



February 24, 2021

Re: OPPOSE HB 2205

Dear Chair Power and members of the House Civil Law Subcommittee,

Thank you for the opportunity to write today to express our opposition to HB 2205. The Oregon State Chamber of Commerce represents 86 local chambers of commerce and more than 27,000 local businesses from every corner of the state. These local businesses are the life-blood of their communities and Oregon's economy.

The Private Attorney General Act – as proposed in HB 2205 – is not a new concept. We've learned a lot about implementation of this law through the experience of our business colleagues in California.

OSCC opposes HB 2205 because of the unprecedented threat it poses to the employer community due to the financial leverage it provides to plaintiffs' attorneys to pursue claims for minor violations of all manner of state law. The California experience is rife with questionable litigation that results in significant monetary settlements where plaintiffs' attorneys retain a majority of the money for fees.

In California, PAGA lawsuits increased from 335 in the first year of implementation (2004) to over 4,300 today. That number is expected to grow to over 7,000 in coming years.

We will focus our comments today on Section 5 (5) which demonstrates why the bill is so gravely flawed: *(5) Upon receipt of notice that no enforcement action will be taken for an alleged violation, or if no enforcement action is taken by the Attorney General or responsible state official within the time limits prescribed in this section, or if the Attorney General or responsible state official fail to provide timely or any notification, the relator may commence a public enforcement action for the alleged violation.*

- **Awards that are disproportionate to the alleged violation.**
- **No requirement that "relator" suffer actual harm.**
- **PAGA penalties are imposed regardless of intent.** An agency may well find an employer made a good faith, inadvertent error. A PAGA action may be filed nonetheless.
- **PAGA applies to all employers regardless of size.** Small employers will undoubtedly not be able to survive some PAGA actions.

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- **Abuse of “draft” PAGA complaints.** Plaintiffs’ attorneys create draft PAGA complaints and send them to the employer. These litigation threats compel settlement before a PAGA complaint is filed.
- **Statutory right to attorney fees for the employee’s attorney only**, thereby adding another layer of cost onto employers, adding leverage to “draft” complaints, and providing an incentive to file cases.

There is no reason to pass this bill when the state has plenty of enforcement agencies already on hand to enforce laws and regulations.

HB 2205 will cause enforcement conflicts between agencies and plaintiffs’ attorneys and non-profits – for instance, we could easily envision a scenario in which an employer – for even the most minor violations - would actually request to be fined by an agency rather than be left to fend for themselves under a PAGA regime.

And how would business liability coverage be written in instances where an enforcement agency declines enforcement action and yet a PAGA claim is made?

HB 2205 will have the added effect of adding significant new workloads to county courts.

For these reasons, OSCC respectfully requests that HB 2205 be opposed and tabled for the session.

Respectfully,



Gioia Goodrum
OSCC Board Chair



JL Wilson
OSCC Legislative Counsel