

Enrolled
Senate Bill 257

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CHAPTER

AN ACT

Relating to variable annuities; creating new provisions; and amending ORS 59.015 and 731.046.

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

SECTION 1. ORS 59.015 is amended to read:

59.015. As used in the Oregon Securities Law, unless the context otherwise requires:

(1) "Broker-dealer" means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

- (a) An issuer effecting sales in its own securities;
- (b) The following institutions:

(A) A financial institution or trust company, as defined in ORS 706.008; or

(B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory regulatory authority is exercising control over, or is regulating or supervising the person in the sale of securities in accord with the purposes of the Oregon Securities Law;

(c) A person who has no place of business in this state effecting transactions in this state exclusively with broker-dealers;

(d) A person effecting sales exempted by ORS 59.035;

(e) A salesperson;

(f) A person effecting sales of securities owned by the person registered for sale pursuant to ORS 59.065;

(g) A person effecting sales of securities exempted by ORS 59.025 (7);

(h) A person licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980 when effecting sales of securities involving real estate paper registered for sale pursuant to ORS 59.065; or

(i) A person designated by rule or order by the director.

(2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

- (3) "Director" means the Director of the Department of Consumer and Business Services.
- (4) "Federal covered investment adviser" means a person who is registered as an investment adviser pursuant to section 203 of the Investment Advisers Act of 1940, as amended.
- (5) "Federal covered security" means any security that is a covered security under section 18 of the Securities Act of 1933, as amended, and for which such Act provides that the director may require filing of a notice and payment of a fee.
- (6) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.
- (7) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.
- (8)(a) "Investment adviser representative" means any partner, officer, director or person occupying a similar status or performing a similar function, or other individual, except clerical or ministerial personnel, who is employed by or associated with:
- (A) A state investment adviser that is licensed or required to be licensed in this state and who does any of the following:
- (i) Makes any recommendations or otherwise renders advice regarding securities;
 - (ii) Manages accounts or portfolios of clients;
 - (iii) Determines which recommendation or advice regarding securities should be given;
 - (iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or
 - (v) Supervises employees acting under this subparagraph; or
- (B) A federal covered investment adviser, subject to the limitations of section 203A of the Investment Advisers Act of 1940, as amended, as the director may designate by rule or order.
- (b) "Investment adviser representative" does not include a person designated by rule or order of the director.
- (9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the "issuer" is the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other instrument or agreement under which the security is issued.
- (10) "License" means a license as provided under the Oregon Securities Law.
- (11) "Mortgage banker" means a mortgage banker as defined in ORS 59.840.
- (12) "Mortgage broker" means a mortgage broker as defined in ORS 59.840.
- (13) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- (14) "Person" includes an individual, a joint venture, a partnership, a cooperative, a limited liability company, an association, a joint stock company, a corporation, a trust, an unincorporated organization or a government or political subdivision of a government.
- (15) "Real estate paper" means any obligation secured or purportedly secured by an interest in real property. Real estate paper includes, but is not limited to, mortgage-backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits.
- (16) "Registered" means registered as provided in the Oregon Securities Law.
- (17)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing shall constitute a part of the subject of the purchase and shall have been offered and sold for value. A gift of assessable stock by or for any issuer or promoter shall constitute a sale.
- (b) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms "sale" and "sell" include the terms "offer" and "offer to sell."

(c) "Sale" and "sell" do not include:

(A) A bona fide pledge or loan of securities;

(B) A bona fide security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by the recipients for the dividend other than payments in connection with the elimination of fractional shares; or

(C) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(18)(a) "Salesperson" means a person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any manner transactions in securities.

(b) "Salesperson" does not include:

(A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;

(B) A person who represents an issuer in effecting sales exempted by ORS 59.035;

(C) A person who represents an issuer in effecting sales with existing partners or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(D) An employee of an institution or organization described in subsection (1)(b) of this section to the extent the employee is not a dual employee of the institution and a broker-dealer;

(E) A person effecting transactions in this state limited to those transactions described in section 15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or

(F) A person designated by rule or order by the director.

(c) A person who is a partner, director or officer of a broker-dealer, issuer or owner of securities, or a person who occupies a similar status or performing similar functions, is a "salesperson" only if the person otherwise comes within this definition.

(19)(a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, **variable annuity**, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person described in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035 (4), or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) "Security" does not include:

(A) An insurance or endowment policy or annuity contract, **other than a variable annuity contract**, under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or some other specified period;

(B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.451; or

(C) A beneficial interest in a testamentary trust.

(20)(a) "State investment adviser" means a person who, for compensation:

(A) Engages all or part of the time of the person, in this state, in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities;

(B) Engages all or part of the time of the person, in this state, in the business of managing an investment or trading account in securities for other persons; or

(C) Issues or promulgates, as part of a regular business in this state, analyses or reports concerning securities.

(b) "State investment adviser" does not include:

(A) An investment adviser representative;

- (B) An institution or organization described in subsection (1)(b) of this section;
- (C) A licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for such services;
- (D) A salesperson licensed to a broker-dealer whose performance of investment advisory services is solely incidental to that person's activities as a salesperson and who receives no special compensation for such services;
- (E) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual or service, or business or financial publication of general, regular and paid circulation;
- (F) A person whose only clients are federal covered investment advisers, state investment advisers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
- (G) A duly licensed lawyer, engineer or accountant whose performance of investment advisory services is solely incidental to the practice of the profession;
- (H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025 (1);
- (I) A federal covered investment adviser in compliance with ORS 59.165 (7);
- (J) A person, advising others, that has no place of business in this state and during the preceding 12-month period has had fewer than six clients, other than those persons included in subparagraph (F) of this paragraph, who are residents of this state; or
- (K) Such other persons as the director may by rule or order designate.

SECTION 2. ORS 731.046 is amended to read:

731.046. Any policy, **other than a variable annuity policy**, whose form has been filed with and approved by the Director of the Department of Consumer and Business Services [*shall be*] **is** exempt from the application of ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, and the marketing of such policy [*shall be*] **is** likewise exempt.

SECTION 3. The amendments to ORS 59.015 and 731.046 by sections 1 and 2 of this 2007 Act apply to variable annuities offered for sale on or after the effective date of this 2007 Act.

Passed by Senate April 16, 2007

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Secretary of Senate

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President of Senate

Passed by House May 29, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State