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News Release

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LEGAL AID DESERVES BETTER THAN THIS DECEPTIVE LEGISLATION

SALEM – Some of my Democratic colleagues are acting like they just hit a record-breaking Powerball.

Interesting how something as charitable sounding as “the Legal Aid bill” can bring dollar signs to legislators’ eyes.

House Bill 2700, which passed this week and now only needs the Governor’s signature to become law, is about to make Oregon the friendliest state in the country for lawyers who bring class-action lawsuits. That’s why the Oregon Trial Lawyers Association lobbied so heavily for this bill.

Here’s how it would work. Have you ever received a notice in the mail telling you that you are part of a class-action lawsuit? Do you recall what you did with it? Perhaps you responded with an enthusiastic, “Count me in!” and completed the form necessary to participate as a member of the class action.

Or perhaps you treated the notice like junk mail and tossed it. Maybe you figured any individual payment would be minuscule and not worth your time. Maybe you planned to file your own lawsuit. Or maybe you didn’t believe you had been wronged by the party being sued.

If the suit is later won or settled, and you have elected to be a member of the class, you might receive a share of the damages. In Oregon, only those who choose to join the class can recover damages.

Some of my Democratic colleagues think it's unfair that a losing defendant shouldn't have to pay everyone – including those who didn't join the suit. Although individual payouts may be small, if multiplied by the number of people not participating, it can add up.

Under HB 2700, the folks who didn't join in the lawsuit would be included in the payout – but their share would go to Legal Aid and another entity to be decided by a judge.

I'm a supporter of Legal Aid, which provides legal assistance to people who cannot afford an attorney in civil cases. Not only has my family foundation given money to Legal Aid, but as a state senator I have helped constituents access Legal Aid. (Recent example: A renter who was left without sanitary bathroom facilities because her landlord refused to make necessary repairs.)

So what's my problem with “the Legal Aid bill?” For starters, not all the extra damages created by HB 2700 go to Legal Aid. The judge will have discretion in each case to decide whether to send 50 percent of the unclaimed damages to “any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.”

“Any entity” – that's dangerously vague. This includes entities that qualify for a 501 (c) (4) tax exemption, which means social welfare and non-profit political organizations could be eligible to receive a payout. In other words, organizations that lobby.

Supporters of HB 2700 talk passionately about “corporate wrongdoers” and “increasing corporate accountability.” If you read the bill, there is nothing about corporations or corporate wrongdoers. It refers to “defendants.” Not all defendants in civil suits are corporations. And not all defendants are wrongdoers.

Supporters also claim that Oregon is in the minority, that most states direct some class action damages to worthy causes. That's a hard fact to pin down. It can vary from case to case. Some courts have rejected distribution schemes that automatically send unclaimed damages to charities, the state, or the existing class-action participants. What is beyond reasonable dispute is that, if HB 2700 becomes law, Oregon's class action rules will be the most liberal in the country.

The bill also needs to address a blatant unfairness of its own: It can be retroactively enforced against defendants whose lawsuits are already in the works. This is like changing the rules in the middle of a contest. The retroactive feature is expected to invite appeals.

Gov. Kate Brown should have sent HB 2700 back to be reworked and tightened so trial lawyers are not the ultimate beneficiaries. I'm not bashing lawyers. I have a law degree, which is what you practically need these days to understand some of the bills brought before the legislature.

The supporters of HB 2700 know that most people don't have the time to read proposed legislation. By dubbing their proposed law as “the Legal Aid bill,” they cleverly win immediate sympathy.

It's a maneuver that Charles Dickens would take delight in dissecting. His classic on the law, "Bleak House," follows a never-ending case through generations. The money is nibbled away by lawyers until nothing is left.

As Dickens wrote, it isn't enough to have truth and justice on your side; you have to have law and lawyers.