

February 24, 2021

To: Chair Power and Members of the House Subcommittee on Civil Law
From: Paloma Sparks, Oregon Business and Industry
RE: OBI Testimony on HB 2205

Chair Power and Members of the Committee:

Thank you for the opportunity to testify on this important issue for Oregon Business & Industry members. OBI is Oregon's most comprehensive business association representing over 1,600 businesses that employ over 250,000 people. We represent multiple sectors across Oregon and serve as the state's Retail and Manufacturing Councils.

House Bill 2205 would allow any individual or organization to bring suits on behalf of the state of Oregon for any provision in state law that may be enforced by a state agency. Our members have significant concerns about how that could expose businesses to unfair litigation. We have seen the devastating impact of lawsuits like these in California, where these lawsuits have run rampant.

We have negotiated many bills over the years to promote agency enforcement of various provisions. This bill would undermine all of those agreements to suddenly apply private rights of action where none existed before in statute. The business community has also accepted increased costs to support our state agencies so that they can pursue enforcement rather than face the possibility of increased litigation. This bill would mean that the tradeoff that businesses made when choosing to support those added costs have lost all benefit.

Our state agencies are dedicated to enforcement of the laws, which may or may not require high penalties as punishment. Certainly, there are instances where penalties are the most appropriate resolution. The purpose of enforcement is to ensure that violations do not continue to occur. State agencies will often use investigations as an opportunity to educate businesses on best practices or explore ways to ensure employees are being educated about their rights. BOLI, for one, sometimes enters into settlements that involve compliance agreements that involve new employer-paid training and spot checks. Tools like these ensure that the business has better workplace practices and employees are protected. Often, agencies choose to focus on the long-term education of businesses to improve overall compliance rather than monetary penalties. Penalties are just one tool that agencies have.

In California, where similar laws exist to the one proposed here, monetary penalties are the only real tool. There, employees recover only nominal fees while employers face million-dollar judgments or are forced to settle for high amounts. Where does that money go? To attorneys. The only real beneficiaries of that system are the attorneys. California has shown great success

in growing an industry of attorneys who pursue and defend against PAGA claims. Employers and employees, though, pay the price.

California's own Labor and Workforce Development agency identified the flaws in the system noting that "the substantial majority" of proposed private court settlements in PAGA cases reviewed by the PAGA Unit fell short of protecting the interests of workers and the state. The analysis continued: "Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the failure of many private plaintiffs' attorneys to fully protect the interests of the aggrieved employees and the state."

What is most alarming about HB 2205 is that it goes well beyond the disaster that we have seen in California. This proposal would clog our courts with claims about *any* provision enforceable under state statute. And our agencies would be tasked with responding to these claims rather than focusing on what may be the highest priorities that they want to pursue. Every year, the legislature passes hundreds of new laws, most enforceable by state agencies. This bill could allow any person with a bias to bring suit under those laws. A law like this makes business even more cautious about new legislation because rather than bringing new improvements, we see the threat of frivolous or harassing lawsuits.

We urge the committee to oppose HB 2205 and other efforts that might undermine our existing system that prioritizes real solutions over litigation. Thank you for your time and consideration.