House Bill 2274

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

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.

Updates, clarifies and modernizes provisions of the Oregon Securities Law and related statutes. Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT


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

SECTION 1. ORS 59.015 is amended to read:

59.015. As used in the Oregon Securities Law, unless the context otherwise requires:

(1)(a) “Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in purchasing or selling securities or represents an issuer in purchasing or selling the issuer's own securities, except that a partner, director or officer of a broker-dealer or issuer, or an individual with a similar status who performs similar functions, is an agent only if the partner, director, officer or other individual represents a broker-dealer or issuer as provided in this subsection.

(b) “Agent” does not include an individual who:

(A) Performs only the following functions for an issuer:

(i) Preparing written communications;

(ii) Responding to inquiries; or

(iii) Performing other ministerial or clerical work;

(B) Acts on behalf of an issuer with respect to an offering or purchase of the issuer's own securities or the securities of a parent or subsidiary of the issuer, if the individual:

(i) Primarily performs, or is expected to primarily perform upon completion of an offering, substantial duties on behalf of the issuer or a parent or subsidiary of the issuer other than duties related to transactions in the issuer's own securities; and

(ii) Does not receive for performing the duties compensation from commissions, or similar remuneration, directly or indirectly derived from or based on transactions in the issuer's own securities; or

(C) Is specified by the Director of the Department of Consumer and Business Services

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.

LC 427
by rule or order.

(1) (a) “Broker-dealer” means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person’s own account.

(b) “Broker-dealer” does not include:

(A) An agent;

(B) An issuer effecting sales in [its] the issuer’s own securities;

(C) The following institutions, to the extent that an appropriate statutory regulatory authority exercises control over, regulates or supervises the institution in the sale of securities in accordance with the purposes set forth in ORS 59.005 to 59.505, 59.991 and 59.995:

(i) A financial institution or trust company, as defined in ORS 706.008; or

(ii) A financial holding company or bank holding company, as those terms are defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory regulatory authority is exercising control over, or is regulating or supervising the person in the sale of securities in accord with the purposes of the Oregon Securities Law;

(D) A person [who has no] that, without maintaining a place of business in this state, effects transactions in this state exclusively with broker-dealers;

(E) A person effecting sales exempted by ORS 59.035;

(F) A salesperson;

(G) A person effecting sales of securities exempted by ORS 59.025 (7);

(H) A person licensed as a mortgage banker or a mortgage broker under ORS 86A.095 to 86A.198 when effecting sales of securities involving real estate paper registered for sale [pursuant to] under ORS 59.065; or

(I) [A person designated by rule or order by] Any other person that the director specifies by rule or order.

(2) (a) “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(b) “Director” means the Director of the Department of Consumer and Business Services.

(3) “Federal covered investment adviser” means a person who is registered as an investment adviser [pursuant to] under section 203 of the Investment Advisers Act of 1940[. as amended].

(4) “Federal covered security” means any security that is a covered security under section 18 of the Securities Act of 1933[, as amended], and for which [such] the Securities Act of 1933 provides that the director may require filing [of] a notice and [payment of] paying a fee.

(5) “Fraud,” “deceit” and “defraud” are not limited to common-law deceit.
“Guaranteed” means guaranteed as to payment of all principal[,] and all interest or dividends.

(7) “Institutional investor” means any of the following institutions or investors, whether acting on the institution's or investor's own behalf or acting in a fiduciary capacity for another person:

(a) A depository institution, as defined in 12 U.S.C. 1813(c), as in effect on the effective date of this 2023 Act.

(b) An international bank.

(c) An insurer, as defined in ORS 731.106, or a separate account that an insurer maintains for purposes of investment.

(d) An investment company, as defined in the Investment Company Act of 1940.

(e) A broker-dealer that is registered under the Securities Exchange Act of 1934.

(f) An employee pension, profit-sharing or benefit plan, if:

(A) The plan has total assets in excess of $25 million; or

(B) A named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, P.L. 93-406, makes the plan's investment decisions and the named fiduciary is:

(i) A broker-dealer;

(ii) An investment adviser registered or exempt from registration under the Investment Advisers Act of 1940;

(iii) An investment adviser registered under ORS 59.175;

(iv) A depository institution, as described in paragraph (a) of this subsection; or

(v) An insurer, as defined in ORS 731.106.

(g) A plan that a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, establishes and maintains for the benefit of the employees of the state or political subdivision of the state, if:

(A) The plan has total assets in excess of $25 million; or

(B) A duly designated public official or a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq., makes the plan's investment decisions. If a named fiduciary makes the plan's investment decisions, the named fiduciary must be:

(i) A broker-dealer, as described in paragraph (e) of this subsection;

(ii) An investment adviser registered or exempt from registration under the Investment Advisers Act of 1940;

(iii) An investment adviser registered under ORS 59.175;

(iv) A depository institution, as described in paragraph (a) of this subsection; or

(v) An insurer, as defined in ORS 731.106.

(h) A trust, other than a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans, if the trust:

(A) Has total assets in excess of $25 million; or

(B) Has assets of any amount, the trustee is a depository institution, as described in paragraph (a) of this subsection, and the participants in the trust are exclusively plans of the types described in paragraphs (f) and (g) of this subsection.

(i) An organization with total assets in excess of $25 million that is not formed for the specific purpose of acquiring offered securities, including:

(A) An organization that is formed for purposes that are exempt from taxation under
section 501c(3) of the Internal Revenue Code;

(B) A corporation or limited liability company;

(C) A partnership or limited liability partnership; or

(D) A Massachusetts business trust or similar business trust.

(j) A small business investment company with total assets in excess of $25 million that the United States Small Business Administration licensed under section 301(c) or (d) of the Small Business Investment Act of 1958, P.L. 85-699.

(k) A private business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940, with total assets in excess of $25 million.

(L) A person that is registered as a federal covered investment adviser under section 203 of the Investment Advisers Act of 1940 and is acting on the person's own account.

(m) A qualified institutional buyer, as defined in 17 C.F.R. 230.144A(a)(1), other than a qualified institutional buyer as defined in 17 C.F.R. 230.144A(a)(1)(i)(H).

(n) A major U.S. institutional investor, as defined in 17 C.F.R. 240.15a-6(b)(4)(i).

(o) Any other institutional investor with total assets in excess of $25 million that is not organized for the specific purpose of acquiring offered securities.

(p) Any other person the director specifies by rule or order.

(8)(a) “Investment adviser representative” means any partner, officer, director or person occupying a similar status or performing a similar function, or other individual, except clerical or ministerial personnel, who is employed by or associated with:

(A) A state investment adviser that is licensed or required to be licensed in this state and who does any of the following:

(i) Makes any recommendations or otherwise renders advice regarding securities;

(ii) Manages accounts or portfolios of clients;

(iii) Determines which recommendation or advice regarding securities should be given;

(iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or

(v) Supervises employees acting under this subparagraph; or

(B) A federal covered investment adviser, subject to the limitations of section 203A of the Investment Advisers Act of 1940, as amended, as the director may designate by rule or order.

(b) “Investment adviser representative” does not include a person designated by rule or order of the director.

(9) “Issuer” means a person who issues, proposes to issue or has issued a security and includes an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the “issuer” is the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other instrument or agreement under which the security is issued.

(8)(a) “Investment adviser representative” means an individual who, as an employee of, or when associated with, an investment adviser or a federal covered investment adviser:

(A) Makes recommendations or otherwise gives advice about securities or determines which recommendations or advice should be given;

(B) Manages client accounts or portfolios;

(C) Provides or purports to provide investment advice;

(D) Receives compensation for soliciting, offering or negotiating to sell, or for the sale
of, investment advice; or
(E) Supervises other employees or associates who perform any of the functions described
in subparagraphs (A) to (D) of this paragraph.

(b) “Investment adviser representative” does not include an individual who:
(A) Performs only clerical or ministerial acts; or
(B) Is an agent, gives investment advice only incidentally as part of the individual’s du-
    ties as an agent and does not receive special compensation for giving investment advice;
(c) Is an employee of, or is associated with, a federal covered investment adviser, but
does not:
    (A) Have a place of business, as defined in 17 C.F.R. 275.203A-3(b), in this state and is
        not an investment adviser representative, as defined in 17 C.F.R. 275.203A-3(a); or
    (B) Have a place of business, as defined in 17 C.F.R. 275.203A-3(b), in this state and is
        not a supervised person, as defined in section 202(a)(25) of the Investment Advisers Act of
        1940; or
    (d) Is excluded from the definition of investment adviser representative under a rule or
        order adopted or issued by the director.

(9) “Investment Advisers Act of 1940” means the federal law passed as P.L. 76-768 and
codified as 15 U.S.C. 80b-1 to 80b-21, as in effect on the effective date of this 2023 Act.
(10) “Investment Company Act of 1940” means the federal law passed as P.L. 76-768 and
codified as 15 U.S.C. 80a-1 to 80a-64, as in effect on the effective date of this 2023 Act.
(11) “Issuer” means a person that issues, proposes to issue or has issued a security and:
    (a) Acts as, and assumes the duties of, a depositor or manager under a trust agreement
        or other agreement or instrument under which the security is issued, if the security is a
        voting trust certificate, a collateral trust certificate, a certificate of deposit for a security
        or a share in an investment company without a board of directors or without individuals who
        perform functions similar to the functions of a board of directors;
    (b) Uses or will use, leases or will lease or conditionally purchases or will conditionally
        purchase property or equipment that is subject to an equipment trust certificate or a similar
        security that serves the same purpose, or is otherwise contractually liable for assuring pay-
        ment of the equipment trust certificate or the similar security; or
    (c) Owns an interest in an oil, gas or other mineral lease or owns an interest in payments
        out of production under a lease, right or royalty, whether whole or fractional, that creates
        fractional interests for the purpose of sale, if the security is a fractional undivided interest
        in a lease or in payments out of production under a lease, right or royalty.

[(10) “License” means a license as provided under the Oregon Securities Law.]
[(11)] (12) “Mortgage banker” means a mortgage banker as defined in ORS 86A.100.
[(12)] (13) “Mortgage broker” means a mortgage broker as defined in ORS 86A.100.
[(14) “Nonissuer transaction” means a transaction or distribution that does not directly
or indirectly benefit an issuer.
(15) “Offer to purchase” means any attempt to obtain or solicit, for value, an offer to sell
a security or an interest in a security.

[(13) (16) [“Offer” or “Offer to sell” [includes every] means any attempt or offer to dispose of,
or [solicitation of] solicit an offer to buy, a security or interest in a security for value, Every], in-
cluding an offer or solicitation of the security through a sale or offer of a warrant or right to
purchase or subscribe to another security of the same or another issuer, [as well as every] or a sale
or offer of a security [which] that gives the holder a present or future right or privilege to convert into another security of the same or another issuer[. is considered to include an offer of the other security].

(17) “Person” [includes] means an individual, a joint venture, a partnership, a limited liability partnership, a cooperative, a limited liability company, an association, a joint stock company, a corporation, a public corporation, a trust, a business trust, an estate, an unincorporated organization, [or] a government or political subdivision of a government, an agency or instrumentality of a government or political subdivision of a government or any other legal or commercial entity.

(18) “Place of business” means an office or any other location open to the public at which a broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with clients or customers.

(19) “Price amendment” means an amendment to a registration statement or a prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of an offering price, underwriting and selling discounts or commissions, the amount of proceeds, conversion rates, call prices and other matters that depend upon the offering price.

(20) “Principal place of business” means the executive office of a broker-dealer or investment adviser from which the partners, officers or managers of the broker-dealer or investment adviser direct, control and coordinate the activities of the broker-dealer or investment adviser.

(21) “Real estate paper” means any obligation secured or purportedly secured by an interest in real property. Real estate paper includes including, but [is] not limited to, mortgage-backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits.

(22) “Record” means information, other than an official record, a public record or an item that is of record, that is inscribed on a tangible medium or that is stored in an electronic medium or other medium that can be retrieved in perceivable form.

(23)(a) “Sale” or “sell” [includes] means every contract of sale of, contract to sell, or disposition of, a security or item of value for a security or interest in a security for value[, including;]

(A) Any security or item of value that is given or delivered with, or as a bonus on account of, a purchase of [securities or any other thing shall constitute a part of the subject of the purchase and shall have been offered and sold for value.] the security;

(B) A gift of assessable stock by or for any issuer or promoter [shall constitute a sale.]; and

(C) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms “sale” and “sell” include the terms “offer” and “offer to sell.”] an offer of a security or an offer to sell a security.

(b) “Sale” and “sell” do not include:

(A) A bona fide pledge or loan of securities;

(B) A bona fide security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if the recipients do not give anything [nothing] of value [is given by the recipients] for the dividend other than payments in connection with the elimination of fractional shares; or

(C) An act incident to a judicially approved reorganization in which a security is issued in ex-
change for one or more outstanding securities, claims or property interests, or partly in such ex-
change and partly for cash.

[(18)(a) “Salesperson” means a person, other than a broker-dealer, who represents or purports to
represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any man-
ner transactions in securities.]

[(b) “Salesperson” does not include:]
[(A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;]
[(B) A person who represents an issuer in effecting sales exempted by ORS 59.035;]
[(C) A person who represents an issuer in effecting sales with existing partners or directors of the
issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any
person in this state;]
[(D) An employee of an institution or organization described in subsection (1)(b) of this section to
the extent the employee is not a dual employee of the institution and a broker-dealer;]
[(E) A person effecting transactions in this state limited to those transactions described in section
15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or]
[(F) A person designated by rule or order by the director.]}

[(c) A person who is a partner, director or officer of a broker-dealer, issuer or owner of securities,
or a person who occupies a similar status or performing similar functions, is a “salesperson” only if
the person otherwise comes within this definition.]}

(24) “Securities Act of 1933” means the federal law passed as P.L. 73-22 and codified as
15 U.S.C. 77a to 77aa, as in effect on the effective date of this 2023 Act.

(25) “Securities Exchange Act of 1934” means the federal law passed as P.L. 73-291 and
codified as 15 U.S.C. 78a to 78qq, as in effect on the effective date of this 2023 Act.

[(19)(a) (26)(a) “Security” means any of the following items, whether certificated or un-
certificated:
(A) A note, stock, treasury stock, security feature, bond, debenture[,] or evidence of
indebtedness[,] ;
(B) A Certificate of interest or participation in a pension plan or profit-sharing agreement,
collateral-trust certificate, preorganization certificate or subscription, transferable share, investment
contract[,] or voting-trust certificate[,] ;
(C) A variable annuity[,] ;
(D) A certificate of deposit for a security[,] or a group or index of securities, including an
interest in or based upon the value of the certificate, group or index;
(E) A put, call, straddle or other option on a security;
(F) A put, call, straddle or other option relating to foreign currency if the put, call,
straddle or option is entered into on a national securities exchange;
(G) A certificate of interest or participation in an oil, gas, or mining title or lease or in pay-
ments out of production under such title or lease[,] ;
(H) Real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person
described in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035
(4)[,]; or[, in general,]
(I) Any interest or instrument commonly known as a [“security,” ] security or any certificate
of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or
warrant or right to subscribe to or purchase any of the [foregoing] items listed in subparagraphs
(A) to (H) of this paragraph.
(b) “Security” does not include:

(A) An insurance or endowment policy or annuity contract, other than a variable annuity contract, under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or some other specified period;

(B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.505; or

(C) A beneficial interest in a testamentary trust.

(27) “Sign” means an act that evidences a present intent to authenticate or adopt a record by either of the following means:

(a) Executing or adopting a tangible symbol on, or logically associated with, the record; or

(b) Attaching or logically associating an electronic symbol, sound or process with the record.

(28) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession that is subject to the jurisdiction of the United States.

[(20)(a)] (29)(a) “State investment adviser” means a person who, for compensation:

(A) Engages [all or part of the time of the person,] full-time or part-time in this state[,] in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities;

(B) Engages [all or part of the time of the person,] full-time or part-time in this state[,] in the business of managing an investment or trading account in securities for other persons; or

(C) Issues or promulgates, as part of a regular business in this state, analyses or reports concerning securities.

(b) “State investment adviser” does not include:

(A) An investment adviser representative;

(B) An institution or organization described in subsection [(1)(b)] (2)(a)(C) of this section;

(C) A licensed broker-dealer [whose] for which performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and [who] that receives no special compensation for such services;

[(D) A salesperson licensed to a broker-dealer whose performance of investment advisory services is solely incidental to that person’s activities as a salesperson and who receives no special compensation for such services;]

[(E)] (D) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual or service, or business or financial publication, including regularly released electronic publications with [of] general[,] and regular [and] paid circulation;

[(F)] (E) A person whose only clients are federal covered investment advisers, state investment advisers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, [as amended,] pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting [for themselves] on the financial institutions’ or institutional buyers’ own behalf or as trustees;

[(G)] (F) A duly licensed or registered lawyer, engineer or accountant whose performance of investment advisory services is solely incidental to the practice of the profession;

[(H)] (G) A person whose advice, analyses or reports relate only to securities exempted by ORS
[(I)] (H) A federal covered investment adviser in compliance with ORS 59.165 [(7)] (9);  
[(J)] (I) A person, advising others, that [has no] does not have a place of business in this state  
and that has submitted a notarized affidavit to the director that declares that, during the  
preceding 12-month period, the person has had fewer than six clients, other than [those] persons  
[included] listed in subparagraph [(P)] (E) of this paragraph, who are residents of this state; or  
[(K)] (J) [Such other persons as the director may by rule or order designate] Any other person  
the director specifies by rule or order.

SECTION 2. ORS 59.025 is amended to read:

59.025. The following securities are exempt from the requirements of ORS 59.049 and 59.055:

(1)(a) A security, including an obligation or separate security as described in 17 C.F.R.  
230.131, [issued or guaranteed by] that the United States, [or] a state, [or by] a political subdivision  
of a state[, or an] agency or other instrumentality of the United States or a state issues or  
guarantees.

(b) Any other security offered in connection with or as part of a security described in paragraph  
(a) of this subsection, if the security cannot be severed and sold separately from the security described in paragraph (a) of this subsection.

(2) A security issued or guaranteed by a foreign government with which the United States is,  
at the time of the sale, maintaining diplomatic relations, or by a state, province or political subdivision of the foreign government that has the power of taxation or assessment, if the foreign government, state, province or political subdivision recognizes the security as a valid obligation.

(3) A security that represents an interest in or a direct obligation of, or is guaranteed by[,]

(a) A national bank, a federal savings and loan association, a federal credit union, a federal land bank or joint stock land bank, [or] a national farm loan association[,] or a United States branch of a foreign bank; or

(b) Any other depository institution, unless the Director of the Department of Consumer  
and Business Services by rule or order determines that the depository institution’s security  
is not exempt.

(4) Any of the following securities:

[(a) A security that, at the time the security is issued, is listed or approved for listing on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or any other exchange that the Director of the Department of Consumer and Business Services recognizes by rule;]

(a) A covered security for the purposes of section 18(b) of the Securities Act of 1933, 15  
U.S.C. 77r, as provided in 17 C.F.R. 230.146;

(b) A security that the NASDAQ Stock Market, NASDAQ Options Market or NASDAQ OMX Futures Exchange has designated or approved for designation at the time the security was issued;

(c) Any other security issued by a person or entity that issues a security listed or designated under paragraph (a) or (b) of this subsection, if the other security is of senior or substantially equal rank to the listed or designated security;

(d) A security issuable under rights or warrants listed or approved under paragraph (a), (b) or  
(c) of this subsection; or

(e) A warrant or right to purchase or subscribe to any security described in paragraph (a), (b),  
(c) or (d) of this subsection.

(5) A security that maintains a rating that the director approves in a recognized securities
(6) A security that represents an interest in or a direct obligation of, and that has been or will be issued by, a bank, trust company, savings and loan association or credit union and that is subject to the examination, supervision and control of a regulatory agency of this state.

(7) Commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce, if the commercial paper is not made the subject of a public offering.

(8) A security, the issuance of which the Public Utility Commission supervises, regulates or controls, if the Public Utility Commission supervises, regulates or controls the person or entity that issues the security.

(9) Stock or membership certificates that an agricultural cooperative corporation or irrigation association issues, if the agricultural cooperative corporation or irrigation association issues the stock or membership certificate as evidence of membership in the cooperative or association, as a patronage dividend or as evidence of a member's or a patron's respective interests in reserves or patronage dividends. This exemption does not apply to a cooperative or association that expects to engage in or is engaged in producing, processing or marketing forest products.

(10) Stock or membership certificates that a fishing cooperative corporation issues to members of the fishing cooperative corporation either for the purpose of showing membership or for the purpose of showing the members' respective interests in reserves or patronage dividends. For purposes of this subsection, a fishing cooperative corporation is an association of persons engaged commercially in harvesting, marketing or processing products of aquatic life from fresh and salt water, that is formed or operated under ORS chapter 62 with the purpose of commercially harvesting, marketing or processing such products or engaging in group bargaining with respect to the sale of such products.

(11) Stock or membership certificates issued by an association of consumers that is formed or operated under ORS chapter 62 with the purpose of providing groceries to the association's members, if the association issues the stock or certificates to members either for the purpose of showing membership in the association or for the purpose of showing the members' respective interests in patronage dividends or reserves. For purposes of the exemption under this subsection:

(a) The price of stock or a membership certificate may not exceed $300.

(b) The benefits must be limited to discounts on purchases or patronage dividends, or any combination of discounts and dividends.

(c) The association may issue only one stock or membership certificate to an individual.

(12) Subject to conditions that the director adopts by rule, stock or membership certificates that a renewable energy cooperative corporation issues to members of the cooperative corporation, if the cooperative corporation issues the stock or certificates to members either to show membership in the cooperative corporation or to show the members' respective interests in or entitlement to assets, reserves or dividends. For the purpose of this subsection, a renewable energy cooperative corporation is an association of persons that is organized as a cooperative corporation under ORS chapter 62 with the purpose of developing and operating facilities to generate electricity from renewable energy resources, as defined in ORS 757.600 (27)(a), (c) and (d), or from a type of energy listed in ORS 469A.025 (1)(c).

(13) Any security issued in connection with an employee stock purchase, savings, pension, profit sharing or similar employee benefit plan, provided that:

(a) The plan meets the requirements for qualification under section 401 of the Internal Revenue
Code of 1986; and]

(b) The terms of the plan are fair, just and equitable to employees under rules of the director. a pension, profit-sharing or stock bonus plan, if the plan is qualified as provided in section 401 of the Internal Revenue Code and if the terms of the plan are fair, just and equitable to employees under rules the director adopts.

(14) Any security issued by a person that is:
(a) Organized and operated exclusively for a religious, educational, benevolent, fraternal, charitable or reformatory purpose and not for pecuniary profit;
(b) Organized or constituted so that the person's net earnings do not inure to the benefit of any person, private stockholder, or individual; and
(c) Designated by rule of the director.

(15) Any other security the director exempts by rule.

SECTION 3, ORS 59.035 is amended to read:

59.035. The following transactions are exempt from ORS 59.049 and 59.055 if [they] the transactions are not part of an attempt to evade fraudulently any provision of the Oregon Securities Law:

(1) Any transaction by an executor or administrator of an estate or by a sheriff, marshal or court appointed fiduciary.

(2) An isolated nonissuer transaction in this state, whether effected through a broker-dealer or not.

(3) Any transaction by an issuer in its securities pursuant to a pro rata offering to its existing security holders, if:
(a) [No] A commission or remuneration, other than a standby fee, is not paid or given directly or indirectly in connection with the transaction; and
(b) The issuer has not had an effective registration under the Oregon Securities Law [nor has] and has not used this exemption within one year prior to the date of the offering or sale.

(4) Any offer to sell, sale, transfer or delivery of securities to a bank, savings institution, trust company, insurance company, investment company, pension or profit-sharing trust, or other financial institution or institutional buyer, [including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Department of Veterans Affairs and the Government National Mortgage Association], or to a broker-dealer, mortgage broker or mortgage banker, whether the purchaser is acting for itself on the purchaser's own behalf or in a fiduciary capacity when the purchaser has discretionary authority to make investment decisions.

(5) Any transaction by an offeror with an accredited investor as defined in section 2 (15)(i) or (ii) of the Securities Act of 1933, [as amended.] or as defined in rules of the Director of the Department of Consumer and Business Services, but only if there is no public advertising or general solicitation in connection with the transaction.

(6) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make the conversion without the payment of additional consideration, if the security surrendered was, when issued, convertible and registered or exempt from registration.

(7) Any transaction in a vendor's interest in a land sale contract, or a bond or note secured by a mortgage or trust deed upon real estate, so long as the entire vendor's interest or mortgage or trust deed, with all the bonds or notes secured thereby, [are] is sold to a single purchaser, in a
single sale.

(8) Agency or principal sales by licensed broker-dealers, executed upon customers’ orders on any exchange or on the over-the-counter market, but not the solicitation of such orders, [where] if there is no intent to avoid the provisions of the Oregon Securities Law and a public offering is not involved. Such broker-dealers shall keep and maintain, for two years from the date of the order, a record of all the sales executed upon customers’ orders, giving the name and address of each customer, the name and identity of the security involved, the dates of the sales, the price paid or received for the security, and the commission or other expenses charged to the customer.

(9) [The offer or sale by] A licensed [broker-dealer] broker-dealer’s offer to sell or a sale of any security the broker-dealer acquired in the ordinary and usual course of business, [when such] if the security is a part of an issue which has been registered in whole or in part[,] and if the offer or sale is made in good faith and not directly or indirectly for the benefit of the issuer or for the promotion of any scheme or enterprise effecting a violation or an evasion of any provisions of the Oregon Securities Law, unless:

(a) The registration has been revoked or suspended; or

(b) The continued sale of the security has been enjoined.

(10) [The offer or sale by licensed broker-dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, if the sale meets the requirements of paragraphs (a), (b) and (c) or (a), (b) and (d) of this subsection:] A nonissuer transaction by a registered broker-dealer’s registered agent, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been available to the public for at least 90 days if, at the time of the transaction:

(a) The issuer of the security:

(A) Has already organized the business and has begun engaging in business;

(B) Is not in bankruptcy or receivership; and

(C) Is not a blank check company, blind pool or shell company the primary plan of business of which is to acquire or to engage in a merger or combination with an unidentified person or persons;

(b) The security is sold at a price reasonably related to the security’s current market price;

(c) The security does not constitute all or a part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or does not constitute a redistribution of the security;
(d) A nationally recognized securities manual, or the electronic equivalent of a nationally recognized securities manual that the director approves by rule or order, or a publicly available record filed with the United States Securities and Exchange Commission includes:

(A) A description of the issuer's business and operations;

(B) The names of the issuer's directors and executive officers, if any;

(C) An audited balance sheet of the issuer completed within the 18 months preceding the transaction or, if a reorganization or merger occurred and the parties to the reorganization or merger had an audited balance sheet, a pro forma balance sheet completed within the 18 months preceding the transaction;

(D) An audited income statement for each of the issuer's preceding two fiscal years or for the period of the issuer's existence, whichever is shorter, or a pro forma income statement for each of the preceding two fiscal years if a reorganization or merger occurred and the parties to the reorganization or merger had an audited income statement; and

(e) The issuer has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the Nasdaq, Inc. licensed national securities exchange, unless:

(A) The issuer is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer, or a predecessor of the issuer, has been continuously engaged in business for at least three years; or

(C) The issuer has total assets of at least $2 million, as evidenced in an audited balance sheet completed within the 18 months preceding the transaction or as evidenced in a pro forma balance sheet completed within the 18 months preceding the transaction, if a reorganization or merger occurred in which the parties to the reorganization or merger had an audited balance sheet.

(11) An offer to sell, but not the sale, of a security meeting either of the following descriptions:

(a) A security for which registration statements have been filed under both the Oregon Securities Law and the Securities Act of 1933, as amended, if no stop or refusal order or order under ORS 59.105 is not in effect and no public proceeding or examination looking toward such an order is not pending. However, except that an offer for such a security may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

(b) A security for which a registration statement has been filed under the Oregon Securities Law and the offer is allowed by the director. However, except that an offer for such a security may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

(12)(a) Any transactions in securities by an offeror within or without this state that meet all of the requirements of either subparagraph (A) or (B) of this paragraph, as appropriate, plus all of the requirements of subparagraphs (C), (D) and (E) of this paragraph:

(A) When the offeror is an issuer, the transactions must not have resulted in more than 10 purchasers within this state of securities of the issuer during any 12 consecutive months.

(B) When the offeror is a nonissuer the securities must have been bought and held for at least 12 consecutive months and the transactions must not have resulted in more than 10 purchasers within this state of securities from the nonissuer during any 12 consecutive months.

(C) A commission or other remuneration is not paid or given directly or indirectly in
connection with the offer or sale of the securities in this state.

(D) [No] Public advertising or general solicitation [is used] does not occur in connection with any transaction under this exemption.

(E) At the time of any transaction under this exemption the offeror does not have under the Oregon Securities Law an application for registration or an effective registration of securities which are part of the same offering.

(b) In connection with transactions under paragraph (a) of this subsection:

(A) Purchasers of securities of the offeror registered under ORS 59.065, exempt under ORS 59.025, exempt under any other subsection of this section, or for which a notice has been filed under ORS 59.049, are not counted as purchasers under this exemption.

(B) Repeat transactions with persons who are counted as purchasers within [Oregon] this state under paragraph (a) of this subsection do not increase the number of purchasers. However, but a purchaser remains a purchaser for 12 months following the month of the last sale to that purchaser.

(C) No limitations are placed on the number of transactions or purchasers without this state. No limitations are placed on the number of offers under this exemption.

(13) A transaction with security holders, pursuant to a statutory vote by such security holders on a merger, consolidation, partial or complete liquidation, reclassification of securities, plan of exchange or sale of assets, in consideration of the issuance of securities of another issuer.

(14) Capital stock issued by a professional corporation organized under ORS chapter 58.

(15) Any other transaction exempted by rule of the director.

SECTION 4. ORS 59.049 is amended to read:

59.049. (1) Federal covered securities may be offered and sold in this state without registration, subject to the following conditions:

[(1)] (a) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933[, as amended,] may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the Director of the Department of Consumer and Business Services. In lieu of the notice, an issuer may file a copy of [its] the issuer’s registration statement as filed with the Securities and Exchange Commission, together with fees required under this subsection. The director shall specify the form of the notice [shall be prescribed by the director. The director] and shall set the amount of the fee by rule. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice.

[(2)] (b) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section 18(b)(3) or (4), other than section [18(b)(4)(D)] 18(b)(4)(F), of the Securities Act of 1933[, as amended,] may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the director. The director shall specify the form of the notice [shall be prescribed by the director. The director] and shall set the amount of the fee in an amount per $1,000 of the aggregate [price] offering amount of the securities which are to be offered in this state. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice.

[(3)] (c) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section [18(b)(4)(D)] 18(b)(4)(F) of the Securities Act of 1933[, as amended,] may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the director, not later than 15 days after the first sale of such federal covered security in this state. The notice [shall] must be filed on Securities and Exchange Commission Form D or
on a form of notice prescribed by the director. The director shall set the fee by rule in an amount per $1,000 of the aggregate [price] offering amount of the securities which are to be offered in this state. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice. If an issuer or other person sells in this state federal covered securities described in this paragraph without timely filing the notice required under this paragraph, the issuer or person is liable to pay to the director three times the amount of the fee required under this subsection to offer for sale or sell federal covered securities. The additional amount of the fee may not be less than $300 and is not refundable.

(4)(a) The director shall set the fees described in [subsections (1) to (3)] subsection (1) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of a fee described in [subsections (1) to (3)] subsection (1) of this section every two years to reflect changes in the national midpoint for [a similar fee] similar fees.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the [National Association of Securities Dealers] Financial Industry Regulatory Authority, or the United States Securities and Exchange Commission or successor associations, authorities, commissions or organizations.

(5) (3) The director may issue an order suspending the offer and sale of a federal covered security if the director finds that there is a failure to comply with any requirement under this section.

(6)(a) The filer of a notice under [subsections (1) to (3)] subsection (1) of this section shall amend the notice when there is a change in the name of the offering or, in the case of offerings for which notice is filed [pursuant to subsection (2) or (3)] under subsection (1)(b) or (c) of this section, when there is an increase in the aggregate [price] offering amount of the securities which are to be offered in this state. [There is no] A fee is not required for an amendment that does not increase the aggregate offering amount. Notices amending the aggregate offering amount [shall] must include the fee calculated in accordance with [subsection (2) or (3)] subsection (1)(b) or (c) of this section, less amounts previously paid under the prior notice filing, but the fee may not be less than $100. The fee is not refundable.

(b) If an issuer or person sells federal covered securities in this state for a price in excess of the aggregate price for which fees were initially paid under this section, the seller shall pay a fee of three times the difference between the initial fee the issuer or other person paid and the fee required under this section for the federal covered securities sold in this state. The additional fee may not be less than $100. The fee is not refundable.

(7) The director, by rule or otherwise, may waive any or all of the provisions of this section.

SECTION 5. ORS 59.051 is amended to read:

59.051. References in ORS 59.005 to 59.505, 59.991 and 59.995 to federal statutes or federal regulations [shall be construed to refer to those] are references to the statutes or regulations as [they are in effect on April 19, 1999] the statutes or regulations are in effect on the effective date of this 2023 Act.

SECTION 6. ORS 59.065 is amended to read:

59.065. (1) The Director of the Department of Consumer and Business Services by rule shall es-
establish procedures for registering securities. The director may coordinate registration in this state with any federal securities Act or national registration system.

(2) Every registration application submitted [shall] must be accompanied by a fee. The director shall set the fee by rule in an amount per $1,000 of the aggregate [price] offering amount of the securities that are to be offered in this state. The fee is not refundable.

(3)(a) The director shall set the fee described in subsection (2) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of the fee described in subsection (2) of this section every two years to reflect changes in the national midpoint for [a similar fee] similar fees.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the [National Association of Securities Dealers] Financial Industry Regulatory Authority, [or] the United States Securities and Exchange Commission or successor associations, authorities, commissions or organizations.

(4) If a registrant sells securities in [Oregon] this state in excess of the quantity registered or for a price in excess of the aggregate price for which fees were initially paid, the registrant may obtain registration of the excess securities by paying three times the difference between the initial fee the registrant paid and the fee required under subsection (2) of this section for the securities sold in [Oregon] this state. The additional fee may not be less than $100. Registration of the excess securities [shall be] is effective retroactively to the date of sale.

SECTION 7. ORS 59.085 is amended to read:

59.085. The Director of the Department of Consumer and Business Services may, by rule or order, impose on a registration such conditions, limitations and restrictions as the director deems appropriate to make the issue fair, just and equitable, including the following:

(1) That a prospectus containing any designated part of the information submitted in connection with registration be sent or given to each person to whom a security is offered or sold.

(2) That the security be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed with the director or preserved for a period of up to three years after the sale, or as specified in the rule or order.

(3) That any of the following be deposited in escrow on terms approved by the director:

(a) Any security issued or to be issued for a consideration substantially different from the public offering price or for a consideration other than cash or a cash equivalent.

(b) The proceeds from the sale of the security until the issuer receives an amount specified by the director.

SECTION 8. ORS 59.095 is amended to read:

59.095. (1) The proponents of a plan [pursuant to which a security is to be issued] to issue a security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash or a cash equivalent, except a security the issuance of which [is under supervision, regulation or control by] the Public Utility Commission [of this state] supervises, regulates or controls, may request [approval of such plan by] the Director of the Department of Consumer and Business Services to approve the plan.

(2) The request for approval [shall] must be made by filing a [registration statement, as provided in ORS 59.065, with] merger agreement and proxy statement and a detailed statement of the
plan. The director shall set the plan down for hearing and require the proponents of the plan to give
notice of the hearing to all persons to whom securities are to be issued in [such] the exchange. All
such persons [shall] have the right to appear at the hearing.

(3)(a) The director shall, after the hearing, consider the fairness of the terms and conditions of
the plan, and, if the director finds that the plan is fair, just and equitable and free from fraud, shall
approve it, subject to such conditions, limitations and restrictions as the director may impose.
(b) If the director finds that the plan is unfair, unjust or inequitable or not free from fraud, the
director shall deny the request, and give notice of the denial, at the expense of the proponents, to
to all persons who were entitled to receive or received notice of the hearing.
(c) If the hearing is not contested, the director may issue an order that:
(A) Approves the plan; and
(B) Registers the security based on the stipulation of the parties in lieu of specific
findings.

SECTION 9. ORS 59.105 is amended to read:
59.105. (1) Except as provided in subsection (2) of this section, the Director of the Department
of Consumer and Business Services may [by order deny, suspend or revoke any] issue a stop order
that denies effectiveness to, suspends or revokes the effectiveness of any registration state-
ment[,] if the director finds that:
(a) The issuer’s proposed [plan of business of the issuer] business plan, the characteristics and
terms of sale of the securities to be sold, or the proposed methods of sale and distribution are unfair,
unjust or inequitable;
(b) Information about the issuer’s proposed business plan, the characteristics and terms
of sale of the securities to be sold or the proposed methods of sale and distribution is mate-
rially incomplete or includes a statement that, on or before the statement’s effective date
and in light of the circumstances in which the statement was made, is false or misleading
with respect to a material fact;
[(b)(c) The issuer is insolvent or in unsound financial condition;
[(c)(d) The applicant, registrant or issuer has violated any of the provisions of the Oregon
Securities Law, or any rule or order of the director of which the applicant, registrant or issuer had
notice;
[(d)(e) The applicant, registrant or issuer has been or is engaged or is about to engage in
dishonest or fraudulent conduct with regard to securities;
[(e)(f) The applicant, registrant, or issuer has been convicted of a misdemeanor, an essential
element of which is fraud, or of a felony;
[(f)(g) The applicant, registrant or issuer has knowingly made or caused to be made to the di-
rector any false representation of a material fact, or has suppressed or withheld from the director
any material information;
[(g)(h) The applicant, registrant or issuer has refused to permit the director to make an ex-
amination [to be made by the director], or has failed to file any report, including any certified fi-
nancial report, or furnish any information [required by] the director requires in connection with the
Oregon Securities Law; or
[(h)(i) The sale or distribution of the securities involved, directly or indirectly, unreas-
sonable amounts or kinds of commissions or other remunerations, promoter’s profits or
participation, [or] unreasonable options or underwriter’s or seller’s discounts, commissions or
other compensation [have been or are to be given or allowed directly or indirectly in connection with

[17]
the sale or distribution of the securities].

(2) The director may enter under subsection (1) of this section an order against [the] an applicant, registrant, [or] issuer, promoter or underwriter [under subsection (1) of this section] if any partner, officer or director of [an] the applicant, registrant, [or] issuer, promoter or underwriter or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, registrant, [or] issuer, [has been] promoter or underwriter was guilty of any act or omission [which] that would be cause for denying, suspending or revoking the registration of an individual applicant, registrant or issuer, except:

(a) This subsection [shall] does not apply to subsection (1)(a) and [(b) (e) of this section.
(b) The director may not enter an order suspending or revoking a registration [under this subsection, pursuant to] for a finding described in subsection [(1)(e)] (1)(f) of this section[,] without 10 days’ prior written notice to the registrant.

SECTION 10. 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)] (1)(a) or (e) or by means of making an untrue statement of a material fact or [an omission to state] omitting a material fact from a statement the person makes to a purchaser who does not know the statement is not true or that the person omitted the material fact if:

(A) The fact is necessary [in order] to make [the statements made.] the statement not misleading in light of the circumstances under which [they are made, not misleading (the buyer not knowing of the untruth or omission), and who] the person made the statement; and
(B) The person 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 the purchaser paid for the security, and interest from the date of payment equal to the greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money or the rate provided in the security if the security is an interest-bearing obligation, less any amount of income the purchaser received on the security; or
(b) If the purchaser no longer owns the security, damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of [it] the security and less interest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment of money from the date of disposition.

(3) Every person who directly or indirectly controls a seller that is liable under subsection (1) of this section is liable jointly and severally with, and to the same extent as, the seller, including[,] every partner, limited liability company manager, including a member who is a manager, officer or director of [such] the seller, every person occupying a similar status or performing similar functions[,] and every person who participates or materially aids in the sale [is also liable jointly and severally with and to the same extent as the seller], unless the [nonseller] person sustains the burden of proof that the [nonseller] person did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the seller’s liability is based. Any person held liable under this section [shall be] is entitled to contribution from [those] other persons who are jointly
and severally liable with [that] the person who was held liable.

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

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

(6) Except as otherwise provided in this subsection, [no] an action or suit may not be commenced under this section more than three years after the sale. An action under this section for a violation of subsection (1)(b) of this section or ORS 59.135 may be commenced within three years after the sale or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

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

(8) Any person having a right of action against a broker-dealer[,] or state investment adviser or against [a salesperson] an agent or investment adviser representative acting within the course and scope, or apparent course and scope, of [authority of the salesperson] the agent's or investment adviser [representative,] representative's authority under this section [shall have] has a right of action under the bond or irrevocable letter of credit provided in ORS 59.175.

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

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

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

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

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

SECTION 11. ORS 59.125 is amended to read:

59.125. (1) Except as provided in subsection (3) of this section, [no] a purchaser may not bring an action [or suit may be commenced] under ORS 59.115 if the purchaser [has] received before [suit] bringing the action a written notice as outlined in subsection (2) of this section.

(2) The notice [shall contain] must include:

(a) An offer to pay the amount specified in ORS 59.115 (2)(a) upon tender of the security; and

(b) A statement of [the effect on the purchaser's rights of] how the purchaser's failure to respond as required in subsection (3) of this section will affect the purchaser's rights.

(3) [An] A purchaser may bring an action [or suit] under this section [may be commenced after receipt of a notice as outlined] after receiving the notice described in subsection (2) of this section if:

(a) [If] The purchaser owned the security when the purchaser received the notice [was received], accepted the payment offer within 30 days after [its receipt] receiving the notice, and has not been paid the full amount offered; or

(b) [If] The purchaser did not own the security when the purchaser received the notice [was received] and, within 30 days after [receipt] receiving the notice, gave written notice of the
purchaser’s inability to tender back the security.

(4) An offer to [repay the purchaser pursuant to] purchase under this section involves the offer or sale of a security. The transaction must be registered under ORS 59.055 unless there is an exemption from the registration requirement or a notice is filed under ORS 59.049.

**SECTION 12.** ORS 59.127 is amended to read:

59.127. (1) A person is liable as provided in subsection (2) of this section to the person selling [the] a security, if the person:

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

(b) Purchases or successfully solicits the purchase of a security in violation of ORS 59.135 [(1) or (3)] (1)(a) or (c) or by means of making an untrue statement of a material fact or [an omission to state] omitting a material fact from a statement the person makes to a seller who does not know the statement is not true or that the person omitted the material fact if:

(A) The fact is necessary [in order] to make [the statements made,] the statement not misleading in light of the circumstances under which [they were made, not misleading (the seller not knowing of the untruth or omission),] and if [the person made the statement]; and

(B) The person 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 seller may recover:

(a) Upon a tender of the consideration paid for the security, the security plus interest from the date of purchase equal to the greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money, or the rate provided in the security if the security is an interest-bearing obligation;

(b) Damages in the amount that would be recoverable upon a tender, plus any amount received on the security, less the consideration paid for the security; or

(c) If the purchaser no longer owns the security, damages equal to the value of the security when the purchaser disposed of it plus interest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment of money from the date of disposition, less the consideration paid for the security.

(3) Every person who directly or indirectly controls a purchaser that is liable under subsection (1) of this section[,] is liable jointly and severally with, and to the same extent as, the purchaser, including every partner, limited liability company manager, including a member who is a manager, officer or director of [such] the purchaser, every person occupying a similar status or performing similar functions[,] and every person who participates or materially aids in the purchase [is also liable jointly and severally with and to the same extent as the purchaser], unless the [nonpurchaser] person sustains the burden of proof that the [nonpurchaser] person did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the purchaser’s liability is based. Any person held liable under this section [shall be] is entitled to contribution from [those] other persons who are jointly and severally liable with the person who was held liable.

(4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function in connection with the purchase of a security is to provide ministerial functions of escrow, custody or deposit services in accordance with applicable law is liable only if the person participates or materially aids in the purchase and the seller sustains the burden of proof that the person knew of
the existence of facts on which liability is based or that the person’s failure to know of the existence
of such facts was the result of the person’s recklessness or gross negligence.

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

(6) Except as otherwise provided in this subsection, [no] an action or suit may not be com-
enced under this section more than three years after the purchase. An action under this section
for a violation of subsection (1)(b) of this section or ORS 59.135 may be commenced within three
years after the purchase or two years after the person bringing the action discovered or should have
discovered the facts on which the action is based, whichever is later. Failure to commence an action
on a timely basis is an affirmative defense.

(7) Any person having a right of action against a broker-dealer[,] or state investment adviser
or against [a salesperson] an agent or investment adviser representative acting within the course
and scope, or apparent course and scope, of [the authority of the salesperson] the agent’s or in-
vestment adviser [representative,] representative’s authority under this section [shall have] has a
right of action under the bond or irrevocable letter of credit provided in ORS 59.175.

(8) Subsection (4) of this section [shall] does not limit the liability of any [persons] person:
(a) For conduct other than in the circumstances described in subsection (4) of this section; or
(b) Under any other law, including any other provisions of the Oregon Securities Law.

(9) Except as provided in subsection (10) of this section, the court may award reasonable attor-
ney fees to the prevailing party in an action under this section.

(10) The court may not award attorney fees to a prevailing defendant under the provisions of
subsection (9) of this section if the action under this section is maintained as a class action pursuant
to ORCP 32.

SECTION 13. ORS 59.131 is amended to read:

59.131. (1) Except as provided in subsection (3) of this section, [no] a seller may not bring an
action [or suit may be commenced] under ORS 59.127 if the seller [has] received before [suit] bringing
the action a written notice of intent to return the security as outlined in subsection (2) of this
section.

(2) The notice [shall contain] must include:
(a) An offer to tender the security and interest from the date of purchase, at a rate equal to the
greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money or
the rate provided in the security if the security is an interest-bearing obligation, less the consider-
atation paid for the security; and
(b) A statement of [the effect on the seller’s rights of] how the seller’s failure to respond as re-
quired in subsection (3) of this section will affect the seller’s rights.

(3) [An] A seller may bring an action [or suit] under this section [may be commenced after re-
ceipt of a notice as outlined] after receiving the notice described in subsection (2) of this section
if:
(a) [If] The seller accepts the offer and gives notice of acceptance within three days after [re-
ceipt of] receiving the offer and fails to receive the contents of [such] the offer as specified in sub-
section (2)(a) of this section within one day [from] after the date the notice of acceptance was sent;
or
(b) [If] The seller elects to recover damages as specified in subsection (2)(b) of this section and
gives notice of the election within 30 days after [receipt of] receiving the offer.

(4) An offer to tender the security pursuant to this section involves the offer for sale of a se-
curity. The transaction must be registered under ORS 59.055 unless there is an exemption from the
registration requirement or a notice is filed under ORS 59.049.

SECTION 14. ORS 59.135 is amended to read:

59.135. [It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:]

(1) In connection with purchasing or selling securities, conducting a securities business or receiving any consideration from another person for advising the other person as to the value of securities or as to purchasing or selling securities, whether through issuing analyses or reports or otherwise, a person may not:

[(1)(a) To] Employ or attempt to employ any device, scheme or artifice to defraud;
[(2)(b) To] Make any untrue statement of a material fact or [to omit to state] omit a material fact that is necessary [in order] to make [the statements made] a statement, including but not limited to a statement concerning the use of funds, in the light of the circumstances under which [they are] the statement was made, not misleading;
[(3)(c) To] Engage or attempt to engage in any act, practice or course of business [which] operates or would operate as a fraud or deceit upon any person; or
[(4)(d) To] Make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document [which] that is known to be false in any material respect or matter.

(2) For the purposes of ORS 59.005 to 59.505, 59.991 and 59.995, fraud, deceit or an attempt to defraud is not limited to instances of common-law deceit.

SECTION 15. ORS 59.137 is amended to read:

59.137. (1) Any person who violates or materially aids in a violation of ORS 59.135 [(1), (2) or (3)] [(1)(a), (b) or (c)] is liable to any purchaser or seller of the security for the actual damages caused by the violation, including the amount of any commission, fee or other remuneration paid, together with interest at the rate specified in ORS 82.010 for judgments for the payment of money, unless the person who materially aids in the violation sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts on which the liability is based.

(2) Any person who directly or indirectly controls a person that is liable under subsection (1) of this section is liable jointly and severally with, and to the same extent as, the person that is liable, including [and] every partner, limited liability company manager, including a member who is a manager, officer or director or a person occupying a status or performing functions of a person liable under subsection (1) of this section, [is jointly and severally liable to the same extent as a person liable under subsection (1) of this section,] unless the person who may be liable under this subsection sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts on which the liability is based.

(3) Any person held liable under this section is entitled to contribution from [those] other persons who are jointly and severally liable with [that] the person who was held liable.

(4) Except as provided in subsection (5) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(5) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (4) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.
An action or suit may be commenced under this section within the later of:
(a) Three years after the date of the purchase or sale of a security to which the action or suit relates; or
(b) Two years after the person bringing the action or suit discovered or should have discovered the facts on which the action or suit is based.

(7) Failure to commence an action or suit under this section on a timely basis is an affirmative defense.

SECTION 16. ORS 59.165 is amended to read:
59.165. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson agent unless the person is licensed under the Oregon Securities Law.
(2) A broker-dealer or state investment adviser may not be licensed in this state unless the broker-dealer or state investment adviser has at least one salesperson agent licensed in this state.
(3) It is unlawful for a broker-dealer or issuer or owner of securities to employ a salesperson agent to act in this state unless the salesperson agent is licensed under the Oregon Securities Law to the broker-dealer or issuer or owner of securities. Only a natural person may be licensed as a salesperson agent.

[(4) It is unlawful for:
(a) A state investment adviser to may not employ an investment adviser representative in this state unless the investment adviser representative is licensed under the Oregon Securities Law to the state investment adviser;]
[(b) A federal covered investment adviser to may not employ an investment adviser representative who has a place of business in this state to act in this state unless the investment adviser representative is licensed under the Oregon Securities Law to the federal covered investment adviser; or].
[(c) An individual, except as otherwise provided in subsection [(8)] (10) of this section, to may not transact business in this state as an investment adviser representative unless the individual is licensed as an investment adviser representative. Only a natural person may be licensed as an investment adviser representative.
[(5) A person may not be licensed as:
(a) A salesperson An agent or an investment adviser representative for more than one broker-dealer, federal covered investment adviser, state investment adviser or issuer or owner of securities at the same time, except as may be allowed by rule or order of the Director of the Department of Consumer and Business Services.
(b) A salesperson An agent or an investment adviser representative unless the person is employed by a broker-dealer, federal covered investment adviser, state investment adviser or issuer or owner of securities.
[(6) It is unlawful for any] A person [to] may not transact business in this state as a state investment adviser unless the person:
(a) Is licensed as such under the Oregon Securities Law; or
(b) Is licensed as a broker-dealer without the imposition of a condition under ORS 59.215 (4).
[(7) Except for federal covered investment advisers whose activities are described by ORS 59.015 [(20)(b)] (29)(b) and licensed broker-dealers transacting business as federal covered investment advisers in this state, [it is unlawful for any] a federal covered investment adviser [to] may not conduct an advisory business in this state unless [such person] the federal covered investment adviser makes notice filings with the director of such documents filed with the Securities and Ex-
change Commission as the director may by rule or otherwise require and pays the fee, including the
notice filing fee, described in ORS 59.175. The director may issue an order suspending the conduct
of an investment advisory business in this state if the director finds that there is a failure to comply
with any requirement under this section.

[(8)] (10) Notwithstanding any other provision of this section, an individual performing the ac-
tivities of an investment adviser representative and who would otherwise be required to be licensed
as an investment adviser representative is not required to be separately licensed as an investment
adviser representative if:

(a) The individual is licensed to a licensed broker-dealer, the broker-dealer is transacting busi-
ness as a federal covered investment adviser or a state investment adviser under the provisions of
subsection [(6)(b)] (8)(b) of this section and the person is performing investment adviser activities
on behalf of the broker-dealer; or

(b) The individual is licensed to a licensed broker-dealer and the broker-dealer directly receives
all compensation otherwise earned by the person in connection with the investment adviser activi-
ies being transacted in this state. The broker-dealer may or may not further distribute any or all
compensation received to the licensed [salesperson] agent.

SECTION 17. ORS 59.175 is amended to read:

59.175. (1) The Director of the Department of Consumer and Business Services by rule shall es-
establish procedures for notice filings required of federal covered investment advisers as well as pro-
cedures for licensing broker-dealers, state investment advisers, investment adviser representatives
and [salespersons] agents. The director may coordinate notice filings or licensing with any national
registration, licensing or notice filing system.

(2)(a) The director may require an applicant for a license as a broker-dealer or state investment
adviser[, including] to pass an examination on the applicant’s knowledge and understanding
of the securities business and the Oregon Securities Law. The director may extend the re-
quirement to include:

(A) The applicant’s partners, directors, officers or any person occupying a similar status or
performing similar functions[, and];

(B) Any person that directly or indirectly [controlling such] controls the applicant; and

[a] (C) Any person for whom application for a license as [a salesperson] an agent or investment
adviser representative is made, to pass an examination on such person’s knowledge and understand-
ing of the Oregon Securities Law and the securities business).

(b) The director may establish by rule a fee for the examination.

(3) The director may make such further examination of the applicant and the applicant’s affairs
as the director deems advisable and may require by rule or order that the applicant publish an an-
nouncement of the application in such manner as the director may specify.

(4)(a) Except as otherwise provided in paragraph (b) or (c) of this subsection, every applicant for
a license as a broker-dealer or state investment adviser shall file with the director a corporate
surety bond or irrevocable letter of credit issued by an insured institution as defined in ORS 706.008
or such other security [as the director may approve by rule] running to the State of Oregon that the
director may approve by rule in a sum [to be established by rule of] the director specifies by
rule, but in no event more than $100,000.

(b) Licensed broker-dealers subject to section 15 of the Securities Exchange Act of 1934, as
amended, are not required to comply with paragraph (a) of this subsection, nor are such licensed
broker-dealers required to comply with any net capital requirements imposed by the director by rule
or otherwise.

(c) A licensed state investment adviser [who has its] with a principal place of business in a state other than this state [shall be] is exempt from the requirements of paragraph (a) of this subsection and from any net capital requirements imposed by the director by rule or otherwise, as long as the licensed state investment adviser is:

(A) Registered or licensed as a state investment adviser in the state where [it] the state investment adviser maintains [its] a principal place of business; and

(B) In compliance with the bonding or net capital requirements of the state where [it] the state investment adviser maintains a principal place of business.

(5)(a) Except as otherwise provided in paragraph (b) or (c) of this subsection, every applicant for a license or renewal of a license as a broker-dealer or state investment adviser shall file with the director proof that the applicant maintains an errors and omissions insurance policy in an amount of at least $1 million from an insurer authorized to transact insurance in this state or from any other insurer approved by the director according to standards established by rule. A broker-dealer or state investment adviser that is subject to this paragraph shall retain in the broker-dealer's or state investment adviser's records evidence of continuous coverage under a qualifying errors and omissions insurance policy.

(b) A licensed broker-dealer subject to section 15 of the Securities Exchange Act of 1934, as amended, is not required to comply with paragraph (a) of this subsection.

(c) A licensed state investment adviser [who has its] with a principal place of business in a state other than this state is exempt from the requirements of paragraph (a) of this subsection.

(6)(a) Subject to paragraph (b) of this subsection, if the application, surety bond, irrevocable letter of credit or other security, errors and omissions insurance policy and fees are in order and the director is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.205 to 59.225, the director shall license the broker-dealer, state investment adviser, [salesperson] agent or investment adviser representative.

(b) If the director determines under ORS 59.205 or 59.215 that a condition or restriction should apply to the license, the director, at the time the license is issued or renewed, shall specify in writing to the licensee the condition or restriction applicable to the license.

(7) A licensee under ORS 59.165 shall amend the license application when there are material changes in the information contained in the original application.

(8) An applicant for, or a person holding, a license issued under ORS 59.005 to 59.505 may file with the director a trade name, as defined in ORS 647.005, or an assumed business name, as defined in ORS 648.005. The trade name or assumed business name shall be filed in a form and manner established by rule by the director.] and operating under a trade name, as defined in ORS 647.005, or an assumed business name, as defined in ORS 648.005, shall file with the director, on a form and in the manner the director specifies by rule, a request for a certificate under ORS 705.635. If the application is complete, [and] the fee described in subsection (9) of this section is paid and the applicant's use of the trade name or assumed business name complies with the Bank Act and ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and this chapter and ORS chapters 645, 705, 717, 725 and 725A, the director shall issue an order authorizing the licensee to operate under the trade name or assumed business name. The order [shall remain] remains in effect until canceled, suspended or revoked.

(9) The director shall charge and collect fees for:

(a) An application [for] to obtain or renew a license as a broker-dealer or state investment
adviser;
[(b) An application to renew a license as a broker-dealer or state investment adviser;]
[(c)] (b) An application [for] to obtain or renew a license as [a salesperson] an agent;
[(d) An application to renew a license as a salesperson;]
[(e)] (c) An application [for] to obtain or renew a license as an investment adviser representative;
[(f) An application to renew a license as an investment adviser representative;]
[(g)] (d) A notice filing or notice filing renewal for a federal covered investment adviser; and
[(h) A notice filing renewal for a federal covered investment adviser; and]
[(i)] (e) A filing for use of a trade name or an assumed business name.

(10)(a) The director shall set the fees described in subsection (9) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of a fee described in subsection (9) of this section every two years to reflect changes in the national midpoint for [a] similar [fee] fees.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the [National Association of Securities Dealers] Financial Industry Regulatory Authority or the United States Securities and Exchange Commission.

(11) Except as provided in this subsection, the fees under this section are not refundable. The director may provide for a method of equitably adjusting the payment of fees for broker-dealers, federal covered investment advisers, state investment advisers, [salespersons] agents and investment adviser representatives [when] if the director determines that the changes in filing periods and expiration dates under ORS 59.185 are not equitable for the person making the payment.

SECTION 18. ORS 59.185 is amended to read:

59.185. (1) Every license of a broker-dealer or state investment adviser expires one year after the date of issuance unless the Director of the Department of Consumer and Business Services establishes a different expiration date for purposes of coordination with any national registration or licensing system.

(2)(a) Every license of an issuer’s or owner’s [salesperson] agent expires when the securities are no longer authorized for sale or one year after the date of issuance, whichever is sooner.

(b) Unless the director establishes a different expiration date for the purposes of coordination with any national registration or licensing system, every license of [a salesperson] an agent licensed to a broker-dealer and every license of an investment adviser representative licensed to a state investment adviser expires on the same date that the license of the broker-dealer or state investment adviser expires.

(c) Unless the director establishes a different expiration date for the purposes of coordination with any national registration or licensing system, every license of an investment adviser representative licensed on behalf of a federal covered investment adviser expires the earlier of one year after the date of issuance or the date the notice of the federal covered investment adviser expires.

(3) The director by rule shall establish procedures for renewing licenses of broker-dealers, state investment advisers, investment adviser representatives and [salespersons] agents, and for the annual renewal of notice filings made on behalf of federal covered investment advisers.

(4) If there is a change in the partners, directors, officers, persons occupying similar positions
or performing similar functions, or persons directly or indirectly controlling a broker-dealer or state
investment adviser, written notification of such change [shall] must promptly be filed with the di-
rector. [No] A fee [shall be] is not required for [such] the notification. An examination may be re-
quired of any such individual who is newly connected with or interested in the licensee.

**SECTION 19.** ORS 59.195 is amended to read:

59.195. (1) Subject to the provisions of section 15 of the Securities Exchange Act of 1934[, as
amended,] and section 222 of the Investment Advisers Act of 1940, [as amended,] every broker-dealer,
state investment adviser, investment adviser representative and [salesperson] agent shall make and
keep such accounts, correspondence, memoranda, papers, books and other records as the Director
of the Department of Consumer and Business Services by rule or order prescribes. All such records
of state investment advisers or investment adviser representatives maintained in this state [shall]
must be preserved for three years unless the director by rule prescribes otherwise. The director
can examine all such records within or without this state at any reasonable time or times and may,
without subpoena, require the production of such records at the office of the director as often as is
reasonably necessary and, in any event, during consideration of any application for licensing or
during any proceeding under ORS 59.205 to 59.225.

(2) Subject to the provisions of section 15 of the Securities Exchange Act of 1934[, as
amended,] and section 222 of the Investment Advisers Act of 1940, [as amended,] every broker-dealer,
state investment adviser, investment adviser representative and [salesperson] agent shall file with
the director such financial reports or other information as the director by rule or order may require.
Licensed broker-dealers, state investment advisers, investment adviser representatives and
[salespersons] agents shall promptly amend any document filed with the director which is or be-
comes incomplete or inaccurate in any material respect. Federal covered investment advisers shall
promptly amend any document otherwise required to be filed with the director when the federal
covered investment adviser is required to file an amendment with the United States Securities and
Exchange Commission.

(3) A state investment adviser [that has its] with a principal place of business in a state other
than this state, and the investment adviser representatives of [such a] the state investment adviser,
[shall be] are exempt from the requirements of subsection (1) of this section [provided that] if the
state investment adviser is registered as a state investment adviser in the state where [it has its]
the state investment adviser's principal place of business is located and the state investment
adviser is in compliance with all such state's requirements relating to accounts and records.

(4)(a) Every broker-dealer and [salesperson of such broker-dealer] broker-dealer's agent shall file
with the director only such financial reports or other information as is otherwise required to
be filed with the United States Securities and Exchange Commission [pursuant to] under the Secu-
rities Exchange Act of 1934[, as amended].

(b) Every state investment adviser [that has its] with a principal place of business in a state
other than this state, and the investment adviser representatives of the state investment adviser,
shall file with the director only the financial reports or other information that is required by the
state in which the state investment [adviser maintains its] adviser's principal place of business is
located, provided the state investment adviser is licensed in such state and is in compliance with
all of such state's reporting requirements.

(5) The director by rule or order may require an investment adviser that is registered
or subject to a requirement to register under ORS 59.175 to provide clients or prospective
clients in this state with appropriate information or records as necessary or appropriate to
serve the public interest or to protect clients or prospective clients.

(6) The director by rule may require an individual registered under ORS 59.175 to participate in a continuing education program that the Securities and Exchange Commission approves and that a self-regulating organization administers or, in the absence of such a program, a continuing education program that the director approves by rule or order.

SECTION 20. ORS 59.205 is amended to read:

59.205. (1) Except as provided in ORS 59.215, the Director of the Department of Consumer and Business Services may by order deny, suspend, or revoke, or impose conditions or restrictions on, a person as a broker-dealer, state investment adviser, investment adviser representative or [salesperson] agent, or on the activities of an applicant for such a license that are related to transactions in securities, if the director finds that the applicant or licensee:

[(1)] (a) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature, or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

[(2)] (b) [Has] Engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or unfair or unethical practices or conduct in connection with the purchase or sale of any security.

[(3)] (c) [Has] Willfully or repeatedly violated or failed to comply with any provision of the Oregon Securities Law, any condition or restriction imposed on a license or any rule or order of the director.

[(4)] (d) [Has been] Was convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

[(5)] (e) Is not qualified to conduct a securities business on the basis of such factors as training, experience and knowledge of the securities business.

[(6)] (f) [Has] Filed an application for a license which, as of the date the license was issued, or as of the date of an order conditioning, restricting, denying, suspending or revoking a license, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which [it] the statement was made, false or misleading with respect to any material fact.

[(7)] (g) [Has] Failed to account to persons interested for all money or property received.

[(8)] (h) [Has not delivered] Did not deliver after a reasonable time[,] securities held for, or to be delivered to, persons entitled [thereof,] to the securities [held or to be delivered].

[(9)] (i) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business.

[(10)] (j) Is the subject of an order of the director conditioning, restricting, denying, suspending or revoking a license as a broker-dealer, state investment adviser, investment adviser representative or [salesperson] agent.

[(11)] (k) Is the subject of an order of the director under:

[(a)] (A) ORS chapter 645, involving a violation of any provision of the Oregon Commodity Code or any rule or order of the director adopted or entered under ORS chapter 645; or

[(b)] (B) ORS 86A.095 to 86A.198, involving a violation of any provision of ORS 86A.095 to 86A.198 or any rule or order of the director adopted or entered under ORS 86A.095 to 86A.198.

[(12)] (L) Is the subject of any of the following orders that are currently effective and were is-
sued within the last [five] ten years:

[(a)] (A) An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission or another federal agency with regulatory authority over depository institutions or transactions in securities, entered after notice and opportunity for hearing, denying, suspending or revoking the person’s registration or license as a broker-dealer, federal covered investment adviser, state investment adviser, investment adviser representative or [salesperson] agent, or the substantial equivalent of those terms as defined in [the Oregon Securities Law] ORS 59.015;

[(b)] (B) A suspension or expulsion from membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, [as amended,] the Commodity Exchange Act or the Investment Advisers Act of 1940[. as amended];

[(c)] (C) A United States Postal Service fraud order;

[(d)] (D) A cease and desist order entered after notice and opportunity for hearing by the director, the securities agency or administrator of another state or of a Canadian province or territory, the Securities and Exchange Commission, [or] the Commodity Futures Trading Commission, the Federal Trade Commission or another federal agency with regulatory authority over depository institutions or transactions in securities; or

[(e)] (E) An order by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act.

[(13)] (m) [Has] Failed, reasonably [the salespersons or] an agent, investment adviser [representatives] representative or other individual that was subject to the supervision of the applicant or licensee and that violated a provision of the Oregon Securities Law or a rule or order of the director.

[(14)] (n) [Has] Failed to comply with the requirements of ORS 59.195 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require.

(o) Avoided or attempted to avoid payment or otherwise failed to pay in full a final judgment or arbitration award that resulted from an action or arbitration that a customer initiated over an investment, unless the applicant or licensee agreed with the customer in writing to an alternative payment arrangement with which the applicant or licensee complied.

(p) Failed to pay in full a fine, civil penalty, order of restitution or similar obligation imposed upon the applicant or licensee by the securities agency or administrator of another state or of a Canadian province or territory, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission or another federal agency with regulatory authority over depository institutions or transactions in securities or a self-regulatory organization registered under the Securities Exchange Act of 1934.

(2) The director’s denial, suspension, revocation or conditioning of a license, or the activities of an applicant for a license, for a reason specified in subsection (1)(c), (f), (g) or (h) of this section is in addition to any civil penalty that may be imposed on an applicant or licensee under ORS 59.995.

SECTION 21. ORS 59.215 is amended to read:

59.215. The Director of the Department of Consumer and Business Services may enter an order [against the applicant or licensee] under ORS 59.205 to deny, suspend, revoke, or impose conditions or restrictions on the license of a broker-dealer or state investment adviser or on the
activities of an applicant for such a license that are related to transactions in securities if
any partner, officer or director of a broker-dealer or state investment adviser or an applicant, any
person occupying a similar status or performing similar functions, or any person directly or indi-
rectly controlling the broker-dealer, or state investment adviser or applicant has been guilty of
any act or omission [which would be cause for conditioning, restricting, denying, suspending or re-
voking the license of an individual broker-dealer, state investment adviser or salesperson] that pro-
vides cause under ORS 59.205 (1), except as follows:

(1) This section [shall] does not apply to any issuer of a federal covered security, a federal
covered investment adviser or to ORS 59.205 (1)(a).

(2) The director may not enter an order against a broker-dealer or state investment adviser on
the basis of [the] a lack of qualification under ORS 59.205 [(5)] (1)(e) of any person other than:

(a) The broker-dealer or state investment adviser, if the broker-dealer or state investment ad-
viser is an individual; or

(b) [A salesperson] An agent of the broker-dealer or an investment adviser representative of the
state investment adviser.

(3) The director may not enter an order solely on the basis of lack of experience if the applicant
or licensee is qualified by training or knowledge or both.

(4)(a) If the director finds that an applicant for an initial license or a license renewal as a
broker-dealer is not qualified as a state investment adviser, the director may condition the
applicant’s license as a broker-dealer upon [its] the applicant’s not transacting business in this
state as a state investment adviser.

(b) An applicant described in paragraph (a) of this subsection may rebuttably be pre-
sumed to be unqualified if the applicant did not pass, or does not have an employee or rep-
resentative that passed, an examination under ORS 59.175 (2) or did not comply with, or does
not have an employee or representative that complied with, continuing education require-
ments the director adopted for state investment advisers.

SECTION 22. ORS 59.225 is amended to read:

59.225. (1) [If] The Director of the Department of Consumer and Business Services may cancel
a license or an application for a license if the director finds that an applicant or licensee has
ceased to do business as a broker-dealer, state investment adviser, investment adviser representative
or [salesperson] agent, or has failed to maintain a bond or other security required by ORS 59.175
(4), or has failed to maintain an errors and omissions insurance policy required by ORS 59.175 (5),
or is subject to an adjudication of mental incompetence or to the control of a conservator or
guardian[,] or cannot be located after reasonable search[, the director may cancel the license or ap-
plication].

(2)(a) A broker-dealer, state investment adviser, investment adviser representative or
[salesperson] agent may withdraw a license by filing an application to withdraw. Unless the director
determines that the license should be suspended or revoked, the director shall allow the withdrawal
subject to any conditions, limitations and restrictions the director may impose.

(b) A federal covered investment adviser may terminate a notice filing pursuant to ORS 59.165
[(7)] (9) by providing the director with written notice of [such] the termination in accordance with
the procedures established by the director.

(3) When an investment adviser representative of a federal covered investment adviser begins
or terminates an association with [such] the federal covered investment adviser, the federal covered
investment adviser or investment adviser representative shall promptly notify the director in writing
in accordance with the procedures established by the director.

(4) The suspension of a license of a broker-dealer or state investment adviser [shall suspend] suspends the license of any [salesperson] agent of the broker-dealer or the license of any investment adviser representative of the state investment adviser. The revocation, cancellation, withdrawal or expiration of a license of a broker-dealer or state investment adviser [shall cancel] cancels the license of any [salesperson] agent of the broker-dealer or the license of any investment adviser representative of the state investment adviser.

(5) The suspension of a registration of securities suspends the license of any [salesperson] agent licensed to the issuer or owner of the securities. The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of any [salesperson] agent licensed to the issuer or owner of the securities.

SECTION 23. ORS 59.235 is amended to read:

59.235. Subject to section 18 of the Securities Act of 1933, [as amended,] section 15 of the Securities Exchange Act of 1934[,, as amended,] and sections 203A and 222 of the Investment Advisers Act of 1940, [as amended,] the Director of the Department of Consumer and Business Services [shall have] has general supervision and control over all issuers, registrants of securities, broker-dealers, federal covered investment advisers, state investment advisers, investment adviser representatives and [salespersons residing or doing] agents that reside or do business in this state and [engaged] engage in any activity with respect to securities or any aspect of the securities business. All such persons and [their] the records and everything connected with [their] the activities of the persons is [shall be] subject to examination by the director at any time. The provisions of this section and of any section of the Oregon Securities Law relating to examinations [shall] extend to any person who should have been licensed as a broker-dealer, state investment adviser, investment adviser representative or [salesperson] agent, any person exempted by rule from [those definitions] a requirement to obtain a license as a broker-dealer, state investment adviser, investment adviser representative or agent or any person whose license has expired or has been withdrawn, canceled, suspended or revoked. The director may collect from each such person the actual expenses incurred in [that] the director's examination.

SECTION 24. 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] under the Oregon Securities Law;

[(2)] (b) [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;

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

[(4)] (d) Issue an order, subject to ORS 59.295, to direct a person to cease and desist from a violation or threatened violation if the director has reason to believe that [any] the person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation].
(2) Except as provided in subsections (3) and (4) of this section, the director shall treat
the following records as confidential, as provided in ORS 705.137, and as exempt from dis-
closure under ORS 192.311 to 192.478:

(a) A tip, complaint or referral against any person that is subject to the director's
supervision under ORS 59.235;

(b) Examination reports and work papers, directives, orders and correspondence that
relates to examination reports; and

(c) Investigation reports and any documents or information the director obtains as part
of an investigation under this section.

(3) The director may use in any action or proceeding documents or information the di-
rector obtained in an examination or investigation under this section or records that are
exempt under subsection (2) of this section if the director deems the use necessary to in-
vestigate or prosecute a violation of the Oregon Securities Law or a violation of other law.

(4) The director or an employee of the Department of Consumer and Business Services
may be examined concerning records that are exempt under subsection (2) of this section in
an action or proceeding and the court may order production of the records if the court finds
that the examination and production is essential for establishing a claim or defense. If the
court must view records described in this section to make a finding, the court shall view the
records in camera.

SECTION 25. ORS 59.255 is amended to read:

59.255. (1) Whenever it appears to
If the Director of the Department of Consumer and Business
Services determines that a person has engaged, is engaging or is about to engage in an act or
practice constituting a violation of any provision of the Oregon Securities Law or any rule or order
of the director, the director may bring [suit] an action in the name and on behalf of the State of
Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce
compliance with the Oregon Securities Law or [such] the director's rule or order. Upon a proper
showing, a the court shall grant a permanent or temporary injunction, restraining order or writ
of mandamus [shall be granted].

(2) The court may fine the person against whom the order is entered not more than $20,000 for
each violation, which [shall] must be entered as a judgment and paid to the General Fund of the
State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's
continuance is a separate violation, but the maximum penalty for any continuing violation [shall]
may not exceed $100,000. If the court finds that the defendant has violated any provision of the
Oregon Securities Law or any [such] rule or order of the director, the court may appoint a re-
ceiver, who may be the director, for the defendant or the defendant's assets. The court may not re-
quire the director to post a bond.

(3) The court may award reasonable attorney fees to the director if the director prevails in an
action under this section. The court may award reasonable attorney fees to a defendant who pre-
vails in an action under this section if the court determines that the director had no objectively
reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision
of the trial court.

(4) The director may [include] seek in any action authorized by this section:

(a) [A claim for] Restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the
persons injured by the act or practice constituting the subject matter of the action. The court shall
have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the
rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical]; [or]

(b) [A claim for] Disgorgement of illegal gains or profits derived. Any recovery under this paragraph shall, which must be turned over to the General Fund of the State Treasury unless the court requires other disposition.; or

c (c) A maximum penalty of $50,000 for each violation and $150,000 for each continuing violation if the court finds that the defendant knew or had reason to know that the person injured by the act or practice that is the subject matter of the action was a vulnerable person, as defined in ORS 124.100.

(5) The provisions of this section do not apply to:

(a) A failure to file a notice and pay a fee pursuant to ORS 59.049 [(1), (2) or (3)] (1)(a), (b) or (c);

(b) A failure to file a notice and pay a fee pursuant to ORS 59.165 [(7)] (9);

(c) A failure to pay a fee pursuant to ORS 59.175 (9); or

(d) A violation of any rule adopted by the director pursuant to ORS 59.049 [(1), (2) or (3)] (1)(a), (b) or (c) or 59.165 [(7)] (9).

SECTION 26. ORS 59.265 is amended to read:

59.265. (1) [When] If the Director of the Department of Consumer and Business Services ascertains that the assets or capital of any broker-dealer not otherwise registered under section 15 of the Securities Exchange Act of 1934[, as amended,] or state investment adviser [that has its] with a principal place of business in this state are impaired, or that [such person’s] the broker-dealer’s or state investment adviser’s affairs are in an unsound condition, the director may take possession of all the property, business and assets of [such] the person. The director shall inventory the assets and liabilities of [such] the person. The director shall file one copy of the inventory in the office of the director and one copy in the office of the clerk of the circuit court of the county in which the principal place of business of [such] the person is located, and shall mail one copy to each shareholder or partner of [such] the person at the last-known address of the shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and give [it] the proceeding a case number.

(2) If any person refuses to permit the director to take [such] possession of the person’s property, business or assets, the director may apply to the circuit court of the county in which the principal place of business of [such] the person is located for an order appointing a receiver, who may be the director, to take such possession.

(3) If the [deficiency in] impairment of assets or capital has not been made good or the unsound condition remedied within 60 days [from] after the date [when] on which the director or receiver took possession, the director or receiver shall liquidate the property, business and assets of [such] the person that are located in this state [shall be liquidated]. If a receiver has not been appointed, the director shall apply for such appointment by the court in which the inventory was filed. The liquidation [shall] must proceed as provided by law for liquidation of a private corporation in receivership.

(4) The director shall fix the expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, [shall be fixed by the director,] subject to the approval of the court[,] and, upon certification by the director, [shall] the expenses and
expenditures must be paid out of the funds in the hands of the director as [such] receiver.

SECTION 27. ORS 59.285 is amended to read:

59.285. (1) In accordance with this section and ORS chapter 183 the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of the Oregon Securities Law. The director may classify securities, persons and matters within the jurisdiction of the director, and prescribe different requirements for different classes.

(2) [No] The director may not make, amend or rescind a rule [may be made, amended or rescinded] unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Oregon Securities Law.

(3) Except as provided in subsection (4) of this section, all financial statements required by the Oregon Securities Law [shall] must be prepared in accordance with generally accepted accounting principles or equivalent standards adopted by the International Sustainability Standards Board or a successor organization. The director may by rule prescribe:

(a) The form and content of financial statements required under the Oregon Securities Law;

(b) The circumstances under which consolidated financial statements [shall] must be filed; and

(c) Whether [any required financial statements shall be certified by] independent or certified public accountants must certify any required financial statements.

(4) Subsection (3) of this section does not apply to any broker-dealer that is subject to the financial reporting requirements of the Securities Exchange Act of 1934, [as amended,] to any federal covered investment adviser or to any state investment adviser [that has its] with a principal place of business outside this state [and] that is registered with the state in which the state investment adviser’s principal place of business is located.

SECTION 28. ORS 59.295 is amended to read:

59.295. (1) Except as provided in ORS 183.745, upon the entry of an order under the Oregon Securities Law, the Director of the Department of Consumer and Business Services shall promptly give appropriate notice of the order as provided in this subsection. The notice [shall] must state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after the date of service of the order. The notice [shall] must be given to:

(a) The issuer and applicant or registrant affected [thereby] by the order, with respect to orders entered [pursuant to] under ORS 59.085 and 59.105;

(b) The applicant or license and any investment adviser representative or [salesperson] agent affected [thereby] by the order, with respect to orders entered pursuant to ORS 59.205; or

(c) All interested persons with respect to orders entered pursuant to any other provision of the Oregon Securities Law, except ORS 59.095.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand for a hearing, [no person shall be] a person is not entitled to judicial review of the order.

(3) After the hearing, the director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license or registration notwithstanding the fact that the license or registration has expired, if the initial order of revocation was issued prior to expiration of the license or registration.

SECTION 29. ORS 59.331 is amended to read:
59.331. (1) Subject to subsection (2) of this section and after providing notice and an opportunity
to participate to the Director of the Department of Consumer and Business Services, the Attorney
General may:
(a) Make public or private investigations within or outside this state as the Attorney General
considers necessary to:
(A) 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 adopted or issued under the Oregon Securities
Law; or
(B) Aid in the enforcement of the Oregon Securities Law or any rule or order of the director
adopted or issued under the Oregon Securities Law.
(b) [Require or] Permit a person to file a statement in writing, under oath or otherwise as the
Attorney General determines, as to all the facts and circumstances concerning a matter to be in-
vestigated.
(c) Administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses,
take evidence and require the production of books, papers, correspondence, memoranda, agreements
or other documents or records that the Attorney General considers relevant or material to an in-
vestigation.
(d) Bring [suit] an action in the name and on behalf of the State of Oregon in the circuit court
of any county to:
(A) Enjoin any acts or practices the Attorney General has reason to believe that a person has
engaged, is engaging or is about to engage in that constitute a violation of any provision of the
Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon
Securities Law; or
(B) Enforce compliance with the Oregon Securities Law or any rule or order of the director
adopted or issued under the Oregon Securities Law.
(2) The Attorney General may take action under subsection (1) of this section only in connection
with any of the following alleged violations or cases:
(a) Alleged violations involving companies whose securities are listed on the New York Stock
Exchange, the American Stock Exchange or the [National Association of Securities Dealers Auto-
exchange;
(b) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
litigation under ORS 166.715 to 166.735;
(c) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
litigation under ORS 336.184 and 646.605 to 646.652; or
(d) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
litigation under ORS 646.705 to 646.805.
(3) The Attorney General may take action under subsection (1) of this section with respect to
cases described in subsection (2)(b), (c) or (d) of this section only after receiving the director’s con-
sent. The director may elect to be a named party in any action the Attorney General takes.
(4) Each witness who appears before the Attorney General under a subpoena issued under this
section [shall] must receive the fees and mileage provided for witnesses in ORS 44.415 (2). If a
person fails to comply with a subpoena issued under this section or if a party or witness refuses to
testify on any matters, the judge of the circuit court of any county, on the application of the At-
torney General, shall compel obedience by proceedings for contempt as in the case of disobedience
of the requirements of a subpoena issued from the court or a refusal to testify in the court.

(5) In an action brought under this section, a court:

(a) Shall grant a permanent or temporary injunction, restraining order or writ of mandamus
upon a proper showing by the Attorney General under subsection (1)(d) of this section.

(b) May award reasonable attorney fees to:

(A) The Attorney General if the Attorney General prevails in an action under this section.

(B) A defendant if the defendant prevails in an action under this section and the court deter-
mines that the Attorney General had no objectively reasonable basis for asserting the claim or no
reasonable basis for appealing an adverse decision of the trial court.

(6) The Attorney General may [include] seek any of the following in an action authorized by this
section:

(a) [A claim for] Restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the
persons injured by the act or practice constituting the subject matter of the action. If the court finds
that enforcement of the rights of the injured persons by private civil action, whether by class action
or otherwise, would be so burdensome or expensive as to be impractical, the court has jurisdiction
to award appropriate relief to the injured persons.

(b) [A claim for] Disgorgement of illegal gains or profits derived. The Attorney General shall
deposit any moneys recovered under this paragraph in the General Fund of the State Treasury un-
less the court requires other disposition.

(c) [A claim for the] Appointment of a receiver of any property derived by means of any act or
practice that constitutes a violation of any provision of the Oregon Securities Law or any rule or
order of the director adopted or issued under the Oregon Securities Law and of any books of ac-
count and papers relating to the property. Property for which a receiver may be appointed includes
other property with which the property derived by means of a violation has been commingled if the
property cannot be identified in kind because of the commingling. The receiver shall take possession
of the property, books and papers and shall liquidate the property for the benefit of all persons who
intervene in the action and establish an interest in the property. Subject to the approval of the
court, the expenses and attorney fees of the receiver and any expenditures required in the liqui-
dation proceeding [shall] must be paid out of the funds of the receivership. The receiver may be the
Attorney General. The court may not require the Attorney General to post a bond.

(d) [A claim for] A fine of not more than $20,000 for each violation. The fine [shall] must be
entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a
separate offense. In the case of a continuing violation, each day's continuance is a separate vio-
lation, but the maximum penalty for any continuing violation may not exceed $100,000.

(7) This section does not apply to:

(a) A failure to file a notice and pay a fee under ORS 59.049 [(1), (2) or (3)] (1)(a), (b) or (c);

(b) A failure to file a notice and pay a fee under ORS 59.165 [(7)] (9);

(c) A failure to pay a fee under ORS 59.175 (9);

(d) A violation of any rule adopted by the director under ORS 59.165 [(7)] (9); or

(e) A company that the director has licensed under ORS 59.165.

SECTION 30. ORS 59.345 is amended to read:

59.345. (1) For the purpose of ORS 59.335, an offer to sell or to buy is made in this state, whether
or not [either party is then] at the time of the offer to sell or to buy the offeror or offeree is
present in this state, [when] if the offer:

(a) Originates from this state; or

[36]
(b) Is directed by the offeror to this state and received at the place to which it the offer is directed [(or at any post office in this state in the case of a mailed offer)].

(2)(a) For the purpose of ORS 59.335, an offer to buy or to sell is accepted in this state [when] if acceptance:

(A) Is communicated to the offeror in this state; and

(B) Has not previously been communicated to the offeror, orally or in writing, outside this state.

(b) Acceptance is communicated to the offeror in this state, whether or not [either party is then] at the time of the acceptance the offeror or offeree is present in this state, [when] if the offeree directs [it] the acceptance to the offeror in this state reasonably believing the offeror to be in this state and [it] the acceptance is received at the place to which [it] the acceptance is directed [(or at any post office in this state in the case of a mailed acceptance)].

(3) An offer to sell or to buy is not made in this state solely because:

(a) A publisher circulates or there is circulated on behalf of the publisher in this state any bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of [its] the publication's circulation outside this state during the past 12 months; or

(b) A radio or television program [originating] or an electronic communication via the internet from outside this state is received in this state.

SECTION 31. ORS 59.370 is amended to read:

59.370. (1) Provisions of the Oregon Securities Law imposing civil or criminal liability do not apply to an act done or omitted in good faith in conformity with a rule or order of the Director of the Department of Consumer and Business Services, notwithstanding that the rule or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(2) A broker-dealer, federal covered investment adviser or state investment adviser shall report information to the director regarding [salespersons] agents or investment adviser representatives licensed to the broker-dealer, federal covered investment adviser or state investment adviser. The director, by rule, shall establish the reporting requirements under this subsection. In adopting rules under this subsection, the director shall consider and to the greatest extent practicable adopt the applicable public reporting requirements of the [National Association of Securities Dealers, Inc.,] Financial Industry Regulatory Authority and the federal Securities and Exchange Commission.

(3) A broker-dealer, federal covered investment adviser or state investment adviser is not liable in any civil action by or on behalf of [a salesperson] an agent or an investment adviser representative, including counterclaims, third-party claims or cross-claims, that is related to an alleged untrue statement made in connection with a report made under subsection (2) of this section, unless the [salesperson] agent or investment adviser representative shows by clear and convincing evidence that:

(a) The broker-dealer, federal covered investment adviser or state investment adviser knew at the time the report was made that the report contained a statement regarding the [salesperson] agent or investment adviser representative that was false in any material respect; or

(b) The broker-dealer, federal covered investment adviser or state investment adviser acted in reckless disregard as to the statement's truth or falsity.

SECTION 32. ORS 59.480 is amended to read:

59.480. As used in ORS 59.480 to 59.505:

(1)(a) “Financial exploitation” means:
(A) Wrongfully taking assets, funds or property belonging to or intended for the use of another person;
(B) Alarming another person by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out;
(C) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by another person; or
(D) Using the income or assets of another person for purposes other than the support and maintenance of the person without the person's consent.

(b) “Financial exploitation” does not include a transfer of money or property that is made for the purpose of qualifying a person for Medicaid benefits or for any other state or federal assistance program, or [the] holding and [exercise of] exercising control over money or property after such a transfer.

(2) “Financial institution” has the meaning given that term in ORS 706.008.
(3) “Qualified individual” means an individual who is:
(a) [A salesperson] An agent;
(b) An investment adviser representative; or
(c) A person who serves in a supervisory, compliance or legal capacity for a broker-dealer or state investment adviser, or who is otherwise identified in the written supervisory procedures of a broker-dealer or state investment adviser.
(4) “Trust company” has the meaning given that term in ORS 706.008.
(5) “Vulnerable person” has the meaning given that term in ORS 124.100.

SECTION 33. ORS 59.535 is amended to read:
59.535. [For the purposes of] As used in ORS 59.535 to 59.585, unless the context otherwise requires:
(1) “Beneficiary form” means a registration of a security [which] that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
(2) “Devissee” means any person designated in a will to receive a disposition of real or personal property.
(3) “Heirs” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
(4) “Person” [means an individual, a corporation, an organization or other legal entity] has the meaning given that term in ORS 59.015.
(5) “Personal representative” [includes] means an executor, administrator, successor personal representative, special administrator and [persons who perform] any person that performs substantially the same function as an executor, administrator, successor personal representative or special administrator under the [law] laws governing [their status] those functions.
(6) “Property” [includes both] means real and personal property or any interest [therein] in real or personal property and [means] includes anything that may be the subject of ownership.
(7) “Register,” “registered,” and “registration” [including its derivatives,] means, as appropriate, to issue or a completed act of issuing a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.
(8) “Registering entity” means a person [who] that originates or transfers a security title by
registration, and includes a broker maintaining security accounts for customers and a transfer agent
or other person acting for or as an issuer of securities.

(9) “Security” means a share, participation or other interest in property, in a business, or in an
obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated
security and a security account.

(10) “Security account” means:
(a) A reinvestment account associated with a security, a securities account with a broker, cash,
cash equivalents, interest, earnings or dividends earned or declared on a security in an account, a
reinvestment account or a brokerage account, whether or not credited to the account before the
owner’s death;
(b) A cash balance or other property held for or due to the owner of a security as a replacement
for or product of an account security, whether or not credited to the account before the owner’s
death; or
(c) An investment management account, a safekeeping account or a custody account with a fi-
nancial institution or trust company, as those terms are defined in ORS 706.008, including the se-
curities in the account and cash, cash equivalents, interest, earnings or dividends earned or declared
on a security in the account, whether or not credited to the account before the owner’s death.

(11) “State” includes any state of the United States, the District of Columbia, the Commonwealth
of Puerto Rico, the United States Virgin Islands and any territory or possession subject to the
legislative authority of the United States.

SECTION 34. ORS 59.710 is amended to read:

59.710. As used in ORS 59.710 to 59.830[, unless the context indicates otherwise]:

[(1) “Security,” “securities” or “securities or commodities,” mean and include all evidences of debt
or other options for their purchase, shares in any corporation or association, bonds, coupons,
scrip, rights, choses in action, and other evidences of debt or property, and options for their purchase,
or anything movable that is bought and sold.]

[(2)] (1) “Broker” means [and includes every person who] a person that, in this state:
(a) Engages, either for all or part of the person’s time, in the business of selling, purchasing
or otherwise acquiring securities from another person [any securities or commodities, or pur-
chasing, or otherwise acquiring securities or commodities from another] for the purpose of reselling
[them or offering them] or offering the securities for sale to the public; [or]
(b) Engages in the business of offering, buying or selling, or otherwise dealing or trading in
securities [or commodities,] as agent or principal, for commission or at a profit; and [every]
(c) A person [who] that deals in futures or differences in market quotations of prices or values
of any securities [or commodities,] or accepts margins on purchases or sales, or pretended purchases
or sales of securities [or commodities].

(2) “Broker-dealer” has the meaning given that term in ORS 59.015.

(3) “Bucket shop” means any building, or any room, apartment, booth, office or store [therein]
within a building, or any other place where any contract prohibited by ORS 59.710 to 59.830 is
made or offered to be made more than once and in the course of continuing or repeated transactions.

(4) [“Bonds” includes the bonds or other evidences of debt of a corporation, company or
association] “Security” has the meaning given that term in ORS 59.015.

SECTION 35. ORS 59.720 is amended to read:

59.720. Notwithstanding the definition of security in ORS 59.015, the provisions of ORS
59.710 to 59.830 [shall] do not apply to any contract, agreement, sale, purchase, lease, conveyance
or mortgage pertaining to real estate situated in this state, nor to the business of real estate brokers
or principal real estate brokers, as defined in ORS 696.010, [in so far as such] to the extent that
the business pertains to real estate located in this state.

SECTION 36. ORS 59.730 is amended to read:

59.730. [No] A person, whether acting in the person's own right, or as the officer, agent, servant,
correspondent or representative of another, [shall,] person, may not as a broker make or offer to
make, assist in making or offering to make, perform or take part in any contract respecting the
purchase or sale, either upon credit or margin, of any [securities or commodities] security more than
once, and in course of continuing or repeated transactions:

(1) Intending [that the contract shall be terminated, closed or settled] to terminate, close or
settle the contract or have the contract terminated, closed or settled according to, or upon the
basis of the public market quotations of or prices made on any board of trade or exchange or market
which deals in [such commodities or securities] the security, and without intending a bona fide
purchase or sale of the [same] security; or

(2) Intending [that the contract shall be deemed terminated, closed and settled] to terminate,
close or settle the contract or have the contract terminated, closed or settled when the mar-
et quotations or prices [mentioned] described in subsection (1) of this section for the [securities or
commodities] security named in the contract [reach] reaches a certain figure, without intending a
bona fide purchase or sale of the [same] security; or

(3) Not intending the actual bona fide receipt or delivery of [such securities or commodities] the
security, but intending a settlement of the contract based upon the difference in the public market
quotations or prices[, mentioned] described in subsection (1) of this section[,] at which the [securities
or commodities are] security is, or [are] is asserted to be, bought or sold. The prosecution, con-
viction and punishment of a corporation for violation of this section [shall not be deemed to be] is
not a prosecution, conviction or punishment of any of [its] the corporation's officers, directors or
stockholders.

SECTION 37. ORS 59.740 is amended to read:

59.740. [No] A person [shall] may not, as owner, keeper, proprietor or person in charge of, or
as officer, director, stockholder, agent, servant, correspondent or representative of any other person,
keep, conduct or operate any bucket shop, or knowingly permit or induce any other person,
whether acting in the person's own right or as officer, agent, servant, correspondent or representa-
tive of another person, to make, offer to make [therein] in the bucket shop, or assist in making
or in offering to make [therein] in the bucket shop, any of the [contract specified] contracts de-
scribed in ORS 59.730, more than once and in the course of continuing or repeated transactions.

SECTION 38. ORS 59.750 is amended to read:

59.750. [No] A person [shall] may not receive, communicate, exhibit or display in any manner
any statement of quotations or prices of [securities or commodities] a security with an intent to
make or offer to make, or to assist in making, or offering to make any contract prohibited by ORS
59.720 to 59.810.

SECTION 39. ORS 59.760 is amended to read:

59.760. [No] A person [shall] may not, with intent to deceive, report or publish, or cause to be
reported or published as a purchase or sale of [stocks or bonds] a security, any transaction [whereby
no] in which an actual change of ownership or interest [is effected] does not occur.

SECTION 40. ORS 59.770 is amended to read:

59.770. [No person shall] A person may not inflate, depress or cause fluctuations in, or attempt
to inflate, depress or cause fluctuations in, or combine or conspire with any other person to inflate, depress or cause fluctuations in, the market prices of [stocks or bonds] a security, or of an issue or any part of an issue of [such stocks or bonds] a security, by means of pretended purchases and sales, or by any other fictitious transactions or devices, for or on account of any person, whereby either in whole or in part a simultaneous change of ownership of or interest in [such stocks or bonds or of such] the security or issue or part of an issue [thereof] of the security is not effected. A pretended purchase or sale of [any stocks or bonds whereby] a security in which, in whole or in part, [no] a simultaneous change of ownership or interest [therein is effected,] in the security does not occur is prima facie evidence of the violation of this section by the person taking part in the pretended purchase or sale.

SECTION 41. ORS 59.780 is amended to read:

ORS 59.780. (1) [No] A broker, employed by a customer to buy and carry a security upon margin [stocks or bonds], while acting as broker for the customer in respect to [such stocks or bonds, shall] the security, may not sell for the broker's own account the same kind or issue of [stocks or bonds] security, with intent to trade against the customer's order.

(2) [No] A broker, employed by a customer to sell [stocks or bonds] a security, while acting as broker for the customer in respect to the sale of [such stocks or bonds, shall] the security, may not purchase for the broker's own account the same kind or issue of [stocks or bonds] security, with intent to trade against the customer's order.

(3) Every member of a firm of brokers who either does, or consents or assents to the doing of, any act prohibited by this section, ORS 59.790 or 59.800 is guilty of violating the section prohibiting the act.

SECTION 42. ORS 59.790 is amended to read:

ORS 59.790. [No] A broker-dealer engaged in the business of purchasing and selling [stocks or bonds] securities as a broker-dealer, knowing that the broker-dealer is insolvent, [shall] may not accept or receive from a customer ignorant of the broker-dealer's insolvency[,] money[, stocks or bonds] or a security belonging to the customer, except in liquidation or as security for an existing indebtedness, and thereby cause the customer to lose in whole or in part [such] the money[, stocks or bonds] or security. A broker-dealer [shall be deemed insolvent within the meaning of this section whenever] is insolvent if the aggregate of the property of the broker-dealer is not, at a fair valuation, sufficient in amount to pay the debts of the broker-dealer.

SECTION 43. ORS 59.800 is amended to read:

ORS 59.800. [No] A broker-dealer engaged in the business of purchasing and selling [stocks or bonds] securities as a broker-dealer [shall] may not:

(1) While having in the possession of the broker-dealer, for safekeeping or otherwise, [stocks or bonds] a security belonging to a customer, without having any lien [thereon] or any special property [therein] in the security, pledge or dispose [thereof] of the security without the customer's consent; [or]

(2) While having in the possession of the broker-dealer [stocks or bonds] a security belonging to a customer on which the broker-dealer has a lien for indebtedness due to the broker-dealer by the customer, pledge the [same] security for more than the amount of the debt due to the broker-dealer [thereon], or otherwise dispose [thereof] of the security for the broker-dealer's own benefit, with or without the customer's consent, and without having in possession of the broker-dealer or subject to control of the broker-dealer, [stocks or bonds] securities of the kind and amount to which the customer is then entitled, for delivery to the customer upon demand of the customer [therefor] for the
security and tender of the amount due [thereon] on the security, and thereby cause the customer to lose, in whole or in part, [such stocks or bonds,] the security or the value [thereof] of the security, or

(3) Fail, on demand, to deliver to any customer, [stocks or bonds] a security owned by the customer, and in the possession of [such] the broker-dealer, upon payment or tender of the amount the [same] security was pledged to secure.

SECTION 44. ORS 59.810 is amended to read:
59.810. [No] A person engaged in the business of purchasing or selling [stocks or bonds] securities as a broker [shall] may not refuse to deliver to each customer on whose behalf the person made a purchase or sale of [such] the securities [is made by the person], within five days after written demand [therefor] the securities made within six months following the purchase or sale, a statement or memorandum of the purchase or sale [which] that is true in all material respects and [which] that contains a description of the securities purchased or sold, the name of the person from whom the securities were purchased or to whom [they] the securities were sold, and the day and hours between which the transaction took place.

SECTION 45. ORS 59.830 is amended to read:
59.830. [No] A person [shall be] is not excused from attending and testifying, or producing any book, paper or other document before any court or magistrate, upon any trial, investigation or proceeding initiated by the district attorney, grand jury or court for a violation of any of the provisions of ORS 59.730 to 59.810, upon the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to convict the person of a crime or subject the person to a penalty or forfeiture. [However, no], except that a person [shall] may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may so testify or produce evidence, documentary or otherwise, and [no] testimony so given or produced [shall] may not be received against the person in any criminal action, suit or proceeding, investigation, inquisition or inquiry.

SECTION 46. ORS 59.991 is amended to read:
59.991. (1) Except as provided in subsection (3) of this section, violation 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 the Director of the Department of Consumer and Business Services under ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995, except ORS 59.315 (2) or 59.810, is a Class B felony.

(2) Violation of ORS 59.315 (2) or 59.810 is a Class A misdemeanor.

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

SECTION 47. ORS 59.995 is amended to read:
59.995. (1)(a) Except as provided in paragraph (b) of this subsection, in addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets the violation of ORS 59.005 to 59.505, 59.710 to 59.830, 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[,];

(A) Any person who violates or who procures, aids or abets the violation of ORS 59.485 or of
any rule adopted by the director 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[.]; and

(B) In addition to any other penalty provided by law, a person that violates or procures, aids or abets the violation or ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the director is subject to a penalty of not more than $50,000 for every violation in which the director finds that the person knew or should have known that the violation harmed a vulnerable person, as defined in ORS 124.100. The penalty must be paid to the General Fund of the State Treasury.

(2) Every violation described in subsection (1)(a) 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 [shall] may not exceed $100,000.

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

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

SECTION 48. Section 49 of this 2023 Act is added to and made a part of ORS chapter 59.

SECTION 49. (1) As used in this section:

(a) “Claimant” means a person that files an application for restitution assistance under this section.

(b) “Final order” means:

(A) A final order that the Director of the Department of Consumer and Business Services issues during the course of or at the conclusion of an administrative proceeding concerning a violation of this chapter in which the director awards restitution; or

(B) A final order that a court issues during the course of or at the conclusion of litigation the director initiates with respect to a violation of this chapter in which the court awards restitution.

(c) “Restitution assistance” means a payment to a victim from the Securities Restitution Assistance Fund.

(d) “Victim” means a person to whom a final order awards restitution.

(e) “Vulnerable person” has the meaning given that term in ORS 124.100.

(2)(a) There is established within the State Treasury the Securities Restitution Assistance Fund, separate and distinct from the General Fund, with the purpose of providing restitution assistance for victims that have not received the full amount of a restitution award.

(b) The Department of Consumer and Business Services shall deposit all moneys the department collects or receives as proceeds of civil penalties the department imposes for violations of this chapter into the State Treasury to the credit of the Securities Restitution Assistance Fund, and moneys in the fund are continuously appropriated to the department for the purposes specified in paragraph (a) of this subsection.

(c) Moneys in the fund may be invested in the same manner as other state moneys, and any interest earned by the fund must be credited to the fund.

(d) The department shall keep a record of all moneys the department deposits into the fund. The record must indicate the source from which the department derived the moneys,
the interest earned and the activity or program against which the department charges all
withdrawals. If moneys in the fund are withdrawn, transferred or used for any purpose other
than the purpose described in paragraph (a) of this subsection, interest accrues on the
amount withdrawn, transferred or used from the date of the withdrawal, transfer or use
until the date on which the moneys are restored to the fund.

(3)(a) A victim is eligible for restitution assistance if the victim is:
(A) A natural person who was a resident of this state at the time a violation of this
chapter occurred that resulted in an issuance of a final order; or
(B) A person, other than a natural person, that was domiciled in this state at the time
a violation of this chapter occurred that resulted in an issuance of a final order.
(b) A victim is not eligible for restitution assistance if the victim:
(A) Participated in or assisted in, or attempted to participate in or assist in, a violation
of this chapter or of any other state or federal law that regulates transactions in securities;
or
(B) Profited from a violation of this chapter, or any other state or federal law that reg-
ulates transactions in securities, or would have profited from the violation if an attempted
violation had succeeded.

(4)(a) A claimant must apply for restitution assistance not later than one year after the
date of a final order unless the director grants an extension for good cause shown. The
claimant must apply on a form, in a manner and with contents that the department specifies
by rule.
(b) Notwithstanding that a victim might have more than one eligible claimant, the de-
partment may pay restitution assistance to only one of the victim’s eligible claimants. A
victim must identify the sole eligible claimant to which the department may pay the
restitution assistance.

(5)(a) The director may award restitution assistance to a claimant in the following
amounts:
(A) The lesser of $25,000 or 25 percent of the amount of unpaid restitution awarded in the
final order; or
(B) The lesser of $50,000 or 50 percent of the amount of unpaid restitution awarded in the
final order if the victim is a vulnerable person.
(b) The director may waive the caps on the amounts described in paragraph (a) of this
subsection if the director finds good cause.

(5) The director may bring an action or may request that the Attorney General bring an
action in a circuit court of this state to recover any restitution assistance the department
paid to a victim if:
(a) The victim was convicted of any crime that was related to a claim under this section,
including but not limited to forgery, fraud, deception or falsification; or
(b) The restitution award is overturned on appeal.

(6)(a) If the department pays restitution assistance to a victim because a person that a
final order obligated to pay restitution has not paid all or part of the required restitution,
the director is subrogated to the victim's right of recovery against the person for the
amount of restitution assistance the department paid to the victim.
(b) The director may file and perfect a lien against any recovery made by or on behalf
of the victim for the amount of restitution assistance the department paid to a victim. The
director may bring an action, or may intervene in any action brought by or on behalf of the victim, for the purpose of foreclosing the lien.

(c) A claimant shall refund to the department any moneys the department paid to the victim that, when combined with any other restitution payment, exceed the amount of restitution specified in the final order.

(7) The director shall deposit the proceeds of any recovery or refund under subsection (6) of this section into the Securities Restitution Assistance Fund.

(8) The director may suspend or prorate payments from the fund if a payment would cause the balance of the fund to fall to or below $250,000. The director may resume payments once the balance again exceeds $250,000.

(9) Except to the extent that the state, or another person on behalf of the state, brings an action or other proceeding to execute, attach, garnish or otherwise recover all or a portion of restitution assistance the department paid under this section, the restitution assistance is not subject to execution, attachment, garnishment or other process.

(10) The director may adopt rules to carry out the provisions of this section.

SECTION 50. ORS 646.605 is amended to read:

646.605. As used in ORS 336.184 and 646.605 to 646.652:

(1) “Appropriate court” means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 336.184 and 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(3) “Examination” of documentary material includes inspection, study or copying of any documentary material, and taking testimony under oath or acknowledgment regarding any documentary material or copy thereof.

(4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) “Prosecuting attorney” means the Attorney General or the district attorney of any county in which a violation of ORS 336.184 and 646.605 to 646.652 is alleged to have occurred.

(6)(a) “Real estate, goods or services” means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes loans and extensions of credit, and franchises, distributorships and other similar business opportunities, but does not include insurance.

(b) Notwithstanding paragraph (a) of this subsection:

(A) “Real estate” does not cover conduct covered by ORS chapter 90.

(B) “Loans and extensions of credit” does not include transactions involving a pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

(7) “Telephone solicitation” means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:
(a) A person who is a broker-dealer or [salesperson] agent licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106, when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure.

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance.

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club.

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, “supervised financial institution” means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon.

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of $100.

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer when the solicitation involves answering services.

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) “Trade” and “commerce” mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and include any trade or commerce directly or indirectly affecting the people of this state.

(9) “Unconscionable tactics” include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer’s physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;
(b) Knowingly permits a customer to enter into a transaction from which the customer will
derive no material benefit;
(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable
probability of payment of the attendant financial obligation in full by the customer when due; or
(d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
servicemember or servicemember in active service. For purposes of this paragraph:
(A) “Disabled veteran” has the meaning given that term in ORS 408.225.
(B) “Disabled servicemember” means a servicemember, as defined in 50 U.S.C. 3911 as in effect
on January 1, 2010, who may be entitled to disability compensation under laws administered by the
United States Department of Veterans Affairs.
(C) “Servicemember in active service” means:
(i) A servicemember called into active service under Title 10 or Title 32 of the United States
Code as in effect on January 1, 2010; or
(ii) A servicemember on state active duty, as defined in the Oregon Code of Military Justice.
(10) A willful violation occurs when the person committing the violation knew or should have
known that the conduct of the person was a violation.
(11) A loan is made “in close connection with the sale of a manufactured dwelling” if:
(a) The lender directly or indirectly controls, is controlled by or is under common control with
the seller, unless the relationship is remote and is not a factor in the transaction;
(b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-
rrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the
borrower;
(c) The lender is related to the seller by blood or marriage;
(d) The seller directly and materially assists the borrower in obtaining the loan;
(e) The seller prepares documents that are given to the lender and used in connection with the
loan; or
(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

SECTION 51. ORS 646A.628 is amended to read:
646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Con-
sumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to
ORS 86A.095 to 86A.198, 86A.990, 86A.992, 650.005 to 650.100, 697.005 to 697.095, 697.602 to 697.842,
705.350, [and] 717.200 to 717.320 and 731.804 and ORS chapters [59,] 645, 706 to 716, 723, 725 and
726 to implement ORS 646A.600 to 646A.628.

SECTION 52. ORS 131A.005 is amended to read:
131A.005. As used in this chapter:
(1) “All persons known to have an interest” means:
(a) Any person who filed a notice of interest for seized property with any public office, in the
manner required or permitted by law, before the property was seized for forfeiture;
(b) Any person from whose custody property is seized for forfeiture; and
(c) Any person who has an interest in property seized for forfeiture, including all owners and
occupants of the property, whose identity and address is known or is ascertainable upon diligent
inquiry and whose rights and interest in the property may be affected by the action.
(2) “Attorney fees” has the meaning given that term in ORCP 68 A.
(3) “Financial institution” means any person lawfully conducting business as:
(a) A financial institution or trust company, as those terms are defined in ORS 706.008;
(b) A consumer finance company subject to the provisions of ORS chapter 725;
(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 86A.100, a mortgage servicing company or other mortgage company;
(d) An officer, agency, department or instrumentality of the federal government, including but not limited to:
   (A) The Secretary of Housing and Urban Development;
   (B) The Federal Housing Administration;
   (C) The United States Department of Veterans Affairs;
   (D) Rural Development and the Farm Service Agency of the United States Department of Agriculture;
   (E) The Federal National Mortgage Association;
   (F) The Government National Mortgage Administration;
   (G) The Federal Home Loan Mortgage Corporation;
   (H) The Federal Agricultural Mortgage Corporation; and
   (I) The Small Business Administration;
(e) An agency, department or instrumentality of the state, including but not limited to:
   (A) The Housing and Community Services Department;
   (B) The Department of Veterans’ Affairs; and
   (C) The Public Employees Retirement System;
(f) An agency, department or instrumentality of any local government, as defined by ORS 174.116, or special government body, as defined by ORS 174.117, including but not limited to such agencies as the Portland Development Commission;
(g) An insurer as defined in ORS 731.106;
(h) A private mortgage insurance company;
(i) A pension plan or fund or other retirement plan; and
(j) A broker-dealer or investment adviser representative as defined in ORS 59.015.
(4) “Forfeiting agency” means a public body that is seeking forfeiture of property under this chapter.
(5) “Forfeiture counsel” means an attorney designated by a forfeiting agency to represent the forfeiting agency in forfeiture proceedings.
(6) “Forfeiture proceeds” means all property that has been forfeited in a proceeding under this chapter, including money, earnings from forfeited property and amounts realized from the sale of forfeited property.
(7) “Instrumentality” has the meaning given in ORS 131.550.
(8) “Law enforcement agency” means any agency that employs police officers or prosecutes criminal cases.
(9) “Motor vehicle with a hidden compartment” means a motor vehicle as defined in ORS 801.360 that has had the vehicle’s original design modified by a person other than the manufacturer to create a container, space or enclosure for the purpose of concealing, hiding or otherwise preventing discovery of its contents and that is used or intended to be used to facilitate the commission of a criminal offense.
(10) “Police officer” has the meaning given that term in ORS 133.525.
(11) “Proceeds of prohibited conduct” means property derived directly or indirectly from prohibited conduct, or maintained by or realized through prohibited conduct. “Proceeds of prohibited...
“conduct” includes any benefit, interest or property of any kind, without reduction for expenses of acquiring or maintaining the property.

(12) “Prohibited conduct” means:
(a) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 475.005 to 475.285 and 475.744 to 475.980 when the conduct constitutes the commission of a crime as described in ORS 161.515;
(b) Violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475C.337, 475C.341, 475C.345 or 475C.349 when the conduct constitutes the commission of a crime as described in ORS 161.515;
(c) Violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475C.229;
(d) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 163.263, 163.264, 163.266 or 167.017; and
(e) Other conduct that constitutes the commission of a crime as described in ORS 161.515, that provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is made subject to the provisions of this chapter under ORS 131A.010 (4) or other law.

(13) “Property” means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.

(14) “Public body” has the meaning given in ORS 174.109.

(15) “Seizing agency” means a law enforcement agency that has seized property for forfeiture.

(16) “Weapon” means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person.

SECTION 53. ORS 657.085 is amended to read:
657.085. “Employment” does not include service performed by any person as a newspaper advertising salesperson, real estate broker, principal real estate broker, insurance producer or securities [salesperson or] agent to the extent that the person is compensated by commission.


(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 sub-
section (1) of this section, to undertake and exercise all of the duties, functions and powers
conferred on the director by section 49 of this 2023 Act and the amendments to ORS 59.015,
59.780, 59.790, 59.800, 59.810, 59.830, 59.991, 59.995, 131A.005, 646.605, 646A.628 and 657.085 by
sections 1 to 47 and 50 to 53 of this 2023 Act.

SECTION 56. 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.

[50]