Exhibit 31

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Workers' Compensation Board
Board Appeals
2601 25th Street SE, Suite 150
Salem, OR 97302-1282

Re: 2018 Biennial Review

Dear Board Members,

Please include in the record and for your consideration the legislative history behind SB 2764 and the 2015 statutory changes. When the House voted on the bill, Rep. Holvey referenced this summary. Tape Recording, House Floor debate, HB 2764, June 10, 2015, Rep. Holvey, Tape at 28.43 – 30:30 (Rep. Holvey, summaries submitted on May 27, 2015, referenced as intent of the bill). The Summary describes the purposes of the 2015 amendments and was submitted on May 27, 2015, to the Senate Committee on Workforce, by Oregon Trial Lawyers Association:

https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/ 75983.

I have reviewed the comments by SAIF and employers recently submitted. The statements are a re-hash of their objections to the bill and to any increase in fees paid to attorneys who represent injured workers. Ultimately, the legislature was not impressed and determined that injured workers needed attorneys, and those attorneys needed to be paid more. The legislature entrusted this body to review attorney fees biennial for the purpose of eliminating the gap of pay between the defense and attorneys representing injured workers and the purpose of ensuring the continued representation of injured workers in the future. The legislature gave this body a mandate, and it is not fulfilled by bending to the insurers' position.

/s/ Julene M. Quinn
Julene M. Quinn, Attorney at Law

cc: Roger Pearson, Managing Attorney

Citation to this document:
Summary, Senate Committee on Workforce, HB 2764, May 27, 2015.
Website link:
https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/ 75983.

This is a summary of House Bill 2764-A9, the MLAC-endorsed, negotiated compromise to the legislation proposed for the 2015 Regular Session. The purpose of this bill is to increase the access to justice for injured workers by providing attorney fees in areas where attorney fees have not been previously paid or are inadequate to compensate for the work required to obtain a successful result.

HB 2764 addressed three major problem categories with current regulation of and provision for how injured workers' attorneys are compensated:
1) amendments to the ORS Chapter 656 findings and policies section(s);
2) amendments which address legal work currently being done for injured workers without any attorney compensation; and
3) a change in the way attorney fees are awarded in temporary disability benefit ("time loss") disputes. The original bill was a modest wish-list for injured workers' attorneys, not encompassing all areas where attorneys are currently not compensated, but put forward as a start to appropriate compensation.

The MLAC process was used to review these requests and determine those areas stakeholders could agree were acceptable. HB 2764-A9 was a compromise arising out of that process. This bill includes fees in the majority of areas where an attorney is ethically obligated to represent injured workers. The efforts of labor and management in working together for this purpose should be applauded.

At the request of employers and insurers in the past, the legislature provided protections for insurers who said that the system was too expensive and providing benefits beyond the scope of a compensable injury. Those protections were provided to insurers, but as a result, the system has become too complex to navigate for an unrepresented worker, necessitating the assistance of attorneys. The reduction in attorney fees in the system and the increased complexity has deterred new attorneys. At the same time, the current bar of attorneys willing to represent injured workers has grown older and is reducing in numbers because of retirements.

The system has many places in which attorney representation is necessary, but attorney fees are not paid or fees are inadequate. The legislature understands the important and valuable benefit that attorneys provide for injured workers and begins the process of providing appropriate compensation for these attorneys in the hopes that newer attorneys will be attracted to the practice and will continue the service to injured workers. Any of the amendments offered by this bill are for the purpose of providing attorney fees in the situations addressed, and any ambiguities that are inevitable in applying a statute to a specific fact pattern should be interpreted to provide the benefit of attorney fees if a reasonable reading so allows.

This document walks through HB 2764-A9, in the order of the numerical sub-sections of Title 51, Chapter 656, which the bill amends; there are two columns for each sub-section; in the right column is the HB 2764-A9 statutory language, and in the left column is a narrative explanation of the legislative purpose and intent behind each section of HB 2764-A9.

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Summary of House Bill 2764-A9 2015 Workers Compensation Legislation

5/26/2015

This is a summary of House Bill 2764-A9, the MLAC endorsed negotiated compromise to the legislation proposed for the 2015 Regular Session. The purpose of this bill is to increase the access to justice for injured workers by providing attorney fees in areas where attorney fees have not been previously paid or are inadequate to compensate for the work required to obtain a successful result.

HB 2764 addressed three major problem categories with current regulation of and provision for how injured workers' attorneys are compensated: 1) amendments to the ORS Chapter 656 findings and policies section(s); 2) amendments which address legal work currently being done for injured workers without any attorney compensation; and 3) a change in the way attorney fees are awarded in temporary disability benefit ("timeloss") disputes. The original bill was a modest wish-list for injured workers' attorneys, not encompassing all areas where attorneys are currently not compensated, but put forward as a start to appropriate compensation. HB 2764 was sponsored by Representatives FAGAN, WILLIAMSON; Representatives BUCKLEY, CLEM, FREDERICK, GOMBERG, KENY-GUYER, KOMP, LININGER, NOSSE, SMITH WARNER, VEGA PEDERSON and WITT and filed pre-session.

The MLAC process was used to review these requests and determine those areas stakeholders could agree were acceptable. HB 2764-A9 was a compromise arising out of that process. This bill includes fees in the majority of areas where an attorney is ethically obligated to represent injured workers. We applaud the efforts of labor and management in working together for this purpose. At the request of employers and insurers in the past, the legislature provided protections for insurers who said that the system was too expensive and providing benefits beyond the scope of a compensable injury. Those protections were provided to insurers, but as a result, the system has become too complex to navigate for an unrepresented worker, necessitating the assistance of attorneys.

The reduction in attorney fees in the system and the increased complexity has deterred new attorneys. At the same time, the current bar of attorneys willing to represent injured workers has grown older and is reducing in numbers because of retirements. The system has many places in which attorney representation is necessary, but attorney fees are not paid or fees are inadequate. The legislature understands the important and valuable benefit that attorneys provide for injured workers and begins the process of providing appropriate compensation for these attorneys in the hopes that newer attorneys will be attracted to the practice and will continue the service to injured workers. Any of the amendments offered by this bill are for the purpose of providing attorney fees in the situations addressed, and any ambiguities that are inevitable in applying a statute to a specific fact pattern should be interpreted to provide the benefit of attorney fees if a reasonable reading so allows.

This document walks through HB 2764-A9, in the order of the numerical sub-sections of Title 51, Chapter 656, which the bill amends; there are two columns for each sub-section; in the right column is the HB 2764-A9 statutory language, and in the left column is a narrative explanation of the legislative purpose and intent behind each section of HB 2764-A9.

HB 2764-A9 SECTION 1. ORS 656.012 Purpose of proposed statutory amendments	HB 2764-A9 SECTION 1. ORS 656.012 language **Key: Bold** means content added to current statute. [*italics*] means content deleted or revised. **** means current statutory sections not to be amended are omitted from table.
The amendment to ORS 656.012(1) states a key change in policy. This change in policy is intended to elevate the importance and necessity of an injured worker's right and access to legal representation. This policy section which sets the overarching purpose and procedural structure of the Act now states that a fair and just administrative system must include "providing for access to adequate representation for injured workers." Attorney services provided to injured workers are essential, given the complexity of the workers' compensation system as it has evolved since the reforms of the 1980's and 1990's. In many, if not most cases, injured workers need the assistance of an attorney specializing in workers' compensation in order to navigate the system. The legislature, in enacting this and the ensuing statutory changes to how injured workers' attorneys are compensated, recognizes that there is a dearth of new and younger attorneys going into the highly specialized and demanding area of workers' compensation law on the side of representing Oregonians injured in the workplace. Many of these attorneys are instead entering the ranks of employer's and insurer's attorneys, where higher attorney compensation and institutional support are found, particularly as many younger attorneys are servicing high undergraduate and law school debt. The legislature recognizes that in order for the bar of attorneys who represent injured workers be able to thrive, and continue to attract new practitioners as the current, aging generation of injured workers' attorneys moves toward retirement, there needs to be a policy shift in the importance of attorney compensation, as well as structural changes in how injured workers' attorneys are compensated. This policy amendment, stating the importance of attorney representation to injured workers, thus acknowledges that attorneys are an important benefit to injured workers, and is intended to guide the courts when interpretation of the statutes so require.	<u>**SECTION 1.**</u> ORS 656.012 is amended to read (1) The Legislative Assembly finds that: (a) The performance of various industrial enterprises necessary to the enrichment and economic well-being of all the citizens of this state will inevitably involve injury to some of the workers employed in those enterprises; (b) The method provided by the common law for compensating injured workers involves long and costly litigation, without commensurate benefit to either the injured workers or the employers, and often requires the taxpayer to provide expensive care and support for the injured workers and their dependents; and (c) An exclusive, statutory system of compensation will provide the best societal measure of those injuries that bear a sufficient relationship to employment to merit incorporation of their costs into the stream of commerce. (2) In consequence of these findings, the objectives of the Workers' Compensation Law are declared to be as follows: (a) To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents; (b) To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable**, while providing for access to adequate representation for injured workers;** (c) To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable; (d) To encourage maximum employer implementation of accident study, analysis and prevention programs to reduce the economic loss and human suffering caused by industrial accidents; and (e) To provide the sole and exclusive source and means by which subject workers, their beneficiaries and anyone otherwise entitled to receive benefits on account of injuries or diseases arising out of and in the course of employment shall seek and qualify for remedies for such conditions. (3) In recognition that the goals and objectives of this Workers' Compensation Law are intended to benefit all citizens, it is declared that the provisions of this law shall be interpreted in an impartial and balanced manner.

HB 2764-A9 SECTION 2. ORS 656.262(11) **Purpose of proposed amendments**	**HB 2764-A9 SECTION 2. ORS 656.262(11) language** **Key: Bold** means content added to current statute. [*italics*] means content deleted. **** means current statutory sections not to be amended are omitted from table.
The changes to this section include adding attorney fees and costs to the items for which injured workers' attorneys' can be paid when they enforce payments which have been unreasonably delayed or refused. Worker's attorneys are one of the regulators of insurer behavior. If insurers act correctly, these attorney fees and costs will not be an issue. It is also important to change the current environment, which permits claims processers to use undue economic leverage against injured workers by preventing injured workers and/or their attorneys from receiving penalties, attorney fees or costs and also by forcing litigation for which a worker's attorney cannot be paid. We intend to address the current situation, where often what is deemed a "proportionate" fee trivializes the value and importance of the benefit being resisted by the insurer, as well as the legal work required to check unreasonable claim processing behavior. Thus, with these changes, the amount of the attorney fee shall be a reasonable fee. The amount shall not be be limited by the proportionate benefit to the injured worker, but the benefit shall be considered as one factor when awarding an attorney fee. The cap is modestly raised from $3,000 to $4,000, with annual adjustments per the SAWW increases, with an extraordinary fee beyond $4,000 being maintained, to be determined by the forum awarding the fee.	<u>**SECTION 2.**</u> ORS 656.262 is amended to read: **** (11) (a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, **attorney fees or costs,** or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due plus any attorney fees assessed under this section. The fees assessed by the director, an Administrative Law Judge, the board or the court under this section shall be [*proportionate to the benefit to the injured worker*] **reasonable attorney fees.** In assessing attorney fees, the director, an Administrative Law Judge, the board or the court shall consider the proportionate benefit to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed [*$3,000*] **$4,000**, absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this paragraph shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Notwithstanding any other provision of this chapter, the director shall have exclusive jurisdiction over proceedings regarding solely the assessment and payment of the additional amount and attorney fees described in this subsection. The action of the director and the review of the action taken by the director shall be subject to review under ORS 656.704. ****
HB 2764-A9 SECTION 2. ORS 656.262(14) **Purpose of proposed amendments**	**HB 2764-A9 SECTION 2, continued. ORS 656.262(14) language** **Key: Bold** means content added to current statute. [*italics*] means content deleted. **** means current statutory sections not to be amended omitted from table.
We are amending ORS 656.262(14) to allow for assessed fees when injured workers are represented by an attorney who assists in the processing of claims, by representing the worker during personal or telephonic interviews or depositions. The Workers' Compensation Board will set the hourly rate, after consultation with the Oregon State Bar Board of Governors, as provided in ORS 656.388 (4). The current statute imposes not only the right of the employer/insurer to	<u>**SECTION 2.**</u> ORS 656.262 is amended to read: ****(14) **(a)** Injured workers have the duty to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers shall submit to and shall fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. Injured workers who are represented by an attorney shall have the right to have the attorney present during any personal or telephonic interview or deposition.

investigate claims, but it imposes a "duty" on the injured worker to "fully cooperate." Under current law, when a worker's attorney is retained during the claim investigation process, and assists the injured worker in cooperating with the claim investigation (which is often helpful as well to the insurer) a worker's attorney can never be paid for this work, whether the claim is then accepted, or whether the claim is denied, the denial and litigated and overturned, resulting in claim acceptance. This new provision insures that injured workers who desire or need representation during the claims investigation process will be able to obtain it. The amendment does not change in any way the /employer insurer's entitlement to interviews or depositions, nor does it increase the injured worker's duty to cooperate in claims investigations.	**(b) If an injured worker is represented by an attorney, the insurer or self-insured employer shall pay to the attorney a reasonable attorney fee based upon an hourly rate for actual time spent during the personal or telephonic interview or deposition. After consultation with the Board of Governors of the Oregon State Bar, the Workers' Compensation Board shall adopt rules for the establishment, assessment and enforcement of an hourly attorney fee rate specified in this subsection.** **(c)** [*However,*] If the attorney is not willing or available to participate in an interview at a time reasonably chosen by the insurer or self-insured employer within 14 days of the request for interview and the insurer or self-insured employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable and is preventing the worker from complying within 14 days of the request for interview, the insurer or self-insured employer shall notify the director. If the director determines that the attorney's unwillingness or unavailability is unreasonable, the director shall assess a civil penalty against the attorney of not more than $1,000. ****
HB 2764-A9 SECTION 3. ORS 656.277 **Purpose of proposed amendments**	**HB 2764-A9 SECTION 3. ORS 656.277 language** **Key: Bold** means content added to current statute. [*italics*] means content deleted. **** means current statutory sections not to be amended are omitted from table.
This amendment to ORS 656.277 is intended to close a current gap where a worker's attorney provides representation to increase worker benefits but the attorney is not paid for his/her work. This amendment will compensate an injured worker's attorney for obtaining claim reclassification through the director process.	**SECTION 3.** ORS 656.277 is amended to read: 656.277. **(1)(a)** A request for reclassification by the worker of an accepted nondisabling injury that the worker believes was or has become disabling must be submitted to the insurer or self-insured employer. The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request. A notice of such classification shall be mailed to the worker and the worker's attorney if the worker is represented. The worker may ask the Director of the Department of Consumer and Business Services to review the classification by the insurer or self-insured employer by submitting a request for review within 60 days of the mailing of the classification notice by the insurer or self-insured employer. If any party objects to the classification of the director, the party may request a hearing under ORS 656.283 within 30 days from the date of the director's order. **(b) If the worker is represented by an attorney and the attorney is instrumental in obtaining an order from the director that reclassifies the claim from nondisabling to disabling the Director shall award the attorney a reasonable assessed attorney fee.** ****

HB 2764-A9 SECTION 4. ORS 656.313 Purpose of proposed amendments	HB 2764-A9 SECTION 4. ORS 656.313 language **Key: Bold** means content added to current statute. [*italics*] means content deleted; **** means current statutory sections not to be amended are omitted from table.
The current statute creates incentives for employers and insurers to file appeals, in that their main economic risk is their own defense legal costs. This creates more litigation, delays ultimate resolution, and has the effect of "starving out" injured workers, already economically vulnerable, as it delays their access to medical treatment, compensation, and recovery, including return to productive employment. The intent of the amendment to 656.313 is to shift some of the economic risk of appeals more towards the employer/insurer, by including attorney fees and costs in the kinds of withheld-on-appeal amounts that accrue interest. We recognize that there are cases in the appellate system challenging whether attorney fees and costs are benefits to a worker and therefore compensation. The language chosen is not intended to say that attorney fees and costs are not compensation, but leaves it to the courts to address the issue.	<u>SECTION 4.</u> ORS 656.313 is amended to read: 656.313. (1)(a) Filing by an employer or the insurer of a request for hearing on a reconsideration order before the Hearings Division, a request for Workers' Compensation Board review or court appeal or request for review of an order of the Director of the Department of Consumer and Business Services regarding vocational assistance stays payment of the compensation appealed, except for: (A) Temporary disability benefits that accrue from the date of the order appealed from until closure under ORS 656.268, or until the order appealed from is itself reversed, whichever event first occurs; (B) Permanent total disability benefits that accrue from the date of the order appealed from until the order appealed from is reversed; (C) Death benefits payable to a surviving spouse prior to remarriage, to children or dependents that accrue from the date of the order appealed from until the order appealed from is reversed; and (D) Vocational benefits ordered by the director pursuant to ORS 656.340 (16). If a denial of vocational benefits is upheld by a final order, the insurer or self-insured employer shall be reimbursed from the Workers' Benefit Fund pursuant to ORS 656.605 for all costs incurred in providing vocational benefits as a result of the order that was appealed. (b) If ultimately found payable under a final order, benefits withheld under this subsection, **and attorney fees and costs** shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed from through the date of payment. The board shall expedite review of appeals in which payment of compensation has been stayed under this section. ****
HB 2764-A9 SECTION 5. ORS 656.382 **Purpose of proposed amendments**	**HB 2764-A9 SECTION 5. ORS 656.382 language** **Key: Bold** means content added to current statute. [*italics*] means content deleted; **** means current statutory sections not to be amended are omitted from table.
One purpose of the statutory changes in section 5 is to provide for the award of assessed attorney fees when a worker's attorney must pursue litigation to collect and/or enforce payment of prior-ordered amounts. The current law prevents a worker's attorney from being paid a fee for necessary enforcement.	<u>SECTION 5.</u> ORS 656.382 is amended to read: 656.382. (1) If an insurer or self-insured employer refuses to pay compensation**, costs or attorney fees** due under an order of an Administrative Law Judge, **the** board or **the** court, or otherwise unreasonably resists the

This creates a disincentive for insurers/employers to promptly and correctly comply with the law. Similarly to the amendments to ORS 656.313, we recognize that there are cases in the appellate system challenging whether attorney fees and costs are benefits to a worker and therefore compensation. The language chosen is not intended to say that attorney fees and costs are not compensation, but leaves it to the courts to address the issue.

The amendments to .382 subsection (2) are intended to change the current situation where the insurer appeals a reconsideration order but only prevails on one issue but not another. Right now, a worker's attorney is not allowed a fee for the issue they won if there is any reduction whatsoever in the reconsideration order. This amendment will instead provide, where the injured worker partially prevails (and prevents reduction or disallowance of "all or part of" the compensation at issue) that the insurer shall pay an attorney fee to the worker's attorney. In other words, the employer must fully prevail on all of the issues raised in order not to be required to pay an attorney fee to the worker's attorney.

Subsection (3) provides for attorney fees when an employer/insurer raises the issue and challenges an award of attorney fees, penalties or costs, and the challenged attorney fee, penalties, or costs are not disallowed or reduced.

Subsection (4) changes the current law which requires the injured worker to prevail on the merits when an employer or insurer appeals. The current law has allowed an insurer or employer to withdraw its appeal, resulting in the injured worker prevailing due to the dismissal, yet the worker's attorney does not receive an attorney fee, because a decision on the merits did not occur. Thus, an injured worker's attorney is required to expend effort and time, sometimes requiring briefing on the matter, before the appeal is withdrawn. The result is attorney work done without remuneration, even when the injured worker prevails. Subsection (4) changes the law and provides for a reasonable attorney fee to the worker's attorney when the employer/insurer has filed a brief. (The intent is to compensate the worker's attorney once briefing has begun, i.e., once the employer/insurer has filed a brief, not to limit the injured worker's attorney's fee to the worker's attorney's brief.)

payment of compensation, **costs or attorney fees**, except as provided in ORS 656.385, the employer or insurer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer or insurer, and the Administrative Law Judge, board or court finds that **all or part of** the compensation awarded to a claimant should not be disallowed or reduced, or, through the assistance of an attorney, that an order rescinding a notice of closure should not be reversed or **all or part of** the compensation awarded by a reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the employer or insurer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the Administrative Law Judge, board or [*the*] court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

"(3) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court initiated by the employer or insurer under this section, and the Administrative Law Judge, board or court finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge, board or court shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

"(4) If an employer or insurer initiates an appeal to the board or Court of Appeals and the matter is briefed, but the employer or insurer withdraws the appeal prior to a decision by the board or court, resulting in the claimant's prevailing in the matter, the claimant's attorney is entitled to a reasonable attorney fee for efforts in briefing the matter to the board or court.

"[*(3)*] **(5)** If upon reaching a decision on a request for hearing initiated by an employer it is found by the Administrative Law Judge that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the Administrative Law Judge may order the employer to pay to the claimant such penalty not exceeding $750 and not less than $100 as may be reasonable in the circumstances.

HB 2764-A9 SECTION 6. ORS 656.385 Purpose of proposed amendments	HB 2764-A9 SECTION 6. ORS 656.385 language Key: **Bold** means content added to current statute. [*italics*] means content deleted; **** means current statutory sections not to be amended are omitted from table.
The section 6 amendments to ORS 656.385(1) clarify that in addition to the director or the ALJ, the court may also award attorney fees under this section if it applies. The amendments to subsection (1) which add the "court" give the appellate courts authority to award injured worker's attorneys an attorney fee under this subsection if they prevail on appeals of medical and vocational disputes. This change is intended to cover an existing gap where an injured worker's attorney provides successful appellate representation but the attorney is not paid. The .385 cap is modestly raised from $3,000 to $4,000, with annual adjustments per the SAWW increases, with an extraordinary fee beyond $4,000 being maintained, to be determined by the forum awarding the fee. It is the intent of the amendments to .385 subsection (1) to capture and compensate the worker's attorney for all of his/her work on the dispute. In subsections (2) and (3) the legislature intends to expand the attorney fees available to injured workers' attorneys by creating an entitlement to a reasonable fee for the insurer/self-insured employer's refusal or unreasonable resistance in payment of attorney fees. Subsection (3) provides that if the worker prevails, whether fully or in part in defending medical or vocational compensation or attorney fees awarded, the forum shall be required to pay the worker's attorney a reasonable fee. The original bill included ORS 656.248 (non-payment of medical bills) in this section. There was dispute among the stakeholders regarding inclusion of .248. It was agreed that the Director would review current policy regarding attorney fees for pursuing unpaid medical bills, as they fall under claimants' rights in ORS 656.245, whereas ORS 656.248 is the medical providers' statute for challenging non-payment. Because of the dispute and because the Director offered to review the issue and resolve it considering the importance of medical bill payment to injured workers, the section was not amended to include .248, but instead left for administrative resolution. Finally the addition of "court" to subsection (4) gives the appellate courts authority under this subsection to order an insurer or self-insured employer award a penalty to an injured worker if it employer/insurer initiated the contested case for the purpose of delay or other vexatious reason or without	**SECTION 5.** ORS 656.385 is amended to read: 656.385. (1) In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327 or 656.340, where a claimant finally prevails after a proceeding has commenced, the Director of the Department of Consumer and Business Services, [*or*] the Administrative Law Judge, **or the court** shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, [*or*] an Administrative Law Judge, **or the court,** the director, [*or*] an Administrative Law Judge **or court** shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. The attorney fee must be based on all work the claimant's attorney has done relative to the proceeding at all levels before the department. The attorney fee assessed under this section must be proportionate to the benefit to the injured worker. The director shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed *[$3,000]* **$4,000** absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this subsection shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. (2) If an insurer or self-insured employer refuses to pay compensation due under**, or attorney fees related to,** ORS 656.245, 656.247, 656.260, 656.327**,** or 656.340 pursuant to an order of the director, an Administrative Law Judge, the court or otherwise unreasonably resists the payment of such compensation **or attorney fees,** the insurer or self-insured employer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (3) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees. (3) If a request for a contested case hearing, review on appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an insurer or self-insured employer, and the director, Administrative Law Judge, or court finds that **all or part of** the compensation awarded under ORS 656.245, 656.247, 656.260, 656.327**,** or 656.340**,** to a claimant**, or attorney fees under this section,** should not be disallowed or reduced, the insurer or self-insured employer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the

reasonable ground.	director, [*the*] Administrative Law Judge, or the court for legal representation by an attorney for the claimant at the contested case hearing, review on appeal or cross-appeal. (4) If upon reaching a final contested case decision where such contested case was initiated by an insurer or self-insured employer it is found that the insurer or self-insured employer initiated the contested case hearing for the purpose of delay or other vexatious reason or without reasonable ground, the director, [*or*] Administrative Law Judge, **or court** may order the insurer or self-insured employer to pay to the claimant such penalty not exceeding $750 and not less than $100 as may be reasonable in the circumstances. (5) Penalties and attorney fees awarded pursuant to this section by the director, an Administrative Law Judge, or the courts shall be paid for by the employer or insurer in addition to compensation found to be due to the claimant.
HB 2764-A9 SECTION 7. ORS 656.386 **Purpose of proposed amendments**	**HB 2764-A9 SECTION 7. ORS 656.386 language** **Key: Bold** means content added to current statute. [*italics*] means content deleted; **** means current statutory sections not to be amended are omitted from table.
ORS 656.386 is amended in two ways. To address attorney work being done by injured worker's attorneys for which they cannot presently be compensated, the amendment to ORS 656.386 subsection (3) plugs a gap in the current statute and provides for the award of a reasonable assessed attorney fee if a claimant initiates and is successful in litigation on claim reclassification at the WCB hearing level and all levels above. The amendment to 656.386 subsection (4) provides for assessed attorney fees when the attorney representing the injured worker increases the amount of the worker's out-of-pocket litigation costs that the insurer/self-insured employer is ordered to pay. It is critical that injured worker's attorneys are paid for pursuing full recovery of the injured worker's necessary out-of-pocket litigation expenses which the worker has incurred. These are largely amounts paid to obtain expert medical testimony including reports. Due to the complexity of the medical/legal issues involved, and the ever-increasing rates charged by medical experts, as well as insurer/self-insured employer resistance to full payment of such amounts, the injured worker's access to effective litigation of claim and benefit denials is	<u>**SECTION 7.**</u> ORS 656.386 is amended to read: 656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, a reasonable attorney fee shall be allowed. **** (2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this section, the court, board or Administrative Law Judge may order payment of the claimant's reasonable expenses and costs for records, expert opinions and witness fees. (b) The court, board or Administrative Law Judge shall determine the reasonableness of witness fees, expenses and costs for the purpose of paragraph (a) of this subsection. (c) Payments for witness fees, expenses and costs ordered under this

protected and enhanced only when the worker can fully recover the litigation costs. Since the injured worker's attorney is acting for the worker in pursuing such recoveries, that attorney must be compensated, or the worker's rights are undermined.	subsection shall be made by the insurer or self-insured employer and are in addition to compensation payable to the claimant. (d) Payments for witness fees, expenses and costs ordered under this subsection may not exceed $1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. (3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or self-insured employer does not respond within 14 days of the request, or if the **claimant,** the insurer or self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court and the Director of the Department of Consumer and Business Services, Administrative Law Judge, board or the court finally determines that the claim should be classified as disabling, the director, Administrative Law Judge, board or [*the*] court may assess a reasonable attorney fee. **(4) In cases involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall award a reasonable assessed attorney fee to the claimant's attorney.** [*(4)*] **(5)** In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter.
HB 2764-A9 SECTION 8. ORS 656.388 **Purpose of proposed amendments**	**HB 2764-A9 SECTION 8. ORS 656.388 language** **Key: Bold** means content added to current statute. [*italics*] means content deleted; **** means current statutory sections not to be amended are omitted from table.
ORS 656.388 is amended in three ways. First, the change to subsection (1) cleans up a current incorrect provision. (Note: this change was proposed by John Shilts.) Second, to address the crisis of an aging bar of injured workers' attorneys, the need to attract and retain younger practitioners, and the fact that attorneys for injured workers perform essential legal services for injured workers, the schedule of attorney fees needs to be adjusted. Because this schedule for the out-of-compensation fees paid to attorneys representing injured workers has not been adjusted since 1999, ORS 656.388 subsection (4) is amended to require the board to review its schedule of fees every two years for adjustment. Since the last adjustment, injured workers have had regular benefit increases and attorneys who represent insurers and employers have been free to negotiate increases in their fees. The changes are to ensure that there is a review and adjustment of fees paid to attorneys for injured workers	**SECTION 8.** ORS 656.388 is amended to read: 656.388. (1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before an Administrative Law Judge or the Workers' Compensation Board, as the case may be, in respect to any claim or award for compensation to or on account of any person, shall be valid unless approved by the Administrative Law Judge or board, or if proceedings on appeal from the order of the board with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be approved or allowed for representation of the claimant before the managed care organization. ~~*or Director of the Department of Consumer and Business Services except for representation at the contested case hearing.*~~]

on a biennial basis, thus ensuring that injured workers will have the ability to hire an attorney.

Thirdly, in recognition of the fact that the defense bar is paid approximately $14 million more fees annually than the bar of attorneys who represent injured workers, and in recognition of the fact that lawyers representing injured workers only get paid when they win, in subsection (5) of ORS 656.388 we are requiring as a guiding principle in that biennial review that the board consider the contingent nature of the practice of workers' compensation law by those attorneys who represent injured workers. Additionally, in this country, we believe in a market economy that rewards those who take greater risk. Because worker's attorneys are paid on a contingent basis when they are successful in obtaining a benefit for an injured worker, they take greater risk in this system. Thus, .388(5) now requires that the compensation paid to the injured worker's attorneys must reflect the risk they take based upon the contingent nature of their practice.

It has been difficult for the bar of injured worker's attorneys representing injured workers to attract and keep young attorneys to help replace those older attorneys who are retiring. If this trend continues, the crisis of representation will continue to grow. This subsection (5) amendment to ORS 656.388 directs that the schedule of attorney fees shall allow for the broadest access to attorneys by injured workers, so that attorneys are available for all disputes an injured worker might have in order to obtain the benefits due under the Law. ORS 656.388(5) now requires that consideration shall be given to the fees earned by attorneys for insurers/employers so that the disparity between the two bars is corrected and does not happen again.

The Workers' Compensation Board is the regulator of all fees in this system. By providing the board these tools, the legislature hopes and expects that the disparity between attorneys who represent injured workers and those who represent insurers and employers is corrected, and that appropriate compensation is paid to attorneys who represent injured workers in order to compensate them for the risk they take and in a manner that will attract new attorneys to the representation for injured workers.

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(4) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter. **The Workers' Compensation Board shall review all attorney fee schedules biennially for adjustment.**

(5) The board shall, in establishing the schedule of attorney fees awarded under this chapter, consider the contingent nature of the practice of workers' compensation law and the necessity of allowing the broadest access to attorneys by injured workers and shall give consideration to fees earned by attorneys for insurers and self-insured employers.

[*(5)*] **(6)** The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant in connection with the same proceeding under ORS 656.268.

[*(6)*] **(7)** Insurers and self-insured employers shall make an annual report to the Director of the Department of Consumer and Business Services reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the director prescribes.

HB 2764-A9 SECTION 9. **Purpose of proposed amendment**	HB 2764-A9 SECTION 9. **Adding Section 10 to ORS chapter 656**
Adding section 10 (regarding attorney fees in timeloss disputes) to ORS Ch. 656	SECTION 10. Section 10 of this 2015 Act is added to and made a part of ORS chapter 656.
HB 2764-A9 SECTION 10. **Purpose of proposed new statutory section**	**HB 2764-A9 SECTION 10.** Key: **Bold** means content added to current chapter 656.
The purpose of this new statutory section 10 is to redress the inequitable situation in which when an injured worker prevails in a timeloss (temporary disability) dispute. Current attorney fees are not only are paid out of the injured worker's increased benefits, but those fees are capped at $1,500. Such a scheme neither reflects the value to the injured worker of the underlying disability benefits, nor the complexity of the litigation. In addition, it does not provide adequate incentives for accurate claims processing. This new statutory provision provides that, when an injured worker prevails in such litigation, his/her attorney will be paid a reasonable assessed attorney fee (meaning an insurer or self-insured employer-paid fee.) We are eliminating both the out-of-compensation nature of the fee, and we are also eliminating the artificial cap.	SECTION 10. **The claimant's attorney shall be allowed a reasonable assessed attorney fee if:** **(1) The claimant's attorney is instrumental in obtaining temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268(4) or 656.325 prior to a decision by an Administrative Law Judge; or** **(2) The claimant finally prevails in a dispute over temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268(4) or 656.325 after a request for hearing has been filed.**
HB 2764-A9 SECTION 11. **Purpose of proposed new statutory section**	**HB 2764-A9 SECTION 11.** Key: **Bold** means content added to current chapter 656.
This section 11 mandates that HB 2764-A9 applies to orders issued and attorney fees incurred (for attorney work done before and after the effective date) regardless of the date of claim filing, so long as there is no final order as of the effective date.	SECTION 11. **Section 10 of this 2015 Act and the amendments to ORS 656.012, 656.262, 656.277, 656.313, 656.382, 656.385, 656.386 and 656.388 by sections 1 to 8 of this 2015 Act apply to orders issued and attorney fees incurred on or after the effective date of this 2015 Act, regardless of the date on which the claim was filed.**