

Enrolled
House Bill 2264

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)

CHAPTER

AN ACT

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

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

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

(1) **“Claim”** means a request or demand made to a public agency, including a request or demand made pursuant to a contract, that seeks moneys, property, services or benefits that will be provided in whole or in part by a public body, whether directly or through reimbursement of another public agency that provides the moneys, property, services or benefits.

(2) **“False claim”** means a claim that:

- (a) Contains, or is based on, false or fraudulent information;
- (b) Contains any statement or representation that is untrue in whole or part; or
- (c) Omits information that could have a material effect on the value, validity or authenticity of the claim.

(3) **“Public agency”** means:

- (a) A public body;
 - (b) The United States or a federal agency;
 - (c) A person who contracts with a public body; or
 - (d) A person other than an individual who receives a grant from a public body.
- (4) **“Public body”** has the meaning given that term in ORS 174.109.

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

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

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

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

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

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

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

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

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

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

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

(a) Has actual knowledge of the false or fraudulent nature of the claim, record, statement, document or information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. Statute of limitation. An action under section 3 of this 2009 Act must be brought within three years after the date that the officer or employee of the public agency charged with responsibility for the claim discovers the violation of section 2 of this 2009 Act. In no event may an action under section 3 of this 2009 Act be brought more than 10 years after the date on which the violation is committed.

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

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

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

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

(b) To answer written interrogatories; or

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

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

SECTION 7. Distribution of recovered amounts. (1) If a judgment is entered in favor of the state under section 3 of this 2009 Act, the Attorney General shall first apply amounts collected under the judgment to reimburse the state for the costs, attorney fees and ex-

penses, including investigative costs, incurred as a result of the violation of section 2 of this 2009 Act.

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

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

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

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

SECTION 10. ORS 180.095 is amended to read:

180.095. [(1) There hereby is appropriated out of the General Fund in the State Treasury \$250,000 for the purpose of providing funds to pay for personal services, travel, meals and lodging, and all costs, disbursements and other litigation expenses incurred by the Department of Justice in preparing, commencing and prosecuting actions and suits under the state and federal antitrust laws and under ORS 646.605 to 646.656.]

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

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

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

Passed by House April 29, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 1, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State