

HOUSE AMENDMENTS TO HOUSE BILL 2274

By COMMITTEE ON EMERGENCY MANAGEMENT, GENERAL GOVERNMENT, AND
VETERANS

March 28

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest of the line and lines 3
2 through 7 and insert “amending ORS 59.245, 59.995 and 705.137; and prescribing an effective
3 date.”.

4 Delete lines 9 through 31 and delete pages 2 through 50 and insert:

5 “**SECTION 1.** ORS 59.245 is amended to read:

6 “59.245. (1) The Director of the Department of Consumer and Business Services **may**:

7 “[1] (a) [May] Make such public or private investigations within or outside this state as the
8 director deems necessary to determine whether a person has violated or is about to violate any
9 provision of the Oregon Securities Law or any rule or order of the director, or to aid in the
10 enforcement of the Oregon Securities Law or in the formulation of rules and forms thereunder;

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

18 “[2] (c) [May] Require or permit a person to file a statement in writing, under oath or other-
19 wise as the director determines, as to all the facts and circumstances concerning the matter to be
20 investigated; **and**

21 “[3] (d) [May] Publish information concerning any violation of the Oregon Securities Law or
22 any rule or order of the director[; *and*].

23 “(2) **A person shall promptly and truthfully reply to an inquiry from the director in re-**
24 **lation to any matter connected directly or indirectly with an offer, purchase or sale of any**
25 **security or the conduct of a securities business. The person shall reply using the form of**
26 **communication the director requests, and the person shall verify the reply in the manner**
27 **and form that the director specifies. A person’s reply under this subsection is subject to the**
28 **provisions of ORS 59.135 (4) and 59.451.**

29 “[4] (3) If the director has reason to believe that any person has engaged, is engaging or is
30 about to engage in any violation of the Oregon Securities Law, **the director** may issue an order,
31 subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened
32 violation.

33 “(4) **Except as provided in subsections (5) and (6) of this section, the following documents,**
34 **material and other information are confidential and may not be disclosed except as provided**
35 **in ORS 705.137:**

1 “(a) Any tip, complaint or referral made to the director against any person that is sub-
2 ject to the director’s general supervision under ORS 59.235 and any record of the tip, com-
3 plaint or referral;

4 “(b) Any examination the director conducts under the Oregon Securities Law and any
5 record of the examination, including any documents, material and other information the di-
6 rector gathers, compiles or creates in connection with the examination, but excluding any
7 final report of the examination; and

8 “(c) Any investigation the director conducts or inquiry the director makes under the
9 Oregon Securities Law and any record of the investigation or inquiry, including any docu-
10 ments, material or other information the director gathers, compiles or creates in connection
11 with the investigation or inquiry, but only during the pendency of the investigation or inquiry
12 or during the pendency of a related action, suit or proceeding to enforce a provision of the
13 Oregon Securities Law or a rule or order of the director.

14 “(5) The director may use in an action, suit or proceeding documents, materials and
15 other information that is confidential under subsection (4) of this section to the extent that
16 the director considers necessary in investigating or prosecuting apparent violations of the
17 Oregon Securities Law and as otherwise provided in ORS 705.137.

18 “(6) Notwithstanding ORS 40.270, an officer of the Department of Consumer and Business
19 Services may be examined concerning records that are exempt from disclosure under sub-
20 section (4) of this section and the records are subject to production if a court finds that the
21 examination and production are essential for establishing a claim or defense in a civil or
22 criminal action. In making a finding under this subsection, a court shall view in camera the
23 records the court requires to be produced.

24 “**SECTION 2.** ORS 59.995 is amended to read:

25 “59.995. (1)(a) Except as provided in [*paragraph*] **paragraphs (b) and (c)** of this subsection, in
26 addition to all other penalties and enforcement provisions provided by law, any person [*who*] **that**
27 violates or [*who*] procures, aids or abets the violation of **this section and** ORS 59.005 to 59.505,
28 59.710 to 59.830[,] **and** 59.991 [*and 59.995*] or any rule or order of the Director of the Department
29 of Consumer and Business Services [*shall be*] **is** subject to a penalty of not more than \$20,000 for
30 every violation, which [*shall*] **must** be paid to the General Fund of the State Treasury.

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

35 “(c) **A person that violates or procures, aids or abets a violation of this section or ORS**
36 **59.005 to 59.505, 59.710 to 59.830 and 59.991 or any rule or order of the director and that knows**
37 **or should know that the act or practice that constitutes the violation injures, or is otherwise**
38 **directed at, a vulnerable person, as defined in ORS 124.100, is in addition to all other penalties**
39 **and enforcement provisions provided by law subject to a penalty of not more than \$60,000 for**
40 **each violation, which must be paid to the General Fund of the State Treasury.**

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

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

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

6 “[~~4~~] (5) This section does not apply to:

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

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

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

10 “(d) A violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3) or 59.165
11 (7).

12 “**SECTION 3.** ORS 705.137 is amended to read:

13 “705.137. (1) Except as provided in subsection (3) of this section, a document, material or other
14 information that the Department of Consumer and Business Services possesses or controls for the
15 purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to
16 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and 726, the
17 Bank Act and the Insurance Code and that is described in statute as confidential or as not subject
18 to disclosure is not subject to disclosure under ORS 192.311 to 192.478, is not subject to subpoena
19 and is not subject to discovery or admissible in evidence in a private civil action. The Director of
20 the Department of Consumer and Business Services may use a confidential document, material or
21 other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095,
22 697.602 to 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and
23 726, the Bank Act and the Insurance Code and in furthering a regulatory or legal action the director
24 brings as a part of the director’s duties.

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

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

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

34 “(b) Share a document, material or other information, including a confidential document, mate-
35 rial or other information that is subject to subsection (1) of this section or that is otherwise confi-
36 dential under ORS 192.345 or 192.355, with other state, federal, foreign and international regulatory
37 and law enforcement agencies, with the Federal Reserve Board, [*and*] with the National Association
38 of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance
39 Commissioners **and with the North American Securities Administrators Association and suc-**
40 **cessors, affiliates or subsidiaries of the North American Securities Administrators Associ-**
41 **ation**, if the recipient agrees to maintain the confidentiality of the document, material or other
42 information.

43 “(c) Receive a document, material or other information, including an otherwise confidential
44 document, material or other information, from state, federal, foreign and international regulatory
45 and law enforcement agencies, from the Federal Reserve Board, [*and*] from the National Association

1 of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance
2 Commissioners **and from the North American Securities Administrators Association and suc-**
3 **cessors, affiliates or subsidiaries of the North American Securities Administrators Associ-**
4 **ation.** As provided in this section, the director shall maintain the confidentiality of documents,
5 materials or other information the director receives if the director receives notice or has an
6 understanding that the document, material or other information is confidential or privileged under
7 the laws of the jurisdiction that is the source of the document, material or other information.

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

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

19 “**SECTION 4. The amendments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this**
20 **2023 Act apply to any business or transaction that is subject to the Oregon Securities Law,**
21 **to ORS 59.535 to 59.585 or to ORS 59.710 to 59.830, or any action or proceeding to enforce the**
22 **provisions of the Oregon Securities Law, ORS 59.535 to 59.585 or 59.710 to 59.830, that occurs**
23 **on or after the operative date specified in section 5 of this 2023 Act.**

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

26 “(2) **The Director of the Department of Consumer and Business Services may adopt rules**
27 **and take any other action before the operative date specified in subsection (1) of this section**
28 **that is necessary to enable the director, on and after the operative date specified in sub-**
29 **section (1) of this section, to undertake and exercise all of the duties, functions and powers**
30 **conferred on the director by the amendments to ORS 59.245, 59.995 and 705.137 by sections**
31 **1 to 3 of this 2023 Act.**

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