

# Senate Bill 311

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## 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**.

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

1  
2 Relating to false claims; creating new provisions; and amending ORS 180.760 and 180.765.

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

4 **SECTION 1.** ORS 180.760 is amended to read:

5 180.760. (1) The Attorney General may bring a civil action in the name of the State of Oregon  
6 against a person who violates ORS 180.755. The Attorney General may bring the action in the Cir-  
7 cuit Court for Marion County or in a circuit court in any county in which part of the conduct that  
8 constituted the violation took place.

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

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

14 (4)(a) A court shall award to the state all damages arising from a violation of ORS 180.755.

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

17 (A) [*\$10,000*] **An amount not less than \$10,000 and not greater than \$50,000** for each vio-  
18 lation; or

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

20 (c) The court may mitigate an award of a penalty under **paragraph (b) of this subsection** based  
21 on any fine or penalty assessed against the defendant for substantially the same acts or omissions  
22 in a judgment under the federal False Claims Act, 31 U.S.C. 3729, et seq., as in effect on January  
23 1, 2010, or under the federal Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a, as in effect on January  
24 1, 2010, that is no longer subject to appeal.

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

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

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

3 (b) The defendant fully cooperated with the Attorney General in the investigation of the vio-  
 4 lation; and

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

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

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

12 (b) If the market value of property, services or benefits at the time and place of receipt or de-  
 13 livery of the property, services or benefits cannot be reasonably ascertained, the value of the prop-  
 14 erty, services or benefits may be established based on the replacement cost of the property, services  
 15 or benefits.

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

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

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

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

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

32 **SECTION 3. Section 4 of this 2023 Act is added to and made a part of ORS 180.750 to**  
 33 **180.785.**

34 **SECTION 4. (1) While in the possession of the Attorney General, any documentary ma-**  
 35 **terial, answers to interrogatories and transcripts of oral testimony shall be held in confi-**  
 36 **dence and not be disclosed to any person except:**

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

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

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

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

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

45 (2) **Documentary material, answers to interrogatories and transcripts of oral testimony**

1 in the possession of the Attorney General may be:

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

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

6 (3) Upon completion of a civil action brought under ORS 180.760, the Attorney General  
7 shall return any documents, answers and transcripts that have not passed into the control  
8 of the court through introduction into the records, to the person who provided the docu-  
9 ments, answers or testimony, upon the person's request in writing. If no action in which  
10 documents, answers or testimony may be used has been commenced within a reasonable time  
11 after completion of the examination or analysis of all documentary material, but in no event  
12 later than four years after production of the material, the Attorney General shall, upon  
13 written request of the person who produced the material, return all documents, answers and  
14 transcripts to the person who provided them.

15 **SECTION 5.** The amendments to ORS 180.765 by section 2 of this 2023 Act apply to claims  
16 under ORS 180.760 discovered by the Attorney General on or after the effective date of this  
17 2023 Act.

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