

# Senate Bill 970

Sponsored by COMMITTEE ON COMMERCE (at the request of Dave Schreiner)

## 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**.

Specifies additional conditions under which corporation may be dissolved or authority of foreign corporation revoked. Specifies conditions under which board of directors may be replaced by board of trustees. Directs Secretary of State to adopt corporate code of conduct. Prohibits corporation from holding Green Permit if corporation engages in certain activities.

Allows action for actual damages for certain securities laws violations involving element of fraud.

## A BILL FOR AN ACT

1  
2 Relating to corporations; creating new provisions; and amending ORS 59.115, 59.127, 59.135, 59.137,  
3 60.001, 60.204, 60.647, 60.661, 60.737 and 468.516.

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

5 **SECTION 1.** ORS 60.647 is amended to read:

6 60.647. The Secretary of State may commence a proceeding under ORS 60.651 to administratively  
7 dissolve a corporation if:

8 (1) The corporation does not pay when due any fees imposed by this chapter;

9 (2) The corporation does not deliver its annual report to the Secretary of State when due;

10 (3) The corporation is without a registered agent or registered office in this state;

11 (4) The corporation does not notify the Secretary of State that its registered agent or registered  
12 office has been changed, that its registered agent has resigned or that its registered office has been  
13 discontinued; [*or*]

14 (5) The corporation's period of duration stated in its articles of incorporation expires;

15 **(6) The corporation has exceeded or abused the authority conferred upon it by law;**

16 **(7) The corporation has violated any provision of its articles of incorporation or bylaws;**

17 **or**

18 **(8) The corporation has transacted its business in a manner that is contrary to the public  
19 policy of this state.**

20 **SECTION 2.** ORS 60.661 is amended to read:

21 60.661. The circuit courts may dissolve a corporation:

22 (1) In a proceeding by the Attorney General if it is established that:

23 (a) The corporation obtained its articles of incorporation through fraud; [*or*]

24 **(b) The corporation has exceeded or abused the authority conferred upon it by law;**

25 [*(b)*] **(c) The corporation has continued to exceed or abuse the authority conferred upon it by  
26 law;[.]**

27 **(d) The corporation has violated any provision of its articles of incorporation or bylaws;**

28 **or**

29 **(e) The corporation has transacted its business in a manner that is contrary to the public**

**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 **policy of this state.**

2 (2) In a proceeding by a shareholder in, **or an employee of**, a corporation that has shares that  
3 are listed on a national securities exchange or that are regularly traded in a market maintained by  
4 one or more members of a national or affiliated securities association, if it is established that:

5 (a) The directors are deadlocked in the management of the corporate affairs, the shareholders  
6 are unable to break the deadlock and irreparable injury to the corporation is threatened or being  
7 suffered, or the business and affairs of the corporation can no longer be conducted to the advantage  
8 of the shareholders generally, because of the deadlock;

9 (b) The directors or those in control of the corporation have acted, are acting or will act in a  
10 manner that is illegal, oppressive or fraudulent;

11 (c) The shareholders are deadlocked in voting power and have failed, for a period that includes  
12 at least two consecutive annual meeting dates, to elect successors to directors whose terms have  
13 expired; [*or*]

14 (d) The corporate assets are being misapplied or wasted;[.]

15 (e) **The corporation has exceeded or abused the authority conferred upon it by law;**

16 (f) **The corporation has violated any provision of its articles of incorporation or bylaws;**

17 (g) **The business and affairs of the corporation can no longer be conducted to the ad-**  
18 **vantage of the shareholders generally; or**

19 (h) **The corporation has transacted its business in a manner that is contrary to the public**  
20 **policy of this state.**

21 (3) In a proceeding by a creditor if it is established that:

22 (a) The creditor's claim has been reduced to judgment, the execution on the judgment returned  
23 unsatisfied and the corporation is insolvent; or

24 (b) The corporation has admitted in writing that the creditor's claim is due and owing and the  
25 corporation is insolvent.

26 (4) In a proceeding by the corporation to have its voluntary dissolution continued under court  
27 supervision.

28 **SECTION 3.** ORS 60.737 is amended to read:

29 60.737. (1) The Secretary of State may commence a proceeding under ORS 60.741 to revoke the  
30 authority of a foreign corporation to transact business in this state if:

31 [(1)] (a) The foreign corporation does not deliver its annual report to the Secretary of State  
32 within the time prescribed by this chapter;

33 [(2)] (b) The foreign corporation does not pay within the time prescribed by this chapter any fees  
34 imposed by this chapter;

35 [(3)] (c) The foreign corporation has failed to appoint or maintain a registered agent or regis-  
36 tered office in this state as prescribed by this chapter;

37 [(4)] (d) The foreign corporation does not inform the Secretary of State under ORS 60.724 or  
38 60.727 that its registered agent or registered office has changed, that its registered agent has re-  
39 signed or that its registered office has been discontinued;

40 [(5)] (e) An incorporator, director, officer or agent of the foreign corporation signed a document  
41 knowing it was false in any material respect with intent that the document be delivered to the office  
42 for filing; [*or*]

43 [(6)] (f) The Secretary of State receives a duly authenticated certificate from the official having  
44 custody of corporate records in the state or country under whose law the foreign corporation is  
45 incorporated stating that it has been dissolved or disappeared as the result of a merger;

1 (g) The foreign corporation has exceeded or abused the authority conferred upon it by  
2 law;

3 (h) The foreign corporation has violated any provision of its articles of incorporation or  
4 bylaws;

5 (i) The foreign corporation has violated any provision of the corporate code of conduct  
6 established under section 8 of this 2007 Act;

7 (j) The foreign corporation has violated any law of this state;

8 (k) The directors or officers of the corporation have acted in a manner that is illegal or  
9 fraudulent;

10 (L) The business of the foreign corporation can no longer be conducted to the general  
11 advantage of the shareholders; or

12 (m) The foreign corporation has transacted its business in a manner that is contrary to  
13 the public policy of this state.

14 (2) Upon receiving a written request from a shareholder or employee of a foreign corpo-  
15 ration authorized to transact business in this state, the Secretary of State shall commence  
16 a proceeding as described in subsection (1) of this section. The written request shall describe  
17 the grounds for revocation of authority described in subsection (1) of this section and provide  
18 proof that the person or persons making the request are shareholders or employees of the  
19 foreign corporation.

20 **SECTION 4.** Sections 5 to 8 of this 2007 Act are added to and made a part of ORS chapter  
21 60.

22 **SECTION 5.** The Secretary of State may proceed as described in section 6 of this 2007  
23 Act to remove the board of directors of a corporation and replace the board of directors with  
24 a board of trustees appointed by the Secretary of State if:

25 (1) The corporation has violated any provision of the corporate code of conduct estab-  
26 lished under section 8 of this 2007 Act; or

27 (2) The corporation has violated any law of this state.

28 **SECTION 6.** (1) If the Secretary of State determines that grounds exist under section 5  
29 of this 2007 Act for removing the board of directors, the Secretary of State shall give the  
30 corporation written notice of the determination.

31 (2) If the corporation does not correct the grounds for removal of the board of directors  
32 or demonstrate to the satisfaction of the Secretary of State, within 45 days after notice is  
33 given, that the grounds determined by the Secretary of State do not exist, the Secretary of  
34 State shall remove the board of directors and appoint a board of trustees.

35 (3) The board of trustees appointed by the Secretary of State under subsection (2) of this  
36 section has the powers granted to a board of directors under this chapter and shall manage  
37 the business and regulate the affairs of the corporation until the Secretary of State deter-  
38 mines that the grounds that caused the removal of the board of directors no longer exist.

39 (4) A new board of directors shall be elected at a special meeting of shareholders under  
40 ORS 60.204 after the Secretary of State has determined that the grounds for removal under  
41 section 5 of this 2007 Act no longer exist.

42 **SECTION 7.** (1) The circuit courts may remove a board of directors and appoint a board  
43 of trustees:

44 (a) In a proceeding by the Attorney General if it is established that:

45 (A) The corporation has violated any provision of the corporate code of conduct estab-

1 lished under section 8 of this 2007 Act; or

2 (B) The corporation has violated any law of this state.

3 (b) In a proceeding by a shareholder if it is established that:

4 (A) The corporation has violated any provision of the corporate code of conduct estab-  
5 lished under section 8 of this 2007 Act; or

6 (B) The corporation has violated any law of this state.

7 (2) The board of trustees appointed by a circuit court under this section has the powers  
8 granted to a board of directors under this chapter and shall manage the business and regu-  
9 late the affairs of the corporation until the circuit court determines that the grounds that  
10 caused the removal of the board of directors no longer exist.

11 (3) A new board of directors shall be elected at a special meeting of shareholders under  
12 ORS 60.204 after the circuit court has determined that the grounds for removal established  
13 under this section no longer exist.

14 **SECTION 8.** The Secretary of State by rule shall adopt a corporate code of conduct for  
15 responsible business practices for corporations subject to the provisions of this chapter. The  
16 code shall prohibit conduct that the Secretary of State determines is contrary to the public  
17 policy of this state or the laws of this state. The Secretary of State shall consider the fol-  
18 lowing practices or conduct when adopting a corporate code of conduct:

19 (1) Adherence to principles of nondiscrimination and respect for human rights and indi-  
20 vidual freedoms;

21 (2) Recognition that decisions on hiring, salary, benefits, advancement, termination or  
22 retirement are based solely on the ability of an individual to do the job;

23 (3) Achievement of compatibility between the environment and the processes and pro-  
24 ducts of a corporation;

25 (4) Promotion of high standards for workplace safety and occupational health;

26 (5) Forbearance from the offer or receipt of improper payments to or from government  
27 officials, political parties or candidates for political office;

28 (6) Adherence to proper recording of financial transactions in corporate books of ac-  
29 count;

30 (7) Equitable and fair conduct in financial and commercial transactions; and

31 (8) Balance of interests of shareholders, employees, customers, suppliers, governments  
32 and the public.

33 **SECTION 9.** Section 10 of this 2007 Act is added to and made a part of ORS 468.501 to  
34 468.521.

35 **SECTION 10.** In addition to the provisions of ORS 468.501 to 468.521, a sponsor that is a  
36 corporation subject to the provisions of ORS chapter 60 is not eligible to receive or maintain  
37 a Green Permit if the corporation:

38 (1) Has exceeded the authority conferred upon it by law;

39 (2) Has violated any provision of its articles of incorporation or bylaws;

40 (3) Has violated any provision of the corporate code of conduct adopted by the Secretary  
41 of State by rule under section 8 of this 2007 Act;

42 (4) Has violated any law of this state; or

43 (5) Has transacted its business in a manner that is contrary to the public policy of this  
44 state, as defined in ORS 60.001.

45 **SECTION 11.** ORS 468.516 is amended to read:

1       468.516. (1) If a sponsor operating a facility under a Green Permit fails to perform any term or  
2 condition in the Green Permit, **or if the sponsor is ineligible to hold a Green Permit under**  
3 **section 10 of this 2007 Act**, the agency may, after written notice to the permittee, terminate the  
4 Green Permit in whole or in part.

5       (2) The permittee may appeal the agency's decision to terminate a Green Permit to the Envi-  
6 ronmental Quality Commission. The commission's decision on appeal shall be an order in other than  
7 a contested case.

8       **SECTION 12.** ORS 60.001 is amended to read:

9       60.001. As used in this chapter:

10      (1) "Anniversary" means that day each year exactly one or more years after:

11      (a) The date of filing by the Secretary of State of the articles of incorporation in the case of a  
12 domestic corporation.

13      (b) The date of filing by the Secretary of State of an application for authority to transact busi-  
14 ness in the case of a foreign corporation.

15      (2) "Articles of incorporation" include amended and restated articles of incorporation, articles  
16 of conversion and articles of merger.

17      (3) "Authorized shares" means the shares of all classes a domestic or foreign corporation is  
18 authorized to issue.

19      (4) "Conspicuous" means so written that a reasonable person against whom the writing is to  
20 operate should have noticed it. For example, printing in italics, boldface or contrasting color, typing  
21 in capitals or underlined is conspicuous.

22      (5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a for-  
23 eign corporation, incorporated under or subject to the provisions of this chapter.

24      (6) "Delivery" means any method of delivery used in conventional commercial practice, including  
25 delivery by hand, mail, commercial delivery and electronic transmission.

26      (7) "Distribution" means a direct or indirect transfer of money or other property, except of a  
27 corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its  
28 shareholders in respect of any of its shares. A distribution may be in the form of a declaration or  
29 payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of  
30 indebtedness, or otherwise.

31      (8) "Domestic limited liability company" means an entity that is an unincorporated association  
32 having one or more members and that is organized under ORS chapter 63.

33      (9) "Domestic nonprofit corporation" means a corporation not for profit incorporated under ORS  
34 chapter 65.

35      (10) "Domestic professional corporation" means a corporation organized under ORS chapter 58  
36 for the purpose of rendering professional services and for the purposes provided under ORS chapter  
37 58.

38      (11) "Electronic signature" has the meaning given that term in ORS 84.004.

39      (12) "Electronic transmission" means any process of communication that does not directly in-  
40 volve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction  
41 of information by the recipient.

42      (13) "Employee" includes an officer but not a director. A director may accept duties that make  
43 the director also an employee.

44      (14) "Entity" includes a corporation, foreign corporation, nonprofit corporation, profit and  
45 nonprofit unincorporated association, business trust, estate, partnership, trust, two or more persons

1 having a joint or common economic interest, any state, the United States and any foreign govern-  
2 ment.

3 (15) "Foreign corporation" means a corporation for profit incorporated under a law other than  
4 the law of this state.

5 (16) "Foreign limited liability company" means an entity that is an unincorporated association  
6 organized under the laws of a state other than this state, under the laws of a federally recognized  
7 Indian tribe or under the laws of a foreign country and that is organized under a statute under  
8 which an association may be formed that affords to each of its members limited liability with respect  
9 to liabilities of the entity.

10 (17) "Foreign nonprofit corporation" means a corporation not for profit organized under the laws  
11 of a state other than this state.

12 (18) "Foreign professional corporation" means a professional corporation organized under the  
13 laws of a state other than this state.

14 (19) "Governmental subdivision" includes an authority, county, district and municipality.

15 (20) "Includes" denotes a partial definition.

16 (21) "Individual" means a natural person. "Individual" includes the estate of an incompetent  
17 individual or a deceased individual.

18 (22) "Means" denotes an exhaustive definition.

19 (23) "Office," when used to refer to the administrative unit directed by the Secretary of State,  
20 means the office of the Secretary of State.

21 (24) "Person" includes individual and entity.

22 (25) "Principal office" means the office, in or out of this state, where the principal executive  
23 offices of a domestic or foreign corporation are located and designated in the annual report or ap-  
24 plication for authority to transact business in this state.

25 (26) "Proceeding" includes civil, criminal, administrative and investigatory action.

26 (27) **"Public policy of this state" includes, but is not limited to, the policy of conserving**  
27 **and protecting the natural resources and beauty of this state and protecting human rights,**  
28 **public health and safety, the rights of employees and the welfare of communities in which a**  
29 **corporation operates.**

30 [(27)] (28) "Record date" means the date established under this chapter on which a corporation  
31 determines the identity of its shareholders and their shareholdings for purposes of this chapter. The  
32 determinations shall be made as of the close of business on the record date unless another time for  
33 doing so is specified when the record date is fixed.

34 [(28)] (29) "Shares" means the units into which the proprietary interest in a corporation are  
35 divided.

36 [(29)] (30) "Shareholder" means the person in whose name shares are registered in the records  
37 of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee  
38 certificate on file with a corporation.

39 [(30)] (31) "Signature" includes any manual, facsimile, conformed or electronic signature.

40 [(31)] (32) "State," when referring to a part of the United States, includes a state, common-  
41 wealth, territory and insular possession of the United States and its agencies and governmental  
42 subdivisions.

43 [(32)] (33) "Subscriber" means a person who subscribes for shares in a corporation, whether  
44 before or after incorporation.

45 [(33)] (34) "United States" includes a district, authority, bureau, commission, department and

1 any other agency of the United States.

2 [(34)] (35) "Voting group" means all shares of one or more classes or series that under the ar-  
 3 ticles of incorporation or this chapter are entitled to vote and be counted together collectively on  
 4 a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this  
 5 chapter to vote generally on the matter are for that purpose a single voting group.

6 **SECTION 13.** ORS 60.204 is amended to read:

7 60.204. (1) A corporation shall hold a special meeting of shareholders:

8 (a) On call of its board of directors or the person or persons authorized to do so by the articles  
 9 of incorporation or bylaws; [or]

10 (b) Except as provided in this paragraph, if the holders of at least 10 percent of all votes entitled  
 11 to be cast on any issue proposed to be considered at the proposed special meeting sign, date and  
 12 deliver to the corporation's secretary one or more written demands for the meeting describing the  
 13 purpose or purposes for which it is to be held. The articles of incorporation may fix a lower per-  
 14 centage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any  
 15 issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a writ-  
 16 ten demand for a special meeting may be revoked by a writing to that effect signed by a shareholder  
 17 who signed the original demand, and received by the corporation prior to the receipt by the corpo-  
 18 ration of a demand sufficient to require the holding of a special meeting; **or**

19 **(c) On call of a board of trustees appointed under section 6 or 7 of this 2007 Act.**

20 (2) If not otherwise fixed under ORS 60.207 or 60.221, the record date for determining share-  
 21 holders entitled to demand a special meeting is the date the first shareholder signs the demand.

22 (3) Special shareholders' meetings may be held in or out of this state at the place stated in or  
 23 fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws,  
 24 special meetings shall be held at the corporation's principal office.

25 (4) Only business within the purpose or purposes described in the meeting notice required by  
 26 ORS 60.214 (3) may be conducted at a special shareholders' meeting.

27 **SECTION 14.** ORS 59.135 is amended to read:

28 59.135. (1) It is unlawful for any person, directly or indirectly, in connection with the  
 29 purchase, [or] sale **or ownership** of any security or the conduct of a securities business or for any  
 30 person who receives any consideration from another person primarily for advising the other person  
 31 as to the value of securities or their purchase or sale, whether through the issuance of analyses or  
 32 reports or otherwise:

33 [(1)] (a) To employ any device, scheme or artifice to defraud;

34 [(2)] (b) To make any untrue statement of a material fact or to omit to state a material fact  
 35 necessary in order to make the statements made, in the light of the circumstances under which they  
 36 are made, not misleading;

37 [(3)] (c) To engage in any act, practice or course of business which operates or would operate  
 38 as a fraud or deceit upon any person; or

39 [(4)] (d) To make or file, or cause to be made or filed, to or with the Director of the Department  
 40 of Consumer and Business Services any statement, report or document which is known to be false  
 41 in any material respect or matter.

42 **(2) Any person who with knowledge or with recklessness or gross negligence violates or**  
 43 **participates or materially aids in a violation of subsection (1) of this section shall be liable**  
 44 **to the purchaser, seller or owner of the security for the actual damages sustained, including**  
 45 **the amount of any commission, fee or other remuneration paid, together with interest at the**

1 rate specified in ORS 82.010 for judgments and decrees for the payment of money.

2 (3) Any person who directly or indirectly controls a person liable under subsection (2) of  
 3 this section and every partner, limited liability company manager, including a member who  
 4 is a manager, officer or director or a person occupying a status or performing functions  
 5 similar to those of any person liable under subsection (2) of this section, shall be liable to  
 6 the same extent as a person liable under subsection (2) of this section, unless the person  
 7 who may be liable under this subsection sustains the burden of proof that the person did not  
 8 know and, in the exercise of reasonable care, could not have known of the existence of the  
 9 facts on which the liability is based.

10 (4) Except as provided in subsection (5) of this section, the court may award reasonable  
 11 attorney fees to the prevailing party in an action under this section.

12 (5) The court may not award attorney fees to a prevailing defendant under the provisions  
 13 of subsection (4) of this section if the action under this section is maintained as a class  
 14 action pursuant to ORCP 32.

15 **SECTION 15.** Section 16 of this 2007 Act is added to and made a part of ORS 59.005 to  
 16 59.451.

17 **SECTION 16.** (1) An action or suit for violation of ORS 59.135 may be commenced within  
 18 the latest of:

19 (a) Three years after the date of the purchase or sale of a security to which the action  
 20 or suit relates;

21 (b) Three years after the occurrence of the facts on which the action or suit is based;  
 22 or

23 (c) Two years after the person bringing the action or suit discovered or should have  
 24 discovered the facts on which the action or suit is based.

25 (2) Failure to commence an action or suit on a timely basis is an affirmative defense.

26 **SECTION 17.** ORS 59.115 is amended to read:

27 59.115. (1) A person is liable as provided in subsection (2) of this section to a purchaser of a  
 28 security if the person:

29 (a) Sells or successfully solicits the sale of a security, other than a federal covered security, in  
 30 violation of the Oregon Securities Law or of any condition, limitation or restriction imposed upon  
 31 a registration or license under the Oregon Securities Law; or

32 (b) Sells or successfully solicits the sale of a security in violation of ORS 59.135 [(1) or (3)] (1)(a)  
 33 or (c) or by means of an untrue statement of a material fact or an omission to state a material fact  
 34 necessary in order to make the statements made, in light of the circumstances under which they are  
 35 made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain  
 36 the burden of proof that the person did not know, and in the exercise of reasonable care could not  
 37 have known, of the untruth or omission.

38 (2) The purchaser may recover:

39 (a) Upon tender of the security, the consideration paid for the security, and interest from the  
 40 date of payment equal to the greater of the rate of interest specified in ORS 82.010 for judgments  
 41 for the payment of money or the rate provided in the security if the security is an interest-bearing  
 42 obligation, less any amount received on the security; or

43 (b) If the purchaser no longer owns the security, damages in the amount that would be recov-  
 44 erable upon a tender, less the value of the security when the purchaser disposed of it and less in-  
 45 terest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment



1 of money from the date of disposition.

2 (3) Every person who directly or indirectly controls a seller liable under subsection (1) of this  
 3 section, every partner, limited liability company manager, including a member who is a manager,  
 4 officer or director of such seller, every person occupying a similar status or performing similar  
 5 functions, and every person who participates or materially aids in the sale is also liable jointly and  
 6 severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof  
 7 that the nonseller did not know, and, in the exercise of reasonable care, could not have known, of  
 8 the existence of facts on which the liability is based. Any person held liable under this section shall  
 9 be entitled to contribution from those jointly and severally liable with that person.

10 (4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function  
 11 in connection with the sale of a security is to provide ministerial functions of escrow, custody or  
 12 deposit services in accordance with applicable law is liable only if the person participates or mate-  
 13 rially aids in the sale and the purchaser sustains the burden of proof that the person knew of the  
 14 existence of facts on which liability is based or that the person's failure to know of the existence  
 15 of such facts was the result of the person's recklessness or gross negligence.

16 (5) Any tender specified in this section may be made at any time before entry of judgment.

17 (6) Except as otherwise provided in this subsection, no action or suit may be commenced under  
 18 this section more than three years after the sale. An action under this section for a violation of  
 19 subsection (1)(b) of this section [*or ORS 59.135*] may be commenced within three years after the sale  
 20 or two years after the person bringing the action discovered or should have discovered the facts on  
 21 which the action is based, whichever is later. Failure to commence an action on a timely basis is  
 22 an affirmative defense.

23 (7) An action may not be commenced under this section solely because an offer was made prior  
 24 to registration of the securities.

25 (8) Any person having a right of action against a broker-dealer, state investment adviser or  
 26 against a salesperson or investment adviser representative acting within the course and scope or  
 27 apparent course and scope of authority of the salesperson or investment adviser representative,  
 28 under this section shall have a right of action under the bond or irrevocable letter of credit provided  
 29 in ORS 59.175.

30 (9) Subsection (4) of this section shall not limit the liability of any person:

31 (a) For conduct other than in the circumstances described in subsection (4) of this section; or

32 (b) Under any other law, including any other provisions of the Oregon Securities Law.

33 (10) Except as provided in subsection (11) of this section, the court may award reasonable at-  
 34 torney fees to the prevailing party in an action under this section.

35 (11) The court may not award attorney fees to a prevailing defendant under the provisions of  
 36 subsection (10) of this section if the action under this section is maintained as a class action pur-  
 37 suant to ORCP 32.

38 **SECTION 18.** ORS 59.127 is amended to read:

39 59.127. (1) A person is liable as provided in subsection (2) of this section to the person selling  
 40 the security, if the person:

41 (a) Purchases or successfully solicits the purchase of a security, other than a federal covered  
 42 security, in violation of any condition, limitation or restriction imposed upon a registration under  
 43 the Oregon Securities Law; or

44 (b) Purchases or successfully solicits the purchase of a security in violation of ORS 59.135 [(1)  
 45 or (3)] **(1)(a) or (c)** or by means of an untrue statement of a material fact or an omission to state

1 a material fact necessary in order to make the statements made, in light of the circumstances under  
2 which they were made, not misleading (the seller not knowing of the untruth or omission), and if the  
3 person does not sustain the burden of proof that the person did not know, and in the exercise of  
4 reasonable care could not have known, of the untruth or omission.

5 (2) The seller may recover:

6 (a) Upon a tender of the consideration paid for the security, the security plus interest from the  
7 date of purchase equal to the greater of the rate of interest specified in ORS 82.010 for judgments  
8 for the payment of money, or the rate provided in the security if the security is an interest-bearing  
9 obligation;

10 (b) Damages in the amount that would be recoverable upon a tender, plus any amount received  
11 on the security, less the consideration paid for the security; or

12 (c) If the purchaser no longer owns the security, damages equal to the value of the security  
13 when the purchaser disposed of it plus interest on such value at the rate of interest specified in ORS  
14 82.010 for judgments for the payment of money from the date of disposition, less the consideration  
15 paid for the security.

16 (3) Every person who directly or indirectly controls a purchaser liable under subsection (1) of  
17 this section, every partner, limited liability company manager, including a member who is a man-  
18 ager, officer or director of such purchaser, every person occupying a similar status or performing  
19 similar functions, and every person who participates or materially aids in the purchase is also liable  
20 jointly and severally with and to the same extent as the purchaser, unless the nonpurchaser sustains  
21 the burden of proof that the nonpurchaser did not know, and, in the exercise of reasonable care,  
22 could not have known, of the existence of facts on which the liability is based. Any person held li-  
23 able under this section shall be entitled to contribution from those jointly and severally liable with  
24 the person.

25 (4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function  
26 in connection with the purchase of a security is to provide ministerial functions of escrow, custody  
27 or deposit services in accordance with applicable law is liable only if the person participates or  
28 materially aids in the purchase and the seller sustains the burden of proof that the person knew of  
29 the existence of facts on which liability is based or that the person's failure to know of the existence  
30 of such facts was the result of the person's recklessness or gross negligence.

31 (5) Any tender specified in this section may be made at any time before entry of judgment.

32 (6) Except as otherwise provided in this subsection, no action or suit may be commenced under  
33 this section more than three years after the purchase. An action under this section for a violation  
34 of subsection (1)(b) of this section [*or ORS 59.135*] may be commenced within three years after the  
35 purchase or two years after the person bringing the action discovered or should have discovered the  
36 facts on which the action is based, whichever is later. Failure to commence an action on a timely  
37 basis is an affirmative defense.

38 (7) Any person having a right of action against a broker-dealer, state investment adviser or  
39 against a salesperson or investment adviser representative acting within the course and scope or  
40 apparent course and scope of the authority of the salesperson or investment adviser representative,  
41 under this section shall have a right of action under the bond or irrevocable letter of credit provided  
42 in ORS 59.175.

43 (8) Subsection (4) of this section shall not limit the liability of any persons:

44 (a) For conduct other than in the circumstances described in subsection (4) of this section; or

45 (b) Under any other law, including any other provisions of the Oregon Securities Law.

1 (9) Except as provided in subsection (10) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

2  
3 (10) The court may not award attorney fees to a prevailing defendant under the provisions of  
4 subsection (9) of this section if the action under this section is maintained as a class action pursuant  
5 to ORCP 32.

6 **SECTION 19.** ORS 59.137 is amended to read:

7 59.137. (1) Any person who violates or materially aids in a violation of ORS 59.135 [(1), (2) or  
8 (3)] **(1)(a), (b) or (c)** is liable to any purchaser or seller of the security for the actual damages  
9 caused by the violation, including the amount of any commission, fee or other remuneration paid,  
10 together with interest at the rate specified in ORS 82.010 for judgments for the payment of money,  
11 unless the person who materially aids in the violation sustains the burden of proof that the person  
12 did not know and, in the exercise of reasonable care, could not have known of the existence of the  
13 facts on which the liability is based.

14 (2) Any person who directly or indirectly controls a person liable under subsection (1) of this  
15 section and every partner, limited liability company manager, including a member who is a manager,  
16 officer or director or a person occupying a status or performing functions of a person liable under  
17 subsection (1) of this section, is jointly and severally liable to the same extent as a person liable  
18 under subsection (1) of this section, unless the person who may be liable under this subsection sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts on which the liability is based.

21 (3) Any person held liable under this section is entitled to contribution from those persons  
22 jointly and severally liable with that person.

23 (4) Except as provided in subsection (5) of this section, the court may award reasonable attorney  
24 fees to the prevailing party in an action under this section.

25 (5) The court may not award attorney fees to a prevailing defendant under the provisions of  
26 subsection (4) of this section if the action under this section is maintained as a class action pursuant  
27 to ORCP 32.

28 (6) An action or suit may be commenced under this section within the later of:

29 (a) Three years after the date of the purchase or sale of a security to which the action or suit  
30 relates; or

31 (b) Two years after the person bringing the action or suit discovered or should have discovered  
32 the facts on which the action or suit is based.

33 (7) Failure to commence an action or suit under this section on a timely basis is an affirmative  
34 defense.

35 **SECTION 20.** Sections 5 to 8 and 10 of this 2007 Act and the amendments to ORS 60.001,  
36 60.204, 60.647, 60.661, 60.737 and 468.516 by sections 1, 2, 3, 11, 12 and 13 of this 2007 Act apply  
37 only to activities occurring on or after the effective date of this 2007 Act.

38 **SECTION 21.** (1) Except as provided in subsection (2) of this section, the amendments to  
39 ORS 59.135 by section 14 of this 2007 Act apply to violations of ORS 59.135 that occur before,  
40 on or after the effective date of this 2007 Act.

41 (2) The amendments to ORS 59.135 by section 14 of this 2007 Act:

42 (a) Do not apply to any action in which a judgment has been entered in the register of  
43 a court before the effective date of this 2007 Act.

44 (b) For purposes of ORS 59.991 and 59.995, apply to violations of ORS 59.135 that occur  
45 on or after the effective date of this 2007 Act.

1       **(3) Except as provided in this subsection, section 16 of this 2007 Act applies to violations**  
2       **that occur before, on or after the effective date of this 2007 Act. Section 16 of this 2007 Act**  
3       **does not apply to any action in which a judgment has been entered in the register of a court**  
4       **before the effective date of this 2007 Act.**

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