

Senate Bill 119

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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**.

Authorizes Attorney General 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.

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

28 (B) **Enforce compliance with the Oregon Securities Law or any rule or order of the di-**

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 rector adopted or issued under the Oregon Securities Law.

2 (2) The Attorney General may take action under subsection (1) of this section only in
3 connection with:

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

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

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

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

13 (3) Each witness who appears before the Attorney General under a subpoena issued under
14 this section shall receive the fees and mileage provided for witnesses in ORS 44.415 (2). If a
15 person fails to comply with a subpoena issued under this section or if a party or witness
16 refuses to testify on any matters, the judge of the circuit court of any county, on the appli-
17 cation of the Attorney General, shall compel obedience by proceedings for contempt as in the
18 case of disobedience of the requirements of a subpoena issued from the court or a refusal
19 to testify in the court.

20 (4) In an action brought under this section, a court:

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

24 (b) May award reasonable attorney fees to:

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

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

30 (5) The Attorney General may include any of the following in an action authorized by this
31 section:

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

37 (b) A claim for disgorgement of illegal gains or profits derived. The Attorney General
38 shall deposit any moneys recovered under this paragraph in the General Fund of the State
39 Treasury unless the court requires other disposition.

40 (c) A claim for the appointment of a receiver of any property derived by means of any
41 act or practice that constitutes a violation of any provision of the Oregon Securities Law or
42 any rule or order of the director adopted or issued under the Oregon Securities Law and of
43 any books of account and papers relating to the property. Property for which a receiver may
44 be appointed includes other property with which the property derived by means of a violation
45 has been commingled if the property cannot be identified in kind because of the commingling.

1 The receiver shall take possession of the property, books and papers and shall liquidate the
2 property for the benefit of all persons who intervene in the action and establish an interest
3 in the property. Subject to the approval of the court, the expenses and attorney fees of the
4 receiver and any expenditures required in the liquidation proceeding shall be paid out of the
5 funds of the receivership. The receiver may be the Attorney General. The court may not
6 require the Attorney General to post a bond.

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

11 (6) This section does not apply to:

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

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

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

15 (d) A violation of any rule adopted by the director under ORS 59.165 (7).

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

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