

House Bill 2274

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

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

1
2 Relating to securities regulation; creating new provisions; amending ORS 59.015, 59.025, 59.035,
3 59.049, 59.051, 59.065, 59.085, 59.095, 59.105, 59.115, 59.125, 59.127, 59.131, 59.135, 59.137, 59.165,
4 59.175, 59.185, 59.195, 59.205, 59.215, 59.225, 59.235, 59.245, 59.255, 59.265, 59.285, 59.295, 59.331,
5 59.345, 59.370, 59.480, 59.535, 59.710, 59.720, 59.730, 59.740, 59.750, 59.760, 59.770, 59.780, 59.790,
6 59.800, 59.810, 59.830, 59.991, 59.995, 131A.005, 646.605, 646A.628 and 657.085; and prescribing an
7 effective date.

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

9 **SECTION 1.** ORS 59.015 is amended to read:

10 59.015. As used in [*the Oregon Securities Law, unless the context otherwise requires*] **ORS 59.005**
11 **to 59.505, 59.991 and 59.995:**

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

18 (b) **"Agent" does not include an individual who:**

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

20 (i) **Preparing written communications;**

21 (ii) **Responding to inquiries; or**

22 (iii) **Performing other ministerial or clerical work;**

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

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

28 (ii) **Does not receive for performing the duties compensation from commissions, or sim-**
29 **ilar remuneration, directly or indirectly derived from or based on transactions in the issuer's**
30 **own securities; or**

31 (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.

1 **by rule or order.**

2 [(1)] (2)(a) “Broker-dealer” means a person who engages, all or part of the time, in effecting
3 transactions in securities for the account of others or for the person’s own account.

4 (b) “Broker-dealer” does not include:

5 (A) **An agent;**

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

7 [(b)] (C) The following institutions, **to the extent that an appropriate statutory regulatory**
8 **authority exercises control over, regulates or supervises the institution in the sale of secu-**
9 **rities in accordance with the purposes set forth in ORS 59.005 to 59.505, 59.991 and 59.995:**

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

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

19 (ii) **A financial holding company or bank holding company, as those terms are defined in**
20 **ORS 706.008, that controls a financial institution or trust company;**

21 (iii) **A savings and loan holding company, as defined in 12 U.S.C. 1467a, that controls a**
22 **financial institution or trust company; or**

23 (iv) **A subsidiary or affiliate of a financial institution or trust company;**

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

26 [(d)] (E) A person effecting sales exempted by ORS 59.035;

27 [(e) A salesperson;]

28 [(f)] (F) A person effecting sales of securities owned by the person **and** registered for sale
29 [pursuant to] **under** ORS 59.065;

30 [(g)] (G) A person effecting sales of securities exempted by ORS 59.025 (7);

31 [(h)] (H) A person licensed as a mortgage banker or a mortgage broker under ORS 86A.095 to
32 86A.198 when effecting sales of securities involving real estate paper registered for sale [pursuant
33 to] **under** ORS 59.065; or

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

36 [(2)] (3) “Control” means the possession, directly or indirectly, of the power to direct or cause
37 the direction of the management and policies of a person, whether through the ownership of voting
38 securities, by contract, or otherwise.

39 [(3) “Director” means the Director of the Department of Consumer and Business Services.]

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

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

45 [(6) “Fraud,” “deceit” and “defraud” are not limited to common-law deceit.]

1 [(7)] (6) “Guaranteed” means guaranteed as to payment of **all** principal[,] **and all** interest or
 2 dividends.

3 (7) “Institutional investor” means any of the following institutions or investors, whether
 4 acting on the institution’s or investor’s own behalf or acting in a fiduciary capacity for an-
 5 other person:

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

8 (b) An international bank.

9 (c) An insurer, as defined in ORS 731.106, or a separate account that an insurer main-
 10 tains for purposes of investment.

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

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

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

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

15 (B) A named fiduciary, as defined in the Employee Retirement Income Security Act of
 16 1974, P.L. 93-406, makes the plan’s investment decisions and the named fiduciary is:

17 (i) A broker-dealer;

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

20 (iii) An investment adviser registered under ORS 59.175;

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

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

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

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

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

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

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

34 (iii) An investment adviser registered under ORS 59.175;

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

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

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

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

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

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

45 (A) An organization that is formed for purposes that are exempt from taxation under

1 **section 501c(3) of the Internal Revenue Code;**

2 **(B) A corporation or limited liability company;**

3 **(C) A partnership or limited liability partnership; or**

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

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

8 **(k) A private business development company, as defined in section 202(a)(22) of the In-**
 9 **vestment Advisers Act of 1940, with total assets in excess of \$25 million.**

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

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

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

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

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

18 *[(8)(a) "Investment adviser representative" means any partner, officer, director or person occupying*
 19 *a similar status or performing a similar function, or other individual, except clerical or ministerial*
 20 *personnel, who is employed by or associated with:]*

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

23 *[(i) Makes any recommendations or otherwise renders advice regarding securities;]*

24 *[(ii) Manages accounts or portfolios of clients;]*

25 *[(iii) Determines which recommendation or advice regarding securities should be given;]*

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

27 *[(v) Supervises employees acting under this subparagraph; or]*

28 *[(B) A federal covered investment adviser, subject to the limitations of section 203A of the Invest-*
 29 *ment Advisers Act of 1940, as amended, as the director may designate by rule or order.]*

30 *[(b) "Investment adviser representative" does not include a person designated by rule or order of*
 31 *the director.]*

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

39 **(8)(a) "Investment adviser representative" means an individual who, as an employee of,**
 40 **or when associated with, an investment adviser or a federal covered investment adviser:**

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

43 **(B) Manages client accounts or portfolios;**

44 **(C) Provides or purports to provide investment advice;**

45 **(D) Receives compensation for soliciting, offering or negotiating to sell, or for the sale**

1 of, investment advice; or

2 (E) Supervises other employees or associates who perform any of the functions described
3 in subparagraphs (A) to (D) of this paragraph.

4 (b) “Investment adviser representative” does not include an individual who:

5 (A) Performs only clerical or ministerial acts; or

6 (B) Is an agent, gives investment advice only incidentally as part of the individual’s du-
7 ties as an agent and does not receive special compensation for giving investment advice;

8 (c) Is an employee of, or is associated with, a federal covered investment adviser, but
9 does not:

10 (A) Have a place of business, as defined in 17 C.F.R. 275.203A-3(b), in this state and is
11 not an investment adviser representative, as defined in 17 C.F.R. 275.203A-3(a); or

12 (B) Have a place of business, as defined in 17 C.F.R. 275.203A-3(b), in this state and is
13 not a supervised person, as defined in section 202(a)(25) of the Investment Advisers Act of
14 1940; or

15 (d) Is excluded from the definition of investment adviser representative under a rule or
16 order adopted or issued by the director.

17 (9) “Investment Advisers Act of 1940” means the federal law passed as P.L. 76-768 and
18 codified as 15 U.S.C. 80b-1 to 80b-21, as in effect on the effective date of this 2023 Act.

19 (10) “Investment Company Act of 1940” means the federal law passed as P.L. 76-768 and
20 codified as 15 U.S.C. 80a-1 to 80a-64, as in effect on the effective date of this 2023 Act.

21 (11) “Issuer” means a person that issues, proposes to issue or has issued a security and:

22 (a) Acts as, and assumes the duties of, a depositor or manager under a trust agreement
23 or other agreement or instrument under which the security is issued, if the security is a
24 voting trust certificate, a collateral trust certificate, a certificate of deposit for a security
25 or a share in an investment company without a board of directors or without individuals who
26 perform functions similar to the functions of a board of directors;

27 (b) Uses or will use, leases or will lease or conditionally purchases or will conditionally
28 purchase property or equipment that is subject to an equipment trust certificate or a similar
29 security that serves the same purpose, or is otherwise contractually liable for assuring pay-
30 ment of the equipment trust certificate or the similar security; or

31 (c) Owns an interest in an oil, gas or other mineral lease or owns an interest in payments
32 out of production under a lease, right or royalty, whether whole or fractional, that creates
33 fractional interests for the purpose of sale, if the security is a fractional undivided interest
34 in a lease or in payments out of production under a lease, right or royalty.

35 [(10) “License” means a license as provided under the Oregon Securities Law.]

36 [(11)] (12) “Mortgage banker” means a mortgage banker as defined in ORS 86A.100.

37 [(12)] (13) “Mortgage broker” means a mortgage broker as defined in ORS 86A.100.

38 (14) “Nonissuer transaction” means a transaction or distribution that does not directly
39 or indirectly benefit an issuer.

40 (15) “Offer to purchase” means any attempt to obtain or solicit, for value, an offer to sell
41 a security or an interest in a security.

42 [(13)] (16) [“Offer” or] “Offer to sell” [includes every] means any attempt or offer to dispose of,
43 or [solicitation of] solicit an offer to buy, a security or interest in a security for value[. Every], in-
44 cluding an offer or solicitation of the security through a sale or offer of a warrant or right to
45 purchase or subscribe to another security of the same or another issuer, [as well as every] or a sale

1 or offer of a security [*which*] **that** gives the holder a present or future right or privilege to convert
 2 into another security of the same or another issuer[, *is considered to include an offer of the other*
 3 *security*].

4 [(14)] (17) "Person" [*includes*] **means** an individual, a joint venture, a partnership, a **limited li-**
 5 **ability partnership**, a cooperative, a limited liability company, an association, a joint stock com-
 6 pany, a corporation, a **public corporation**, a trust, a **business trust**, an **estate**, an unincorporated
 7 organization, [*or*] a government or political subdivision of a government, **an agency or**
 8 **instrumentality of a government or political subdivision of a government or any other legal**
 9 **or commercial entity**.

10 (18) "Place of business" **means an office or any other location open to the public at which**
 11 **a broker-dealer, investment adviser or federal covered investment adviser regularly provides**
 12 **brokerage or investment advice or solicits, meets with or otherwise communicates with cli-**
 13 **ents or customers**.

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

19 (20) "Principal place of business" **means the executive office of a broker-dealer or in-**
 20 **vestment adviser from which the partners, officers or managers of the broker-dealer or in-**
 21 **vestment adviser direct, control and coordinate the activities of the broker-dealer or**
 22 **investment adviser**.

23 [(15)] (21) "Real estate paper" means any obligation secured or purportedly secured by an in-
 24 terest in real property[. *Real estate paper includes*] **including**, but [*is*] not limited to, mortgage-
 25 backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits.

26 [(16) "Registered" means registered as provided in the Oregon Securities Law.]

27 (22) "Record" **means information, other than an official record, a public record or an**
 28 **item that is of record, that is inscribed on a tangible medium or that is stored in an elec-**
 29 **tronic medium or other medium that can be retrieved in perceivable form**.

30 [(17)(a)] (23)(a) "Sale" or "sell" [*includes*] **means** every contract of sale of, contract to sell, or
 31 disposition of, a security or interest in a security for value[.], **including**:

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

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

36 [(b)] (C) For purposes of the authority of the director under ORS 59.245 and 59.255, [*the terms*
 37 *"sale" and "sell" include the terms "offer" and "offer to sell."*] **an offer of a security or an offer to**
 38 **sell a security**.

39 [(c)] (b) "Sale" and "sell" do not include:

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

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

45 (C) An act incident to a judicially approved reorganization in which a security is issued in ex-

1 change for one or more outstanding securities, claims or property interests, or partly in such ex-
2 change and partly for cash.

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

6 [(b) “Salesperson” does not include:]

7 [(A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;]

8 [(B) A person who represents an issuer in effecting sales exempted by ORS 59.035;]

9 [(C) A person who represents an issuer in effecting sales with existing partners or directors of the
10 issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any
11 person in this state;]

12 [(D) An employee of an institution or organization described in subsection (1)(b) of this section to
13 the extent the employee is not a dual employee of the institution and a broker-dealer;]

14 [(E) A person effecting transactions in this state limited to those transactions described in section
15 15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or]

16 [(F) A person designated by rule or order by the director.]

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

20 **(24) “Securities Act of 1933” means the federal law passed as P.L. 73-22 and codified as**
21 **15 U.S.C. 77a to 77aa, as in effect on the effective date of this 2023 Act.**

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

24 [(19)(a)] **(26)(a) “Security” means any of the following items, whether certificated or un-**
25 **certificated:**

26 **(A) A note, stock, treasury stock, security feature, bond, debenture[,] or evidence of**
27 **indebtedness[,];**

28 **(B) A Certificate of interest or participation in a pension plan or profit-sharing agreement,**
29 **collateral-trust certificate, preorganization certificate or subscription, transferable share, investment**
30 **contract[,] or voting-trust certificate[,];**

31 **(C) A variable annuity[,];**

32 **(D) A certificate of deposit for a security[,] or a group or index of securities, including an**
33 **interest in or based upon the value of the certificate, group or index;**

34 **(E) A put, call, straddle or other option on a security;**

35 **(F) A put, call, straddle or other option relating to foreign currency if the put, call,**
36 **straddle or option is entered into on a national securities exchange;**

37 **(G) A certificate of interest or participation in an oil, gas, or mining title or lease or in pay-**
38 **ments out of production under such title or lease[,];**

39 **(H) Real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person**
40 **described in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035**
41 **(4)[,]; or[, in general,]**

42 **(I) Any interest or instrument commonly known as a [“security,”] security or any certificate**
43 **of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or**
44 **warrant or right to subscribe to or purchase any of the [foregoing] items listed in subparagraphs**
45 **(A) to (H) of this paragraph.**

1 (b) "Security" does not include:

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

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

7 (C) A beneficial interest in a testamentary trust.

8 **(27) "Sign" means an act that evidences a present intent to authenticate or adopt a re-**
 9 **cord by either of the following means:**

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

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

14 **(28) "State" means a state of the United States, the District of Columbia, the Common-**
 15 **wealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession**
 16 **that is subject to the jurisdiction of the United States.**

17 [(20)(a)] **(29)(a)** "State investment adviser" means a person who, for compensation:

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

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

23 (C) Issues or promulgates, as part of a regular business in this state, analyses or reports con-
 24 cerning securities.

25 (b) "State investment adviser" does not include:

26 (A) An investment adviser representative;

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

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

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

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

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

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

45 [(H)] **(G)** A person whose advice, analyses or reports relate only to securities exempted by ORS

1 59.025 (1);

2 [(I)] (H) A federal covered investment adviser in compliance with ORS 59.165 [(7)] (9);

3 [(J)] (I) A person, advising others, that [has no] **does not have a** place of business in this state
 4 and **that has submitted a notarized affidavit to the director that declares that**, during the
 5 preceding 12-month period, **the person** has had fewer than six clients, other than [those] persons
 6 [included] **listed** in subparagraph [(F)] (E) of this paragraph, who are residents of this state; or

7 [(K)] (J) [*Such other persons as the director may by rule or order designate*] **Any other person**
 8 **the director specifies by rule or order.**

9 **SECTION 2.** ORS 59.025 is amended to read:

10 59.025. The following securities are exempt from **the requirements of** ORS 59.049 and 59.055:

11 (1)(a) A security, **including an obligation or separate security as described in 17 C.F.R.**
 12 **230.131**, [*issued or guaranteed by*] **that** the United States, [*or*] a state, [*or by*] a political subdivision
 13 **of a state[,] or an** agency or other instrumentality of the United States or a state **issues or**
 14 **guarantees.**

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

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

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

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

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

29 (4) Any of the following securities:

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

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

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

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

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

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

45 (5) A security that maintains a rating that the director approves in a recognized securities

1 manual.

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

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

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

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

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

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

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

31 (b) The benefits must be limited to discounts on purchases or patronage dividends, or any com-
32 bination of discounts and dividends.

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

34 (12) Subject to conditions that the director adopts by rule, stock or membership certificates that
35 a renewable energy cooperative corporation issues to members of the cooperative corporation, if the
36 cooperative corporation issues the stock or certificates to members either to show membership in
37 the cooperative corporation or to show the members' respective interests in or entitlement to assets,
38 reserves or dividends. For the purpose of this subsection, a renewable energy cooperative corpo-
39 ration is an association of persons that is organized as a cooperative corporation under ORS chapter
40 62 with the purpose of developing and operating facilities to generate electricity from renewable
41 energy resources, as defined in ORS 757.600 (27)(a), (c) and (d), or from a type of energy listed in
42 ORS 469A.025 (1)(c).

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

45 [*(a) The plan meets the requirements for qualification under section 401 of the Internal Revenue*

1 *Code of 1986; and]*

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

6 (14) Any security issued by a person that is:

7 (a) Organized and operated exclusively for a religious, educational, benevolent, fraternal, chari-
 8 table or reformatory purpose and not for pecuniary profit;

9 (b) Organized or constituted so that the person's net earnings do not inure to the benefit of any
 10 person, private stockholder, or individual; and

11 (c) Designated by rule of the director.

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

13 **SECTION 3.** ORS 59.035 is amended to read:

14 59.035. The following transactions are exempt from ORS 59.049 and 59.055 if *[they]* **the trans-**
 15 **actions** are not part of an attempt to evade fraudulently any provision of the Oregon Securities
 16 Law:

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

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

21 (3) Any transaction by an issuer in *[its]* **the issuer's** securities pursuant to a pro rata offering
 22 to *[its]* **the issuer's** existing security holders, if:

23 (a) *[No]* **A** commission or remuneration, other than a standby fee, is **not** paid or given directly
 24 or indirectly in connection with the transaction; and

25 (b) The issuer has not had an effective registration under the Oregon Securities Law *[nor has]*
 26 **and has not** used this exemption within one year prior to the date of the offering or sale.

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

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

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

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

1 single sale.

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

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

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

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

17 (10) *[The offer or sale by licensed broker-dealer, acting either as principal or agent, of securities*
18 *theretofore sold and distributed to the public, if the sale meets the requirements of paragraphs (a), (b)*
19 *and (c) or (a), (b) and (d) of this subsection:]*

20 *[(a) Such securities are sold at prices reasonably related to the current market price thereof at the*
21 *time of sale, and, if such licensed broker-dealer is acting as agent, the commission collected by such*
22 *licensed broker-dealer on account of the sale thereof is not in excess of usual and customary commis-*
23 *sions collected with respect to securities and transactions having comparable characteristics;]*

24 *[(b) Such securities do not constitute an unsold allotment to or subscription by such broker-dealer*
25 *as a participant in the distribution of such securities by the issuer or by or through an underwriter;]*

26 *[(c) The issuer is listed in any recognized securities manual approved by rule by the director, and*
27 *the listing contains the names of the issuer's officers and directors, a balance sheet of the issuer as of*
28 *a date not more than 18 months prior to the date of such sale, and a profit and loss statement for either*
29 *the fiscal year preceding the date of the balance sheet or the most recent year of operations; and]*

30 *[(d) The securities are authorized for quotation on a nationwide automated quotations system ap-*
31 *proved by rule or order of the director.]* **A nonissuer transaction by a registered broker-dealer's**
32 **registered agent, and a resale transaction by a sponsor of a unit investment trust registered**
33 **under the Investment Company Act of 1940, in a security of a class that has been available**
34 **to the public for at least 90 days if, at the time of the transaction:**

35 (a) **The issuer of the security:**

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

37 (B) **Is not in bankruptcy or receivership; and**

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

41 (b) **The security is sold at a price reasonably related to the security's current market**
42 **price;**

43 (c) **The security does not constitute all or a part of an unsold allotment to, or a sub-**
44 **scription or participation by, the broker-dealer as an underwriter of the security or does not**
45 **constitute a redistribution of the security;**

1 (d) A nationally recognized securities manual, or the electronic equivalent of a nationally
 2 recognized securities manual that the director approves by rule or order, or a publicly
 3 available record filed with the United States Securities and Exchange Commission includes:

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

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

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

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

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

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

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

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

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

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

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

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

38 (A) [When] **If** the offeror is an issuer, the transactions **must not have resulted** [result in not]
 39 **in** more than 10 purchasers within this state of securities of the issuer during any 12 consecutive
 40 months.

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

45 (C) [No] **A** commission or other remuneration is **not** paid or given directly or indirectly in

1 connection with the offer or sale of the securities **in this state**.

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

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

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

8 (A) Purchasers of securities of the offeror registered under ORS 59.065, exempt under ORS
9 59.025, exempt under any other subsection of this section, or for which a notice has been filed under
10 ORS 59.049, are not counted as purchasers under this exemption.

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

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

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

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

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

21 **SECTION 4.** ORS 59.049 is amended to read:

22 59.049. (1) Federal covered securities may be offered and sold in this state without registration,
23 subject to the following **conditions**:

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

33 [(2)] (b) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal
34 covered security that is subject to section 18(b)(3) or (4), other than section [*18(b)(4)(D)*]
35 **18(b)(4)(F)**, of the Securities Act of 1933[, *as amended*,] may be offered and sold only upon a filing
36 of a notice with, and the payment of the required fee to, the director. The **director shall specify**
37 **the** form of **the** notice [*shall be prescribed by the director. The director*] **and** shall set the fee by rule
38 in an amount per \$1,000 of the aggregate [*price*] **offering amount** of the securities which are to be
39 offered in this state. The fee is not refundable. The effective date of the notice is the later of the
40 date the notice is received by the director or the date specified by the filer of the notice.

41 [(3)] (c) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal
42 covered security that is subject to section [*18(b)(4)(D)*] **18(b)(4)(F)** of the Securities Act of 1933[, *as*
43 *amended*,] may be offered and sold only upon a filing of a notice with, and the payment of the re-
44 quired fee to, the director, not later than 15 days after the first sale of such federal covered security
45 in this state. The notice [*shall*] **must** be filed on Securities and Exchange Commission Form D or

1 on a form of notice prescribed by the director. The director shall set the fee by rule in an amount
 2 per \$1,000 of the aggregate [*price*] **offering amount** of the securities which are to be offered in this
 3 state. The fee is not refundable. The effective date of the notice is the later of the date the notice
 4 is received by the director or the date specified by the filer of the notice. **If an issuer or other**
 5 **person sells in this state federal covered securities described in this paragraph without**
 6 **timely filing the notice required under this paragraph, the issuer or person is liable to pay**
 7 **to the director three times the amount of the fee required under this subsection to offer for**
 8 **sale or sell federal covered securities. The additional amount of the fee may not be less than**
 9 **\$300 and is not refundable.**

10 [(4)(a)] (2)(a) The director shall set the fees described in [*subsections (1) to (3)*] **subsection (1)**
 11 of this section in an amount that the director determines is equal as nearly as possible to the na-
 12 tional midpoint for similar fees charged by all other state regulatory agencies within the United
 13 States responsible for regulating securities.

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

17 (c) In determining the national midpoint for similar fees under this section, the director may
 18 consider national midpoints determined by the North American Securities Administrators Associ-
 19 ation, the [*National Association of Securities Dealers*] **Financial Industry Regulatory Authority,**
 20 [*or*] the United States Securities and Exchange Commission **or successor associations, authori-**
 21 **ties, commissions or organizations.**

22 [(5)] (3) The director may issue an order suspending the offer and sale of a federal covered se-
 23 curity if the director finds that there is a failure to comply with any requirement under this section.

24 [(6)(a)] (4)(a) The filer of a notice under [*subsections (1) to (3)*] **subsection (1)** of this section
 25 shall amend the notice when there is a change in the name of the offering or, in the case of offerings
 26 for which notice is filed [*pursuant to subsection (2) or (3)*] **under subsection (1)(b) or (c)** of this
 27 section, when there is an increase in the aggregate [*price*] **offering amount** of the securities which
 28 are to be offered in this state. [*There is no*] **A fee is not** required for an amendment that does not
 29 increase the aggregate offering amount. Notices amending the aggregate offering amount [*shall*]
 30 **must** include the fee calculated in accordance with [*subsection (2) or (3)*] **subsection (1)(b) or (c)**
 31 of this section, less amounts previously paid under the prior notice filing, but the fee may not be less
 32 than \$100. The fee is not refundable.

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

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

39 **SECTION 5.** ORS 59.051 is amended to read:

40 59.051. References in ORS 59.005 to 59.505, 59.991 and 59.995 to federal statutes or federal reg-
 41 ulations [*shall be construed to refer to those*] **are references to the** statutes or regulations as [*they*
 42 *are in effect on April 19, 1999*] **the statutes or regulations are in effect on the effective date**
 43 **of this 2023 Act.**

44 **SECTION 6.** ORS 59.065 is amended to read:

45 59.065. (1) The Director of the Department of Consumer and Business Services by rule shall es-

1 tablish procedures for registering securities. The director may coordinate registration in this state
 2 with any federal securities Act or national registration system.

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

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

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

12 (c) In determining the national midpoint for similar fees under this section, the director may
 13 consider national midpoints determined by the North American Securities Administrators Associ-
 14 ation, the *[National Association of Securities Dealers]* **Financial Industry Regulatory Authority**,
 15 *[or]* the United States Securities and Exchange Commission **or successor associations, authori-**
 16 **ties, commissions or organizations**.

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

23 **SECTION 7.** ORS 59.085 is amended to read:

24 59.085. The Director of the Department of Consumer and Business Services may, by rule or or-
 25 der, impose on a registration such conditions, limitations and restrictions as the director deems ap-
 26 propriate to make the issue fair, just and equitable, including the following:

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

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

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

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

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

37 **SECTION 8.** ORS 59.095 is amended to read:

38 59.095. (1) The proponents of a plan *[pursuant to which a security is to be issued]* **to issue a**
 39 **security** in exchange for one or more bona fide outstanding securities, claims or property interests,
 40 or partly in such exchange and partly for cash **or a cash equivalent**, except a security the issuance
 41 of which *[is under supervision, regulation or control by]* the Public Utility Commission *[of this state]*
 42 **supervises, regulates or controls**, may request *[approval of such plan by]* the Director of the De-
 43 partment of Consumer and Business Services **to approve the plan**.

44 (2) The request for approval *[shall]* **must** be made by filing a *[registration statement, as provided*
 45 *in ORS 59.065, with]* **merger agreement and proxy statement and** a detailed statement of the

1 plan. The director shall set the plan down for hearing and require the proponents of the plan to give
 2 notice of the hearing to all persons to whom securities are to be issued in *[such]* **the** exchange. All
 3 such persons *[shall]* have the right to appear at the hearing.

4 (3)(a) The director shall, after the hearing, consider the fairness of the terms and conditions of
 5 the plan, and, if the director finds that the plan is fair, just and equitable and free from fraud, shall
 6 approve it, subject to such conditions, limitations and restrictions as the director may impose.

7 (b) If the director finds that the plan is unfair, unjust or inequitable or not free from fraud, the
 8 director shall deny the request, and give notice of the denial, at the expense of the proponents, to
 9 all persons who were entitled to receive or received notice of the hearing.

10 (c) **If the hearing is not contested, the director may issue an order that:**

11 (A) **Approves the plan; and**

12 (B) **Registers the security based on the stipulation of the parties in lieu of specific**
 13 **findings.**

14 **SECTION 9.** ORS 59.105 is amended to read:

15 59.105. (1) Except as provided in subsection (2) of this section, the Director of the Department
 16 of Consumer and Business Services may *[by order deny, suspend or revoke any]* **issue a stop order**
 17 **that denies effectiveness to, suspends or revokes the effectiveness of any registration state-**
 18 **ment[,] if the director finds that:**

19 (a) The **issuer's** proposed *[plan of business of the issuer]* **business plan**, the characteristics and
 20 terms of sale of the securities to be sold, or the proposed methods of sale and distribution are unfair,
 21 unjust or inequitable;

22 (b) **Information about the issuer's proposed business plan, the characteristics and terms**
 23 **of sale of the securities to be sold or the proposed methods of sale and distribution is mate-**
 24 **rially incomplete or includes a statement that, on or before the statement's effective date**
 25 **and in light of the circumstances in which the statement was made, is false or misleading**
 26 **with respect to a material fact;**

27 *[(b)]* (c) The issuer is insolvent or in unsound financial condition;

28 *[(c)]* (d) The applicant, registrant or issuer has violated any of the provisions of the Oregon
 29 Securities Law, or any rule or order of the director of which the applicant, registrant or issuer had
 30 notice;

31 *[(d)]* (e) The applicant, registrant or issuer has been or is engaged or is about to engage in
 32 dishonest or fraudulent conduct with regard to securities;

33 *[(e)]* (f) The applicant, registrant, or issuer has been convicted of a misdemeanor, an essential
 34 element of which is fraud, or of a felony;

35 *[(f)]* (g) The applicant, registrant or issuer has knowingly made or caused to be made to the di-
 36 rector any false representation of a material fact, or has suppressed or withheld from the director
 37 any material information;

38 *[(g)]* (h) The applicant, registrant or issuer has refused to permit **the director to make** an ex-
 39 amination *[to be made by the director]*, or has failed to file any report, including any certified fi-
 40 nancial report, or furnish any information *[required by]* the director **requires** in connection with the
 41 Oregon Securities Law; or

42 *[(h)]* (i) **The sale or distribution of the securities involved, directly or indirectly,** unrea-
 43 sonable amounts or kinds of commissions or other remunerations, promoter's profits or
 44 participation, *[or]* unreasonable options **or underwriter's or seller's discounts, commissions or**
 45 **other compensation** *[have been or are to be given or allowed directly or indirectly in connection with*

1 *the sale or distribution of the securities].*

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

9 (a) This subsection *[shall]* **does** not apply to subsection (1)(a) and *[(b)]* **(c)** of this section.

10 (b) The director may not enter an order suspending or revoking a registration *[under this sub-*
 11 *section, pursuant to]* **for a finding described in** subsection *[(1)(e)]* **(1)(f)** of this section*[,]* without 10
 12 days' prior written notice to the registrant.

13 **SECTION 10.** ORS 59.115 is amended to read:

14 59.115. (1) A person is liable *[as provided in subsection (2) of this section]* to a purchaser of a
 15 security if the person:

16 (a) Sells or successfully solicits the sale of a security, other than a federal covered security, in
 17 violation of the Oregon Securities Law or of any condition, limitation or restriction imposed upon
 18 a registration or license under the Oregon Securities Law; or

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

23 **(A) The fact is** necessary *[in order]* to make *[the statements made,]* **the statement not mis-**
 24 **leading** in light of the circumstances under which *[they are made, not misleading (the buyer not*
 25 *knowing of the untruth or omission), and who]* **the person made the statement; and**

26 **(B) The person** does not sustain the burden of proof that the person did not know, and in the
 27 exercise of reasonable care could not have known, of the untruth or omission.

28 (2) The purchaser may recover:

29 (a) Upon tender of the security, the consideration **the purchaser** paid for the security, and in-
 30 terest from the date of payment equal to the greater of the rate of interest specified in ORS 82.010
 31 for judgments for the payment of money or the rate provided in the security if the security is an
 32 interest-bearing obligation, less any amount **of income the purchaser** received on the security; or

33 (b) If the purchaser no longer owns the security, damages in the amount that would be recov-
 34 erable upon a tender, less the value of the security when the purchaser disposed of *[it]* **the security**
 35 and less interest on such value at the rate of interest specified in ORS 82.010 for judgments for the
 36 payment of money from the date of disposition.

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

1 and severally liable with *[that]* **the person who was held liable**.

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

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

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

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

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

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

- 23 (a) For conduct other than in the circumstances described in subsection (4) of this section; or
- 24 (b) Under any other law, including any other provisions of the Oregon Securities Law.

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

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

30 **SECTION 11.** ORS 59.125 is amended to read:

31 59.125. (1) Except as provided in subsection (3) of this section, *[no]* **a purchaser may not bring**
32 **an** action *[or suit may be commenced]* under ORS 59.115 if the purchaser *[has]* received before
33 *[suit]* **bringing the action** a written notice as outlined in subsection (2) of this section.

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

- 35 (a) An offer to pay the amount specified in ORS 59.115 (2)(a) upon tender of the security; and
- 36 (b) A statement of *[the effect on the purchaser's rights of]* **how the purchaser's** failure to re-
37 spond as required in subsection (3) of this section **will affect the purchaser's rights**.

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

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

44 (b) *[If]* The purchaser did not own the security when the **purchaser received the** notice *[was*
45 *received]* and, within 30 days after *[receipt]* **receiving the notice**, gave written notice of **the**

1 **purchaser's** inability to tender back the security.

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

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

6 59.127. (1) A person is liable as provided in subsection (2) of this section to the person selling
 7 [*the*] **a** security, if the person:

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

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

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

18 **(B)** The person does not sustain the burden of proof that the person did not know, and in the
 19 exercise of reasonable care could not have known, of the untruth or omission.

20 (2) The seller may recover:

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

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

27 (c) If the purchaser no longer owns the security, damages equal to the value of the security
 28 when the purchaser disposed of it plus interest on such value at the rate of interest specified in ORS
 29 82.010 for judgments for the payment of money from the date of disposition, less the consideration
 30 paid for the security.

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

42 (4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function
 43 in connection with the purchase of a security is to provide ministerial functions of escrow, custody
 44 or deposit services in accordance with applicable law is liable only if the person participates or
 45 materially aids in the purchase and the seller sustains the burden of proof that the person knew of

1 the existence of facts on which liability is based or that the person's failure to know of the existence
 2 of such facts was the result of the person's recklessness or gross negligence.

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

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

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

15 (8) Subsection (4) of this section *[shall]* **does** not limit the liability of any *[persons]* **person**:

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

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

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

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

23 **SECTION 13.** ORS 59.131 is amended to read:

24 59.131. (1) Except as provided in subsection (3) of this section, *[no]* **a seller may not bring an**
 25 action *[or suit may be commenced]* under ORS 59.127 if the seller *[has]* received before *[suit]* **bringing**
 26 **the action** a written notice of intent to return the security as outlined in subsection (2) of this
 27 section.

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

29 (a) An offer to tender the security and interest from the date of purchase, at a rate equal to the
 30 greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money or
 31 the rate provided in the security if the security is an interest-bearing obligation, less the consider-
 32 ation paid for the security; and

33 (b) A statement of *[the effect on the seller's rights of]* **how the seller's** failure to respond as re-
 34 quired in subsection (3) of this section **will affect the seller's rights**.

35 (3) *[An]* **A seller may bring an** action *[or suit]* under this section *[may be commenced after re-*
 36 *ceipt of a notice as outlined]* **after receiving the notice described** in subsection (2) of this section
 37 **if**:

38 (a) *[If]* The seller accepts the offer and gives notice of acceptance within three days after *[re-*
 39 *ceipt of]* **receiving** the offer and fails to receive the contents of *[such]* **the** offer as specified in sub-
 40 section (2)(a) of this section within one day *[from]* **after** the date the notice of acceptance was sent;
 41 or

42 (b) *[If]* The seller elects to recover damages as specified in subsection (2)(b) of this section and
 43 gives notice of the election within 30 days after *[receipt of]* **receiving** the offer.

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

1 registration requirement or a notice is filed under ORS 59.049.

2 **SECTION 14.** ORS 59.135 is amended to read:

3 59.135. *[It is unlawful for any person, directly or indirectly, in connection with the purchase or sale*
 4 *of any security or the conduct of a securities business or for any person who receives any consideration*
 5 *from another person primarily for advising the other person as to the value of securities or their pur-*
 6 *chase or sale, whether through the issuance of analyses or reports or otherwise:]*

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

11 [(1)] **(a)** *[To]* **Employ or attempt to employ** any device, scheme or artifice to defraud;

12 [(2)] **(b)** *[To]* Make any untrue statement of a material fact or *[to omit to state]* **omit** a material
 13 fact **that is** necessary *[in order]* to make *[the statements made]* **a statement, including but not**
 14 **limited to a statement concerning the use of funds**, in the light of the circumstances under
 15 which *[they are]* **the statement was** made, not misleading;

16 [(3)] **(c)** *[To]* **Engage or attempt to engage** in any act, practice or course of business *[which]*
 17 **that** operates or would operate as a fraud or deceit upon any person; or

18 [(4)] **(d)** *[To]* Make or file, or cause to be made or filed, to or with the Director of the Depart-
 19 ment of Consumer and Business Services any statement, report or document *[which]* **that** is known
 20 to be false in any material respect or matter.

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

23 **SECTION 15.** ORS 59.137 is amended to read:

24 59.137. (1) Any person who violates or materially aids in a violation of ORS 59.135 [(1), (2) or
 25 (3)] **(1)(a), (b) or (c)** is liable to any purchaser or seller of the security for the actual damages
 26 caused by the violation, including the amount of any commission, fee or other remuneration paid,
 27 together with interest at the rate specified in ORS 82.010 for judgments for the payment of money,
 28 unless the person who materially aids in the violation sustains the burden of proof that the person
 29 did not know and, in the exercise of reasonable care, could not have known of the existence of the
 30 facts on which the liability is based.

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

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

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

43 (5) The court may not award attorney fees to a prevailing defendant under the provisions of
 44 subsection (4) of this section if the action under this section is maintained as a class action pursuant
 45 to ORCP 32.

(6) 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]* A person *[to]* **may not** 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]* **may not** employ *[a salesperson]* **an 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]* **an agent**.

[(4) It is unlawful for:]

[(a)] (4) 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)] (5) 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)] (6) 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)] (7) 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)] (8) *[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)] (9) 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-

1 change Commission as the director may by rule or otherwise require and pays the fee, including the
 2 notice filing fee, described in ORS 59.175. The director may issue an order suspending the conduct
 3 of an investment advisory business in this state if the director finds that there is a failure to comply
 4 with any requirement under this section.

5 [(8)] **(10)** Notwithstanding any other provision of this section, an individual performing the ac-
 6 tivities of an investment adviser representative and who would otherwise be required to be licensed
 7 as an investment adviser representative is not required to be separately licensed as an investment
 8 adviser representative if:

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

13 (b) The individual is licensed to a licensed broker-dealer and the broker-dealer directly receives
 14 all compensation otherwise earned by the person in connection with the investment advisory activ-
 15 ities being transacted in this state. The broker-dealer may or may not further distribute any or all
 16 compensation received to the licensed [*salesperson*] **agent**.

17 **SECTION 17.** ORS 59.175 is amended to read:

18 59.175. (1) The Director of the Department of Consumer and Business Services by rule shall es-
 19 tablish procedures for notice filings required of federal covered investment advisers as well as pro-
 20 cedures for licensing broker-dealers, state investment advisers, investment adviser representatives
 21 and [*salespersons*] **agents**. The director may coordinate notice filings or licensing with any national
 22 registration, licensing or notice filing system.

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

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

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

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

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

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

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

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

1 or otherwise.

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

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

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

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

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

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

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

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

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

32 (8) An applicant for, or a person holding, a license issued under ORS 59.005 to 59.505 [*may file*
33 *with the director a trade name, as defined in ORS 647.005, or an assumed business name, as defined*
34 *in ORS 648.005. The trade name or assumed business name shall be filed in a form and manner es-*
35 *tablished by rule by the director.*] **and operating under a trade name, as defined in ORS 647.005,**
36 **or an assumed business name, as defined in ORS 648.005, shall file with the director, on a**
37 **form and in the manner the director specifies by rule, a request for a certificate under ORS**
38 **705.635.** If the application is complete, [*and*] the fee described in subsection (9) of this section is paid
39 **and the applicant's use of the trade name or assumed business name complies with the Bank**
40 **Act and ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and this chapter and ORS chapters 645,**
41 **705, 717, 725 and 725A,** the director shall issue an order authorizing the licensee to operate under
42 the trade name or assumed business name. The order [*shall remain*] **remains** in effect until canceled,
43 suspended or revoked.

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

45 (a) An application [*for*] **to obtain or renew** a license as a broker-dealer or state investment

1 adviser;

2 [(b) *An application to renew a license as a broker-dealer or state investment adviser;*]

3 [(c)] (b) An application [for] **to obtain or renew** a license as [a salesperson] **an agent**;

4 [(d) *An application to renew a license as a salesperson;*]

5 [(e)] (c) An application [for] **to obtain or renew** a license as an investment adviser represen-
6 tative;

7 [(f) *An application to renew a license as an investment adviser representative;*]

8 [(g)] (d) A notice filing **or notice filing renewal** for a federal covered investment adviser; **and**

9 [(h) *A notice filing renewal for a federal covered investment adviser; and*]

10 [(i)] (e) A filing for use of a trade name or an assumed business name.

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

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

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

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

26 **SECTION 18.** ORS 59.185 is amended to read:

27 59.185. (1) Every license of a broker-dealer or state investment adviser expires one year after
28 the date of issuance unless the Director of the Department of Consumer and Business Services es-
29 tablishes a different expiration date for purposes of coordination with any national registration or
30 licensing system.

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

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

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

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

45 (4) If there is a change in the partners, directors, officers, persons occupying similar positions

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

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

6 59.195. (1) Subject to the provisions of section 15 of the Securities Exchange Act of 1934*[, as*
 7 *amended,]* and section 222 of the Investment Advisers Act of 1940, *[as amended,]* every broker-dealer,
 8 state investment adviser, investment adviser representative and *[salesperson]* **agent** shall make and
 9 keep such accounts, correspondence, memoranda, papers, books and other records as the Director
 10 of the Department of Consumer and Business Services by rule or order prescribes. All such records
 11 of state investment advisers or investment adviser representatives maintained in this state *[shall]*
 12 **must** be preserved for three years unless the director by rule prescribes otherwise. The director
 13 may examine all such records within or without this state at any reasonable time or times and may,
 14 without subpoena, require the production of such records at the office of the director as often as is
 15 reasonably necessary and, in any event, during consideration of any application for licensing or
 16 during any proceeding under ORS 59.205 to 59.225.

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

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

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

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

43 (5) **The director by rule or order may require an investment adviser that is registered**
 44 **or subject to a requirement to register under ORS 59.175 to provide clients or prospective**
 45 **clients in this state with appropriate information or records as necessary or appropriate to**

1 **serve the public interest or to protect clients or prospective clients.**

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

6 **SECTION 20.** ORS 59.205 is amended to read:

7 59.205. (1) Except as provided in ORS 59.215, the Director of the Department of Consumer and
 8 Business Services may by order deny, suspend, [*or*] revoke[,] or impose conditions or restrictions
 9 on[, a] **the** license of [*a person as*] a broker-dealer, state investment adviser, investment adviser
 10 representative or [*salesperson*] **agent, or on the activities of an applicant for such a license that**
 11 **are related to transactions in securities**, if the director finds that the applicant or licensee:

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

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

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

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

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

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

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

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

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

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

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

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

43 [(b)] (B) ORS 86A.095 to 86A.198, involving a violation of any provision of ORS 86A.095 to
 44 86A.198 or any rule or order of the director adopted or entered under ORS 86A.095 to 86A.198.

45 [(12)] (L) Is the subject of any of the following orders that are currently effective and were is-

1 sued within the last *[five]* **ten** years:

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

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

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

13 *[(d)]* **(D)** A cease and desist order entered after notice and opportunity for hearing by the di-
14 rector, the securities agency or administrator of another state or **of** a Canadian province or terri-
15 tory, the Securities and Exchange Commission, *[or]* the Commodity Futures Trading Commission,
16 **the Federal Trade Commission or another federal agency with regulatory authority over de-**
17 **pository institutions or transactions in securities**; or

18 *[(e)]* **(E)** An order by the Commodity Futures Trading Commission denying, suspending or re-
19 voking registration under the Commodity Exchange Act.

20 *[(13)]* **(m)** *[Has]* Failed*[, reasonably]* to supervise **reasonably** *[the salespersons or]* **an agent**, in-
21 vestment adviser *[representatives]* **representative or other individual that was subject to the**
22 **supervision** of the applicant or licensee **and that violated a provision of the Oregon Securities**
23 **Law or a rule or order of the director**.

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

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

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

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

42 **SECTION 21.** ORS 59.215 is amended to read:

43 59.215. The Director of the Department of Consumer and Business Services may enter an order
44 *[against the applicant or licensee]* under ORS 59.205 **to deny, suspend, revoke, or impose condi-**
45 **tions or restrictions on the license of a broker-dealer or state investment adviser or on the**

1 **activities of an applicant for such a license that are related to transactions in securities** if
 2 any partner, officer or director of a broker-dealer or state investment adviser **or an applicant**, any
 3 person occupying a similar status or performing similar functions, or any person directly or indi-
 4 rectly controlling the broker-dealer, [or] state investment adviser **or applicant** has been guilty of
 5 any act or omission [*which would be cause for conditioning, restricting, denying, suspending or re-*
 6 *voking the license of an individual broker-dealer, state investment adviser or salesperson*] **that pro-**
 7 **vides cause under ORS 59.205 (1)**, except as follows:

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

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

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

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

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

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

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

27 **SECTION 22.** ORS 59.225 is amended to read:

28 59.225. (1) [*If*] The Director of the Department of Consumer and Business Services **may cancel**
 29 **a license or an application for a license if the director** finds that an applicant or licensee has
 30 ceased to do business as a broker-dealer, state investment adviser, investment adviser representative
 31 or [*salesperson*] **agent**, or has failed to maintain a bond or other security required by ORS 59.175
 32 (4), or has failed to maintain an errors and omissions insurance policy required by ORS 59.175 (5),
 33 or is subject to an adjudication of mental incompetence or to the control of a conservator or
 34 guardian[,] or cannot be located after reasonable search[, *the director may cancel the license or ap-*
 35 *plication*].

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

40 (b) A federal covered investment adviser may terminate a notice filing pursuant to ORS 59.165
 41 [(7)] **(9)** by providing the director with written notice of [*such*] **the** termination in accordance with
 42 the procedures established by the director.

43 (3) When an investment adviser representative of a federal covered investment adviser begins
 44 or terminates an association with [*such*] **the** federal covered investment adviser, the federal covered
 45 investment adviser or investment adviser representative shall promptly notify the director in writing

1 in accordance with the procedures established by the director.

2 (4) The suspension of a license of a broker-dealer or state investment adviser [*shall suspend*]
 3 **suspends** the license of any [*salesperson*] **agent** of the broker-dealer or the license of any invest-
 4 ment adviser representative of the state investment adviser. The revocation, cancellation, with-
 5 drawal or expiration of a license of a broker-dealer or state investment adviser [*shall cancel*]
 6 **cancels** the license of any [*salesperson*] **agent** of the broker-dealer or the license of any investment
 7 adviser representative of the state investment adviser.

8 (5) The suspension of a registration of securities suspends the license of any [*salesperson*] **agent**
 9 licensed to the issuer or owner of the securities. The revocation, cancellation, withdrawal or expi-
 10 ration of the registration of securities cancels the license of any [*salesperson*] **agent** licensed to the
 11 issuer or owner of the securities.

12 **SECTION 23.** ORS 59.235 is amended to read:

13 59.235. Subject to section 18 of the Securities Act of 1933, [*as amended,*] section 15 of the Se-
 14 curities Exchange Act of 1934[, *as amended,*] and sections 203A and 222 of the Investment Advisers
 15 Act of 1940, [*as amended,*] the Director of the Department of Consumer and Business Services [*shall*
 16 *have*] **has** general supervision and control over all issuers, registrants of securities, broker-dealers,
 17 federal covered investment advisers, state investment advisers, investment adviser representatives
 18 and [*salespersons residing or doing*] **agents that reside or do** business in this state and [*engaged*]
 19 **engage** in any activity with respect to securities or any aspect of the securities business. All such
 20 persons and [*their*] **the** records and everything connected with [*their*] **the** activities **of the persons**
 21 **is** [*shall be*] subject to examination by the director at any time. The provisions of this section and
 22 of any section of the Oregon Securities Law relating to examinations [*shall*] extend to any person
 23 who should have been licensed as a broker-dealer, state investment adviser, investment adviser
 24 representative or [*salesperson*] **agent**, any person exempted by rule from [*those definitions*] **a re-**
 25 **quirement to obtain a license as a broker-dealer, state investment adviser, investment ad-**
 26 **viser representative or agent** or any person whose license has expired or has been withdrawn,
 27 canceled, suspended or revoked. The director may collect from each such person the actual expenses
 28 incurred in [*that*] **the director's** examination.

29 **SECTION 24.** ORS 59.245 is amended to read:

30 59.245. (1) The Director of the Department of Consumer and Business Services **may**:

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

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

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

41 [(4)] (d) **Issue an order, subject to ORS 59.295, to direct a person to cease and desist from**
 42 **a violation or threatened violation** if the director has reason to believe that [*any*] **the** person has
 43 engaged, is engaging or is about to engage in any violation of the Oregon Securities Law[, *may issue*
 44 *an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or*
 45 *threatened violation*].

1 (2) Except as provided in subsections (3) and (4) of this section, the director shall treat
 2 the following records as confidential, as provided in ORS 705.137, and as exempt from dis-
 3 closure under ORS 192.311 to 192.478:

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

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

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

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

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

20 **SECTION 25.** ORS 59.255 is amended to read:

21 59.255. (1) [*Whenever it appears to*] **If** the Director of the Department of Consumer and Business
 22 Services **determines** that a person has engaged, is engaging or is about to engage in an act or
 23 practice constituting a violation of any provision of the Oregon Securities Law or any rule or order
 24 of the director, the director may bring [*suit*] **an action** in the name and on behalf of the State of
 25 Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce
 26 compliance with the Oregon Securities Law or [*such*] **the director's** rule or order. Upon a proper
 27 showing, a **the court shall grant a** permanent or temporary injunction, restraining order or writ
 28 of mandamus [*shall be granted*].

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

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

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

43 (a) [*A claim for*] Restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the
 44 persons injured by the act or practice constituting the subject matter of the action[. *The court shall*
 45 *have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the*

1 *rights of such persons by private civil action, whether by class action or otherwise, would be so bur-*
 2 *densome or expensive as to be impractical]; [or]*

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

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

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

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

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

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

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

17 **SECTION 26.** ORS 59.265 is amended to read:

18 59.265. (1) [When] **If** the Director of the Department of Consumer and Business Services ascer-
 19 tains that the assets or capital of any broker-dealer not otherwise registered under section 15 of the
 20 Securities Exchange Act of 1934[, as amended,] or state investment adviser [that has its] **with a**
 21 **principal place of business in this state are impaired, or that [such person's] the broker-dealer's**
 22 **or state investment adviser's** affairs are in an unsound condition, the director may take pos-
 23 session of all the property, business and assets of [such person] **the broker-dealer or state in-**
 24 **vestment adviser that is** located in this state and retain possession of [them] **the property,**
 25 **business and assets** pending the further proceedings specified in this section. The director shall
 26 inventory the assets and liabilities of [such] **the** person. The director shall file one copy of the in-
 27 ventory in the office of the director and one copy in the office of the clerk of the circuit court of
 28 the county in which the principal place of business of [such] **the** person is located, and shall mail
 29 one copy to each shareholder or partner of [such] **the** person at the last-known address of the
 30 shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and
 31 give [it] **the proceeding** a case number.

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

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

43 (4) The **director shall fix the** expenses of the receiver and compensation of counsel, as well as
 44 all expenditures required in the liquidation proceedings, [shall be fixed by the director,] subject to
 45 the approval of the court[,] and, upon certification by the director, [shall] **the expenses and**

1 **expenditures must** be paid out of the funds in the hands of the director as *[such]* receiver.

2 **SECTION 27.** ORS 59.285 is amended to read:

3 59.285. (1) In accordance with this section and ORS chapter 183 the Director of the Department
4 of Consumer and Business Services may from time to time make, amend and rescind such rules as
5 are necessary to carry out the provisions of the Oregon Securities Law. The director may classify
6 securities, persons and matters within the jurisdiction of the director, and prescribe different re-
7 quirements for different classes.

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

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

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

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

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

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

25 **SECTION 28.** ORS 59.295 is amended to read:

26 59.295. (1) Except as provided in ORS 183.745, upon the entry of an order under the Oregon
27 Securities Law, the Director of the Department of Consumer and Business Services shall promptly
28 give appropriate notice of the order as provided in this subsection. The notice *[shall]* **must** state
29 that a hearing will be held on the order if a written demand for hearing is filed with the director
30 within 20 days after the date of service of the order. The notice *[shall]* **must** be given to:

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

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

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

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

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

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

45 **SECTION 29.** ORS 59.331 is amended to read:

1 59.331. (1) Subject to subsection (2) of this section and after providing notice and an opportunity
2 to participate to the Director of the Department of Consumer and Business Services, the Attorney
3 General may:

4 (a) Make public or private investigations within or outside this state as the Attorney General
5 considers necessary to:

6 (A) Determine whether a person has violated or is about to violate any provision of the Oregon
7 Securities Law or any rule or order of the director adopted or issued under the Oregon Securities
8 Law; or

9 (B) Aid in the enforcement of the Oregon Securities Law or any rule or order of the director
10 adopted or issued under the Oregon Securities Law.

11 (b) [*Require or*] Permit a person to file a statement in writing, under oath or otherwise as the
12 Attorney General determines, as to all the facts and circumstances concerning a matter to be in-
13 vestigated.

14 (c) Administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses,
15 take evidence and require the production of books, papers, correspondence, memoranda, agreements
16 or other documents or records that the Attorney General considers relevant or material to an in-
17 vestigation.

18 (d) Bring [*suit*] **an action** in the name and on behalf of the State of Oregon in the circuit court
19 of any county to:

20 (A) Enjoin any acts or practices the Attorney General has reason to believe that a person has
21 engaged, is engaging or is about to engage in that constitute a violation of any provision of the
22 Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon
23 Securities Law; or

24 (B) Enforce compliance with the Oregon Securities Law or any rule or order of the director
25 adopted or issued under the Oregon Securities Law.

26 (2) The Attorney General may take action under subsection (1) of this section only in connection
27 with any of the following alleged violations or cases:

28 (a) Alleged violations involving companies whose securities are listed on the New York Stock
29 Exchange, the American Stock Exchange or the [*National Association of Securities Dealers Auto-*
30 *mated Quotation System, Inc. National Market System*] **Nasdaq, Inc. licensed national securities**
31 **exchange;**

32 (b) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
33 litigation under ORS 166.715 to 166.735;

34 (c) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
35 litigation under ORS 336.184 and 646.605 to 646.652; or

36 (d) Cases in which the Attorney General is pursuing or intends to pursue an investigation or
37 litigation under ORS 646.705 to 646.805.

38 (3) The Attorney General may take action under subsection (1) of this section with respect to
39 cases described in subsection (2)(b), (c) or (d) of this section only after receiving the director's con-
40 sent. The director may elect to be a named party in any action the Attorney General takes.

41 (4) Each witness who appears before the Attorney General under a subpoena issued under this
42 section [*shall*] **must** receive the fees and mileage provided for witnesses in ORS 44.415 (2). If a
43 person fails to comply with a subpoena issued under this section or if a party or witness refuses to
44 testify on any matters, the judge of the circuit court of any county, on the application of the At-
45 torney General, shall compel obedience by proceedings for contempt as in the case of disobedience

1 of the requirements of a subpoena issued from the court or a refusal to testify in the court.

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

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

5 (b) May award reasonable attorney fees to:

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

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

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

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

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

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

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

35 (7) This section does not apply to:

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

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

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

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

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

41 **SECTION 30.** ORS 59.345 is amended to read:

42 59.345. (1) For the purpose of ORS 59.335, an offer to sell or to buy is made in this state, whether
43 or not *[either party is then]* **at the time of the offer to sell or to buy the offeror or offeree is**
44 present in this state, *[when]* **if** the offer:

45 (a) Originates from this state; or

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

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

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

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

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

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

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

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

19 **SECTION 31.** ORS 59.370 is amended to read:

20 59.370. (1) Provisions of the Oregon Securities Law imposing civil or criminal liability do not
 21 apply to an act done or omitted in good faith in conformity with a rule or order of the Director of
 22 the Department of Consumer and Business Services, notwithstanding that the rule or order may
 23 later be amended or rescinded or be determined by judicial or other authority to be invalid for any
 24 reason.

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

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

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

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

43 **SECTION 32.** ORS 59.480 is amended to read:

44 59.480. As used in ORS 59.480 to 59.505:

45 (1)(a) "Financial exploitation" means:

1 (A) Wrongfully taking assets, funds or property belonging to or intended for the use of another
 2 person;

3 (B) Alarming another person by conveying a threat to wrongfully take or appropriate money or
 4 property of the person if the person would reasonably believe that the threat conveyed would be
 5 carried out;

6 (C) Misappropriating, misusing or transferring without authorization any money from any ac-
 7 count held jointly or singly by another person; or

8 (D) Using the income or assets of another person for purposes other than the support and
 9 maintenance of the person without the person’s consent.

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

14 (2) “Financial institution” has the meaning given that term in ORS 706.008.

15 (3) “Qualified individual” means an individual who is:

16 (a) *[A salesperson]* **An agent**;

17 (b) An investment adviser representative; or

18 (c) A person who serves in a supervisory, compliance or legal capacity for a broker-dealer or
 19 state investment adviser, or who is otherwise identified in the written supervisory procedures of a
 20 broker-dealer or state investment adviser.

21 (4) “Trust company” has the meaning given that term in ORS 706.008.

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

23 **SECTION 33.** ORS 59.535 is amended to read:

24 59.535. *[For the purposes of]* **As used in** ORS 59.535 to 59.585*], unless the context otherwise re-*
 25 *quires]:*

26 (1) “Beneficiary form” means a registration of a security *[which]* **that** indicates the present
 27 owner of the security and the intention of the owner regarding the person who will become the
 28 owner of the security upon the death of the owner.

29 (2) “Devisee” means any person designated in a will to receive a disposition of real or personal
 30 property.

31 (3) “Heirs” means those persons, including the surviving spouse, who are entitled under the
 32 statutes of intestate succession to the property of a decedent.

33 (4) “Person” *[means an individual, a corporation, an organization or other legal entity]* **has the**
 34 **meaning given that term in ORS 59.015.**

35 (5) “Personal representative” *[includes]* **means an** executor, administrator, successor personal
 36 representative, special administrator and *[persons who perform]* **any person that performs** sub-
 37 stantially the same function **as an executor, administrator, successor personal representative**
 38 **or special administrator** under the *[law]* **laws** governing *[their status]* **those functions.**

39 (6) “Property” *[includes both]* **means** real and personal property or any interest *[therein]* **in real**
 40 **or personal property** and *[means]* **includes** anything that may be the subject of ownership.

41 (7) “Register,” **“registered,” and “registration”** *[including its derivatives,]* means, **as appro-**
 42 **priate,** to issue **or a completed act of issuing** a certificate showing the ownership of a certificated
 43 security or, in the case of an uncertificated security, to initiate or transfer an account showing
 44 ownership of securities.

45 (8) “Registering entity” means a person *[who]* **that** originates or transfers a security title by

1 registration, and includes a broker maintaining security accounts for customers and a transfer agent
2 or other person acting for or as an issuer of securities.

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

6 (10) "Security account" means:

7 (a) A reinvestment account associated with a security, a securities account with a broker, cash,
8 cash equivalents, interest, earnings or dividends earned or declared on a security in an account, a
9 reinvestment account or a brokerage account, whether or not credited to the account before the
10 owner's death;

11 (b) A cash balance or other property held for or due to the owner of a security as a replacement
12 for or product of an account security, whether or not credited to the account before the owner's
13 death; or

14 (c) An investment management account, a safekeeping account or a custody account with a fi-
15 nancial institution or trust company, as those terms are defined in ORS 706.008, including the se-
16 curities in the account and cash, cash equivalents, interest, earnings or dividends earned or declared
17 on a security in the account, whether or not credited to the account before the owner's death.

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

21 **SECTION 34.** ORS 59.710 is amended to read:

22 59.710. As used in ORS 59.710 to 59.830[, *unless the context indicates otherwise*]:

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

27 [(2)] (1) "Broker" means [*and includes every person who*] **a person that**, in this state:

28 (a) Engages, either for all or part of the person's time, in the business of selling, **purchasing**
29 **or otherwise acquiring securities from another person** [*any securities or commodities, or pur-*
30 *chasing, or otherwise acquiring securities or commodities from another*] for the purpose of reselling
31 [*them or offering them*] **or offering the securities** for sale to the public; [*or*]

32 (b) **Engages** in the business of offering, buying or selling, or otherwise dealing or trading in
33 securities [*or commodities,*] as agent or principal, for commission or at a profit; and [*every*]

34 (c) **A person** [*who*] **that** deals in futures or differences in market quotations of prices or values
35 of any securities [*or commodities,*] or accepts margins on purchases or sales, or pretended purchases
36 or sales of securities [*or commodities*].

37 (2) **"Broker-dealer" has the meaning given that term in ORS 59.015.**

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

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

43 **SECTION 35.** ORS 59.720 is amended to read:

44 59.720. **Notwithstanding the definition of security in ORS 59.015**, the provisions of ORS
45 59.710 to 59.830 [*shall*] **do** not apply to any contract, agreement, sale, purchase, lease, conveyance

1 or mortgage pertaining to real estate situated in this state, nor to the business of real estate brokers
 2 or principal real estate brokers, as defined in ORS 696.010, *[in so far as such]* **to the extent that**
 3 **the** business pertains to real estate located in this state.

4 **SECTION 36.** ORS 59.730 is amended to read:

5 59.730. *[No]* **A** person, whether acting in the person's own right, or as the officer, agent, servant,
 6 correspondent or representative of another, *shall,* **person, may not** as a broker make or offer to
 7 make, assist in making or offering to make, perform or take part in any contract respecting the
 8 purchase or sale, either upon credit or margin, of any *[securities or commodities]* **security** more than
 9 once, and in course of continuing or repeated transactions:

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

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

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

27 **SECTION 37.** ORS 59.740 is amended to read:

28 59.740. *[No]* **A** person *[shall]* **may not**, as owner, keeper, proprietor or person in charge of, or
 29 as officer, director, stockholder, agent, servant, correspondent or representative of any **other** per-
 30 son, keep, conduct or operate any bucket shop, or knowingly permit or induce any **other** person,
 31 whether acting in the person's own right or as officer, agent, servant, correspondent or represen-
 32 tative of another **person**, to make, offer to make *[therein]* **in the bucket shop**, or assist in making
 33 or in offering to make *[therein]* **in the bucket shop**, any of the *[contract specified]* **contracts de-**
 34 **scribed** in ORS 59.730, more than once and in the course of continuing or repeated transactions.

35 **SECTION 38.** ORS 59.750 is amended to read:

36 59.750. *[No]* **A** person *[shall]* **may not** receive, communicate, exhibit or display in any manner
 37 any statement of quotations or prices of *[securities or commodities]* **a security** with an intent to
 38 make or offer to make, or to assist in making, or offering to make any contract prohibited by ORS
 39 59.720 to 59.810.

40 **SECTION 39.** ORS 59.760 is amended to read:

41 59.760. *[No]* **A** person *[shall]* **may not**, with intent to deceive, report or publish, or cause to be
 42 reported or published as a purchase or sale of *[stocks or bonds]* **a security**, any transaction *[whereby*
 43 *no]* **in which an** actual change of ownership or interest *[is effected]* **does not occur.**

44 **SECTION 40.** ORS 59.770 is amended to read:

45 59.770. *[No person shall]* **A person may not** inflate, depress or cause fluctuations in, or attempt

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

11 **SECTION 41.** ORS 59.780 is amended to read:

12 59.780. (1) *[No]* **A** broker, employed by a customer to buy and carry **a security** upon margin
 13 *[stocks or bonds]*, while acting as broker for the customer in respect to *[such stocks or bonds,*
 14 *shall]* **the security, may not** sell for the broker's own account the same kind or issue of *[stocks or*
 15 *bonds]* **security**, with intent to trade against the customer's order.

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

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

23 **SECTION 42.** ORS 59.790 is amended to read:

24 59.790. *[No]* **A** broker-dealer engaged in the business of purchasing and selling *[stocks or*
 25 *bonds]* **securities** as a broker-dealer, knowing that the broker-dealer is insolvent, *[shall]* **may not**
 26 accept or receive from a customer ignorant of the **broker-dealer's** insolvency[,], money[, *stocks or*
 27 *bonds]* **or a security** belonging to the customer, except in liquidation or as security for an existing
 28 indebtedness, and thereby cause the customer to lose in whole or in part *[such]* **the** money[, *stocks*
 29 *or bonds]* **or security**. A broker-dealer *[shall be deemed insolvent within the meaning of this section*
 30 *whenever]* **is insolvent if** the aggregate of the property of the broker-dealer is not, at a fair valu-
 31 ation, sufficient in amount to pay the debts of the broker-dealer.

32 **SECTION 43.** ORS 59.800 is amended to read:

33 59.800. *[No]* **A** broker-dealer engaged in the business of purchasing and selling *[stocks or*
 34 *bonds]* **securities** as a broker-dealer *[shall]* **may not**:

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

39 (2) While having in the possession of the broker-dealer *[stocks or bonds]* **a security** belonging
 40 to a customer on which the broker-dealer has a lien for indebtedness due to the broker-dealer by the
 41 customer, pledge the *[same]* **security** for more than the amount **of the debt** due to the broker-dealer
 42 *[thereon]*, or otherwise dispose *[thereof]* **of the security** for the broker-dealer's own benefit, with or
 43 without the customer's consent, and without having in possession of the broker-dealer or subject to
 44 control of the broker-dealer, *[stocks or bonds]* **securities** of the kind and amount to which the cus-
 45 tomer is then entitled, for delivery to the customer upon demand of the customer *[therefor]* **for the**

1 **security** and tender of the amount due [*thereon*] **on the security**, and thereby cause the customer
 2 to lose, in whole or in part, [*such stocks or bonds,*] **the security** or the value [*thereof*] **of the se-**
 3 **curity**; or

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

7 **SECTION 44.** ORS 59.810 is amended to read:

8 59.810. [*No*] **A** person engaged in the business of purchasing or selling [*stocks or bonds*] **secu-**
 9 **rities** as a broker [*shall*] **may not** refuse to deliver to each customer on whose behalf **the person**
 10 **made** a purchase or sale of [*such*] **the** securities [*is made by the person*], within five days after
 11 written demand [*therefor*] **the securities** made within six months following the purchase or sale, a
 12 statement or memorandum of the purchase or sale [*which*] **that** is true in all material respects and
 13 [*which*] **that** contains a description of the securities purchased or sold, the name of the person from
 14 whom the securities were purchased or to whom [*they*] **the securities** were sold, and the day and
 15 hours between which the transaction took place.

16 **SECTION 45.** ORS 59.830 is amended to read:

17 59.830. [*No*] **A** person [*shall be*] **is not** excused from attending and testifying, or producing any
 18 book, paper or other document before any court or magistrate, upon any trial, investigation or pro-
 19 ceeding initiated by the district attorney, grand jury or court for a violation of any of the provisions
 20 of ORS 59.730 to 59.810, upon the ground that the testimony or evidence, documentary or otherwise,
 21 required of the person may tend to convict the person of a crime or subject the person to a penalty
 22 or forfeiture[. *However, no*], **except that a person** [*shall*] **may not** be prosecuted or subjected to any
 23 penalty or forfeiture for or on account of any transaction, matter or thing concerning which the
 24 person may so testify or produce evidence, documentary or otherwise, and [*no*] testimony so given
 25 or produced [*shall*] **may not** be received against the person in any criminal action, suit or pro-
 26 ceeding, investigation, inquisition or inquiry.

27 **SECTION 46.** ORS 59.991 is amended to read:

28 59.991. (1) Except as provided in subsection (3) of this section, violation of any provision of ORS
 29 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995 or any rule adopted by the Director of the De-
 30 partment of Consumer and Business Services under ORS 59.005 to 59.505, 59.710 to 59.830, 59.991
 31 and 59.995, except ORS 59.315 (2) or 59.810, is a Class B felony.

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

33 (3) This section does not apply to a failure to file a notice and pay a fee under ORS 59.049 [(1),
 34 (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
 35 [(7)] **(9)**, nor to a failure to pay a fee pursuant to ORS 59.175 (9), nor to a violation of any rule
 36 adopted by the director under ORS 59.049 [(1), (2) or (3)] **(1)(a), (b) or (c)** or 59.165 [(7)] **(9)**.

37 **SECTION 47.** ORS 59.995 is amended to read:

38 59.995. (1)(a) Except as provided in paragraph (b) of this subsection, in addition to all other
 39 penalties and enforcement provisions provided by law, any person who violates or who procures,
 40 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
 41 or order of the Director of the Department of Consumer and Business Services [*shall be*] **is** subject
 42 to a penalty of not more than \$20,000 for every violation, which [*shall*] **must** be paid to the General
 43 Fund of the State Treasury.

44 (b) Notwithstanding paragraph (a) of this subsection[,]:

45 **(A)** Any person who violates or who procures, aids or abets the violation of ORS 59.485 or of

1 any rule adopted by the director for administration of ORS 59.480 to 59.505 [*shall be*] **is** subject to
 2 a penalty of not more than \$1,000 for every violation, which [*shall*] **must** be paid to the General
 3 Fund of the State Treasury[.]; **and**

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

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

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

14 (4) This section does not apply to a failure to file a notice and pay a fee pursuant to ORS 59.049
 15 [(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
 16 [(7)] (9), nor to a failure to pay a fee pursuant to ORS 59.175 (9), nor to a violation of any rule
 17 adopted by the director under ORS 59.049 [(1), (2) or (3)] (1)(a), (b) or (c) or 59.165 [(7)] (9).

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

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

20 (a) **"Claimant" means a person that files an application for restitution assistance under**
 21 **this section.**

22 (b) **"Final order" means:**

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

26 (B) **A final order that a court issues during the course of or at the conclusion of liti-**
 27 **gation the director initiates with respect to a violation of this chapter in which the court**
 28 **awards restitution.**

29 (c) **"Restitution assistance" means a payment to a victim from the Securities Restitution**
 30 **Assistance Fund.**

31 (d) **"Victim" means a person to whom a final order awards restitution.**

32 (e) **"Vulnerable person" has the meaning given that term in ORS 124.100.**

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

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

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

44 (d) **The department shall keep a record of all moneys the department deposits into the**
 45 **fund. The record must indicate the source from which the department derived the moneys,**

1 the interest earned and the activity or program against which the department charges all
 2 withdrawals. If moneys in the fund are withdrawn, transferred or used for any purpose other
 3 than the purpose described in paragraph (a) of this subsection, interest accrues on the
 4 amount withdrawn, transferred or used from the date of the withdrawal, transfer or use
 5 until the date on which the moneys are restored to the fund.

6 (3)(a) A victim is eligible for restitution assistance if the victim is:

7 (A) A natural person who was a resident of this state at the time a violation of this
 8 chapter occurred that resulted in an issuance of a final order; or

9 (B) A person, other than a natural person, that was domiciled in this state at the time
 10 a violation of this chapter occurred that resulted in an issuance of a final order.

11 (b) A victim is not eligible for restitution assistance if the victim:

12 (A) Participated in or assisted in, or attempted to participate in or assist in, a violation
 13 of this chapter or of any other state or federal law that regulates transactions in securities;
 14 or

15 (B) Profited from a violation of this chapter, or any other state or federal law that reg-
 16 ulates transactions in securities, or would have profited from the violation if an attempted
 17 violation had succeeded.

18 (4)(a) A claimant must apply for restitution assistance not later than one year after the
 19 date of a final order unless the director grants an extension for good cause shown. The
 20 claimant must apply on a form, in a manner and with contents that the department specifies
 21 by rule.

22 (b) Notwithstanding that a victim might have more than one eligible claimant, the de-
 23 partment may pay restitution assistance to only one of the victim's eligible claimants. A
 24 victim must identify the sole eligible claimant to which the department may pay the
 25 restitution assistance.

26 (5)(a) The director may award restitution assistance to a claimant in the following
 27 amounts:

28 (A) The lesser of \$25,000 or 25 percent of the amount of unpaid restitution awarded in the
 29 final order; or

30 (B) The lesser of \$50,000 or 50 percent of the amount of unpaid restitution awarded in the
 31 final order if the victim is a vulnerable person.

32 (b) The director may waive the caps on the amounts described in paragraph (a) of this
 33 subsection if the director finds good cause.

34 (5) The director may bring an action or may request that the Attorney General bring an
 35 action in a circuit court of this state to recover any restitution assistance the department
 36 paid to a victim if:

37 (a) The victim was convicted of any crime that was related to a claim under this section,
 38 including but not limited to forgery, fraud, deception or falsification; or

39 (b) The restitution award is overturned on appeal.

40 (6)(a) If the department pays restitution assistance to a victim because a person that a
 41 final order obligated to pay restitution has not paid all or part of the required restitution,
 42 the director is subrogated to the victim's right of recovery against the person for the
 43 amount of restitution assistance the department paid to the victim.

44 (b) The director may file and perfect a lien against any recovery made by or on behalf
 45 of the victim for the amount of restitution assistance the department paid to a victim. The

1 **director may bring an action, or may intervene in any action brought by or on behalf of the**
 2 **victim, for the purpose of foreclosing the lien.**

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

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

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

11 **(9) Except to the extent that the state, or another person on behalf of the state, brings**
 12 **an action or other proceeding to execute, attach, garnish or otherwise recover all or a por-**
 13 **tion of restitution assistance the department paid under this section, the restitution assist-**
 14 **ance is not subject to execution, attachment, garnishment or other process.**

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

16 **SECTION 50.** ORS 646.605 is amended to read:

17 646.605. As used in ORS 336.184 and 646.605 to 646.652:

18 (1) "Appropriate court" means the circuit court of a county:

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

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

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

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

24 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
 25 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
 26 other tangible document or recording, wherever situated.

27 (3) "Examination" of documentary material includes inspection, study or copying of any docu-
 28 mentary material, and taking testimony under oath or acknowledgment regarding any documentary
 29 material or copy thereof.

30 (4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
 31 unincorporated associations and any other legal entity except bodies or officers acting under statu-
 32 tory authority of this state or the United States.

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

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

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

40 (A) "Real estate" does not cover conduct covered by ORS chapter 90.

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

43 (7) "Telephone solicitation" means a solicitation where a person, in the course of the person's
 44 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-
 45 itiate telephonic contact with a potential customer and the person is not one of the following:

1 (a) A person who is a broker-dealer or [*salesperson*] **agent** licensed under ORS 59.175, or a
2 mortgage banker or mortgage broker licensed under ORS 86A.106, when the solicitation is for a
3 security qualified for sale pursuant to ORS 59.055.

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

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

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

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

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

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

23 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
24 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-
25 struction funeral or cemetery plans.

26 (i) A person who solicits the services provided by a cable television system licensed or fran-
27 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
28 vices.

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

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

33 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
34 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
35 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

40 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
41 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
42 directly affecting the people of this state.

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

44 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
45 bility to understand the language of the agreement;

1 (b) Knowingly permits a customer to enter into a transaction from which the customer will
 2 derive no material benefit;

3 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable
 4 probability of payment of the attendant financial obligation in full by the customer when due; or

5 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
 6 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
 7 servicemember or servicemember in active service. For purposes of this paragraph:

8 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

9 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. 3911 as in effect
 10 on January 1, 2010, who may be entitled to disability compensation under laws administered by the
 11 United States Department of Veterans Affairs.

12 (C) "Servicemember in active service" means:

13 (i) A servicemember called into active service under Title 10 or Title 32 of the United States
 14 Code as in effect on January 1, 2010; or

15 (ii) A servicemember on state active duty, as defined in the Oregon Code of Military Justice.

16 (10) A willful violation occurs when the person committing the violation knew or should have
 17 known that the conduct of the person was a violation.

18 (11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

19 (a) The lender directly or indirectly controls, is controlled by or is under common control with
 20 the seller, unless the relationship is remote and is not a factor in the transaction;

21 (b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-
 22 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the
 23 borrower;

24 (c) The lender is related to the seller by blood or marriage;

25 (d) The seller directly and materially assists the borrower in obtaining the loan;

26 (e) The seller prepares documents that are given to the lender and used in connection with the
 27 loan; or

28 (f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

29 **SECTION 51.** ORS 646A.628 is amended to read:

30 646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Con-
 31 sumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to
 32 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,
 33 705.350, [and] 717.200 to 717.320 and 731.804 and ORS chapters [59,] 645, 706 to 716, 723, 725 and
 34 726 to implement ORS 646A.600 to 646A.628.

35 **SECTION 52.** ORS 131A.005 is amended to read:

36 131A.005. As used in this chapter:

37 (1) "All persons known to have an interest" means:

38 (a) Any person who filed a notice of interest for seized property with any public office, in the
 39 manner required or permitted by law, before the property was seized for forfeiture;

40 (b) Any person from whose custody property is seized for forfeiture; and

41 (c) Any person who has an interest in property seized for forfeiture, including all owners and
 42 occupants of the property, whose identity and address is known or is ascertainable upon diligent
 43 inquiry and whose rights and interest in the property may be affected by the action.

44 (2) "Attorney fees" has the meaning given that term in ORCP 68 A.

45 (3) "Financial institution" means any person lawfully conducting business as:

- 1 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;
- 2 (b) A consumer finance company subject to the provisions of ORS chapter 725;
- 3 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 86A.100, a
4 mortgage servicing company or other mortgage company;
- 5 (d) An officer, agency, department or instrumentality of the federal government, including but
6 not limited to:
- 7 (A) The Secretary of Housing and Urban Development;
- 8 (B) The Federal Housing Administration;
- 9 (C) The United States Department of Veterans Affairs;
- 10 (D) Rural Development and the Farm Service Agency of the United States Department of Agri-
11 culture;
- 12 (E) The Federal National Mortgage Association;
- 13 (F) The Government National Mortgage Administration;
- 14 (G) The Federal Home Loan Mortgage Corporation;
- 15 (H) The Federal Agricultural Mortgage Corporation; and
- 16 (I) The Small Business Administration;
- 17 (e) An agency, department or instrumentality of the state, including but not limited to:
- 18 (A) The Housing and Community Services Department;
- 19 (B) The Department of Veterans' Affairs; and
- 20 (C) The Public Employees Retirement System;
- 21 (f) An agency, department or instrumentality of any local government, as defined by ORS
22 174.116, or special government body, as defined by ORS 174.117, including but not limited to such
23 agencies as the Portland Development Commission;
- 24 (g) An insurer as defined in ORS 731.106;
- 25 (h) A private mortgage insurance company;
- 26 (i) A pension plan or fund or other retirement plan; and
- 27 (j) A broker-dealer or investment adviser **representative** as defined in ORS 59.015.
- 28 (4) "Forfeiting agency" means a public body that is seeking forfeiture of property under this
29 chapter.
- 30 (5) "Forfeiture counsel" means an attorney designated by a forfeiting agency to represent the
31 forfeiting agency in forfeiture proceedings.
- 32 (6) "Forfeiture proceeds" means all property that has been forfeited in a proceeding under this
33 chapter, including money, earnings from forfeited property and amounts realized from the sale of
34 forfeited property.
- 35 (7) "Instrumentality" has the meaning given in ORS 131.550.
- 36 (8) "Law enforcement agency" means any agency that employs police officers or prosecutes
37 criminal cases.
- 38 (9) "Motor vehicle with a hidden compartment" means a motor vehicle as defined in ORS 801.360
39 that has had the vehicle's original design modified by a person other than the manufacturer to cre-
40 ate a container, space or enclosure for the purpose of concealing, hiding or otherwise preventing
41 discovery of its contents and that is used or intended to be used to facilitate the commission of a
42 criminal offense.
- 43 (10) "Police officer" has the meaning given that term in ORS 133.525.
- 44 (11) "Proceeds of prohibited conduct" means property derived directly or indirectly from pro-
45 hibited conduct, or maintained by or realized through prohibited conduct. "Proceeds of prohibited

1 conduct” includes any benefit, interest or property of any kind, without reduction for expenses of
2 acquiring or maintaining the property.

3 (12) “Prohibited conduct” means:

4 (a) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision
5 of ORS 475.005 to 475.285 and 475.744 to 475.980 when the conduct constitutes the commission of a
6 crime as described in ORS 161.515;

7 (b) Violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475C.337,
8 475C.341, 475C.345 or 475C.349 when the conduct constitutes the commission of a crime as described
9 in ORS 161.515;

10 (c) Violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475C.229;

11 (d) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision
12 of ORS 163.263, 163.264, 163.266 or 167.017; and

13 (e) Other conduct that constitutes the commission of a crime as described in ORS 161.515, that
14 provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is made subject
15 to the provisions of this chapter under ORS 131A.010 (4) or other law.

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

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

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

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

23 **SECTION 53.** ORS 657.085 is amended to read:

24 657.085. “Employment” does not include service performed by any person as a newspaper ad-
25 vertising salesperson, real estate broker, principal real estate broker, insurance producer or secu-
26 rities [*salesperson or*] agent to the extent that the person is compensated by commission.

27 **SECTION 54.** Section 49 of this 2023 Act and the amendments to ORS 59.015, 59.025,
28 59.035, 59.049, 59.051, 59.065, 59.085, 59.095, 59.105, 59.115, 59.125, 59.127, 59.131, 59.135, 59.137,
29 59.165, 59.175, 59.185, 59.195, 59.205, 59.215, 59.225, 59.235, 59.245, 59.255, 59.265, 59.285, 59.295,
30 59.331, 59.345, 59.370, 59.480, 59.535, 59.710, 59.720, 59.730, 59.740, 59.750, 59.760, 59.770, 59.780,
31 59.790, 59.800, 59.810, 59.830, 59.991, 59.995, 131A.005, 646.605, 646A.628 and 657.085 by sections
32 1 to 47 and 50 to 53 of this 2023 Act apply to any business or transaction that is subject to
33 the Oregon Securities Law, to ORS 59.535 to 59.585 or to ORS 59.710 to 59.830, or any action
34 or proceeding to enforce the provisions of the Oregon Securities Law, ORS 59.535 to 59.585
35 or 59.710 to 59.830, that occurs on or after the operative date specified in section 55 of this
36 2023 Act.

37 **SECTION 55.** (1) Section 49 of this 2023 Act and the amendments to ORS 59.015, 59.025,
38 59.035, 59.049, 59.051, 59.065, 59.085, 59.095, 59.105, 59.115, 59.125, 59.127, 59.131, 59.135, 59.137,
39 59.165, 59.175, 59.185, 59.195, 59.205, 59.215, 59.225, 59.235, 59.245, 59.255, 59.265, 59.285, 59.295,
40 59.331, 59.345, 59.370, 59.480, 59.535, 59.710, 59.720, 59.730, 59.740, 59.750, 59.760, 59.770, 59.780,
41 59.790, 59.800, 59.810, 59.830, 59.991, 59.995, 131A.005, 646.605, 646A.628 and 657.085 by sections
42 1 to 47 and 50 to 53 of this 2023 Act become operative on January 1, 2024.

43 (2) The Director of the Department of Consumer and Business Services may adopt rules
44 and take any other action before the operative date specified in subsection (1) of this section
45 that is necessary to enable the director, on and after the operative date specified in sub-

1 **section (1) of this section, to undertake and exercise all of the duties, functions and powers**
2 **conferred on the director by section 49 of this 2023 Act and the amendments to ORS 59.015,**
3 **59.025, 59.035, 59.049, 59.051, 59.065, 59.085, 59.095, 59.105, 59.115, 59.125, 59.127, 59.131, 59.135,**
4 **59.137, 59.165, 59.175, 59.185, 59.195, 59.205, 59.215, 59.225, 59.235, 59.245, 59.255, 59.265, 59.285,**
5 **59.295, 59.331, 59.345, 59.370, 59.480, 59.535, 59.710, 59.720, 59.730, 59.740, 59.750, 59.760, 59.770,**
6 **59.780, 59.790, 59.800, 59.810, 59.830, 59.991, 59.995, 131A.005, 646.605, 646A.628 and 657.085 by**
7 **sections 1 to 47 and 50 to 53 of this 2023 Act.**

8 **SECTION 56. This 2023 Act takes effect on the 91st day after the date on which the 2023**
9 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

10