

**Minority Report**  
**B-Engrossed**  
**Senate Bill 257**

Ordered by the House May 22  
Including Senate Amendments dated April 11 and House Minority  
Report Amendments dated May 22

Sponsored by nonconcurring members of the House Committee on Judiciary: Representatives WHISNANT,  
CAMERON

**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.

Adds variable annuity to definition of security for purposes of Oregon Securities Law.  
**Prohibits civil action under Oregon Securities Law in connection with offer, solicitation or purchase of variable annuity.**

**A BILL FOR 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;

**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 (g) A person effecting sales of securities exempted by ORS 59.025 (7);
- 2 (h) A person licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980  
3 when effecting sales of securities involving real estate paper registered for sale pursuant to ORS  
4 59.065; or
- 5 (i) A person designated by rule or order by the director.
- 6 (2) "Control" means the possession, directly or indirectly, of the power to direct or cause the  
7 direction of the management and policies of a person, whether through the ownership of voting se-  
8 curities, by contract, or otherwise.
- 9 (3) "Director" means the Director of the Department of Consumer and Business Services.
- 10 (4) "Federal covered investment adviser" means a person who is registered as an investment  
11 adviser pursuant to section 203 of the Investment Advisers Act of 1940, as amended.
- 12 (5) "Federal covered security" means any security that is a covered security under section 18  
13 of the Securities Act of 1933, as amended, and for which such Act provides that the director may  
14 require filing of a notice and payment of a fee.
- 15 (6) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.
- 16 (7) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.
- 17 (8)(a) "Investment adviser representative" means any partner, officer, director or person occu-  
18 pying a similar status or performing a similar function, or other individual, except clerical or  
19 ministerial personnel, who is employed by or associated with:
- 20 (A) A state investment adviser that is licensed or required to be licensed in this state and who  
21 does any of the following:
- 22 (i) Makes any recommendations or otherwise renders advice regarding securities;
- 23 (ii) Manages accounts or portfolios of clients;
- 24 (iii) Determines which recommendation or advice regarding securities should be given;
- 25 (iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or
- 26 (v) Supervises employees acting under this subparagraph; or
- 27 (B) A federal covered investment adviser, subject to the limitations of section 203A of the In-  
28 vestment Advisers Act of 1940, as amended, as the director may designate by rule or order.
- 29 (b) "Investment adviser representative" does not include a person designated by rule or order  
30 of the director.
- 31 (9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes  
32 an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or  
33 collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated  
34 investment trust not having a board of directors or persons performing similar functions or of the  
35 fixed, restricted management or unit type, the "issuer" is the person or persons performing the acts  
36 and assuming the duties of depositor or manager pursuant to the provisions of the trust or other  
37 instrument or agreement under which the security is issued.
- 38 (10) "License" means a license as provided under the Oregon Securities Law.
- 39 (11) "Mortgage banker" means a mortgage banker as defined in ORS 59.840.
- 40 (12) "Mortgage broker" means a mortgage broker as defined in ORS 59.840.
- 41 (13) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an  
42 offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right  
43 to purchase or subscribe to another security of the same or another issuer, as well as every sale  
44 or offer of a security which gives the holder a present or future right or privilege to convert into  
45 another security of the same or another issuer, is considered to include an offer of the other secu-

1 rity.

2 (14) "Person" includes an individual, a joint venture, a partnership, a cooperative, a limited li-  
3 ability company, an association, a joint stock company, a corporation, a trust, an unincorporated  
4 organization or a government or political subdivision of a government.

5 (15) "Real estate paper" means any obligation secured or purportedly secured by an interest in  
6 real property. Real estate paper includes, but is not limited to, mortgage-backed securities,  
7 collateralized mortgage obligations, and real estate mortgage investment conduits.

8 (16) "Registered" means registered as provided in the Oregon Securities Law.

9 (17)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a  
10 security or interest in a security for value. Any security given or delivered with, or as a bonus on  
11 account of, a purchase of securities or any other thing shall constitute a part of the subject of the  
12 purchase and shall have been offered and sold for value. A gift of assessable stock by or for any  
13 issuer or promoter shall constitute a sale.

14 (b) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms "sale"  
15 and "sell" include the terms "offer" and "offer to sell."

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

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

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

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

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

27 (b) "Salesperson" does not include:

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

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

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

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

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

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

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

41 (19)(a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness,  
42 certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust  
43 certificate, preorganization certificate or subscription, transferable share, investment contract,  
44 voting-trust certificate, **variable annuity**, certificate of deposit for a security, certificate of interest  
45 or participation in an oil, gas, or mining title or lease or in payments out of production under such

1 title or lease, real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a  
2 person described in subsection (1)(b) of this section to persons other than persons enumerated in  
3 ORS 59.035 (4), or, in general, any interest or instrument commonly known as a “security,” or any  
4 certificate of interest or participation in, temporary or interim certificates for, receipt for, guarantee  
5 of, or warrant or right to subscribe to or purchase any of the foregoing.

6 (b) “Security” does not include:

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

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

12 (C) A beneficial interest in a testamentary trust.

13 (20)(a) “State investment adviser” means a person who, for compensation:

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

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

19 (C) Issues or promulgates, as part of a regular business in this state, analyses or reports con-  
20 cerning securities.

21 (b) “State investment adviser” does not include:

22 (A) An investment adviser representative;

23 (B) An institution or organization described in subsection (1)(b) of this section;

24 (C) A licensed broker-dealer whose performance of investment advisory services is solely inci-  
25 dental to the conduct of business as a broker-dealer and who receives no special compensation for  
26 such services;

27 (D) A salesperson licensed to a broker-dealer whose performance of investment advisory services  
28 is solely incidental to that person’s activities as a salesperson and who receives no special com-  
29 pensation for such services;

30 (E) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual  
31 or service, or business or financial publication of general, regular and paid circulation;

32 (F) A person whose only clients are federal covered investment advisers, state investment ad-  
33 visers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust  
34 companies, insurance companies, investment companies as defined in the Investment Company Act  
35 of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional  
36 buyers, whether acting for themselves or as trustees;

37 (G) A duly licensed lawyer, engineer or accountant whose performance of investment advisory  
38 services is solely incidental to the practice of the profession;

39 (H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025  
40 (1);

41 (I) A federal covered investment adviser in compliance with ORS 59.165 (7);

42 (J) A person, advising others, that has no place of business in this state and during the pre-  
43 ceding 12-month period has had fewer than six clients, other than those persons included in sub-  
44 paragraph (F) of this paragraph, who are residents of this state; or

45 (K) Such other persons as the director may by rule or order designate.

1        **SECTION 2.** ORS 731.046 is amended to read:

2        731.046. Any policy, **other than a variable annuity policy**, whose form has been filed with and  
3 approved by the Director of the Department of Consumer and Business Services [*shall be*] **is** exempt  
4 from the application of ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, and the marketing  
5 of such policy [*shall be*] **is** likewise exempt.

6        **SECTION 3.** Section 4 of this 2007 Act is added to and made a part of ORS chapter 59.

7        **SECTION 4.** A person may not bring an action or suit under ORS 59.115 or 59.127 in  
8 connection with an offer, solicitation or purchase of a variable annuity.

9        **SECTION 5.** Section 4 of this 2007 Act and the amendments to ORS 59.015 and 731.046 by  
10 sections 1 and 2 of this 2007 Act apply to variable annuities offered for sale, solicited or  
11 purchased on or after the effective date of this 2007 Act.

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