

**B-Engrossed**  
**House Bill 2274**

Ordered by the Senate May 8  
Including House Amendments dated March 28 and Senate Amendments  
dated May 8

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

**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.

Permits Director of Department of Consumer and Business Services to make any proper inquiry of person or matter connected with offering, purchasing or selling any security or conducting securities business and requires person to reply promptly and truthfully to inquiry. Provides confidentiality for and prohibits disclosure of certain materials that Director of Department of Consumer and Business Services gathers, compiles or creates as part of examination or investigation of person in connection with offer, purchase or sale of security or conduct of securities business and specifies exemptions from prohibition on disclosure. **Permits examination of officer of department concerning records that are exempt from disclosure under specified circumstances.** Permits director to use confidential materials or information to extent director considers necessary in action, suit or proceeding to investigate or prosecute apparent violations of Oregon Securities Law.

Imposes penalty of not more than \$60,000 for violation of Oregon Securities Law and maximum of \$300,000 for continuing violation. Permits director to order restitution.

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to securities regulation; creating new provisions; amending ORS 59.245, 59.995 and 705.137;  
3 and prescribing an effective date.

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

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

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

9        [(4)] **(3)** If the director has reason to believe that any person has engaged, is engaging or is  
10 about to engage in any violation of the Oregon Securities Law, **the director** may issue an order,  
11 subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened  
12 violation.

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

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

19        **(b) Any examination made by the director under the Oregon Securities Law and the re-**  
20 **cord of the examination, including any documents, material and other information the di-**  
21 **rector gathers, compiles or creates in connection with the examination, but excluding any**  
22 **final report of the examination; and**

23        **(c) Any investigation or inquiry the director makes under the Oregon Securities Law and**  
24 **the record of the investigation or inquiry, including any documents, material or other in-**  
25 **formation the director gathers, compiles or creates in connection with the investigation or**  
26 **inquiry, but only during the pendency of the investigation or inquiry or during the pendency**  
27 **of a related action, suit or proceeding by the director, the Attorney General or other gov-**  
28 **ernment entity to enforce a provision of the Oregon Securities Law or a rule or order of the**  
29 **director.**

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

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

43        **(7) If the director, in the director's sole discretion, determines that disclosure is neces-**  
44 **sary to protect the public interest, the director may make available the records described in**  
45 **subsection (4) of this section.**

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

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

5       59.995. (1)(a) Except as provided in [*paragraph*] **paragraphs (b) and (c)** of this subsection, in  
6 addition to all other penalties and enforcement provisions provided by law, any person [*who*] **that**  
7 violates or [*who*] procures, aids or abets the violation of **this section and** ORS 59.005 to 59.505,  
8 59.710 to 59.830[,] **and** 59.991 [*and 59.995*] or any rule or order of the Director of the Department  
9 of Consumer and Business Services [*shall be*] **is** subject to a penalty of not more than \$20,000 for  
10 every violation, which [*shall*] **must** be paid to the General Fund of the State Treasury.

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

15       **(c) A person that violates or procures, aids or abets a violation of this section or ORS**  
16 **59.005 to 59.505, 59.710 to 59.830 and 59.991 or any rule or order of the director and that knows**  
17 **or should know that the act or practice that constitutes the violation injures, or is otherwise**  
18 **directed at, a vulnerable person, as defined in ORS 124.100, is in addition to all other penalties**  
19 **and enforcement provisions provided by law subject to a penalty of not more than \$60,000 for**  
20 **each violation, which must be paid to the General Fund of the State Treasury.**

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

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

27       **(4) In addition to imposing a penalty provided under this section, the director may order**  
28 **a person whose acts, omissions, practices, operations or violation of ORS 59.005 to 59.505 and**  
29 **59.710 to 59.830 or a rule or order of the director causes harm to another person to pay**  
30 **restitution to the other person.**

31       [(4)] **(5)** This section does not apply to:

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

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

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

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

36       **SECTION 3.** ORS 705.137 is amended to read:

37       705.137. (1) Except as provided in subsection (3) of this section, a document, material or other  
38 information that the Department of Consumer and Business Services possesses or controls for the  
39 purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to  
40 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and 726, the  
41 Bank Act and the Insurance Code and that is described in statute as confidential or as not subject  
42 to disclosure is not subject to disclosure under ORS 192.311 to 192.478, is not subject to subpoena  
43 and is not subject to discovery or admissible in evidence in a private civil action. The Director of  
44 the Department of Consumer and Business Services may use a confidential document, material or  
45 other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095,

1 697.602 to 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 and ORS chapters 59, 723, 725 and  
2 726, the Bank Act and the Insurance Code and in furthering a regulatory or legal action the director  
3 brings as a part of the director's duties.

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

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

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

13 (b) Share a document, material or other information, including a confidential document, material  
14 or other information that is subject to subsection (1) of this section or that is otherwise confidential  
15 under ORS 192.345 or 192.355, with other state, federal, foreign and international regulatory and law  
16 enforcement agencies, with the Federal Reserve Board, [*and*] with the National Association of In-  
17 surance Commissioners and affiliates or subsidiaries of the National Association of Insurance Com-  
18 missioners **and with the North American Securities Administrators Association and**  
19 **successors, affiliates or subsidiaries of the North American Securities Administrators Asso-**  
20 **ciation**, if the recipient agrees to maintain the confidentiality of the document, material or other  
21 information.

22 (c) Receive a document, material or other information, including an otherwise confidential doc-  
23 ument, material or other information, from state, federal, foreign and international regulatory and  
24 law enforcement agencies, from the Federal Reserve Board, [*and*] from the National Association of  
25 Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance  
26 Commissioners **and from the North American Securities Administrators Association and suc-**  
27 **cessors, affiliates or subsidiaries of the North American Securities Administrators Associ-**  
28 **ation**. As provided in this section, the director shall maintain the confidentiality of documents,  
29 materials or other information the director receives if the director receives notice or has an  
30 understanding that the document, material or other information is confidential or privileged under  
31 the laws of the jurisdiction that is the source of the document, material or other information.

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

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

43 **SECTION 4. The amendments to ORS 59.245, 59.995 and 705.137 by sections 1 to 3 of this**  
44 **2023 Act apply to any business or transaction that is subject to the Oregon Securities Law,**  
45 **to ORS 59.535 to 59.585 or to ORS 59.710 to 59.830, or any action or proceeding to enforce the**

1 provisions of the Oregon Securities Law, ORS 59.535 to 59.585 or 59.710 to 59.830, that occurs  
2 on or after the operative date specified in section 5 of this 2023 Act.

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

5 (2) The Director of the Department of Consumer and Business Services may adopt rules  
6 and take any other action before the operative date specified in subsection (1) of this section  
7 that is necessary to enable the director, on and after the operative date specified in sub-  
8 section (1) of this section, to undertake and exercise all of the duties, functions and powers  
9 conferred on the director by the amendments to ORS 59.245, 59.995 and 705.137 by sections  
10 1 to 3 of this 2023 Act.

11 **SECTION 6.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
12 regular session of the Eighty-second Legislative Assembly adjourns sine die.  
13

---