

D R A F T

SUMMARY

Modifies exemptions from liability related to sale or successful solicitation of sale of security in violation of securities law.

A BILL FOR AN ACT

Relating to securities law; amending ORS 59.115.

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

SECTION 1. ORS 59.115 is amended to read:

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

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

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

(2) The purchaser may recover:

(a) Upon tender of the security, the consideration paid for the security, and interest from the date of payment equal to the greater of the rate of

1 interest specified in ORS 82.010 for judgments for the payment of money or
2 the rate provided in the security if the security is an interest-bearing obli-
3 gation, less any amount received on the security; or

4 (b) If the purchaser no longer owns the security, damages in the amount
5 that would be recoverable upon a tender, less the value of the security when
6 the purchaser disposed of it and less interest on such value at the rate of
7 interest specified in ORS 82.010 for judgments for the payment of money from
8 the date of disposition.

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

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

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

30 (6) Except as otherwise provided in this subsection, no action or suit may
31 be commenced under this section more than three years after the sale. An

1 action under this section for a violation of subsection (1)(b) of this section
2 or ORS 59.135 may be commenced within three years after the sale or two
3 years after the person bringing the action discovered or should have discov-
4 ered the facts on which the action is based, whichever is later. Failure to
5 commence an action on a timely basis is an affirmative defense.

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

8 (8) Any person having a right of action against a broker-dealer, state in-
9 vestment adviser or against a salesperson or investment adviser represen-
10 tative acting within the course and scope or apparent course and scope of
11 authority of the salesperson or investment adviser representative, under this
12 section shall have a right of action under the bond or irrevocable letter of
13 credit provided in ORS 59.175.

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

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

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

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

22 (11) The court may not award attorney fees to a prevailing defendant
23 under the provisions of subsection (10) of this section if the action under this
24 section is maintained as a class action pursuant to ORCP 32.

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