

B-Engrossed
Senate Bill 797

Ordered by the Senate June 16
Including Senate Amendments dated May 1 and June 16

Sponsored by Senator WALKER, Representative BARKER

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.

Changes name of Consumer Protection and Education Revolving Account to Department of Justice Protection and Education Revolving Account. Expands use of account to include payment of Department of Justice costs attributable to consumer and business education relating to laws governing antitrust, unlawful trade practice and environment, to actions and suits under state and federal civil rights laws and to criminal prosecutions under state environmental laws.

[Requires Department of Justice to estimate anticipated account expenditures every two biennia. Requires balance, exclusive of specified moneys, that exceeds estimated expenditures for four-year period to be transferred to General Fund.]

Requires Department of Justice to report to Joint Committee on Ways and Means certain information related to account. Requires committee to use information to determine appropriate balance for account.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Department of Justice; creating new provisions; amending ORS 180.095, 180.180, 646.775
3 and 646A.284; appropriating money; and declaring an emergency.

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

5 **SECTION 1.** ORS 180.095 is amended to read:

6 180.095. *[(1) There hereby is appropriated out of the General Fund in the State Treasury \$250,000*
7 *for the purpose of providing funds to pay for personal services, travel, meals and lodging, and all costs,*
8 *disbursements and other litigation expenses incurred by the Department of Justice in preparing, com-*
9 *mencing and prosecuting actions and suits under the state and federal antitrust laws and under ORS*
10 *646.605 to 646.656.]*

11 *[(2) The money appropriated by subsection (1) of this section shall be transferred to an account in*
12 *the General Fund in the State Treasury to be known as the Consumer Protection and Education Re-*
13 *volving Account. All moneys in such revolving account are appropriated and constitute a continuous*
14 *appropriation out of the General Fund for the purposes of this section. The creation of the revolving*
15 *account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260.]*

16 **(1) The Department of Justice Protection and Education Revolving Account is created in**
17 **the General Fund. All moneys in the account are continuously appropriated to the Depart-**
18 **ment of Justice and may be used to pay for only the following activities:**

19 **(a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;**

20 **(b) Consumer and business education relating to the laws governing antitrust, unlawful**
21 **trade practices and the environment; and**

22 **(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by**

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 the department in investigating, preparing, commencing and prosecuting the following
2 actions and suits, and enforcing judgments, settlements, compromises and assurances of
3 voluntary compliance arising out of the following actions and suits:

- 4 (A) Actions and suits under the state and federal antitrust laws;
- 5 (B) Actions and suits under ORS 646.605 to 646.656;
- 6 (C) Criminal prosecutions under state and federal environmental laws; and
- 7 (D) Actions commenced under ORS 59.331.

8 (2) Moneys in the Department of Justice Protection and Education Revolving Account
9 are not subject to allotment. Upon request of the Attorney General, the State Treasurer
10 shall create subaccounts within the account for the purposes of managing moneys in the
11 account and allocating those moneys to the activities described in subsection (1) of this
12 section.

13 (3) Except as otherwise provided by law, all sums of money received by the Department of
14 Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including
15 damages, **restitution, refunds**, attorney fees, costs, disbursements and other recoveries, but ex-
16 cluding civil penalties under ORS 646.642, in [*actions and suits under the state and federal antitrust*
17 *laws and ORS 646.605 to 646.656*] **proceedings described in subsection (1)(c) of this section** shall,
18 upon receipt, be deposited with the State Treasurer to the credit of the [*Consumer*] **Department**
19 **of Justice** Protection and Education Revolving Account. However, if the action or suit was based
20 on an expenditure or loss from a public body or a dedicated fund, the amount of such expenditure
21 or loss, after deduction of attorney fees and expenses awarded to the department [*of Justice*] by the
22 court or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and
23 the remainder thereof credited to the [*Consumer*] **Department of Justice** Protection and Education
24 Revolving Account.

25 (4) If the Department of Justice recovers restitution or refunds in a proceeding described
26 in subsection (1)(c) of this section, and the department cannot determine the persons to
27 whom the restitution or refunds should be paid or the amount of the restitution or refund
28 payable to individual claimants is de minimis, the restitution or refunds may not be deposited
29 in the Department of Justice Protection and Education Revolving Account and shall be de-
30 posited in the General Fund.

31 (5) Before April 1 of each odd-numbered year, the Department of Justice shall report to
32 the Joint Committee on Ways and Means:

33 (a) The department's projection of the balance in the Department of Justice Protection
34 and Education Revolving Account at the end of the biennium in which the report is made
35 and at the end of the following biennium;

36 (b) The amount of the balance held for restitution and refunds; and

37 (c) An estimate of the department's anticipated costs and expenses under subsection
38 (1)(b) and (c) of this section for the biennium in which the report is made and for the fol-
39 lowing biennium.

40 (6) The Joint Committee on Ways and Means, after consideration of recommendations
41 made by the Department of Justice, shall use the information reported under subsection (5)
42 of this section to determine an appropriate balance for the revolving account.

43 **SECTION 2.** ORS 180.180 is amended to read:

44 180.180. (1) The Department of Justice Operating Account is created in the General Fund.
45 Moneys credited to the account are continuously appropriated for the purpose of paying expenses

1 incurred by the Department of Justice, including those incurred by the Division of Child Support,
2 but not including expenses described in ORS 180.095, that are reimbursable from the [Consumer]
3 **Department of Justice** Protection and Education Revolving Account.

4 (2) All moneys received by the Department of Justice pursuant to its activities, except those
5 received and creditable to the [Consumer] **Department of Justice** Protection and Education Re-
6 volving Account, shall be deposited in the State Treasury to the credit of the Department of Justice
7 Operating Account.

8 (3) Subaccounts may be used in the Department of Justice Operating Account whenever the
9 Department of Justice determines that operating needs of the department so require.

10 (4) In order to facilitate financing the operating expenses of the Department of Justice described
11 in subsection (1) of this section, the Department of Justice may at any time during the biennium
12 transfer to the Department of Justice Operating Account with the approval of the Director of the
13 Oregon Department of Administrative Services such funds as it considers necessary, not to exceed
14 \$800,000, from funds duly appropriated to the Department of Justice for a biennial period. Such funds
15 so transferred shall be retransferred from the Department of Justice Operating Account to the ap-
16 propriation from which the original transfer was made. The retransfers shall be accomplished prior
17 to the last day of each biennial period.

18 **SECTION 3.** ORS 646A.284 is amended to read:

19 646A.284. (1) The Attorney General shall have a cause of action against any person who violates
20 ORS 646A.282.

21 (2) If the Attorney General prevails, the court shall enter judgment against the defendant for:

22 (a) Each simulated invoice uttered in this state, for the greater of:

23 (A) Three times the amount stated in the simulated invoice; or

24 (B) \$500;

25 (b) Such orders or judgments as may be necessary to restore to any person any moneys of which
26 the person was deprived by any conduct in violation of ORS 646A.282; and

27 (c) Such orders or judgments as may be necessary to ensure cessation of conduct in violation
28 of ORS 646A.282.

29 (3) The court may award reasonable attorney fees to the prevailing party in an action under this
30 section.

31 (4) All sums of money received by the Department of Justice under a judgment, settlement or
32 compromise in an action or potential action brought under this section, shall, upon receipt, be de-
33 posited with the State Treasurer to the credit of the [Consumer] **Department of Justice** Protection
34 and Education Revolving Account established pursuant to ORS 180.095.

35 **SECTION 4.** ORS 646.775 is amended to read:

36 646.775. (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon,
37 on behalf of a political subdivision in this state or as parens patriae on behalf of a natural person,
38 in any circuit court in which venue is proper under ORS 646.790, to secure equitable and monetary
39 relief as provided in this section for injury sustained by the natural person or political subdivision
40 to the natural person's or political subdivision's property by reason of a violation of ORS 646.725
41 or 646.730. The Attorney General may bring the action authorized by this paragraph regardless of
42 whether the natural person or political subdivision dealt directly or indirectly with the adverse
43 party.

44 (b) The court shall exclude from the amount of monetary relief awarded in an action pursuant
45 to paragraph (a) of this subsection any amount of monetary relief:

1 (A) That duplicates amounts that have been awarded for the same injury; or

2 (B) That is properly allocable to natural persons who have excluded their claims pursuant to
3 subsection (2)(b) of this section, or to any business entity.

4 (c)(A) Subject to paragraph (b) of this subsection, the court shall award the state as monetary
5 relief three times the total damages sustained by natural persons and political subdivisions and the
6 costs the state incurs in the action.

7 (B) The court may award reasonable attorney fees to the Attorney General if the Attorney
8 General prevails in an action under this section.

9 (C) The court may award reasonable attorney fees to a defendant who prevails in an action
10 under this section if the court determines that the Attorney General had no objectively reasonable
11 basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial
12 court.

13 (d) Notwithstanding paragraph (c) of this subsection, the court shall award the state only the
14 actual damages sustained by natural persons and political subdivisions in an action in which:

15 (A) The Attorney General prevails solely on the basis of a judgment entered in a proceeding
16 under 15 U.S.C. 1 to 45 or in another action by the state under ORS 646.760, 646.770 or 646.780, used
17 as collateral estoppel against the defendant under ORS 646.805; or

18 (B) The natural person or political subdivision dealt indirectly with the adverse party and the
19 Attorney General establishes a violation other than a per se violation of ORS 646.725.

20 (2)(a) In any action pursuant to subsection (1)(a) of this section, the Attorney General shall, at
21 the times, in the manner and with the content the court directs, give notice by publication. If the
22 court finds that notice given solely by publication would deny due process of law to a natural person
23 or political subdivision, the court may direct further notice to the natural person or political sub-
24 division according to the circumstances of the case.

25 (b) Any natural person or political subdivision on whose behalf an action is brought pursuant
26 to subsection (1)(a) of this section may elect to exclude from adjudication the portion of the claim
27 for monetary relief attributable to the natural person or political subdivision by filing notice of the
28 election with the court within the time specified in the notice given pursuant to paragraph (a) of this
29 subsection.

30 (c) The final judgment in an action pursuant to subsection (1)(a) of this section shall be res
31 judicata as to any claim under this section by any natural person or political subdivision on behalf
32 of whom such action was brought and who fails to give the notice specified in paragraph (b) of this
33 subsection within the period specified in the notice given pursuant to paragraph (a) of this sub-
34 section.

35 (3) An action pursuant to subsection (1)(a) of this section shall not be dismissed or compromised
36 without the approval of the court, and the notice of any proposed dismissal or compromise shall be
37 given in the manner the court directs.

38 (4) In any action pursuant to subsection (1)(a) of this section in which there has been a deter-
39 mination that a defendant agreed to fix prices in violation of ORS 646.725, damages may be proved
40 and assessed in the aggregate by statistical or sampling methods, by the computation and pro rata
41 allocation of illegal overcharges, or by any other reasonable system of estimating aggregate damages
42 as the court in its discretion may permit without the necessity of separately proving the individual
43 claim of, or amount of damage to, natural persons or political subdivisions on whose behalf the suit
44 was brought.

45 (5)(a) Monetary relief recovered in an action pursuant to subsection (1)(a) of this section shall

1 be distributed in the manner the court in its discretion may authorize, subject to the requirement
2 that any distribution procedure adopted afford each natural person or political subdivision on whose
3 behalf the suit was brought a reasonable opportunity to secure an appropriate portion of the net
4 monetary relief.

5 (b) The Attorney General shall deposit that portion of the monetary relief awarded by the court
6 as costs of suit and a reasonable attorney fee in the [*Consumer*] **Department of Justice** Protection
7 and Education Revolving Account established pursuant to ORS 180.095.

8 (c) To the extent that the monetary relief awarded by the court is not exhausted by distribution
9 pursuant to paragraphs (a) and (b) of this subsection, the remaining funds shall be deemed a civil
10 penalty by the court and assessed as such for the benefit of the state pursuant to ORS 646.760.

11 (6) The powers granted in this section are in addition to and not in derogation of the common
12 law powers of the Attorney General to act as *parens patriae*, or the powers of the Attorney General
13 to sue as a representative party on behalf of a class pursuant to ORCP 32.

14 **SECTION 5. On the effective date of this 2009 Act, the State Treasurer shall transfer all**
15 **funds in the Consumer Protection and Education Revolving Account into the Department of**
16 **Justice Protection and Education Revolving Account created by the amendments to ORS**
17 **180.095 by section 1 of this 2009 Act. Amounts transferred under this section may be used for**
18 **the purposes specified by ORS 180.095, as amended by section 1 of this 2009 Act.**

19 **SECTION 6. The amendments to ORS 180.095 by section 1 of this 2009 Act apply only to**
20 **judgments entered on or after the effective date of this 2009 Act and to settlements, com-**
21 **promises and assurances of voluntary compliance entered into on or after the effective date**
22 **of this 2009 Act.**

23 **SECTION 7. This 2009 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
25 **on its passage.**