

House Bill 2232

Sponsored by Representative WILDE (Presession filed.)

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**.

Requires person subject to requirement to obtain license under Oregon Securities Law to disclose to individual that person is not fiduciary if person is not subject to or has not assumed fiduciary duty with respect to individual. Specifies requirements for disclosure.

Requires person subject to requirement to obtain license under Oregon Securities Law to assume fiduciary duty with respect to individual to whom person provides counsel or advice or on behalf of whom person transacts business related to individual's investments in retirement benefit plan that is not subject to federal Employee Retirement Income Security Act of 1974.

Punishes violation of Act by maximum of 364 days' imprisonment, \$6,250, or both.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to fiduciary duties of persons that are subject to Oregon Securities Law; creating new
3 provisions; amending ORS 59.991; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 59.005 to 59.505.**

6 **SECTION 2. A person that is subject to a requirement to obtain a license under ORS
7 59.165 shall:**

8 (1)(a) **Disclose orally and in writing to an individual with whom the person transacts
9 business as a broker-dealer, salesperson or state investment adviser, or in any other capacity
10 in which the individual relies on the person for counsel or advice regarding a transaction in
11 securities, that the person is not a fiduciary if the person is not subject to, or has not as-
12 sumed, a fiduciary duty with respect to the individual.**

13 (b) **In the disclosure described in paragraph (a) of this subsection, explain the duties to
14 which a fiduciary is subject and specifically disclaim the duties that the person does not as-
15 sume with respect to the individual.**

16 (c) **Provide the disclosure described in paragraph (a) of this subsection as an oral state-
17 ment or writing, as appropriate, that is separate from any other communication or document
18 the person has with or provides to the individual.**

19 (2) **Assume a duty as a fiduciary with respect to an individual for whom, in return for
20 compensation, the person provides counsel or advice or on behalf of whom, in return for
21 compensation, the person transacts business related to the individual's investments in a re-
22 tirement benefit plan that is not subject to the Employee Retirement Income Security Act
23 of 1974 (29 U.S.C. 1001 et seq.), as in effect on the effective date of this 2021 Act.**

24 **SECTION 3. ORS 59.991 is amended to read:**

25 59.991. (1) Except as provided in [*subsection (3)*] **subsections (2) and (3)** of this section, violation
26 of any provision of ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995 or any rule adopted by
27 the Director of the Department of Consumer and Business Services under ORS 59.005 to 59.505,

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 59.710 to 59.830, 59.991 and 59.995, except ORS 59.315 (2) or 59.810, is a Class B felony.

2 (2) Violation of ORS 59.315 (2) or 59.810 **or section 2 of this 2021 Act** is a Class A
3 misdemeanor.

4 (3) This section does not apply to a failure to file a notice and pay a fee under ORS 59.049 (1),
5 (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure
6 to pay a fee pursuant to ORS 59.175 (9), nor to a violation of any rule adopted by the director under
7 ORS 59.049 (1), (2) or (3) or 59.165 (7).

8 **SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 59.991 by section 3**
9 **of this 2021 Act apply to transactions that occur on or after the effective date of this 2021**
10 **Act between an individual and a person that is subject to a requirement to obtain a license**
11 **under ORS 59.165.**

12 **SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021**
13 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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