

House Bill 2479

Sponsored by Representatives MAURER, RICHARDSON

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 civil action against person who submits false claim paid directly or indirectly by state. Provides that action may be brought by private qui tam plaintiff or Attorney General. Awards treble damages, costs and disbursements and attorney fees. Specifies amount of award to qui tam plaintiff based upon qui tam plaintiff's contribution to prosecution and culpability.

A BILL FOR AN ACT

1
2 Relating to false claims.

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

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

5 (1) **"Claim" means any request or demand for money, property or services made to any**
6 **employee, officer or agent of this state, or to any contractor, grantee or other recipient,**
7 **whether under contract or not, if any portion of the money, property or services requested**
8 **or demanded issued from or was provided by the state, or if the state will reimburse the**
9 **contractor, grantee or other recipient for any portion of the money or property that is re-**
10 **quested or demanded.**

11 (2) **"Knowingly" means that a person, with respect to information and regardless of spe-**
12 **cific intent to defraud:**

13 (a) **Has actual knowledge of the information;**

14 (b) **Acts in deliberate ignorance of the truth or falsity of the information; or**

15 (c) **Acts in reckless disregard of the truth or falsity of the information.**

16 (3) **"Qui tam plaintiff" means a person who brings a civil action under section 3 (2) of this**
17 **2009 Act.**

18 **SECTION 2. (1) Any person who commits any of the following acts shall be liable to the**
19 **state for three times the amount of damages that the state sustains because of the act of**
20 **that person. A person shall also be liable to the state for the costs of a civil action brought**
21 **to recover any of those damages, and shall be liable to the state for a civil penalty of not less**
22 **than \$5,000 and not more than \$10,000 for each violation, if the person commits any of the**
23 **following acts:**

24 (a) **Knowingly presents or causes to be presented a false claim.**

25 (b) **Knowingly makes, uses or causes to be made or used a false record or statement to**
26 **get a false claim paid or approved.**

27 (c) **Conspires to defraud the state by getting a false claim allowed or paid, or conspires**
28 **to defraud the state by knowingly making, using or causing to be made or used a false record**
29 **or statement to conceal, avoid or decrease an obligation to pay or transmit money or prop-**
30 **erty to the state.**

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) Has possession, custody or control of public property or money used or to be used by
 2 the state and knowingly delivers or causes to be delivered less property than the amount for
 3 which the person receives a certificate or receipt.

4 (e) Is authorized to make or deliver a document certifying receipt of property used or to
 5 be used by the state and knowingly makes or delivers a receipt falsely representing the
 6 property received.

7 (f) Knowingly buys or receives as a pledge of an obligation or debt, public property from
 8 any person who lawfully may not sell or pledge the property.

9 (g) Knowingly makes, uses or causes to be made or used a false record or statement to
 10 conceal, avoid or decrease an obligation to pay or transmit money or property to the state.

11 (h) Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers
 12 the falsity of the claim and fails to disclose the false claim to the state within a reasonable
 13 time after discovery of the false claim.

14 (2) Notwithstanding subsection (1) of this section, a court may assess not less than two
 15 times the amount of damages that the state sustains because of the act of the person de-
 16 scribed in subsection (1) of this section and no civil penalty if the court finds all of the fol-
 17 lowing:

18 (a) The person committing the violation furnished officials of the state who are respon-
 19 sible for investigating false claim violations with all information known to that person about
 20 the violation no later than 30 days after the date on which the person first obtained the in-
 21 formation.

22 (b) The person fully cooperated with any investigation by the state.

23 (c) At the time the person furnished the state with information about the violation, no
 24 criminal prosecution, civil action or administrative action had commenced with respect to
 25 the violation and the person did not have actual knowledge of the existence of an investi-
 26 gation into the violation.

27 (3) This section does not apply to claims, records or statements made under the revenue
 28 and tax laws of this state.

29 **SECTION 3.** (1) The Attorney General shall investigate a violation under section 2 of this
 30 2009 Act. If the Attorney General finds that a person has violated or is violating section 2
 31 of this 2009 Act, the Attorney General may bring a civil action under this section against
 32 that person.

33 (2)(a) A qui tam plaintiff may bring a civil action for a violation of section 2 of this 2009
 34 Act for the person and the state in the name of the State of Oregon. The action may be
 35 dismissed by the court only if the Attorney General gives written consent to the dismissal
 36 and the reasons for consenting.

37 (b) A qui tam plaintiff shall serve the Attorney General with a copy of the complaint and
 38 a written disclosure of substantially all material evidence and information the qui tam
 39 plaintiff possesses. The complaint shall be filed in camera, shall remain under seal for at
 40 least 60 days and may not be served upon the defendant until the court so orders. The At-
 41 torney General may elect to intervene and proceed with the action within 60 days after the
 42 Attorney General receives the complaint and the material evidence and information.

43 (c) The Attorney General may, for good cause shown, move the court for extensions of
 44 the time during which the complaint remains under seal under paragraph (b) of this sub-
 45 section. The defendant may not be required to respond to any complaint filed under this

1 section until 20 days after the complaint is unsealed and served upon the defendant as pro-
 2 vided in ORCP 7.

3 (d) No later than 60 days after service or expiration of any extensions obtained under
 4 paragraph (c) of this subsection, the Attorney General shall:

5 (A) Proceed with the action; or

6 (B) Notify the court that the Attorney General declines to proceed with the action, in
 7 which case the qui tam plaintiff may proceed with the action.

8 (e) No person other than the Attorney General may intervene in the action brought by
 9 the qui tam plaintiff or bring a separate civil action based upon the facts underlying the
 10 pending action.

11 (3)(a) The Attorney General shall have primary responsibility for prosecuting an action
 12 if the Attorney General proceeds with the action and may not be bound by the qui tam
 13 plaintiff, subject to paragraph (b) of this subsection.

14 (b) The Attorney General may move to dismiss the action and shall serve the motion on
 15 the qui tam plaintiff. The qui tam plaintiff shall be given the opportunity to respond and be
 16 heard on the motion.

17 (c) The Attorney General may settle the action with the defendant if the court deter-
 18 mines, after a hearing, that the proposed settlement is fair, adequate and reasonable under
 19 all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

20 (d) Upon a showing by the Attorney General that unrestricted participation during the
 21 course of the proceedings by the qui tam plaintiff would interfere with or unduly delay the
 22 Attorney General's litigation of the case, or would be repetitious, irrelevant or for purposes
 23 of harassment, the court may impose limitations on the qui tam plaintiff's participation as
 24 the court deems necessary and appropriate.

25 (e) Upon a showing by the defendant that unrestricted participation in the litigation by
 26 the qui tam plaintiff would be for purposes of harassment or would impose an undue burden
 27 or expense upon the defendant, the court may impose limitations on the qui tam plaintiff's
 28 participation as the court deems necessary and appropriate.

29 (4) If the Attorney General does not proceed with the action, the qui tam plaintiff has
 30 the right to conduct the action, but the Attorney General may be permitted to intervene
 31 upon a showing of good cause. Upon request, the Attorney General shall be served with
 32 copies of all pleadings and, at the Attorney General's expense, shall be provided copies of all
 33 deposition transcripts.

34 (5) Upon a showing by the Attorney General that any type of discovery by the qui tam
 35 plaintiff would interfere with an investigation by the state or with a civil or criminal prose-
 36 cution by the Attorney General or a district attorney, the court may stay such discovery for
 37 a period of not more than 60 days. The showing under this subsection shall be made in
 38 camera. A court may extend the 60-day period upon a showing in camera that the Attorney
 39 General or a district attorney has pursued a criminal or civil investigation or proceeding
 40 with reasonable diligence and that the challenged discovery in the civil action will interfere
 41 with the criminal or civil investigation or proceeding.

42 (6) The Attorney General may pursue any alternative remedy provided by law to enforce
 43 section 2 of this 2009 Act including any administrative proceeding to impose a civil penalty.
 44 If the Attorney General pursues an alternative remedy, the qui tam plaintiff shall have the
 45 same rights in the proceeding as the qui tam plaintiff would have under an action under this

1 section. A final finding of fact or conclusion of law made in a proceeding for an alternative
2 remedy under this subsection shall be given preclusive effect as to all parties to an action
3 under this section. A finding or conclusion is final if it has been finally determined on appeal
4 to the appropriate court, if the time for filing an appeal with respect to the finding or con-
5 clusion has expired or if the finding or conclusion is not subject to judicial review.

6 (7)(a) Subject to paragraph (b) of this subsection, if the Attorney General proceeds with
7 the action brought by a qui tam plaintiff, the qui tam plaintiff is entitled to at least 15 per-
8 cent but not more than 25 percent of the damages and civil penalty awarded in the action
9 or the settlement of the claim, based upon the contribution of the qui tam plaintiff to the
10 litigation of the claim.

11 (b) If the court finds that the judgment against the defendant is based primarily on in-
12 formation other than information supplied by the qui tam plaintiff, the court may award to
13 the qui tam plaintiff such sums as it deems appropriate but not more than 10 percent of the
14 damages and civil penalty awarded by the court, based upon the significance of the infor-
15 mation provided by the qui tam plaintiff and the role of the qui tam plaintiff in advancing
16 the case.

17 (c) Any amount awarded to the qui tam plaintiff under paragraph (a) or (b) of this sub-
18 section shall be paid from the damages and civil penalty awarded by the court. The court
19 may also award against the defendant the reasonable expenses and disbursements and at-
20 torney fees of the qui tam plaintiff. The state is not liable for expenses, disbursements or
21 attorney fees of the qui tam plaintiff in bringing the action.

22 (8) If the Attorney General does not proceed with the action brought by a qui tam
23 plaintiff, the court shall award to a prevailing qui tam plaintiff an amount no less than 25
24 percent and no greater than 30 percent of the damages and civil penalty awarded by the
25 court or of the amount of the settlement. The court may also award costs and disbursements
26 and attorney fees of the qui tam plaintiff against the defendant.

27 (9) If the court finds that the qui tam plaintiff planned or participated in the violation
28 of section 2 of this 2009 Act, the court may reduce the share of the damages and civil penalty
29 that the qui tam plaintiff would otherwise receive under subsection (7) or (8) of this section,
30 taking into account the role of the qui tam plaintiff in advancing the case and any relevant
31 circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal
32 conduct arising from the qui tam plaintiff's role in the violation of section 2 of this 2009 Act,
33 the court shall dismiss the qui tam plaintiff from the action and the qui tam plaintiff may
34 not receive any share of the damages or civil penalty and may not be awarded costs and
35 disbursements or attorney fees. A dismissal of the qui tam plaintiff under this subsection
36 does not prejudice the right of the Attorney General to continue the prosecution of the
37 action.

38 (10) If the defendant prevails in the action, the court may award the defendant costs and
39 disbursements and reasonable attorney fees against the qui tam plaintiff, but not against the
40 Attorney General, if the court finds the claim of the qui tam plaintiff was frivolous,
41 vexatious or brought primarily for purposes of harassment.

42 (11) The remedies available under this section are in addition to and not in lieu of any
43 remedies available under ORS 165.696 and 411.690.

44 **SECTION 4.** (1) A civil action under section 3 of this 2009 Act shall be brought in the
45 circuit court of the county in which the defendant resides or transacts business or in which

1 the violation of section 2 of this 2009 Act occurred within the later of:

2 (a) Six years from the date on which the violation of section 2 of this 2009 Act is com-
3 mitted; or

4 (b) Three years from the date when the Attorney General knows or reasonably should
5 know the material facts, but in no event more than 10 years after the date the violation was
6 committed.

7 (2) In any action brought under section 3 of this 2009 Act, the Attorney General or the
8 qui tam plaintiff shall be required to prove all essential elements of the cause of action, in-
9 cluding damages, by a preponderance of the evidence.

10 (3) A judgment entered in favor of the Attorney General in a criminal proceeding charg-
11 ing false or fraudulent statements shall be binding in any proceeding brought under section
12 3 of this 2009 Act.

13 SECTION 5. (1) No action may be brought under section 3 of this 2009 Act:

14 (a) Against a member of the Legislative Assembly, the judiciary or a senior executive
15 branch official if the action is based on information known to the state when the action is
16 brought; or

17 (b) That is based on allegations that are the subject of a civil action or administrative
18 proceeding in which the state is a party.

19 (2) Any employee who is discharged, demoted, suspended, threatened, harassed or in any
20 other manner harmed in the employee's terms or conditions of employment by an employer
21 or an agent of an employer because of lawful acts done by the employee in furtherance of
22 an action under section 3 of this 2009 Act may bring an action for compensation against the
23 employer. The relief available in an action under this subsection shall include reinstatement
24 at the level of seniority prior to the retaliatory action, double the amount of back pay to
25 which the employee is entitled, compensation for emotional and mental distress, attorney
26 fees and costs and disbursements incurred by the employee in the litigation of the matter.

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