



**Chair Kathleen Taylor, Vice Chair Daniel Bonham
Senate Committee on Labor and Business
Opposition to SB 592
February 14, 2023**

The Oregon Farm Bureau Federation (OFB) and Oregon Association of Nurseries (OAN) appreciate the opportunity to provide feedback SB 592. As a reference, OFB is the state's largest trade association representing over 6000 family farms and ranches actively engaged in production agriculture. OAN represents the nursery and greenhouse industry which is the state's largest agricultural sector and the nation's second largest nursery state with over \$1.2 billion in sales. Nearly 75% of nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River. Nursery association members represent wholesale and Christmas tree growers, retailers and greenhouse operations.

While we appreciate the goal of proponents to reduce workplace fatalities and create a safer work environment, the current construct of the bill penalizes small and family-owned businesses and provides no metric to assess whether increasing penalties and conducting comprehensive inspections actually create safer workplaces. OFB and OAN cannot support SB 592 as drafted.

First, we disagree with the premise that substantially increasing penalties will deter “bad actors” from willfully violating the law. That said, Oregon employers operate in an increasing burdensome and complicated regulatory arena, and many are struggling to navigate compliance with recently passed OR-OSHA laws. For family farms and nurseries, the proposed increase in penalties could be devastating or limit opportunities to invest in additional safety measures. Oregon has done a lot of work over the last several years to update workplace safety regulations, and we should find out whether that will have an impact on workplace safety before passing laws to levy stiffer and more significant penalties. Should SB 592 move forward, we recommend that SB 592 be amended to increase penalties more gradually over time to lessen the impact to small employers and family businesses.

We also encourage amendments to SB 592 to provide increased technical assistance for employers. As the committee is aware, OR-OSHA penalizes farms that diligently follow best practices and whose employees break safety rules that lead to accidents. In the U.S.—unlike Canada—employees carry no responsibility when it comes to following workplace safety laws. This makes it challenging to balance punishing fines for employers alongside rewards for diligent safety practices, and OR-OSHA is not always adept at distinguishing between the two. For instance, OR-OSHA published one family business in a press release for failing to put a COVID-19 poster on a port-a-potty that had just been delivered to the farm.¹ This press release seeded distrust and fear across the entire industry—for a poster violation! We can only imagine the number of minor violations and penalties that the agency could and would assess against farm and ranch families if instructed to do so by the legislature. These penalties will not create a safer workplace but will drive agriculture from Oregon. OFB and OAN encourage the

¹ <https://osha.oregon.gov/news/2020/Pages/nr2020-36.aspx>

committee to invest in a “carrot” alongside the regulatory hammer proposed in SB 592. It is very difficult for family businesses to navigate Oregon’s complex workplace safety regulations, and in particular, those adopted by OR-OSHA over the last four years. Technical assistance would provide meaningful support to employers who are trying to do the right thing.

Second, OFB and OAN oppose language in section 1, subsection 2 of SB 592 that requires comprehensive inspections for fatalities that were not the result of a willful violation. Our concerns are centered in the COVID-19 pandemic, and the methodology by which the State of Oregon counted occupational exposures and deaths.

Although the media attributed workplace outbreaks to agriculture and businesses generally throughout much of 2020, existing data did not reveal a significant risk of COVID-19 exposure in an occupational setting. On the contrary, state public health officials were clear that workplace spread was not the primary way that COVID-19 was spreading among Oregonians.

“Outbreaks like this are complicated,” Allen said. “They can involve things like social events, people who have contact with other members of their household as well as employment.... It’s not so simple to point to just a particular event or a particular place and say that was the cause of the outbreak.”²

“We are all concerned about what happens when people move indoors,” Allen said. “... These social gatherings we’ve seen are not typically in commercial spaces, they’re typically in people’s homes.”³

“Again, [COVID-19] is a community acquired infection. Household transmission plays a huge role in the transmission of disease...the initial cluster that we identified was related to a Labor Day gathering not associated with Pacific Seafoods.”⁴

From Oregon Health Authority Director Pat Allen in a press conference with Gov. Kate Brown and Dr. Dean Sidelinger on July 13, 2020: *“we identify workplace outbreaks because they’re easy to see and because an outbreak can spread in a workplace, but it’s also important to remember that the outbreak didn’t just spring up magically in that workplace. It came from outside the workplace into the community.”*

“The outbreak currently affects a total of 48 of about 350 people who arrived in the Portland metro area May 23 and 24 to harvest fruit from Townsend-owned sites in

² Jamie Goldberg. Oregonlive. Coronavirus outbreak at Oregon seafood processor illuminates challenges in tracing infection origins, limitations in state’s response. October 9, 2020. <https://www.oregonlive.com/coronavirus/2020/10/coronavirus-outbreak-at-oregon-seafood-processor-illuminates-challenges-in-tracing-infection-origins-limitations-in-states-response.html>

³ KGW8. COVID-19 cases up 25% in Oregon since the end of August. October 2, 2020. <https://www.msn.com/en-us/news/us/new-tests-on-the-way-for-oregon-which-has-seen-a-25-increase-in-covid-19-tests-since-aug-31/ar-BB19L9SC>

⁴ Dr. Emilio DeBess. Oregon Health Authority. Pacific Seafoods Town Hall. October 2, 2020: <https://www.youtube.com/watch?v=5NaVayyA-o> at 8:15:00

Fairview and Cornelius," OHA said in a statement. "The individuals are believed to have been exposed to the virus prior to coming to Oregon."⁵

Despite clear statements from public health officials to the contrary, Oregon's agencies regularly categorized infections and fatalities as work-related. If SB 592 were in effect in 2020, OR-OSHA staff likely would have been working in overdrive, visiting hundreds of places of employment and conducting comprehensive inspections. Using the pandemic as the example, SB 592 punishes employers who have not willfully violated the law by requiring whole-facility inspections when they are not warranted. The bill expends state resources on inspections that are unlikely create a different outcome or safer workplace. And for small businesses and family farms, whole-facility inspections are more likely than not to find a minor paperwork or poster violation, given the incredible complexity of OR-OSHA's recently passed workplace safety regulations.

Our organizations respectfully request the committee consider an amendment to SB 592, section 1, subsection 2 that includes the following: *"Whenever an occupational death has occurred in a fixed place of employment **as a result of a willful violation**, the director shall, in addition to any inspections conducted pursuant to complaints filed against the place of employment, conduct a comprehensive inspection of the place of employment within one year following the date on which the closing conference associated with the occupational death was held."*

We want to emphasize that the health and safety of agricultural employees is very important to our sector. As an industry over the last three years, we have worked very hard to reduce the risk of exposure to the novel coronavirus at work, to alert employers and employees to the dangers of heat exposure, and to mitigate the risks of manganese and air pollution/ smoke particulate to employees. Each of these rules has come at significant cost to agricultural employers, and we regularly hear from our members regarding issues implementing these complicated regulations and fear that OR-OSHA will surprise them with penalties for minor paperwork violations.

While we all support safer workplaces, OFB and OAN urge the committee to consider amendments that recognize that increased penalties do not always lead to safer outcomes, and that many employers who are trying to do the right thing could be inadvertently penalized by SB 592.

Thank you for the opportunity to provide comments regarding SB 592. Please contact Jenny Dresler on behalf of the Oregon Farm Bureau Federation or Jeff Stone with the Oregon Association of Nurseries with any questions related to these comments.

⁵ Nigel Jaquiss. Willamette Week. *Oregon Officials Say COVID-19 Outbreak at Townsend Farms Affects 48 of 350 Newly Arrived Seasonal Workers*. <https://www.wweek.com/news/2020/05/28/oregon-officials-say-townsend-farms-covid-19-outbreak-affects-48-of-350-newly-arrived-seasonal-workers/>