A Letter from Oregon's Business Community

Oppose the -2 Amendments to SB 137:

A Surprise Tax Increase on Oregon Small Businesses

The -2 amendments propose a tax on Paycheck Protection Program funds

State coffers are overflowing; the state does not need this money

Background – In response to the COVID-19 pandemic, Congress recognized the financial hardships families and businesses have experienced due to sudden job losses and business closures by passing the CARES Act last year with overwhelming bipartisan support. Among other essential provisions, the CARES Act authorized the creation of the Paycheck Protection Program (PPP), a federal lifeline for both employers and employees that provided temporary and limited funding to small businesses (fewer than 500 employees) in the form of loans that would be fully forgiven if used for authorized purposes like payroll, rent, and utilities.

Kept Employees on Payroll, Off Unemployment – PPP funds were intended to keep as many employees on payroll as possible when states were experiencing massive spikes in unemployment benefit claims due to the government-ordered business closures and other impacts of the pandemic. Congress was clear that these funds should not be considered income, and after the IRS issued a ruling that these funds would not be allowed as regular deductible business expenses, Congress responded by expressly fixing this unintended consequence with the passage of the Consolidated Appropriations Act of 2020.

A Surprise Tax Increase – SB 137-2 would require forgiven PPP loan amounts in excess of $100,000 be added back as "taxable income" for Oregon businesses that used the program exactly the way it was intended. It is an unfair, retroactive tax increase on Oregon small businesses at time when Oregon is already projected to bring in more revenue than ever before. The Legislative Revenue Office estimates this unnecessary tax increase will cost Oregon businesses $450-$600 million.

Oregon does not need the money – The May Revenue Forecast was incredibly strong, projecting a $2.8 billion positive ending balance. This amounts to a $1.1 billion increase from the March Revenue Forecast and a $2.3 billion increase from the 2019 Close of Session Forecast. The state has also been allocated $2.6 billion in direct financial aid from the Biden Administration's American Rescue Plan Act of 2021, in addition to ARPA funds for local jurisdictions. Given this, there is no budgetary justification for tax increases of any sort, including taxation of forgiven PPP loans.

Protect Oregon Businesses - Oppose the -2 amendments to SB 137

For more information, please contact Anthony K. Smith, NFIB, Anthony.Smith@NFIB.org, *(503) 364-4450 or Scott Bruun, OBI, ScottBruun@oregonbusinessindustry.com, (503) 720-1329*


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Oregon Restaurant
& Lodging Association


OREGON
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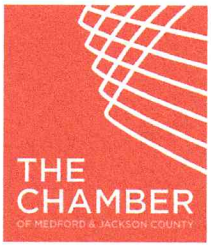
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OF MEDFORD & JACKSON COUNTY


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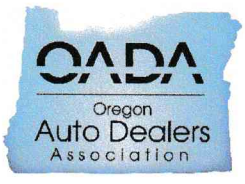
OVDA
Oregon Vehicle Dealer Association


MULTIFAMILY NW
The Association Promoting Quality Rental Housing


NATA
NW Automotive Trades Assn.


OADA
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Association


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FUELS
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WINEGROWERS
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PROFESSIONAL LAND
SURVEYORS OF OREGON


OPSA
Oregon Power Sports Association


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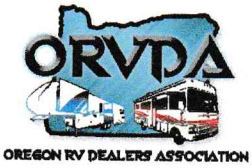
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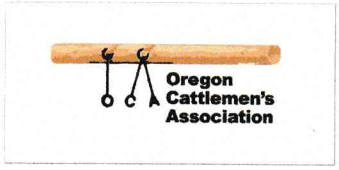

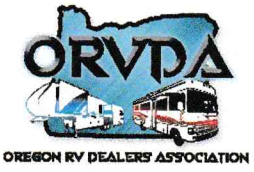

TO: **Matt Kaiser**
Oregon OSHA
Submitted via email: tech.web@oregon.gov and Matthew.C.Kaiser@oregon.gov

RE: **Rules Addressing the COVID-19 Public Health Emergency in All Oregon Workplaces**
Adopting OAR 437-001-0744

March 26, 2021

The above entities, associations and organizations submit the following concerns with the proposed permanent rules addressing the COVID-19 Public Health Emergency in All Oregon Workplaces. As active participants on this effort since last June, we appreciate OR-OSHA's willingness to engage in stakeholder conversations. However, there are key missing components discussed during the stakeholder engagement process from the proposed rules. In addition, we continue to believe that OR-OSHA should provide clear direction to Oregon

employers about what is NEWLY required of them, given their compliance with the temporary COVID-19 rules you adopted just four months ago.

Our specific concerns with the proposed permanent rules include:

- **Expiration Date tied to EO Ending:** The agency had indicated a willingness to have these new pandemic permanent rules expire upon the end of the COVID-19 pandemic, however the note in the proposed language is vague and not specific to the Governor's Executive Order. We suggest and raise the following concerns:

  > Unless otherwise indicated, the rule's provisions take effect May 4, 2021, and remain in effect until revised or repealed.
  > Note: Although the rule must be adopted as a permanent rule, its purpose is to address the COVID-19 pandemic. Oregon OSHA intends to repeal the rule when the Governor's Executive Order related to COVID-19 and the current State of Emergency expires or is rescinded. ~~it is no longer necessary to address that pandemic. Because it is not possible to assign a specific time for that decision, Oregon OSHA will consult with the Oregon OSHA Partnership Committee, the Oregon Health Authority, and other stakeholders as circumstances change to determine when all or part of the rule can be appropriately repealed.~~

- **Confirmation Employer Efforts Satisfy New Mandates:** Language confirming that Risk Assessments, Infection Control Plans and Worker Training completed under the Temporary COVID-19 OSHA Rules satisfy all new requirements in the permanent rules. While addressed in your comparison document, we did not see specific language confirming that intent and in fact see direction to complete a risk assessment and infection control plan with a note that OR OSHA will assist in completing this task. This task has already been completed under the temporary rules and should be reflected as acceptable in the permanent rules:

  > Note: Oregon OSHA will make a Risk Assessment template and sample Risk Assessments available to assist employers in completing this task. If an employer has already completed the Risk Assessment and Infection Control Plan under the Temporary Rules these plans shall satisfy the requirements outlined in these sections.

- **Clarification about the new Hazard Communication standard**: Buried in a "Note" on pg. 25 the OSHA rules attempt to link to a federal standard for the use of certain cleaning chemicals and disinfectants. If there are specific cleaning chemicals that trigger this requirement, OSHA should clearly post and delineate these rather than referencing very complicated federal rules.
- **Delete New Costly Ventilation Requirements:** We remain concerned that these ventilation requirements will add significant costs burdens. It can be quite costly to get service providers out annually, let alone quarterly. It is also unclear if previous maintenance under the Temporary Rules satisfy this new mandate. The proposed rules

also require an employer to attest in writing their HVAC systems are in compliance with this rule. Is this writing to be submitted to OR-OSHA? What are the clear requirements to satisfy compliance? We recommend deleting this new requirement:

~~(C) By June 1, 2021, all employers with more than 10 employees statewide and an existing HVAC system must certify in writing that they are operating that system in accordance with the rule.~~
~~(i) The certification must be dated and must include the name of the individual making the certification; and (ii) Such certification records must be maintained as long as this rule is in effect.~~
~~(D) On a quarterly basis beginning no later than June 1, 2021, all employers must ensure the following:~~
~~(i) All air filters are maintained and replaced as necessary to ensure the proper function of the ventilation system;~~
~~(ii) All intake ports that provide outside air to the HVAC system are cleaned, maintained, and cleared of any debris that may affect the function and performance of the ventilation system; and~~
~~(iii) Minimize air recirculation within indoor and enclosed areas to the greatest extent possible when the building is occupied.~~

- **Delete Burdensome 30-year Record Keeping Mandate**: The 30-year record keeping requirement for records notifying employees they may have been exposed to someone with COVID-19 are new and exceed any labor law recording keeping mandate currently placed on Oregon employers.

~~Note: Whenever an exposure notification as described by this rule occurs, the notification to exposed employees and the names of those notified are Employee Exposure records subject to the existing requirements of Oregon OSHA's Access to Employee Exposure and Medical Records standard (29 CFR 1910. 1020), which requires that such records be retained for 30 years.~~

- **Update Medical Removal to Reflect New Guidance**: This section should be updated to reflect the new OHA guidelines which do not require quarantine for fully vaccinated personnel (who have been fully immunized with COVID-19 vaccine according to the ACIP schedule and are at least 14 days beyond completion of the vaccine series) who come in close contacts of persons with confirmed or suspected COVID-19 are not required to quarantine. In addition, the new requirement that the employer provide the employee with notice of all over PTO, sick leave or benefits conflates the OR-OSHA realm of regulation with BOLI and we ask that this new mandate be stricken. Existing law already requires significant notification requirements. Additional notice mandates will require additional steps and provide the possibility for mistakes that the employer could then be liable for even if they have provided the information previously.

(B) Whenever an employee participates in quarantine or isolation, whether as a result of the requirements of this rule or because the employer chooses to take additional precautions, the affected worker(s) must be given written notification that they are entitled to return to their previous job duties if still available without any adverse action as a result of participation in COVID-19 quarantine or isolation activities ~~and should be provided any relevant information about the employer's paid time off, sick leave, or any other available benefits in accordance with local, state, or federal law.¶~~

- **Delete Confusing and Burdensome Vaccine Tracking:** (C) on pg. 29 seems to both remove employers ability to require vaccinations and simultaneously applies a new mandate on employers to document employees declination. Since employers are not managing nor administering the distribution of vaccines, OR-OSHA appears to propose requiring the employer to proactively seek this information from workers.

  ~~(C) Unless the local public health agency or Oregon Health Authority directs otherwise, employers need not require employees to accept the vaccination. If employees who are offered the vaccine decline to be vaccinated, the employer must document that declination.~~

  Employers have significant concern with this new mandate, which was not discussed during any of the stakeholder conversations and strongly urge its removal. Since vaccines are not mandated by OR-OSHA, the documentation attesting vaccination or no-vaccination appear to serve only to violate the workers personal privacy and potentially expose the employer to liability with no clear workplace safety benefit.

Oregon's Business Community Urges You to Oppose Secondary Lawsuits (SB 208, HB 3074, HB 3171 & HB 3172)

Senators and Representatives,

As members of Oregon's business community, we ask you to oppose Senate Bill 208, House Bill 3074, House Bill 3171, and House Bill 3172. These proposals would greatly expand litigation in resolving insurance claims, disrupting Oregon's insurance market and threatening higher costs for consumers at a time when they can least afford it.

Oregon consumers can already bring a lawsuit or file a complaint with the state's insurance commissioner if they feel they have been treated unfairly. Oregon's insurance division can already order insurers to pay claims, as well as require restitution and levy fines against insurers that act in bad faith.

The proposals in these bills, authorizing secondary lawsuits regarding the resolution of claims and authorizing third parties to sue insurers, would undermine the existing strong protections we have for consumers. These bills would incentivize trial attorneys to shift discovery costs to the agency, straining resources during a period of tight budgets.

These policies negatively impacted insurance rates in other states that adopted them.

- A California court decision allowed third-party lawsuits in 1979. Another court struck it down in 1988. During that decade of litigation, the number of claims and the handling costs skyrocketed, increasing bodily injury premiums 32–53 percent. After the repeal, the spikes in lawsuits, premiums and claims costs declined dramatically. Source: RAND Institute for Civil Justice 2001
- After adjusting for inflation, losses have increased 20 percent in Washington for the major property lines of insurance following passage of a law allowing additional first-party lawsuits. Source: SNL Financial, 2007-2015; inflation adjusted by PCI

People across Oregon are still struggling to emerge from the economic hardship of COVID-19. Now is not the time to risk raising insurance costs for families and local small businesses.

Save Oregon's Small Businesses from Regulatory Overkill!
Vote YES on HB 2334

When a state agency creates a rule, the agency is supposed to prepare a statement identifying any significant economic impacts on businesses, with a special focus on how the cost of compliance will effect small businesses. Unfortunately, Oregon's agencies have found ways to circumvent this important review and saddle our small businesses with overwhelming regulatory costs.

The "small business impacts analysis" needs an overhaul now more than ever! Our small and local businesses have been decimated by COVID-19. We need the legislature to step in and strengthen the small business impacts analysis to ensure that state agencies are following their requirements under the law, and protecting the businesses we know and love.

HB 2334 would strengthen the small business impacts analysis by requiring an agency to:

- Undertake the analysis even for temporary or emergency rules;
- Establish differing compliance or reporting requirements or time tables for small business;
- Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small business; **and**
- Utilize objective criteria for standards; **or**
- Exempt small businesses from any or all requirements of the rule; or
- Establish a less intrusive or less costly alternative rule applicable to small business.

Oregon's agencies need to consider the economic consequences of their rules on our small businesses and mitigate those impacts during the administrative process!

Vote **YES on HB 2334** to strengthen Oregon's business impacts analysis to keep our small and family run businesses strong!

Contact: samantha@oregonfb.org

To: Chair Holvey and Members of the House Committee on Business and Labor
From: Coalition of Employer Representatives
Date: March 17, 2021
Re: Response to HB 2813

Thank you for the opportunity to present testimony regarding HB 2813. Our coalition represents a diverse group of Oregon sectors engaged in outdoor work activities—seasonal and year-round—subject to the regulations proposed in HB 2813. Many members of our coalition are familiar with California's Wildfire Smoke Regulation and have been part of discussions with the state, in particular Oregon OHSA, regarding this same concept. We support the intent of this legislation to protect worker health during extreme wildfire smoke events, such as the devastating 2020 wildfires, but are concerned that aspects of the bill are impractical and duplicative of executive branch efforts. It is with this background that we share our recommended changes to HB 2813.

To start, the wildfire smoke program proposed by HB 2813 is duplicative of a rulemaking effort already underway at Oregon OSHA (OR-OSHA) to provide the same protection to employees. In March 2020, Governor Brown's Executive Order 20-04 directed OR-OSHA and the Oregon Health Authority (OHA) to initiate rulemaking to protect employees from wildfire smoke and extreme outdoor heat. OR-OSHA convened the first rules advisory committee (RAC) meeting on March 4, 2021 to develop rules to protect employees from wildfire smoke. OR-OSHA's RAC process, comprised of 60 interested stakeholders, is running concurrently with the legislative session and already has scheduled a second meeting scheduled on March 25th with an anticipated final rule by September 30, 2021. Given this overlap, we encourage policymakers to choose one policy pathway on wildfire smoke, whether it is consensus legislation or the OR-OSHA/ OHA rulemaking, in order to avoid the creation of conflicting regulations.

If the Committee advances HB 2813 this session, our coalition respectfully asks for the opportunity to address the concerns below.

- **Covered Employees:** As drafted HB 2813 applies broadly to all employees and workplaces whenever work is conducted outside. The program scope should not exceed California's rule, which provides exceptions for (1) enclosed buildings or structures with adequate ventilation, (2) enclosed vehicles, (3) when an employer demonstrates that AQI is less than 151 (4) employees who work outside for short durations of time, and (5) individuals engaged in firefighting.
- **PM2.5 Determination:** Many worksites across Oregon operate on staggered shifts. The mandate to determine PM 2.5 before every shift in Section 2(3)(a) will be impossible to implement. We suggest revising this section to provide a clear time period for determining PM2.5, for instance before the start of the first shift.
- **Data Sources:** HB 2813 should allow all employers to use existing government-provided AQI data sources or a device manufactured to measure the concentration of PM2.5, consistent with California's Wildfire Smoke Regulation. Many employers operate at different worksites within the same county or even across several counties. It is important to maintain the ability to use a handheld PM2.5 measurement device for employers that operate in areas outside of the range of broadband or who choose to purchase the device. However, it is impractical to require an agricultural employer or construction contractor to purchase a device for use at each worksite (when there is no guarantee the device will work on the location) when the worksite coordinates could easily be used to determine local AQI on government-endorsed websites.

- **Posting and Notice:** We suggest deleting the requirement for a poster in the five most widely used non-English languages in Section 2(2)(c) as this is not practical. Instead, HB 2813 should adopt language applied in other Oregon labor laws: "*Notice provided to an employee under this section must be in the language the employer typically uses to communicate with the employee.*" Template posters and notice language also must be provided by OR-OSHA and OHA so that employers are not responsible for confirming translation, determining public health risks related to PM2.5 or occupational health and safety tools available to workers.
- **Training:** OR-OSHA's Respiratory Protection rule (and fit test requirements) currently applies to specific sectors, but not broadly to all workplaces. We suggest training curriculum similar to California's Appendix B, which has broader applicability. This can be directed to be established in rule via the legislation.
- **Emergencies:** We request an exemption for emergency situations, consistent with California, and when there is a critical supply shortage, such as what occurred with N95 masks during early days of the COVID-19 crisis.
- **Hierarchy of Controls:** We suggest deleting Section 2(2)(e)(A-B), as there is no threshold for regulation. This section is better provided as guidance in rulemaking, not statute.
- **Respiratory Protection:** Section 2(2)(b) should be amended to allow employers to accommodate emergency situations, religious objections, or to accommodate employee facial hair. The lack of exemptions has led to conflict between employees and employers in other jurisdictions.

Our coalition appreciates the opportunity to respond to HB 2813 today and share our thoughts making this legislation more workable for employers, while protecting the health of our employees. We look forward to working with the sponsors on amendments to align more closely with California's Wildfire Smoke Regulation and ensure that the final legislation is practical across a diversity of outdoor work situations.

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Oppose Duplicative and Costly New DEQ Program: *NO on HB 2814*

HB 2814 would create a new indirect sources review program at DEQ. A similar program was proposed, and *unanimously rejected*, at the Environmental Quality Commission in 2020. The proposed program would apply to indirect sources throughout the state, including retail facilities, government offices and buildings, schools, colleges, hospitals, ports, and development projects. This broad application means that all of Oregon's economy would be impacted by this sweeping program.

This proposed program is a solution in search of a problem: Oregon has long regulated indirect sources and DEQ has evaluated more than 400 indirect sources under its indirect sources program. No indirect source has ever been found to cause a violation of air quality standards, which begs the question of why we need a duplicative program. Many other DEQ programs are targeting mobile sources of air pollutants such as the HB 2007 Retrofit Compliance Rulemaking, Low Emission Vehicle program including Oregon's Zero Emission Vehicle mandate, the Employee Commute Option and the Vehicle Inspection Program.

The impact of this program would be felt by Oregon's whole economy, but especially by small businesses. Such a program is likely to include analysis, review and permitting requirements. The cost of air quality analysis and permit preparation alone will be prohibitive for some small contractors and businesses, and substantial delays would also be caused by review requirements. These new costs would create further strain on construction or operation of most businesses, particularly as our state recovers from the historic economic impacts of the COVID-19 pandemic. DEQ has previously acknowledged they would need additional staff and funding for the program, meaning additional fees would either be imposed on businesses or requested from the General Fund.

Finally, we have substantial legal concerns about an indirect sources program proposal. Such programs target regulating fuel efficiency and carbon emissions from mobile sources. This is clearly prohibited by federal law and is likely to invite extensive litigation.

To ensure that Oregon's economy keeps running smoothly and to avoid substantial legal challenges, we urge your no vote on HB 2814.

For more information, please contact John Rakowitz (AGC) 503-317-1781, Sharla Moffett (OBI) 971-998-2272 or Mike Eliason (OFIC) 971-218-0945

For more information, please contact John Rakowitz (AGC) 503-317-1781, Sharla Moffett (OBI) 971-998-2272 or Mike Eliason (OFIC) 971-218-0945

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.

HB 2205 is not about worker protection.

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 since the first year of 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

Contact: Amanda Dalton amanda@daltonadvocacy.com
Paloma Sparks palomasparks@oregonbusinessindustry.com

Honorable Senator Betsy Johnon, Senator Steiner Hayward, and Representative Rayfield
Joint Ways and Means Committee

Opposition to HB2398 as drafted

Oregon has had a system of statewide planning and building codes since 1973. Oregon's system of building regulation impacts new and existing building owners, contractors, developers, and remodelers. We have relied on this system to make sure we know that our operating permits are valid and that the rules are not changed retroactively or arbitrarily. Creating a new local system could expose us to an invalid permitting process and an unclear new regulatory environment.

HB 2398 allows local government to adopt new and separate building codes above and beyond the state standards without rulemaking, including no required due process or public input. It will create different requirements in certain communities which will increase confusion and cost.

The bill is written so broadly with limited public discussion of how this will impact building owners and operators. We need to understand the exact impact on our ability to operate, maintain, repair, and remodel buildings in Oregon, especially where we operate in more than one community. We can't have different rules area by area impacting our operations, maintenance, and construction workers.

Of real concern is that the bill specifically allows local government to mandate untested and uncertified products (plumbing, electrical, HVAC, and building materials). We cannot expose our workers and users of our buildings to substandard equipment or unproven building materials.

We encourage you to take the time to find a better way to move forward without undermining our statewide system or in any way adding confusion or increased risk for the public or our members. HB 2398 is just too broad, too rushed, and too risky.

IBEW 48
IBEW 89
IBEW 112
IBEW 125
IBEW 280
IBEW 659
IBEW 932
Oregon State Association of Electrical Workers

May 3, 2021

Patrick Allen
Oregon Health Authority
500 Summer St NE #E-20
Salem, OR 97301

VIA EMAIL: patrick.allen@dhsoha.state.or.us

Director Allen,

We are writing today to express grave concern with Oregon Health Authority's new Statewide Mask, Face Covering, Face Shield Guidance published on April 29, 2021. Collectively, our organizations represent businesses across Oregon's many sectors, including employers who operate outdoor work environments. Our organizations and those we represent have taken COVID-19 precautions seriously and the wellbeing of employees and customers is critically important to us. However, we are deeply troubled by the state's continued misdirected response to COVID-19 over a year into the pandemic and we take serious issue with this new guidance as published.

Despite being labeled as "guidance", this document, and accompanying documents from the agency, are binding on Oregonians and employers, and enforceable by OR-OSHA. With this in mind, we are concerned and frustrated that the Health Authority did not work with any of

our organizations when crafting this new guidance, nor did the agency take comment from the public. Instead, OHA published new and highly restrictive requirements without notification to the public or key stakeholders.

The requirement that employees wear masks at all times, despite being outdoors and fully vaccinated is two steps in the wrong direction. The Health Authority has made it abundantly clear that workplace exposure is not the major transmitter of COVID-19 in the state, workplaces are under a strict regulatory protocol with OR-OSHA, and Oregon's businesses have made it their biggest priority to incentivize vaccination among their employees. Best available scientific information suggests that the risk of COVID-19 transmission while vaccinated and outdoors is incredibly low, which has recently led the CDC to release guidance stating that people do not need to wear masks when vaccinated and in uncrowded outdoor environments. Imposing this new mask mandate on our outdoor employees, when their risk of illness and exposure at work is already low, is punitive and does little to incentivize employees to become vaccinated, which is essential to the state's success in beating COVID-19.

We must work together to find a way to get our communities back on their feet and our businesses reopened, all while keeping our employees safe. Unfortunately, this new guidance does not strike this balance, and will serve to further disincentivize vaccinations and increase restrictions when we know that workplace exposure is not the major driver of COVID-19. Therefore, we strongly urge the Health Authority to immediately rescind this guidance and work with affected employers and employees to draft more reasonable guidelines.

Thank you for the opportunity to provide this feedback. Please do not hesitate to reach out to any of our organizations to further this conversation, or to the contact below.

Contact: samantha@oregonfb.org

No on 801 -1: Keep Self-Insurance Programs Operating

The -1 amendment to SB 801 would eliminate the ability of self-insured employers to conduct their own claim processing. Many of Oregon's largest companies and large local governments are self-insured employers, giving their employees high quality workers' compensation coverage while doing what works best logistically and financially for the company.

These proposed changes to the self-insured program in Oregon would virtually eliminate this program, as the companies would no longer be able to do their own claim processing. While it shifts this duty to SAIF Corporation, the long term effect of this amendment would be to shift companies away from being self-insured altogether. This creates a huge problem for companies and employees who have long appreciated the ability to insure themselves for workers' compensation. Many companies use this system because it allows them to provide the best care at the best cost for their employees. Should they have to go with another company, they risk having to change the quality of care they are able to provide for their employees. And employees would lose out on what is often a more generous benefit, for example better time loss provisions.

Workers enjoy the same protections through self-insurance programs as other insurance programs. The system has been working for decades with rules in place that ensure that workers receive all the benefits they are entitled to. Just as with other insurers, self-insureds are regulated by the Workers' Compensation Division. This regulation ensures that the employees are receiving the care they deserve, while allowing employers to make the best business determination for their companies.

There are also legal considerations with making this drastic change. The dormant commerce clause of the US Constitution does not allow for states to make laws that advantage in-state over out-of-state businesses, without meeting certain requirements. Given that SAIF Corporation is an entirely Oregon based, quasi state entity, it is questionable whether Oregon would be able to require out-of-state companies who choose to self-insure, to instead use the services of SAIF Corporation.

For more information, please contact Kirsten Adams (AGC) – 503-990-2262, or
Paloma Sparks (OBI) – 541-337-4740

For more information, please contact Kirsten Adams (AGC) – 503-990-2262, or
Paloma Sparks (OBI) – 541-337-4740

NO on HB 2205 – _Lawsuit Scheme Threatens Every Employer in Oregon and Economic Recovery

Creates a mechanism allowing outside suits in the name of the State for any statute including civil penalties

The Private Attorney General Act (PAGA) in California confers a private right of action to individuals to prosecute labor code violations. Modeled after PAGA, HB 2205 goes *beyond* PAGA to allow outside entities to sue businesses under any state statute authorizing a state agency to take enforcement action with a civil penalty.

PAGA has been disastrous for businesses in California – HB 2205 is, shockingly, worse!

- California's PAGA statute has been litigated and modified multiple times since passage in 2003. In California, PAGA is specific to labor law. HB 2205 expands this concept dramatically and subjects Oregonians to potential lawsuits by outside entities in the name of the state based on more than 300 different chapters and numerous state agencies.
- This legislation will decimate Oregon's state agencies currently responsible for enforcement and essentially privatize those functions to be managed by trial lawyers and the courts through lawsuits.
- HB 2205 will have an impact on every business, every non-profit and virtually every employer in Oregon, subjecting them to liability exposure never envisioned when enforcement statutes were adopted.

HB 2205 destroys the legislative intent of virtually every statute seeking enforcement through civil penalties

- Legislators can choose to allow for lawsuits when they pass legislation. Often they believe agency enforcement including civil penalties is a preferred solution.
- Employers have negotiated a variety of employment laws and consumer protections laws in good faith with proponents, legislators and agencies to avoid a private right of action and to avoid inclusion under the section of the Unlawful Trade Practices Act that has a private right of action and the ability to file a class action lawsuit. HB 2205 negates all work previously done to allow for education and enforcement, but not lawsuits related to those issues.
- Further, it allows these lawsuits to be filed without the requirements of certifying a class. Class action lawsuits are complicated because of the investigative work to identify and certify class members. PAGA cases are essentially class action suits but require that only one person feel aggrieved in order to file.

HB 2205 benefits one special interest group – trial attorneys

- Examples from California show how little employees actually receive as a result of PAGA claims. Individuals filing claims can only receive 25% of any penalties, while trial attorneys benefit from contingency fees, awards of attorney's fees and from reimbursement of costs.
- In their review of PAGA court settlements, the California Labor and Workforce Development Agency said "This review has revealed that the substantial majority of proposed settlement agreements proposed to superior courts and filed with the LWDA did not sufficiently protect the interest of workers and the state."

HB 2205 has a Steep Cost – for Businesses and the State

- HB 2205 undermines existing enforcement authority of ALL state agencies. Even if it is scaled back to focus solely on BOLI, it will divert agency attention away from education and enforcement in order to focus on responding under tight timelines to PAGA notices. No state agency will operate efficiently or effectively under the new lawsuit regime established by HB 2205.
- California businesses have spent unprecedented sums defending themselves against PAGA claims or settling those claims and they are only faced with PAGA actions for violations of labor law. The impact of the proposal in HB 2205 are impossible to estimate because no state has a law that so dramatically subjects businesses to lawsuits related to every enforcement action available in statute.

HB 2205 will deter future investment and create dangerous risk exposure for any Oregon business or employer

We Urge Opposition to HB 2205


Oregon State
Chamber of Commerce


OREGON
BUSINESS
& INDUSTRY
OBI


NFIB


OREGON
MANUFACTURERS
AND COMMERCE


BEND
CHAMBER


OREGON
FARM
BUREAU


OHCA
OREGON HEALTH
CARE ASSOCIATION


NAMIC
NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES
SHAPING OUR MUTUAL FUTURE


OR LRC
OREGON LIABILITY REFORM COALITION


OFS
Oregonians
for Food & Shelter


OCTA
OREGON CABLE
TELECOMMUNICATIONS
ASSOCIATION


OREGON TRUCKING ASSOCIATIONS

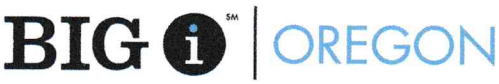

OREGON
FOREST &
INDUSTRIES
COUNCIL


OREGON
SEED
COUNCIL


OREGON
WINEGROWERS
ASSOCIATION


OREGON
ASSOCIATION OF
NURSERIES


OHFA
OREGON HEALTH & FITNESS ALLIANCE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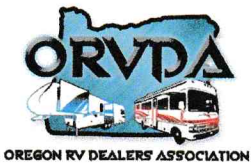
PLSO
PROFESSIONAL LAND
SURVEYORS OF OREGON


ORVDA
OREGON RV DEALERS ASSOCIATION


OAHC


OWC
OREGON WINE COUNCIL


NATA
NW Automotive Trades Assn.


OVDA
Oregon Vehicle Dealer Association


OREGON
BANKERS
ASSOCIATION


OPSA
Oregon Power Sports Association


American Property Casualty
Insurance Association
INSURING AMERICA


OREGON
PHCC
PLUMBING-HEATING-COOLING
CONTRACTORS ASSOCIATION


OADA
OREGON AUTO DEALERS
ASSOCIATION


NW Insurance Council

NO on SB 802 -1: Avoid Unworkable Burdens on the Workers' Compensation System

Allowing workers to file claims for secondary effects of COVID-19 without having to prove that they contracted COVID-19 at work creates an unworkable requirement for the workers' compensation system. This change could affect hundred of thousands workers, who would be able to file a workers' compensation claim for secondary effects of COVID-19 for **thirty years** following the end of the declared emergency for COVID-19, without having to have filed a workers' compensation claim when they actually contracted COVID-19. This also creates a problem for insurance companies, as it retroactively creates responsibility for insurance companies who do not know what kind of risk to budget or manage for. Workers who believe they have contracted COVID-19 at work, can file these claims now, and are then protected for whatever secondary effects they experience later.

Secondary effects are already covered: This bill is a solution in search of a problem. If a worker has filed a workers' compensation claim for COVID-19 and had their claim accepted, any subsequent medical complications that result from the illness are covered under the workers' compensation claim they filed when they had COVID-19. That's how Oregon's system works: once the claim is accepted, you are entitled to treatment of symptoms that result from that initial injury or disease for the rest of your life. So if a secondary impact happens 25 years from now, you are still covered. No change to the current law is required to ensure that those who have had an accepted claim for COVID-19 can have their secondary effects covered. We don't disagree that there may be secondary effects that workers are forced to deal with down the road. However, these secondary effects are already covered by the workers' compensation system for workers who file their claims when they are ill with COVID-19.

The presumption is effectively unrebuttable for employers: The adoption of a presumption related to COVID-19 would mean there is no requirement that it be contracted in the workplace and is effectively "unrebuttable" by the employer. Even if a worker had zero workplace exposure, the presumption requires the employer to identify the exposure, and may have to do so as late as the year 2051. They must specify the known and confirmed source from off-work hours and confirm a positive test for that unrelated individual - which would be a near impossibility. This becomes even more difficult when the presumption can be utilized 30 years in the future. By then, it will be even more difficult to attain information to rebut the presumption. It takes an effectively unrebuttable presumption and goes one step further by adding thirty years of time between the alleged illness and the claim, making it impossible for an employer to show that the claim was not work-related. As a result, COVID-19 cases that are not actually a result of workplace exposure will come into the workers' compensation system.

For more information, please contact Kirsten Adams (AGC) – 503-990-2262, or
Paloma Sparks (OBI) – 541-337-4740

Such a presumption would shift costs to the workers' compensation system that aren't related to workplace injuries, and would unduly burden the system. It's also likely these claims would include some amount of time loss payments. These dynamics make it extremely difficult for insurers to price and reserve adequately for future costs from these claims. Uncertainty in predicting costs may lead insurers to raise rates, increase reserves, and/or increase capital to ensure promises to policyholders and injured workers are kept. The balance of the workers' compensation system is critical for workers and employers alike and must be protected. Passing SB 802 with the -1 amendment threatens to destroy that all-important balance.

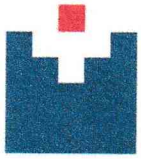
The system is already working for those filing claims when they are ill: Data shows that workers who file workers compensation claims for COVID are getting the coverage they need. In 2020, Oregon's Management Labor Advisory Committee (MLAC) met six times for more than 14 hours examining the impact to workers filing workers' compensation claims related to COVID-19. Data was presented from the Workers' Compensation Division illustrating a workers' compensation system that is working and functioning as it should. Oregon's top ranked system is continuing to work for both employers and employees during this unprecedented time. The lack of agreement at MLAC shows that there is no pressing need to alter the system.

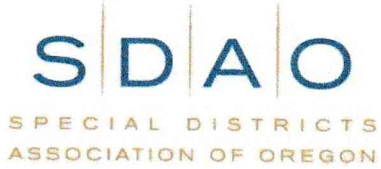
To further ensure that workers were receiving the coverage they needed, the business community supported a new administrative rule at the Workers' Compensation Division, to ensure that the system was providing appropriate coverage and processing of COVID-19 related workers' compensation claims. The rule requires insurers to conduct a "reasonable investigation" before denying any claim and requires an audit of insurers if an insurer has reported five or more claims for COVID-19 or exposure, regardless of whether those claims have been accepted or denied. This rule is making the system even more effective for workers with COVID-19: the denied claims went from 18% before the rule to 5% following the rule's implementation. Workers who have contracted COVID-19 in their workplaces are able to get the care they need now, and in the future, by filing a workers' compensation claim at the point of illness.

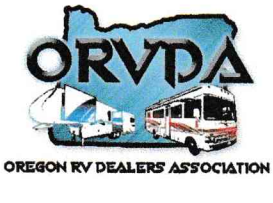
This concept has not been reviewed by MLAC: Oregon's Management Labor Advisory Committee at the Workers' Compensation Division has not had the opportunity to review this amendment. MLAC provides technical analysis and review of legislation to determine the potential impacts, and determine whether it will address the problem presented. This amendment needs to be reviewed by MLAC before progressing any further in the legislative process.

Vote NO on -1 Amendments to SB 802 to avoid inappropriate claims and protect Oregon's strong workers' compensation system.

For more information, please contact Kirsten Adams (AGC) – 503-990-2262, or
Paloma Sparks (OBI) – 541-337-4740







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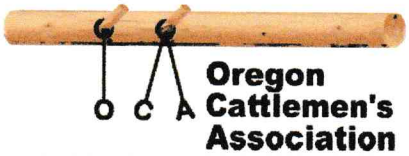
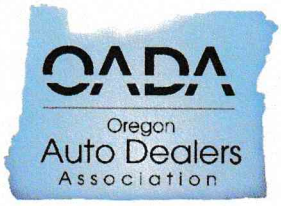
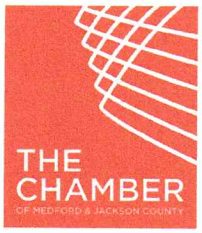






For more information, please contact Kirsten Adams (AGC) – 503-990-2262, or
Paloma Sparks (OBI) – 541-337-4740

SB 139: A Business Tax Increase of $30-40 Million Per Year

The -7 and -10 amendments propose new restrictions on Oregon's Pass-Through Entity (PTE) tax policy while state coffers are overflowing

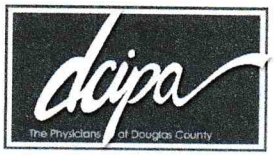
Background – The small business PTE tax rates were part of the Grand Bargain from the 2013 special session. The package of bills passed during the special session included HB 3601, which among other provisions that raised revenue overall, created new tax rates for taxpayers with PTE business income meeting certain criteria, namely those with at least one full-time employee and those whose owners actively participate in the day-to-day operation of their businesses. **The policy objective was to provide a more favorable rate structure for these businesses.**

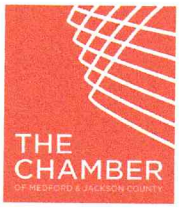
Oregon Has Already Disconnected from Federal PTE Tax Policy – The Tax Cuts and Jobs Act (TCJA) of 2017 used a tax parity lens to make sure that both C corps and PTEs benefited as equally as possible from the tax cuts. C corps saw their corporate income tax rates reduced from 35% to 21% and pass-through businesses were able to apply a new 20% deduction (Sec. 199A) to reduce their federal tax liability. During the 2018 regular session, the Legislature passed SB 1528, which required an add-back of that federal deduction as Oregon taxable income because the state already had its own PTE tax policy. The Governor then called a special session to pass HB 4301, which expanded Oregon's PTE rates to sole proprietorships (and single-owner LLC's), a group of businesses that were left out of the original legislation. **The net result was that while Oregon's PTE policy now benefits around 25,000 businesses, hundreds of thousands of businesses missed out on the tax savings they would have received on their Oregon income taxes had the state remained connected to the federal 20% pass-through deduction.**

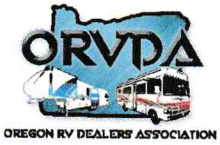
New, Retroactive Restrictions – While the -7's and the -10's broaden the lowest PTE rate (7%) to income up to $500,000 and provides a slight rate decrease (from 7.6% to 7.5%) for income between $500,000 and $1 million, businesses with more than $5 million in income would be prohibited from opting into the program **starting January 1, 2021** (this is where the majority of the $30-40 revenue increase comes from). Additionally, a new requirement would be applied to S corps and partnerships (sole proprietorships would be exempt). **Businesses subject to this requirement would need to meet or exceed a new "Oregon employee to Oregon owner ratio", adjusted based on income, and/or reinvest at least 75% of business profits back into the business.**

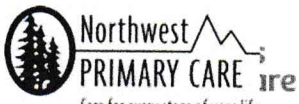
Oregon Does Not Need the Money – The May Revenue Forecast was incredibly strong, projecting a $2.8 billion positive ending balance. This amounts to a $1.1 billion increase from the March Revenue Forecast and a $2.3 billion increase from the 2019 Close of Session Forecast. The state has also been allocated $2.6 billion in direct financial aid from the Biden Administration's American Rescue Plan Act of 2021, in addition to ARPA funds for local jurisdictions. **Given this, there is no budgetary justification for tax increases of any sort, including tax increases on pass-through businesses.**

For more information, please contact Anthony K. Smith, NFIB, Anthony.Smith@NFIB.org, *(503) 364-4450 or Scott Bruun, OBI, ScottBruun@oregonbusinessindustry.com, (503) 720-1329*









Oregon Family Farm Association

PAC - P.O. Box 23504 Portland, Oregon 97281

SB 582 is a Very Costly Plan to Restructure Oregon's Recycling System

SB 582 would require packaging, printing and writing paper be recycled through new "producer responsibility organizations." These new organizations would be responsible for paying for recycling these products, funding new litter prevention and clean-up programs, paying for facility improvements for multi-family housing recycling, upgrading recycling processing facilities, creating new recycling education programs, reimbursing local governments for some of their transportation costs and operating new depots for the collection of recyclables. If passed, DEQ's staff and its consultants estimate these new activities will add at least $100 million more per year to the cost of recycling in Oregon. We support the objective of increasing the recovery of all paper and packaging. However, this bill raises significant policy questions and implementation concerns.

Products Already Being Recycled Would be Moved Into this New System

The bill defines "Covered Products" to include:

1. All types of packaging used to "contain" or "protect" products, including boxes, bags, cans, bottles, take out containers, wrappings, etc.
2. All types of printing and writing papers, including newspapers, magazines, flyers, brochures, catalogs, phone books, copy paper and writing paper.
3. Food service items like paper or plastic plates, including take out containers; and
4. Any other product or material that the Environmental Quality Commission decides to add in the future.

Most of these materials are already being efficiently collected and recycled in Oregon.

Every Oregon Retailer, Wholesaler and Manufacturer Will be Impacted

The "producers" who will be required to pay for the creation and operation of these new programs include anyone who makes, imports, distributes or sells a "covered product." Every store, restaurant, warehouse, office, publisher, manufacturer, or delivery service will be impacted and required to help pay for these new programs. Ultimately, it will be consumers who will eventually bear much of the burden by paying these costs through higher prices.

Unique Labeling Requirements Will Limit Availability of Some Products

The bill would ban package recycling labels required by many other states, and it would mandate use of a new label to be developed by the EQC by rule. Producers who cannot or do not make products in Oregon specific packages would not be able to sell that product in Oregon.

Huge Penalties Possible

The bill would permit "any person" to sue "any person" for any violations, and allow DEQ to impose penalties of up to $25,000/day.

For more information, contact Paul Cosgrove, 503-799-5679 or paul.cosgrove@tonkon.com

OREGON BUSINESS & INDUSTRY OBI

OFS Oregonians for Food & Shelter

Northwest Grocery Association

OREGON FOREST & INDUSTRIES COUNCIL

Below are Additional Organizations Opposed to SB 582


American
Chemistry
Council


American
Forest & Paper
Association


PLASTICS
INDUSTRY ASSOCIATION


HDA
Healthcare Distribution Alliance


CRI
THE CARPET AND RUG INSTITUTE

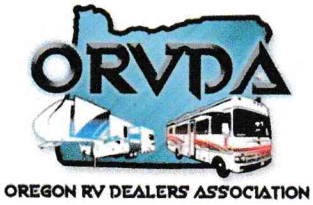

REGON
MANUFACTURERS
AND COMMERCE


american cleaning institute®


OREGON
PHCC
PLUMBING-HEATING-COOLING
CONTRACTORS ASSOCIATION


ONSA
Oregon
Neighborhood
Store
Association


OREGON
ASSOCIATION OF
NURSERIES


ORVDA
OREGON RV DEALERS ASSOCIATION


WSPA


AHAM
ASSOCIATION OF HOME
APPLIANCE MANUFACTURERS


OPSA
Oregon Power Sports Association

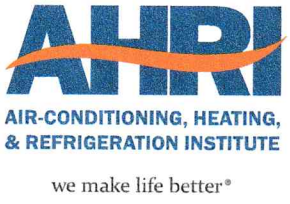

CONSUMER
BRANDS
ASSOCIATION


FOOD
NORTHWEST
We Feed You


EPS
Industry
Alliance


OVDA
Oregon Vehicle Dealer Association


Consumer
Technology
Association™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& REFRIGERATION INSTITUTE
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Flexible Packaging
Association


HOUSEHOLD &
COMMERCIAL
PRODUCTS ASSOCIATION
Innovative Products For Home. Work. Life.


OWC
OREGON WINE COUNCIL

Save Oregon's Small Businesses from Regulatory Overkill!
Vote YES on HB 2334

When a state agency creates a rule, the agency is supposed to prepare a statement identifying any significant economic impacts on businesses, with a special focus on how the cost of compliance will effect small businesses. Unfortunately, Oregon's agencies have found ways to circumvent this important review and saddle our small businesses with overwhelming regulatory costs.

The "small business impacts analysis" needs an overhaul now more than ever! Our small and local businesses have been decimated by COVID-19. We need the legislature to step in and strengthen the small business impacts analysis to ensure that state agencies are following their requirements under the law, and protecting the businesses we know and love.

HB 2334 would strengthen the small business impacts analysis by requiring an agency to:

- Undertake the analysis even for temporary or emergency rules;
- Establish differing compliance or reporting requirements or time tables for small business;
- Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small business; **and**
- Utilize objective criteria for standards; **or**
- Exempt small businesses from any or all requirements of the rule; or
- Establish a less intrusive or less costly alternative rule applicable to small business.

Oregon's agencies need to consider the economic consequences of their rules on our small businesses and mitigate those impacts during the administrative process!

Vote **YES on HB 2334** to strengthen Oregon's business impacts analysis to keep our small and family run businesses strong!

Contact: samantha@oregonfb.org