



TO: Senate Judiciary Committee

FROM: Fawn Barrie
Oregon Liability Reform Coalition

RE: HB 2700

The Oregon Liability Coalition would like to share with the Committee the attached opinion from Gregory Chaimov of Davis Wright Tremaine LLP concerning the impact HB 2700 would have on a recently filed case, *Curzi vs. Oregon State Lottery*.

HB 2700 has been moving through the Legislature in an expedited manner, and we are concerned the full impact of the legislation has not been completely examined. We oppose HB 2700 and ask legislators to consider the negative impact the legislation will have not just on businesses in Oregon, but also, potentially, on the state.

The ORLRC includes members from a wide range of companies and associations who support liability reform issues and includes companies and organizations from the health insurance, auto insurance, pharmaceutical, real estate and medical industries, among others.



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February 6, 2015

Fawn Barrie, Executive Director
Oregon Liability Reform Coalition
1249 Commercial St SE
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Re: Effect of HB 2700 on Claims against Governments

Dear Ms. Barrie:

This letter responds to your request for our opinion whether the adoption of 2015 HB 2700 would likely increase the amount the State of Oregon and other Oregon governments would pay in class actions. The answer is yes.

We are not in this letter addressing constitutional or other concerns with the changes the bill makes; our discussion is limited to how the changes, if valid, would change class action procedure.

Today, ORCP 32 F provides a process that allows a judge to decide how much compensation is due to an individual member of a class. That process includes a provision for class members to submit information to show that the class members were injured and by how much.

HB 2700 eliminates the process without requiring a replacement process. Instead, HB 2700 adds a new paragraph—O—that is unique in class action law. As written, new paragraph O would permit a court to forego a claims process and instead direct damages to Legal Aid Services (and another entity of the judge's choice) if it is "not practicable" to award damages to individual class members. To our knowledge, no other state expressly provides for this procedure. If a court follows this procedure, the class could recover damages without proof of who the members of the class are or of harm to any individual member--which would necessarily mean greater exposure to liability than under current law.

This expanded liability is most likely to adversely affect governments. Governments typically provide goods and services to the public at large. Unlike with a business transaction, there is frequently no record of the use of a government good or service.

The elimination of the process for deciding the amount of compensation for individual members of a class means that claimants without documented proof of harm are more likely to be able to recover damages against the State of Oregon and other Oregon governments than they are against private businesses.

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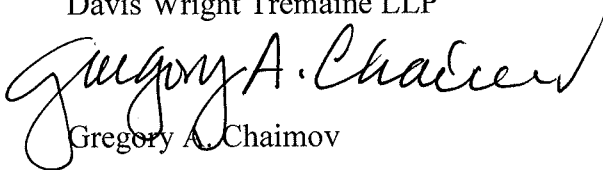
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The recently filed case of *Curzi v. Oregon State Lottery* is an example of the problem HB 2700 could present for governments. In that case, an individual seeks to represent a class of all individuals who played video poker. The individual claims that the Oregon State Lottery “rigged” video poker games so that players were less likely to win and seeks at least \$134 million from the state for the individuals who played video poker. There is, however, no way to determine who played video poker, who played a certain amount, or who won and who lost. Under these circumstances, current law would likely result in a court’s deciding not to award any damages to class members.

HB 2700 eliminates the requirement for class members to submit proof of their damages. Instead, using the *Curzi* case as an example, a would appear to be able to base an award of damages on surveys or statistical estimates of players’ poker habits generally, and on the opinions of experts on which individuals are more likely to play video poker and for how long. Courts’ reliance on this kind of opinion or statistical information—rather than on proof of actual injury to a class member—is likely to increase the amounts governments will pay in class actions.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads "Gregory A. Chaimov". The signature is written in black ink and is positioned above the printed name.

Gregory A. Chaimov

GAC/jan