

LC 708
2017 Regular Session
44000-010
8/4/16 (DFY/ps)

D R A F T

SUMMARY

Requires broker-dealers and state investment advisers to maintain errors and omissions insurance policy in amount of at least \$1 million as condition of state licensure, if broker-dealer or state investment adviser has discretionary trading authority or has custody of client funds.

Becomes operative on July 31, 2018.

A BILL FOR AN ACT

Relating to conditions of licensure for persons dealing in securities; creating new provisions; and amending ORS 59.175, 59.225, 59.255, 59.331, 59.991 and 59.995.

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

SECTION 1. ORS 59.175 is amended to read:

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

(2) The director may require an applicant for a license as a broker-dealer or state investment adviser, including the applicant's partners, directors, officers or any person occupying a similar status or performing similar functions, and any person directly or indirectly controlling such applicant and a person for whom application for a license as a salesperson or investment adviser representative is made, to pass an examination on such person's

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.

knowledge and understanding of the Oregon Securities Law and the securities business. The director may establish by rule a fee for the examination.

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

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

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

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

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

(B) *[is]* In compliance with *[such state's]* the bonding or net capital requirements of the state where it maintains principal place of business.

(5)(a) Except as otherwise provided in paragraph (b), (c) or (d) of this subsection, every applicant for a license or renewal of a license as a broker-dealer or state investment adviser shall file with the di-

1 **rector proof that the applicant maintains an errors and omissions in-**
 2 **surance policy in an amount of at least \$1 million from an insurer**
 3 **authorized to transact insurance in this state or from any other**
 4 **insurer approved by the director according to standards established**
 5 **by rule.**

6 **(b) A broker-dealer or state investment adviser that has neither**
 7 **discretionary trading authority nor custody of client funds is not re-**
 8 **quired to comply with paragraph (a) of this subsection.**

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

12 **(d) A licensed state investment adviser who has its principal place**
 13 **of business in a state other than this state is exempt from the re-**
 14 **quirements of paragraph (a) of this subsection.**

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

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

26 **[(6)] (7)** A licensee under ORS 59.165 shall amend the license application
 27 when there are material changes in the information contained in the original
 28 application.

29 **[(7)] (8)** An applicant for or a person holding a license issued under ORS
 30 59.005 to 59.451 may file with the director a trade name, as defined in ORS
 31 647.005, or an assumed business name, as defined in ORS 648.005. The trade

name or assumed business name shall be filed in a form and manner established by rule by the director. If the application is complete and the fee described in subsection [(8)] **(9)** of this section is paid, the director shall issue an order authorizing the licensee to operate under the trade name or assumed business name. The order shall remain in effect until canceled, suspended or revoked.

[(8)] **(9)** The director shall charge and collect fees for:

(a) An application for a license as a broker-dealer or state investment adviser;

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

(c) An application for a license as a salesperson;

(d) An application to renew a license as a salesperson;

(e) An application for a license as an investment adviser representative;

(f) An application to renew a license as an investment adviser representative;

(g) A notice filing for a federal covered investment adviser;

(h) A notice filing renewal for a federal covered investment adviser; and

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

[(9)(a)] **(10)(a)** The director shall set the fees described in subsection [(8)] **(9)** of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of a fee described in subsection [(8)] **(9)** of this section every two years to reflect changes in the national midpoint for a similar fee.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the National Association of Securities Dealers or the United States Securities and Exchange Com-

mission.

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

SECTION 2. ORS 59.225 is amended to read:

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

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

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

(3) When an investment adviser representative of a federal covered investment adviser begins or terminates an association with such federal covered investment adviser, the federal covered investment adviser or investment adviser representative shall promptly notify the director in writ-

ing in accordance with the procedures established by the director.

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

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

SECTION 3. ORS 59.255 is amended to read:

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

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

1 fendant or the defendant's assets. The court may not require the director to
2 post a bond.

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

9 (4) The director may include in any action authorized by this section:

10 (a) A claim for restitution or damages under ORS 59.115, 59.127 or 59.137,
11 on behalf of the persons injured by the act or practice constituting the sub-
12 ject matter of the action. The court shall have jurisdiction to award appro-
13 priate relief to such persons, if the court finds that enforcement of the rights
14 of such persons by private civil action, whether by class action or otherwise,
15 would be so burdensome or expensive as to be impractical; or

16 (b) A claim for disgorgement of illegal gains or profits derived. Any re-
17 covery under this paragraph shall be turned over to the General Fund of the
18 State Treasury unless the court requires other disposition.

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

20 (a) A failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2)
21 or (3);

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

23 (c) A failure to pay a fee pursuant to ORS 59.175 [(8)] (9); or

24 (d) A violation of any rule adopted by the director pursuant to ORS 59.049
25 (1), (2) or (3)[,] **or** 59.165 (7) [*or* 59.175 (8)].

26 **SECTION 4.** ORS 59.331 is amended to read:

27 59.331. (1) Subject to subsection (2) of this section and after providing
28 notice and an opportunity to participate to the Director of the Department
29 of Consumer and Business Services, the Attorney General may:

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

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

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

(b) Require or permit a person to file a statement in writing, under oath or otherwise as the Attorney General determines, as to all the facts and circumstances concerning a matter to be investigated.

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

(d) Bring suit in the name and on behalf of the State of Oregon in the circuit court of any county to:

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

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

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

(a) Alleged violations involving companies whose securities are listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automated Quotation System, Inc. National Market System;

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

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

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

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

(4) Each witness who appears before the Attorney General under a subpoena issued under this section shall receive the fees and mileage provided for witnesses in ORS 44.415 (2). If a person fails to comply with a subpoena issued under this section or if a party or witness refuses to testify on any matters, the judge of the circuit court of any county, on the application of the Attorney General, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

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

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

(b) May award reasonable attorney fees to:

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

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

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

(a) A claim for restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the persons injured by the act or practice constituting the sub-

ject matter of the action. If the court finds that enforcement of the rights of the injured persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical, the court has jurisdiction to award appropriate relief to the injured persons.

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

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

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

(7) This section does not apply to:

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

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

(c) A failure to pay a fee under ORS 59.175 [(8)] **(9)**;

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

or

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

SECTION 5. ORS 59.991 is amended to read:

59.991. (1) Except as provided in subsection (3) of this section, violation of any provision of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule adopted by the Director of the Department of Consumer and Business Services under ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, except ORS 59.315 (2) or 59.810, is a Class B felony.

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

(3) This section does not apply to a failure to file a notice and pay a fee under ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant to ORS 59.175 [(8)] **(9)**, nor to a violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3)[,] **or** 59.165 (7) [*or* 59.175 (8)].

SECTION 6. ORS 59.995 is amended to read:

59.995. (1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than \$20,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$100,000.

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

(4) This section does not apply to a failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant

1 to ORS 59.175 [(8)] (9), nor to a violation of any rule adopted by the director
2 under ORS 59.049 (1), (2) or (3)[,] **or** 59.165 (7) [*or* 59.175 (8)].

3 **SECTION 7. The amendments to ORS 59.175, 59.225, 59.255, 59.331,**
4 **59.991 and 59.995 by sections 1 to 6 of this 2017 Act become operative**
5 **on July 31, 2018.**

6 **SECTION 8. The Department of Consumer and Business Services**
7 **may take any action before the operative date specified in section 7**
8 **of this 2017 Act that is necessary for the department to exercise, on**
9 **and after the operative date specified in section 7 of this 2017 Act, all**
10 **of the duties, functions and powers conferred on the department by**
11 **the amendments to ORS 59.175, 59.225, 59.255, 59.331, 59.991 and 59.995**
12 **by sections 1 to 6 of this 2017 Act.**

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