

# House Bill 2205

Sponsored by Representative WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes procedure for person to bring action in name of state to recover civil penalties for violations of state law. Provides for distribution of civil penalties recovered.

## A BILL FOR AN ACT

1  
2 Relating to public enforcement actions.

3       Whereas violations of state laws are often systemic, affecting many Oregonians and undermining  
4 the economic stability of Oregonians; and

5       Whereas despite strong protections in the law for Oregonians, limits on the availability of public  
6 enforcement resources have deleterious effects by allowing abuses to go uncorrected; and

7       Whereas allowing private persons to bring public enforcement actions on behalf of the state  
8 promotes the effective enforcement of state laws while minimizing the outlay of scarce state funds;  
9 and

10       Whereas public enforcement actions are an efficient mechanism to deter and punish systemic  
11 violations of Oregon law; and

12       Whereas public enforcement actions incentivize private parties to recover civil penalties for the  
13 government that otherwise may not have been assessed and collected by state enforcement agencies;  
14 and

15       Whereas public enforcement actions benefit employers that comply with Oregon law by pro-  
16 tecting consumers and these employers from unfair competition from companies that reduce costs  
17 by disregarding the law; and

18       Whereas public enforcement actions allow civic organizations to assist aggrieved persons in re-  
19 porting violations of protective provisions of Oregon law; and

20       Whereas public enforcement actions encourage persons injured by violations of Oregon law to  
21 report abuses by protecting these persons from retaliation; and

22       Whereas public enforcement actions are consistent with a history, both in Oregon and in the  
23 United States as a whole, of laws enabling private citizens to aid in detection of false claims for  
24 public funds and more recently to enforce laws protecting Oregonians; and

25       Whereas public enforcement actions will increase the capacity of state agencies to investigate  
26 alleged violations of Oregon law and to bring actions to recover civil penalties; now, therefore,

27 **Be It Enacted by the People of the State of Oregon:**

28 **SECTION 1. As used in sections 1 to 6 of this 2021 Act:**

29       **(1) "Public enforcement action" means a civil action brought by a relator under section**  
30 **2 of this 2021 Act to recover civil penalties for a violation enforceable by a responsible state**  
31 **official.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) “Relator” means an individual or a representative organization that brings in good  
2 faith a public enforcement action.

3 (3) “Representative organization” means a nonprofit corporation incorporated under ORS  
4 chapter 65, or an organization eligible for tax exempt status pursuant to section 501(c)(3),  
5 501(c)(4) or 501(c)(5) of the Internal Revenue Code, that regularly advocates to prevent the  
6 type of harm, or regularly works on behalf of individuals impacted by the harm, for which  
7 the public enforcement action is brought.

8 (4)(a) “Responsible state official” means the person authorized by law to take enforce-  
9 ment action for a violation.

10 (b) “Responsible state official” includes an agency employee delegated to act on an  
11 official’s behalf with respect to taking enforcement action for a violation or receiving notices  
12 pursuant to sections 1 to 6 of this 2021 Act.

13 (5) “Violation” means a violation of a statute or a rule adopted pursuant thereto for  
14 which a state agency or responsible state official has power to enforce.

15 **SECTION 2.** (1)(a) An individual or a representative organization may bring a public  
16 enforcement action for an alleged violation as a relator on behalf of the State of Oregon and  
17 in the name of the State of Oregon, pursuant to the procedures and subject to the limitations  
18 specified in section 5 of this 2021 Act.

19 (b) The public enforcement action may be brought in the Circuit Court of Marion County  
20 or any court of competent jurisdiction for a county specified in ORS 14.080.

21 (c) A public enforcement action may allege multiple violations that have affected differ-  
22 ent persons aggrieved by the same defendant.

23 (d) If a public enforcement action is brought by a representative organization on an  
24 aggrieved person’s behalf, the aggrieved person may direct that the representative organ-  
25 ization keep the identity of the aggrieved person confidential.

26 (2) If the relevant state agency or responsible state official is authorized to assess a civil  
27 penalty, the court is authorized to assess an equivalent civil penalty in a public enforcement  
28 action. If no civil penalty is specifically provided by law, a court is authorized to assess a civil  
29 penalty of \$250 in a public enforcement action for each aggrieved person per two-week period  
30 in which the violation occurred. The court shall assess a penalty for each person aggrieved  
31 by the violation during the relevant time period.

32 (3) Civil penalties recovered in a public enforcement action shall be distributed as follows:

33 (a) If the Attorney General or responsible state official has not intervened in the public  
34 enforcement action under section 5 of this 2021 Act, 40 percent to the relator and 60 percent  
35 to the relevant state agency identified by the court.

36 (b) If the Attorney General or responsible state official has intervened in the public  
37 enforcement action under section 5 of this 2021 Act, 30 percent to the relator and 70 percent  
38 to the relevant state agency identified by the court.

39 (c) All funds collected by the relevant state agency pursuant to sections 1 to 6 of this  
40 2021 Act are continuously appropriated to the relevant state agency for the purpose of en-  
41 forcing the laws of this state that the relevant state agency or responsible state official is  
42 charged with enforcing.

43 (d) The relator shall distribute equitably any civil penalties recovered by the relator  
44 among the persons affected by the violation found in the public enforcement action. The  
45 relator shall submit a distribution summary to the Attorney General or responsible state

1 official, who may, within 60 days of receiving the distribution summary, order a different  
 2 distribution. Any distribution shall compensate the relator for the burdens and risks of  
 3 prosecuting the public enforcement action or, if the relator is a representative organization,  
 4 provide reasonable compensation to the representative organization for attorney fees and  
 5 costs incurred in investigating, instituting and litigating the public enforcement action.

6 (4) If a civil penalty is recovered in a public enforcement action, the court shall award  
 7 the relator reasonable attorney fees and costs and may award the Attorney General or re-  
 8 sponsible state official reasonable attorney fees and costs and applicable equitable remedies.

9 (5) The right to bring a public enforcement action under this section may not be impaired  
 10 by contract.

11 (6) Notwithstanding any other provision of law, a public enforcement action must be  
 12 commenced within the same period of time that a state agency would have to take enforce-  
 13 ment action for the alleged violation. The statute of limitations for bringing a public  
 14 enforcement action under this section is tolled from the date a relator files a notice pursuant  
 15 to section 5 of this 2021 Act or the date a state agency commences an investigation of the  
 16 alleged violation, whichever is earlier.

17 (7) Notwithstanding any other provision of law, a public enforcement action initiated by  
 18 a private party under this 2021 Act may not be used for the purpose of res judicata or  
 19 collateral estoppel in a private action based on the same operative facts.

20 **SECTION 3.** (1) Notwithstanding section 5 of this 2021 Act, a relator may not bring a  
 21 public enforcement action for a violation if a state agency takes enforcement action with  
 22 regard to the violation within the time periods set forth in section 5 of this 2021 Act and the  
 23 state agency serves notice on the relator pursuant to section 5 of this 2021 Act.

24 (2)(a) Except as provided in paragraph (b) of this subsection, the filing of a public  
 25 enforcement action precludes subsequent state enforcement efforts based on the same facts  
 26 and law, whether conducted by the state or by a relator under sections 1 to 6 of this 2021  
 27 Act.

28 (b) This section does not limit the right of the Attorney General or a responsible state  
 29 official to seek other damages for aggrieved persons as part of a public enforcement action  
 30 in which the Attorney General or responsible state official has intervened.

31 (3) The Attorney General shall establish a publicly available database of public enforce-  
 32 ment actions, including the names of the parties, the disposition and any other information  
 33 that the Attorney General prescribes by rule. The Attorney General shall adopt rules allow-  
 34 ing a relator to request that the Attorney General not include information in the database.

35 (4) Public enforcement actions brought under section 1 to 6 of this 2021 Act are subject  
 36 to ORS 192.311 to 192.478.

37 **SECTION 4.** (1) A person may not retaliate or threaten to retaliate against a relator or  
 38 person because:

39 (a) The relator brings a public enforcement action;

40 (b) The person cooperates with a relator in a public enforcement action; or

41 (c) It is believed that the relator may bring a public enforcement action or the person  
 42 may cooperate with a relator bringing a public enforcement action.

43 (2) A person aggrieved by a violation of this section may bring an action seeking  
 44 compensatory and punitive damages or equitable relief, including restitution of past and fu-  
 45 ture wages or benefits, reinstatement and reasonable attorney fees and costs.

1       **SECTION 5.** (1) A person may not commence a public enforcement action prior to 30 days  
 2 after written notice of the claim has been submitted by the relator to the Attorney General  
 3 and to the responsible state official. If more than one agency is charged with enforcement  
 4 of the statutes or rules at issue in the prospective action, the relator shall provide notice to  
 5 each responsible state official for each agency.

6       (2) The notice provided under subsection (1) of this section shall be construed in the light  
 7 most favorable to the relator and must include:

8       (a) The name, address and contact information of the alleged violator.

9       (b) The name, address and contact information of the relator.

10       (c) The name, address and contact information of any attorney representing the relator.

11       (d) A concise statement of the alleged violation reasonably calculated to apprise the At-  
 12 torney General and responsible state official of the substance and nature of the alleged vio-  
 13 lation.

14       (3) The Attorney General shall by rule provide for the right of a relator to provide an  
 15 amended notice if the Attorney General determines that the relator's original notice provided  
 16 under subsection (1) of this section is not in compliance with this section. The Attorney  
 17 General shall identify with particularity the deficiencies in the original notice. If the deter-  
 18 mination and the opportunity to amend are not provided by the Attorney General within 30  
 19 days of the original notice, the original notice is deemed to comply with this section. The  
 20 relator has 30 days after receiving the Attorney General's determination of noncompliance  
 21 with this section to amend the notice. The amended notice relates back to the original no-  
 22 tice.

23       (4) If the Attorney General or responsible state official intends to investigate the alleged  
 24 violation, the Attorney General or responsible state official shall notify the relator by certi-  
 25 fied mail within 30 days of the date of the notice received pursuant to subsection (1) of this  
 26 section. Within 120 days of the notice of the decision to investigate, the Attorney General  
 27 or responsible state official may investigate the alleged violation and take any appropriate  
 28 enforcement action. The Attorney General or responsible state official shall notify the  
 29 relator by certified mail within five business days of reaching an enforcement determination.

30       (5) Upon receipt of notice that no enforcement action will be taken for an alleged vio-  
 31 lation, or if no enforcement action is taken by the Attorney General or responsible state  
 32 official within the time limits prescribed in this section, or if the Attorney General or re-  
 33 sponsible state official fail to provide timely or any notification, the relator may commence  
 34 a public enforcement action for the alleged violation.

35       (6) A public enforcement action shall proceed promptly without regard to any concurrent  
 36 private actions.

37       (7) The Attorney General or responsible state official may intervene in a public enforce-  
 38 ment action and proceed with any and all claims in the action as of right, within 30 days  
 39 after the filing of the action or the filing of a bankruptcy proceeding that affects the action.

40       (8) If the Attorney General or responsible state official intervenes in a public enforce-  
 41 ment action:

42       (a) The Attorney General or responsible state official has primary responsibility for  
 43 prosecuting the action and is not bound by an act of the relator bringing the action. Upon  
 44 intervention, the Attorney General or responsible state official shall provide the relator  
 45 reasonable compensation for the attorney fees and costs expended on behalf of the relator

1 in investigating, instituting and litigating the action.

2 (b) The court must review and approve any proposed settlement of the public enforce-  
 3 ment action. The Attorney General or responsible state official shall submit the proposed  
 4 settlement to the court and at the same time provide the relator with a copy of the proposed  
 5 settlement. The relator shall have an opportunity to be heard by the court on the proposed  
 6 settlement. The court may approve the settlement if the court finds that the settlement is  
 7 fair, adequate, reasonable and in the public interest. Any settlement must account for rea-  
 8 sonable compensation for the attorney fees and costs expended on behalf of the relator in  
 9 investigating, instituting and litigating the action.

10 (9) If the Attorney General and responsible state official do not intervene in the public  
 11 enforcement action, the relator may conduct the action subject to the following limitation:

12 (a) The court must review and approve any settlement of a public enforcement action.  
 13 The relator shall submit the proposed settlement to the Attorney General and to the re-  
 14 sponsible state official at the same time that the proposed settlement is submitted to the  
 15 court. The court shall approve a settlement of the action if the court finds that the settle-  
 16 ment is fair, adequate, reasonable and in the public interest. If the parties reach a settle-  
 17 ment after a relator has provided notice under subsection (1) of this section but before an  
 18 action is filed in court, the Attorney General or responsible state official shall review the  
 19 proposed settlement and approve the settlement if the official determines the settlement is  
 20 fair, adequate, reasonable and in the public interest. Any settlement must account for rea-  
 21 sonable compensation for the attorney fees and costs expended on behalf of the relator in  
 22 investigating, instituting and litigating the action.

23 (b) The Attorney General or responsible state official may request to be served with  
 24 copies of all pleadings filed in the action and to be supplied with copies all deposition tran-  
 25 scripts. The Attorney General or responsible state official shall bear any costs associated  
 26 with service of such pleadings and depositions.

27 (c) The Attorney General or responsible state official may file, at any time, information  
 28 or advice with the court as amicus curiae concerning the action.

29 (10) A public enforcement action is not required to meet the requirements of ORCP 32.

30 (11) The rules governing pretrial discovery in a public enforcement action are the same  
 31 as those applicable to other civil actions. No special showing of merit or other additional  
 32 requirement may be imposed on a relator's discovery rights in a public enforcement action.

33 **SECTION 6.** Sections 1 to 6 of this 2021 Act shall be liberally construed in light of the  
 34 remedial purpose of expanding the enforcement of Oregon statutes.

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