



From the Office of
State Representative
Bill Kenner

Job Killer Alert Vote No on HB 2386 B to Prevent New Cease & Desist Powers for BOLI

CLAIM: BOLI needs this new cease & desist order authority to shut down businesses' alleged unlawful practices while investigations are on-going so they don't "continue to violate workers' rights."¹

FACT: BOLI testified that this new authority would most often be used as part of a final order issued by the agency.² Yet after a final order, where the employer has been found in violation of the law, the Commissioner already has injunctive powers, which are far broader than these proposed cease & desist powers.

CLAIM: HB 2386 B provides employers with due process protections before BOLI can issue a cease & desist order.

FACT: HB 2386 B does nothing to provide employers with an opportunity for hearing before BOLI can issue a temporary cease & desist authority. In fact, the bill actually limits an employer's ability to appeal a cease & desist order.

Under HB 2386 B, an employer's opportunity to appeal a cease & desist order is limited to an administrative process and conducted before a BOLI Administrative Law Judge. Review of the administrative law judge's decision would be limited to a petition for review in the Court of Appeals. This Court of Appeals review is extremely narrow and highly deferential to the ALJ's decision, not the business owner's particular facts or circumstances. In addition, all of this is time consuming and expensive – both to pursue the appeal with necessary legal counsel all while the business owners business is essentially shut down.

¹ BOLI Testimony before House Business & Labor Committee, dated February 9, 2015

² *Id.* at pg. 2

CLAIM: Amended bill protects agricultural based businesses.

FACT: The amended bill ONLY precludes BOLI's cease & desist authority during the ongoing harvest or distribution of *perishable products*. This protection is for a limited number of agricultural businesses and leaves all other Oregon businesses vulnerable. Additionally, it still allows the Commissioner to issue a temporary cease & desist order upon completion of harvest (which is not defined) or after distribution. It remains unclear whether BOLI could prevent a farmer from moving from one crop to the next if he wasn't "in progress" of harvesting that second crop at the time the order was issued.

CLAIM: HB 2386 B provides the employer more protections and the opportunity for a hearing.

FACT: The bill's complicated hearing process lacks protections for the unsophisticated employer who might easily lose the legal right to appeal simply because he or she was unaware that this right existed. BOLI is not required to notify the employer of the legal and factual basis of the cease & desist order, or that the employer be notified of his right to request a hearing and how to make the request.

The shortcomings and dangers of the bill are not adequately corrected or mitigated in the newly amended bill, and we urge your "NO" vote on HB 2386 B.

Associated Oregon Industries (AOI)
Associated General Contractors (AGC)
Associated Oregon Loggers (AOL)
Columbia Gorge Fruit Growers
Independent Insurance Agents and Brokers
of Oregon (IIABO)
Medford Chamber of Commerce
National Association of Insurance and
Financial Advisors (NAIFA)
National Federation of Independent
Businesses (NFIB)
Northwest Food Processors Association
(NWFPA)
Northwest Grocery Association (NWGA)
Oregon Auto Dealers Association (OADA)
Oregon Bankers Association (OBA)
Oregon Business Association (OBA)

Oregon Cattlemen's Association (OCA)
Oregon Dairy Farmers Association (ODFA)
Oregon Farm Bureau (OFB)
Oregon Forest Industries Council (OFIC)
Oregon Home Builders Association (OHBA)
Oregon Metals Industry Council (OMIC)
Oregon Restaurant & Lodging Association
(ORLA)
Oregon Seed Council (OSC)
Oregon State Association of Plumbing –
Heating – Cooling Contractors (PHCC)
Oregon State Chamber of Commerce (OSCC)
Oregon Trucking Association (OTA)
Oregon Wheat Growers League (OWGL)
Oregonians for Food & Shelters (OFS)
Salem Chamber of Commerce