

HB 2274-2
(LC 427)
2/16/23 (TSB/ps)

Requested by HOUSE COMMITTEE ON EMERGENCY MANAGEMENT, GENERAL GOVERNMENT, AND VETERANS (at the request of Department of Consumer and Business Services)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2274**

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

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

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

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

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

14 **“(b) Make any proper inquiry of a person that is licensed or required**
15 **to be licensed as a broker-dealer, salesperson, investment adviser rep-**
16 **resentative or state investment adviser, or any officer, partner, direc-**
17 **tor or authorized representative of a broker-dealer, salesperson,**
18 **investment adviser representative or state investment adviser, in re-**
19 **lation to the activities or condition of the broker-dealer, salesperson,**
20 **investment adviser representative or state investment adviser or in**
21 **relation to any other matter connected with offering, purchasing or**

1 **selling any security or conducting a securities business;**

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

5 “[3] (d) [May] Publish information concerning any violation of the
6 Oregon Securities Law or any rule or order of the director[;]. [and]

7 **“(2) A person shall promptly and truthfully reply to an inquiry from**
8 **the director in relation to any matter connected directly or indirectly**
9 **with an offer, purchase or sale of any security or the conduct of a**
10 **securities business. The person shall reply using the form of commu-**
11 **nication the director requests, and the person shall verify the reply in**
12 **the manner and form that the director specifies. A person’s reply un-**
13 **der this subsection is subject to the provisions of ORS 59.135 and 59.451.**

14 “[4] (3) If the director has reason to believe that any person has en-
15 gaged, is engaging or is about to engage in any violation of the Oregon Se-
16 curities Law, **the director** may issue an order, subject to ORS 59.295,
17 directed to the person to cease and desist from the violation or threatened
18 violation.

19 **“(4) Except as provided in subsections (5) and (6) of this section, the**
20 **following records of the Department of Consumer and Business Ser-**
21 **vices are exempt from disclosure or production and the department**
22 **must treat the records as confidential in accordance with ORS 705.137:**

23 **“(a) A tip, complaint or referral the director receives against any**
24 **person that is subject to the director’s general supervision under ORS**
25 **59.235;**

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

28 **“(c) Investigation reports, any documents and information the di-**
29 **rector gathers as part of an investigation under this section and any**
30 **work papers, directives, orders or correspondence related to an inves-**

1 **tigation.**

2 “(5) The director may use in an action, suit or proceeding infor-
3 mation that is exempt from disclosure under subsection (4) of this
4 section if the director gathers the information in an examination or
5 investigation and the director considers the information necessary for
6 the purpose of investigating or prosecuting apparent violations of the
7 Oregon Securities Law or other law.

8 “(6) Notwithstanding ORS 40.270, an officer of the department may
9 be examined concerning records that are exempt from disclosure under
10 subsection (4) of this section and the records are subject to production
11 if a court finds that the examination and production are essential for
12 establishing a claim or defense in a civil or criminal action. In making
13 a finding under this subsection, a court shall view in camera the re-
14 cords the court requires to be produced.

15 **SECTION 2.** ORS 59.995 is amended to read:

16 “59.995. (1)(a) Except as provided in [*paragraph*] **paragraphs (b) and (c)**
17 of this subsection, in addition to all other penalties and enforcement pro-
18 visions provided by law, any person [*who*] **that** violates or [*who*] procures,
19 aids or abets the violation of **this section and** ORS 59.005 to 59.505, 59.710
20 to 59.830[,] **and** 59.991 [*and 59.995*] or any rule or order of the Director of the
21 Department of Consumer and Business Services [*shall be*] **is** subject to a
22 penalty of not more than \$20,000 for every violation, which [*shall*] **must** be
23 paid to the General Fund of the State Treasury.

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

30 “(c) **A person that violates or procures, aids or abets a violation of**

1 **this section or ORS 59.005 to 59.505, 59.710 to 59.830 and 59.991 or any**
2 **rule or order of the director and that knows or should know that the**
3 **act or practice that constitutes the violation injures, or is otherwise**
4 **directed at, a vulnerable person, as defined in ORS 124.100, is in addi-**
5 **tion to all other penalties and enforcement provisions provided by law**
6 **subject to a penalty of not more than \$60,000 for each violation, which**
7 **must be paid to the General Fund of the State Treasury.**

8 “(2) Every violation described in subsection (1)(a) **and (c)** of this section
9 is a separate offense and, in the case of a continuing violation, each day’s
10 continuance is a separate violation, but the maximum penalty for any con-
11 tinuing violation **under subsection (1)(a) of this section [shall] may not**
12 **exceed \$100,000 and the maximum penalty for a continuing violation**
13 **under subsection (1)(c) of this section may not exceed \$300,000.**

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

16 “(4) **In addition to imposing a penalty provided under this section,**
17 **the director may order a person whose acts, omissions, practices, op-**
18 **erations or violation of ORS 59.005 to 59.505 and 59.710 to 59.830 or a**
19 **rule or order of the director causes harm to another person to pay**
20 **restitution to the other person.**

21 “[~~(4)~~] (5) This section does not apply to:

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

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

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

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

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

30 “705.137. (1) Except as provided in subsection (3) of this section, a docu-

1 ment, material or other information that the Department of Consumer and
2 Business Services possesses or controls for the purpose of administering ORS
3 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842,
4 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725
5 and 726, the Bank Act and the Insurance Code and that is described in
6 statute as confidential or as not subject to disclosure is not subject to dis-
7 closure under ORS 192.311 to 192.478, is not subject to subpoena and is not
8 subject to discovery or admissible in evidence in a private civil action. The
9 Director of the Department of Consumer and Business Services may use a
10 confidential document, material or other information in administering ORS
11 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842,
12 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725
13 and 726, the Bank Act and the Insurance Code and in furthering a regulatory
14 or legal action the director brings as a part of the director's duties.

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

18 “(3) In order to assist in the performance of the director's duties, the di-
19 rector may:

20 “(a) Authorize sharing a confidential document, material or other infor-
21 mation that is subject to subsection (1) of this section as appropriate among
22 the administrative divisions and staff offices of the department created under
23 ORS 705.115 for the purpose of administering and enforcing the statutes
24 identified in subsection (1) of this section, in order to enable the adminis-
25 trative divisions and staff offices to carry out the functions and responsibil-
26 ities of the administrative divisions and staff offices.

27 “(b) Share a document, material or other information, including a confi-
28 dential document, material or other information that is subject to subsection
29 (1) of this section or that is otherwise confidential under ORS 192.345 or
30 192.355, with other state, federal, foreign and international regulatory and

1 law enforcement agencies, with the Federal Reserve Board, [*and*] with the
2 National Association of Insurance Commissioners and affiliates or subsid-
3 iaries of the National Association of Insurance Commissioners **and with the**
4 **North American Securities Administrators Association and successors,**
5 **affiliates or subsidiaries of the North American Securities Adminis-**
6 **trators Association,** if the recipient agrees to maintain the confidentiality
7 of the document, material or other information.

8 “(c) Receive a document, material or other information, including an
9 otherwise confidential document, material or other information, from state,
10 federal, foreign and international regulatory and law enforcement agencies,
11 from the Federal Reserve Board, [*and*] from the National Association of In-
12 surance Commissioners and affiliates or subsidiaries of the National Associ-
13 ation of Insurance Commissioners **and from the North American**
14 **Securities Administrators Association and successors, affiliates or**
15 **subsidiaries of the North American Securities Administrators Associ-**
16 **ation.** As provided in this section, the director shall maintain the
17 confidentiality of documents, materials or other information the director re-
18 ceives if the director receives notice or has an understanding that the doc-
19 ument, material or other information is confidential or privileged under the
20 laws of the jurisdiction that is the source of the document, material or other
21 information.

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

27 “(5) This section does not prohibit the director from disclosing to a da-
28 tabase or other clearinghouse service maintained by the National Associ-
29 ation of Insurance Commissioners or affiliates or subsidiaries of the National
30 Association of Insurance Commissioners, **or by the North American Se-**

1 **curities Administrators Association and successors, affiliates or sub-**
2 **sidiaries of the North American Securities Administrators Association,**
3 information about a final, adjudicated action, including a suspension or re-
4 vocation of a certificate of authority or a license, if the information is oth-
5 erwise open to public inspection.

6 **“SECTION 4. The amendments to ORS 59.245, 59.995 and 705.137 by**
7 **sections 1 to 3 of this 2023 Act apply to any business or transaction**
8 **that is subject to the Oregon Securities Law, to ORS 59.535 to 59.585**
9 **or to ORS 59.710 to 59.830, or any action or proceeding to enforce the**
10 **provisions of the Oregon Securities Law, ORS 59.535 to 59.585 or 59.710**
11 **to 59.830, that occurs on or after the operative date specified in section**
12 **5 of this 2023 Act.**

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

15 **“(2) The Director of the Department of Consumer and Business**
16 **Services may adopt rules and take any other action before the opera-**
17 **tive date specified in subsection (1) of this section that is necessary**
18 **to enable the director, on and after the operative date specified in**
19 **subsection (1) of this section, to undertake and exercise all of the du-**
20 **ties, functions and powers conferred on the director by the amend-**
21 **ments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this 2023**
22 **Act.**

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

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