

Senate Bill 729

Sponsored by Senator GIROD (Pre-session filed.)

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**.

Modifies exemptions from liability related to sale or successful solicitation of sale of security in violation of securities law.

A BILL FOR AN ACT

1
2 Relating to securities law; amending ORS 59.115.

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

4 **SECTION 1.** ORS 59.115 is amended to read:

5 59.115. (1) A person is liable as provided in subsection (2) of this section to a purchaser of a
6 security if the person:

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

10 (b) Sells or successfully solicits the sale of a security in violation of ORS 59.135 (1) or (3) or by
11 means of an untrue statement of a material fact or an omission to state a material fact necessary
12 in order to make the statements made, in light of the circumstances under which they are made, not
13 misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden
14 of proof that the person did not know, and in the exercise of reasonable care could not have known,
15 of the untruth or omission.

16 (2) The purchaser may recover:

17 (a) Upon tender of the security, the consideration paid for the security, and interest from the
18 date of payment equal to the greater of the rate of interest specified in ORS 82.010 for judgments
19 for the payment of money or the rate provided in the security if the security is an interest-bearing
20 obligation, less any amount received on the security; or

21 (b) If the purchaser no longer owns the security, damages in the amount that would be recov-
22 erable upon a tender, less the value of the security when the purchaser disposed of it and less in-
23 terest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment
24 of money from the date of disposition.

25 (3) Every person who directly or indirectly controls a seller liable under subsection (1) of this
26 section, every partner, limited liability company manager, including a member who is a manager,
27 officer or director of such seller, every person occupying a similar status or performing similar
28 functions, and every person who participates or materially aids in the sale is also liable jointly and
29 severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof
30 that the nonseller did not know, and, in the exercise of reasonable care, could not have known, of
31 the existence of facts on which the liability is based. Any person held liable under this section shall

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 be entitled to contribution from those jointly and severally liable with that person.

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*] **lending**, escrow,
4 custody or deposit services in accordance with applicable law is liable only if the person partic-
5 ipates or materially aids in the sale and the purchaser sustains the burden of proof that the person
6 knew of the existence of facts on which liability is based or that the person's failure to know of the
7 existence 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 action or suit may be commenced under
10 this section more than three years after the sale. An action under this section for a violation of
11 subsection (1)(b) of this section or ORS 59.135 may be commenced within three years after the sale
12 or two years after the person bringing the action discovered or should have discovered the facts on
13 which the action is based, whichever is later. Failure to commence an action on a timely basis is
14 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, state investment adviser or
18 against a salesperson or investment adviser representative acting within the course and scope or
19 apparent course and scope of authority of the salesperson or investment adviser representative,
20 under this section shall have a right of action under the bond or irrevocable letter of credit provided
21 in ORS 59.175.

22 (9) Subsection (4) of this section shall 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.

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