Chapter 59

1971 REPLACEMENT PART

Securities (Blue Sky Law) and Crimes Involving Securities

OREGON SECURITIES LAW

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OREGON SECURITIES LAW

(General Provisions)

59.005 Short Title. ORS 59.005 to 59.445 and 59.991 may be cited as the Oregon Securities Law.
[1967 c.537 §2]

59.010 [Repealed by 1967 c.537 §36]

59.015 Definitions for Oregon Securities Law. As used in the Oregon Securities Law, unless the context otherwise requires:

(1) "Broker-dealer" means a person who engages, all or part of his time, in effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) An issuer effecting sales in its own securities;

(b) A bank, savings institution or trust company;

(c) A person who has no place of business in this state if he effects transactions in this state exclusively with broker-dealers;

(d) A person effecting sales exempted by ORS 59.035;

(e) A salesman, as defined in subsection (12) of this section;

(f) A person effecting sales of securities owned by him which he has registered for sale pursuant to ORS 59.065; or

(g) A person effecting sales of securities exempted by subsection (7) of ORS 59.025.

(2) "Commissioner" means the Corporation Commissioner of this state or an agent or employe whom he authorizes to act in his behalf.

(3) "Controlling shareholder" means a person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of an issuer.

(4) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

(6) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(7) (a) "Investment adviser" means a person who, for compensation:

(A) Engages, all or part of his time, 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;

(B) Engages, all or part of his time, in this state, in the business of managing an investment or trading account in securities for other persons; or

(C) As part of a regular business, issues or promulgates, in this state, analyses or reports concerning securities.

(b) "Investment adviser" does not include:

(A) A bank, savings institution or trust company authorized to do business in this state;

(B) A person giving investment advice in isolated instances only, if such person does not represent himself in any manner as being in the business of an investment adviser, counselor or manager in this state;

(C) A registered broker-dealer or a registered salesman whose performance of these services is solely incidental to his activities as a broker-dealer or as a salesman and who receives no special compensation for such services;

(D) An issuer as to its own securities offered and sold for its own account;

(E) A publisher of or contributor to a bona fide newspaper, news magazine, investment manual or service or business or financial publication of general, regular and paid circulation;

(F) A person whose only clients are investment advisers, broker-dealers, banks, savings institutions or trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(G) A duly licensed lawyer, engineer or accountant whose performance of these services is solely incidental to the practice of his profession;

(H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025; or

(I) Such other persons as the commissioner may by rule or order designate.

(8) "Issuer" means a person who issues, proposes to issue or has issued a security and a person who acts as a promoter for and on behalf of an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest 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 "issuer" is the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other instrument or agreement under which the security is issued.

(9) "Person" includes an individual, a joint venture, a partnership, a cooperative, an association, a joint stock company, a corporation, a trust, an unincorporated organization or a government or political subdivision of a government.

(10) "Registered" means registered as provided in the Oregon Securities Law.

(11) (a) "Sale" or "sell" includes every disposition or attempt to dispose of, contract to sell, attempt or offer to sell, exchange of, option for the sale of, solicitation of an offer to purchase, or subscription for, a security or an interest in a security for a consideration, directly or by an agent, circular, letter, advertisement or otherwise, regardless of whether or not any person so acting has power to pass title to or control the disposition of the security or acts as a finder. Any security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing shall constitute a part of the subject of such purchase and shall have been offered and sold for a consideration. A gift of assessable stock by or for any issuer or promoter shall constitute a sale. The offer, sale, transfer or issue for a consideration of any right, privilege, option or warrant which gives the holder or another person a present or future right to subscribe for or purchase another security of the same or another issuer shall be an offer of such other security.

(b) "Sale" and "sell" do not include:

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

(B) A security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by the recipients for the dividend other than payments in connection with the elimination of fractional shares; or

(C) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(12) (a) "Salesman" means:

(A) A person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any manner transactions in securities.

(B) A person, other than an investment adviser, who represents or purports to represent an investment adviser in doing any of the acts enumerated in subsection (7) of this section.

(b) "Salesman" does not include a person who represents an issuer in:

(A) Effecting sales in a security exempted by ORS 59.025;

(B) Effecting sales exempted by ORS 59.035; or

(C) Effecting sales with existing partners or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(c) A partner, director or officer of a broker-dealer, investment adviser, issuer or owner of securities, or a person occupying a similar status or performing similar functions, is a "salesman" only if he otherwise comes within this definition.

(13) (a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, 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.

(b) "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or some other specified period.

[1967 c.537 §3; 1971 c.624 §1; 1971 c.641 §1]

59.020 [Repealed by 1967 c.537 §36]

59.025 Exempt securities. The following securities are exempt from ORS 59.055:

(1) A security issued or guaranteed by the United States or by a state, a political

subdivision of a state or an agency or other instrumentality of any of the foregoing.

(2) A security issued or guaranteed by a foreign government with which the United States is at the time of the sale maintaining diplomatic relations, or by a state, province or political subdivision thereof having the power of taxation or assessment, if the security is recognized as a valid obligation by such foreign government or state, province or political subdivision thereof.

(3) A security which represents an interest in or a direct obligation of or is guaranteed by a national bank, federal savings and loan association, federal credit union or federal land bank or joint stock land bank or national farm loan association under the Federal Farm Loan Act of 1916, as amended.

(4) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or the Pacific Coast Stock Exchange; any other security of the issuer of such a listed security, which is of senior or substantially equal rank to the listed security; a security issuable under rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to any of the foregoing.

(5) A security maintaining a rating approved by the commissioner in a recognized securities manual.

(6) A security which represents an interest in or a direct obligation of and which has been or is to be issued by a bank, trust company, savings and loan association, industrial loan company organized or authorized under ORS chapter 724, or credit union, that is subject to the examination, supervision and control of a regulatory agency of this state.

(7) Commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce, where such commercial paper is not made the subject of a public offering.

(8) A security, the issuance of which is under supervision, regulation or control by the Public Utility Commissioner of this state, if the Public Utility Commissioner is exercising control over, or is regulating or supervising, the issuer thereof.

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

(10) Any security issued in connection with an employes' benefit plan, provided the terms of such plan are fair, just and equitable to employes under regulations of the commissioner.

[1967 c.537 §4 ;1969 c.688 §1]

59.030 [Repealed by 1967 c.537 §36]

59.035 Exempt sales. The following sales are exempt from ORS 59.055:

(1) A judicial, sheriff's, executor's, administrator's, guardian's or other fiduciary's sale or sale by a receiver or trustee in insolvency or bankruptcy, when upon order of a court of competent jurisdiction and not for the benefit of the issuer.

(2) An isolated transaction not in the course of repeated and successive transactions in this state.

(3) The sale by an issuer of its securities pursuant to a pro rata offering to its existing security holders, if:

(a) No commission or other remuneration, other than a standby fee, is paid or given directly or indirectly with such sale or distribution; and

(b) Such issuer has not had an effective registration under the Oregon Securities Law within a period of five years prior to the date of such offering or sale.

(4) 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 broker-dealer.

(5) 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 without the payment of additional consideration, if the security surrendered was, when issued, registered or exempt from registration.

(6) The sale of a bond or note secured by a mortgage or trust deed upon real estate, so long as the entire mortgage or trust deed, with all the bonds or notes secured thereby, are sold to a single purchaser, in a single sale.

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

(8) The sale by a registered broker-dealer of any security acquired in the ordinary and usual course of business, when such security is a part of an issue which has been registered in whole or in part, if the sale is made in good faith and not directly or indirectly for the benefit of the issuer or for the promotion of any scheme or enterprise effecting a violation or an evasion of any provisions of the Oregon Securities Law, unless:

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

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

(9) The sale by registered broker-dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, if:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such registered broker-dealer is acting as agent, the commission collected by such registered broker-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;

(b) Such securities do not constitute an unsold allotment to or subscription by such broker-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 other recognized securities manuals approved by the commissioner, contains 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.

(10) An offer of a security for which registration statements have been filed under both the Oregon Securities Law and the Securities Act of 1933, as amended, if no stop or refusal order or order under ORS 59.105 is in effect and no public proceeding or examination looking toward such an order is pending. Such offer may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

(11) The initial sale of any securities of a new organization by preorganization subscription or by subscription after organization but before the commencement of any business activity, if:

(a) The number of persons solicited within this state does not exceed 25, and the number of persons purchasing the securities within or without this state does not exceed 10;

(b) No commission or other remuneration is paid or given directly or indirectly in connection with the sale; and

(c) The sale is not a part of an attempt to evade the provisions of the Oregon Securities Law.

(12) Sales, including offers to sell, to not more than 10 persons in this state during any period of 12 consecutive months, and:

(a) The offeror had filed with the commissioner a notice specifying the offeror, the security to be offered and the terms of the offer, at least five business days before the offer is made; or

(b) The offerees are holders of securities previously issued by the offeror, and the number of security holders of the offeror does not exceed 25.

(13) A transaction with existing shareholders, pursuant to a statutory vote by such shareholders on a merger, consolidation, partial or complete liquidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation.

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

[1967 c.537 §5; 1971 c.624 §2]

59.045 Corporation Commissioner may deny, withdraw or condition exemptions. The commissioner may by rule or order, as to any security or sale or any type of security or sale, deny, withdraw or condition the exemptions allowed by ORS 59.025 and subsections

(8), (9) and (12) of ORS 59.035, if, in his opinion, the further sale of the security in this state would work a fraud or imposition upon the purchaser, or he may waive the conditions of paragraphs (a) and (b) of subsection (12) of ORS 59.035. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of an exemption under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such withdrawal.
[1967 c.537 §6]

(Registration of Securities)

59.055 Registration of securities required; conditions of offer and sale. It is unlawful for any person to offer or sell any security in this state, unless:

(1) The security is registered and the offer or sale is not in violation of any rule or order of the commissioner or any condition, limitation or restriction imposed by him upon such registration; or

(2) The security is exempt under ORS 59.025 or the sale is exempt under ORS 59.035.
[1967 c.537 §7]

59.065 Registration statement; fees. (1) An applicant for the registration of securities shall file a verified registration statement with the commissioner, containing such information and exhibits as the commissioner may require, upon forms furnished or approved by the commissioner. An applicant may be:

(a) An issuer;

(b) The owner of the securities;

(c) A registered broker-dealer; or

(d) Any other person on whose behalf the offering is to be made.

(2) Where a registration statement or application for exemption has been filed under the Securities Act of 1933, as amended, the registration statement filed under this section shall be accompanied with a copy of any prospectus or offering circular and all amendments, with such supporting data as the commissioner may require. The commissioner may coordinate registration in this state with registration or exemption under the Securities Act of 1933, as amended.

(3) Where the securities are outstanding in the hands of the public, the registration statement may be for registration for resale or dealing and trading generally.

(4) Every registration statement filed under this section shall be accompanied with an examination fee of $1 per $1,000 of the aggregate price of the securities which are to be offered in this state on the first $100,000 or fraction thereof, and 50 cents per $1,000 on the next $200,000 or fraction thereof and $25 per $100,000 for each additional $100,000 or fraction thereof, but in no case shall the fee be less than $25 nor more than $500. The examination fee is not refundable.
[1967 c.537 §8]

59.075 Order of registration; renewal; fee. (1) The commissioner shall issue an order of registration unless he finds that registration should be denied on one or more of the grounds specified in ORS 59.105. Subject to the further order of the commissioner, the securities may thereafter be sold in accordance with the order of registration and any conditions, limitations or restrictions imposed by the commissioner.

(2) Every registration of securities shall expire one year after the date of the order of registration.

(3) The registrant may file with the commissioner a renewal application containing such information and exhibits as the commissioner may require, upon forms furnished or approved by the commissioner, with an examination fee computed, in accordance with subsection (4) of ORS 59.065, on the authorized securities remaining to be sold on the date of the renewal application. The examination fee is not refundable.

(4) If the commissioner finds that no ground for suspension or revocation of the registration exists under ORS 59.105, he shall issue an order of renewal, subject to the further order of the commissioner and any conditions, limitations and restrictions imposed by the commissioner. The renewed registration shall expire one year after the date of expiration of the original registration or last renewal.
[1967 c.537 §9]

59.085 Conditions imposed on registration. The commissioner may, by rule or order, impose on a registration such conditions, limitations and restrictions as he deems appropriate to make the issue fair, just and equitable, including the following:

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

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

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

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

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

[1967 c.537 §10]

59.095 Approval of plan to issue securities in exchange for other securities, claims or property. (1) The proponents of a plan pursuant to which a security is to be issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, except a security the issuance of which is under supervision, regulation or control by the Public Utility Commissioner of this state, may request approval of such plan by the commissioner.

(2) The request for approval shall be made by filing a registration statement, as provided in ORS 59.065, with a detailed statement of the plan. The commissioner shall set the plan down for hearing and require the proponents of the plan to give notice of the hearing to all persons to whom securities are to be issued in such exchange. All such persons shall have the right to appear at the hearing.

(3) The commissioner shall, after the hearing, consider the fairness of the terms and conditions of the plan, and, if he finds that the plan is fair, just and equitable and free from fraud, he shall approve it, subject to such conditions, limitations and restrictions as he may impose. If he finds that the plan is unfair, unjust or inequitable or not free from fraud, he shall deny the request, and give notice of the denial, at the expense of the proponents, to all persons who were entitled to receive or received notice of the hearing.

[1967 c.537 §11]

59.105 Denial, suspension or revocation of registration. (1) Except as provided in subsection (2) of this section, the commissioner may by order deny, suspend or revoke any registration, if he finds that:

(a) The proposed plan of business of the issuer, the characteristics and terms of sale of the securities to be sold, or the proposed methods of sale and distribution are unfair, unjust or inequitable;

(b) The issuer is insolvent or in unsound financial condition;

(c) The applicant, registrant or issuer has violated any of the provisions of the Oregon Securities Law, or any rule or order of the commissioner of which the applicant, registrant or issuer had notice, or unreasonable amounts or kinds of commissions or other remunerations, promoter's profits or participation or unreasonable options have been or are to be given or allowed directly or indirectly in connection with the sale or distribution of the securities;

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

(e) The applicant, registrant, or issuer has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony;

(f) The applicant, registrant or issuer 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 material information; or

(g) The applicant, registrant or issuer has refused to permit an examination to be made by the commissioner, or has failed to file any report, including any certified financial report, or furnish any information required by the commissioner in connection with the Oregon Securities Law.

(2) The commissioner may enter an order against the applicant, registrant or issuer under subsection (1) of this section if any partner, officer or director of an applicant, registrant or issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, registrant or issuer has been guilty of any act or omission which would be cause for denying, suspending or revoking the registration of an individual applicant, registrant or issuer, except:

(a) This subsection shall not apply to paragraphs (a) and (b) of subsection (1) of this section.

(b) The commissioner may not enter an order suspending or revoking a registration under this subsection, pursuant to paragraph (e) of subsection (1) of this section, without 10 days' prior written notice to the registrant.
[1967 c.537 §12]

59.110 [Amended by 1953 c.690 §3; 1955 c.201 §1; 1957 c.47 §1; 1963 c.244 §1; 1965 c.241 §2; repealed by 1967 c.537 §36]

59.115 Liability of person offering or selling securities unlawfully; limitations on proceeding. (1) Any person who:

(a) Offers or sells a security in violation of the Oregon Securities Law or of any rule or order of the commissioner, or of any condition, limitation or restriction imposed upon a registration under the Oregon Securities Law; or

(b) Offers or sells a security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable as provided in subsection (2) of this section to the person buying the security from him.

(2) The purchaser may recover, in addition to costs and reasonable attorney fees at trial and on appeal:

(a) Upon tender of the security, the consideration paid for the security, and interest from the date of payment at the rate of six percent per annum, or at the rate provided in the security if the security is an interest-bearing obligation, less any amount received on the security; or

(b) If he no longer owns the security, damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of six percent per annum from the date of disposition.

(3) Every person who directly or indirectly controls a seller liable under subsection (1) of this section, every partner, officer, or director of such seller, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof that he did not know, and, in the exercise of reasonable care, could not have known, of the existence of the facts on which the liability is based. Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with him.

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

(5) No action or suit may be commenced under this section more than three years after the sale.

(6) Any person having a right of action against a broker-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 59.175.
[1967 c.537 §13(1), (2), (3), (4), (5), (7)]

59.120 [Amended by 1955 c.196 §1; 1957 c.116 §1; 1963 c.244 §2; repealed by 1967 c.537 §36]

59.125 Offer to repay purchaser bars proceeding; exceptions. (1) Except as provided in subsection (3) of this section, no action or suit may be commenced under ORS 59.115 if the purchaser has received before suit a written notice as outlined in subsection (2) of this section.

(2) The notice shall contain:

(a) An offer to pay the amount specified in paragraph (a) of subsection (2) of ORS 59.115 upon tender of the security; and

(b) A statement of the effect on the purchaser's rights of failure to respond as required in subsection (3) of this section.

(3) An action or suit under this section may be commenced after receipt of a notice as outlined in subsection (2) of this section:

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

(b) If the purchaser did not own the security when the notice was received and, within 30 days after receipt, gave written notice of inability to tender back the security.
[1967 c.537 §13(6)]

59.130 [Amended by 1953 c.549 §138; repealed by 1967 c.537 §36]

59.135 Fraud and deceit with respect to securities or securities business. It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any

security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To make or file, or cause to be made or filed, to or with the commissioner any statement, report or document which is known to be false in any material respect or matter.

[1967 c.537 §14]

59.140 [Repealed by 1967 c.537 §36]

59.145 Registration neither approval of securities nor finding that documents filed are true. (1) Neither the fact that an application for registration under the Oregon Securities Law has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under the Oregon Securities Law is true, complete and not misleading. Neither such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(2) It is unlawful to make, or cause to be made, to a prospective purchaser, customer or client a representation inconsistent with subsection (1) of this section.

[1967 c.537 §15]

59.150 [Amended by 1957 c.45 §1; repealed by 1967 c.537 §36]

59.155 Corporation Commissioner is agent for service of process; manner of service; exceptions. (1) The commissioner shall be an agent for the following persons upon whom may be served at any time any process, notice or demand in a civil proceeding under the Oregon Securities Law, including a proceeding brought by the commissioner:

(a) Every applicant for registration or registrant, and every person who offers or sells a security in this state, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; and

(b) Every person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

(2) Service shall be made by:

(a) Delivery to the commissioner or a clerk on duty in any office of the commissioner of one copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service and a $2 fee;

(b) Transmittal by the person instituting the proceeding of notice of the service on the commissioner and one copy of the process, notice or demand and accompanying papers to the person being served by certified mail:

(A) At such person's address, if any, as shown by the records of the commissioner; and

(B) At such address the use of which the person initiating the proceedings knows or on the basis of reasonable inquiry has reason to believe is most likely to result in actual notice; and

(c) Filing with the appropriate court or other body, as part of the return of service, of the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(3) This section shall apply to service in connection with proceedings commenced after September 13, 1967, whether or not the acts or circumstances out of which the proceedings arise occurred or arose before or after September 13, 1967.

(4) The procedure permitted by this section shall not be available when personal jurisdiction can otherwise be obtained in this state.

[1967 c.537 §16]

59.160 [Repealed by 1967 c.537 §36]

(Registration of Broker-Dealers, Investment Advisers and Salesmen)

59.165 Registration of broker-dealers, investment advisers and salesmen required. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman unless the person is registered under the Oregon Securities Law.

(2) It is unlawful for a broker-dealer, investment adviser, issuer or owner of securities to employ a salesman to act in this state unless the salesman is registered under the Oregon Securities Law. No person may be registered as salesman for more than one broker-dealer, investment adviser, issuer or owner of securities at the same time. Only a natural person may be registered as a salesman.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless the person:

(a) Is registered as such under the Oregon Securities Law; or

(b) Is registered as a broker-dealer without the imposition of a condition under subsection (4) of ORS 59.215.

[1967 c.537 §17]

59.170 [Amended by 1961 c.352 §1; repealed by 1967 c.537 §36]

59.175 Application for registration; examination; bond; fees. (1) A broker-dealer or investment adviser may register or renew a registration by filing an application. A salesman shall be registered or his registration renewed by the filing of such an application by the broker-dealer, investment adviser, issuer or owner of securities desiring to employ the salesman.

(2) The application shall contain such information and exhibits as the commissioner may require upon forms furnished or approved by the commissioner and shall be accompanied with the fees required by subsection (7) of this section. The surety bond required by subsection (5) of this section shall be filed before registration is granted.

(3) The commissioner may require an applicant for registration as a broker-dealer or investment adviser, including the applicant's partners, directors, officers or any person occupying a similar status or performing similar functions, and any person directly or indirectly controlling such applicant and a person for whom application for registration as a salesman is made, to pass an examination on such person's knowledge and understanding of the Oregon Securities Law and the securities business.

(4) The commissioner may make such further examination of the applicant and its affairs as he deems advisable and may require by rule or order that the applicant publish an announcement of the application in such manner as the commissioner may specify.

(5) Every applicant for registration as a broker-dealer or investment adviser shall file with the commissioner a corporate surety bond satisfactory to the commissioner running to the State of Oregon in the sum of $10,000.

(6) If the application, surety bond and fees are in order and the commissioner is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.205 to 59.225, the commissioner shall issue an order of registration or renewal.

(7) The Corporation Commissioner shall charge and collect for:

(a) Registration of a broker-dealer or investment adviser, a filing fee of $50, and a one-year initial registration fee of $50;

(b) Renewal of registration of a broker-dealer or investment adviser, $50 per year;

(c) Registration of a salesman, a filing fee of $10 and a one-year initial registration fee of $15;

(d) Renewal of registration of a salesman, $15 per year;

(e) Transfer of registration of salesman to another broker-dealer, investment adviser or issuer, $10; and

(f) If the applicant does not pass the examination as may be required by subsection (3) of this section, an additional filing fee will be required for each subsequent examination.

(8) If a registration or renewal is not granted, the fee other than the filing fee shall be refunded.

[1967 c.537 §18; 1969 c.137 §4; 1971 c.624 §3]

59.180 [Amended by 1957 c.48 §1; repealed by 1967 c.537 §36]

59.185 Expiration and renewal of registration; termination of salesman's registration; change in personnel. (1) Every registration of a broker-dealer, investment adviser or salesman shall have its anniversary one year from the first day of the month following date of initial registration, and annually thereafter. Every such registration shall remain in effect until canceled.

(2) The commissioner shall notify each registered broker-dealer and investment adviser of the necessity to renew such registration. He shall also notify each registered broker-dealer, investment adviser, issuer, or owner of the necessity to renew the registration of any of its salesmen. Such notice shall be sent not less than 30 days prior to the anniversary date of any such registration by

first-class mail and shall include forms for making the application for such renewal.

(3) After the anniversary date, if application for renewal has not been received, the commissioner shall send a final notice advising that the registration is deemed canceled, unless application for renewal is received 10 days after the mailing of this final notice. The commissioner shall not be required to send such final notice to any registrant who has previously notified him that such registrant does not intend to renew. In the case of a salesman's registration, a copy of such final notice shall be sent to the salesman.

(4) Not less than 10 days after the date of mailing of the final notice provided for in subsection (3) of this section, the commissioner may cancel the registration if no application to renew has been received or he has been previously notified that the registrant does not intend to renew.

(5) The registration of a salesman shall terminate when the broker-dealer, investment adviser, issuer or owner of securities who registered the salesman files with the commissioner written notice of termination.

(6) If there is a change in the partners, directors, officers, persons occupying similar positions or performing similar functions, or persons directly or indirectly controlling a broker-dealer or investment adviser, written notification of such change shall promptly be filed with the commissioner. No fee shall be required for such notification. An examination may be required of any such individual who is newly connected with or interested in the registrant.

[1967 c.537 §19 (1), (2), (3); 1969 c.137 §5]

59.190 [Repealed by 1967 c.537 §36]

59.195 Registrants to keep required records; inspection; filing of financial reports. (1) Every broker-dealer, salesman or investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner by rule or order prescribes. All such records shall be preserved for three years unless the commissioner by rule prescribes otherwise. The commissioner may examine all such records within or without this state at any reasonable time or times and may, without subpena require the production of such records at the office of the commissioner as often as is reasonably necessary and, in any event, during consideration of any application for registration or during any proceeding under ORS 59.205 to 59.225.

(2) Every broker-dealer, salesman and investment adviser shall file such financial reports or other information as the commissioner by rule or order may require and shall promptly correct any document filed with the commissioner which is or becomes incomplete or inaccurate in any material respect.

[1967 c.537 §19(4), (5)]

59.200 [Amended by 1955 c.198 §1; 1957 c.58 §1; 1959 c.280 §1; repealed by 1967 c.537 §36]

59.205 Grounds for denial, suspension or revocation of registration. Except as provided in ORS 59.215, the commissioner may by order deny, suspend or revoke registration of a person as a broker-dealer, salesman or investment adviser if he finds that the applicant or registrant:

(1) Is insolvent, either in the sense that his liabilities exceed his assets or that he cannot meet his obligations as they mature, or is in such financial condition that he cannot continue in business with safety to his customers;

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or unfair or unethical practices or conduct in connection with the purchase or sale of any security;

(3) Has wilfully or repeatedly violated or failed to comply with any provision of the Oregon Securities Law or any rule or order of the commissioner;

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

(5) Is not qualified to conduct a securities business on the basis of such factors as training, experience and knowledge of the securities business;

(6) Has filed an application for registration which as of the date of registration, or as of the date of issuance of an order denying, suspending or revoking registration, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

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

(8) Has not delivered after a reasonable time, to persons entitled thereto, securities held or to be delivered;

(9) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(10) Is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, salesman or investment adviser;

(11) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, salesman or investment adviser, or the substantial equivalent of those terms as defined in the Oregon Securities Law, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, as amended, or is the subject of a United States Post Office fraud order; but:

(a) The commissioner may not revoke or suspend a registration under this clause more than one year from the date of the order relied on; and

(b) The commissioner may not enter an order under this clause on the basis of an order entered in another state unless that order was based on facts which would currently constitute a ground for an order under ORS 59.205 to 59.225.

(12) Has failed, reasonably to supervise his salesmen.

[1967 c.537 §20 (1); 1969 c.137 §6]

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

59.211 [1963 c.244 §4 (enacted in lieu of 59.210); repealed by 1967 c.537 §36]

59.215 Action against registrant for act or omission of associate; exceptions. The commissioner may enter an order against the applicant or registrant under ORS 59.205 if any partner, officer or director of a broker-dealer or investment adviser, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser has been guilty of any act or omission which would be cause for denying, suspending or revoking the registration of an individual broker-dealer, salesman or investment adviser, except as follows:

(1) This section shall not apply to subsections (1) and (12) of ORS 59.205.

(2) The commissioner may not enter an order against a broker-dealer or investment adviser on the basis of the lack of qualification under subsection (5) of ORS 59.205 of any person other than:

(a) The broker-dealer or investment adviser himself if he is an individual; or

(b) A salesman of the broker-dealer or investment adviser.

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

(4) If the commissioner finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may condition the applicant's registration as a broker-dealer upon its not transacting business in this state as an investment adviser.

[1967 c.537 §20 (2)]

59.220 [Repealed by 1967 c.537 §36]

59.225 Cancellation of registration or application; application for withdrawal; effect of suspension or revocation. (1) If the commissioner finds that an applicant or registrant has ceased to do business as a broker-dealer, salesman or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(2) A broker-dealer, salesman or investment adviser may withdraw from registration by filing an application to withdraw. Unless the commissioner determines that the registration should be suspended or revoked, he shall enter an order of withdrawal subject to any conditions, limitations and restrictions the commissioner may impose.

(3) The suspension of registration of a broker-dealer or investment adviser shall suspend the registration of any salesman of the broker-dealer or investment adviser. The revocation of registration of a broker-dealer or investment adviser shall terminate the registration of any salesman of the broker-dealer or investment adviser.

[1967 c.537 §20 (3), (4), (5)]

59.230 [Repealed by 1967 c.537 §36]

(Powers of Corporation Commissioner)

59.235 General supervision over persons dealing in securities. The commissioner shall have general supervision and control over all issuers, registrants of securities, broker-dealers, salesmen and investment advisers residing or doing business in this state and engaged in any activity with respect to securities or any aspect of the securities business. All such persons shall be subject to examination by the commissioner at any time. The provisions of this section and of any section of the Oregon Securities Law relating to the examination of any such person shall extend to any broker-dealer, salesman or investment adviser whose registration has expired or has been withdrawn, canceled, suspended or revoked, if, in the judgment of the commissioner, such person may have violated any condition of an order of registration, any provision of the Oregon Securities Law, any rule or order of the commissioner or may have committed a fraud, or is insolvent. The commissioner may collect from each such person the actual expenses incurred in that examination.
[1967 c.537 §21]

59.240 [Repealed by 1955 c.198 §2]

59.245 Investigations; publicity with respect to violations. The commissioner:

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

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) May publish information concerning any violation of the Oregon Securities Law or any rule or order of the commissioner.
[1967 c.537 §22]

59.250 [Amended by 1963 c.244 §5; repealed by 1967 c.537 §36]

59.255 Enjoining violations; appointment of receiver; damages to private parties. (1) Whenever it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of the Oregon Securities Law or any rule or order of the commissioner, the commissioner may bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the Oregon Securities Law or such rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus, shall be granted. If the court finds that the defendant has violated any provision of the Oregon Securities Law or any such rule or order, the court may appoint a receiver, who may be the commissioner, for the defendant or the defendant's assets. The court may not require the commissioner to post a bond. If the commissioner prevails, he shall be entitled to a reasonable attorney fee to be fixed by the court.

(2) The commissioner may include in any action authorized by subsection (1) of this section a claim for restitution or damages under ORS 59.115 on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical.
[1967 c.537 §23; 1971 c.394 §1]

59.260 [Repealed by 1967 c.537 §36]

59.265 Procedure when assets or capital of broker-dealer or investment adviser found impaired; involuntary liquidation. (1) When the commissioner ascertains that the assets or capital of any broker-dealer or investment adviser are impaired, or that such person's affairs are in an unsound condition, he may take possession of all the property, business and assets of such person located in this state and retain possession of them pending the further proceedings specified in this section. The commissioner shall inventory the assets and liabilities of such person. 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 place of business of such person is located, and shall mail one copy to each shareholder or partner of such person at his last-known address. The clerk of the court shall file the inventory as a pending proceeding and give it a docket number.

(2) If any person refuses to permit the

commissioner to take such possession, the commissioner may apply to the circuit court of the county in which the principal place of business of such person is located for an order appointing a receiver, who may be the commissioner, to take such possession.

(3) If the deficiency in assets or capital has not been made good or the unsound condition remedied within 60 days from the date when the commissioner or receiver took possession, the property, business and assets of such person located in this state shall be liquidated. If a receiver has not been appointed, the commissioner shall apply for such appointment by the court in which the inventory was filed. The liquidation shall proceed as provided by law for liquidation of a private corporation in receivership.

(4) 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 by the commissioner, shall be paid out of the funds in his hands as such receiver.

[1967 c.537 §24]

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

[1967 c.537 §25]

59.285 Rules, forms, orders; financial statements; hearings to be public. (1) In accordance with this section and ORS chapter 183, the commissioner may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of the Oregon Securities Law, including rules defining any terms, whether or not such terms are used in the Oregon Securities Law. The commissioner may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes.

(2) No rule, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Oregon Securities Law. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to achieving uniformity in the form and content of registration statements, applications and reports wherever practicable.

(3) All financial statements required by the Oregon Securities Law shall be prepared in accordance with generally accepted accounting practices. The commissioner may by rule or order prescribe:

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

(b) The circumstances under which consolidated financial statements shall be filed; and

(c) Whether any required financial statements shall be certified by independent or certified public accountants.

(4) No provision of the Oregon Securities Law imposing civil or criminal liability shall apply to an act done or omitted in good faith in conformity with a rule or order of the commissioner, notwithstanding that the rule or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public, unless the commissioner in his discretion grants a request joined in by all the parties that the hearing be conducted privately.

[1967 c.537 §26]

59.295 Notice of orders; hearings on orders. (1) Upon the entry of an order under the Oregon Securities Law, the commissioner shall promptly give appropriate notice of the order to:

(a) The issuer and applicant or registrant affected thereby with respect to orders entered pursuant to ORS 59.075, 59.085 and 59.105;

(b) The applicant or registrant and any salesman affected thereby with respect to orders entered pursuant to ORS 59.175 to 59.225; or

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

The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the commissioner within 20 days after entry of the order.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the commissioner shall hold a hearing on the order as provided by ORS 183.310 to 183.500. In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the order.

(3) After the hearing, the commissioner shall vacate, modify or affirm the order.
[1967 c.537 §26]

59.305 Judicial review of orders. (1) A person aggrieved by an order of the commissioner which has been the subject of a timely application for hearing before the commissioner shall be entitled to judicial review of the order under ORS 183.310 to 183.500.

(2) No decree of a reviewing court under ORS 183.310 to 183.500 shall bar the commissioner from thereafter vacating or modifying an order involved in the proceeding for review, or entering any new order, for a proper cause which was not decided by the reviewing court.
[1967 c.537 §27]

59.310 [Amended by 1957 c.46 §1; 1961 c.352 §2; 1963 c.244 §6; repealed by 1967 c.537 §36]

59.315 Oaths and subpenas in proceedings before commissioner. (1) For the purpose of an investigation or proceeding under the Oregon Securities Law, the commissioner may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry. Each witness who appears before the commissioner under a subpena shall receive the fees and mileage provided for witnesses in civil cases.

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court of any county, on the application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.
[1967 c.537 §29]

59.320 [Amended by 1961 c.352 §3; repealed by 1967 c.537 §36]

59.325 Records of commissioner; certified copies of documents; effect of certification. (1) The commissioner shall keep a register of all registrations and all denial, suspension or revocation orders entered under the Oregon Securities Law. The register and all applications, registration statements and other information received by the commissioner in connection with the Oregon Securities Law shall be open to public inspection, except for information which, in the opinion of the commissioner, would result in injustice if made public.

(2) The commissioner shall furnish to any person, upon payment of the appropriate fee, copies (certified under seal of the Corporation Division if requested) of any document which is a matter of public record. In a proceeding or prosecution under the Oregon Securities Law, a copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(3) A certificate of the commissioner under seal of the Corporation Division as to compliance or noncompliance with registration provisions of the Oregon Securities Law shall be taken and received in a civil or criminal proceeding in this state as prima facie evidence of the facts stated in the certificate.
[1967 c.537 §30]

59.330 [Amended by 1961 c.280 §6; repealed by 1967 c.537 §36]

(Miscellaneous Provisions)

59.335 Application of certain sections. (1) ORS 59.055, 59.115 to 59.145 and subsection (1) of ORS 59.165 apply to persons who sell or offer to sell when:

(a) An offer to sell is made in this state; or

(b) An offer to buy is made and accepted in this state.

(2) ORS 59.135, 59.145 and subsection (1) of ORS 59.165 apply to persons who buy or offer to buy when:

(a) An offer to buy is made in this state; or

(b) An offer to sell is made and accepted in this state.

(3) ORS 59.135, 59.145 and subsection (3) of ORS 59.165, in so far as investment advisers are concerned, apply when an act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.
[1967 c.537 §31 (1), (2), (6)]

59.340 [Amended by 1963 c.244 §7; repealed by 1967 c.537 §36]

59.345 When offer to sell or buy is made in this state. (1) For the purpose of ORS 59.335, an offer to sell or to buy is made in

this state, whether or not either party is then present in this state, when the offer:

(a) Originates from this state; or

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

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

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

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

(b) Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

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

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

(b) A radio or television program originating outside this state is received in this state.

[1967 c. 537 §31 (3), (4), (5)]

59.355 Corporations subject to other laws. Nothing in the Oregon Securities Law relieves a corporation from making reports required by law to be made to the commissioner or to any other state officer, or from paying the fees to be paid by corporations. The Oregon Securities Law:

(1) Does not repeal any law regulating the organization of corporations in this state or the admission of any foreign corporation.

(2) Is 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.

[1967 c.537 §32]

59.365 Common-law and statutory rights not limited. Nothing in the Oregon Securities Law limits any statutory or common-law right of a person to bring an action in any court for an act involved in the sale of securities, or the right of the state to punish a person for a violation of any law.

[1967 c.537 §33]

59.375 Validating provisions; time limitation on certain suits, actions or proceedings. (1) The repeal of statutes by chapter 397, Oregon Laws 1939, or by chapter 537, Oregon Laws 1967, does not invalidate any deposits in escrow or contracts entered into by an issuer of securities for the benefit or security of any person. The commissioner shall proceed in all respects touching those contracts and escrows, as though such statutes had not been repealed.

(2) Rights of action conferred or duties, restrictions, liabilities or penalties imposed or required by or under such repealed statutes upon or of any person subject to such repealed statutes before the repeal thereof are not impaired or abrogated by such repeal. However, every person, as to all actions thereafter performed, is subject to the Oregon Securities Law.

(3) The right of a person to institute any action, suit or proceeding for a recovery based upon a violation of, or noncompliance with, any provision of such repealed statutes is barred upon the expiration of a period of three years immediately following the violation or noncompliance.

(4) All effective registrations under such repealed statutes, all administrative orders relating to such registrations and all conditions on such registrations remain in effect so long as they would have remained in effect if ORS 59.005 to 59.445 had not been passed. They are considered to have been filed, entered or imposed under ORS 59.005 to 59.445 but are governed by prior law.

[1967 c.537 §34]

(Required Reports and Statements)

59.405 Report on financial conditions and security holdings required from issuers. (1) Every issuer which has registered securities under the Oregon Securities Law and has issued securities pursuant to such registration subsequent to December 31, 1963, shall file with the commissioner the reports described in subsection (2) of this section. The commissioner shall notify each such issuer of its obligation to file the initial report.

(2) The reports required by subsection (1) of this section shall contain such information, statements and documents regarding

the financial and business conditions of the issuer and the number and description of securities of the issuer held by its officers, directors and controlling shareholders and shall be in such form and filed at such times as the commissioner may require by rule or order.

(3) Such portions of the reports required by subsection (1) of this section shall be distributed to the security holders of the issuer at such times and in such form as the commissioner may by rule or order require.

(4) The commissioner may by rule or order exempt any issuer or class of issuers from this section if he finds that the filing of any such report by a specific issuer or class of issuers is not necessary for the protection of investors and the public interest.

(5) For the purposes of ORS 59.405 to 59.445, "issuer" does not include issuers of:

(a) Securities issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended.

(b) Securities issued by an insurance company if all of the following conditions are met:

(A) Such insurance company is required to and does file an annual statement with the Insurance Commissioner (or other officer or agency performing a similar function) of its domiciliary state and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such state commissioner, officer or agency substantially conforms to that so prescribed;

(B) The insurance company is, by its domiciliary state, subject to regulation of proxies, consents or authorizations in respect of securities issued by the company and the regulation conforms to that prescribed by the National Association of Insurance Commissioners; and

(C) The purchase and sale of securities issued by the insurance company, by its directors, officers and controlling shareholders are subject to reporting by its domiciliary state substantially in the manner established by the commissioner pursuant to ORS 59.425.

(c) Securities registered by the issuer pursuant to section 12 of the Securities and Exchange Act of 1934.

(6) The reports filed under this section shall be filed and maintained by the commissioner for public inspection. Any person is entitled to receive copies thereof from the commissioner upon payment of 15 cents per page copied.

(7) Filing of reports pursuant to this section shall not constitute an approval thereof by the commissioner or a finding by the commissioner that the report is true, complete and not misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection.

[1971 c.641 §3]

59.410 [Repealed by 1967 c.537 §36]

59.415 Effect of failure to file required report; liability; limitation on actions. (1) It is unlawful for any person, including the officers and directors of any issuer, to fail to file a report required by ORS 59.405 or to file any such report which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless such person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the failure, untruth or omission. In addition to any other penalties or remedies provided by the Oregon Securities Law, each officer and director of an issuer which violates this subsection shall be personally liable for damages as provided in subsection (2) of this section if such officer or director:

(a) Had actual notice of the issuer's duty to file reports;

(b) Knew, or in the exercise of reasonable care could have known of the violation; and

(c) Could have prevented the violation.

(2) Any issuer and other person who violate subsection (1) of this section shall be liable jointly and severally for the damages occasioned by such violation, together with reasonable attorney fees and costs to any person who, during the continuation of the violation and without actual notice of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No suit or action may be commenced under subsection (2) of this section more than one year after the purchase or sale.

(4) Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with him.

[1971 c.641 §4]

59.420 [Repealed by 1967 c.537 §36]

59.425 Security ownership statements; filing; copy fee; effect of filing; unlawful representations. (1) Every officer, director or controlling shareholder of an issuer required to file a report under ORS 59.405 shall file with the commissioner statements regarding his ownership or changes of ownership of securities of such issuer, in the form and at the times the commissioner may establish by rule or order, unless the commissioner determines that the filing of any such statement by an officer, director or controlling shareholder of a specific issuer is not necessary for the protection of investors and the public interest.

(2) The statements filed under this section shall be filed and maintained by the commissioner for public inspection. Any person is entitled to receive copies thereof from the commissioner upon payment of 15 cents per page copied.

(3) Filing of the statements pursuant to this section shall not constitute approval thereof by the commissioner or a finding by the commissioner that any such statement is true, complete and not misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection.

[1971 c.641 §5]

59.430 [Repealed by 1967 c.537 §36]

59.435 Effect of failure to file security ownership statement; liability; limitation on actions. (1) It is unlawful for any officer, director or controlling shareholder to fail to file a statement as required by ORS 59.425, or to file any such statement which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless the person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. In addition to any other penalties or remedies provided by the Oregon Securities Law, any person who violates this subsection is subject to the provisions of subsection (2) of this section.

(2) Any person who violates subsection (1) of this section shall be liable for the damages occasioned by such violation, together with reasonable attorney fees and costs, to any person who, during the continuance of the violation and without actual knowledge of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No officer, director or controlling shareholder shall be personally liable for damages as provided in this section for failure to file a statement required by ORS 59.425, unless such person had actual notice of the duty to file and wilfully failed to do so.

(4) No suit or action may be commenced under subsection (2) of this section more than one year after the date the violation establishing the liability commenced.

[1971 c.641 §6]

59.440 [Repealed by 1967 c.537 §36]

59.445 Suspension of sale or trading of issuer's securities for certain violations. In the case of a violation of ORS 59.405 to 59.445, the commissioner may suspend sale or trading by or through a broker-dealer of the securities of the issuer until the failure to file a report or statement or the inaccuracy or omissions in any report or statement are remedied as determined by the commissioner.

[1971 c.641 §7]

59.450 [Repealed by 1967 c.537 §36]

59.510 [Repealed by 1967 c.537 §36]

59.520 [Repealed by 1967 c.537 §36]

59.530 [Repealed by 1967 c.537 §36]

59.610 [Repealed by 1967 c.537 §36]

59.620 [Repealed by 1967 c.537 §36]

REGULATION OF SALE OF BURIAL SHARES

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 10th day of each month, a verified 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.

[Amended by 1971 c.200 §5]

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) of this section 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) of this section, 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 safekeeping 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) of this section 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.

PENALTIES

59.990 [Amended by 1955 c.180 §1; repealed by 1967 c.537 §36]

59.991 Penalties. (1) Any person who violates any provision of the Oregon Securities Law, except subsection (2) of ORS 59.315, shall, upon conviction, be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) Violation of subsection (2) of ORS 59.315 or of ORS 59.660 to 59.700 and 59.810 is a misdemeanor.

(3) Violation of ORS 59.730, 59.740 or 59.750 is a felony punishable upon conviction, if a corporation, by a fine of not more than $5,000 for each offense, and, if any other person, by a fine of not more than $1,000, or by imprisonment for not more than five years, or both.

(4) 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.
[1967 c.537 §35]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 December 1, 1971.

Robert W. Lundy
Legislative Counsel