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Testimony in support of HB 2957 A

Senate Committee on Labor & Business

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AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. AARP Oregon advocates on issues important to our 500,000 Oregon members with a focus on health security, livable communities and financial resilience.

Our financial resilience work is broad but it includes advocating for the rights and protections of older Oregonians in the workforce. Consistent with this focus, indeed before the Committee today, is our effort to update the workplace age discrimination law. As we recently testified, many older workers must remain in the workforce out of financial necessity. We need robust laws that provide older workers (all workers) appropriate legal recourse and protections if they encounter workplace discrimination of any kind, including age discrimination.

HB 2957 fixes a glitch in the Oregon law, likely as a result of the statute of limitations being extended from one to five years in the 2019 session. Currently, you have 5 years to file a discrimination claim in court. But if you file a complaint through BOLI, your 5 years will be shortened considerably since BOLI can issue a right to sue notice, any time within one year, then giving you only 90 days to file a discrimination claim in court. While a lawyer may understand that under the current process, the statute of limitations is artificially shortened, it is fair to assume that those who proceed without counsel have no idea. HB 2957 is intended to help those who did not know that they should find a lawyer before proceeding with a BOLI complaint or risk losing their right to seek redress in a court of law.

The Oregon Bureau of Labor & Industries' (BOLI's) mission statement, reads in part: "BOLI ensures that workers have access to their rights by *investigating* worker claims and complaints and *enforcing* state laws relating to wages, hours, terms and conditions of employment." It encourages those who have experienced any of these to file a complaint with BOLI.

Because of current law, at no fault of BOLI, BOLI should almost come with a warning: If you do not have a lawyer, do not file a complaint. If you do file a complaint without a lawyer you may find yourself in a matter of months with only 90 days, not up to 5 years, to find a lawyer, meet with the lawyer, have the lawyer do the necessary review, agree to take your case and file a lawsuit in court. And as other witnesses have testified, that's really almost impossible.

And it's appropriate to recognize that today, a person seeking redress from BOLI may not only have their case not investigated, but they may also find themselves in a matter of weeks with a 90 day right to sue letter. BOLI has stated on its own website that as a consequences of

financial constraints it must prioritize complaints and will issue dismissal of some complaints without *any* investigation. That could turn a 5 year statute of limitations into one that is less than 6 months.

Opposition argument:

It's worth taking a moment to examine the opposition's arguments because they are troubling. First, they presume that individuals who have experienced discrimination have hired a lawyer and in turn, the lawyer chooses to use the BOLI process to conduct an investigation. Whether or not that is true in some cases, it ignores what this bill actually does. This bill has nothing to do with individuals who have hired a lawyer who in turn files a complaint with BOLI. This bill has everything to do with individuals who file a complaint with BOLI *without* a lawyer.

The opponents also argue that because a BOLI investigation is very stressful, time consuming and expensive for employers, once that is completed, it is completely fair to reduce any of the remaining time in the 5 year statute of limitations to 90 days. While ignoring the very same effects on the employee, that is not a justification to short-circuit the statute of limitations, especially when as I just said, that is primarily happening to those who do not have counsel.

Opponents also argue that it's reasonable to have this shortened time because memories fade, staff changes and records need to be retained. But this argument would make sense only if this bill were an effort to extend the statute of limitations. That is not the issue before this Committee.

HB 2957 A is an appropriate, reasonable and frankly common sense fix to making sure that in Oregon when you have 5 year statute of limitations to bring a claim of discrimination to a court, you really have 5 years.