

## HOUSE AMENDMENTS TO HOUSE BILL 2264

By COMMITTEE ON JUDICIARY

April 24

1 On page 1 of the printed bill, line 2, before “and” insert “creating new provisions; amending  
2 ORS 180.095;”.

3 Delete lines 4 through 25 and delete pages 2 through 5 and insert:

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

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

10 **“(2) ‘False claim’ means a claim that:**

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

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

13 **“(c) Omits information that could have a material effect on the value, validity or au-**  
14 **thenticity of the claim.**

15 **“(3) ‘Public agency’ means:**

16 **“(a) A public body;**

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

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

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

20 **“(4) ‘Public body’ has the meaning given that term in ORS 174.109.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20       “SECTION 3. Civil action for violation; remedies. (1) The Attorney General may bring a  
21 civil action in the name of the State of Oregon against a person who violates section 2 of this  
22 2009 Act. The Attorney General may bring the action in the Circuit Court for Marion County  
23 or in a circuit court in any county in which part of the conduct that constituted the violation  
24 took place.

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

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

30       “(4) A court shall award to the state all damages arising from a violation of section 2 of  
31 this 2009 Act. In addition, the court shall award to the state a penalty equal to the greater  
32 of \$10,000 for each violation or an amount equal to twice the amount of damages incurred  
33 for each violation. The court may mitigate an award of a penalty under this subsection based  
34 on any fine or penalty assessed against the defendant for substantially the same acts or  
35 omissions in a judgment under the federal False Claims Act, 31 U.S.C. 3729, et seq., as in  
36 effect on the effective date of this 2009 Act, or under the federal Civil Monetary Penalty Law,  
37 42 U.S.C. 1320a-7a, as in effect on the effective date of this 2009 Act, that is no longer subject  
38 to appeal.

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

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

1 section if:

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

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

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

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

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

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

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

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

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

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

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

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

41 “SECTION 6. Investigative demand. (1) If it appears to the Attorney General that a per-  
42 son has possession, custody or control of any information, document or other materials that  
43 are relevant to an investigation of a violation of section 2 of this 2009 Act, or that could lead  
44 to the discovery of relevant information in an investigation of a violation of section 2 of this  
45 2009 Act, the Attorney General may cause an investigative demand to be served upon the

1 person. The investigative demand may require the person:

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

4 “(b) To answer written interrogatories; or

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

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

9 “SECTION 7. Distribution of recovered amounts. (1) If a judgment is entered in favor of  
10 the state under section 3 of this 2009 Act, the Attorney General shall first apply amounts  
11 collected under the judgment to reimburse the state for the costs, attorney fees and ex-  
12 penses, including investigative costs, incurred as a result of the violation of section 2 of this  
13 2009 Act.

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

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

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

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

25 “SECTION 10. ORS 180.095 is amended to read:

26 “180.095. [(1) There hereby is appropriated out of the General Fund in the State Treasury \$250,000  
27 for the purpose of providing funds to pay for personal services, travel, meals and lodging, and all costs,  
28 disbursements and other litigation expenses incurred by the Department of Justice in preparing, com-  
29 mencing and prosecuting actions and suits under the state and federal antitrust laws and under ORS  
30 646.605 to 646.656.]

31 “[2] (1) [The money appropriated by subsection (1) of this section shall be transferred to an ac-  
32 count in the General Fund in the State Treasury to be known as] The Consumer Protection and Ed-  
33 ucation Revolving Account **is created in the General Fund.** All moneys in [such revolving] the  
34 account are **continuously** appropriated [and constitute a continuous appropriation out of the General  
35 Fund] **to the Department of Justice** for the [purposes of this section] **purpose of providing funds**  
36 **to pay the costs of personal services, travel, meals and lodging, and all costs, disbursements**  
37 **and other litigation expenses, incurred by the department in preparing, commencing and**  
38 **prosecuting actions and suits under sections 1 to 8 of this 2009 Act, under the state and**  
39 **federal antitrust laws and under ORS 646.605 to 646.656.** [The creation of the revolving account  
40 shall] **Expenditure of amounts from the account does** not require an allotment or allocation of  
41 moneys [pursuant to] **under ORS 291.234 to 291.260.**

42 “[3] (2) All sums of money received by the Department of Justice under a judgment, settlement,  
43 compromise or assurance of voluntary compliance, including damages, attorney fees, costs, dis-  
44 bursements and other recoveries, but excluding civil penalties under ORS 646.642, **in civil actions**  
45 **under sections 1 to 8 of this 2009 Act and** in actions and suits under the state and federal anti-

1 trust laws and ORS 646.605 to 646.656 shall, upon receipt, be deposited with the State Treasurer to  
2 the credit of the Consumer Protection and Education Revolving Account. However, if the action or  
3 suit was based on an expenditure or loss from a public body or a dedicated fund, the amount of such  
4 expenditure or loss, after deduction of attorney fees and expenses awarded to the Department of  
5 Justice by the court or agreed to by the parties, if any, shall be credited to the public body or  
6 dedicated fund and the remainder thereof credited to the Consumer Protection and Education Re-  
7 volving Account.

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

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