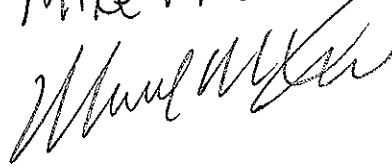


From the Desk of

Rep. Mike McLane


Respectfully submitted by:

Harrang Long Gary Rudnick P.C.
William F. Gary
Dave Frohnmayer

HB 4143 (CLASS ACTIONS) DOES NOT ALIGN OREGON WITH 40+ OTHER STATES AS THE PROPONENTS CLAIM!

- Proponents claim that HB 4143 simply provides for the allocation of damages that are awarded in a class action, but which are not claimed by members of the class. (“Cy Pres”, which means next best use). They assert that this bill would make Oregon class action rules consistent with those of nearly every other state. That is not what HB 4143 does.
- The problem with this bill is that it is NOT a simple Cy Pres bill as proponents claim. It does far more than provide for the disposition of unclaimed funds arrived at through a settlement or awarded by a jury. It radically changes the way that damages have been determined in Oregon class actions for over 40 years. And **just about every change that the bill makes to that process is unconstitutional, unfair, and fundamentally unworkable.**
- **The bill allows a judge to eliminate the fundamental requirement, going back to English common law, that all plaintiffs prove they are actually owed money before the defendant is required to pay them.**
- The bill violates a defendant's federal Due Process rights by allowing a judge to require it to pay damages that no class member has claimed or proven. That is unconstitutional and we know of no other state that allows it.
- The bill also allows a judge to decide that it is “not practicable” to make a defendant pay the people who were actually harmed and to require instead that their money be paid to the Oregon State Bar for the purpose of funding Legal Aid. That amounts to a taking of the class members’ private property without just compensation. It would be an unconstitutional taking and would violate the class members’ federal Due Process rights and the Remedy Clause of the Oregon Constitution.
- The bill is also silent as to whether a class member whose damages are paid to the state instead of to the class member has the right to sue the defendant again for the same damages. If the class member retains that right the defendant risks having to pay the same damages twice, which violates federal Due Process. If such a private suit is barred, that violates the class member’s right to Due Process.
- **The bill authorizes unconstitutional procedures, is unfair to class members and to defendants, and is fundamentally unworkable. It will have undesirable and unintended consequences.**