Senate Bill 750

Sponsored by Senator TAYLOR, Representatives WILLIAMSON, SALINAS; Senators FAGAN, FREDERICK, GOLDEN, MANNING JR, MONNES ANDERSON, WAGNER, Representatives ALONSO LEON, EVANS, GORSEK, HERNANDEZ, HOLVEY, KENY-GUYER, LEIF, NERON, NOSSE, PILUSO, POWER, RAYFIELD, REARDON, SCHOUTEN, SMITH WARNER, STARK, WILLIAMS, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Establishes procedure for aggrieved person, whistleblower or representative organization to bring action in name of state to recover civil penalties for violations of certain laws related to labor and employment. Provides for distribution of civil penalties recovered.

A BILL FOR AN ACT

Relating to public enforcement actions.

Whereas violations of employment laws are often systemic, affecting many Oregonians and undermining the economic stability of working families; and

Whereas despite strong protections for Oregonians, limits on the availability of public enforcement resources have deleterious effects by allowing abuses to go uncorrected; and

Whereas to promote the effective enforcement of those laws while minimizing the outlay of scarce state funds, a public enforcement action allows private persons to bring public enforcement actions on behalf of the state; and

Whereas public enforcement actions are an efficient mechanism to deter and punish systemic violations of Oregon law; and

Whereas public enforcement actions incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by state enforcement agencies; and

Whereas public enforcement actions benefit employers that comply with Oregon law by protecting these employers from unfair competition from companies that reduce costs by disregarding the law; and

Whereas public enforcement actions allow civic organizations to assist aggrieved persons in reporting violations of protective provisions of Oregon law; and

Whereas public enforcement actions encourage persons injured by violations of the Oregon law to report abuses by protecting these persons from retaliation; and

Whereas public enforcement actions are consistent with a history, both in Oregon and in the United States as a whole, of laws enabling private citizens to aid in detection of false claims for public funds and more recently to enforce labor laws; and

Whereas public enforcement actions will increase the capacity of state agencies to investigate alleged violations of Oregon law and to bring actions to recover civil penalties; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2019 Act:

(1) “Aggrieved person” means an employee, a prospective or former employee or a person
providing services for remuneration to another, against whom one or more alleged violations was committed by an alleged violator, whether or not employed by the violator at the time an action is filed, including any person who is not classified by an employer as an employee but who claims to be an employee and whose claims against the purported employer relate to misclassification of employment.

(2) “Public enforcement action” means a civil action brought by a relator under section 2 of this 2019 Act to recover civil penalties for a violation enforceable by a responsible state official.

(3) “Relator” means an aggrieved person, a whistleblower or a representative organization that brings a public enforcement action.

(4) “Representative organization” means a nonprofit corporation incorporated under ORS chapter 65, or an organization eligible for tax exempt status pursuant to section 501(c)(3), 501(c)(4) or 501(c)(5) of the Internal Revenue Code, that regularly advocates on behalf of employees or that regularly assists in public enforcement actions under sections 1 to 6 of this 2019 Act and that has been elected by an aggrieved person to bring a public enforcement action on the aggrieved person's behalf.

(5)(a) “Responsible state official” means the person authorized by law to take enforcement action for a violation.

(b) “Responsible state official” includes an agency employee delegated to act on an official's behalf with respect to taking enforcement action for a violation or receiving notices pursuant to sections 1 to 6 of this 2019 Act.

(6) “Violation” means a violation of ORS 433.850 or 650.005 to 650.100 or ORS chapter 279C, 652, 653, 654, 656, 658, 659, 659A, 671 or 701 or a rule adopted pursuant thereto.

(7) “Whistleblower” means a current or former employee, contractor, subcontractor, or employee of a contractor or subcontractor, of a person who has committed alleged violations with knowledge of the alleged violations that is independent of and materially adds to any publicly disclosed information about the alleged violations.

SECTION 2. (1)(a) An aggrieved person, a whistleblower or a representative organization may bring a public enforcement action for an alleged violation as a relator on behalf of the State of Oregon and in the name of the State of Oregon, pursuant to the procedures and subject to the limitations specified in section 5 of this 2019 Act.

(b) The public enforcement action may be brought in the Circuit Court for Marion County or any court of competent jurisdiction for any county where the alleged conduct occurred.

(c) A public enforcement action may allege multiple violations that have affected different persons aggrieved by the same defendant.

(d) If a public enforcement action is brought by a representative organization on an aggrieved person's behalf, the aggrieved person may direct that the representative organization keep the identity of the aggrieved person confidential.

(2) If a responsible state official is authorized by ORS 433.850 or 650.005 to 650.100 or ORS chapter 279C, 652, 653, 654, 656, 658, 659, 659A, 671 or 701 or rules adopted pursuant thereto to assess a civil penalty, a court is authorized to assess an equivalent civil penalty in a public enforcement action. If ORS 433.850 or 650.005 to 650.100 or ORS chapter 279C, 652, 653, 654, 656, 658, 659, 659A, 671 or 701 or rules adopted pursuant thereto create a duty owing to an employee, but no civil penalty is specifically provided by law, a court is authorized to assess a civil penalty of $250 in a public enforcement action for each aggrieved person per two-week
period in which the violation occurred. The court shall assess a penalty for each person aggrieved by the violation during the relevant time period.

(3) A court may assess a lesser civil penalty than the civil penalty specified by this section if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(4) Civil penalties recovered in a public enforcement action shall be distributed as follows:

(a) If the Attorney General has not intervened in the public enforcement action under section 5 of this 2019 Act, 30 percent to the relator and 70 percent to a relevant state agency identified by the court for deposit in the Community Outreach and Labor Education Fund established under section 7 of this 2019 Act and for enforcement of the laws of this state and for education about the rights and obligations enforceable through a public enforcement action.

(b) If the Attorney General has intervened in the public enforcement action under section 5 of this 2019 Act, 20 percent to the relator and 80 percent to a relevant state agency identified by the court for deposit in the Community Outreach and Labor Education Fund established under section 7 of this 2019 Act and for enforcement of the laws of this state and for education about the rights and obligations enforceable through a public enforcement action.

(5) If any civil penalty is recovered in a public enforcement action, the court shall award the relator reasonable attorney fees and costs.

(6) The right to bring a public enforcement action under this section may not be impaired by contract.

(7) Notwithstanding any other provision of law, a public enforcement action must be commenced within the same period of time that a state agency would have to take enforcement action for the alleged violation. The statute of limitations for bringing a public enforcement action under this section is tolled from the date a relator files a notice pursuant to section 5 of this 2019 Act or the date a state agency commences an investigation of the alleged violation, whichever is earlier.

SECTION 3. (1) Notwithstanding section 5 of this 2019 Act, a relator may not bring a public enforcement action for a violation:

(a) If a state agency takes enforcement action with regard to the violation within the time periods set forth in section 5 of this 2019 Act and the state agency serves notice on the relator pursuant to section 5 of this 2019 Act.

(b) If the violation is of a posting, notice, agency reporting requirement or agency filing requirement, except where the filing or reporting requirement involves mandatory payroll or injury reporting.

(2)(a) Except as provided in paragraph (b) of this subsection, the filing of a public enforcement action precludes subsequent state enforcement efforts based on the same facts and law, whether conducted by the state or by a relator under sections 1 to 6 of this 2019 Act.

(b) This section does not limit the Attorney General's right to seek restitution for aggrieved persons as part of a public enforcement action in which the Attorney General has intervened. The Attorney General shall distribute any amounts recovered as restitution in the same manner in which restitution proceeds in enforcement actions initiated by the state are distributed.
(3) The Attorney General shall establish a publicly available database of public enforcement actions, including the names of the parties, the disposition and any other information that the Attorney General prescribes by rule. The Attorney General shall adopt rules allowing a relator to request that the Attorney General not include information in the database.

SECTION 4. (1) A person may not retaliate or threaten to retaliate against an aggrieved person or whistleblower because:
(a) The aggrieved person or whistleblower brings a public enforcement action;
(b) The aggrieved person or whistleblower cooperates with a relator in a public enforcement action; or
(c) It is believed that the aggrieved person or whistleblower may bring a public enforcement action or cooperate with a person bringing a public enforcement action.

(2) A person aggrieved by a violation of this section may bring an action seeking compensatory and punitive damages or equitable relief, including restitution of past and future wages or benefits, reinstatement and reasonable attorney fees and costs.

SECTION 5. (1) A person may not commence a public enforcement action prior to 30 days after written notice of the claim has been submitted by the relator to the responsible state official and to the Attorney General. If more than one agency is charged with enforcement of statutes or rules at issue in the prospective action, the relator shall provide notice to each responsible state official.

(2) The notice provided under subsection (1) of this section shall be construed in the light most favorable to the relator and must include:
(a) The name, address and last-known contact information of the alleged violator.
(b) The name, address and contact information of the relator.
(c) The name, address and contact information of any attorney representing the relator.
(d) A concise statement of the alleged violation reasonably calculated to apprise the responsible state official and the Attorney General of the substance and nature of the alleged violation.

(3) The Attorney General shall by rule provide for the right of a relator to provide an amended notice if the Attorney General determines that the relator's original notice provided under subsection (1) of this section is not in compliance with this section. The Attorney General shall identify with particularity the deficiencies in the original notice. If the determination and the opportunity to amend are not provided by the Attorney General within 30 days of the original notice, the original notice is deemed to comply with this section. The relator has 30 days after receiving the Attorney General's determination of noncompliance with this section to amend the notice. The amended notice relates back to the original notice.

(4) If the responsible state official intends to investigate the alleged violation, the official shall notify the relator within 30 days of the date of the notice received pursuant to subsection (1) of this section. Within 120 days of the notice of the decision to investigate, the responsible state official may investigate the alleged violation and take any appropriate enforcement action. If the responsible state official, during the course of the investigation, determines that additional time is necessary to complete the investigation, the official may extend the time by not more than 60 days and shall provide the relator with notice of the extension. If the responsible state official determines that no enforcement action will be taken with regard to the alleged violation, the official shall notify the relator within five
business days by certified mail.

(5) Upon receipt of notice that no enforcement action will be taken for an alleged violation, or if no enforcement action is taken by the responsible state official within the time limits prescribed in this section, or if the responsible state official fails to provide timely or any notification, the relator may commence a public enforcement action for the alleged violation.

(6) If the responsible state official does not object to the filing of a public enforcement action pursuant to this section, but objects to the State of Oregon being represented by a particular attorney proposed by the relator, the responsible state official may, within 30 days of the date of the notice provided under subsection (1) of this section, notify the Attorney General of the objection. Upon finding, after notice and hearing, that, based on the attorney's past conduct while representing a client, the attorney does not meet the required professional standards of representatives, or if the attorney fails to zealously pursue the remedies available under sections 1 to 6 of this 2019 Act, the Attorney General may order that the public enforcement action not be filed by the attorney on behalf of the relator.

(7) The Attorney General may intervene in a public enforcement action and proceed with any and all claims in the action:

(a) As of right, within 30 days after the filing of the action.

(b) For good cause shown, more than 30 days after the filing of the action.

(8) If the Attorney General intervenes in a public enforcement action, the Attorney General has primary responsibility for prosecuting the action and is not bound by an act of the relator bringing the action. The relator remains a party to the action. The Attorney General may move to dismiss or settle the action after the relator has been notified of the filing of the motion and has been provided with an opportunity to be heard, and the court determines that the dismissal or settlement is fair, adequate, reasonable and in the public interest. Any disposition by the Attorney General must provide fair compensation for the attorney fees and costs expended on behalf of the relator in instituting the action.

(9) If the Attorney General does not intervene in the public enforcement action, the relator may conduct the action subject to the following limitations:

(a) The court must review and approve any settlement of a public enforcement action. The court shall approve a settlement of the action if the court finds that the settlement or voluntary dismissal is fair, adequate, reasonable and in the public interest. If the parties reach a settlement after a relator has provided notice under subsection (1) of this section but before an action is filed in court, the responsible state official shall review the proposed settlement and approve the settlement if the official determines the settlement is fair, adequate, reasonable and in the public interest.

(b) The Attorney General may request to be served with copies of all pleadings filed in the action and to be supplied with copies of all deposition transcripts. The Attorney General shall bear any costs associated with service of such pleadings and depositions.

(c) The Attorney General may file, at any time, information or advice with the court as amicus curiae concerning the action.

(10) A public enforcement action is not required to meet the requirements of ORCP 32.

(11) The rules governing pretrial discovery in a public enforcement action are the same
as those applicable to other civil actions. No special showing of merit or other additional
requirement may be imposed on a relator’s discovery rights in a public enforcement action.

SECTION 6. Sections 1 to 6 of this 2019 Act shall be liberally construed in light of the
remedial purpose of expanding the enforcement of Oregon statutes protecting employees.

SECTION 7. (1) The Community Outreach and Labor Education Fund is established in the
State Treasury, separate and distinct from the General Fund. Interest earned by the Com-
munity Outreach and Labor Education Fund shall be credited to the fund. All moneys in the
fund are continuously appropriated to the Bureau of Labor and Industries for the purpose
of awarding grants as provided in subsection (3) of this section.

(2) Twenty-five percent of the moneys collected by a relevant state agency under section
2 (4) of this 2019 Act shall be deposited in the Community Outreach and Labor Education
Fund.

(3)(a) Moneys in the Community Outreach and Labor Education Fund shall be granted
from time to time by the Commissioner of the Bureau of Labor and Industries to nonprofit
organizations to fund outreach, education and technical assistance to Oregon workers per-
taining to employee rights in the workplace.

(b) Grants provided through the fund may be used for activities to assist workers in en-
forcing employment rights, including outreach, community-based education events, training
materials, technical assistance, counseling and research and referral services.

(c) When considering applications for grants under this subsection, the commissioner
shall give priority to projects that provide services to especially vulnerable workers, includ-
ing low-wage, immigrant, refugee, contingent, injured, disabled, women, lesbian, gay, bisexual
or transgender workers.