

A-Engrossed
House Bill 2264

Ordered by the House April 24
Including House Amendments dated April 24

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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.

Authorizes Attorney General to bring civil action against person who obtains or attempts to obtain moneys, property, services or benefits from [state] **public** agency, or who obtains or attempts to obtain [state] **public** moneys or [state-funded] **publicly-funded** property, services or benefits, based on false or fraudulent claim or behavior. Establishes amounts Attorney General may recover. Specifies priority for distribution of amounts recovered.

[Creates Public Assistance Recovery Revolving Account in General Fund. Continuously appropriates moneys in account to Department of Justice for costs of preparing, commencing and prosecuting actions to recover amounts paid as public assistance.]

[Creates False Claims Recovery Revolving Account in General Fund. Continuously appropriates moneys in account to Department of Justice for costs of preparing, commencing and prosecuting actions that are not actions to recover amounts paid as public assistance.]

Continuously appropriates moneys in Consumer Protection and Education Revolving Account to Department of Justice for costs of preparing, commencing and prosecuting actions. Requires all moneys received pursuant to actions to be deposited in General Fund to credit of account.

A BILL FOR AN ACT

1
2 Relating to civil actions for certain fraudulent conduct; creating new provisions; amending ORS
3 180.095; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Definitions. As used in sections 1 to 8 of this 2009 Act:**

6 (1) **"Claim" means a request or demand made to a public agency, including a request or**
7 **demand made pursuant to a contract, that seeks moneys, property, services or benefits that**
8 **will be provided in whole or in part by a public body, whether directly or through re-**
9 **imbursement of another public agency that provides the moneys, property, services or ben-**
10 **efits.**

11 (2) **"False claim" means a claim that:**

12 (a) **Contains, or is based on, false or fraudulent information;**

13 (b) **Contains any statement or representation that is untrue in whole or part; or**

14 (c) **Omits information that could have a material effect on the value, validity or authen-**
15 **ticity of the claim.**

16 (3) **"Public agency" means:**

17 (a) **A public body;**

18 (b) **The United States or a federal agency;**

19 (c) **A person who contracts with a public body; or**

20 (d) **A person other than an individual who receives a grant from a public body.**

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 (4) "Public body" has the meaning given that term in ORS 174.109.

2 **SECTION 2. Prohibited acts.** (1) A person may not:

3 (a) Present for payment or approval, or cause to be presented for payment or approval,
4 a claim that the person knows is a false claim.

5 (b) In the course of presenting a claim for payment or approval, make or use, or cause
6 to be made or used, a record or statement that the person knows to contain, or to be based
7 on, false or fraudulent information.

8 (c) Agree or conspire with other persons to present for payment or approval a claim that
9 the person knows is a false claim.

10 (d) Deliver, or cause to be delivered, property to a public agency in an amount the person
11 knows is less than the amount for which the person receives a certificate or receipt.

12 (e) Make or deliver a document certifying receipt of property used by a public agency,
13 or intended to be used by a public agency, that the person knows contains false or fraudulent
14 information.

15 (f) Buy property of a public agency from an officer or employee of a public agency if the
16 person knows that the officer or employee is not authorized to sell the property.

17 (g) Receive property of a public agency from an officer or employee of the public agency
18 as a pledge of an obligation or debt if the person knows that the officer or employee is not
19 authorized to pledge the property.

20 (h) Make or use, or cause to be made or used, a false or fraudulent statement to conceal,
21 avoid or decrease an obligation to pay or transmit moneys or property to a public agency if
22 the person knows that the statement is false or fraudulent.

23 (i) Fail to disclose a false claim that benefits the person within a reasonable time after
24 discovering that the false claim has been presented or submitted for payment or approval.

25 (2) For the purposes of this section, a person has knowledge that a claim, record, state-
26 ment, document or information is false or fraudulent if the person:

27 (a) Has actual knowledge of the false or fraudulent nature of the claim, record, state-
28 ment, document or information;

29 (b) Acts in deliberate ignorance of the false or fraudulent nature of the claim, record,
30 statement, document or information; or

31 (c) Acts in reckless disregard of the false or fraudulent nature of the claim, record,
32 statement, document or information.

33 (3) In an action under section 3 of this 2009 Act, the Attorney General need not prove
34 that a person specifically intended to defraud a public agency to establish that a person acted
35 with knowledge as described in subsection (2) of this section.

36 **SECTION 3. Civil action for violation; remedies.** (1) The Attorney General may bring a
37 civil action in the name of the State of Oregon against a person who violates section 2 of this
38 2009 Act. The Attorney General may bring the action in the Circuit Court for Marion County
39 or in a circuit court in any county in which part of the conduct that constituted the violation
40 took place.

41 (2) Repayment of or intent to repay any amounts obtained by a person as a result of a
42 violation of section 2 of this 2009 Act is not a defense in an action under this section.

43 (3) The fact that a public agency has not paid any amounts to a person as a result of a
44 violation of section 2 of this 2009 Act or has not suffered any injury by reason of a violation
45 of section 2 of this 2009 Act, is not a defense in an action under this section.

1 (4) A court shall award to the state all damages arising from a violation of section 2 of
2 this 2009 Act. In addition, the court shall award to the state a penalty equal to the greater
3 of \$10,000 for each violation or an amount equal to twice the amount of damages incurred
4 for each violation. The court may mitigate an award of a penalty under this subsection based
5 on any fine or penalty assessed against the defendant for substantially the same acts or
6 omissions in a judgment under the federal False Claims Act, 31 U.S.C. 3729, et seq., as in
7 effect on the effective date of this 2009 Act, or under the federal Civil Monetary Penalty Law,
8 42 U.S.C. 1320a-7a, as in effect on the effective date of this 2009 Act, that is no longer subject
9 to appeal.

10 (5) If a court finds that an act or omission of an individual on behalf of a corporation or
11 other legal entity constitutes a violation of section 2 of this 2009 Act, the court may find that
12 both the individual and the legal entity violated section 2 of this 2009 Act, and impose a
13 separate penalty under subsection (4) of this section against both the individual and the legal
14 entity.

15 (6) Notwithstanding subsections (4) and (5) of this section, if the state prevails in an
16 action under this section, the court may not award a penalty under subsection (4) of this
17 section if:

18 (a) The defendant provided the Attorney General with all information known to the de-
19 fendant about the violation within 30 days after the defendant first acquired the information;

20 (b) The defendant fully cooperated with the Attorney General in the investigation of the
21 violation; and

22 (c) At the time the defendant provided the Attorney General with information about the
23 violation, an investigation, court proceeding or administrative action related to the violation
24 had not been commenced.

25 (7) For the purpose of determining the amount of damages under this section:

26 (a) The value of property, services or benefits obtained by a person who makes a claim
27 may be established based on the market value of property, services or benefits at the time
28 and place of receipt or delivery of the property, services or benefits.

29 (b) If the market value of property, services or benefits at the time and place of receipt
30 or delivery of the property, services or benefits cannot be reasonably ascertained, the value
31 of the property, services or benefits may be established based on the replacement cost of the
32 property, services or benefits.

33 (c) If a written instrument has no readily ascertainable market value, the value of the
34 instrument may be established based on the value determined as provided in ORS 164.115 (2).

35 (d) The Attorney General may establish damages using statistical or sampling method-
36 ology, or any other system that reasonably estimates damages incurred, without separately
37 proving the damages incurred from each violation of section 2 of this 2009 Act.

38 (8) The court may award reasonable attorney fees and costs of investigation, preparation
39 and litigation to the state if the state prevails in an action under this section. The court may
40 award reasonable attorney fees and costs of investigation, preparation and litigation to a
41 defendant who prevails in an action under this section if the court determines that the At-
42 torney General had no objectively reasonable basis for bringing the action or no reasonable
43 basis for appealing an adverse decision of the trial court.

44 **SECTION 4. Statute of limitation.** An action under section 3 of this 2009 Act must be
45 brought within three years after the date that the officer or employee of the public agency

1 charged with responsibility for the claim discovers the violation of section 2 of this 2009 Act.
2 In no event may an action under section 3 of this 2009 Act be brought more than 10 years
3 after the date on which the violation is committed.

4 **SECTION 5. Estoppel.** (1) Any judgment that is no longer subject to appeal and that was
5 rendered in favor of the state or of the United States in a criminal proceeding based on
6 conduct that gives rise to an action under section 3 of this 2009 Act, whether based on a
7 verdict after trial or upon a plea of guilty or nolo contendere, estops a defendant in an action
8 under section 3 of this 2009 Act from denying the elements of the offense for which the de-
9 fendant was convicted.

10 (2) A criminal or administrative action need not be brought against a person as a condi-
11 tion to bringing an action against the person under section 3 of this 2009 Act.

12 **SECTION 6. Investigative demand.** (1) If it appears to the Attorney General that a person
13 has possession, custody or control of any information, document or other materials that are
14 relevant to an investigation of a violation of section 2 of this 2009 Act, or that could lead to
15 the discovery of relevant information in an investigation of a violation of section 2 of this
16 2009 Act, the Attorney General may cause an investigative demand to be served upon the
17 person. The investigative demand may require the person:

18 (a) To appear and testify under oath at the time and place stated in the investigative
19 demand;

20 (b) To answer written interrogatories; or

21 (c) To produce relevant documentary material or physical evidence for examination at
22 the time and place stated in the investigative demand.

23 (2) An investigative demand under this section shall be served in the manner provided
24 by ORS 646.622 and may be enforced in the manner provided by ORS 646.626.

25 **SECTION 7. Distribution of recovered amounts.** (1) If a judgment is entered in favor of
26 the state under section 3 of this 2009 Act, the Attorney General shall first apply amounts
27 collected under the judgment to reimburse the state for the costs, attorney fees and ex-
28 penses, including investigative costs, incurred as a result of the violation of section 2 of this
29 2009 Act.

30 (2) After reimbursement under subsection (1) of this section, amounts collected under
31 the judgment must be paid to any public agency or fund that suffered a loss by reason of the
32 violation of section 2 of this 2009 Act.

33 (3) Any amount remaining after distribution as provided in subsections (1) and (2) of this
34 section must be deposited in the Consumer Protection and Education Revolving Account.

35 **SECTION 8. Remedy not exclusive.** The remedies provided under section 3 of this 2009
36 Act are in addition to any other remedy, civil or criminal, that may be available under any
37 other provision of law. Claims based on remedies available under other provisions of law may
38 be joined in an action under section 3 of this 2009 Act.

39 **SECTION 9. Applicability.** Section 2 of this 2009 Act applies only to conduct that occurs
40 on or after the effective date of this 2009 Act.

41 **SECTION 10.** ORS 180.095 is amended to read:

42 180.095. [(1) There hereby is appropriated out of the General Fund in the State Treasury \$250,000
43 for the purpose of providing funds to pay for personal services, travel, meals and lodging, and all costs,
44 disbursements and other litigation expenses incurred by the Department of Justice in preparing, com-
45 mencing and prosecuting actions and suits under the state and federal antitrust laws and under ORS

1 646.605 to 646.656.]

2 [(2)] (1) [The money appropriated by subsection (1) of this section shall be transferred to an account
3 in the General Fund in the State Treasury to be known as] The Consumer Protection and Education
4 Revolving Account **is created in the General Fund.** All moneys in [such revolving] **the** account are
5 **continuously** appropriated [and constitute a continuous appropriation out of the General Fund] **to**
6 **the Department of Justice** for the [purposes of this section] **purpose of providing funds to pay**
7 **the costs of personal services, travel, meals and lodging, and all costs, disbursements and**
8 **other litigation expenses, incurred by the department in preparing, commencing and prose-**
9 **cuting actions and suits under sections 1 to 8 of this 2009 Act, under the state and federal**
10 **antitrust laws and under ORS 646.605 to 646.656.** [The creation of the revolving account shall]
11 **Expenditure of amounts from the account does** not require an allotment or allocation of moneys
12 [pursuant to] **under** ORS 291.234 to 291.260.

13 [(3)] (2) All sums of money received by the Department of Justice under a judgment, settlement,
14 compromise or assurance of voluntary compliance, including damages, attorney fees, costs, dis-
15 bursements and other recoveries, but excluding civil penalties under ORS 646.642, **in civil actions**
16 **under sections 1 to 8 of this 2009 Act and** in actions and suits under the state and federal anti-
17 trust laws and ORS 646.605 to 646.656 shall, upon receipt, be deposited with the State Treasurer to
18 the credit of the Consumer Protection and Education Revolving Account. However, if the action or
19 suit was based on an expenditure or loss from a public body or a dedicated fund, the amount of such
20 expenditure or loss, after deduction of attorney fees and expenses awarded to the Department of
21 Justice by the court or agreed to by the parties, if any, shall be credited to the public body or
22 dedicated fund and the remainder thereof credited to the Consumer Protection and Education Re-
23 volving Account.

24 **SECTION 11.** The section captions used in this 2009 Act are provided only for the con-
25 venience of the reader and do not become part of the statutory law of this state or express
26 any legislative intent in the enactment of this 2009 Act.

27