

# Senate Bill 143

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation for Oregon Self-Insurers Association)

## 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**.

Establishes Self-Insurer Security Fund for certain employers subject to workers' compensation laws. Requires self-insured employers to become members of fund. Instructs Director of Department of Consumer and Business Services to adopt rules related to fund and alternative security deposit system. Requires fund to adopt certain bylaws and to set assessment for members. Requires fund to make annual report to director and members of fund. Imposes penalties for certain violations.

## A BILL FOR AN ACT

1  
2 Relating to self-insurance of workers' compensation obligations; creating new provisions; and  
3 amending ORS 656.018 and 656.704.

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

5 **SECTION 1. Sections 2 to 11 of this 2015 Act are added to and made a part of ORS**  
6 **chapter 656.**

7 **SECTION 2. As used in sections 2 to 11 of this 2015 Act:**

8 (1) **"Board member" means a member of the board of trustees of the Self-Insurer Secu-**  
9 **urity Fund established under section 3 of this 2015 Act.**

10 (2) **"Composite deposit" means an alternative security deposit system under which all**  
11 **eligible self-insured employers collectively secure, in whole or in part, aggregate self-insured**  
12 **workers' compensation liabilities through the Self-Insurer Security Fund.**

13 (3)(a) **"Member" means any private self-insured employer that participates in the Self-**  
14 **Insurer Security Fund.**

15 (b) **"Member" does not include self-insured employer groups and public entities.**

16 (4)(a) **"Self-insured employer" means, for purposes of sections 2 to 11 of this 2015 Act,**  
17 **an employer certified under ORS 656.430 as meeting the qualifications set out by ORS 656.407.**

18 (b) **"Self-insured employer" does not include self-insured employer groups and public en-**  
19 **tities.**

20 (5) **"Self-insured employer in default" means a self-insured employer that has failed to**  
21 **pay compensation or other payments due to the Director of the Department of Consumer**  
22 **and Business Services and whose liabilities have been turned over to the Self-Insurer Secu-**  
23 **urity Fund by the director.**

24 **SECTION 3. (1) There is established the Self-Insurer Security Fund, in the form of a**  
25 **nonprofit mutual benefit corporation. Each self-insured employer shall become and remain**  
26 **a member of the fund as a condition of the self-insured employer remaining certified under**  
27 **ORS 656.430, except as provided by administrative rule. Self-insured employers in default**  
28 **shall forfeit their membership in the fund.**

**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       (2) The fund shall be governed by a board of trustees. The board of trustees shall consist  
2 of an odd number of board members elected by the members of the fund, subject to the ap-  
3 proval of the Director of the Department of Consumer and Business Services. Board mem-  
4 bers shall be employees of self-insured employers. Employees of self-insured employers in  
5 default may not serve on the board of trustees and shall forfeit their status of trustee upon  
6 the default of their employer.

7       (3)(a) The fund shall adopt bylaws necessary to effectuate the purposes of this section,  
8 to carry out the responsibilities of the fund under this chapter, including, but not limited to,  
9 any obligations imposed by the director pursuant to ORS 656.403, 656.407 and 656.430, and to  
10 provide for governance of the fund. The fund and self-insured employers that are members  
11 of the fund are not obligated to pay any amounts or assessments to the Self-Insured Em-  
12 ployer Adjustment Reserve established under ORS 656.614.

13       (b) The fund may carry out its responsibilities directly or by contract and may purchase  
14 services and insurance and borrow funds as the fund deems necessary for the protection of  
15 the board members and employees of the fund.

16       (4) The fund may receive confidential information concerning the financial condition of  
17 self-insured employers whose liabilities to pay compensation may devolve upon the fund and  
18 shall adopt bylaws to prevent dissemination of that information.

19       **SECTION 4.** (1) A self-insured employer shall secure the incurred workers' compensation  
20 liabilities of the self-insured employer at all times, either in the manner required by ORS  
21 656.407 or through the alternative security deposit system. Upon the sending by the Director  
22 of the Department of Consumer and Business Services of a request to renew, request to post,  
23 or request to increase, a security deposit, a perfected security interest is created in the  
24 private self-insured employer's assets in favor of the Self-Insurer Security Fund to the ex-  
25 tent of any then unsecured portion of the self-insured employer's incurred liabilities. That  
26 perfected security interest is transferred to any cash or securities thereafter posted by the  
27 private self-insured employer with the director and is released only upon the acceptance by  
28 the director of a surety bond or irrevocable letter of credit for the full amount of the in-  
29 curred liabilities for the payment of compensation.

30       (2) Employers that have ceased to be self-insured employers shall discharge their con-  
31 tinuing obligations to secure the payment of workers' compensation benefits that accrued  
32 during the period of self-insurance and shall comply with the following obligations of current  
33 certificate of self-insurance holders:

34       (a) Filing annual reports as required by the director to carry out the requirements of this  
35 chapter.

36       (b) Depositing and maintaining a security deposit for accrued liability for payment of any  
37 workers' compensation benefits that may become due, pursuant ORS 656.430.

38       (c) Paying within 30 days of notice all assessments due to the fund.

39       **SECTION 5.** (1)(a) As an alternative to each self-insured employer securing its incurred  
40 liabilities as provided in ORS 656.407, the Director of the Department of Consumer and  
41 Business Services shall adopt by rule an alternative security deposit system whereby all  
42 self-insured employers designated for participation by the director shall collectively secure  
43 their aggregate incurred liabilities through the Self-Insurer Security Fund.

44       (b) The rules adopted under this subsection shall require the director to set a total se-  
45 curity requirement for participating self-insured employers based on a review of the partic-

1 ipating self-insured employers' annual reports and any other information required by the  
2 director.

3 (c) The fund shall annually submit to the director a proposed written plan describing a  
4 proposed composite deposit, which may consist of a combination of cash and securities,  
5 surety bonds, irrevocable letters of credit, insurance or other financial instruments or  
6 guarantees sufficient to meet the security requirement set by the director. The director may  
7 object to the proposed plan within 30 days of its submission and shall outline in writing the  
8 basis of objection. The fund and the director shall thereafter jointly develop a final plan ac-  
9 ceptable to the director and the fund. If a final plan is not approved, each self-insured em-  
10 ployer shall secure its incurred liabilities in the manner required by ORS 656.407 within 60  
11 days of written notice that a final plan was not approved.

12 (d) Self-insured employers not designated by the director for participation in the com-  
13 posite deposit shall meet all requirements as established by the director and by the fund.

14 (2) In order to provide the composite deposit approved by the director, the fund shall  
15 assess each participating self-insured employer a deposit assessment payable within 30 days  
16 of assessment. The amount of the deposit assessment charged to each participating self- in-  
17 sured employer shall be set by the fund. The deposit assessment for participation in the  
18 composite deposit shall be in addition to other assessments made by the fund pursuant to  
19 section 9 of this 2015 Act.

20 (3) In order to make a composite deposit proposal to the director and to set the deposit  
21 assessment to be required of each participating self-insured employer, the fund shall have  
22 access to the annual financial reports and all other information submitted by all self-insured  
23 employers to the director. The director shall adopt rules that specify the conditions for ac-  
24 cess by the fund to the information specified in this subsection. The rules adopted under this  
25 subsection shall preserve the confidentiality of the self-insured employers' financial infor-  
26 mation.

27 (4)(a) Upon payment of the deposit assessment required under subsection (2) of this sec-  
28 tion, the self-insured employer paying the assessment loses all right to, title to and interest  
29 in the deposit assessment. Nothing in this section confers a property interest in the com-  
30 posite deposit upon any self-insured employer.

31 (b) To the extent that in any one year the deposit assessment paid by self-insured em-  
32 ployers is not depleted in the purchase of securities, surety bonds, irrevocable letters of  
33 credit, insurance or other financial instruments or guarantees, the surplus shall remain as  
34 part of the composite deposit in subsequent years and may be used to fund existing or future  
35 claims liabilities for any self-insured employer in default, regardless of whether the self-  
36 insured employer in default participates in the composite deposit.

37 (c) If in any one year the fund fails to post the required composite deposit by the date  
38 required by the director, or if the director rejects the proposed composite deposit, and the  
39 director requires each self-insured employer to secure the incurred liabilities of the self-  
40 insured employer in the manner required by ORS 656.407, the deposit assessment paid in that  
41 year shall be refunded, upon the posting of sufficient individual collateral by the self-insured  
42 employer, to the self-insured employer that paid the deposit assessment.

43 (5)(a) If a self-insured employer objects to the calculation, posting or any other aspect  
44 of the deposit assessment required by subsection (2) of this section, upon payment of the  
45 deposit assessment in the time provided, the self-insured employer may appeal the deposit

1 assessment to the director, who shall have exclusive jurisdiction over the dispute.

2 (b) If a self-insured employer fails to pay the deposit assessment in the time provided,  
3 the director:

4 (A) Shall order the self-insured employer to pay a civil penalty under ORS 656.745 of not  
5 less than 10 percent of the deposit assessment and to post a separate security deposit in the  
6 manner provided by ORS 656.407. The civil penalty shall be paid to the director, who shall  
7 transfer it to the fund.

8 (B) May revoke the certificate of self-insurance of the self-insured employer as provided  
9 by ORS 656.434 and 656.440.

10 (6)(a) The composite deposit, and all deposit assessments, shall be held by the fund. The  
11 director shall determine when a self-insured employer has failed to pay workers' compen-  
12 sation benefits as required by this chapter and order the fund to commence payment. Upon  
13 such an order, the fund may use the composite deposit, or any part of the composite deposit,  
14 to fund the benefit payments and costs of administration for the self-insured employer in  
15 default.

16 (b) The fund may hold and invest in federally regulated financial instruments the cash  
17 portion of the composite deposit as prescribed by rule and may draw upon it to pay claims  
18 of self-insured employers that fail to pay the deposit assessment, purchase federally regu-  
19 lated financial instruments, pay reasonable administrative expenses of the fund or establish  
20 a cash reserve or for other purposes authorized by the director by rule.

21 (7)(a) The fund shall set minimum credit, financial or other conditions that a self-insured  
22 employer must meet in order to participate in the alternative security deposit system.

23 (b) The fund, in its sole discretion, may exclude a self-insured employer from participat-  
24 ing in the alternative security deposit system for credit or financial reasons. In the event a  
25 self-insured employer is excluded from participation, within 30 days of receipt of notice of  
26 exclusion the nonparticipating self-insured employer shall post a separate security deposit  
27 as set by the director in the manner provided by ORS 656.407. A self-insured employer ex-  
28 cluded by the fund from participating in the alternative security deposit system may appeal  
29 that decision to the director, who shall have exclusive jurisdiction over the dispute.

30 (8) A self-insured employer that fails to submit reports or information as required by the  
31 director to implement the purposes of sections 2 to 11 of this 2015 Act is subject to the as-  
32 sessment of a civil penalty under ORS 656.745. The civil penalty shall be paid to the director  
33 who shall transfer it to the fund.

34 **SECTION 6.** (1)(a) If the Director of the Department of Consumer and Business Services  
35 determines that a self-insured employer, including an employer that is no longer self-insured,  
36 has failed to comply with section 5 of this 2015 Act or has violated sections 2 to 11 of this  
37 2015 Act, the director may enter an order against the self-insured employer directing com-  
38 pliance and restitution for any losses and imposing a civil penalty under ORS 656.745. The  
39 civil penalty shall be paid to the director who shall transfer it to the Self-Insurer Security  
40 Fund.

41 (b) Penalties assessed under paragraph (a) of this subsection may not exceed:

42 (A) For a failure to file a complete or timely annual report, the lesser of an amount up  
43 to five percent of the incurred liabilities reported in the last report or \$1,500 for each 30-day  
44 period or portion thereof during which there is a failure to file a complete or timely report.

45 (B) If the failure to file a complete or timely annual report was malicious, fraudulent, the

1 result of bad faith or a repeated violation, twice the amounts assessed under section 5 (8)  
2 of this 2015 Act.

3 (C) For a failure to timely or completely pay a deposit assessment required under section  
4 5 of this 2015 Act, the lesser of an amount up to the total deposit assessment or \$2,500 for  
5 each 30-day period or portion thereof during which there is a failure to pay the total deposit  
6 assessment.

7 (c) Penalties imposed under this section are in addition to remedies and penalties other-  
8 wise provided for in this chapter for the failure to secure the payment of workers' compen-  
9 sation benefits.

10 (2) A self-insured employer may deposit and maintain a security deposit or pay a deposit  
11 assessment, while reserving the right of the self-insured employer to challenge the amount  
12 of the deposit assessment or liability for the deposit assessment at a hearing as provided for  
13 in ORS 656.740. If the director or a court, upon appeal, concludes that the amount assessed  
14 was excessive or that the self-insured employer is not liable for the deposit assessment, the  
15 director may waive, release, compromise or order the refund of amounts that had been paid  
16 or deposited by the self-insured employer.

17 **SECTION 7.** (1) Upon order of the Director of the Department of Consumer and Business  
18 Services, the Self-Insurer Security Fund shall assume the Oregon workers' compensation  
19 claims of subject workers and their beneficiaries resulting from injuries while employed by  
20 a self-insured employer in default, including existing workers' compensation obligations of  
21 any self-insured employer that became insolvent prior to the establishment of the fund. If  
22 the director determines that the payment of benefits and claims administration shall be  
23 made through the fund, the fund shall commence timely payment of the Oregon workers'  
24 compensation obligations upon notification from the director. The fund is subject to the rules  
25 of the director with respect to such claims. The fund shall have no responsibility for self-  
26 insured employer groups and public entities.

27 (2) Upon the assumption of obligations by the fund pursuant to an order issued by the  
28 director, the fund shall have a right to immediate possession of any posted security, and the  
29 custodian, surety or issuer of any irrevocable letter of credit and the director shall convey  
30 to the fund the security and the interest that has accrued since the date of the self-insured  
31 employer's default. The fund may also liquidate part or all of the composite deposit.

32 (3) The director shall advise the fund promptly after receipt of information indicating  
33 that a self-insured employer may be unable to meet its compensation obligations. The direc-  
34 tor shall also advise the fund of all determinations and directives made or issued pursuant  
35 to this section.

36 (4) Any decision by the director or the fund may be contested in the manner provided for  
37 in ORS 656.704.

38 (5) Nothing in sections 2 to 11 of this 2015 Act abrogates the ability of a self-insured  
39 employer to insure against known or unknown claims arising out of the self-insurance pe-  
40 riod.

41 (6) Notwithstanding section 6 of this 2015 Act, the fund is not liable for the payment of  
42 any penalties assessed for any act or omission on the part of any person other than the fund,  
43 including, but not limited to, the penalties provided in ORS 656.382, 656.745, 656.750 or 656.990.

44 (7) The fund shall be a party in interest in all proceedings involving workers' compen-  
45 sation claims against a self-insured employer in default whose workers' compensation obli-

1 gations have been paid or assumed by the fund. The fund may:

2 (a) Investigate, process, accept or deny claims.

3 (b) Receive notice of, adjust, compromise, settle and pay claims.

4 (c) Appear in any proceeding related to a claim, defend claims and appeal claims.

5 **SECTION 8.** (1) The Self-Insurer Security Fund may bring an action to obtain re-  
6 imbursement from a self-insured employer in default of amounts up to the amount of the  
7 self-insured employer's workers' compensation obligations and legal costs.

8 (2) The fund shall obtain, from the security deposit of a self-insured employer in default,  
9 the amount of the self-insured employer's workers' compensation obligations, including rea-  
10 sonable administrative and legal costs, paid or assumed by the fund. The fund shall be a  
11 party in interest in any action to obtain the security deposit for the payment of workers'  
12 compensation obligations of a self-insured employer in default.

13 (3) The fund may bring an action against any person, including, but not limited to, an  
14 excess insurance carrier of the self-insured employer and a person whose negligence or  
15 breach of an obligation contributed to an underestimation of the self-insured employer's total  
16 accrued liability, as reported to the Director of the Department of Consumer and Business  
17 Services, to recover compensation paid and liability assumed by the fund.

18 (4) The fund may be a party in interest in an action brought by a person seeking damages  
19 resulting from the failure of a self-insured employer in default to pay workers' compensation  
20 benefits required under this chapter.

21 (5) The fund shall have the same preference over the other debts of the principal or the  
22 principal's estate as is given by law to the person directly entitled to workers' compensation  
23 benefits.

24 (6) The liability of the fund for a claim brought under this chapter and under the federal  
25 Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., to pay for  
26 shortfalls in a security deposit is limited to the amount of claim liability owing the claimant  
27 under this chapter offset by the amount of any claim liability owing under the Longshore and  
28 Harbor Workers' Compensation Act.

29 (7) The self-insured employer in default loses all right to, title to and interest in, and any  
30 right to control, all assets or obligations posted or left on deposit as security. The director  
31 may liquidate the deposit as provided in ORS 656.443 and apply it to the self-insured employer  
32 in default's incurred liabilities either directly or through the fund.

33 (8) The fund shall assume only the workers' compensation claims of Oregon subject  
34 workers and their beneficiaries.

35 **SECTION 9.** (1) The Self-Insurer Security Fund may assess each self-insured employer  
36 amounts necessary to carry out the purposes of sections 2 to 11 of this 2015 Act. Moneys  
37 obtained by such assessments and moneys and other assets held by the fund may be used  
38 only for the purposes of sections 2 to 11 of this 2015 Act.

39 (2) The failure of a self-insured employer to timely pay assessments shall be good cause  
40 for the Director of the Department of Consumer and Business Services to revoke the certi-  
41 fication of self-insurance as provided by ORS 656.434 and 656.440.

42 (3) The fund shall certify to the director the receipt, collection and delinquencies in  
43 payment of all moneys from assessments and penalties payable to the fund. The fund shall  
44 take any action deemed appropriate by the fund to collect delinquent assessments and pen-  
45 alties.

1 (4) In the event the fund is unable to pay benefits when due as a result of inadequate  
 2 funding, the director may require the fund to make such additional assessments to its  
 3 member that are necessary to ensure the adequate, ongoing funding of the benefits. Alter-  
 4 natively, the director may, in the director's discretion, order that an outside conservator or  
 5 liquidator be appointed to manage the financial affairs of the fund and return the fund to full  
 6 solvency or to liquidate the fund's liabilities. In the event that the fund's liabilities are liq-  
 7 uidated, the members may, as part of the liquidation, be assessed such amounts that are  
 8 necessary to discharge the liabilities of the fund, in amounts proportionate to the members'  
 9 respective required security deposit amounts at the time of liquidation. To secure the pay-  
 10 ment and performance of the obligations of the fund to injured workers under this chapter,  
 11 the director shall have a perfected security interest in all of the assets of the fund, wherever  
 12 located. The security interest granted to the director shall be subordinate only to security  
 13 interests granted by the fund, after notice to the director, in connection with borrowing by  
 14 the fund. The director shall have all of the remedies available to a secured creditor in the  
 15 event the fund is liquidated. The director shall promulgate rules to address the conservation  
 16 or liquidation of the fund.

17 **SECTION 10.** (1) The Self-Insurer Security Fund shall annually contract for an inde-  
 18 pendent certified audit of the financial activities of the fund. An annual report on the fi-  
 19 nancial status of the fund as of June 30 of each year shall be submitted to the Director of  
 20 the Department of Consumer and Business Services and to each member of the fund by De-  
 21 cember 1 of each year. The director may require by rule semiannual or quarterly perform-  
 22 ance audits of the fund balance and investment performance.

23 (2) Except for taxes levied on real or personal property, the fund is exempt from payment  
 24 of all fees and taxes levied by this state or by any city, county, district or other political  
 25 subdivision of this state.

26 (3) If a self-insured employer in default fails to timely report a claim under this chapter  
 27 to an excess insurer, and the excess insurer refuses to make payments based on that failure,  
 28 the fund is not barred by that failure from pursuing payments from the excess insurer. The  
 29 fund may, within 60 days after the date the director orders the fund to assume the Oregon  
 30 workers' compensation claims of the self-insured employer in default, report any claim under  
 31 this chapter to an excess insurer, and the excess insurer may not refuse to make payments  
 32 to the fund based upon nontimely reporting of such a claim.

33 **SECTION 11.** (1) If a self-insured employer in default is a party to a pending proceeding  
 34 under this chapter, the proceeding shall be stayed for 60 days after the date the Director of  
 35 the Department of Consumer and Business Services orders the fund to assume the Oregon  
 36 workers' compensation claims of the self-insured employer in default.

37 (2) If any claim under this chapter arises from a judgment based on the default of the  
 38 self-insured employer in default or the failure of the self-insured employer in default to de-  
 39 fend the claim, the fund may apply to have the judgment set aside and shall be permitted to  
 40 defend against the claim on its merits.

41 (3) If a self-insured employer in default fails to timely report a claim under this chapter  
 42 to an excess insurer, and the excess insurer refuses to make payments based on that failure,  
 43 the fund is not barred by that failure from pursuing payments from the excess insurer. The  
 44 fund may, within 60 days after the date the director orders the fund to assume the Oregon  
 45 workers' compensation claims of the self-insured employer in default, report any claim under

1 **this chapter to an excess insurer, and the excess insurer may not refuse to make payments**  
2 **to the fund based upon nontimely reporting of such a claim.**

3 **SECTION 12.** ORS 656.704 is amended to read:

4 656.704. (1) Actions and orders of the Director of the Department of Consumer and Business  
5 Services regarding matters concerning a claim under this chapter, and administrative and judicial  
6 review of those matters, are subject to the procedural provisions of this chapter and such procedural  
7 rules as the Workers' Compensation Board may prescribe.

8 (2)(a) A party dissatisfied with an action or order, **including actions by the Self-Insurer Se-**  
9 **curity Fund**, regarding a matter other than a matter concerning a claim under this chapter may  
10 request a hearing on the matter in writing to the director. The director shall refer the request for  
11 hearing to the Workers' Compensation Board for a hearing before an Administrative Law Judge.  
12 Review of an order issued by the Administrative Law Judge shall be by the director and the director  
13 shall issue a final order that is subject to judicial review as provided by ORS 183.480 to 183.497.

14 (b) The director shall prescribe the classes of orders issued under this subsection by Adminis-  
15 trative Law Judges and other personnel that are final, appealable orders and those orders that are  
16 preliminary orders subject to revision by the director.

17 (3)(a) For the purpose of determining the respective authority of the director and the board to  
18 conduct hearings, investigations and other proceedings under this chapter, and for determining the  
19 procedure for the conduct and review thereof, matters concerning a claim under this chapter are  
20 those matters in which a worker's right to receive compensation, or the amount thereof, are directly  
21 in issue. However, subject to paragraph (b) of this subsection, such matters do not include any dis-  
22 putes arising under ORS 656.245, 656.247, 656.248, 656.260 or 656.327, any other provisions directly  
23 relating to the provision of medical services to workers or any disputes arising under ORS 656.340  
24 except as those provisions may otherwise provide.

25 (b) The respective authority of the board and the director to resolve medical service disputes  
26 shall be determined according to the following principles:

27 (A) Any dispute that requires a determination of the compensability of the medical condition for  
28 which medical services are proposed is a matter concerning a claim.

29 (B) Any dispute that requires a determination of whether medical services are excessive, inap-  
30 propriate, ineffectual or in violation of the rules regarding the performance of medical services, or  
31 a determination of whether medical services for an accepted condition qualify as compensable med-  
32 ical services among those listed in ORS 656.245 (1)(c), is not a matter concerning a claim.

33 (C) Any dispute that requires a determination of whether a sufficient causal relationship exists  
34 between medical services and an accepted claim to establish compensability is a matter concerning  
35 a claim.

36 (c) Notwithstanding ORS 656.283 (3), if parties to a hearing scheduled before an Administrative  
37 Law Judge are involved in a dispute regarding both matters concerning a claim and matters not  
38 concerning a claim, the Administrative Law Judge may defer any action on the matter concerning  
39 a claim until the director has completed an administrative review of the matters other than those  
40 concerning a claim. The director shall mail a copy of the administrative order to the parties and to  
41 the Administrative Law Judge. A party may request a hearing on the order of the director. At the  
42 request of a party or by the own motion of the Administrative Law Judge, the hearings on the  
43 separate matters may be consolidated. The Administrative Law Judge shall issue an order for those  
44 matters concerning a claim and a separate order for matters other than those concerning a claim.

45 (4) Hearings under ORS 656.740 shall be conducted by an Administrative Law Judge from the



1 board's Hearings Division.

2 (5) If a request for hearing or administrative review is filed with either the director or the board  
3 and it is determined that the request should have been filed with the other, the dispute shall be  
4 transferred. Filing a request will be timely filed if the original filing was completed within the pre-  
5 scribed time.

6 **SECTION 13.** ORS 656.018 is amended to read:

7 656.018. (1)(a) The liability of every employer who satisfies the duty required by ORS 656.017 (1)  
8 is exclusive and in place of all other liability arising out of injuries, diseases, symptom complexes  
9 or similar conditions arising out of and in the course of employment that are sustained by subject  
10 workers, the workers' beneficiaries and anyone otherwise entitled to recover damages from the em-  
11 ployer on account of such conditions or claims resulting therefrom, specifically including claims for  
12 contribution or indemnity asserted by third persons from whom damages are sought on account of  
13 such conditions, except as specifically provided otherwise in this chapter.

14 (b) This subsection shall not apply to claims for indemnity or contribution asserted by a rail-  
15 road, as defined in ORS 824.020, or by a corporation, individual or association of individuals which  
16 is subject to regulation pursuant to ORS chapter 757 or 759.

17 (c) Except as provided in paragraph (b) of this subsection, all agreements or warranties contrary  
18 to the provisions of paragraph (a) of this subsection entered into after July 19, 1977, are void.

19 (2) The rights given to a subject worker and the beneficiaries of the subject worker under this  
20 chapter for injuries, diseases, symptom complexes or similar conditions arising out of and in the  
21 course of employment are in lieu of any remedies they might otherwise have for such injuries, dis-  
22 eases, symptom complexes or similar conditions against the worker's employer under ORS 654.305  
23 to 654.336 or other laws, common law or statute, except to the extent the worker is expressly given  
24 the right under this chapter to bring suit against the employer of the worker for an injury, disease,  
25 symptom complex or similar condition.

26 (3) The exemption from liability given an employer under this section is also extended to the  
27 employer's insurer, the self-insured employer's claims administrator, the Department of Consumer  
28 and Business Services, **the Self-Insurer Security Fund, members of the Self-Insurer Security**  
29 **Fund, the Self-Insurer Security Fund's claims administrator**, and to the contracted agents,  
30 employees, partners, limited liability company members, general partners, limited liability partners,  
31 limited partners, officers and directors of the employer, the employer's insurer, the self-insured  
32 employer's claims administrator, [and] the department **and the Self-Insurer Security Fund**, except  
33 that the exemption from liability shall not apply:

34 (a) If the willful and unprovoked aggression by a person otherwise exempt under this subsection  
35 is a substantial factor in causing the injury, disease, symptom complex or similar condition;

36 (b) If the worker and the person otherwise exempt under this subsection are not engaged in the  
37 furtherance of a common enterprise or the accomplishment of the same or related objectives;

38 (c) If the failure of the employer to comply with a notice posted pursuant to ORS 654.082 is a  
39 substantial factor in causing the injury, disease, symptom complex or similar condition; or

40 (d) If the negligence of a person otherwise exempt under this subsection is a substantial factor  
41 in causing the injury, disease, symptom complex or similar condition and the negligence occurs  
42 outside of the capacity that qualifies the person for exemption under this section.

43 (4) The exemption from liability given an employer under this section applies to a worker leasing  
44 company and the client to whom workers are provided when the worker leasing company and the  
45 client comply with ORS 656.850 (3).

1 (5)(a) The exemption from liability given an employer under this section applies to a temporary  
2 service provider, as that term is used in ORS 656.850, and also extends to the client to whom  
3 workers are provided when the temporary service provider complies with ORS 656.017.

4 (b) The exemption from liability given a client under paragraph (a) of this subsection is also  
5 extended to the client's insurer, the self-insured client's claims administrator, the department, and  
6 the contracted agents, employees, officers and directors of the client, the client's insurer, the self-  
7 insured client's claims administrator and the department, except that the exemption from liability  
8 shall not apply:

9 (A) If the willful and unprovoked aggression by a person otherwise exempt under this subsection  
10 is a substantial factor in causing the injury, disease, symptom complex or similar condition;

11 (B) If the worker and the person otherwise exempt under this subsection are not engaged in the  
12 furtherance of a common enterprise or the accomplishment of the same or related objectives;

13 (C) If the failure of the client to comply with a notice posted pursuant to ORS 654.082 is a  
14 substantial factor in causing the injury, disease, symptom complex or similar condition; or

15 (D) If the negligence of a person otherwise exempt under this subsection is a substantial factor  
16 in causing the injury, disease, symptom complex or similar condition and the negligence occurs  
17 outside of the capacity that qualifies the person for exemption under this subsection.

18 (6) Nothing in this chapter shall prohibit payment, voluntarily or otherwise, to injured workers  
19 or their beneficiaries in excess of the compensation required to be paid under this chapter.

20 (7) The exclusive remedy provisions and limitation on liability provisions of this chapter apply  
21 to all injuries and to diseases, symptom complexes or similar conditions of subject workers arising  
22 out of and in the course of employment whether or not they are determined to be compensable under  
23 this chapter.

24