Senate Bill 1558

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Authorizes Director of Department of Consumer and Business Services to pay compensation due to workers of members of certain decertified self-insured employer groups and to set standards by rule for proof of financial viability of self-insured employer and for insurance coverage retention and combined net worth of members of self-insured employer group. Prohibits certain group members and board members of groups from serving as group administrator. Authorizes director to revoke certification of self-insured employer in default and for violation of rules. Authorizes director to take certain actions when self-insured employer group is in default, is decertified or cancels its certification. Modifies requirements for ending cash balance in Workers' Benefit Fund.

Requires each self-insured employer group to conduct vote on continuation of group and report results to director by April 15, 2014. Instructs Workers' Compensation Management-Labor Advisory Committee to conduct study about modification of ending balance requirement and report results to Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to self-insurance coverage for workers' compensation claims; creating new provisions; amending ORS 656.407, 656.430, 656.434, 656.443, 656.506 and 656.614; and declaring an emergency.

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

SECTION 1. (1) Notwithstanding ORS 656.605, if a self-insured employer group is decertified as of July 1, 2014, the Director of the Department of Consumer and Business Services may advance funds from the Workers' Benefit Fund to injured workers who have not received payment of compensation due after the common claims fund and securities deposited with the director are exhausted.

(2) Expenditures authorized under this section may exceed the amount of surety bonds and any other security on deposit with the director for the decertified self-insured employer group.

SECTION 2. Section 1 of this 2014 Act is added to and made a part of ORS chapter 656.

SECTION 3. ORS 656.407 is amended to read:

656.407. (1) An employer shall establish proof with the Director of the Department of Consumer and Business Services that the employer is qualified either:

(a) As a carrier-insured employer by causing proof of coverage provided by an insurer to be filed with the director; or

(b) As a self-insured employer by establishing proof that the employer has an adequate staff qualified to process claims promptly and has the financial ability to make certain the prompt payment of all compensation and other payments that may become due to the director under this chapter.

(2) Except as provided in subsection (3) of this section, a self-insured employer shall establish

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.

proof of financial ability by**:**

(a) Demonstrating acceptable financial viability based on information required by the director by rule; and

(b) Providing security that the director determines acceptable by rule. The security must be in an amount reasonably sufficient to insure payment of compensation and other payments that may become due to the director but not less than the employer's normal expected annual claim liabilities and in no event less than $100,000. In arriving at the amount of security required under this subsection, the director may take into consideration the financial ability of the employer to pay compensation and other payments and probable continuity of operation. The security shall be held by the director to secure the payment of compensation for injuries to subject workers of the employer and to secure other payments that may become due from the employer to the director under this chapter. Moneys received as security under this subsection shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The amount of security may be increased or decreased from time to time by the director.

(3)(a) A city, county or a qualified self-insured employer group that wishes to be exempt from subsection (2) of this section may make written application therefor to the director. The application shall include a copy of the most recent annual audit of the city, county or qualified self-insured employer group filed with the Secretary of State under ORS 297.405 to 297.740, information regarding the establishment of a loss reserve account for the payment of compensation to injured workers and such other information as the director may require. The director shall approve the application and the city, county or qualified self-insured employer group shall be exempt from subsection (2) of this section if the director finds that:

(A) The city, county or qualified self-insured employer group has been self-insured in compliance with subsection (2) of this section for more than three consecutive years prior to making the application referred to in this subsection.

(B) The city, county or qualified self-insured employer group has in effect a loss reserve account:

(i) That is actuarially sound and that is adequately funded as determined by an annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director pursuant to this chapter. A copy of the annual audit shall be filed with the director. Upon a finding that there is probable cause to believe that the loss reserve account is not actuarially sound, the director may require a city, county or qualified self-insured employer group to obtain an independent actuarial audit of the loss reserve account. The requirements of this subsection are in addition to and not in lieu of any other audit or reporting requirement otherwise prescribed by or pursuant to law.

(ii) That is dedicated to and may be expended only for the payment of compensation and amounts due the director by the city, county or qualified self-insured employer group under this chapter.

(b) The director shall have the first lien and priority right to the full amount of the loss reserve account required to pay the present discounted value of all present and future claims under this chapter.

(c) The city, county or qualified self-insured employer group shall notify the director no later than 60 days prior to any action to discontinue the loss reserve account. The city, county or qualified self-insured employer group shall advise the director of the plans of the city, county or qualified self-insured employer group to submit the security deposits required in subsection (2) of this section,

or obtain coverage as a carrier-insured employer prior to the date the loss reserve account ceases to exist. If the city, county or qualified self-insured employer group elects to discontinue self-insurance, it shall submit such security as the director may require to insure payment of all compensation and amounts due the director for the period the city, county or qualified self-insured employer group was self-insured.

(d) In order to requalify as a self-insured employer, the city, county or qualified self-insured employer group must deposit prior to discontinuance of the loss reserve account such security as is required by the director pursuant to subsection (2) of this section.

(e) Notwithstanding ORS 656.440, if prior to the date of discontinuance of the loss reserve account the director has not received the security deposits required in subsection (2) of this section, the certificate of self-insurance of the city, county or qualified self-insured employer group is automatically revoked as of that date.

(4) As used in this section, "qualified self-insured employer group" means a self-insured employer group that is a municipal corporation or a public corporation, as those terms are defined in ORS 297.405.

SECTION 4. ORS 656.430 is amended to read:

656.430. (1) Upon determining that an employer has qualified as a self-insured employer under ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a certificate to that effect to the employer.

(2) Coverage of a self-insured employer is effective on the date of certification unless a later date is specified in the certificate.

(3) Two or more entities shall not be included in the certification of one employer unless in each entity the same person, or group of persons, or corporation owns a majority interest. If an entity owns a majority interest in another entity which in turn owns the majority interest in another entity, all entities so related may be combined regardless of the number of entities in succession. If more than one entity is included in the certification of one employer, each entity included is jointly and severally liable for any compensation and other amounts due the Department of Consumer and Business Services under this chapter by any entity included in the certification.

(4) In the term "majority interest," as used in this section, "majority" means more than 50 percent.

(5) If an entity other than a partnership:

(a) Has issued voting stock, "majority interest" means a majority of the issued voting stock;

(b) Has not issued voting stock, "majority interest" means a majority of the members; or

(c) Has not issued voting stock and has no members, "majority interest" means a majority of the board of directors or comparable governing body.

(6) If the entity is a partnership, majority interest shall be determined in accordance with the participation of each general partner in the profits of the partnership.

(7)**(a)** Notwithstanding any other provision of this section, the director may certify five or more subject employers as a self-insured employer group, which shall be considered an employer for purposes of this chapter, if:

[*(a)*] **(A)** The director finds that the employers as a group meet the requirements of ORS 656.407 (1)(b) and (2);

[*(b)*] **(B)** The director determines that[*:*]

[*(A) If*] the employers as a group [*have*] **meet the** insurance coverage [*with a*] retention [*of $100,000 or more, the employers have a*] **and** combined net worth [*of $1 million or more; or*] **re-**

quirements adopted by the director by rule;

[*(B) If the employers as a group have insurance coverage with a retention of less than $100,000, the employers have a combined net worth at least equal to the proportion of $1 million that the retention bears to $100,000;*]

[*(c)*] **(C)** The director finds that the grouping is likely to improve accident prevention and claims handling for the employer;

[*(d)*] **(D)** Each employer executes and files with the designated entity a written agreement, in such form as the director may prescribe, in which:

[*(A)*] **(i)** The employer agrees to be jointly and severally liable for the payment of any compensation and other amounts due to the Department of Consumer and Business Services under this chapter incurred by a member of the group; or

[*(B)*] **(ii)** The employer, if a city, county, special district described and listed in ORS 198.010 or 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized under ORS 569.350 to 569.445, intergovernmental agency created under ORS 225.050, school district as defined in ORS 255.005 (9), public housing authority created under ORS chapter 456 or regional council of governments created under ORS chapter 190, agrees to be individually liable for the payment of any compensation and other amounts due to the department under this chapter incurred by the employer during the period of group self-insurance;

[*(e)*] **(E)** The director finds that the employer group is organized as a corporation or cooperative pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to 190.130 and the bylaws require the governing group to obtain fidelity bonds;

[*(f)*] **(F)** The director finds that the employer group has designated an entity [*within or for the group*] responsible for**:**

(i) Centralized claims processing **in accordance with paragraph (b) of this subsection**[,]**; and**

(ii) Payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require; and

[*(g)*] **(G)** The employer has presented a method approved by the director to notify the department of:

[*(A)*] **(i)** The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

[*(B)*] **(ii)** Whether an employer who terminates membership in the group continues to be a subject employer[.]**; and**

(b) Except for employer groups composed of cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190, a group administrator may not be a group member or a member of the board of the group.

(8) A self-insured employer must have excess insurance coverage appropriate for the employer's potential liability under this chapter with an insurer authorized to do business in this state. A self-insured employer certified prior to November 1, 1981, must have excess insurance coverage appropriate for the employer's potential liability under this chapter either with an insurer authorized to do business in this state or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be submitted at the time application is made for self-insured certification in the form of an insurance binder providing the appropriate coverage effective the date of certification. The policy providing

such coverage must be filed with the director not later than 30 days after the date the coverage is effective. Any changes in the insurer or the coverage must be filed with the department not later than 30 days after the effective date of the change. With respect to such coverage:

(a) The policy must include a provision, approved by the director, for reimbursement to the department of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the policy limitations on amounts and limits of liability to the insured employer; and

(b) The period of coverage must be continuous and remain in effect until the certification is revoked or canceled.

(9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured employer after giving 30 days' written notice if the employer:

(a) Fails to comply with subsection (8) of this section; [*or*]

(b) In the case of an employer described in subsection (7) of this section, fails to comply with that subsection[.]**; or**

(c) Fails to comply with rules adopted by the director as required by subsection (11) of this section.

(10) A self-insured employer must have an occupational safety and health loss control program as required by ORS 654.097.

(11) The director, by rule shall:

(a) Prescribe methods for determining and approving net worth.

(b) Prescribe the types and approve the retention and limitation levels of excess insurance policies.

(c) Establish reporting requirements.

(d) Prescribe information to be submitted in applications for self-insured employer certifications .

(e) Prescribe the form and manner of reporting commencement or termination in a self-insured employer group.

(f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

(g) Prescribe such other requirements as the director considers necessary so that employers certified as self-insured employers will meet the financial responsibilities under this chapter.

(12) For the purpose of certification as a self-insured employer group, cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005 [*(9)*], public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190 shall be considered by the director to be of the same industry.

(13) Notwithstanding subsection (8) of this section, a public utility with assets of more than $500 million may obtain excess insurance coverage from an eligible surplus lines insurer. As used in this subsection, "public utility" has the meaning given that term in ORS 757.005.

SECTION 5. ORS 656.434 is amended to read:

656.434. (1) A certification issued under ORS 656.430 remains in effect until:

(a) Revoked by the Director of the Department of Consumer and Business Services as provided by this section and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) The director may revoke the certification of a self-insured employer if:

(a) The employer fails to comply with ORS 656.407 or 656.430 **or is in default as described in**

ORS 656.443; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

(3) When the certification of a self-insured employer is revoked, or when an employer terminates in a self-insured employer group, that employer must immediately comply with ORS 656.017 (1). If the employer fails to so comply, notwithstanding ORS 656.052 (3), the director immediately may file suit in the circuit court of the county in which the employer resides or employs workers. Upon filing of such a suit, the court shall set a date for hearing and shall cause notice thereof to be served on the employer. The hearing shall be not less than five nor more than 15 days from the date of service of the notice. Upon commencement of the suit, the circuit court shall enjoin the employer from further employing workers until the employer complies with ORS 656.017 (1).

SECTION 6. ORS 656.443 is amended to read:

656.443. (1) If an employer **or self-insured employer group** defaults in payment of compensation or other payments due to the Director of the Department of Consumer and Business Services under this chapter, the director may, on notice to the employer **or self-insured employer group** and any insurer providing workers' compensation insurance coverage**,** [*or*] a surety bond **or other security** to [*such*] **the** employer **or self-insured employer group**, use money or interest and dividends on securities, sell securities or institute legal proceedings on any **insurance policy,** surety bond or [*insurance policy*] **other security** for which a notice of coverage has been filed with the director to the extent necessary to make such payments.

(2) Prior to any default by the employer **or self-insured employer group**, the employer **or group** is entitled to all interest and dividends on securities on deposit and to exercise all voting rights, stock options and other similar incidents of ownership of the securities.

(3) If for any reason the certification of a self-insured employer **or self-insured employer group** is canceled or terminated, the **surety bond or other** security deposited with the director shall remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer. The **surety bond or other** security shall be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the **surety bond or other** security, and to assure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. At the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the **surety bond or other** security deposited with the director a policy of paid-up insurance in a form approved by the director.

(4) If a self-insured employer group is in default, is decertified by the director or cancels its certification under ORS 656.434, the director may:

(a) Order members of the group to pay an assessment for the continuing claim liabilities as specified in ORS 656.430 (7)(a)(D)(i); and

(b) Determine the claims processing agent that shall process claims of the group. The claims processing agent may be the assigned claims agent selected under ORS 656.054.

(5) Member assessments collected under subsection (4) of this section shall be deposited in the Consumer and Business Services Fund created in ORS 705.145.

(6) Failure to pay an assessment ordered under subsection (4) of this section subjects members of the self-insured employer group to civil penalties as provided in ORS 656.745.

SECTION 7. ORS 656.506 is amended to read:

656.506. (1) As used in this section:

(a) "Employee" means a subject worker as defined in ORS 656.005 (28).

(b) "Employer" means a subject employer as defined in ORS 656.005 (27).

(2) Every employer shall retain from the moneys earned by all employees an amount determined by the Director of the Department of Consumer and Business Services for each hour or part of an hour the employee is employed and pay the money retained in the manner and at such intervals as the Director of the Department of Consumer and Business Services shall direct.

(3) In addition to all moneys retained under subsection (2) of this section, the director shall assess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The assessment shall be paid in such manner and at such intervals as the director may direct.

(4) Moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash balances, shall be deposited by the Department of Consumer and Business Services into the Workers' Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the needs of the Workers' Benefit Fund for the expenditures of the department in carrying out its functions and duties pursuant to subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630. Factors to be considered in making such adjustment of the assessments shall include, but not be limited to, the cash balance as determined by the director and estimated expenditures and revenues of the Workers' Benefit Fund.

(5) It is the intent of the Legislative Assembly that the department set rates for the collection of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period for which the rates shall be effective, the cash balance shall be an amount [*approximating 12*] **of not less than six** months of projected expenditures from the Workers' Benefit Fund in regard to its functions and duties under subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in a manner that minimizes the volatility of the rates assessed. The department may set the assessment rate at a higher level if the department determines that a higher rate is necessary to avoid unintentional program or benefit reductions in the time period immediately following the period for which the rate is being set.

(6) Every employer required to pay the assessments referred to in this section shall make and file a report of employee hours worked and amounts due under this section upon a combined report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue:

(a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

(7) There is established a Retroactive Program for the purpose of providing increased benefits to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries. However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Program for claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for computing benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable under this subsection shall be in such amount as the director considers appropriate. The director annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined by the director that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers shall be payable in the first instance by the insurer

or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Program benefits, such benefits shall be payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Workers' Benefit Fund by the director.

SECTION 8. ORS 656.614 is amended to read:

656.614. (1) The Self-Insured Employer Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve shall be established within the Consumer and Business Services Fund. These reserves shall be used to pay the claims of workers of self-insured employers **or of employers that are members of a self-insured employer group** when the Director of the Department of Consumer and Business Services finds that the worker cannot obtain payment from the employer **or self-insured employer group** responsible for payment of the claim because of insolvency**, default or decertification** of [*such*] **the** employer**, the self-insured employer group** or the excess insurer of the employer **or group**, and exhaustion of the excess insurance and security deposited to secure such payment.

(2) If at any time the director finds that the amount of moneys in the reserves is not sufficient to carry out the purposes stated in subsection (1) of this section, the director may impose and collect from self-insured employers **and self-insured employer groups** assessments sufficient to raise the amount of moneys in the reserves to the point where it can carry out such purposes. If at any time the director finds that there is a surplus in the reserves beyond an amount that can reasonably be anticipated as sufficient to carry out the purposes stated in subsection (1) of this section, the director may transfer the surplus to the Consumer and Business Services Fund and reduce the total amount of [*self-insured employer*] assessment by the amount so transferred.

(3) Notwithstanding the provisions of this section, the director may impose a differential assessment between the two employers adjustment reserves in order to collect sufficient moneys in the reserves as provided in subsection (2) of this section.

(4) Assessments imposed under this section shall be paid to the director in the manner and at such times as the director may direct.

(5) Assessments paid by self-insured employer groups shall be deposited in the Consumer and Business Services Fund in separate accounts for public employers that are members of a self-insured employer group and for private employers that are members of a self-insured employer group. Moneys deposited in each account may be used only to pay claims expenses of employees of each category of self-insured employer group.

[*(5)*] **(6)** Notwithstanding subsection (1) of this section, the director may use the reserves to assure timely payment of compensation pending payment from the excess insurance or security deposit. The director shall recover these costs from the excess insurance or the security deposit, up to their limits.

SECTION 9. No later than January 1, 2019, the Workers' Compensation Management-Labor Advisory Committee established under ORS 656.790 shall study the effects of the amendments to ORS 656.506 by section 7 of this 2014 Act and report to the Legislative Assembly the findings of the committee about the advisability of the continuation of the changes resulting from those amendments.

SECTION 10. (1) Every self-insured employer group shall conduct a vote of group members to determine if the group will continue functioning as a self-insured employer group or

will no longer continue functioning as a self-insured employer group after June 30, 2014.

(2) At the time the vote required under this section is conducted, the group administrator shall inform each member of the group that the result of a vote by a majority of the members of the group to cease functioning will require each member of the group to maintain workers' compensation insurance coverage as specified in ORS 656.017.

(3) Every self-insured employer group shall inform the Director of the Department of Consumer and Business Services of the result of the vote by April 15, 2014.

(4) Every self-insured employer group that is decertified by July 1, 2014, shall transfer the common claims fund and security deposited as required by ORS 656.407 for deposit in the Workers' Benefit Fund.

SECTION 11. Section 10 of this 2014 Act is repealed on December 1, 2014.

SECTION 12. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.