

LC 566
2023 Regular Session
13700-010
8/19/22 (MNJ/ps)

D R A F T

SUMMARY

Modifies damages and penalties awarded for action for false claims.

Increases statute of limitations for action for false claims from three years to five years.

Provides for confidentiality and permissible disclosures of materials relating to false claims.

A BILL FOR AN ACT

Relating to false claims; creating new provisions; and amending ORS 180.760 and 180.765.

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

SECTION 1. ORS 180.760 is amended to read:

180.760. (1) The Attorney General may bring a civil action in the name of the State of Oregon against a person who violates ORS 180.755. The Attorney General may bring the action in the Circuit Court for Marion County or in a circuit court in any county in which part of the conduct that constituted the violation took place.

(2) Repayment of or intent to repay any amounts obtained by a person as a result of a violation of ORS 180.755 is not a defense in an action under this section.

(3) The fact that a public agency has not paid any amounts to a person as a result of a violation of ORS 180.755 or has not suffered any injury by reason of a violation of ORS 180.755, is not a defense in an action under this section.

(4)(a) A court shall award to the state all damages arising from a vio-

1 lation of ORS 180.755.

2 **(b)** In addition to damages awarded under paragraph (a) of this
3 **subsection**, the court shall award to the state a penalty equal to the greater
4 of:

5 **(A)** [*\$10,000*] **An amount not less than \$10,000 and not greater than**
6 **\$50,000** for each violation; or

7 **(B)** An amount equal to twice the amount of damages incurred for each
8 violation.

9 **(c)** The court may mitigate an award of a penalty under **paragraph (b)**
10 **of** this subsection based on any fine or penalty assessed against the defend-
11 ant for substantially the same acts or omissions in a judgment under the
12 federal False Claims Act, 31 U.S.C. 3729, et seq., as in effect on January 1,
13 2010, or under the federal Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a,
14 as in effect on January 1, 2010, that is no longer subject to appeal.

15 (5) If a court finds that an act or omission of an individual on behalf of
16 a corporation or other legal entity constitutes a violation of ORS 180.755, the
17 court may find that both the individual and the legal entity violated ORS
18 180.755[,] and impose a separate penalty under subsection (4) of this section
19 against both the individual and the legal entity.

20 (6) Notwithstanding subsections (4) and (5) of this section, if the state
21 prevails in an action under this section, the court may not award a penalty
22 under subsection (4) of this section if:

23 (a) The defendant provided the Attorney General with all information
24 known to the defendant about the violation within 30 days after the defend-
25 ant first acquired the information;

26 (b) The defendant fully cooperated with the Attorney General in the in-
27 vestigation of the violation; and

28 (c) At the time the defendant provided the Attorney General with infor-
29 mation about the violation, an investigation, court proceeding or adminis-
30 trative action related to the violation had not been commenced.

31 (7) For the purpose of determining the amount of damages under this

1 section:

2 (a) The value of property, services or benefits obtained by a person who
3 makes a claim may be established based on the market value of property,
4 services or benefits at the time and place of receipt or delivery of the prop-
5 erty, services or benefits.

6 (b) If the market value of property, services or benefits at the time and
7 place of receipt or delivery of the property, services or benefits cannot be
8 reasonably ascertained, the value of the property, services or benefits may
9 be established based on the replacement cost of the property, services or
10 benefits.

11 (c) If a written instrument has no readily ascertainable market value, the
12 value of the instrument may be established based on the value determined
13 as provided in ORS 164.115 (2).

14 (d) The Attorney General may establish damages using statistical or
15 sampling methodology, or any other system that reasonably estimates dam-
16 ages incurred, without separately proving the damages incurred from each
17 violation of ORS 180.755.

18 (8) The court may award reasonable attorney fees and costs of investi-
19 gation, preparation and litigation to the state if the state prevails in an
20 action under this section. The court may award reasonable attorney fees and
21 costs of investigation, preparation and litigation to a defendant who prevails
22 in an action under this section if the court determines that the Attorney
23 General had no objectively reasonable basis for bringing the action or no
24 reasonable basis for appealing an adverse decision of the trial court.

25 **SECTION 2.** ORS 180.765 is amended to read:

26 180.765. An action under ORS 180.760 must be brought within [*three*] **five**
27 years after the date that the [*officer or employee of the public agency charged*
28 *with responsibility for the claim*] **Attorney General** discovers the violation
29 of ORS 180.755. In no event may an action under ORS 180.760 be brought
30 more than 10 years after the date on which the violation is committed.

31 **SECTION 3.** **Section 4 of this 2023 Act is added to and made a part**

1 of ORS 180.750 to 180.785.

2 **SECTION 4. (1) While in the possession of the Attorney General,**
3 **any documentary material, answers to interrogatories and transcripts**
4 **of oral testimony shall be held in confidence and not be disclosed to**
5 **any person except:**

6 (a) **The person providing the material or answers;**

7 (b) **The representative or attorney of the person providing the ma-**
8 **terial or answers;**

9 (c) **Persons employed by the Attorney General;**

10 (d) **Officials of the United States or any state who are authorized**
11 **to enforce federal or state false claims laws, including the federal**
12 **False Claims Act, 31 U.S.C. 3729 to 3733, provided that prior to the**
13 **disclosure the Attorney General shall obtain the written agreement**
14 **of the officials to abide by the confidentiality restriction of this sec-**
15 **tion; and**

16 (e) **Other persons authorized in subsection (2) of this section.**

17 (2) **Documentary material, answers to interrogatories and tran-**
18 **scripts of oral testimony in the possession of the Attorney General**
19 **may be:**

20 (a) **Used in any investigation conducted pursuant to ORS 180.750 to**
21 **180.785 or in any case or proceeding before a court or administrative**
22 **agency; or**

23 (b) **Disclosed to any committee or subcommittee of the Legislative**
24 **Assembly in a manner and for purposes as the Attorney General deems**
25 **appropriate.**

26 (3) **Upon completion of a civil action brought under ORS 180.760, the**
27 **Attorney General shall return any documents, answers and transcripts**
28 **that have not passed into the control of the court through introduc-**
29 **tion into the records, to the person who provided the documents, an-**
30 **swers or testimony, upon the person's request in writing. If no action**
31 **in which documents, answers or testimony may be used has been**

1 commenced within a reasonable time after completion of the exam-
2 ination or analysis of all documentary material, but in no event later
3 than four years after production of the material, the Attorney General
4 shall, upon written request of the person who produced the material,
5 return all documents, answers and transcripts to the person who pro-
6 vided them.

7 SECTION 5. The amendments to ORS 180.765 by section 2 of this
8 2023 Act apply to claims under ORS 180.760 discovered by the Attorney
9 General on or after the effective date of this 2023 Act.

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