

HB 2205 is not about consumer protection.

As drafted, the bill would allow private trial attorneys to file actions on behalf of the state, including claims under the broad Unlawful Trade Practices Act (UTPA) statutes. No other state has delegated their broad consumer enforcement authority to private trial attorneys...and Oregon should not be the first. Oregon has one of the strongest consumer protection units in the country under Attorney General Ellen Rosenblum's leadership. In addition, Attorneys Generals (AG) have different incentives than private attorneys. Specifically, AGs do not have a financial incentive to litigate. Instead, they answer to citizens of the state – your constituents.. AGs will pursue structural and injunctive remedies that have far greater consumer benefit than a nominal check that only a small percentage of people actually cash. AGs also work with businesses to provide meaningful resolutions to litigation that can be more impactful than monetary damages, ensuring long term compliance and greater worker protection. This bill makes trial attorneys, rather than public agencies the regulators of businesses. They won't prioritize the greater good for all Oregonians.

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In California, under the Private Attorneys General Act (PAGA) an employee may file an action on behalf of themselves, all other aggrieved employees and the state for alleged Labor law

violations – essentially allowing private attorneys to act as unelected attorney generals. The bill incentivizes lawsuits and fee stacking over remedying injuries and making workers whole.

We should heed California's warning....

- CA PAGA led to a 1000% increase in lawsuits each year since its adoption[1]
- The cases largely lead to big payouts for trial attorneys....not so much for workers. In one example, the plaintiff was awarded $2.325M while the average individual plaintiff award was $1.08[2]. In another, $65M award, $21M went to trial attorneys and the average aggrieved worker received a $108 check. PAGA lawsuits mainly benefit trial attorneys, not workers.
- Even the Labor & Workforce Development Agency recognized the potential for abuse under PAGA in their assessment:

  > ..."the substantial majority" of proposed private court settlements in PAGA cases reviewed by the PAGA Unit fell short of protecting the interests of workers and the state. The analysis continues: "Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the failure of many private plaintiffs' attorneys to fully protect the interests of the aggrieved employees and the state."

PAGA is not the silver bullet enforcement tool proponents claim it is. Oregon should invest in the state agencies charged with encouraging employer compliance and protecting workers. Don't unnecessarily expose employers to increased litigation costs, forcing them to defend against a new private right of action and risk of class action lawsuits...all with no evidence of increased protection to workers.

HB 2205 is about more lawsuits.

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[1] *See* 2019 Budget Change Proposal, *PAGA Unit Staffing Alignment*, 7350-110-BCP-2019-MR

[2] See California Business & Industrial Alliance v. Becerra (Super. Ct. Orange County, 2018, No. 30-2018-01035180-CU-JR-CXC

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