

# Senate Bill 523

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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**.

Specifies that directors and officers of cooperative have fiduciary duty to cooperative. Permits Attorney General to investigate complaint and bring action to remedy breach of director's or officer's fiduciary duty. Permits member of cooperative to bring action to remedy breach of director's or officer's fiduciary duty.

## A BILL FOR AN ACT

1  
2 Relating to fiduciary duties owed to cooperatives; amending ORS 62.283 and 62.295.

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

4 **SECTION 1.** ORS 62.283 is amended to read:

5 62.283. (1) A director shall discharge the duties of a director, including the duties as a member  
6 of a committee, [*in good faith, with*] **as a fiduciary of the cooperative, exercising** the care an or-  
7 dinarily prudent person [*in a like position*] would exercise [*under similar circumstances*] **in con-**  
8 **ducting the person's own affairs, [and] in a manner the director reasonably believes [to be] is** in  
9 the best interests of the cooperative **and under a duty of loyalty to the cooperative and a duty**  
10 **to exercise the director's responsibilities in an informed and considered manner.**

11 (2) In discharging the duties of a director, a director is entitled to rely on information, opinions,  
12 reports or statements including financial statements and other financial data, if prepared or pre-  
13 sented by:

14 (a) One or more officers or employees of the cooperative whom the director reasonably believes  
15 to be reliable and competent in the matters presented;

16 (b) Legal counsel, public accountants or other persons as to matters the director reasonably  
17 believes are within the person's professional or expert competence; or

18 (c) A committee of the board of directors of which the director is not a member if the director  
19 reasonably believes the committee merits confidence.

20 (3) A director is not acting [*in good faith*] **as a fiduciary to the cooperative** if the director has  
21 knowledge concerning the matter in question that makes reliance otherwise permitted by subsection  
22 (2) of this section unwarranted.

23 [(4) A director is not liable for any action taken as a director, or any failure to take any action,  
24 if the director performed the duties of the director's office in compliance with this section.]

25 [(5)] (4) When evaluating any offer of another party to make a tender or exchange offer for any  
26 equity security of the cooperative or any proposal to merge or consolidate the cooperative with  
27 another corporation or cooperative or to purchase or otherwise acquire all or substantially all the  
28 properties and assets of the corporation or cooperative, the directors of the cooperative may, in  
29 determining what [*they*] **the directors** believe [*to be*] **is** in the best interests of the cooperative, give

**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 due consideration to the social, legal and economic effects on employees, customers and suppliers  
 2 of the cooperative and on the communities and geographical areas in which the cooperative and  
 3 [its] **the cooperative's** subsidiaries operate, the economy of the state and nation, the long term as  
 4 well as short term interests of the cooperative and [its] **the cooperative's** members, including the  
 5 possibility that these interests may be best served by the continued independence of the cooperative,  
 6 and other relevant factors.

7 **(5) The Attorney General may investigate a complaint from a member of a cooperative**  
 8 **that alleges that a director has breached a fiduciary duty the director owes to the cooper-**  
 9 **ative or to members of the cooperative under this section or has misrepresented the finan-**  
 10 **cial condition of the cooperative. The Attorney General may bring an action in a court of this**  
 11 **state on behalf of the cooperative or members of the cooperative to recover damages that**  
 12 **the cooperative or members of the cooperative have incurred or to seek an injunction against**  
 13 **an action of the director that breaches the director's fiduciary duty.**

14 **(6) A member of a cooperative may bring an action in a court of this state to recover**  
 15 **damages the member incurred as a result of a director's breach of fiduciary duty to the co-**  
 16 **operative or to the member or to seek an injunction against an action of the director that**  
 17 **breaches the director's fiduciary duty.**

18 **SECTION 2.** ORS 62.295 is amended to read:

19 62.295. (1) The principal officers of a cooperative are a president, one or more vice presidents  
 20 as prescribed in the bylaws, a secretary and a treasurer. These officers [*shall*] **must** be elected an-  
 21 nually by the board at such time and in such manner as the bylaws provide. The offices of secretary  
 22 and treasurer may be combined in one person. At least one principal officer must be a director of  
 23 the cooperative. The manager of a cooperative may hold the office of president or any other office.

24 (2) The bylaws may provide for a chairperson of the board of directors. The offices of chair-  
 25 person and president may be combined in one person. However, notwithstanding subsection (1) of  
 26 this section, a person who is not a director may not serve as chairperson of the board of directors.

27 (3) Any other officer may be chosen by the board.

28 (4) All officers shall have such authority and perform such duties as the bylaws provide, or as  
 29 the board may determine, not inconsistent with the bylaws. Any officer may be removed by the  
 30 board whenever in [its] **the board's** judgment the **removal will serve the** best interests of the co-  
 31 operative [*will be served thereby*]. Election or appointment [*shall not of itself*] **alone does not** create  
 32 contract rights.

33 **(5) An officer of a cooperative shall discharge the duties of an officer as a fiduciary of**  
 34 **the cooperative, exercising the care an ordinarily prudent person would exercise in con-**  
 35 **ducting the person's own affairs, in a manner the officer reasonably believes is in the best**  
 36 **interests of the cooperative and under a duty of loyalty to the cooperative and a duty to**  
 37 **exercise the officer's responsibilities in an informed and considered manner.**

38 **(6) The Attorney General may investigate a complaint from a member of a cooperative**  
 39 **that alleges that a principal officer has breached a fiduciary duty the officer owes to the**  
 40 **cooperative or to members of the cooperative under this section or has misrepresented the**  
 41 **financial condition of the cooperative. The Attorney General may bring an action in a court**  
 42 **of this state on behalf of the cooperative or members of the cooperative to recover damages**  
 43 **that the cooperative or members of the cooperative have incurred or to seek an injunction**  
 44 **against an action of the officer that breaches the officer's fiduciary duty.**

45 **(7) A member of a cooperative may bring an action in a court of this state to recover**

1 **damages the member incurred as a result of a principal officer's breach of fiduciary duty to**  
2 **the cooperative or to the member or to seek an injunction against an action of the officer**  
3 **that breaches the officer's fiduciary duty.**

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