



BILL BRIEF

HB 1076 – Qui Tam Actions

Key provisions

- Allows private citizens (referred to as “relators”) via attorneys to sue employers on behalf of the state to enforce labor and employment laws which state agencies are already responsible for enforcing.
- Allows attorneys to claim a large portion of any recovery—up to 40%—plus attorney fees and costs, while at the same time, not provide attorneys' fees and costs to employers if they prevail in a lawsuit.
- Applies to **local** governments, thus adding one more unfunded mandate on them.

Background

- **What does qui tam” mean?** *Qui tam* literally means “in the name of the king.” In the context of this bill, qui tam allows a person or entity to sue an employer on behalf of the state for enforcement of specified laws for penalties and damages, subject to the same conditions and limitations that apply to the agency.
- Multiple state laws provide protections for employees and contain various mechanisms to enforce the protections. Administrative remedies include civil penalties and recovery of back wages. Example:
 - **Wage laws** include the Minimum Wage Act and the laws relating to prevailing wage. The Wage Payment Act (WPA) authorizes an employee to file a wage complaint with the Department of Labor and Industries (LNI) regarding a failure to pay minimum wage or overtime, a failure to pay contracted-for wages, and other wage claims. The Department may obtain wages and interest for an employee and may order the employer to pay a civil penalty if the violation was willful. Under prevailing wage laws, the Department may also obtain wages and assess a civil penalty for a failure to pay prevailing wages.
- In 2012, the Medicaid Fraud False Claims Act (MFFCA) was passed in Washington state which authorizes a qui tam action to seek a civil penalty for Medicaid fraud.
- California passed a similar law in 2004, and according to the [California Chamber of Commerce](#), “California labor and employment laws are known for being complex and burdensome in comparison to the rest of the nation. There is no better example of California’s distinction in this area than the Private Attorneys General Act (PAGA), which allows aggrieved employees to file a representative action on behalf of themselves, all other aggrieved employees, and the State of California for

Key messages

This bill would incentivize attorneys to seek out private citizens to sue the government so they could reap a portion of the financial award.

Such a system would be ripe for abuse, and no real safeguards to ensure we won’t see a surge in frivolous lawsuits.

If there is an issue with state agencies not having the resources to enforce laws, we should be providing additional funding to state agencies, not providing more opportunities for attorneys to get rich on the backs of employees.

Significant risk and unfunded mandate on local governments as employers.

Just one more thing employers have to worry about while they are trying their best to simply stay in compliance with every changing employment law, rule, and proclamation from the governor.

Bill Status as of April 25, 2021: Died in Senate Ways & Means.

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alleged Labor Code violations. **The California Chamber of Commerce is not aware of any other state that has such a law—and any state should take pause before seeking to mirror this unique law.”**

What this legislation does

Authorizes aggrieved persons, whistleblowers, or their designated representative entity (referred to as “relators”) to bring a qui tam action for specified employment laws enforced by LNI (e.g. wage & safety laws), and for discrimination and health care employee whistleblower retaliation laws enforced by the Human Rights Commission for any relief the specified state agency (agency) may seek, including penalties and damages, subject to the same conditions and limitations that apply to the agency. Key provisions (see [Bill Report](#) for more specifics):

- **Notification & Process.** A relator must first give the agency and employer notice of the claim.
 - The agency is subject to timeframes for its decisions regarding its role, any investigation, and notice to the relator. The relator is also subject to timeframes for bringing the action.
 - The relator may commence the qui tam action if the agency does not investigate or make a determination within those timeframes.
 - Once a qui tam action has commenced, the agency may intervene under certain conditions and assume primary responsibility.
- **Settlements.** As part of its investigation, the agency may attempt to settle the violation. If the settlement provides not less than 100 percent of any wrongfully withheld wages or benefits, including interest, the settlement precludes further claims for the same wages or benefits.
- **Distribution of Awards.** Any penalty amounts recovered are distributed as follows: (1) if the agency does not intervene, 40 percent to the relator and 60 percent to the agency; and (2) if the agency intervenes, 20 percent to the relator and 80 percent to the agency. Penalties received by the relator must be equitably distributed to the aggrieved parties, subject to review by the agency, except that the relator is entitled to a proportionate service award. A relator that prevails is entitled to reasonable attorneys' fees and costs. Any damages recovered must be distributed to the aggrieved employees.

Reasons to support

- The state does not do an adequate job protecting employees by proper enforcement of worker protection laws.

Reasons to oppose

- **State Responsible for Enforcement of Employment Laws** - If there is an issue with state agencies not having the resources to enforce laws, then we should be providing additional funding to these state agencies, not providing more opportunities for attorneys to get rich on the backs of employees.
- **Cost to Local Governments** – Local governments are also employers. Many of the types of claims that would be brought against cities and counties under this legislation are not covered under the coverage provided through risk pools, or even through private insurance. One more **unfunded mandate** on local governments.
- **Incentivizes Litigation Threats & Abuse** – In California, plaintiffs' attorneys have used this law as a threat to compel employers to settle before a lawsuit is even filed, and since a qui tam complaint is never filed, the state agency is not made aware of the alleged violations and never receives its share of the settlement.

Stakeholders

Association of WA Business (AWB), Nat'l Federation of Independent Business (NFIB), Building Industry of WA (BIAW), WA Hospitality Association, WA Food Industry, WA Retail Association, NW Grocery Association, Association of General Contractors (AGC), Washington Construction Industry Council, WA Association of Counties, WA Hospital Association, Liability Reform Coalition

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