

# House Bill 3506

Sponsored by Representative CHAICHI

## 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 individual or representative organization to bring action in name of state to recover civil penalties for violations of certain state laws. 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:**

### **SECTION 1. As used in sections 1 to 6 of this 2023 Act:**

28  
29 (1) **"Enforcement action" means the issuance of formal charges, an order of determi-**  
30 **nation or a notice of intent to assess civil penalties or the entrance into an enforceable**  
31 **settlement as authorized by law.**

**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) “Public enforcement action” means a civil action brought by a relator under section  
2 2 of this 2023 Act to recover civil penalties for a violation enforceable by a responsible state  
3 official.

4 (3) “Relator” means an individual or a representative organization that brings in good  
5 faith a public enforcement action under sections 1 to 6 of this 2023 Act.

6 (4) “Representative organization” means a nonprofit corporation incorporated under ORS  
7 chapter 65, or an organization eligible for tax exempt status pursuant to section 501(c)(3),  
8 501(c)(4) or 501(c)(5) of the Internal Revenue Code, that regularly advocates to prevent the  
9 type of harm, or regularly works on behalf of individuals impacted by the harm, for which  
10 the public enforcement action is brought.

11 (5)(a) “Responsible state official” means the Commissioner of the Bureau of Labor and  
12 Industries, the Director of the Department of Consumer and Business Services or the Em-  
13 ployment Relations Board as authorized by law to take enforcement action for a violation.

14 (b) “Responsible state official” includes a designee or agency employee delegated to act  
15 on the commissioner’s or director’s behalf, or on behalf of the Employment Department,  
16 with respect to taking enforcement action for a violation or receiving notices pursuant to  
17 sections 1 to 6 of this 2023 Act.

18 (6)(a) “Violation” means a violation of ORS chapter 652, 653, 654, 658, 659, 659A, 661, 662  
19 or 663, or a rule adopted pursuant thereto.

20 (b) “Violation” does not include a:

21 (A) Violation of ORS 659A.145, 659A.403, 659A.406, 659A.409 or 659A.421 or discrimination  
22 under federal housing law, or a rule adopted pursuant thereto.

23 (B) Violation of a notice or posting requirement.

24 (C) Violation of an agency reporting or filing requirement, unless the requirement relates  
25 to the mandatory reporting of payroll or an injury.

26 (D) Violation for minor variations in the legal name or address of an employer in an  
27 itemized statement required under ORS 652.610 or 652.640, provided that the variations do  
28 not impair a worker’s ability to readily identify the employer.

29 **SECTION 2.** (1)(a) An individual or a representative organization may bring a public  
30 enforcement action for an alleged violation as a relator on behalf of the State of Oregon and  
31 in the name of the State of Oregon, pursuant to the procedures and subject to the limitations  
32 specified in section 5 of this 2023 Act.

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

35 (c) The public enforcement action may allege multiple violations that have affected dif-  
36 ferent persons aggrieved by the same defendant.

37 (d) The public enforcement action may seek injunctive or declaratory relief if the re-  
38 sponsible state official is authorized to seek such relief.

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

42 (2) If the responsible state official is authorized to assess a civil penalty, the court is  
43 authorized to assess an equivalent civil penalty in a public enforcement action. If no civil  
44 penalty is specifically provided by law, a court is authorized to assess a civil penalty of \$250  
45 in a public enforcement action for each aggrieved person per two-week period in which the

1 violation occurred. The court shall assess a penalty for each person aggrieved by the vio-  
 2 lation during the relevant time period.

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

4 (a) If the responsible state official has not intervened in the public enforcement action  
 5 under section 5 of this 2023 Act, 40 percent to the relator and 60 percent to the responsible  
 6 state official identified by the court.

7 (b) If the responsible state official has intervened in the public enforcement action under  
 8 section 5 of this 2023 Act, 30 percent to the relator and 70 percent to the responsible state  
 9 official identified by the court.

10 (c) All funds collected by the responsible state official pursuant to sections 1 to 6 of this  
 11 2023 Act are continuously appropriated to the responsible state official for the purpose of  
 12 enforcing the laws of this state that the responsible state official is charged with enforcing.

13 (d) The relator shall distribute equitably any civil penalties recovered by the relator  
 14 among the persons affected by the violation found in the public enforcement action. The  
 15 relator shall submit a distribution summary to the court, who may, within 60 days of re-  
 16 ceiving the distribution summary, order a different distribution. Any distribution shall com-  
 17 pensate the relator for the burdens and risks of prosecuting the public enforcement action  
 18 or, if the relator is a representative organization, provide reasonable compensation to the  
 19 representative organization for attorney fees and costs incurred in investigating, instituting  
 20 and litigating the public enforcement action.

21 (4) If a civil penalty is recovered in a public enforcement action, the court shall award  
 22 the relator reasonable attorney fees and costs and may award the responsible state official  
 23 reasonable attorney fees and costs and applicable equitable remedies.

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

26 (6) Notwithstanding any other provision of law, a public enforcement action must be  
 27 commenced within the same period of time that a responsible state official would have to  
 28 take enforcement action for the alleged violation. The statute of limitations for bringing a  
 29 public enforcement action under this section is tolled from the date a relator files a notice  
 30 pursuant to section 5 of this 2023 Act or the date a responsible state official commences an  
 31 investigation of the alleged violation, whichever is earlier.

32 (7) Notwithstanding any other provision of law, a public enforcement action initiated by  
 33 a private party under sections 1 to 6 of this 2023 Act may not be used for the purpose of res  
 34 judicata or collateral estoppel in a private action based on the same operative facts.

35 **SECTION 3.** (1) Notwithstanding section 5 of this 2023 Act, a relator may not bring a  
 36 public enforcement action for a violation if a responsible state official takes enforcement  
 37 action with regard to the violation within the time periods set forth in section 5 of this 2023  
 38 Act and the responsible state official serves notice on the relator pursuant to section 5 of  
 39 this 2023 Act.

40 (2)(a) Except as provided in paragraph (b) of this subsection, the filing of a public  
 41 enforcement action precludes subsequent state enforcement efforts based on the same facts  
 42 and law, whether conducted by the state or by a relator under sections 1 to 6 of this 2023  
 43 Act.

44 (b) This section does not limit the right of a responsible state official to seek other  
 45 damages for aggrieved persons as part of a public enforcement action in which the respon-

1 sible state official has intervened.

2 (3)(a) The Commissioner of the Bureau of Labor and Industries shall establish a publicly  
 3 available database of public enforcement actions, including the names of the parties, the  
 4 disposition and any other information that the commissioner prescribes by rule. The com-  
 5 missioner shall adopt rules allowing a relator to request that the commissioner not include  
 6 information in the database due to risk to person, family or property, risk of job loss or  
 7 other reasonable considerations.

8 (b) Each responsible state official shall provide the commissioner with the information  
 9 described in paragraph (a) of this subsection necessary for the commissioner to maintain an  
 10 up-to-date database of public enforcement actions.

11 (4) Public enforcement actions brought under sections 1 to 6 of this 2023 Act are subject  
 12 to ORS 192.311 to 192.478.

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

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

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

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

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

22 **SECTION 5.** (1) A relator may not commence a public enforcement action until 30 days  
 23 after written notice of the claim has been submitted by the relator to the responsible state  
 24 official. If more than one agency is charged with enforcement of the statutes or rules at is-  
 25 sue in the prospective action, the relator shall provide notice to each responsible state offi-  
 26 cial for each agency.

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

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

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

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

32 (d) A concise statement of the alleged violation reasonably calculated to apprise the re-  
 33 sponsible state official of the substance and nature of the alleged violation, including, but  
 34 not limited to, the statutes or rules alleged to have been violated, the estimated number of  
 35 aggrieved persons and relevant facts, dates and events.

36 (3) The responsible state official shall by rule provide for the right of a relator to provide  
 37 an amended notice if the responsible state official determines that the relator's original no-  
 38 tice provided under subsection (1) of this section is not in compliance with this section. The  
 39 responsible state official shall identify with particularity the deficiencies in the original no-  
 40 tice. If the determination and the opportunity to amend are not provided by the responsible  
 41 state official within 30 days of the original notice, the original notice is deemed to comply  
 42 with this section. The relator has 30 days after receiving the responsible state official's de-  
 43 termination of noncompliance with this section to amend the notice. The amended notice  
 44 relates back to the original notice.

45 (4)(a) If the responsible state official intends to investigate the alleged violation, the re-

1 responsible state official shall notify the relator by certified mail within 30 days of the date of  
2 the notice or the amended notice received pursuant to subsection (1) or (3) of this section.

3 (b) During the period of time the responsible state official is investigating the alleged  
4 violation a relator may not file a public enforcement action.

5 (c) Within 120 days of the notice of the decision to investigate, the responsible state of-  
6 ficial may investigate the alleged violation and take any appropriate enforcement action.

7 (d) The responsible state official shall notify the relator by certified mail within five  
8 business days of reaching an enforcement determination.

9 (5) Upon receipt of notice that no enforcement action will be taken for an alleged vio-  
10 lation, or if no enforcement action is taken by the responsible state official within the time  
11 limits prescribed in this section, or if the responsible state official fails to provide timely or  
12 any notification, the relator may commence a public enforcement action for the alleged vio-  
13 lation.

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

16 (7) The responsible state official may intervene in a public enforcement action and pro-  
17 ceed with any and all claims in the action as of right, within 30 days after the filing of the  
18 action or the filing of a bankruptcy proceeding that affects the action.

19 (8) If the responsible state official intervenes in a public enforcement action:

20 (a) The responsible state official has primary responsibility for prosecuting the action and  
21 is not bound by an act of the relator bringing the action. Upon intervention, the responsible  
22 state official shall provide the relator reasonable compensation for the attorney fees and  
23 costs expended on behalf of the relator in investigating, instituting and litigating the action.

24 (b) The court must review and approve any proposed settlement of the public enforce-  
25 ment action. The responsible state official shall submit the proposed settlement to the court  
26 and at the same time provide the relator with a copy of the proposed settlement. The relator  
27 shall have an opportunity to be heard by the court on the proposed settlement. The court  
28 may approve the settlement if the court finds that the settlement is fair, adequate, reason-  
29 able and in the public interest. Any settlement must account for reasonable compensation  
30 for the attorney fees and costs expended on behalf of the relator in investigating, instituting  
31 and litigating the action.

32 (9) If the responsible state official does not intervene in the public enforcement action,  
33 the relator may conduct the action subject to the following limitation:

34 (a) The court must review and approve any settlement of a public enforcement action.  
35 The relator shall submit the proposed settlement to the responsible state official at the same  
36 time that the proposed settlement is submitted to the court. The court shall approve a  
37 settlement of the action if the court finds that the settlement is fair, adequate, reasonable  
38 and in the public interest. If the parties reach a settlement after a relator has provided no-  
39 tice under subsection (1) of this section but before an action is filed in court, the responsible  
40 state official shall review the proposed settlement and approve the settlement if the official  
41 determines the settlement is fair, adequate, reasonable and in the public interest. Any  
42 settlement must account for reasonable compensation for the attorney fees and costs ex-  
43 pended on behalf of the relator in investigating, instituting and litigating the action.

44 (b) The responsible state official may request to be served with copies of all pleadings  
45 filed in the action and to be supplied with copies all deposition transcripts. The responsible

1 state official shall bear any costs associated with service of such pleadings and depositions.

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

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

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

8 SECTION 6. Sections 1 to 6 of this 2023 Act shall be liberally construed in light of the  
9 remedial purpose of expanding the enforcement of Oregon statutes.

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