

Senate Bill 750

Sponsored by Senator TAYLOR, Representatives WILLIAMSON, SALINAS; Senators FAGAN, FREDERICK, GOLDEN, MANNING JR, MONNES ANDERSON, WAGNER, Representatives ALONSO LEON, EVANS, GORSEK, HERNANDEZ, HOLVEY, KENY-GUYER, LEIF, NERON, NOSSE, PILUSO, POWER, RAYFIELD, REARDON, SCHOUTEN, SMITH WARNER, STARK, WILLIAMS, WITT

SUMMARY

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

Establishes procedure for aggrieved person, whistleblower or representative organization to bring action in name of state to recover civil penalties for violations of certain laws related to labor and employment. Provides for distribution of civil penalties recovered.

A BILL FOR AN ACT

1
2 Relating to public enforcement actions.

3 Whereas violations of employment laws are often systemic, affecting many Oregonians and
4 undermining the economic stability of working families; and

5 Whereas despite strong protections for Oregonians, limits on the availability of public enforce-
6 ment resources have deleterious effects by allowing abuses to go uncorrected; and

7 Whereas to promote the effective enforcement of those laws while minimizing the outlay of
8 scarce state funds, a public enforcement action allows private persons to bring public enforcement
9 actions on behalf of the state; and

10 Whereas public enforcement actions are an efficient mechanism to deter and punish systemic
11 violations of Oregon law; and

12 Whereas public enforcement actions incentivize private parties to recover civil penalties for the
13 government that otherwise may not have been assessed and collected by state enforcement agencies;
14 and

15 Whereas public enforcement actions benefit employers that comply with Oregon law by pro-
16 tecting these employers from unfair competition from companies that reduce costs by disregarding
17 the law; and

18 Whereas public enforcement actions allow civic organizations to assist aggrieved persons in re-
19 porting violations of protective provisions of Oregon law; and

20 Whereas public enforcement actions encourage persons injured by violations of the Oregon law
21 to report abuses by protecting these persons from retaliation; and

22 Whereas public enforcement actions are consistent with a history, both in Oregon and in the
23 United States as a whole, of laws enabling private citizens to aid in detection of false claims for
24 public funds and more recently to enforce labor laws; and

25 Whereas public enforcement actions will increase the capacity of state agencies to investigate
26 alleged violations of Oregon law and to bring actions to recover civil penalties; now, therefore,

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

28 **SECTION 1. As used in sections 1 to 6 of this 2019 Act:**

29 **(1) "Aggrieved person" means an employee, a prospective or former employee or a person**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 providing services for remuneration to another, against whom one or more alleged violations
2 was committed by an alleged violator, whether or not employed by the violator at the time
3 an action is filed, including any person who is not classified by an employer as an employee
4 but who claims to be an employee and whose claims against the purported employer relate
5 to misclassification of employment.

6 (2) "Public enforcement action" means a civil action brought by a relator under section
7 2 of this 2019 Act to recover civil penalties for a violation enforceable by a responsible state
8 official.

9 (3) "Relator" means an aggrieved person, a whistleblower or a representative organiza-
10 tion that brings a public enforcement action.

11 (4) "Representative organization" means a nonprofit corporation incorporated under ORS
12 chapter 65, or an organization eligible for tax exempt status pursuant to section 501(c)(3),
13 501(c)(4) or 501(c)(5) of the Internal Revenue Code, that regularly advocates on behalf of
14 employees or that regularly assists in public enforcement actions under sections 1 to 6 of
15 this 2019 Act and that has been elected by an aggrieved person to bring a public enforcement
16 action on the aggrieved person's behalf.

17 (5)(a) "Responsible state official" means the person authorized by law to take enforce-
18 ment action for a violation.

19 (b) "Responsible state official" includes an agency employee delegated to act on an
20 official's behalf with respect to taking enforcement action for a violation or receiving notices
21 pursuant to sections 1 to 6 of this 2019 Act.

22 (6) "Violation" means a violation of ORS 433.850 or 650.005 to 650.100 or ORS chapter
23 279C, 652, 653, 654, 656, 658, 659, 659A, 671 or 701 or a rule adopted pursuant thereto.

24 (7) "Whistleblower" means a current or former employee, contractor, subcontractor, or
25 employee of a contractor or subcontractor, of a person who has committed alleged violations
26 with knowledge of the alleged violations that is independent of and materially adds to any
27 publicly disclosed information about the alleged violations.

28 **SECTION 2.** (1)(a) An aggrieved person, a whistleblower or a representative organization
29 may bring a public enforcement action for an alleged violation as a relator on behalf of the
30 State of Oregon and in the name of the State of Oregon, pursuant to the procedures and
31 subject to the limitations specified in section 5 of this 2019 Act.

32 (b) The public enforcement action may be brought in the Circuit Court for Marion County
33 or any court of competent jurisdiction for any county where the alleged conduct occurred.

34 (c) A public enforcement action may allege multiple violations that have affected differ-
35 ent persons aggrieved by the same defendant.

36 (d) If a public enforcement action is brought by a representative organization on an
37 aggrieved person's behalf, the aggrieved person may direct that the representative organ-
38 ization keep the identity of the aggrieved person confidential.

39 (2) If a responsible state official is authorized by ORS 433.850 or 650.005 to 650.100 or ORS
40 chapter 279C, 652, 653, 654, 656, 658, 659, 659A, 671 or 701 or rules adopted pursuant thereto
41 to assess a civil penalty, a court is authorized to assess an equivalent civil penalty in a public
42 enforcement action. If ORS 433.850 or 650.005 to 650.100 or ORS chapter 279C, 652, 653, 654,
43 656, 658, 659, 659A, 671 or 701 or rules adopted pursuant thereto create a duty owing to an
44 employee, but no civil penalty is specifically provided by law, a court is authorized to assess
45 a civil penalty of \$250 in a public enforcement action for each aggrieved person per two-week

1 period in which the violation occurred. The court shall assess a penalty for each person
2 aggrieved by the violation during the relevant time period.

3 (3) A court may assess a lesser civil penalty than the civil penalty specified by this sec-
4 tion if, based on the facts and circumstances of the particular case, to do otherwise would
5 result in an award that is unjust, arbitrary and oppressive, or confiscatory.

6 (4) Civil penalties recovered in a public enforcement action shall be distributed as follows:

7 (a) If the Attorney General has not intervened in the public enforcement action under
8 section 5 of this 2019 Act, 30 percent to the relator and 70 percent to a relevant state agency
9 identified by the court for deposit in the Community Outreach and Labor Education Fund
10 established under section 7 of this 2019 Act and for enforcement of the laws of this state and
11 for education about the rights and obligations enforceable through a public enforcement
12 action.

13 (b) If the Attorney General has intervened in the public enforcement action under section
14 5 of this 2019 Act, 20 percent to the relator and 80 percent to a relevant state agency iden-
15 tified by the court for deposit in the Community Outreach and Labor Education Fund es-
16 tablished under section 7 of this 2019 Act and for enforcement of the laws of this state and
17 for education about the rights and obligations enforceable through a public enforcement
18 action.

19 (5) If any civil penalty is recovered in a public enforcement action, the court shall award
20 the relator reasonable attorney fees and costs.

21 (6) The right to bring a public enforcement action under this section may not be impaired
22 by contract.

23 (7) Notwithstanding any other provision of law, a public enforcement action must be
24 commenced within the same period of time that a state agency would have to take enforce-
25 ment action for the alleged violation. The statute of limitations for bringing a public
26 enforcement action under this section is tolled from the date a relator files a notice pursuant
27 to section 5 of this 2019 Act or the date a state agency commences an investigation of the
28 alleged violation, whichever is earlier.

29 **SECTION 3.** (1) Notwithstanding section 5 of this 2019 Act, a relator may not bring a
30 public enforcement action for a violation:

31 (a) If a state agency takes enforcement action with regard to the violation within the
32 time periods set forth in section 5 of this 2019 Act and the state agency serves notice on the
33 relator pursuant to section 5 of this 2019 Act.

34 (b) If the violation is of a posting, notice, agency reporting requirement or agency filing
35 requirement, except where the filing or reporting requirement involves mandatory payroll
36 or injury reporting.

37 (2)(a) Except as provided in paragraph (b) of this subsection, the filing of a public
38 enforcement action precludes subsequent state enforcement efforts based on the same facts
39 and law, whether conducted by the state or by a relator under sections 1 to 6 of this 2019
40 Act.

41 (b) This section does not limit the Attorney General's right to seek restitution for
42 aggrieved persons as part of a public enforcement action in which the Attorney General has
43 intervened. The Attorney General shall distribute any amounts recovered as restitution in
44 the same manner in which restitution proceeds in enforcement actions initiated by the state
45 are distributed.

1 (3) The Attorney General shall establish a publicly available database of public enforce-
2 ment actions, including the names of the parties, the disposition and any other information
3 that the Attorney General prescribes by rule. The Attorney General shall adopt rules allow-
4 ing a relator to request that the Attorney General not include information in the database.

5 **SECTION 4.** (1) A person may not retaliate or threaten to retaliate against an aggrieved
6 person or whistleblower because:

7 (a) The aggrieved person or whistleblower brings a public enforcement action;

8 (b) The aggrieved person or whistleblower cooperates with a relator in a public enforce-
9 ment action; or

10 (c) It is believed that the aggrieved person or whistleblower may bring a public enforce-
11 ment action or cooperate with a person bringing a public enforcement action.

12 (2) A person aggrieved by a violation of this section may bring an action seeking
13 compensatory and punitive damages or equitable relief, including restitution of past and fu-
14 ture wages or benefits, reinstatement and reasonable attorney fees and costs.

15 **SECTION 5.** (1) A person may not commence a public enforcement action prior to 30 days
16 after written notice of the claim has been submitted by the relator to the responsible state
17 official and to the Attorney General. If more than one agency is charged with enforcement
18 of statutes or rules at issue in the prospective action, the relator shall provide notice to each
19 responsible state official.

20 (2) The notice provided under subsection (1) of this section shall be construed in the light
21 most favorable to the relator and must include:

22 (a) The name, address and last-known contact information of the alleged violator.

23 (b) The name, address and contact information of the relator.

24 (c) The name, address and contact information of any attorney representing the relator.

25 (d) A concise statement of the alleged violation reasonably calculated to apprise the re-
26 sponsible state official and the Attorney General of the substance and nature of the alleged
27 violation.

28 (3) The Attorney General shall by rule provide for the right of a relator to provide an
29 amended notice if the Attorney General determines that the relator's original notice provided
30 under subsection (1) of this section is not in compliance with this section. The Attorney
31 General shall identify with particularity the deficiencies in the original notice. If the deter-
32 mination and the opportunity to amend are not provided by the Attorney General within 30
33 days of the original notice, the original notice is deemed to comply with this section. The
34 relator has 30 days after receiving the Attorney General's determination of noncompliance
35 with this section to amend the notice. The amended notice relates back to the original no-
36 tice.

37 (4) If the responsible state official intends to investigate the alleged violation, the official
38 shall notify the relator within 30 days of the date of the notice received pursuant to sub-
39 section (1) of this section. Within 120 days of the notice of the decision to investigate, the
40 responsible state official may investigate the alleged violation and take any appropriate
41 enforcement action. If the responsible state official, during the course of the investigation,
42 determines that additional time is necessary to complete the investigation, the official may
43 extend the time by not more than 60 days and shall provide the relator with notice of the
44 extension. If the responsible state official determines that no enforcement action will be
45 taken with regard to the alleged violation, the official shall notify the relator within five

1 **business days by certified mail.**

2 (5) Upon receipt of notice that no enforcement action will be taken for an alleged vio-
3 lation, or if no enforcement action is taken by the responsible state official within the time
4 limits prescribed in this section, or if the responsible state official fails to provide timely or
5 any notification, the relator may commence a public enforcement action for the alleged vio-
6 lation.

7 (6) If the responsible state official does not object to the filing of a public enforcement
8 action pursuant to this section, but objects to the State of Oregon being represented by a
9 particular attorney proposed by the relator, the responsible state official may, within 30 days
10 of the date of the notice provided under subsection (1) of this section, notify the Attorney
11 General of the objection. Upon finding, after notice and hearing, that, based on the attorney's
12 past conduct while representing a client, the attorney does not meet the required profes-
13 sional standards of representatives, or if the attorney fails to zealously pursue the remedies
14 available under sections 1 to 6 of this 2019 Act, the Attorney General may order that the
15 public enforcement action not be filed by the attorney on behalf of the relator.

16 (7) The Attorney General may intervene in a public enforcement action and proceed with
17 any and all claims in the action:

18 (a) As of right, within 30 days after the filing of the action.

19 (b) For good cause shown, more than 30 days after the filing of the action.

20 (8) If the Attorney General intervenes in a public enforcement action, the Attorney
21 General has primary responsibility for prosecuting the action and is not bound by an act of
22 the relator bringing the action. The relator remains a party to the action. The Attorney
23 General may move to dismiss or settle the action after the relator has been notified of the
24 filing of the motion and has been provided with an opportunity to be heard, and the court
25 determines that the dismissal or settlement is fair, adequate, reasonable and in the public
26 interest. Any disposition by the Attorney General must provide fair compensation for the
27 attorney fees and costs expended on behalf of the relator in instituting the action.

28 (9) If the Attorney General does not intervene in the public enforcement action, the
29 relator may conduct the action subject to the following limitations:

30 (a) The court must review and approve any settlement of a public enforcement action.
31 The relator shall submit the proposed settlement to the responsible state official and to the
32 Attorney General at the same time that the proposed settlement is submitted to the court.
33 The court shall approve a settlement of the action if the court finds that the settlement or
34 voluntary dismissal is fair, adequate, reasonable and in the public interest. If the parties
35 reach a settlement after a relator has provided notice under subsection (1) of this section
36 but before an action is filed in court, the responsible state official shall review the proposed
37 settlement and approve the settlement if the official determines the settlement is fair, ade-
38 quate, reasonable and in the public interest.

39 (b) The Attorney General may request to be served with copies of all pleadings filed in
40 the action and to be supplied with copies of all deposition transcripts. The Attorney General
41 shall bear any costs associated with service of such pleadings and depositions.

42 (c) The Attorney General may file, at any time, information or advice with the court as
43 *amicus curiae* concerning the action.

44 (10) A public enforcement action is not required to meet the requirements of ORCP 32.

45 (11) The rules governing pretrial discovery in a public enforcement action are the same

1 as those applicable to other civil actions. No special showing of merit or other additional
2 requirement may be imposed on a relator's discovery rights in a public enforcement action.

3 **SECTION 6.** Sections 1 to 6 of this 2019 Act shall be liberally construed in light of the
4 remedial purpose of expanding the enforcement of Oregon statutes protecting employees.

5 **SECTION 7.** (1) The Community Outreach and Labor Education Fund is established in the
6 State Treasury, separate and distinct from the General Fund. Interest earned by the Com-
7 munity Outreach and Labor Education Fund shall be credited to the fund. All moneys in the
8 fund are continuously appropriated to the Bureau of Labor and Industries for the purpose
9 of awarding grants as provided in subsection (3) of this section.

10 (2) Twenty-five percent of the moneys collected by a relevant state agency under section
11 2 (4) of this 2019 Act shall be deposited in the Community Outreach and Labor Education
12 Fund.

13 (3)(a) Moneys in the Community Outreach and Labor Education Fund shall be granted
14 from time to time by the Commissioner of the Bureau of Labor and Industries to nonprofit
15 organizations to fund outreach, education and technical assistance to Oregon workers per-
16 taining to employee rights in the workplace.

17 (b) Grants provided through the fund may be used for activities to assist workers in en-
18 forcing employment rights, including outreach, community-based education events, training
19 materials, technical assistance, counseling and research and referral services.

20 (c) When considering applications for grants under this subsection, the commissioner
21 shall give priority to projects that provide services to especially vulnerable workers, includ-
22 ing low-wage, immigrant, refugee, contingent, injured, disabled, women, lesbian, gay, bisexual
23 or transgender workers.