



April 22, 2019

Representative Nancy Nathanson
Chair, House Committee on Revenue

Chair Nathanson,

Thank you for the opportunity to provide written comments to supplement testimony provided in opposition to HB 2269A. As a reference, the Oregon Farm Bureau (“OFB”) is the state’s largest general agriculture association, representing nearly 7,000 families actively engaged in farming and ranching. We have serious concerns about HB 2269A as currently drafted.

To start, HB 2269A isn’t limited to large employers; 50 employee businesses are still considered small businesses. Additionally, the bill does not delineate between full-time, part-time, or seasonal workforce. To trigger the assessment, an employee must simply work a minimum of 8 hours per week for 90 days in a calendar year. This means that small farms who rely on a seasonal workforce will be pulled into the bill. This 8-hour threshold is substantially smaller than even the Affordable Care Act, which is triggered after 30 hours per week.

Second, the new record keeping and compliance requirements are onerous, and the requirement for another poster seems unnecessary. The BOLI penalties referenced in the -A4 amendment apply to BOLI wage and hour law, and the Oregon Department of Revenue (“DOR”) can now levy civil penalties under the bill. Is the health care assessment considered part of an employee’s wages? If an employee opts out of health coverage, could the employer be found to be in violation of Oregon’s Equal Pay law, since the assessment goes to fund Medicaid or private premiums and wouldn’t become part of the employee’s wages?

Additionally, OFB opposes language on page 3, lines 14-16. This language limits businesses’ ability to recoup costs incurred under HB 2269A. The state should not have any purview at all over business pricing, particularly for businesses that operate on thin margins or are subject to domestic and international price pressures.

Most importantly, this bill does not make sense for agriculture for the following reasons:

Multiple Employers

How is the assessment determined for employees who work for several farms in one season? Employees may be working eight hours per week for each farm or processing facility. How does the bill address the situation where an employee has multiple employers?

Farm Labor Contractors

How is the number of employees calculated when an employer is both a primary and secondary employer? Many farms have permanent employees but also rely on farm labor contractors for harvest. How is this counted towards the employer? In agriculture, if you aren't directly employing someone for 90 days a year, your contractors likely are, and those costs will be passed on through the labor contract. Employees should not be counted twice.

Also, HB 2269A refers to a quarterly filing with the Oregon Department of Revenue. Which quarter is being used to determine employee count? Agriculture isn't alone with these technical questions.

Uncertainty in Agriculture

The bill offers no language to show how this is actually going to work in agriculture:

- A farmer doesn't know what the weather will bring.
- The number of employees will vary depending on the crop type.
- The assessment would vary wildly depending on the farm labor contractor and how many employees are needed.
- A farmer doesn't know how many people you will hire for harvest.

It's effectively a head tax and presumes that employers are in the wrong before they are able to show they are good actors.

Technical Concerns

HB 2269A penalizes employers for circumstances out of their control. It is unclear whether *workers whose documentation status may be pending or unknown*, would be eligible for an employer-offered health plan, but they cannot participate in the individual marketplace. And employers cannot ask employees where they go for insurance.

HB 2269 is asking employers, many of whom cannot afford insurance themselves, to pay for health care for all of employees, and then penalizes them when those workers by law cannot enroll—even if they want to offer it.

The Legislature also has taken steps to ensure that all children have health care, expanding coverage under Cover All Kids. If an employees' child is covered under Healthy Kids or Cover All Kids, but the employee is ineligible for the employer's health plan because of their legal status, the employer will have to pay the assessment. This is punitive to employers who have employees with children enrolled in a program that we've incentivized and expanded.

Privacy

As a final point, we have taken a lot of steps this session to protect Oregonians' privacy, but those efforts aren't reflected in this bill. Employers would be required to identify employees by name, putting their privacy at risk. OFB respectfully urges the Committee to revisit that proposed process by which information is shared.

As a final point, HB 2269 gives regulatory agencies immense discretion and provides employers with too little certainty to make business decisions. OFB remains concerned about:

- A general lack of sideboards and stakeholder process in HB 2269;
- The uncapped assessment that is left to the discretion of the Department of Consumer and Business Services ("DCBS");
- The delegation of authority from the legislature to the executive branch to raise revenue; and
- Ambiguous provisions and definitions, such as the "waiver process," "50 employee threshold," and additional details, which lack the clarity to be functional and do not provide guidance for rulemaking.

Thank you for the opportunity to put forward our concerns.

Respectfully,

A handwritten signature in black ink, appearing to be 'JD', with a long horizontal stroke extending to the right.

Jenny Dresler
Lobbyist
Oregon Farm Bureau