Chapter 59

1965 REPLACEMENT PART

Securities (Blue Sky Law) and Crimes Involving Securities

OREGON SECURITIES LAW

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OREGON SECURITIES LAW

59.010 Sections constituting "Oregon Securities Law." ORS 59.010 to 59.530 and subsections (1) and (2) of 59.990 shall be known as the Oregon Securities Law.

59.020 Definitions for Oregon Securities Law. When used in the Oregon Securities Law the following terms shall, unless the text otherwise indicates, have the following meanings:

(1) "Agent" means salesman as defined in subsection (2) of ORS 59.030.

(2) "Broker" means dealer as defined in subsection (4) of this section.

(3) "Commissioner" means the Corporation Commissioner of this state.

(4) "Dealer" includes every person other than a salesman who in this state engages either for all or part of his time directly or through an agent in the business of selling any securities issued by another person or purchasing or otherwise acquiring such securities from another for the purpose of reselling them or of offering them for sale to the public, or offering, buying, selling or otherwise dealing or trading in securities as agent or principal for a commission or at a profit, or who deals in futures or differences in market quotations of prices or values of any securities or accepts margins on purchases or sales or pretended purchases or sales of securities. "Dealer" does not include a person having no place of business in this state who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business.

(5) "Issuer" includes every person who proposes to issue, has issued, or hereafter issues any security. Any person who acts as a promoter for and on behalf of a corporation, trust or unincorporated association or partnership of any kind to be formed shall be deemed to be an issuer. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

(6) "Mortgage" includes any trust instrument to secure a debt.

(7) "Person" includes a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint stock company, a trust and any unincorporated organization. As used herein the term "trust" includes a common law or business trust, but does not include a private trust or a trust created or appointed under or by virtue of a last will and testament, or by a court of law or equity.

Note: The provisions of chapter 580, Oregon Laws 1963, establishing the Banking Division, Corporation Division and Insurance Division of the Department of Commerce, stand repealed on July 1, 1967. Pursuant to chapter 580, Oregon Laws, 1963, the Legislative Counsel has substituted in ORS chapter 59, for words designating the former Banking Department, Corporation Department and Insurance Department, words designating the Banking, Corporation and Insurance Divisions, respectively.

59.030 Definitions for Oregon Securities Law. When used in the Oregon Securities Law the following terms shall, unless the text otherwise indicates, have the following meanings:

(1) "Sale" or "sell" includes every disposition, or attempt to dispose of a security or interest in a security for a consideration. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for a consideration. "Sale" or "sell" shall also include a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by an agent, or a circular, letter, advertisement or otherwise. A privilege pertaining to a security giving the holder a right to convert such security into another security of the same issuer is not deemed a sale of such other security within the meaning of this definition and such privilege shall not be construed as affecting the status of the security to which the privilege pertains with respect to exemption or registration under the provisions of the Oregon Securities Law. However, when the privilege of conversion is exercised it is subject to the provisions in subsection (8) of ORS 59.120. The issue or transfer of a right pertaining to a security and entitling the holder of such right to

subscribe to another security of the same issuer, when the right is issued or transferred with the security to which it pertains, is not deemed a sale of the other security within the meaning of this definition and such right shall not be construed as affecting the status of the security to which the right pertains with respect to exemption or registration under the provisions of the Oregon Securities Law; but the sale of such other security upon the exercise of such right is subject to the provisions of the Oregon Securities Law.

(2) "Salesman" includes every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer, to sell securities in any manner in this state. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer are not deemed salesmen within the meaning of this definition.

(3) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate; receipt, or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; any certificate, contract, receipt or instrument representing or constituting evidence of, or secured by, title to or interest in, any oil, gas or mining lease, royalty or deed; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

59.040 to 59.100 [Reserved for expansion]

59.110 Securities to which Oregon Securities Law does not apply. Except as otherwise expressly provided, the provisions of the Oregon Securities Law shall not apply to any of the following classes of securities:

(1) Any security issued or guaranteed by the United States or by any state or political subdivision or agency thereof.

(2) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale or offer of sale thereof maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment.

(3) Any security which represents an interest in or a direct obligation of and which has been or is to be issued by a national bank or by a federal land bank or joint stock land bank or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916, or by any corporation created by or acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States.

(4) Securities issued, outstanding and fully listed or approved for listing upon notice of issuance on the New York Stock Exchange, American Stock Exchange, Mid-West Stock Exchange or the Pacific Coast Stock Exchange and also all securities of equal or senior rank to any securities so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, any securities called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or to subscribe to any of the foregoing; such securities to be exempt only so long as such listing remains in effect. The commissioner, however, may, at any time for cause, by formal order, withdraw the exemption allowed by this section from any security dealt in on any stock exchange mentioned in this subsection. Also securities listed in any standard manual or supplements thereto and which maintain a rating approved for exemption by written order of the commissioner.

(5) Any security which represents an interest in or a direct obligation of and which has been or is to be issued by a state bank or trust company, industrial loan company organized or authorized under the provisions of ORS chapter 724 or credit union, which is subject to the examination, supervision and control of the Superintendent of Banks of this state.

(6) Negotiable promissory notes or commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce, where such notes or commercial paper are not made the subject of a public offering.

(7) Preorganization subscriptions to securities, issued or to be issued, by any person, corporation, trust, partnership, limited partnership, cooperative association, joint

venture, or unincorporated association, where the total number of persons solicited does not exceed 25 and where the total number subscribing to the purchase of any such securities does not exceed 10; also, subsequent subscriptions to securities issued, or to be issued, by any person, corporation, trust, partnership, limited partnership, cooperative association, joint venture or unincorporated association, where the persons solicited, at the time of such solicitation, are the holders of other securities previously issued by the same issuer and where the number of security holders does not exceed 10. These exemptions shall be inapplicable wherever there is an attempt to evade the provisions of this law or wherever any commission, compensation or remuneration is paid or given in connection with the securing of such subscriptions or purchases.

(8) Any security issued by a savings and loan association organized under the laws of this state.

(9) Any security issued by any insurance company incorporated under any law of any state of the United States, which company has been in existence and doing business for a period of 10 years or more. Nor shall the Oregon Securities Law apply to any contract permitted to be sold by life insurance companies under the insurance laws of this state.

(10) Any security the issuance of which is under supervision, regulation or control by the Public Utility Commissioner of Oregon, if the Public Utility Commissioner is exercising control over, or is regulating or supervising the issuer thereof.

(11) Stock or membership certificates issued by an agricultural cooperative marketing, purchasing or irrigation association where such stock is issued to evidence membership in such association or as a patronage dividend by such association and certificates issued to members or patrons by such an association evidencing their respective interests in reserves or as patronage dividends. This exemption shall not apply to any association which expects to engage or is engaged in the production, processing or marketing of forest products.

[Amended by 1953 c.690 §3; 1955 c.201 §1; 1957 c.47 §1; 1963 c.244 §1; 1965 c.241 §2]

Note: See note for ORS 59.020.

59.120 Sales to which Oregon Securities Law does not apply. Except as expressly provided the provisions of the Oregon Securities Law shall not apply to the sale of any security in any of the following transactions:

(1) At any judicial, sheriff's, executor's, administrator's, guardian's, or other fiduciary's sale or at any sale by a receiver or trustee in insolvency or bankruptcy when upon order of a court of competent jurisdiction.

(2) An isolated transaction in which any security is bought, sold, offered for sale, subscription or delivery by the owner, or by a corporation of its unissued stock, or his or its representative for the owner's or the corporation's account, the purchase, sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by the owner or corporation or on his or its accounts by the representative, and the owner, corporation or representative not being the underwriter of the security.

(3) The distribution by a corporation actively engaged in the business authorized by its charter of capital stock, bonds or other securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings or surplus.

(4) The issue of securities to the existing security holders or other creditors of a corporation following a reorganization of the corporation under the supervision of a court of competent jurisdiction, where the issuance is provided for by the decree or order of the court and is either in exchange for the securities of the security holders or claims of creditors or partly for cash and partly in exchange for the securities or claims of the security holders or creditors.

(5) The pro rata offering and sale by an issuer of its securities to its existing security holders, provided that no commission or other remuneration, other than a standby fee, is paid or given directly or indirectly with such sale or distribution, and provided that such issuer has not had an effective registration statement on file under the Oregon Securities Law within a period of five years prior to the date of such offering or sale.

(6) The sale, transfer or delivery of securities to a bank, savings institution, trust company, insurance company, investment company, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a registered broker or dealer.

(7) Any transfer or exchange of securities pursuant to a consolidation or merger agreement.

(8) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make the conversion, provided the security surrendered has been registered under the law or was, when sold, exempt from the provisions of the Oregon Securities Law.

(9) Bonds or notes secured by mortgage upon real estate so long as the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(10) Agency or principal transactions by registered dealers, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders, where there is no intent to avoid the provisions of the Oregon Securities Law or not involving a public offering. Such dealer shall keep and maintain for two years from the date of the order a record of all the transactions executed upon customers' orders, giving the name and address of each customer, the name and identity of the security involved, the date of the transactions, the price paid for or received for the security, and the commission or other expenses charged to the customer.

(11) The sale by a registered dealer of any security acquired in the ordinary and usual course of business, when such security is a part of an issue which has theretofore been qualified for sale, in whole or in part, by permit under any previous law or by registration under the Oregon Securities Law, the sale being made in good faith and not directly or indirectly for the benefit of the issuer of the security or for the promotion of any scheme or enterprise effecting a violation or an evasion of any provisions of the Oregon Securities Law. However, this exemption shall not apply when the original qualification or registration of the security has been revoked or suspended in accordance with ORS 59.230, or the applicable provisions of any previous statute, or where the continued sale of the security has been enjoined in accordance with ORS 59.340. Nor does this exemption apply when, in the opinion of the commissioner, the further sale of the security in this state would work a fraud or imposition upon the purchaser and the commissioner has issued an order revoking the exemption afforded the security by this section.

(12) The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and

(b) Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter; and

(c) Either Moody's or Standard and Poor's securities manuals, or any others recognized securities manuals approved by the commissioner, contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of such sale, and a profit and loss statement for either the fiscal year preceding the date of the balance sheet or the most recent year of operations.

The commissioner may revoke the exemption afforded by this subsection with respect to any securities by issuing an order to that effect if he finds that the further sale of such securities in this state would work or tend to work a fraud on purchasers thereof.

(13) Any offer of a security for which registration statements have been filed under both the Oregon Securities Law and the Federal Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Oregon Securities Law or the Federal Act. Such offer may not be accepted until the securities have been registered as provided for in the Oregon Securities Law.

[Amended by 1955 c.196 §1; 1957 c.116 §1; 1963 c.244 §2]

59.130 Registration of securities as a condition to sale; effectiveness of permits issued before enactment of Oregon Securities Law. (1) No securities, except of a class exempt under ORS 59.110, or unless sold in any transaction exempt under ORS

59.120, shall be sold within this state unless and until they have been registered by notification or by qualification as provided by ORS 59.140 to 59.180, unless they fall within the classification of securities to be registered for resale or for trading purposes, as provided in ORS 59.200. However, registration of any security shall be deemed to include the registration of any right or conversion privilege embodied in or made a part of that security, but the registration of the right or privilege shall not be deemed to be a registration of the security to be issued or exchanged for the right or privilege. The exercise of the conversion right or privilege shall be subject to the provisions of subsection (8) of ORS 59.120. The exemption of sales of securities in the transactions enumerated in ORS 59.120 shall have application only to the sales of securities directly involved in such transactions, and such securities shall not thereafter be sold unless and until registered or subsequently sold under the exemption provisions of ORS 59.110 or 59.120.

(2) A record of the registration of securities shall be entered in a register of securities to be kept in the office of the Corporation Division. There shall also be recorded in the register any orders entered by the commissioner with respect to such securities. The register and application with respect to the securities registered therein shall be open to public inspection.

(3) All permits issued under any previous Act of the State of Oregon which were outstanding on July 1, 1939, and which authorized the sale or exchange or disposal of any security within this state, are deemed to be a registration of such security under the Oregon Securities Law without further application. However, all the provisions of the Oregon Securities Law with respect to suspension, revocation or cancelation or to the commissioner's powers shall apply to such permits or registrations and securities in the same manner as though those securities had been registered after July 1, 1939. [Amended by 1953 c.549 §138]

Note: See note for ORS 59.020.

59.140 Securities entitled to registration by notification. Securities entitled to registration by notification are those issued by a corporation, partnership, association, company, syndicate or lawfully existing trust owning a property, business or industry which has been in continuous operation not less than three years or which is a consolidation or merger of a property, business or industry which has been in continuous operation for not less than three years, and which has shown during a period of not less than two years or more than 10 years next prior to the close of its fiscal year preceding the offering of the securities, average annual net earnings, after deducting all prior charges not including the charges upon securities to be retired out of the proceeds of sale, as follows:

(1) In the case of interest-bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest-bearing obligations of equal rank.

(2) In the case of preferred stock, not less than one and one-half times the annual divided requirements of such preferred stock and on all other outstanding stock of equal or senior rank.

(3) In the case of common stock, not less than five percent upon all outstanding common stock of equal or senior rank, together with the amount of common stock then offered for sale reckoned upon the price at which such stock is then offered for sale or sold.

59.150 Mode of registration by notification; statement concerning security; fees. (1) Securities entitled to registration by notification shall be registered by the filing by the issuer, or by any registered dealer interested in their sale, in the office of the commissioner, of a statement with respect to such securities containing the following:

(a) Name of issuer.

(b) A brief description of the security including amount of the issue.

(c) Amount of securities to be offered in the state.

(d) A brief statement of the facts which show that the security falls within one of the classes defined in ORS 59.140.

(e) The price at which the securities are to be offered for sale.

(2) In the case of securities falling within the class defined by ORS 59.140, if the prospectus to be used for public offering is not filed with the statement, a copy of such prospectus shall be filed in the office of the commissioner within five days thereafter or within such further time as the commissioner may allow.

(3) At the time of filing the application the applicant shall pay to the commissioner

a fee of one-tenth of one percent of the aggregate price of the securities which are to be offered in this state on the first $100,000 or fraction thereof, and one-twentieth of one percent on the next $200,000 or fraction thereof and an additional fee of $25 per $100,000 or fraction thereof when aggregate amount is above $300,000, but in no case shall the fee be less than $10 or more than $500.

(4) The commissioner shall, for a period of 48 hours only from and after the receipt of the statement accompanied by the prescribed fee, have the power to decide if the security comes within the classes of securities described in ORS 59.140 and is entitled to registration by notification. If he finds that it is entitled to registration by notification, he shall record the registration in the register of securities and issue a certificate of registration. If he finds it is not entitled to registration, he shall enter an order in the register of securities denying the registration. Failure of the commissioner to take any formal action on an application for registration by notification within 48 hours shall constitute a registration. Upon registration, the security may be sold in this state by the issuer or by any registered dealer, subject, however, to the conditions, limitations and restrictions as may be reasonable or necessary to carry out the purposes of the Oregon Securities Law and to the further order of the commissioner. [Amended by 1957 c.45 §1]

59.160 Suspension of right to sell securities to be registered by notification. (1) If, at any time in the opinion of the commissioner the information contained in the statement or prospectus mentioned in ORS 59.150 is misleading, incorrect, inadequate or incomplete, or the sale or offering for sale of the security may work or tend to work a fraud or imposition or would be unfair, unjust or inequitable, the commissioner may require from the person filing the statement such further information as may in his judgment be necessary definitely to establish the classification of such security as claimed in the statement or to enable the commissioner to ascertain whether its sale would be fraudulent or deceitful, or would result in fraud, or imposition, or would be unfair, unjust or inequitable. He may also suspend the right to sell the security pending further investigation by entering an order specifying the grounds for such action, and by notifying personally by mail, telephone or telegraph the person filing the statement and every registered dealer who has notified the commissioner of an intention to sell the security. The refusal to furnish information required by the commissioner within a reasonable time to be fixed by him may be a proper ground for the entry of such order of suspension. Upon the entry of the order of suspension no further sales of the security shall be made until further order of the commissioner.

(2) In the event of the entry of the order of suspension the commissioner shall, upon request, give a prompt hearing to the parties interested. If no hearing is requested within a period of 20 days from the entry of the order or if, upon the hearing, the commissioner determines that the security does not fall within a class entitled to registration under ORS 59.150, or that its sale would be fraudulent or deceitful, or would result in fraud or imposition, or would be unfair, unjust or inequitable, he shall enter a final order prohibiting sales of such security, with his findings with respect thereto. If the finding is that the security is not entitled to registration under ORS 59.150, the applicant may apply for registration by qualification by complying with the requirements of ORS 59.170. Appeals from the final order may be taken as provided in ORS 59.420. If, however, upon the hearing, the commissioner finds that the security is entitled to registration under ORS 59.150, and that its sale will neither be fraudulent nor deceitful nor result in fraud or imposition, or be unfair, unjust or inequitable, he shall forthwith enter an order revoking the order of suspension and the security shall be restored to its status as a security registered under ORS 59.150 as of the date of the order of suspension.

59.170 Registration by qualification. (1) All securities required by the Oregon Securities Law to be registered before being sold in this state, and not entitled to registration by notification, shall be registered by qualification in the manner provided by this section, unless they fall within the classification of securities to be registered for resale or for trading purposes, as provided in ORS 59.200.

(2) The commissioner shall receive and act upon applications to have securities registered by qualification, and may prescribe

forms on which he may require such applications to be submitted. Applications shall be in writing and shall be signed and sworn to by the applicant, and filed in the office of the Corporation Division and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell them within this state.

(3) The commissioner may require the applicant to submit to him the following information respecting the issuer and such other information as he may in his judgment deem necessary to enable him to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The name under which the issuer is doing or intends to do business.

(b) The name of the state or other sovereign power under which the issuer is organized.

(c) The location of the issuer's principal business office and of its principal office in this state.

(d) The names and addresses of the directors, trustees and officers, if the issuer is a corporation or association or trust organized or existing under the common law (as defined in subsection (7) of ORS 59.020) of all partners, if the issuer is a partnership, and of the issuer, if the issuer is an individual.

(e) The purpose of incorporation and the general character of business to be transacted by the issuer, and the purpose of the proposed issue.

(f) A statement of capitalization of the issuer; a balance sheet showing the amount and general character of its assets and liabilities as of the latest practicable date prior to the date of filing the balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; a copy of the security for the registration of which the application is made; and a copy of all circulars, prospectuses, advertisements or other descriptions of the securities then prepared by or for the issuer and or by or for the applicant to be used for distribution or publication in this state.

(g) A statement of the amount of the issuer's income, expenses and charges during the last three years, or if in actual business less than three years, then for the time the issuer has been in actual business.

(h) A statement showing the price at which the security is proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of the securities.

(i) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which the securities have been or are to be issued in payment, and the commissioner may fix the amount of stocks, bonds or other securities that may be issued by any corporation, foreign or domestic, in payments for property, patents, good will, promotion and intangible assets.

(j) The amount of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(k) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments, and bylaws, or their substantial equivalents, as currently in effect, if not already on file in the office of the commissioner. If the issuer is a trustee there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, or an unincorporated association, or joint stock company, or any other form of organization there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization if not already filed in the office of the commissioner.

(L) The names and addresses of the underwriters.

(m) A copy of any agreement (or, if identical agreements are used, the forms thereof) made with any underwriter or dealer.

(4) All the statements, exhibits and documents of every kind required by the commissioner under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in the manner and form required by the commissioner.

(5) At the time of filing the application, the applicant shall pay to the commissioner a fee to be ascertained in the manner prescribed in subsection (3) of ORS 59.150.

(6) If upon examination of any application the commissioner finds that the proposed plan of business of the issuer and

the terms of the securities to be issued by such issuer are fair, just and equitable, that the issuer intends to transact its business fairly and honestly, and that the securities it proposes to issue and the methods to be used by it in issuing and disposing of them are not such as would be fraudulent or would work or tend to work a fraud upon the purchaser, the commissioner shall record the order of registration of the securities in the register of securities and issue a certificate of registration. Thereafter the securities may be sold by the issuer or by any registered dealer as provided in the Oregon Securities Law, subject, however, to the conditions, limitations and restrictions reasonable or necessary to carry out the purposes of the Oregon Securities Law and to the further order of the commissioner. Otherwise, the commissioner shall enter an order in the register of securities denying the registration and shall furnish the applicant with a copy of the order.
[Amended by 1961 c.352 §1]

Note: See note for ORS 59.020.

59.180 Expiration and renewal of registration by notification and qualification. Any registration of securities under the provisions of ORS 59.150 and 59.170, as to that portion thereof not sold and distributed to the public, shall expire at the end of one year from the date of registration. However, registration may be renewed, subject to any orders of suspension or cancellation by filing with the commissioner a statement containing a balance sheet and income and profit account of the issuer of the latest practicable date, together with other facts as to any material changes which may have occurred in the affairs of the issuer. Upon any application for renewal of a registration the commissioner shall collect a filing fee of $25.
[Amended by 1957 c.48 §1]

59.190 Securities, or funds obtained from sale thereof, for payment of patent right, lease, good will or promotional costs may be held in escrow or impounded. (1) If the statement containing the information required by ORS 59.170 discloses that securities have been or are intended to be issued for any patent right, copyright, trade-mark, process, lease, formulae or good will, or for promotion fees or expenses or for other intangible assets, the amount and nature thereof shall be fully set forth. The commissioner may require that such securities so issued in payment therefor shall be delivered in escrow to him or to any person whom he shall name under an escrow agreement, the conditions of which shall be prescribed by the commissioner. Such securities shall remain in escrow until the commissioner directs their release by formal order.

(2) Whenever it appears in the filing of an application for registration under ORS 59.170 that the funds to be obtained from the sale of any security sought to be registered are to be used for promotional purposes, the commissioner may cause to be impounded in a bank or trust company selected by the issuer and approved by the commissioner, an amount from the proceeds of the sale of the securities which will insure completion of the promotional project.

59.200 Registration of securities in hands of public or issued by stock split-up or stock dividend thereon; fees. (1) Any security which has been issued and is outstanding in the hands of the public, or any stock of the same rank and parity lawfully issued by way of stock split-up or a stock dividend thereon, and which may not be lawfully sold or offered for sale by reason of an exemption under ORS 59.110, or in an exempted transaction under ORS 59.120, may be registered for resale by the owner thereof, or for resale or dealing in or trading purposes by a registered dealer, by filing by such owner or registered dealer, as the case may be, in the office of the commissioner:

(a) The name and description of the security to be registered.

(b) Notice of intention to offer for resale or to deal or trade generally in any such security.

(2) If requested by the commissioner there shall also be filed:

(a) A statement, with such supporting data or verifications as may be available, evidencing the fact that the security is issued and is outstanding in the hands of the public, or that it consists of stock of the same rank or parity lawfully issued by way of stock split-up or a stock dividend thereon.

(b) The price at which the security is to be offered for resale, if presently known, and if not known then the method or formulae for arriving at the offering price from time to time and any additional information the owner or dealer has tending to establish the fairness of such price.

(c) A copy of the latest available balance sheet or other available financial data tending to establish the condition of the issuer.

(3) If it appears to the commissioner from the information filed or otherwise available to him that the security, or the price at which it is to be sold, or the methods of the sale are such as would work or tend to work a fraud on the purchasers, or would be unfair, unjust or inequitable, he shall, after notice and opportunity to be heard or after a hearing, refuse registration; otherwise he shall register the security for resale by the owner, or for resale or dealing and trading generally therein by registered dealers, subject to the provisions of ORS 59.220 and 59.230.

(4) At the time of registration under this section, a registration fee of one-tenth of one percent of the aggregate sale value of the securities registered shall be paid, but in no case shall the fee be less than $10 nor more than $500.

[Amended by 1955 c.198 §1; 1957 c.58 §1; 1959 c.280 §1]

59.210 [Amended by 1955 c.179 §1; repealed by 1963 c.244 §3 (ORS 59.211 enacted in lieu of ORS 59.210)]

59.211 Nonresident's consent to suit in this state by service on commissioner. (1) If an applicant for registration is a nonresident, the applicant shall file with the application an irrevocable consent that service of process in any action, suit, or proceeding arising out of a violation of the Oregon Securities Law, in connection with the registration for which application is made, may be made on the applicant by service on the Corporation Commissioner.

(2) The consent shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by an individual applicant and shall set forth:

(a) The name of the applicant.

(b) The address to which documents served upon the Corporation Commissioner are to be forwarded.

(c) If the applicant is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served hereunder may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) The manner of service on the Corporation Commissioner and the time within which the defendant may answer shall be governed by the provisions of ORS 57.700 whether or not the applicant is a corporation.

[1963 c.244 §4 (enacted in lieu of 59.210)]

59.220 Reorganization of corporations; filing and hearing of plan; registration of securities to be exchanged under plan; approval as being within purview of federal statutes. If any plan of reorganization of the capital structure of a corporation, except a corporation the securities of which are subject to supervision, regulation or control by the Public Utility Commissioner of the State of Oregon, is proposed, whereunder bona fide outstanding stock, securities, claims or property interests of the corporation are to be exchanged for other stock or security, or partly in such exchange and partly for cash, the proponents of the reorganization may be required to file such plan with the commissioner. Upon the filing of the reorganization plan, together with an application for registration as provided in the Oregon Securities Law, the commissioner shall set the plan down for hearing and require any notice he deems reasonable and sufficient to be given to all parties in interest. The commissioner shall, upon the hearing, consider the fairness of the terms and conditions of the plan of reorganization and the proposed exchanges thereunder, and if, upon consideration of the evidence adduced at the hearing, he finds the plan and the exchanges to be made thereunder are fair, just and equitable and free from fraud, he is authorized to approve them, subject to the terms and conditions he may prescribe. When such approval is given by the commissioner he shall order the registration of the securities as provided in the Oregon Securities Law, and the approval shall be deemed to be, within the meaning of subparagraph 10 of section 3 (a) of the Federal Securities Act of 1933, as amended by the Federal Securities and Exchange Act of 1934 and any subsequent amendments thereto [15 U.S.C.A. § 77c], an approval by a governmental authority of the State of Oregon expressly authorized by such federal enactment. At the time of filing any such application for any reorganization plan under this section, there shall be paid to the commissioner the filing fees provided for by ORS 59.150 and 59.170.

59.230 Suspension or revocation of registration; order, notice and service; hearing. (1) The commissioner may suspend the registration of any security by entering an order to that effect, with his findings in respect thereto, if upon examination into the affairs of the issuer of the security, either in the performance of routine duties, or upon field examination, or upon hearing, it appears that the issuer of the security:

(a) Is insolvent; or

(b) Is of bad business repute; or

(c) Does not conduct its business in accordance with law; or

(d) That its affairs are in an unsound condition; or

(e) That the issuer of the security has violated any of the provisions of the Oregon Securities Law, or any order of the commissioner of which the issuer had notice, relating to the registration or sale of the security; or

(f) Has been or is engaged or is about to engage in fraudulent conduct with regard to issues being issued or about to be issued by it, or with regard to issues registered by it; or

(g) Is in any other way acting dishonestly or has made any fraudulent representations in any prospectus or in any circular or other literature distributed concerning the issuer or its securities, or the security registered; or

(h) Has knowingly made or caused to be made to the commissioner any false representation of a material fact, or has suppressed or withheld from the commissioner any information which the issuer possesses, and which if submitted by him would have rendered the security incompetent to be registered under the Oregon Securities Law; or

(i) Has refused to permit an examination to be made by the commissioner, or has failed to file any annual report required by the Oregon Securities Law, within the time fixed by the commissioner for filing the report, or to pay the fee required for the filing and examination of the report, or to file any report or furnish any information that may be required by the commissioner under the provisions of the Oregon Securities Law. In connection with any such examination the commissioner may require a balance sheet exhibiting the assets and liabilities of the issuer or his income statement, or both, to be certified to by a public accountant, either in this state or in any other state where the issuer's business is located, approved by the commissioner. Whenever the commissioner deems it necessary, he may also require the balance sheet or income statement, or both, to be made more specific in those particulars he points out or to be brought down to the latest practicable date.

(2) Notice of the entry of the order shall be given in writing, served personally or sent by mail or telegraph, to the issuer and to every registered dealer who has notified the commissioner of an intention to sell the security, and to their registered salesmen.

(3) Upon the suspension of the registration of any security the issuer shall, upon application, be entitled to a hearing; but if no such application for a hearing is made within 20 days after the entry of the order of suspension, the commissioner shall enter a final order revoking the registration of the security.

59.240 [Repealed by 1955 c.198 §2]

59.250 Illegal sales; validity; liability of seller. (1) Every sale made in violation of any of the provisions of the Oregon Securities Law shall be void; and the person, issuer or dealer making such sale and every director, officer or agent of the seller, if such director, officer or agent with knowledge of the violation personally participated or aided in any way in making it, shall be jointly and severally liable to the purchaser in an action at law in any court of competent jurisdiction upon tender of the securities sold or of the contract made for the full amount paid by the purchaser, with interest, together with all taxable court costs and reasonable attorney's fees. No action shall be brought for the recovery of the purchase price after three years from the date of the sale; and no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed within 30 days from the date thereof to accept an offer in writing of the seller to take back the security and to refund the full amount paid, together with interest on that amount for the period from the date of payment by the purchaser down to the date of repayment, such interest to be computed:

(a) In case the securities consist of interest-bearing obligations, at the same rate as provided in the obligations.

(b) In case the securities consist of other than interest-bearing obligations, at the

rate of six percent per annum; less, in every case, the amount of any income from the securities that may have been received by the purchaser.

(2) Any person having a right of action against a dealer, or against a salesman acting within the course and scope or apparent course and scope of his authority, under this section shall have a right of action under the bond provided in ORS 59.310.

(3) A registration by notification made in good faith and after the commissioner, on application, has given tentative consent to such registration, shall not, as to sales made prior to revocation of the registration, result in the liabilities prescribed in this section, although the securities may not be entitled to such registration.

[Amended by 1963 c.244 §5]

59.260 Prohibitions against inducing purchases by deception; against securing subscriptions by fraud; and against making false statements. (1) No person with intent to induce the purchase of any of the securities mentioned in the Oregon Securities Law shall, with intent to deceive or defraud, make, issue or publish, or cause to be made, issued or published, any statement or advertisement as to the value of such securities, or as to the financial condition of any corporation, company or association which has issued, or is issuing, or is about to issue, them, knowing that any material representation, prediction or promise, made in such statement or advertisement is false; and no person shall knowingly or recklessly, with intent to deceive or defraud, conceal any facts materially affecting the value of any such securities, or the financial condition of any corporation, company or association which has issued or is issuing, or is about to issue them.

(2) No person shall, alone or in conjunction with others, devise or attempt to devise, any scheme or artifice to defraud any person by securing subscriptions for, or by promoting or negotiating the issuance, transfer, distribution or sale of any security, and, for the purpose of executing or attempting to execute such scheme or artifice, commit any overt act within this state.

(3) No person shall knowingly make or file, or cause to be made or filed with the Corporation Division, or with the commissioner, an examiner or any employe of that department, under any of the provisions of the Oregon Securities Law, with the intent of deceiving the commissioner, examiner, or employe, any statement, document, report or other paper, which is false in any material respect or matter.

Note: See note for ORS 59.020.

59.270 to 59.300 [Reserved for expansion]

59.310 Registration and examination of dealers, agents and salesmen; consent to service of process; bond; fees; application of section to owners and issuers. (1) No dealer or salesmen shall engage in business as dealer or agent or sell any securities including securities exempted in ORS 59.110, except in transactions exempt under ORS 59.120, unless and until such dealer or salesman has been registered as a dealer or salesman in the office of the commissioner pursuant to this section. The partners of a partnership or the executive officers of a corporation or association registered as a dealer shall not be required to register as agents under this section.

(2) Every dealer before engaging in business shall file in the office of the commissioner an application for registration in writing, verified by oath, and in the form prescribed by the commissioner. It shall state the location of the dealer's principal office and all branch offices in this state, the name or style of doing business, the names, residence and business addresses of all persons interested in the business as principals, partners, officers and directors, specifying as to each his capacity and title, the general plan and character of business and the length of time the dealer has been engaged in business.

(3) Every dealer not domiciled in this state shall file with his application an irrevocable written consent to the service of process upon the commissioner in actions against the dealer in the manner and form provided in ORS 59.211.

(4) Application for registration of an agent shall be made only by the registered dealer or issuer desiring to employ such agent. No person shall be eligible for registration as salesman for more than one dealer at the same time.

(5) The commissioner may require additional information he deems necessary in connection with any application for registration of a dealer or salesman. The commissioner may also require applicants for a license as a dealer, including the partners of a partnership, the executive officers of a

corporation or association or any person occupying a similar status or performing similar functions, or as a salesman to submit to and pass successfully oral or written examination as evidence of applicants' knowledge and understanding of securities business.

(6) The commissioner shall examine the application for registration of a dealer or salesman and shall make further examination of the applicant and its affairs as he deems advisable. If from such examination, he is satisfied that the application should not be refused upon one or more of the grounds specified under ORS 59.320, he shall register the applicant as a dealer or agent.

(7) A dealer shall file with the commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the sum of $10,000, which shall contain the provisions and be in the form substantially as follows:

Know All Men by These Presents, That we, _____ as principal, and _____, a corporation, qualified and authorized to do business in the State of Oregon as surety, are held and firmly bound unto the State of Oregon for the use and benefit of any interested person, in the sum of $10,000 lawful money of the United States of America, to be paid to the State of Oregon for the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that: Whereas the above-named principal has made application to the Corporation Commissioner of the State of Oregon for registration as a dealer within the meaning of the Oregon Securities Act and is required by the provisions of the Act to furnish a bond in the sum above named, conditioned as herein set forth:

Now, therefore, if the principal, or his agents and employes acting within the course and scope or apparent course and scope of their authority, shall strictly, honestly and faithfully comply with the provisions of the aforementioned Oregon Securities Act, and shall pay all damages suffered by any person by reason of the violation of any of the provisions of the Act, or Acts amendatory thereof and supplementary thereto, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of facts materially affecting the value of any securities connected with, or growing out of any transaction contemplated by the provisions of this Act, then this obligation shall be void; otherwise to remain in full force and effect.

This bond shall become effective on the —— day of ——, 19—, and shall remain in force until the surety is released from liability by the Corporation Commissioner, or untill this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 30 days' written notice to the principal and to the Corporation Commissioner of the State of Oregon.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In witness whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its duly authorized officers at ——, Oregon, this —— day of ——, 19—.

_____(Seal)
Principal

_____(Seal)
Surety

By_____.

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(8) The names and addresses of all persons approved for registration as dealers or agents and all orders with respect to their registration shall be recorded in a register of dealers and salesmen kept in the office of the commissioner; and the names of all dealers and salesmen, and the orders of the commissioner relating to their registration, shall be open to public inspection.

(9) Every registration under this section shall expire on June 30 next after the date of registration, but the commissioner shall renew such registrations for the ensuing year upon the filing of written renewal applications, to be prescribed by the commissioner, and the filing of any additional statements or information required by him. Applications for renewals of registration shall be filed with the commissioner not later than July 1 of each year.

(10) Each applicant for license as a dealer shall pay to the commissioner when

filing the application an examination fee of $50 and shall also pay a license fee of $5 for each month or fraction thereof, but not to exceed $50, from the month the license is issued until the following July 1. The renewal license fee for a dealer shall be $50 a year. If such applicant is not issued a license as a dealer, the license fee paid shall be refunded. Each applicant for license as a salesman shall pay to the commissioner when filing the application an examination fee of $10 and shall also pay a license fee of $1.50 for each month or fraction thereof, but not to exceed $15, from the month the license is issued until the following July 1. The renewal license fee for a salesman shall be $15 a year. If such applicant is not issued a license as a salesman, the license fee paid shall be refunded. A salesman's license may be transferred to another dealer upon application to the commissioner and payment of a $10 transfer fee.

(11) Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with respect to the change.

(12) Any owner of an issued and outstanding security required by the Oregon Securities Law to be registered, and any issuer of any security required by the Oregon Securities Law to be registered, shall each be deemed a dealer within the provisions hereof, but neither shall be required to pay the $50 registration or renewal fee, and neither shall be required to file the corporate surety bond required by this section. The authority of any such owner or issuer, in each instance, to act as a dealer is expressly limited and restricted to making sales of such security when duly registered by such owner or issuer.

[Amended by 1957 c.46 §1; 1961 c.352 §2; 1963 c. 244 §6]

59.320 Refusal or suspension of registration of dealers or agents; causes; dealers' records of transactions. (1) The commissioner may refuse the registration of any dealer or agent, or may suspend any registration, by entering an order to that effect, with his findings in respect thereto, if upon examination into the affairs of the applicant or registrant, either in the performance of routine duties, or upon field examination, or upon hearing, it is determined that the applicant or registrant:

(a) Is insolvent, if a dealer; or

(b) Is of bad business repute or has demonstrated his unworthiness to transact the business of dealer or agent; or

(c) Does not conduct his business in accordance with law, or has violated any provisions of the Oregon Securities Law; or

(d) Is in such financial condition that he cannot continue in business with safety to his customers; or

(e) Has been guilty of fraud in connection with any sale or purchase of securities; or

(f) Has made any misrepresentations or false statement to, or concealed any essential or material fact from, any person in the sale to or purchase from that person of any security; or

(g) Has knowingly made or caused to be made to the commissioner any false representation of a material fact, or has suppressed or withheld from the commissioner any information which the applicant or registrant possesses, and which if submitted by him would have rendered the applicant or registrant incompetent to be registered under the Oregon Securities Law; or

(h) Has failed to account to persons interested for all money or property received; or

(i) Has not delivered, after a reasonable time, to persons entitled thereto, securities held or agreed to be delivered by the dealer, as and when paid for and due to be delivered; or

(j) Is selling or offering for sale securities through any solicitor or agent not registered in compliance with the provisions of the Oregon Securities Law; or

(k) Has taken grossly unfair advantage of a customer in any security transaction; or

(L) Has refused to permit an examination by the commissioner of its books and affairs, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under the provisions of the Oregon Securities Law; or

(m) Has been convicted of a felony or any misdemeanor of which an essential is fraud; or

(n) Has failed to evidence knowledge and understanding of the securities business.

(2) It is sufficient cause for refusal or revocation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partner-

ship or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer or agent.

(3) All registered dealers shall keep and maintain at all times in their principal places of business, complete and suitable records of all transactions in all the securities purchased and sold by them, together with books, papers and data clearly reflecting the financial condition of the securities business of such dealers. Every dealer shall, at the times required by the commissioner, make and file in the office of the commissioner a true and correct statement, in the form and containing the data the commissioner may require, of the business of the dealer.

(4) Notice of the entry of any order of suspension or of refusing registration to any dealer shall be given in writing, served personally or sent by mail or by telegraph to the dealer and any agent affected. The dealer shall, upon application, be entitled to a hearing; but if no such application is made within 20 days after the entry of an order of suspension or of refusing registration of any dealer, the commissioner shall enter a final order in either case. The suspension or revocation of a registration of a dealer shall also suspend or revoke the registration of any agent of the dealer.
[Amended by 1961 c.352 §3]

59.330 Supervision of issuers, dealers or brokers; examination; fee; disobedience of subpena prohibited. (1) The commissioner shall have general supervision and control over all issuers, dealers or brokers, residing or doing business in this state, engaged in securing subscriptions for or in the issuance, transfer, sale, promotion, negotiation or distribution of any securities. All such issuers, dealers or brokers shall be subject to examination by the commissioner, or his authorized deputies, at any time he deems it advisable. The provisions of this section, or any other section of the Oregon Securities Law relating to the examination of the affairs of a dealer or broker, shall extend to a dealer or broker whose registration certificate has expired or has been withdrawn, canceled, suspended or revoked, if, in the judgment of the commissioner, such dealer or broker has violated any condition of any registration certificate or any provision of the Oregon Securities Law or has committed a fraud, or is insolvent, and shall extend to the issuer of such securities, whether the issuer is domiciled in this state or elsewhere. The commissioner may collect from each issuer, dealer or broker the actual expenses incurred in that examination and a per diem of the examiners of $10 for each examination. The fee collected shall be turned into the State Treasury and credited to the General Fund.

(2) No person shall neglect or refuse to attend and testify or answer any lawful inquiry or to produce books, papers, accounts, records, contracts or documents, if in his power to do so, in obedience to the subpena of the commissioner.
[Amended by 1961 c.280 §6]

59.340 Restraint of fraudulent practices by injunction; power of commissioner to take possession of dealer's property. (1) The commissioner may investigate, whenever it appears to him, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement or distribution of any securities within this state, including any security exempted under ORS 59.110 and including any transaction exempted under ORS 59.120, any person, as defined in ORS 59.020:

(a) Employed or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining money or property by means of any false pretense, representation or promise; or

(b) Made, makes or attempts to make in this state fictitious or pretended purchases or sales of securities; or

(c) Engaged in or engages in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is in violation of law, or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser (any one or all of which devices, schemes, artifices, fictitious or pretended purchases or sales of securities, practices, transactions and courses of business hereby are declared to be fraudulent practices); or

(d) Is acting as dealer or salesman within this state without being registered as dealer or salesman as provided in the Oregon Securities Law.

(2) Whenever the commissioner believes from evidence satisfactory to him that any such person:

(a) Has engaged in, is engaged or is about to engage in any of the practices or

transactions declared to be fraudulent practices in subsection (1) of this section; or

(b) Is selling or offering for sale any securities in violation of the Oregon Securities Law; or

(c) Is acting as a dealer or salesman without being registered as provided in the Oregon Securities Law;

the commissioner may, in addition to any other remedies, bring suit in the name and on behalf of the State of Oregon against such person and any other person or persons concerned in or in any way participating in or about to participate in such fraudulent practices or acting in violation of the Oregon Securities Law, to enjoin such person and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of the Oregon Securities Law and a receiver or conservator may be appointed for the defendant or the defendant's assets. The circuit court of any county of this state hereby is vested with jurisdiction in equity to restrain the further sale of any securities connected with or related to such fraudulent or illegal practices or transactions and may grant injunctions to prevent and restrain such fraudulent or illegal practices or transactions, in addition to the penalties and other remedies provided in the Oregon Securities Law. The court shall have power, during the pendency of the proceedings before it to issue such preliminary restraining orders as may appear to be just and proper; and the findings of the commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issue ex parte of a preliminary restraining order. In any such court proceedings the commissioner may apply for and on due showing be entitled to have issued the court's subpena requiring forthwith the appearance of any defendant and his employes, salesmen or agents, and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction.

(3) When the commissioner ascertains by examination or otherwise that the assets or capital of any dealer are impaired, or that the dealer's affairs are in an unsafe condition, he may in either case immediately take possession of all the property, business and assets of the dealer which are located in this state and retain possession of them pending the further proceedings specified in this section. Should the board of directors or any officer or person in charge of the offices of such dealer refuse to permit the commissioner to take possession as aforesaid, the commissioner shall communicate such fact to the Attorney General, whereupon it shall become the duty of the Attorney General at once to institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of the dealer. The commissioner thereupon shall make or have made an inventory of the assets and known liabilities of the dealer. The commissioner shall file one copy of the inventory in his office and one copy in the office of the clerk of the circuit court of the county in which the principal office of the dealer is located, and shall mail one copy to each stockholder of the dealer at his last-known address, if by the exercise of reasonable diligence it can be determined. The clerk of the court with whom the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number. The officers, directors or stockholders of the dealer may have 60 days, from the date when the commissioner takes possession of the property, business and assets, to make good any deficit which may exist or to remedy the unsafe condition of its affairs. At the expiration of this time, if the deficiency in assets or capital has not been made good or the unsafe condition remedied, the commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the dealer which are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership. No other individual shall be appointed receiver by any court without first giving the Corporation Commissioner ample notice thereof. The inventory made by the commissioner and all claims filed by creditors shall be open at all reasonable times for inspection; and any action taken by the receiver upon any of the claims shall be subject to the approval of the court before whom the cause is pending. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, shall be fixed by the commissioner, subject to the approval of the court, and, upon certification of the commissioner, shall be paid

out of the funds in his hands as such receiver.

[Amended by 1963 c.244 §7]

59.350 to 59.400 [Reserved for expansion]

59.410 Pleading and burden of proof as to exemptions and classifications. It is not necessary to negative any of the exemptions or classifications provided in the Oregon Securities Law in any complaint, action, information, indictment or any other writ or proceedings laid or brought under the Oregon Securities Law; and the burden of proof of any exemption shall be upon the party claiming the benefit of such exemption or classification.

59.420 Appeals from orders of commissioner; procedure. An appeal may be taken by any person interested from any final order of the commissioner to the Circuit Court of Marion County by serving upon the commissioner within 20 days after notice of the entry of the order a written notice of the appeal, stating the grounds upon which a reversal of the final order is sought and accompanied by a demand in writing for a certified transcript of the record and of all papers on file in his office affecting or relating to the order, and by executing a bond in the penal sum of $500 to the State of Oregon, with sufficient surety, to be approved by the court, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs adjudged against the appellant. Thereupon the commissioner shall within 10 days make, certify and deliver to the appellant the transcript, or in lieu thereof the original papers if the court so orders. The appellant shall within five days thereafter file the same and a copy of the notice of appeal with the clerk of the court, which notice of appeal shall stand as appellant's complaint. Thereupon the cause shall be entered on the trial calendar of the court for trial de novo and shall be given precedence by the court over other matters pending. The court shall receive and consider any pertinent evidence, oral or documentary, concerning the order of the commissioner from whom the appeal is taken. If the order of the commissioner is reversed the court shall by its mandate specifically direct the commissioner as to his further action in the matter, including the making and entering of any order in connection therewith, and the conditions, limitations or restrictions to be therein contained, provided that the comissioner shall not thereby be barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order is affirmed, the appellant shall not be barred after 30 days from filing a new application provided the application is not otherwise barred or limited. The appeal shall not in anywise suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the circuit court on any such appeal on the same terms and conditions as an appeal is taken in civil actions. An appeal from an order of the commissioner shall be considered as a proceeding in equity. Any order of the commissioner which finally limits, or adversely determines, the rights of any interested person, shall be a final order as to such interested person, and be subject to appeal under this section.

59.430 Commissioner to prescribe forms and promulgate rules concerning procedure. The commissioner shall prescribe the forms of application and the forms of all other blanks, documents and records to be used and kept in connection with the administration of the Oregon Securities Law. In addition he shall establish and promulgate such rules and regulations concerning the procedure and practice of applicants appearing before him as in his discretion may seem expedient and essential to the satisfactory enforcement and administration of this law.

59.440 Witnesses; power of commissioner. The commissioner, or anyone authorized by him, shall have the power to subpena witnesses and administer oaths in connection with the administration of the Oregon Securities Law. Each witness who appears before the commissioner and who was subpenaed in his behalf shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the court of record in the county where the hearing is held. The commissioner or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions in circuit courts.

59.450 Information received by commissioner; inspection; copies; certificate of commissioner as evidence. All information received by the commissioner shall be kept

open to public inspection at all reasonable hours, and the commissioner shall supply to any applicant upon payment of the fee therefor copies of any papers of record with the commissioner. However, the commissioner shall have power to place in a separate file, not open to the public except on his special order, any information which he feels in justice to the person filing it should not be made public. An exemplification of the record under the hand of the commissioner shall be sufficient evidence of any record made or entered by or on file with the commissioner. A certificate over the hand and seal of the commissioner, showing that the securities in question have not been recorded in the register of qualified securities, shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of the Oregon Securities Law, and shall be admissible in evidence in any proceeding, either civil or criminal, instituted under any of the laws of this state.

59.460 to 59.500 [Reserved for expansion]

59.510 Construction of the Oregon Securities Law. Nothing in the Oregon Securities Law shall be construed to relieve corporations from making reports required by law to be made to the commissioner or any other state officer or paying the fees to be paid by corporations. The Oregon Securities Law shall not be construed to repeal any law now in force regulating the organization of corporations in this state or the admission of any foreign corporation; but it shall be construed to be additional to any provisions regulating the organization of a corporation under the laws of this state or the admission of a foreign corporation to do business in this state.

59.520 Civil actions and criminal prosecutions not limited by the Oregon Securities Law. Nothing in the Oregon Securities Law shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the sale of securities, or the right of the state to punish any person for any violation of any law.

59.530 Deposits in escrow or contracts under prior laws not affected. The repeal of those laws repealed by the Oregon Securities Law shall not invalidate any deposits in escrow or contracts entered into by any issuer of any securities for the benefit or security of any person; and the commissioner shall proceed in all respects, touching those contracts and escrows as if such laws had not been repealed. Rights of action conferred, or duties, restrictions, liabilities or penalties imposed or required by or under such laws upon or of any corporation or person subject to such repealed laws before July 1, 1939, shall not be impaired or abrogated by such repeal; but every such corporation or person shall, as to all actions thereafter performed be subject to the provisions of the Oregon Securities Law. The right of any person to institute any action, suit or proceeding for any recovery based upon a violation of, or noncompliance with, any provision of such repealed laws shall be forever barred upon the expiration of a period of three years following the violation or noncompliance.

59.540 to 59.600 [Reserved for expansion]

REGULATION OF INVESTMENT COUNSELORS AND MANAGERS AND OF SALE OF BURIAL SHARES

59.610 Investment counselors and managers defined. (1) As used in ORS 59.610 and 59.620, "investment counselor" and "investment manager" include any person:

(a) Who, for compensation, engages, in this state, in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities; or

(b) Who, for compensation, engages, in this state, in the business of managing any investment or trading account in securities for other persons; or

(c) Who, for compensation and as part of a regular business, issues or promulgates, in this state, analyses of securities.

(2) "Investment counselor" and "investment manager," as used in ORS 59.610 and 59.620, do not include:

(a) A bank or trust company authorized to do business in this state.

(b) Any person giving investment advice in isolated instances only, provided such person does not represent himself in any manner as being in the business of an investment counselor or investment manager in this state.

(c) Any dealer, salesman or issuer as defined in ORS 59.020 or 59.030.

(d) Any newspaper as defined in ORS 193.010, or the publisher thereof.

(e) Investment manuals or services, and news magazines or business or financial publications of general, regular and national circulation, and the publishers thereof.

(f) Any person whose only clients are investment counselors or investment managers registered under ORS 59.620, investment companies, insurance companies, banks and trust companies.

(g) Attorneys at law licensed to practice in this state, while engaged in the usual practice of their profession.

59.620 Investment counselors and managers to be governed by certain provisions of Oregon Securities Law. Investment counselors and investment managers, and their agents and representatives doing business in this state, shall be governed by the provisions of ORS 56.060, 59.250, 59.260, 59.310 to 59.340, 59.410 to 59.450, 59.510, 59.520 and subsections (1) and (2) of 59.990.

59.630 to 59.650 [Reserved for expansion]

59.660 Definition of "share." As used in ORS 59.670 and 59.680, "share" includes certificate, right or interest.

59.670 Sale of burial shares; seller's bond. No person shall sell or offer for sale, or otherwise dispose of for value, any share granting or purporting to grant to the purchaser or holder, or to his heirs, children, dependents, members of his family, administrators, survivors, executors or assigns, any right to funeral or burial services contingent upon the death of the purchaser, holder, children, dependents, or members of his family, at a price or cost less than the price or cost open to any person not having such share unless the person selling, offering for sale, or otherwise disposing of any such share shall first file, and keep in force, a bond running to the State or Oregon. This bond shall be in the penal sum of $50,000, with a surety company licensed to do business in this state as surety. The bond shall be approved by and filed with the Corporation Commissioner and conditioned to indemnify the purchaser or holder of the share from any loss sustained or occasioned by any misrepresentation or fraud on the part of the person selling or offering it for sale, or by the failure of any such person to comply with the terms and conditions of the share or any representation made at the time of, or as an inducement for, its purchase or acquisition. In case the purchaser or holder of the share sustains damage or loss from any cause specified in this section, such purchaser or his executors or administrators shall have a cause of action against the principal and surety upon the bond for all damages or loss sustained, together with the costs provided by law and, in addition, a reasonable sum as attorney's fees to be fixed by the court. However, the recovery against the surety shall not exceed the amount of the bond.

59.680 Statement of seller; deposit of cash or securities for purchaser's protection. In addition to the filing of the bond required under ORS 59.670, every such person shall file with the Corporation Commissioner, on or before the tenth day of each month, a sworn statement showing the total amount of money received by him on account of the sale of outstanding and unredeemed shares theretofore issued by him and which were in force on the last day of the preceding month. This statement shall also set forth the name and address of every person who during the preceding month became a purchaser of any such share, together with the amount of money collected thereon and paid or to be paid therefor. The statement shall not be a public record, but shall be only for the information of the Corporation Commissioner and shall not be divulged by him or by anyone having access thereto except in court proceedings involving violation of ORS 59.670 or 59.680. At the time of filing this sworn statement, such person shall also deposit with the State Treasurer cash or securities specified as authorized investments for domestic insurance companies under the insurance laws of this state, in a sum at least equal in value, when added to the securities previously deposited by any such person with the State Treasurer, to 50 percent of the total amount theretofore received by such person on account of such shares. If at any time the securities so deposited are in excess of 50 percent of the amount received on account of the then outstanding and unredeemed shares such person may withdraw the excess, and the State Treasurer is directed to return the excess to the person depositing it. The securities so deposited shall be for the protection of all purchasers, or holders, of any such shares from the respective persons making the deposit, but a deposit by any such person hereunder shall be security only for the performance

of his own contract as evidenced by the share sold and disposed of by him. The cash or securities, together with all accrued interest or dividends, shall be held and disposed of in the manner provided by law in respect to cash or securities deposited with the State Treasurer, and he shall be entitled to collect the fees authorized pursuant to state law pertaining to and regulating title insurance.

59.690 Corporation Commissioner may examine books of seller. The Corporation Commissioner is authorized to examine the books and accounts of any person doing business within the purview of ORS 59.670 whenever in his judgment it is necessary to insure a proper enforcement of ORS 59.670 or 59.680, but not more often than once in any six-month period. The reasonable and necessary cost of making the examination shall be borne and paid to the State Treasurer on demand by the persons whose books and accounts are to be examined, to be disposed of as provided by law in similar cases.

59.700 Exemptions from ORS 59.660 to 59.690. ORS 59.660 to 59.690 shall not apply to any funeral or burial right or benefit issued or granted as an incident to membership in any fraternal or benevolent association or society, not organized for profit, or incident to any insurance policy or provision issued by any person authorized to do business in this state. ORS 59.660 to 59.690 shall not apply to anyone engaged only in the furnishing of burial receptacles, nor to anyone participating in the burial of dead human bodies, or conducting funerals without compensation for such services or participation.

PROHIBITION OF CERTAIN SECURITY TRANSACTIONS

59.710 Definitions for ORS 59.710 to 59.830. As used in ORS 59.710 to 59.830, unless the context indicates otherwise:

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

(2) "Broker" means and includes every person who in this state engages, either for all or part of his time, in the business of selling any securities or commodities, or purchasing, or otherwise acquiring securities or commodities from another for the purpose of reselling them or offering them for sale to the public; or in the business of offering, buying or selling, or otherwise dealing or trading in securities or commodities, as agent or principal, for commission or at a profit; and every person who deals in futures or differences in market quotations of prices or values of any securities or commodities, or accepts margins on purchases or sales, or pretended purchases or sales of securities or commodities.

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

(4) "Bonds" includes the bonds or other evidences of debt of a corporation, company or association.

59.720 Application of ORS 59.710 to 59.830 to real estate contracts and brokers. The provisions of ORS 59.710 to 59.830 shall not apply to any contract, agreement, sale, purchase, lease, conveyance or mortgage pertaining to real estate situated in this state, nor to the business of real estate brokers and salesmen, as defined in ORS 696.010, in so far as such business pertains to real estate located in this state.

59.730 Making contract involving securities without intending a bona fide sale or purchase. No person, whether acting in his own right, or as the officer, agent, servant, correspondent or representative of another, shall, as broker make or offer to make, assist in making or offering to make, perform or take part in any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities more than once, and in course of continuing or repeated transactions:

(1) Intending that the contract shall be terminated, closed or settled according to, or upon the basis of the public market quotations of or prices made on any board of trade or exchange or market which deals in such commodities or securities, and without

intending a bona fide purchase or sale of the same; or

(2) Intending that the contract shall be deemed terminated, closed and settled when the market quotations or prices mentioned in subsection (1) for the securities or commodities named in the contract reach a certain figure, without intending a bona fide purchase or sale of the same; or

(3) Not intending the actual bona fide receipt or delivery of such securities or commodities, but intending a settlement of the contract based upon the difference in the public market quotations or prices, mentioned in subsection (1), at which the securities or commodities are, or are asserted to be, bought or sold. The prosecution, conviction and punishment of a corporation for violation of this section shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

59.740 Conducting bucket shop or repeatedly making forbidden contracts. No person shall as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of any person, keep, conduct or operate any bucket shop, or knowingly permit or induce any person, whether acting in his own right or as officer, agent, servant, correspondent or representative of another, to make, offer to make therein, or assist in making or in offering to make therein, any of the contract specified in ORS 59.730, more than once and in the course of continuing or repeated transactions.

59.750 Receipt or communication of prices for purpose of forbidden contract. No person shall receive, communicate, exhibit or display in any manner any statement of quotations or prices of securities or commodities with an intent to make or offer to make, or to assist in making, or offering to make any contract prohibited by ORS 59.720 to 59.810.

59.760 Reporting false sale of securities with intent to deceive. No person shall, with intent to deceive, report or publish, or cause to be reported or published as a purchase or sale of stocks or bonds, any transaction whereby no actual change of ownership or interest is effected.

59.770 Manipulating market by pretended sales. No person shall inflate, depress or cause fluctuations in, or attempt to inflate, depress or cause fluctuations in, or combine or conspire with any other person to inflate, depress or cause fluctuations in, the market prices of stocks or bonds, or of an issue or any part of an issue of such stocks or bonds, by means of pretended purchases and sales, or by any other fictitious transactions or devices, for or on account of any person, whereby either in whole or in part a simultaneous change of ownership of or interest in such stocks or bonds or of such issue or part of an issue thereof, is not effected. A pretended purchase or sale of any stocks or bonds whereby, in whole or in part, no simultaneous change of ownership or interest therein is effected, is prima facie evidence of the violation of this section by the person taking part in the pretended purchase or sale.

59.780 Broker's trading against customer's order; violation of ORS 59.780 to 59.800 by member of broker's firm. (1) No broker, employed by a customer to buy and carry upon margin stocks or bonds, while acting as broker for the customer in respect to such stocks or bonds, shall sell for his own account the same kind or issue of stocks or bonds, with intent to trade against the customer's order.

(2) No broker, employed by a customer to sell stocks or bonds, while acting as broker for the customer in respect to the sale of such stocks or bonds, shall purchase for his own account the same kind or issue of stocks or bonds, with intent to trade against the customer's order.

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

59.790 Insolvent broker receiving securities from customer. No person engaged in the business of purchasing and selling stocks or bonds as a broker, knowing that he is insolvent, shall accept or receive from a customer ignorant of his insolvency, money, stocks or bonds belonging to the customer, except in liquidation or as security for an existing indebtedness, and thereby cause the customer to lose in whole or in part such money, stocks or bonds. A person shall be deemed insolvent within the

meaning of this section whenever the aggregate of his property is not, at a fair valuation, sufficient in amount to pay his debts.

59.800 Pledge or sale by broker of customer's securities. No person engaged in the business of purchasing and selling stocks or bonds as a broker shall:

(1) While having in his possession, for safe keeping or otherwise, stocks or bonds belonging to a customer, without having any lien thereon or any special property therein, pledge or dispose thereof without the customer's consent; or

(2) While having in his possession stocks or bonds belonging to a customer on which he has a lien for indebtedness due to him by the customer, pledge the same for more than the amount due to him thereon, or otherwise dispose thereof for his own benefit, with or without the customer's consent, and without having in his possession or subject to his control, stocks or bonds of the kind and amount to which the customer is then entitled, for delivery to him upon his demand therefor and tender of the amount due thereon, and thereby cause the customer to lose, in whole or in part, such stocks or bonds, or the value thereof; or

(3) Fail, on demand, to deliver to any customer, stocks or bonds owned by the customer, and in the possession of such broker, upon payment or tender of the amount the same was pledged to secure.

59.810 Delivery to customer of true statement of purchase or sale made by broker. No person engaged in the business of purchasing or selling stocks or bonds as a broker shall refuse to deliver to each customer on whose behalf a purchase or sale of such securities is made by him, within five days after written demand therefor made within six months following the purchase or sale, a statement or memorandum of the purchase or sale which is true in all material respects and which contains a description of the securities purchased or sold, the name of the person from whom the securities were purchased or to whom they were sold, and the day and hours between which the transaction took place.

59.820 Actions against corporation for second violation. (1) If a domestic corporation is convicted of a second offense under ORS 59.730 to 59.810, the circuit court has jurisdiction over an action by the Attorney General, in the name of the people, to dissolve the corporation.

(2) If a foreign corporation is convicted of a second offense under ORS 59.730 to 59.810, the circuit court has jurisdiction in an action brought as provided in subsection (1) to restrain the corporation from doing business in this state.

59.830 Self-incrimination by witness; immunity from prosecution. No person shall be excused from attending and testifying, or producing any book, paper or other document before any court or magistrate, upon any trial, investigation or proceeding initiated by the district attorney, grand jury or court for a violation of any of the provisions of ORS 59.730 to 59.810, upon the ground that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him in any criminal action, suit or proceeding, investigation, inquisition or inquiry.

59.840 to 59.980 [Reserved for expansion]

PENALTIES

59.990 Penalties for violations. (1) Any corporation, partnership, association, joint stock company, trust or unincorporated organization which violates any of the provisions of the Oregon Securities Law, except subsection (2) of ORS 59.330, shall be fined for each offense, upon conviction thereof, not more than $10,000. Any person other than a corporation, partnership, association, joint stock company, trust or unincorporated organization who violates any of the provisions of the Oregon Securities Law, except subsection (2) of ORS 59.330, shall be punished for each offense, upon conviction thereof, by imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than $5,000, or by both fine and imprisonment.

(2) Any person who violates subsection (2) of ORS 59.330 shall be punished by a fine of not less than $100 nor more than

$1,000, or by imprisonment in the county jail for not more than one year, or both.

(3) Violation of ORS 59.660 to 59.700 is a misdemeanor.

(4) Any person who violates ORS 59.730, 59.740 or 59.750 shall be guilty of a felony and, upon conviction, shall, if a corporation, be punished by a fine of not more than $5,000 for each offense, and all other persons so convicted shall be punished by a fine of not more than $1,000, or by imprisonment for not more than five years, or both.

(5) Violation of ORS 59.760, 59.770, 59.780, 59.790 or 59.800 is a felony punishable upon conviction by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

(6) Violation of ORS 59.810 is a misdemeanor and is punishable upon conviction by a fine of not more than $500, or imprisonment for not more than one year, or both. [Amended by 1955 c.180 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel