

# Enrolled Senate Bill 311

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CHAPTER .....

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 violation of ORS 180.755.

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

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

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

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

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

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

(a) The defendant provided the Attorney General with all information known to the defendant about the violation within 30 days after the defendant first acquired the information;

(b) The defendant fully cooperated with the Attorney General in the investigation of the violation; and

(c) At the time the defendant provided the Attorney General with information about the violation, an investigation, court proceeding or administrative action related to the violation had not been commenced.

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

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

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

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

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

(8) The court may award reasonable attorney fees and costs of investigation, preparation and litigation to the state if the state prevails in an action under this section. The court may award reasonable attorney fees and costs of investigation, preparation and litigation 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 bringing the action or no reasonable basis for appealing an adverse decision of the trial court.

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

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

**SECTION 3. Section 4 of this 2023 Act is added to and made a part of ORS 180.750 to 180.785.**

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

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

(b) **The representative or attorney of the person providing the material or answers;**

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

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

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

**(2) Documentary material, answers to interrogatories and transcripts of oral testimony in the possession of the Attorney General may be:**

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

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

**(3) Upon completion of a civil action brought under ORS 180.760, the Attorney General shall return any documents, answers and transcripts that have not passed into the control of the court through introduction into the records, to the person who provided the documents, answers or testimony, upon the person's request in writing. If no action in which**

documents, answers or testimony may be used has been commenced within a reasonable time after completion of the examination or analysis of all documentary material, but in no event later than four years after production of the material, the Attorney General shall, upon written request of the person who produced the material, return all documents, answers and transcripts to the person who provided them.

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

**Passed by Senate February 15, 2023**

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

**Passed by House May 8, 2023**

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Dan Rayfield, Speaker of House

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

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Secretary of State