

# Senate Bill 797

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 **as introduced**.

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 actions and suits under state and federal civil rights laws and criminal prosecutions under state environmental laws.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

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

3  
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 only for the purpose of providing funds to pay for personal**  
19 **services, travel, meals and lodging, and all costs, disbursements and other litigation expenses**  
20 **incurred by the department in investigating, preparing, commencing and prosecuting:**

21 **(a) Actions and suits under the state and federal antitrust laws;**

22 **(b) Actions and suits under ORS 646.605 to 646.656;**

23 **(c) Actions and suits under state and federal civil rights laws; and**

24 **(d) Criminal prosecutions under state and federal environmental laws.**

25 **(2) Moneys in the Department of Justice Protection and Education Revolving Account**  
26 **are not subject to allotment. Upon request of the Attorney General, the State Treasurer**  
27 **shall create subaccounts within the account for the purpose of managing moneys in the ac-**  
28 **count and allocating those moneys to the enforcement activities described in subsection (1)**  
29 **of this section.**

30 **(3) Except as provided in subsection (4) of this section, all sums of money received by the**

**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 Department of Justice under a judgment, settlement, compromise or assurance of voluntary compli-  
 2 ance, including damages, attorney fees, costs, disbursements and other recoveries, but excluding  
 3 civil penalties under ORS 646.642, in [actions and suits under the state and federal antitrust laws and  
 4 ORS 646.605 to 646.656] **proceedings described in subsection (1) of this section** shall, upon re-  
 5 ceipt, be deposited with the State Treasurer to the credit of the [Consumer] **Department of Justice**  
 6 Protection and Education Revolving Account. However, if the action or suit was based on an ex-  
 7 penditure or loss from a public body or a dedicated fund, the amount of such expenditure or loss,  
 8 after deduction of attorney fees and expenses awarded to the department [of Justice] by the court  
 9 or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and the  
 10 remainder thereof credited to the [Consumer] **Department of Justice** Protection and Education  
 11 Revolving Account.

12 **(4) The Department of Justice shall not deposit amounts recovered as consumer refunds**  
 13 **or restitution under ORS 646.605 to 646.656 in the Department of Justice Protection and Ed-**  
 14 **ucation Revolving Account.**

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

16 180.180. (1) The Department of Justice Operating Account is created **in the General Fund**.  
 17 Moneys credited to the account are continuously appropriated for the purpose of paying expenses  
 18 incurred by the Department of Justice, including those incurred by the Division of Child Support,  
 19 but not including expenses described in ORS 180.095, that are reimbursable from the [Consumer]  
 20 **Department of Justice** Protection and Education Revolving Account.

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

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

27 (4) In order to facilitate financing the operating expenses of the Department of Justice described  
 28 in subsection (1) of this section, the Department of Justice may at any time during the biennium  
 29 transfer to the Department of Justice Operating Account with the approval of the Director of the  
 30 Oregon Department of Administrative Services such funds as it considers necessary, not to exceed  
 31 \$800,000, from funds duly appropriated to the Department of Justice for a biennial period. Such funds  
 32 so transferred shall be retransferred from the Department of Justice Operating Account to the ap-  
 33 propriation from which the original transfer was made. The retransfers shall be accomplished prior  
 34 to the last day of each biennial period.

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

36 646A.284. (1) The Attorney General shall have a cause of action against any person who violates  
 37 ORS 646A.282.

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

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

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

41 (B) \$500;

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

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

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

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

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

8 646.775. (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon,  
9 on behalf of a political subdivision in this state or as *parens patriae* on behalf of a natural person,  
10 in any circuit court in which venue is proper under ORS 646.790, to secure equitable and monetary  
11 relief as provided in this section for injury sustained by the natural person or political subdivision  
12 to the natural person's or political subdivision's property by reason of a violation of ORS 646.725  
13 or 646.730. The Attorney General may bring the action authorized by this paragraph regardless of  
14 whether the natural person or political subdivision dealt directly or indirectly with the adverse  
15 party.

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

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

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

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

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

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

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

32 (A) The Attorney General prevails solely on the basis of a judgment entered in a proceeding  
33 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  
34 as collateral estoppel against the defendant under ORS 646.805; or

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

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

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

1 subsection.

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

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

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

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

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

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

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

31 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**  
32 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
33 **on its passage.**

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