

A-Engrossed
Senate Bill 119

Ordered by the Senate May 9
Including Senate Amendments dated May 9

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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.

Authorizes Attorney General, **after receiving consent of Director of Department of Consumer and Business Services**, to take enforcement actions under Oregon Securities Law. Allows Attorney General to conduct investigations, require statements under oath, issue subpoenas and bring suit for injunction or to enforce compliance with Oregon Securities Law.

Allows attorney fees. Allows Attorney General to pursue claim for restitution or damages, claim for disgorgement of illegal gains, claim for appointment of receiver or claim for fine.

Exempts certain companies licensed by director under Oregon Securities Law.

A BILL FOR AN ACT

1
2 Relating to Attorney General enforcement of securities law.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 59.005 to 59.451.**

5 **SECTION 2. (1) Subject to subsection (2) of this section and after providing notice and**
6 **an opportunity to participate to the Director of the Department of Consumer and Business**
7 **Services, the Attorney General may:**

8 (a) **Make public or private investigations within or outside this state as the Attorney**
9 **General considers necessary to:**

10 (A) **Determine whether a person has violated or is about to violate any provision of the**
11 **Oregon Securities Law or any rule or order of the director adopted or issued under the**
12 **Oregon Securities Law; or**

13 (B) **Aid in the enforcement of the Oregon Securities Law or any rule or order of the di-**
14 **rector adopted or issued under the Oregon Securities Law.**

15 (b) **Require or permit a person to file a statement in writing, under oath or otherwise**
16 **as the Attorney General determines, as to all the facts and circumstances concerning a**
17 **matter to be investigated.**

18 (c) **Administer oaths and affirmations, subpoena witnesses, compel the attendance of**
19 **witnesses, take evidence and require the production of books, papers, correspondence,**
20 **memoranda, agreements or other documents or records that the Attorney General considers**
21 **relevant or material to an investigation.**

22 (d) **Bring suit in the name and on behalf of the State of Oregon in the circuit court of**
23 **any county to:**

24 (A) **Enjoin any acts or practices the Attorney General has reason to believe that a person**

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 has engaged, is engaging or is about to engage in that constitute a violation of any provision
2 of the Oregon Securities Law or any rule or order of the director adopted or issued under
3 the Oregon Securities Law; or

4 (B) Enforce compliance with the Oregon Securities Law or any rule or order of the di-
5 rector adopted or issued under the Oregon Securities Law.

6 (2) The Attorney General may take action under subsection (1) of this section only in
7 connection with any of the following alleged violations or cases:

8 (a) Alleged violations involving companies whose securities are listed on the New York
9 Stock Exchange, the American Stock Exchange or the National Association of Securities
10 Dealers Automated Quotation System, Inc. National Market System;

11 (b) Cases in which the Attorney General is pursuing or intends to pursue an investigation
12 or litigation under ORS 166.715 to 166.735;

13 (c) Cases in which the Attorney General is pursuing or intends to pursue an investigation
14 or litigation under ORS 646.605 to 646.652; or

15 (d) Cases in which the Attorney General is pursuing or intends to pursue an investigation
16 or litigation under ORS 646.705 to 646.805.

17 (3) The Attorney General may take action under subsection (1) of this section with re-
18 spect to cases described in subsection (2)(b), (c) or (d) of this section only after receiving the
19 director's consent. The director may elect to be a named party in any action the Attorney
20 General takes.

21 (4) Each witness who appears before the Attorney General under a subpoena issued under
22 this section shall receive the fees and mileage provided for witnesses in ORS 44.415 (2). If a
23 person fails to comply with a subpoena issued under this section or if a party or witness
24 refuses to testify on any matters, the judge of the circuit court of any county, on the appli-
25 cation of the Attorney General, shall compel obedience by proceedings for contempt as in the
26 case of disobedience of the requirements of a subpoena issued from the court or a refusal
27 to testify in the court.

28 (5) In an action brought under this section, a court:

29 (a) Shall grant a permanent or temporary injunction, restraining order or writ of
30 mandamus upon a proper showing by the Attorney General under subsection (1)(d) of this
31 section.

32 (b) May award reasonable attorney fees to:

33 (A) The Attorney General if the Attorney General prevails in an action under this sec-
34 tion.

35 (B) A defendant if the defendant prevails in an action under this section and the court
36 determines that the Attorney General had no objectively reasonable basis for asserting the
37 claim or no reasonable basis for appealing an adverse decision of the trial court.

38 (6) The Attorney General may include any of the following in an action authorized by this
39 section:

40 (a) A claim for restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the
41 persons injured by the act or practice constituting the subject matter of the action. If the
42 court finds that enforcement of the rights of the injured persons by private civil action,
43 whether by class action or otherwise, would be so burdensome or expensive as to be im-
44 practical, the court has jurisdiction to award appropriate relief to the injured persons.

45 (b) A claim for disgorgement of illegal gains or profits derived. The Attorney General

1 shall deposit any moneys recovered under this paragraph in the General Fund of the State
2 Treasury unless the court requires other disposition.

3 (c) A claim for the appointment of a receiver of any property derived by means of any
4 act or practice that constitutes a violation of any provision of the Oregon Securities Law or
5 any rule or order of the director adopted or issued under the Oregon Securities Law and of
6 any books of account and papers relating to the property. Property for which a receiver may
7 be appointed includes other property with which the property derived by means of a violation
8 has been commingled if the property cannot be identified in kind because of the commingling.
9 The receiver shall take possession of the property, books and papers and shall liquidate the
10 property for the benefit of all persons who intervene in the action and establish an interest
11 in the property. Subject to the approval of the court, the expenses and attorney fees of the
12 receiver and any expenditures required in the liquidation proceeding shall be paid out of the
13 funds of the receivership. The receiver may be the Attorney General. The court may not
14 require the Attorney General to post a bond.

15 (d) A claim for a fine of not more than \$20,000 for each violation. The fine shall be en-
16 tered as a judgment and paid to the General Fund of the State Treasury. Each violation is
17 a separate offense. In the case of a continuing violation, each day's continuance is a separate
18 violation, but the maximum penalty for any continuing violation may not exceed \$100,000.

19 (7) This section does not apply to:

20 (a) A failure to file a notice and pay a fee under ORS 59.049 (1), (2) or (3);

21 (b) A failure to file a notice and pay a fee under ORS 59.165 (7);

22 (c) A failure to pay a fee under ORS 59.175 (8);

23 (d) A violation of any rule adopted by the director under ORS 59.165 (7); or

24 (e) A company that the director has licensed under ORS 59.165.

25 **SECTION 3.** Section 2 of this 2007 Act applies to violations or alleged violations of any
26 provision of the Oregon Securities Law, or of any rule or order of the Director of the De-
27 partment of Consumer and Business Services adopted or issued under the Oregon Securities
28 Law, that occur on or after the effective date of this 2007 Act.

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