

## Oppose HB 4089 – Felony Penalties for Good Faith Mistakes

Our coalition stands against bad actors, but we strongly oppose HB 4089’s efforts to impose criminal liability on small businesses.

The bill lacks definitions and does not align with current law. This ambiguity will ensure that small employers face criminal penalties if they make even a small mistake in their interpretation of Oregon’s workplace protections or paperwork requirements. It will also make it even harder to find HR and payroll staff to fill crucial roles.

### There are already robust statutory and civil remedies to protect Oregon workers against wage theft and hold bad actors accountable:

The agency’s PIE unit targets sectors with high rates of violations, and the *Agricultural Compliance* unit focuses on ag violations. BOLI imposes civil penalties, including for failing to pay final wages, which can be up to 8 times the daily rate. Workers can access the Wage Security Fund--up to \$10k in unpaid wages if their employer shutters.

**BOLI**

OR imposes civil sanctions for wage theft, including penalties of up to 30 days of pay for willful failure to pay final wages. Remedies include recovering all unpaid wages, interest, attorney fees, and additional "penalty wages" equal to the unpaid amount.

**Civil Liability**

USDOL’s Wage and Hour Division recovers back wages and, in cases of willful violations, can assess additional liquidated damages equal to the back wages owed.

**USDOL**

### HB 4089 is a clear signal that Oregon is unfriendly to businesses.

HB 4089 lacks the balance needed to ensure that punitive action isn’t taken against employers acting in good faith. An accidental misclassification of an independent contractor would turn an employer into a felon. A simple paperwork mistake could cost a local business owner everything. The bill makes Oregon’s onerous, confusing and constantly changing wage and hour laws even more difficult to navigate—criminalizing small employers, managers and supervisors, who make a mistake in the application of the law.

**BEWARE**

PROCEED WITH CAUTION.

Operating a Business in Oregon Comes at Significant Personal and Professional Risk.

### The bill imposes criminal penalties without intentional bad acts by an employer.

While there are bad actors in any industry, most business owners are diligent in their efforts to ensure their teams are treated well and typically find a way to pay their employees before themselves. Still, **administrative burdens are some of the biggest challenges** for small businesses, who typically don’t have large HR departments or in-house legal teams to keep up with compliance provisions that are adopted by state agencies or the Legislature.

HB 4089 proposes hefty fines or jail time and a criminal record if they make accounting errors. This proposal is a significant overreach—ignoring the basic tenants of criminal law, such as “intent” to do harm.

**Sections 4 and 5 conflate criminal and civil liability standards.**

Sections 4 and 5 are a clear overstep. It is outrageous to saddle small employers or unwitting homeowners with a class C felony for hiring an unlicensed contractor, assuming they “knew or should have known” of the status of the contractor’s license. Asking for a license is best practice, but unscrupulous contractors can also skirt the letter of the law, and the “should have known” standard opens Oregonians up to significant liability. Since licenses can expire during the course of a project or job, this requires unreasonable due diligence from small businesses and homeowners to avoid felony charges.

"Known or should have known" is largely a **civil standard** used to determine negligence or liability. It requires proving that a reasonable person in the defendant’s position would have been aware of a fact, even if they were not. Criminal charges typically require a higher standard, actual intent and knowingly committing a crime. The proposed punishment DOES NOT fit the alleged crime and will turn many well-meaning Oregonians into felons.

The Legislature has already signaled an interest in addressing labor contracting in the construction and agricultural sectors in upcoming sessions. Last year, legislators passed sweeping new liabilities for businesses in SB 426, a law that is already devastating for property owners and contractors if a civil court finds them liable. HB 4089’s proponents should let that work continue and engage in productive dialogue with stakeholders in both industries in the interim instead of haphazardly applying criminal sanctions to family farmers, small woodland owners, local businesses, and even homeowners.

**A bill of this scope and impact of this bill deserves full vetting with all impacted stakeholders.** Most trade groups heard nothing about this bill leading up to the session and were unable to provide feedback on this proposal. There isn’t time to do the work needed to balance the goals of HB 4089 with the realities of operating a business in this state.

**Vote “NO” on HB 4089.**

