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

Relating to public enforcement actions.

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

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

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

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

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

Whereas public enforcement actions benefit employers that comply with Oregon law by protecting consumers and these employers from unfair competition from companies that reduce costs by disregarding the law; and

Whereas public enforcement actions allow civic organizations to assist aggrieved persons in reporting violations of protective provisions of Oregon law; and

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

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

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

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

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

(1) “Public enforcement action” means a civil action brought by a relator under section 2 of this 2021 Act to recover civil penalties for a violation enforceable by a responsible state official.
(2) “Relator” means an individual or a representative organization that brings in good faith a public enforcement action.

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

(4)(a) “Responsible state official” means the person authorized by law to take enforcement action for a violation.

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

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

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

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

(c) A public enforcement action may allege multiple violations that have affected different persons aggrieved by the same defendant.

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

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

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

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

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

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

(d) The relator shall distribute equitably any civil penalties recovered by the relator among the persons affected by the violation found in the public enforcement action. The relator shall submit a distribution summary to the Attorney General or responsible state
official, who may, within 60 days of receiving the distribution summary, order a different
distribution. Any distribution shall compensate the relator for the burdens and risks of
prosecuting the public enforcement action or, if the relator is a representative organization,
provide reasonable compensation to the representative organization for attorney fees and
costs incurred in investigating, instituting and litigating the public enforcement action.
(4) If a civil penalty is recovered in a public enforcement action, the court shall award
the relator reasonable attorney fees and costs and may award the Attorney General or re-
sponsible state official reasonable attorney fees and costs and applicable equitable remedies.
(5) The right to bring a public enforcement action under this section may not be impaired
by contract.
(6) Notwithstanding any other provision of law, a public enforcement action must be
commenced within the same period of time that a state agency would have to take enforce-
ment action for the alleged violation. The statute of limitations for bringing a public
enforcement action under this section is tolled from the date a relator files a notice pursuant
to section 5 of this 2021 Act or the date a state agency commences an investigation of the
alleged violation, whichever is earlier.
(7) Notwithstanding any other provision of law, a public enforcement action initiated by
a private party under this 2021 Act may not be used for the purpose of res judicata or
collateral estoppel in a private action based on the same operative facts.
SECTION 3. (1) Notwithstanding section 5 of this 2021 Act, a relator may not bring a
public enforcement action for a violation if a state agency takes enforcement action with
regard to the violation within the time periods set forth in section 5 of this 2021 Act and the
state agency serves notice on the relator pursuant to section 5 of this 2021 Act.
(2)(a) Except as provided in paragraph (b) of this subsection, the filing of a public
enforcement action precludes subsequent state enforcement efforts based on the same facts
and law, whether conducted by the state or by a relator under sections 1 to 6 of this 2021
Act.
(b) This section does not limit the right of the Attorney General or a responsible state
official to seek other damages for aggrieved persons as part of a public enforcement action
in which the Attorney General or responsible state official has intervened.
(3) The Attorney General shall establish a publicly available database of public enforce-
ment actions, including the names of the parties, the disposition and any other information
that the Attorney General prescribes by rule. The Attorney General shall adopt rules allow-
ing a relator to request that the Attorney General not include information in the database.
(4) Public enforcement actions brought under section 1 to 6 of this 2021 Act are subject
to ORS 192.311 to 192.478.
SECTION 4. (1) A person may not retaliate or threaten to retaliate against a relator or
person because:
(a) The relator brings a public enforcement action;
(b) The person cooperates with a relator in a public enforcement action; or
(c) It is believed that the relator may bring a public enforcement action or the person
may cooperate with a relator bringing a public enforcement action.
(2) A person aggrieved by a violation of this section may bring an action seeking
compensatory and punitive damages or equitable relief, including restitution of past and fu-
ture wages or benefits, reinstatement and reasonable attorney fees and costs.
SECTION 5. (1) A person may not commence a public enforcement action prior to 30 days after written notice of the claim has been submitted by the relator to the Attorney General and to the responsible state official. If more than one agency is charged with enforcement of the statutes or rules at issue in the prospective action, the relator shall provide notice to each responsible state official for each agency.

(2) The notice provided under subsection (1) of this section shall be construed in the light most favorable to the relator and must include:
   (a) The name, address and contact information of the alleged violator.
   (b) The name, address and contact information of the relator.
   (c) The name, address and contact information of any attorney representing the relator.
   (d) A concise statement of the alleged violation reasonably calculated to apprise the Attorney General and responsible state official of the substance and nature of the alleged violation.

(3) The Attorney General shall by rule provide for the right of a relator to provide an amended notice if the Attorney General determines that the relator’s original notice provided under subsection (1) of this section is not in compliance with this section. The Attorney General shall identify with particularity the deficiencies in the original notice. If the determination and the opportunity to amend are not provided by the Attorney General within 30 days of the original notice, the original notice is deemed to comply with this section. The relator has 30 days after receiving the Attorney General’s determination of noncompliance with this section to amend the notice. The amended notice relates back to the original notice.

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

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

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

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

(8) If the Attorney General or responsible state official intervenes in a public enforcement action:
   (a) The Attorney General or responsible state official has primary responsibility for prosecuting the action and is not bound by an act of the relator bringing the action. Upon intervention, the Attorney General or responsible state official shall provide the relator reasonable compensation for the attorney fees and costs expended on behalf of the relator.
in investigating, instituting and litigating the action.

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

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

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

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

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

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

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

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