

Requested by Representative WILDE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2205**

1 On page 1 of the printed bill, delete lines 28 through 31 and delete pages
2 2 through 5 and insert:

3 **“SECTION 1. As used in sections 1 to 7 of this 2021 Act:**

4 **“(1) ‘Enforcement action’ means the issuance of formal charges, an**
5 **order of determination or a notice of intent to assess civil penalties**
6 **or the entrance into an enforceable settlement as authorized by law.**

7 **“(2) ‘Public enforcement action’ means a civil action brought by a**
8 **relator under section 2 of this 2021 Act to recover civil penalties for a**
9 **violation enforceable by a responsible state official.**

10 **“(3) ‘Relator’ means a whistleblower relator or a representative or-**
11 **ganization that brings in good faith a public enforcement action under**
12 **sections 1 to 7 of this 2021 Act.**

13 **“(4) ‘Representative organization’ means a nonprofit corporation**
14 **incorporated under ORS chapter 65, or an organization eligible for tax**
15 **exempt status pursuant to section 501(c)(3), 501(c)(4) or 501(c)(5) of the**
16 **Internal Revenue Code, that regularly advocates to prevent the type**
17 **of harm, or regularly works on behalf of individuals impacted by the**
18 **harm, for which the public enforcement action is brought.**

19 **“(5)(a) ‘Responsible state official’ means the Commissioner of the**
20 **Bureau of Labor and Industries or the Director of the Department of**
21 **Consumer and Business Services as authorized by law to take**

1 enforcement action for a violation.

2 “(b) ‘Responsible state official’ includes a designee or agency em-
3 ployee delegated to act on the commissioner’s or director’s behalf with
4 respect to taking enforcement action for a violation or receiving no-
5 tices pursuant to sections 1 to 7 of this 2021 Act.

6 “(6)(a) ‘Violation’ means a violation of ORS chapter 652, 653, 654,
7 658, 659 or 659A, or a rule adopted pursuant thereto.

8 “(b) ‘Violation’ does not include a:

9 “(A) Violation of ORS 659A.145, 659A.403, 659A.406, 659A.409 or
10 659A.421 or discrimination under federal housing law, or a rule adopted
11 pursuant thereto.

12 “(B) Violation of a notice or posting requirement.

13 “(C) Violation of an agency reporting or filing requirement, unless
14 the requirement relates to the mandatory reporting of payroll or an
15 injury.

16 “(D) Violation for minor variations in the legal name or address of
17 an employer in an itemized statement required under ORS 652.610 or
18 652.640, provided that the variations do not impair a worker’s ability
19 to readily identify the employer.

20 “(7) ‘Whistleblower relator’ means a worker who has a reasonable
21 belief, formed independently of any publicly disclosed information,
22 that a violation was committed by:

23 “(a) The worker’s employer, prospective employer or former em-
24 ployer;

25 “(b) A person for whom the worker claims in good faith to be the
26 worker’s employer; or

27 “(c) A person who is compensating or has compensated the worker
28 for services rendered.

29 **“SECTION 2. (1)(a) A whistleblower relator may bring a public**
30 **enforcement action for an alleged violation as a relator on behalf of**

1 the State of Oregon and in the name of the State of Oregon, pursuant
2 to the procedures and subject to the limitations specified in section 5
3 of this 2021 Act.

4 “(b) A representative organization may bring a public enforcement
5 action described in paragraph (a) of this subsection if the
6 whistleblower relator agrees in writing in a form prescribed by rule
7 of the Commissioner of the Bureau of Labor and Industries to have
8 the representative organization bring the public enforcement action in
9 place of the whistleblower relator.

10 “(2)(a) The public enforcement action may be brought in the Circuit
11 Court of Marion County or any court of competent jurisdiction for a
12 county specified in ORS 14.080.

13 “(b) The public enforcement action may allege multiple violations
14 that have affected different persons aggrieved by the same defendant.

15 “(c) The public enforcement action may seek injunctive or
16 declaratory relief if the responsible state official is authorized to seek
17 such relief.

18 “(d) If the public enforcement action is brought by a representative
19 organization, the whistleblower relator may direct that the represen-
20 tative organization keep the identity of the whistleblower relator con-
21 fidential.

22 “(3) If the responsible state official is authorized to assess a civil
23 penalty, the court is authorized to assess an equivalent civil penalty
24 in a public enforcement action. If no civil penalty is specifically pro-
25 vided by law, a court is authorized to assess a civil penalty of \$250 per
26 violation in a public enforcement action for each aggrieved person per
27 two-week period in which the violation occurred. The court shall as-
28 sess a penalty for each person aggrieved by the violation during the
29 relevant time period.

30 “(4) Civil penalties recovered in a public enforcement action shall

1 be distributed as follows:

2 “(a) If the responsible state official has not intervened in the public
3 enforcement action under section 5 of this 2021 Act, 30 percent to the
4 relator and 70 percent to the responsible state official identified by the
5 court.

6 “(b) If the responsible state official has intervened in the public
7 enforcement action under section 5 of this 2021 Act, 20 percent to the
8 relator and 80 percent to the responsible state official identified by the
9 court.

10 “(c) Notwithstanding any other provision of law:

11 “(A) Seventy-five percent of all funds received by the responsible
12 state official pursuant to sections 1 to 7 of this 2021 Act are contin-
13 uously appropriated to the responsible state official for the purpose
14 of enforcing the laws of this state that the responsible state official is
15 charged with enforcing.

16 “(B) Twenty-five percent of all funds received by the responsible
17 state official pursuant to sections 1 to 7 of this 2021 Act shall be de-
18 posited in the Community Outreach and Labor Education Fund es-
19 tablished under section 8 of this 2021 Act.

20 “(d) The relator shall distribute equitably any civil penalties recov-
21 ered by the relator among the persons affected by the violation found
22 in the public enforcement action. The relator shall submit a distrib-
23 ution summary to the court who may order a different distribution.
24 Any distribution shall compensate the relator for the burdens and
25 risks of prosecuting the public enforcement action or, if the relator is
26 a representative organization, provide reasonable compensation to the
27 representative organization for attorney fees and costs incurred in in-
28 vestigating, instituting and litigating the public enforcement action.

29 “(5) If a civil penalty is recovered in a public enforcement action,
30 the court shall award the relator reasonable attorney fees and costs

1 and may award the responsible state official reasonable attorney fees
2 and costs and applicable equitable remedies.

3 “(6) The right to bring a public enforcement action under this sec-
4 tion may not be impaired by contract.

5 “(7) Notwithstanding any other provision of law, a public enforce-
6 ment action must be commenced within the same period of time that
7 a responsible state official would have to take enforcement action for
8 the alleged violation. The statute of limitations for bringing a public
9 enforcement action under this section is tolled from the date a relator
10 files a notice and pays a fee pursuant to section 5 of this 2021 Act or
11 the date a responsible state official commences an investigation of the
12 alleged violation, whichever is earlier to the date a relator is permitted
13 to commence a public enforcement action under section 5 of this 2021
14 Act.

15 “(8) Notwithstanding any other provision of law, a public enforce-
16 ment action initiated by a private party under sections 1 to 7 of this
17 2021 Act may not be used for the purpose of res judicata or collateral
18 estoppel in a private action based on the same operative facts.

19 **“SECTION 3. (1) Notwithstanding section 5 of this 2021 Act, a**
20 **relator may not bring a public enforcement action for a violation if a**
21 **responsible state official takes enforcement action with regard to the**
22 **violation within the time periods set forth in section 5 of this 2021 Act**
23 **and the responsible state official serves notice on the relator pursuant**
24 **to section 5 of this 2021 Act.**

25 “(2)(a) Except as provided in paragraph (b) of this subsection, the
26 filing of a public enforcement action precludes subsequent state
27 enforcement efforts to recover civil penalties based on the same facts
28 and law, whether conducted by the state or by a relator under sections
29 1 to 7 of this 2021 Act.

30 “(b) This section does not limit the right of a responsible state of-

1 **ficial to seek other damages for aggrieved persons as part of a public**
2 **enforcement action in which the responsible state official has inter-**
3 **vened.**

4 **“(3) The filing of a public enforcement action precludes a subse-**
5 **quent public enforcement action based on the same facts and law,**
6 **unless the court determines the initial public enforcement action has**
7 **not been diligently prosecuted.**

8 **“(4)(a) The Commissioner of the Bureau of Labor and Industries**
9 **shall establish a publicly available database of public enforcement**
10 **actions, including the names of the parties, the disposition and any**
11 **other information that the commissioner prescribes by rule. The**
12 **commissioner shall adopt rules allowing a relator to request that the**
13 **commissioner not include certain information in the database due to**
14 **risk to person, family or property, risk of job loss or other reasonable**
15 **considerations.**

16 **“(b) Each responsible state official shall provide the commissioner**
17 **with the information described in paragraph (a) of this subsection**
18 **necessary for the commissioner to maintain an up-to-date database**
19 **of public enforcement actions.**

20 **“(5) Public enforcement actions brought under sections 1 to 7 of this**
21 **2021 Act are subject to ORS 192.311 to 192.478.**

22 **“SECTION 4. (1) A person may not retaliate or threaten to retaliate**
23 **against a relator or person because:**

24 **“(a) The relator brings a public enforcement action;**

25 **“(b) The person cooperates with a relator in a public enforcement**
26 **action; or**

27 **“(c) It is believed that the relator may bring a public enforcement**
28 **action or the person may cooperate with a relator bringing a public**
29 **enforcement action.**

30 **“(2) A person aggrieved by a violation of this section may bring an**

1 action seeking compensatory and punitive damages or equitable relief,
2 including restitution of past and future wages or benefits, rein-
3 statement and reasonable attorney fees and costs.

4 **“SECTION 5. (1) A relator may not file a public enforcement action**
5 **until 30 days after the date the relator has submitted to the responsi-**
6 **ble state official a written notice of intent to file the action and paid**
7 **to the responsible state official a \$75 fee, unless the fee is waived under**
8 **rules prescribed by the responsible state official. If more than one**
9 **agency is charged with enforcement of the statutes or rules at issue**
10 **in the prospective action, the relator shall provide notice to each re-**
11 **sponsible state official for each agency.**

12 **“(2) The notice provided under subsection (1) of this section shall**
13 **be construed in the light most favorable to the relator and must in-**
14 **clude:**

15 **“(a) The name, address and last known contact information of the**
16 **alleged violator, if known.**

17 **“(b) The name, address and contact information of the relator.**

18 **“(c) The name, address and contact information of any attorney**
19 **representing the relator.**

20 **“(d) A concise statement of the alleged violation reasonably calcu-**
21 **lated to apprise the responsible state official of the substance and na-**
22 **ture of the alleged violation, including, but not limited to, the statutes**
23 **or rules alleged to have been violated, the estimated number of**
24 **aggrieved persons and relevant facts, dates and events.**

25 **“(3) The responsible state official shall by rule provide for the right**
26 **of a relator to provide an amended notice if the responsible state of-**
27 **ficial determines that the relator’s original notice provided under**
28 **subsection (1) of this section is not in compliance with this section.**
29 **The responsible state official shall identify with particularity the defi-**
30 **ciencies in the original notice. If the determination and the opportu-**

1 nity to amend are not provided by the responsible state official within
2 30 days of the original notice, the original notice is deemed to comply
3 with this section. The relator has 30 days after receiving the respon-
4 sible state official’s determination of noncompliance with this section
5 to amend the notice. The amended notice relates back to the original
6 notice.

7 “(4)(a) If the responsible state official intends to investigate the al-
8 leged violation, the responsible state official shall notify the relator
9 by certified mail within 30 days of the date of the notice or amended
10 notice received pursuant to subsection (1) or (3) of this section.

11 “(b) During the period of time the responsible state official is in-
12 vestigating the alleged violation a relator may not file a public
13 enforcement action.

14 “(c) Except as provided in paragraph (d) of this subsection, within
15 120 days of the notice of the decision to investigate, the responsible
16 state official may investigate the alleged violation and take any ap-
17 propriate enforcement action. If the responsible state official deter-
18 mines that additional time is needed to complete the investigation, the
19 responsible state official may investigate the alleged violation and take
20 enforcement action within an additional 60 days upon notifying the
21 relator of the additional time.

22 “(d) When the alleged violation is for a violation of ORS chapter
23 659A, within one year of the notice of the decision to investigate, the
24 responsible state official may investigate the alleged violation and take
25 enforcement action.

26 “(e) The responsible state official shall promptly notify the relator
27 by certified mail of reaching an enforcement determination.

28 “(5) Upon receipt of notice that no enforcement action will be taken
29 for an alleged violation, or if no enforcement action is taken by the
30 responsible state official within the time limits prescribed in this sec-

1 tion, or if the responsible state official fails to provide timely or any
2 notification, the relator may commence a public enforcement action
3 for the alleged violation.

4 “(6) A public enforcement action shall proceed promptly without
5 regard to any concurrent private actions.

6 “(7) The responsible state official may move the court to dismiss the
7 public enforcement action, if dismissal is rationally related to accom-
8 plishing a valid governmental purpose and the purpose is not fraudu-
9 lent, arbitrary or capricious. The relator shall have an opportunity to
10 be heard by the court on the motion to dismiss.

11 “(8) The responsible state official may intervene in a public
12 enforcement action and proceed with any and all claims in the action:

13 “(a) As of right, within 30 days after the filing of the action or the
14 filing of a bankruptcy proceeding that affects the action.

15 “(b) For good cause shown, as determined by the court, more than
16 30 days after the filing of the action or the filing of a bankruptcy
17 proceeding that affects the action.

18 “(9) If the responsible state official intervenes in a public enforce-
19 ment action:

20 “(a) The responsible state official has primary responsibility for
21 prosecuting the action and is not bound by an act of the relator
22 bringing the action. Upon intervention, the responsible state official
23 shall provide the relator reasonable compensation for the attorney fees
24 and costs expended on behalf of the relator in investigating, institut-
25 ing and litigating the action.

26 “(b) The court must review and approve any proposed settlement
27 of the public enforcement action. The responsible state official shall
28 submit the proposed settlement to the court and at the same time
29 provide the relator with a copy of the proposed settlement. The relator
30 shall have an opportunity to be heard by the court on the proposed

1 settlement. The court may approve the settlement if the court finds
2 that the settlement is fair, adequate, reasonable and in the public in-
3 terest. Any settlement must account for reasonable compensation for
4 the attorney fees and costs expended on behalf of the relator in in-
5 vestigating, instituting and litigating the action.

6 “(10) If the responsible state official does not intervene in the public
7 enforcement action, the relator may conduct the action subject to the
8 following limitations:

9 “(a) The responsible state official may request to be served with
10 copies of all pleadings filed in the action and to be supplied with copies
11 of all deposition transcripts. The responsible state official shall bear
12 any costs associated with service of such pleadings and depositions.

13 “(b) The responsible state official may file, at any time, information
14 or advice with the court as amicus curiae concerning the action.

15 “(c)(A) The court must review and approve any proposed settlement
16 of the public enforcement action. The relator shall submit the pro-
17 posed settlement to the responsible state official at the same time that
18 the proposed settlement is submitted to the court.

19 “(B) If the parties reach a settlement after a relator has provided
20 notice under subsection (1) of this section but before an action is filed
21 in court, the relator shall file a petition to approve settlement in the
22 Circuit Court of Marion County or any court of competent jurisdiction
23 for a county specified in ORS 14.080.

24 “(C) The court may approve a settlement if the court determines
25 the settlement is fair, adequate, reasonable and in the public interest.
26 The settlement must account for reasonable compensation for the at-
27 torney fees and costs expended on behalf of the relator in investigat-
28 ing, instituting and litigating the action. The settlement may not
29 contain a confidentiality, nondisclosure or nondisparagement clause
30 or a provision that has the purpose or effect of preventing the relator

1 from disclosing or discussing an alleged violation or resolution.

2 “(11) A public enforcement action is not required to meet the re-
3 quirements of ORCP 32.

4 “(12) The rules governing pretrial discovery in a public enforcement
5 action are the same as those applicable to other civil actions. No spe-
6 cial showing of merit or other additional requirement may be imposed
7 on a relator’s discovery rights in a public enforcement action.

8 “SECTION 6. A responsible state official may adopt rules necessary
9 to implement the provisions of sections 1 to 7 of this 2021 Act.

10 “SECTION 7. Sections 1 to 7 of this 2021 Act shall be liberally con-
11 strued in light of the remedial purpose of expanding the enforcement
12 of Oregon statutes.

13 “SECTION 8. (1) the Community Outreach and Labor Education
14 Fund is established in the State Treasury, separate and distinct from
15 the General Fund. Interest earned by the Community Outreach and
16 Labor Education Fund shall be credited to the fund. The moneys in
17 the fund are continuously appropriated to the Bureau of Labor and
18 Industries for the purposes specified in subsection (2) of this section.

19 “(2)(a) The Commissioner of the Bureau of Labor and Industries
20 shall from time to time, but at least annually, grant money from the
21 fund to nonprofit organizations to assist workers in this state regard-
22 ing workers’ rights in the workplace.

23 “(b) Grants may be used for activities that assist workers in en-
24 forcing employment rights including outreach, education, training,
25 technical assistance, counseling, research and referral services.

26 “(c) Priority for awarding grants shall be given to programs that
27 provide services to workers who are members of communities histor-
28 ically vulnerable to violations as that term is defined in section 1 of
29 this 2021 Act, including low wage workers, contingent workers, immi-
30 grants, refugees or persons with disabilities, or because of a person’s

1 **gender, gender identity or sexual orientation.**

2 **“(d) The commissioner shall make publicly available the list of**
3 **grantees.**

4 **“(3) The commissioner shall by rule establish an application process**
5 **for awarding grants and may adopt any other rules necessary to carry**
6 **out the provisions of this section.”.**

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