

House Bill 3146

Sponsored by COMMITTEE ON JUDICIARY (at the request of Representative Jennifer Williamson)

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**.

Changes statutory references to "inmate" to "adult in custody."

A BILL FOR AN ACT

1
2 Relating to corrections; creating new provisions; and amending ORS 21.682, 21.695, 30.320, 30.642,
3 30.643, 30.645, 30.646, 30.647, 30.648, 30.650, 34.365, 34.370, 46.405, 51.090, 135.760, 135.763,
4 135.765, 135.767, 135.770, 135.773, 135.785, 137.124, 138.527, 138.590, 144.035, 144.050, 144.096,
5 144.098, 144.123, 144.270, 144.275, 144.315, 144.420, 144.450, 144.480, 144.490, 144.522, 161.267,
6 162.135, 162.175, 163.165, 163.208, 163.452, 163.454, 169.005, 169.042, 169.044, 169.046, 169.053,
7 169.076, 169.220, 169.760, 179.375, 179.473, 179.478, 179.479, 179.483, 179.486, 179.495, 179.508,
8 183.315, 183.335, 192.515, 192.577, 238.015, 238A.005, 240.205, 243.650, 283.305, 283.415, 336.057,
9 341.317, 390.195, 420.525, 421.068, 421.073, 421.081, 421.084, 421.085, 421.105, 421.120, 421.121,
10 421.125, 421.132, 421.137, 421.142, 421.145, 421.147, 421.166, 421.168, 421.170, 421.185, 421.190,
11 421.194, 421.205, 421.213, 421.215, 421.220, 421.305, 421.312, 421.354, 421.364, 421.405, 421.412,
12 421.420, 421.423, 421.437, 421.442, 421.445, 421.450, 421.455, 421.465, 421.467, 421.468, 421.470,
13 421.476, 421.480, 421.490, 421.651, 421.805, 423.020, 423.076, 423.077, 423.100, 423.105, 423.490,
14 423.497, 423.600, 423.605, 423.610, 430.380, 438.435, 496.458, 655.505, 655.510, 655.515, 655.520,
15 655.525, 655.540, 655.545, 655.555, 656.005, 656.041, 656.752, 657.065 and 677.225 and section 2,
16 chapter 5, Oregon Laws 2013, and section 29, chapter 649, Oregon Laws 2013.

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

SECTION 1. ORS 21.682 is amended to read:

19 21.682. (1) A judge may waive or defer all or part of the fees and court costs payable to the
20 court by a party in a civil action or proceeding, including sheriff's fees under ORS 21.300 (1)(a), if
21 the judge finds that the party is unable to pay all or any part of the fees and costs. Waiver or
22 deferral under this section of the fees or court costs of an [*inmate*] **adult in custody**, as defined in
23 ORS 30.642, is subject to ORS 30.642 to 30.650.

24 (2) A presiding judge may delegate authority to waive or defer fees and court costs under this
25 section to the court administrator for the court in which the judge serves. A delegation of authority
26 under this subsection must be in writing and must be subject to clear standards. If a delegation is
27 made under this subsection, an applicant may seek review of the court administrator's decision by
28 a judge. If an applicant requests review of a court administrator's decision, the court administrator
29 shall forward the application for waiver or deferral of the fees or court costs to the appropriate
30 judge.

31 (3) A court may not delay or refuse to enter an order or judgment in an action or proceeding
32 because deferred fees and court costs have not been paid.

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.

SECTION 110. ORS 655.540 is amended to read:

655.540. (1) The assessments paid to the Oregon Department of Administrative Services by the Department of Corrections or the Oregon Youth Authority shall be credited as a component of the Insurance Fund pursuant to ORS 278.425 and 278.435.

(2) Funds credited to the *[inmate]* **adult in custody** injury component of the Insurance Fund for the purposes of ORS 655.505 to 655.555 may be used to effect insurance or reinsurance with any authority or instrumentality, public or private, or otherwise to distribute the liability for compensation payable to persons entitled to recover under ORS 655.505 to 655.555.

SECTION 111. ORS 655.545 is amended to read:

655.545. Liability of the Oregon Department of Administrative Services or the Insurance Fund for the payment of benefits under ORS 655.505 to 655.555 is contingent upon and limited by the availability of reserves in the *[inmate]* **adult in custody** injury component of the Insurance Fund. In the event that the reserves in the *[inmate]* **adult in custody** injury component of the Insurance Fund are not sufficient to meet the benefit payments and administration cost for a given period, the expenses of the department shall have precedence over all other claims. Thereafter, priority among claimants is determined according to the time of filing of the claim.

SECTION 112. ORS 655.555 is amended to read:

655.555. The Oregon Department of Administrative Services, with the approval of the Department of Corrections and the Oregon Youth Authority, shall adopt rules necessary to administer the *[inmate]* **adult in custody** injury fund. The rules may provide for procedures, benefits and coverage that vary from the workers' compensation system.

SECTION 113. ORS 656.005 is amended to read:

656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2)(a) "Beneficiary" means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter.

(b) "Beneficiary" does not include:

(A) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(B) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) "Board" means the Workers' Compensation Board.

(4) "Carrier-insured employer" means an employer who provides workers' compensation coverage with the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

(5) "Child" means a child of an injured worker, including:

(a) A posthumous child;

(b) A child legally adopted before the injury;

(c) A child toward whom the worker stands in loco parentis;

(d) A child born out of wedlock;

(e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support; and

(f) A child of any age who was an invalid at the time of the accident and thereafter remains an

1 invalid substantially dependent on the worker for support.

2 (6) "Claim" means a written request for compensation from a subject worker or someone on the
3 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

4 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-
5 ances, arising out of and in the course of employment requiring medical services or resulting in
6 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-
7 dental means, if it is established by medical evidence supported by objective findings, subject to the
8 following limitations:

9 (A) No injury or disease is compensable as a consequence of a compensable injury unless the
10 compensable injury is the major contributing cause of the consequential condition.

11 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
12 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
13 so long as and to the extent that the otherwise compensable injury is the major contributing cause
14 of the disability of the combined condition or the major contributing cause of the need for treatment
15 of the combined condition.

16 (b) "Compensable injury" does not include:

17 (A) Injury to any active participant in assaults or combats which are not connected to the job
18 assignment and which amount to a deviation from customary duties;

19 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
20 forming, any recreational or social activities primarily for the worker's personal pleasure; or

21 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
22 the evidence the injured worker's consumption of alcoholic beverages or cannabis or the unlawful
23 consumption of any controlled substance, unless the employer permitted, encouraged or had actual
24 knowledge of such consumption.

25 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for
26 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
27 there is a reasonable expectation that permanent disability will result from the injury.

28 (d) A "nondisabling compensable injury" is any injury which requires medical services only.

29 (8) "Compensation" includes all benefits, including medical services, provided for a compensable
30 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-
31 suant to this chapter.

32 (9) "Department" means the Department of Consumer and Business Services.

33 (10)(a) "Dependent" means any of the following relatives of the worker who, at the time of an
34 accident, depended in whole or in part for the relative's support on the earnings of a worker who
35 dies as a result of an injury:

36 (A) A parent, grandparent or stepparent;

37 (B) A grandson or granddaughter;

38 (C) A brother or sister or half-brother or half-sister; and

39 (D) A niece or nephew.

40 (b) "Dependent" does not include an alien who does not reside within the United States at the
41 time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

42 (11) "Director" means the Director of the Department of Consumer and Business Services.

43 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the
44 healing arts in any country or in any state, territory or possession of the United States within the
45 limits of the license of the licentiate.

1 (b) Except as otherwise provided for workers subject to a managed care contract, “attending
2 physician” means a doctor, physician or physician assistant who is primarily responsible for the
3 treatment of a worker’s compensable injury and who is:

4 (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a
5 podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical
6 Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly
7 licensed doctor in any country or in any state, territory or possession of the United States; or

8 (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative
9 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-
10 paragraph, a:

11 (i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of
12 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any
13 state, territory or possession of the United States;

14 (ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505
15 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or
16 possession of the United States; or

17 (iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of
18 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any
19 country or in any state, territory or possession of the United States.

20 (c) Except as otherwise provided for workers subject to a managed care contract, “attending
21 physician” does not include a physician who provides care in a hospital emergency room and refers
22 the injured worker to a primary care physician for follow-up care and treatment.

23 (d) “Consulting physician” means a doctor or physician who examines a worker or the worker’s
24 medical record to advise the attending physician or nurse practitioner authorized to provide
25 compensable medical services under ORS 656.245 regarding treatment of a worker’s compensable
26 injury.

27 (13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and
28 the state, state agencies, counties, municipal corporations, school districts and other public corpo-
29 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to
30 direct and control the services of any person.

31 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of
32 a temporary service provider is not the employer of temporary workers provided by the temporary
33 service provider.

34 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning
35 for that term provided in ORS 656.850.

36 (14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized
37 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned
38 claims agent selected by the director under ORS 656.054.

39 (15) “Consumer and Business Services Fund” means the fund created by ORS 705.145.

40 (16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

41 (17) “Medically stationary” means that no further material improvement would reasonably be
42 expected from medical treatment, or the passage of time.

43 (18) “Noncomplying employer” means a subject employer who has failed to comply with ORS
44 656.017.

45 (19) “Objective findings” in support of medical evidence are verifiable indications of injury or

1 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
 2 palpable muscle spasm. “Objective findings” does not include physical findings or subjective re-
 3 sponses to physical examinations that are not reproducible, measurable or observable.

4 (20) “Palliative care” means medical service rendered to reduce or moderate temporarily the
 5 intensity of an otherwise stable medical condition, but does not include those medical services ren-
 6 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

7 (21) “Party” means a claimant for compensation, the employer of the injured worker at the time
 8 of injury and the insurer, if any, of such employer.

9 (22) “Payroll” means a record of wages payable to workers for their services and includes
 10 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
 11 similar advantage received from the employer. However, “payroll” does not include overtime pay,
 12 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
 13 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-
 14 ticipated under the contract of employment and which are paid at the sole discretion of the em-
 15 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices
 16 is only for the purpose of calculations based on payroll to determine premium for workers’ com-
 17 pensation insurance, and does not affect any other calculation or determination based on payroll for
 18 the purposes of this chapter.

19 (23) “Person” includes partnership, joint venture, association, limited liability company and
 20 corporation.

21 (24)(a) “Preexisting condition” means, for all industrial injury claims, any injury, disease, con-
 22 genital abnormality, personality disorder or similar condition that contributes to disability or need
 23 for treatment, provided that:

24 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the
 25 worker has been diagnosed with such condition, or has obtained medical services for the symptoms
 26 of the condition regardless of diagnosis; and

27 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes
 28 the initial injury;

29 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the
 30 new medical condition; or

31 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment
 32 precedes the onset of the worsened condition.

33 (b) “Preexisting condition” means, for all occupational disease claims, any injury, disease, con-
 34 genital abnormality, personality disorder or similar condition that contributes to disability or need
 35 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
 36 for worsening in such claims pursuant to ORS 656.273 or 656.278.

37 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or
 38 need for treatment if the condition merely renders the worker more susceptible to the injury.

39 (25) “Self-insured employer” means an employer or group of employers certified under ORS
 40 656.430 as meeting the qualifications set out by ORS 656.407.

41 (26) “State Accident Insurance Fund Corporation” and “corporation” mean the State Accident
 42 Insurance Fund Corporation created under ORS 656.752.

43 (27) “Subject employer” means an employer who is subject to this chapter as provided by ORS
 44 656.023.

45 (28) “Subject worker” means a worker who is subject to this chapter as provided by ORS

1 656.027.

2 (29) "Wages" means the money rate at which the service rendered is recompensed under the
 3 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
 4 housing, lodging or similar advantage received from the employer, and includes the amount of tips
 5 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
 6 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
 7 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
 8 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
 9 which any worker shall be carried upon the payroll of the employer for the purpose of determining
 10 the premium of the employer.

11 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,
 12 who engages to furnish services for a remuneration, subject to the direction and control of an em-
 13 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,
 14 cities, school districts and other public corporations, but does not include any person whose services
 15 are performed as an *[inmate]* **adult in custody** or ward of a state institution or as part of the el-
 16 igibility requirements for a general or public assistance grant. For the purpose of determining
 17 entitlement to temporary disability benefits or permanent total disability benefits under this chapter,
 18 "worker" does not include a person who has withdrawn from the workforce during the period for
 19 which such benefits are sought.

20 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

21 **SECTION 114.** ORS 657.065 is amended to read:

22 657.065. (1) "Employment" does not include service performed in the employ of the United States
 23 Government or any instrumentality of the United States, except that if the Congress of the United
 24 States permits states to require any instrumentalities of the United States to make payments into
 25 an unemployment fund under a state unemployment insurance law, then, to the extent permitted by
 26 Congress, and after the date such permission becomes effective, this chapter shall be effective as to
 27 such instrumentalities and as to services performed for such instrumentalities in the same manner,
 28 to the same extent and on the same terms as to all other employers, employing units, individuals
 29 and services. However, if this state is not certified by the Secretary of Labor under section 3304(c)
 30 of title 26, United States Code, for any year, then the payments required of such instrumentalities
 31 with respect to such year shall be deemed to have been erroneously collected within the meaning
 32 of ORS 657.510 and shall be refunded by the Director of the Employment Department from the fund
 33 in accordance with ORS 657.510.

34 (2) "Employment" does not include services that are performed in the employ of the state, any
 35 political subdivision or instrumentality of the state or an Indian tribe:

36 (a) As an elected public official.

37 (b) In a position that, under or pursuant to laws of this state or tribal laws, is designated as a
 38 policymaking or advisory position the performance of the duties of which ordinarily does not require
 39 more than eight hours per week.

40 (c) As an employee serving on a temporary basis in case of fire, storm, earthquake, flood or
 41 similar emergency.

42 (d) As a member of a legislative body or a member of the judiciary.

43 (e) By an *[inmate of]* **adult in custody in** a custodial or penal institution when such services
 44 are performed for the custodial or penal institution in which the *[inmate]* **adult in custody** is con-
 45 fined.

1 and is not liable for the termination of a contract under this section.

2 **SECTION 149.** ORS 656.041 is amended to read:

3 656.041. (1) As used in this section, unless the context requires otherwise:

4 (a) **“Adult in custody” means a person sentenced by any court or legal authority, whether**
 5 **in default of the payment of a fine or committed for a definite number of days, to serve**
 6 **sentence in a city or county jail or other place of incarceration except state and federal in-**
 7 **stitutions. “Adult in custody” includes a person who performs community service pursuant**
 8 **to ORS 137.128, whether or not the person is incarcerated.**

9 [(a)] (b) **“Authorized employment” means the employment of an [inmate] adult in custody on**
 10 **work authorized by the governing body of a city or county.**

11 [(b)] *“Inmate” means a person sentenced by any court or legal authority, whether in default of the*
 12 *payment of a fine or committed for a definite number of days, to serve sentence in a city or county jail*
 13 *or other place of incarceration except state and federal institutions. “Inmate” includes a person who*
 14 *performs community service pursuant to ORS 137.128, whether or not the person is incarcerated.]*

15 (2) A city or county may elect to have [inmates] **adults in custody** performing authorized em-
 16 ployment considered as subject workers of the city or county for purposes of this chapter. Such
 17 election shall be made by a written application to the insurer, or in the case of a self-insured em-
 18 ployer, the Director of the Department of Consumer and Business Services, that includes a resol-
 19 ution of the governing body declaring its intent to cover [inmates] **adults in custody** as provided
 20 in this section and a description of the work to be performed by such [inmates] **adults in custody**.
 21 The application shall also state the estimated total number of [inmates] **adults in custody** for which
 22 coverage is requested. The county or city shall notify the insurer or director of changes in the es-
 23 timated total number of [inmates] **adults in custody** performing authorized employment.

24 (3) Upon receiving the written application the insurer or self-insured employer may fix assumed
 25 wage rates for the [inmates] **adults in custody**, which may be used only for purposes of computa-
 26 tions under this chapter, and shall require the regular payment of premiums or assessments based
 27 upon the estimated total number of such [inmates] **adults in custody** for which coverage is re-
 28 quested. The self-insured employer shall submit such assumed wage rates to the director. If the di-
 29 rector finds that the rates are unreasonable, the director may fix appropriate rates to be used for
 30 purposes of this section.

31 (4) The city or county shall maintain a separate list of [inmates] **adults in custody** performing
 32 authorized employment. A certified copy of the list shall be furnished the insurer or director upon
 33 request. [Inmates] **Adults in custody** covered under this section are entitled to the benefits of this
 34 chapter and they are entitled to such benefits if injured as provided in ORS 656.202 while performing
 35 any duties arising out of and in the course of their participation in the authorized employment,
 36 provided the duties being performed are among those described on the application of the city or
 37 county.

38 (5) The filing of claims for benefits under this section is the exclusive remedy of an [inmate]
 39 **adult in custody** or a beneficiary of the [inmate] **adult in custody** for injuries compensable under
 40 this chapter against a city or county and its officers and employees, regardless of negligence.

41 **SECTION 150.** ORS 656.752 is amended to read:

42 656.752. (1) The State Accident Insurance Fund Corporation is created for the purpose of
 43 transacting workers’ compensation insurance and reinsurance business. The State Accident Insur-
 44 ance Fund Corporation also may insure an Oregon employer against any liability such employer may
 45 have on account of bodily injury to a worker of the employer arising out of and in the course of

1 employment as fully as any private insurance carrier.

2 (2) The functions of the State Accident Insurance Fund Corporation shall be:

3 (a) To confer with and solicit employers and to determine, handle, audit and enforce collection
4 of premiums, assessments and fees of insured employers insured with the State Accident Insurance
5 Fund Corporation;

6 (b) To make insurance available to as many Oregon employers as inexpensively as may be con-
7 sistent with the overall integrity of the Industrial Accident Fund, in accordance with ORS 656.634
8 and sound principles of insurance;

9 (c) To receive and handle and process the claims of workers and beneficiaries of workers injured
10 in the employ of insured employers insured with the State Accident Insurance Fund Corporation;
11 and

12 (d) To perform all other functions which the laws of this state specifically authorize or which
13 are necessary or appropriate to carry out the functions expressly authorized.

14 (3) The State Accident Insurance Fund Corporation in its name may sue and be sued.

15 (4) The State Accident Insurance Fund Corporation may authorize self-insured employers or
16 other insurers to use any physical rehabilitation center operated by the State Accident Insurance
17 Fund Corporation on such terms as the State Accident Insurance Fund Corporation deems reason-
18 able.

19 (5) The State Accident Insurance Fund Corporation in its own name, may acquire, lease, rent,
20 own and manage real property. It may construct, equip and furnish buildings or other structures as
21 are necessary to accommodate its needs. It may purchase, rent, lease or otherwise acquire for its
22 use all supplies, materials, equipment and services necessary to carry out its functions. It may sell
23 or otherwise dispose of any property acquired under this subsection.

24 (6) Any real property acquired and owned by the State Accident Insurance Fund Corporation
25 under this section shall be subject to ad valorem taxation.

26 (7) The State Accident Insurance Fund Corporation may furnish advice, services and excess
27 workers' compensation and employer liability insurance to any employer qualified as a self-insured
28 employer under the provisions of ORS 656.407, on such terms and conditions as the State Accident
29 Insurance Fund Corporation deems reasonable.

30 (8) With the approval of the Director of the Department of Consumer and Business Services, the
31 State Accident Insurance Fund Corporation may provide reinsurance coverage to Oregon employers
32 on such terms and conditions as the State Accident Insurance Fund Corporation deems reasonable.

33 (9) The State Accident Insurance Fund Corporation may contract with the Oregon Department
34 of Administrative Services to provide claim management services for claims filed under ORS 655.505
35 to 655.555 by *[inmates]* **adults in custody** of institutions of the Department of Corrections.

36