

**Testimony of Arthur Towers, OTLA Political Director
Yes on HB 2764
House Committee On Business and Labor
February 27, 2015**

There is a growing crisis for injured workers and their employers. The goal of the workers' comp system is get injured workers back on the job, to make sure their needs are met when they are injured, and to ensure affordable premiums for employers.

However, the system has grown so complex in the last twenty-five years, it is very difficult for workers to access the benefits that the employer and worker have been paying for. The process requires an injured worker to navigate a maze of insurers, claims adjusters, medical providers, & the vocational rehab process.

An injured employee often requires a lawyer to help get all of this sorted out. Injured workers' legal fees are heavily regulated by the state. Further, current law curtails payment for legal representation for injured workers for assistance with:

- Successful recovery of an injured worker's costs after prevailing on a case.
- Successful requests for reclassification of an injury from non-disabling to disabling.
- Successful defense of an insurer's appeal of assessed attorney fees and penalties.
- Preparation and counsel for injured worker statements before claim acceptance.
- Many aspects of successful appeals of incorrectly calculated wage-replacement benefits (time loss).

As the system has evolved, insurers now have the perverse incentive to drag cases out, capriciously deny valid claims and benefits, and slow down workers' return to work. These factors has resulted in an imbalance in payments to defense lawyers (over \$30M) & to injured workers' attorneys (\$19.7M) as of 2012.

There are now fewer than 100 lawyers who represent injured workers in Oregon. This means that many workers end up representing themselves, bollixing up cases, and bogging down the system. HB 2764 would:

1. Fill in gaps where workers' attorneys are providing meaningful assistance to injured workers, but receiving no compensation.
2. Incentivize insurers to properly process claims in a speedy fashion by allowing workers' attorneys to be adequately compensated for assisting with wage-replacement benefit appeals.
3. Incentivize insurers to properly process claims in a speedy fashion by allowing workers' attorneys to be adequately compensated for recovering penalties.
4. Allow attorney fees to be paid by insurers instead of from funds awarded to injured workers when insurers are caught underpaying workers for time lost due to injury. Injured workers are often in dire need of funds to stay afloat while out of work.

HB 2764 would provide an incentive for additional lawyers to enter this specialized type of legal work and hence improve access for workers. Injured workers attorneys' fees currently comprise less than 2% of the \$819M cost of the workers' comp system. HB 2764 will not increase the number of worksite injuries. Much of HB 2764 addresses long, drawn out appeals. One of the effects of HB 2764 will be to reduce these by giving the insurance industry the incentive to get benefits paid properly the first time. An increase in legal fees would not result in a meaningful premium increase for employers.