

# 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)

## 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 **as introduced**.

Authorizes Attorney General to bring civil action against person who obtains or attempts to obtain moneys, property, services or benefits from state agency, or who obtains or attempts to obtain state moneys or state-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.

## A BILL FOR AN ACT

1  
2 Relating to civil actions for certain fraudulent conduct; and appropriating money.

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

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

5 (1) **"Claim" means a request or demand for moneys, property, services or benefits, in-**  
6 **cluding a request or demand made pursuant to a contract, made to:**

7 (a) **A state agency; or**

8 (b) **A person, if the state provides a portion of the moneys, property, services or benefits**  
9 **requested or demanded, or will reimburse the person for a portion of the moneys, property,**  
10 **services or benefits.**

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) **"State agency" means an officer, board, commission, department, division or other**  
17 **entity within the executive department as defined in ORS 174.112.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 3. Civil action for violation; remedies.** (1) The Attorney General may bring a  
28 civil action on behalf of any state agency against a person who violates section 2 of this 2009  
29 Act. The Attorney General may bring the action in the Circuit Court for Marion County or  
30 in a circuit court in any county in which part of the conduct that constituted the violation  
31 took place.

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

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

37 (4) A court shall award to the state all damages incurred by a state agency for each vi-  
38 olation of section 2 of this 2009 Act, and may award in addition a penalty of not more than  
39 \$10,000 for each violation of section 2 of this 2009 Act. If the court finds that an act or  
40 omission of an individual on behalf of a corporation or other legal entity constitutes a vio-  
41 lation of section 2 of this 2009 Act, the court may find both the individual and the legal entity  
42 to have violated section 2 of this 2009 Act and may impose separate penalties on the indi-  
43 vidual and the legal entity.

44 (5) Except as provided in subsection (6) of this section, if the state prevails in an action  
45 under this section, the court may award to the state an amount equal to three times the

1 value of the moneys, property, services or benefits obtained, or attempted to be obtained,  
 2 by the defendant. An award under this subsection is in addition to damages under subsection  
 3 (4) of this section, but is in lieu of any additional penalty under subsection (4) of this section.

4 (6) If the state prevails in an action under this section, the court may award to the state  
 5 an amount equal to the value of the moneys, property, services or benefits obtained, or at-  
 6 tempted to be obtained, by the defendant if:

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

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

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

14 (7) For the purposes of subsections (5) and (6) of this section:

15 (a) The value of moneys, property, services or benefits obtained is the amount paid under  
 16 a claim or the market value of property or services at the time and place of receipt or de-  
 17 livery of the property or services.

18 (b) If the market value of property or services at the time and place of receipt or delivery  
 19 of the property cannot be reasonably ascertained, the value of the property or services is the  
 20 replacement cost of the property or services.

21 (c) If a written instrument has no readily ascertainable market value, the value of the  
 22 instrument is the value determined as provided in ORS 164.115 (2).

23 (8) Penalties under subsection (4) of this section, and amounts under subsection (5) of  
 24 this section, may not be awarded under this section if civil penalties have been assessed  
 25 previously for and paid to the state for the same claims under the federal False Claims Act,  
 26 31 U.S.C. 3729, et seq., as in effect on the effective date of this 2009 Act, or under the federal  
 27 Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a, as in effect on the effective date of this 2009  
 28 Act.

29 (9) The court may award reasonable attorney fees and costs of investigation, preparation  
 30 and litigation to the state if the state prevails in an action under this section. The court may  
 31 award reasonable attorney fees and costs of investigation, preparation and litigation to a  
 32 defendant who prevails in an action under this section if the court determines that the At-  
 33 torney General had no objectively reasonable basis for bringing the action or no reasonable  
 34 basis for appealing an adverse decision of the trial court.

35 **SECTION 4. Statute of limitation.** An action under section 3 of this 2009 Act must be  
 36 brought within six years after the date that the defendant's last violation of section 2 of this  
 37 2009 Act occurs, or within four years after a state agency discovers, or in the exercise of  
 38 reasonable care should have discovered, all elements necessary to bring an action under  
 39 section 3 of this 2009 Act, whichever occurs last. In no event may an action under section 3  
 40 of this 2009 Act be brought more than 10 years after the date on which the violation is  
 41 committed.

42 **SECTION 5. Estoppel.** (1) Any judgment rendered in favor of the state or of the United  
 43 States in a criminal proceeding based on conduct that gives rise to an action under section  
 44 3 of this 2009 Act, whether based on a verdict after trial or upon a plea of guilty or nolo  
 45 contendere, estops a defendant in an action under section 3 of this 2009 Act from denying the

1 elements of the offense for which the defendant was convicted.

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

4 **SECTION 6. Investigative demand.** (1) If it appears to the Attorney General that a person  
5 has possession, custody or control of any information, document or other materials that is  
6 relevant to an investigation of a violation of section 2 of this 2009 Act, or that could lead to  
7 the discovery of relevant information in an investigation of a violation of section 2 of this  
8 2009 Act, the Attorney General may cause an investigative demand to be served upon the  
9 person. The investigative demand may require the person:

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

12 (b) To answer written interrogatories; or

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

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

17 **SECTION 7. Distribution of recovered amounts.** (1) If a judgment is entered in favor of  
18 the state under section 3 of this 2009 Act, the Attorney General shall first apply amounts  
19 collected under the judgment to reimburse the state for the costs, attorney fees and ex-  
20 penses, including investigative costs, incurred as a result of the violation of section 2 of this  
21 2009 Act.

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

25 (3) Any amount remaining after distribution as provided in subsections (1) and (2) of this  
26 section must be distributed as follows:

27 (a) If the action arises out a false claim for moneys, property, services or benefits pro-  
28 vided as public assistance, the remaining amount must be deposited in the Public Assistance  
29 Recovery Revolving Account established under section 9 of this 2009 Act.

30 (b) If the action arises out of any violation of section 2 other than a violation described  
31 in paragraph (a) of this subsection, any remaining amount must be deposited in the False  
32 Claims Recovery Revolving Account established under section 10 of this 2009 Act.

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

37 **SECTION 9. Public Assistance Recovery Revolving Account.** (1) The Public Assistance  
38 Recovery Revolving Account is established in the General Fund. All moneys in the account  
39 are continuously appropriated to the Department of Justice for the purpose of paying for  
40 personal services, travel, meals and lodging, and all costs, disbursements and other litigation  
41 expenses incurred by the Department of Justice in preparing, commencing and prosecuting  
42 actions to recover amounts paid as public assistance when the state has a right to recover  
43 those amounts. Payments from the account do not require an allotment or allocation of  
44 moneys pursuant to ORS 291.234 to 291.260.

45 (2) The Public Assistance Recovery Revolving Account consists of amounts deposited in

1 the Public Assistance Recovery Revolving Account as required under section 7 of this 2009  
2 Act.

3 SECTION 10. False Claims Recovery Revolving Account. (1) The False Claims Recovery  
4 Revolving Account is established in the General Fund. All moneys in the account are con-  
5 tinuously appropriated to the Department of Justice for the purpose of paying for personal  
6 services, travel, meals and lodging, and all costs, disbursements and other litigation expenses  
7 incurred by the Department of Justice in preparing, commencing and prosecuting actions  
8 under section 3 of this 2009 Act, other than actions to recover amounts paid as public as-  
9 sistance. Payments from the account do not require an allotment or allocation of moneys  
10 pursuant to ORS 291.234 to 291.260.

11 (2) The False Claims Recovery Revolving Account consists of amounts deposited in the  
12 False Claims Recovery Revolving Account as required under section 7 of this 2009 Act.

13 SECTION 11. Applicability. Section 2 of this 2009 Act applies only to conduct that occurs  
14 on or after the effective date of this 2009 Act.

15 SECTION 12. The section captions used in this 2009 Act are provided only for the con-  
16 venience of the reader and do not become part of the statutory law of this state or express  
17 any legislative intent in the enactment of this 2009 Act.

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