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What is the Just Enforcement Act? An Outline of HB 2205 of 2021

The Oregon Legislature does a good job of passing sound and balanced laws that protect Oregonians from predatory corporate behavior. But protection requires enforcement, and enforcement can be difficult in times when government resources are limited. The Just Enforcement Act (JEA) is designed to fill gaps in enforcement. Worker safety, wages, working conditions, anti-discrimination laws and others can be fully enforced, even in times of scarcity.

The JEA provides a means to enforce state law through private-public partnership. The State oversees and controls enforcement actions, but private individuals and advocacy organizations are permitted to step in to enforce State law, when the State lacks resources to do so.

Section 1: Relevant Definitions

The Act defines a “public enforcement action” as a civil action to recover penalties for those violations that are enforceable by OSHA or BOLI. A “relator” can bring a public enforcement action. A relator can be a worker or a representative organization with a good faith belief in the violation/s. A “representative organization” is a nonprofit chosen by the worker that regularly advocates to prevent the type of harm for which the public enforcement action is brought. “Violation” means a violation of ORS chapter 652, 653, 654, 658, 659 or 659A, or a rule adopted pursuant thereto.

Section 2: Mechanism of private party suits and penalties

Before a relator may bring suit under the JEA, the relator must give notice to the State agency so that the agency can decide whether to pursue the matter. The JEA suit can allege violations affecting multiple people. The suit can seek injunctive relief, i.e. that an employer stop doing something illegal or start doing something to improve conditions or practices. A representative organization may keep the identity of the relator/s confidential.

If a state agency can assess a civil penalty by statute, a court may also assess this penalty in suits brought under the JEA. When no penalty is specified, the court is authorized to assess \$250 per two-week period in which the violation occurred, for each aggrieved person during that time period.

Civil penalties are distributed 30% to the relator and 70% to the state, if the state does not intervene in the action. If the state does intervene, penalties are distributed 20% to the relator and 80% to the state. 25% of the state’s share is put aside to be granted to community groups to do outreach and help workers navigate labor enforcement. *See* Section 8. The state’s portion is continuously appropriated to the enforcement agency for further enforcement. The relator must

distribute their share of the penalties among affected persons but may receive a larger share to reflect the burden and risk of bringing the action. A representative organization may recover costs and attorney fees. The court will award attorney fees to the relator and may award them to the agency as well.

A public enforcement action for penalties does not bar an individual from bringing a private action based on the same facts or violations.

Section 3: Rights of the parties

A relator may not bring an action if the agency takes enforcement action on the violations. A relator may not bring an action for a violation of a posting or notice requirement or minor mistakes in an itemized wage statement.

BOLI will establish a public database of public enforcement actions with basic information including names of parties and disposition of the action. There will be a process to keep certain information confidential.

Section 4: Retaliation protection

Retaliation is prohibited against a person who brings a public enforcement action, cooperates in an action or is perceived to have brought or cooperated in an action. Violation is unlawful under ORS 659A. Remedies are as provided in 659A.885(1) and (3)

Section 5: Notice of the action

A relator gives notice to the agency of the violations and pays a \$75 filing fee. The agency then has 30 days to determine if it will take action. The notice must include contact information of the alleged violator and of the relator, a concise statement of the alleged violation, estimated number of affected workers, among other things. The agency may reject the notice if it is deficient. The relator then has another 30 days to amend the notice.

If the agency intends to investigate, it notifies the relator within 30 days of receipt of the notice. The agency then has 120 days to investigate the violations and may take an extra 60 days if needed. After 120 (or 180) days, the agency must promptly notify the relator of its determination. For civil rights violations, BOLI has one year to investigate and enforce. If no enforcement action is taken or no notice is given, the relator may then proceed. If the relator proceeds after the state has investigated but not taken enforcement action, the state may move to dismiss the action. Dismissal is appropriate if it is rationally related to accomplishing a valid governmental purpose and is not fraudulent, arbitrary and capricious, or illegal

If the agency initially decides not to enforce but changes its mind, the agency may intervene within 30 days of a relator filing in court or at any point for good cause. After intervention, the agency has primary responsibility for prosecuting the action. It must provide the relator its reasonable attorney fees prior to intervention.

The court must approve any settlement of a public enforcement action, whether brought by a relator or the state. The state or relator must submit a proposed settlement to the court, as well as

to each other. A relator has an opportunity to be heard on any proposed settlement, as does the state. The court may approve the settlement if it is fair, adequate, reasonable and in the public interest. If the parties settle a case before filing in court, the relator must file a complaint and motion to approve the settlement at the same time. Settlements under this act may not contain a confidentiality clause or any other provision that has the purpose or effect of preventing the relator from discussing the alleged violations or resolution.

If the agency does not intervene, it may request to be served with copies of all pleadings and deposition transcripts at its own cost.

When a person brings a public enforcement action, no person may bring a related public enforcement action based on the same facts during the same time period unless the court determines that the previously-filed public enforcement action has not been diligently prosecuted.

Section 6: The Act is to be construed liberally.

Section 7: The responsible state official may adopt any rules necessary to carry out the provisions of Act.

Section 8: Community Outreach and Labor Education Fund

25% of all penalty money collected by the agency is directed to a fund for community outreach and labor education. This money will be granted to nonprofit organizations to fund outreach, education and technical assistance to Oregon workers regarding workers' rights in the workplace. There will be a public application process for awarding the grants and a public list of grantees.

Nonprofits that provide services to BIPOC, low-wage, immigrant, refugee, contingent, injured, disabled, women and LGBTQ+ workers will be given priority in the application process.