

# Enrolled Senate Bill 797

Sponsored by Senator WALKER, Representative BARKER

CHAPTER .....

## AN ACT

Relating to Department of Justice; creating new provisions; amending ORS 180.095, 180.180, 646.775 and 646A.284 and section 7, chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264); repealing section 10, chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264); appropriating money; and declaring an emergency.

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

**SECTION 1.** 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) 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. All moneys in such revolving account are appropriated and constitute a continuous appropriation out of the General Fund for the purposes of this section. The creation of the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260.]*

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

- (a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;**
- (b) Consumer and business education relating to the laws governing antitrust, unlawful trade practices and the environment; and**
- (c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the department in investigating, preparing, commencing and prosecuting the following actions and suits, and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising out of the following actions and suits:**
  - (A) Actions and suits under the state and federal antitrust laws;**
  - (B) Actions and suits under ORS 646.605 to 646.656;**
  - (C) Criminal prosecutions under state and federal environmental laws; and**
  - (D) Actions commenced under ORS 59.331.**

**(2) Moneys in the Department of Justice Protection and Education Revolving Account are not subject to allotment. Upon request of the Attorney General, the State Treasurer shall create subaccounts within the account for the purposes of managing moneys in the**

**account and allocating those moneys to the activities described in subsection (1) of this section.**

(3) **Except as otherwise provided by law**, all sums of money received by the Department of Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including damages, **restitution, refunds**, attorney fees, costs, disbursements and other recoveries, but excluding civil penalties under ORS 646.642, in [*actions and suits under the state and federal antitrust laws and ORS 646.605 to 646.656*] **proceedings described in subsection (1)(c) of this section** shall, upon receipt, be deposited with the State Treasurer to the credit of the [*Consumer*] **Department of Justice** 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*] **Department of Justice** Protection and Education Revolving Account.

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

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

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

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

(c) **An estimate of the department's anticipated costs and expenses under subsection (1)(b) and (c) of this section for the biennium in which the report is made and for the following biennium.**

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

**SECTION 1a.** **If House Bill 2264 becomes law, section 10, chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264) (amending ORS 180.095), is repealed and ORS 180.095, as amended by section 1 of this 2009 Act, is amended to read:**

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

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

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

(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the department in investigating, preparing, commencing and prosecuting the following actions and suits, and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising out of the following actions and suits:

(A) Actions and suits under the state and federal antitrust laws;

(B) Actions and suits under ORS 646.605 to 646.656;

(C) Criminal prosecutions under state and federal environmental laws; [*and*]

(D) Actions commenced under ORS 59.331[.]; **and**

**(E) Actions and suits under sections 1 to 8, chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264).**

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

(3) Except as otherwise provided by law, all sums of money received by the Department of Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including damages, restitution, refunds, attorney fees, costs, disbursements and other recoveries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the Department of Justice 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 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 Department of Justice Protection and Education Revolving Account.

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

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

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

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

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

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

**SECTION 1b.** Section 7, chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264), is amended to read:

**Sec. 7.** (1) If a judgment is entered in favor of the state under section 3, **chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264)** [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 expenses, including investigative costs, incurred as a result of the violation of section 2, **chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264)** [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, **chapter 292, Oregon Laws 2009 (Enrolled House Bill 2264)** [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] **Department of Justice** Protection and Education Revolving Account.

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

180.180. (1) The Department of Justice Operating Account is created **in the General Fund**. Moneys credited to the account are continuously appropriated for the purpose of paying expenses incurred by the Department of Justice, including those incurred by the Division of Child Support, but not including expenses described in ORS 180.095, that are reimbursable from the [Consumer] **Department of Justice** Protection and Education Revolving Account.

(2) All moneys received by the Department of Justice pursuant to its activities, except those received and creditable to the [Consumer] **Department of Justice** Protection and Education Re-

volving Account, shall be deposited in the State Treasury to the credit of the Department of Justice Operating Account.

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

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

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

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

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

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

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

(B) \$500;

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

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

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

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

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

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

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

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

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

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

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

(C) The court may award reasonable attorney fees 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 asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

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

(A) The Attorney General prevails solely on the basis of a judgment entered in a proceeding 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 as collateral estoppel against the defendant under ORS 646.805; or

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

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

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

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

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

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

(5)(a) Monetary relief recovered in an action pursuant to subsection (1)(a) of this section shall be distributed in the manner the court in its discretion may authorize, subject to the requirement that any distribution procedure adopted afford each natural person or political subdivision on whose behalf the suit was brought a reasonable opportunity to secure an appropriate portion of the net monetary relief.

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

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

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

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

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

**SECTION 7.** If House Bill 2264 becomes law, section 5 of this 2009 Act is amended to read:

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

**SECTION 8.** If House Bill 2264 becomes law, section 6 of this 2009 Act is amended to read:

**Sec. 6.** The amendments to ORS 180.095 by [section 1] sections 1 and 1a of this 2009 Act apply only to judgments entered on or after the effective date of this 2009 Act and to settlements, compromises and assurances of voluntary compliance entered into on or after the effective date of this 2009 Act.

**SECTION 9.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate June 19, 2009

Received by Governor:

Repassed by Senate June 29, 2009

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

Approved:

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Secretary of Senate

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

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President of Senate

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Governor

Passed by House June 29, 2009

Filed in Office of Secretary of State:

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

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Speaker of House

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Secretary of State