guidelines for a family of three from the date  
25 of injury to the date of evaluation of the extent of the worker’s disability.

26 “(C) Employed for less than four weeks prior to the date of injury with no other employment  
27 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that  
28 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable  
29 to Oregon residents and that are published annually in the Federal Register by the United States  
30 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended  
31 by the parties at the time of initial hire adjusted by the percentage of change in the applicable  
32 federal poverty guidelines for a family of three from the date of injury to the date of evaluation of  
33 the extent of the worker’s disability.”.

34 Delete lines 44 and 45.

35 On page 4, delete lines 1 through 9.

36 In line 10, delete “(c)” and insert “(b)” and after “improved” insert “medically” and after  
37 “worker’s” insert “medical”.

38 After line 11, insert:

39 “(c) ‘Materially improved vocationally’ means an actual change for the better in the:

40 “(A) Worker’s vocational capability; or

41 “(B) Likelihood that the worker can return to work in a gainful and suitable occupation.”.

42 On page 5, line 3, delete “656.268,” and insert “656.268 (5), if a worker objects to a notice of  
43 closure issued under this subsection, the worker must request a hearing.”.

44 In line 7, before the period insert “or until another order that terminates the worker’s benefits  
45 becomes final”.

1 In line 19, delete “on reconsideration or”.

2 Delete lines 20 through 24 and insert:

3 “(c) Medical examinations or vocational evaluations used to support the issuance of a notice of  
4 closure under this subsection must include at least one report in which the author personally ob-  
5 served the worker.”.

6 In line 30, after the comma insert “if a worker has enrolled in and is actively engaged in a  
7 training program,”.

8 In line 31, after “ends” insert “or the worker ceases to be enrolled and actively engaged in the  
9 training program”.

10 On page 6, after line 9, insert:

11 “(11) For purposes of this section:

12 “(a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

13 “(A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides  
14 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three  
15 that are applicable to Oregon residents and that are published annually in the Federal Register by  
16 the United States Department of Health and Human Services or 66-2/3 percent of the worker’s av-  
17 erage weekly wages from all employment for the 52 weeks prior to the date of injury.

18 “(B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-  
19 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly  
20 wages that are the lesser of the most recent federal poverty guidelines for a family of three that  
21 are applicable to Oregon residents and that are published annually in the Federal Register by the  
22 United States Department of Health and Human Services or 66-2/3 percent of the worker’s average  
23 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of  
24 actual employment, excluding any extended periods of unemployment.

25 “(C) Employed for less than four weeks prior to the date of injury with no other employment  
26 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that  
27 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable  
28 to Oregon residents and that are published annually in the Federal Register by the United States  
29 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended  
30 by the parties at the time of initial hire.

31 “(b) A gainful occupation for workers with a date of injury on or after January 1, 2006, who  
32 were:

33 “(A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides  
34 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three  
35 that are applicable to Oregon residents and that are published annually in the Federal Register by  
36 the United States Department of Health and Human Services or 66-2/3 percent of the worker’s av-  
37 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by  
38 the percentage of change in the applicable federal poverty guidelines for a family of three from the  
39 date of injury to the date of evaluation of the extent of the worker’s disability.

40 “(B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-  
41 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly  
42 wages that are the lesser of the most recent federal poverty guidelines for a family of three that  
43 are applicable to Oregon residents and that are published annually in the Federal Register by the  
44 United States Department of Health and Human Services or 66-2/3 percent of the worker’s average  
45 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of

1 actual employment, excluding any extended periods of unemployment and as adjusted by the per-  
2 centage of change in the applicable federal poverty guidelines for a family of three from the date  
3 of injury to the date of evaluation of the extent of the worker's disability.

4 "(C) Employed for less than four weeks prior to the date of injury with no other employment  
5 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that  
6 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable  
7 to Oregon residents and that are published annually in the Federal Register by the United States  
8 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended  
9 by the parties at the time of initial hire adjusted by the percentage of change in the applicable  
10 federal poverty guidelines for a family of three from the date of injury to the date of evaluation of  
11 the extent of the worker's disability."

12 On page 17, delete lines 27 through 29 and insert:

13 "**SECTION 6.** ORS 656.319 is amended to read:

14 "656.319. (1) With respect to objection by a claimant to denial of a claim for compensation under  
15 ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

16 "(a) A request for hearing is filed not later than the 60th day after the mailing of the denial to  
17 the claimant; or

18 "(b) The request is filed not later than the 180th day after mailing of the denial and the claimant  
19 establishes at a hearing that there was good cause for failure to file the request by the 60th day  
20 after mailing of the denial.

21 "(2) Notwithstanding subsection (1) of this section, a hearing shall be granted even if a request  
22 therefor is filed after the time specified in subsection (1) of this section if the claimant can show  
23 lack of mental competency to file the request within that time. The period for filing under this  
24 subsection shall not be extended more than five years by lack of mental competency, nor shall it  
25 extend in any case longer than one year after the claimant regains mental competency.

26 "(3) With respect to subsection (2) of this section, lack of mental competency shall apply only  
27 to an individual suffering from such mental disorder, mental illness or nervous disorder as is re-  
28 quired for commitment or voluntary admission to a treatment facility pursuant to ORS 426.005 to  
29 426.223 and 426.241 to 426.380 and the rules of the Department of Human Services.

30 "(4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such  
31 objections shall not be granted unless a request for hearing is filed within 30 days after the copies  
32 of the reconsideration order were mailed to the parties.

33 "(5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS  
34 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within  
35 60 days after copies of the notice of refusal to close were mailed to the parties.

36 "(6) A hearing for failure to process or an allegation that the claim was processed incorrectly  
37 shall not be granted unless the request for hearing is filed within two years after the alleged action  
38 or inaction occurred.

39 "**(7) With respect to objection by a claimant to a notice of closure issued under ORS**  
40 **656.206, a hearing on the objection shall not be granted unless the request for hearing is filed**  
41 **within 60 days after the notice of closure was mailed to the claimant.**

42 "**SECTION 7. The amendments to ORS 656.206, 656.268, 656.319 and 656.605 by sections 1**  
43 **to 6 of this 2005 Act apply to all claims for which a notice of closure is issued under ORS**  
44 **656.206 or 656.268 on or after the effective date of this 2005 Act."**