

Enrolled House Bill 2274

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to securities regulation; creating new provisions; amending ORS 59.245, 59.995 and 705.137; and prescribing an effective date.

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

SECTION 1. ORS 59.245 is amended to read:

59.245. (1) The Director of the Department of Consumer and Business Services **may**:

[(1)] (a) [May] Make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated or is about to violate any provision of the Oregon Securities Law or any rule or order of the director, or to aid in the enforcement of the Oregon Securities Law or in the formulation of rules and forms thereunder;

(b) Make any proper inquiry of a person that is licensed or required to be licensed as a broker-dealer, salesperson, investment adviser representative or state investment adviser, or any officer, partner, director or authorized representative of a broker-dealer, salesperson, investment adviser representative or state investment adviser, in relation to the activities or condition of the broker-dealer, salesperson, investment adviser representative or state investment adviser or in relation to any other matter connected with offering, purchasing or selling any security or conducting a securities business;

[(2)] (c) [May] Require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated; **and**

[(3)] (d) [May] Publish information concerning any violation of the Oregon Securities Law or any rule or order of the director[; and].

(2) A person shall promptly and truthfully reply to an inquiry from the director in relation to any matter connected directly or indirectly with an offer, purchase or sale of any security or the conduct of a securities business. The person shall reply using the form of communication the director requests, and the person shall verify the reply in the manner and form that the director specifies. A person's reply under this subsection is subject to the provisions of ORS 59.135 (4) and 59.451.

[(4)] (3) If the director has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, **the director** may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation.

(4) Except as provided in subsections (5) to (8) of this section, the following documents, material and other information are confidential and may not be disclosed except as provided in ORS 705.137:

(a) Any tip, complaint or referral made to the director against any person that is subject to the director's general supervision under ORS 59.235 and the record of the tip, complaint or referral;

(b) Any examination made by the director under the Oregon Securities Law and the record of the examination, including any documents, material and other information the director gathers, compiles or creates in connection with the examination, but excluding any final report of the examination; and

(c) Any investigation or inquiry the director makes under the Oregon Securities Law and the record of the investigation or inquiry, including any documents, material or other information the director gathers, compiles or creates in connection with the investigation or inquiry, but only during the pendency of the investigation or inquiry or during the pendency of a related action, suit or proceeding by the director, the Attorney General or other government entity to enforce a provision of the Oregon Securities Law or a rule or order of the director.

(5) The director may use documents, materials and other information that are confidential under subsection (4) of this section to the extent that the director considers necessary in investigating or prosecuting apparent violations of the Oregon Securities Law and as otherwise provided in ORS 705.137.

(6) Notwithstanding ORS 40.270, an officer of the Department of Consumer and Business Services may be examined concerning records that are exempt from disclosure under subsection (4) of this section and the records are subject to examination and production if a court or arbitrator finds that the examination and production are essential for establishing a claim or defense in a civil or criminal action or an arbitration, or that a person other than the director possessed or controlled the records but the person is not available, cannot produce the records or make the records available for examination or is not subject to subpoena in this state. In making a finding under this subsection, a court or arbitrator may view in camera the records the court or arbitrator requires to be produced.

(7) If the director, in the director's sole discretion, determines that disclosure is necessary to protect the public interest, the director may make available the records described in subsection (4) of this section.

(8) Subsection (4) of this section does not prevent disclosure of documents, material or other information that a person other than the director possesses or controls or make the documents, material or other information confidential or subject to ORS 705.137.

SECTION 2. ORS 59.995 is amended to read:

59.995. (1)(a) Except as provided in [paragraph] paragraphs (b) and (c) of this subsection, in addition to all other penalties and enforcement provisions provided by law, any person [who] that violates or [who] procures, aids or abets the violation of **this section and** ORS 59.005 to 59.505, 59.710 to 59.830[,] **and** 59.991 [and 59.995] or any rule or order of the Director of the Department of Consumer and Business Services [shall be] **is** subject to a penalty of not more than \$20,000 for every violation, which [shall] **must** be paid to the General Fund of the State Treasury.

(b) [Notwithstanding paragraph (a) of this subsection,] Any person [who] that violates or [who] procures, aids or abets the violation of ORS 59.485 or of any rule [adopted by] the director **adopts** for administration of ORS 59.480 to 59.505 [shall be] **is** subject to a penalty of not more than \$1,000 for every violation, which [shall] **must** be paid to the General Fund of the State Treasury.

(c) **A person that violates or procures, aids or abets a violation of this section or ORS 59.005 to 59.505, 59.710 to 59.830 and 59.991 or any rule or order of the director and that knows or should know that the act or practice that constitutes the violation injures, or is otherwise directed at, a vulnerable person, as defined in ORS 124.100, is in addition to all other penal-**

ties and enforcement provisions provided by law subject to a penalty of not more than \$60,000 for each violation, which must be paid to the General Fund of the State Treasury.

(2) Every violation described in subsection (1)(a) **and (c)** of this section is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation **under subsection (1)(a) of this section [shall] may not exceed \$100,000 and the maximum penalty for a continuing violation under subsection (1)(c) of this section may not exceed \$300,000.**

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) In addition to imposing a penalty provided under this section, the director may order a person whose acts, omissions, practices, operations or violation of ORS 59.005 to 59.505 and 59.710 to 59.830 or a rule or order of the director causes harm to another person to pay restitution to the other person.

[4] (5) This section does not apply to:

(a) A failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3)[, *nor to*];

(b) A failure to file a notice and pay a fee pursuant to ORS 59.165 (7)[, *nor to*];

(c) A failure to pay a fee pursuant to ORS 59.175 (9)[, *nor to*]; **or**

(d) A violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3) or 59.165 (7).

SECTION 3. ORS 705.137 is amended to read:

705.137. (1) Except as provided in subsection (3) of this section, a document, material or other information that the Department of Consumer and Business Services possesses or controls for the purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.311 to 192.478, is not subject to subpoena and is not subject to discovery or admissible in evidence in a private civil action. The Director of the Department of Consumer and Business Services may use a confidential document, material or other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code and in furthering a regulatory or legal action the director brings as a part of the director's duties.

(2) A document, material or other information to which subsection (1) of this section applies is subject to the public officer privilege described in ORS 40.270.

(3) In order to assist in the performance of the director's duties, the director may:

(a) Authorize sharing a confidential document, material or other information that is subject to subsection (1) of this section as appropriate among the administrative divisions and staff offices of the department created under ORS 705.115 for the purpose of administering and enforcing the statutes identified in subsection (1) of this section, in order to enable the administrative divisions and staff offices to carry out the functions and responsibilities of the administrative divisions and staff offices.

(b) Share a document, material or other information, including a confidential document, material or other information that is subject to subsection (1) of this section or that is otherwise confidential under ORS 192.345 or 192.355, with other state, federal, foreign and international regulatory and law enforcement agencies, with the Federal Reserve Board, [*and*] with the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners **and with the North American Securities Administrators Association and successors, affiliates or subsidiaries of the North American Securities Administrators Association**, if the recipient agrees to maintain the confidentiality of the document, material or other information.

(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies, from the Federal Reserve Board, [*and*] from the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance

Commissioners **and from the North American Securities Administrators Association and successors, affiliates or subsidiaries of the North American Securities Administrators Association.** As provided in this section, the director shall maintain the confidentiality of documents, materials or other information the director receives if the director receives notice or has an understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(4) Disclosing a document, material or other information to the director under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

(5) This section does not prohibit the director from disclosing to a database or other clearing-house service maintained by the National Association of Insurance Commissioners or affiliates or subsidiaries of the National Association of Insurance Commissioners, **or by the North American Securities Administrators Association and successors, affiliates or subsidiaries of the North American Securities Administrators Association,** information about a final, adjudicated action, including a suspension or revocation of a certificate of authority or a license, if the information is otherwise open to public inspection.

SECTION 4. The amendments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this 2023 Act apply to any business or transaction that is subject to the Oregon Securities Law, to ORS 59.535 to 59.585 or to ORS 59.710 to 59.830, or any action or proceeding to enforce the provisions of the Oregon Securities Law, ORS 59.535 to 59.585 or 59.710 to 59.830, that occurs on or after the operative date specified in section 5 of this 2023 Act.

SECTION 5. (1) The amendments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this 2023 Act become operative on January 1, 2024.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the director by the amendments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this 2023 Act.

SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House April 5, 2023

Repassed by House June 22, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State