Chapter 59

1989 EDITION

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 59.370, 59.991 and 59.995 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59.010 *[Repealed by 1967 c.537 §36]*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 the time, in effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

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

(b) The following institutions:

(A) A banking institution, as defined in ORS 706.005; a national bank, as defined in ORS 706.005; an extranational institution, as defined in ORS 706.005 authorized to carry on a banking or trust business in this state; a foreign institution, as defined in ORS 706.005 authorized to carry on a banking or trust business in this state; a federal association, as defined in ORS 722.004; a savings association, as defined in ORS 722.004 authorized to carry on business in this state;

(B) A bank holding company, as defined in the federal Bank Holding Company Act of 1956 as amended, 12 U.S.C. sections 1841-1850 (1982), holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an association described in subparagraph (A) of this paragraph; a credit union, as defined in ORS 723.006; a federally chartered credit union; the subsidiaries and affiliates of the bank holding company, savings and loan holding company, credit union or federally chartered credit union; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory regulatory authority is exercising control over, or is regulating or supervising the person in the sale of securities in accord with the purposes of the Oregon Securities Law.

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

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

(e) A salesperson, as defined in this section;

(f) A person effecting sales of securities owned by the person registered for sale pursuant to ORS 59.065;

(g) A person effecting sales of securities exempted by ORS 59.025 (7); or

(h) A person designated by rule or order by the director.

(2) "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.

(3) "Director" means the Director of the Department of Insurance and Finance.

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

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

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

(A) Engages, all or part of the time of the person, 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 the time of the person, 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) An institution or organization described in paragraph (b) of subsection (1) of this section;

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

(C) A licensed broker-dealer whose performance of these services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for such services;

(D) A salesperson licensed to a broker-dealer, whose performance of these services is solely incidental to that person's activities as a salesperson and who receives no special compensation for such services;

(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, mortgage

brokers, 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 the profession;

(H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025 (1); or

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

(7) "Issuer" means a person who issues, proposes to issue or has issued a security and includes 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.

(8) "License" means a license issued to a broker-dealer, mortgage broker, investment advisor or salesperson under the Oregon Securities Law.

(9) "Mortgage banker" means any person whose business is originating, processing to completion, funding from its own resources and servicing or selling real estate paper. A person shall be considered to fund from its own resources when it provides funds from its own capital, from lines of credit or from one or more persons enumerated in ORS 59.035 (4). A person shall not be considered to fund from its own resources when it obtains funds from persons other than persons enumerated in ORS 59.035 (4).

(10) "Mortgage broker":

(a) Means a person who engages all or part of the time, for the account of others, or for the person's own account in the business of:

(A) Selling real estate paper whether as issuer, agent or principal to persons other than persons enumerated in ORS 59.035 (4); or

(B) Accepting funds from one or more persons other than persons enumerated in ORS 59.035 (4) for investment in real estate paper.

(b) Does not include:

(A) An institution or organization described in paragraph (b) of subsection (1) of this section.

(B) A licensed broker-dealer.

(C) A person who purchases real property and issues an obligation to finance the transaction to the seller incidentally to the sale.

(D) A real estate licensee as defined in ORS 696.010 (13) who performs services solely incidental to the practice of professional real estate activity as defined in ORS 696.010 (10) without special compensation.

(E) A licensee licensed under the provisions of ORS chapter 725 or a mortgage banker, other than an institution described in paragraph (b) of subsection (1) of this section, when engaging in transactions with persons listed in ORS 59.035 (4).

(F) Any other person designated by rule or order of the director.

(11) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(12) "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.

(13) "Real estate paper" means any obligation secured or purportedly secured by an interest in real property. Real estate paper includes, but is not limited to, mortgage-backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits.

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

(15)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. 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 the purchase and shall have been offered and sold for value. A gift of assessable stock by or for any issuer or promoter shall constitute a sale.

(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.

(16)(a) "Salesperson" 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 (6) of this section.

(C) A person, other than a mortgage broker, who represents or purports to represent a mortgage broker in doing any of the acts enumerated in subsection (10) of this section.

(b) "Salesperson" does not include:

(A) Except as provided in ORS 59.025 (14)(b) and (15), a person who represents an issuer in effecting sales in a security exempted by ORS 59.025;

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

(C) A person who represents an issuer in 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;

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

(E) A person designated by rule or order by the director.

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

(17)(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, real estate paper sold by a broker-dealer, mortgage broker or a person described in paragraph (b) of subsection (1) of this section to persons other than persons enumerated in ORS 59.035 (4), or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) "Security" does not include:

(A) 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;

(B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.370; or

(C) A beneficial interest in a testamentary trust. [1967 c.537 §3; 1971 c.624 §1; 1971 c.641 §1; 1973 c.366 §1; 1975 c.491 §1; 1985 c.349 §1; 1987 c.414 §§69, 69a; 1987 c.603 §1; 1989 c.197 §1]

59.020 [Repealed by 1967 c.537 §36]

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

(1)(a) 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.

(b) Any other security offered in connection with or as part of the security set forth in paragraph (a) of this subsection if the security cannot be severed and sold separately from the security in paragraph (a) of this subsection.

(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 that 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 na-

tional farm loan association under the Federal Farm Loan Act of 1916, as amended.

(4) Any of the following securities:

(a) 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, the Pacific Stock Exchange or any other exchange recognized by rule of the director;

(b) A security designated or approved for designation upon notice of issuance under the National Association of Securities Dealers Automated Quotation System, Inc.-National Market System;

(c) Any other security of the issuer of a security listed or designated under paragraph (a) or (b) of this subsection, that is of senior or substantially equal rank to the listed or designated security;

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

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

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

(6) A security that represents an interest in or a direct obligation of and that has been or is to be issued by a bank, trust company, savings and loan association, 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, when the 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 Commission of this state, if the Public Utility Commission 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 when the stock is issued to evidence membership in the 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) Stock or membership certificates issued by a fishing cooperative corporation, when the stock or certificates are issued to members of the cooperative corporation either for the purpose of showing membership in the cooperative corporation or for the purpose of showing their respective interests in reserves or patronage dividends. For purposes of this subsection, a fishing cooperative corporation is an association of persons engaged commercially in harvesting, marketing or processing products of aquatic life from fresh and salt water, that is formed or operated under ORS chapter 62 with the purpose of commercially harvesting, marketing or processing such products or engaging in group bargaining with respect to the sale of such products.

(11) Stock or membership certificates issued by an association of consumers formed or operated under ORS chapter 62 with the purpose of providing groceries to its consumer members, when the stock or certificates are issued to members either for the purpose of showing membership in the association or for the purpose of showing their respective interests in patronage dividends or reserves. For purposes of the exemption under this subsection:

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

(b) The benefits shall be limited to discounts on purchases or patronage dividends, or any combination of such discounts and dividends.

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

(12) Any security issued in connection with an employee's stock purchase, savings, pension, profit sharing or similar employee's benefit plan, provided:

(a) That the plan meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; and

(b) That the terms of the plan are fair, just and equitable to employees under rules of the director.

(13) Any security issued by a person:

(a) Organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purpose and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual; and

(b) Designated by rule of the director.

(14)(a) Any security issued by an issuer registered as an open-end management investment company or unit investment trust

under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) if:

(A)(i) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Advisers Act of 1940 (15 U.S.C. 80b-2) or that is currently registered, as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) for at least three years next preceding an offer or sale of a security claimed to be exempt under this subsection and the issuer has acted, or is affiliated with an investment adviser that has acted, as an investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph; or

(ii) The issuer has a sponsor that has at all times throughout the three years next preceding an offer or sale of a security claimed to be exempt under this paragraph, sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded $100 million; and

(B) The director has received prior to any sale exempted under this subsection:

(i) Notice of intention to sell setting forth the name and address of the issuer and the securities to be offered in this state; and

(ii) A fee of $350 for open-end management companies or a fee of $150 for unit investment trusts.

(b) An exemption under this subsection does not grant an exemption from licensing for salespersons under ORS 59.015 (16)(b)(A).

(c) In the event any offer or sale is to be made more than 12 months after the date notice under subparagraph (B) of paragraph (a) of this subsection is received by the director, another notice and payment of the applicable fee shall be required.

(d) For purposes of this subsection, an investment adviser is affiliated with another investment adviser if the investment advisory controls, is controlled by, or is under common control with the other investment adviser.

(15) Any other security exempted by rule of the director. [1967 c.537 §4; 1969 c.688 §1; 1973 c.428 §9; 1975 c.491 §2; 1985 c 193 §1; 1985 c 349 §2a; 1987 c.603 §1a; 1987 c.677 §9; 1989 c.171 §6, 1989 c.197 §2]

59.030 [Repealed by 1967 c.537 §36]

59.035 Exempt transactions. The following transactions are exempt from ORS 59.055 if they are not part of an attempt to evade fraudulently any provision of the Oregon Securities Law:

(1) Any transaction by a sheriff, marshal or court appointed fiduciary.

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

(3) Any transaction by an issuer in its securities pursuant to a pro rata offering to its existing security holders, if:

(a) No commission or remuneration, other than a standby fee, is paid or given directly or indirectly in connection with the transaction; and

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

(4) Any offer, 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 (including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration and the Government National Mortgage Association), or to a broker-dealer, mortgage broker or mortgage banker, whether the purchaser is acting for itself or in a fiduciary capacity when the purchaser has discretionary authority to make investment decisions.

(5) Any transaction by an offeror with an accredited investor as defined in Section 2 (15)(i) or (ii) of the Securities Act of 1933 or rules of the director, but only if there is no public advertising or general solicitation in connection with the transaction.

(6) 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, convertible and registered or exempt from registration.

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

(8) Agency or principal sales by licensed 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.

(9) The offer or sale by a licensed 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 offer or 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.

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

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

(c) Either Moody's or Standard and Poor's securities manuals, or any other recognized securities manuals approved by the director, 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; and

(d) The securities are authorized for quotation on a nationwide automated quotations system approved by rule or order of the director.

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

(a) 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. However, an offer for such a security may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

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

(12)(a) Any transactions in securities by an offeror within or without this state that meet all of the requirements of subparagraph (A) or (B) of this paragraph and all of the requirements of subparagraphs (C), (D) and (E) of this paragraph:

(A) When the offeror is an issuer, the transactions result in not more than 10 purchasers within this state of securities of the issuer during any 12 consecutive months.

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

(C) No commission or other remuneration is paid or given directly or indirectly in connection with the offer or sale of the securities.

(D) No public advertising or general solicitation is used in connection with any transaction under this exemption.

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

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

(A) Purchasers of securities of the offeror registered under ORS 59.065, exempt under ORS 59.025, or exempt under any other subsection of this section are not counted as purchasers under this exemption.

(B) Repeat transactions with persons who are counted as purchasers within Oregon under paragraph (a) of this subsection do not

increase the number of purchasers. However, a purchaser remains a purchaser for 12 months following the month of the last sale to that purchaser.

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

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

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

(15) Any other transaction exempted by rule of the director. [1967 c 537 §5, 1971 c.624 §2; 1973 c.823 §§91, 156; 1985 c.349 §3; 1987 c.603 §2; 1989 c.197 §3]

59.045 Director of the Department of Insurance and Finance authority to deny, withdraw or condition exemptions. (1) The director may by rule or order, as to any security or any type of security transaction:

(a) Deny, withdraw or condition the exemptions allowed by ORS 59.025 and 59.035 if, in the director's opinion, the further sale of the security in this state would work a fraud or imposition upon the purchaser.

(b) Waive the conditions of ORS 59.035 (3)(b) and (12)(a)(B).

(c) Provide which exemptions may or may not be used in connection with other exemptions or provide procedures for determining which offerings are or are not integrated with other offerings within the same or other exemptions.

(2) The director may by order withdraw, condition or deny the use of any exemption by a person if the director has reason to believe that the person has engaged in or is about to engage in an act or practice constituting a violation of the Oregon Securities Law or that the use of any exemption by that person would work a fraud or imposition on purchasers.

(3) No person shall be liable under the Oregon Securities Law by reason of the withdrawal of an exemption under this section if that person sustains the burden of proof that that person did not know, and in the exercise of reasonable care could not have known of the withdrawal. [1967 c.537 §6; 1973 c.366 §3; 1985 c.349 §4]

59.047 [1981 c.292 §2, 1985 c.349 §5; repealed by 1987 c.603 §30]

59.050 [1981 c.292 §3; 1985 c.349 §6; repealed by 1987 c.603 §30]

59.052 [1981 c.292 §4, 1985 c.349 §7; repealed by 1987 c.603 §30]

(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 director or any condition, limitation or restriction imposed by the director 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 procedures; application; fees. (1) The director by rule shall establish procedures for registering securities. The director may coordinate registration in this state with any federal securities Act or national registration system.

(2) Every registration application submitted shall be accompanied by a 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 fee is not refundable.

(3) If a registrant sells securities in Oregon in excess of the quantity registered or for a price in excess of the aggregate price for which fees were initially paid, the registrant may obtain registration of the excess securities by paying three times the difference between the initial fee paid and the fee required under subsection (2) of this section for the securities sold in Oregon. However, the additional fee shall not be less than $25. Registration of the excess securities shall be effective retroactively to the date of sale. [1967 c.537 §8; 1973 c.366 §4; 1985 c 349 §8; 1987 c 603 §3]

59.070 Amended registration application; when required; fees. (1) A registrant under ORS 59.065 shall amend the registration application when there are material changes in the terms and conditions of the original registration. This shall include an increase in the aggregate amount of securities to be offered in Oregon, change in the type of securities or change in the identity of the issuer or owner.

(2) Applications for an amendment to increase the aggregate amount of securities to be offered in Oregon shall include fees calculated in accordance with ORS 59.065 (2), less amounts previously paid under the prior registration but in no event shall the fee be less than $25.

(3) Nothing in this section shall relieve a registrant from the obligation to notify the director concerning material changes in facts and circumstances concerning the offering. [1985 c 349 §10, 1987 c.603 §4]

Note: ORS 59.070 was added to and made a part of ORS chapter 59 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

59.075 Registration by director; expiration; renewal; fee. (1) The director shall register the securities unless the director finds that registration should be denied on one or more of the grounds specified in ORS 59.105. The securities may thereafter be sold in accordance with the registration and any conditions, limitations or restrictions imposed by the director.

(2) Every registration of securities shall expire one year after the date of the registration. The director may establish a different expiration date for purposes of coordination with any national registration system. When a registration is amended the registration expires one year after the date of the initial registration unless the amended registration provides otherwise.

(3) The director by rule shall establish procedures for renewing registrations of securities.

(4) Every renewal application shall be accompanied by a fee computed in accordance with ORS 59.065 (2). The fee is not refundable.

(5) If the director finds that no ground for suspension or revocation of the registration exists under ORS 59.105, the director shall renew the registration, subject to any conditions, limitations and restrictions imposed by the director. The renewed registration shall expire one year after the date of expiration of the original registration or last renewal. The director may establish a different expiration date for purposes of coordination with any national registration system. [1967 c.537 §9; 1985 c.349 §12, 1987 c.603 §5]

59.078 [1973 c.366 §8; repealed by 1987 c.603 §30]

59.085 Conditions imposed on registration. The director may, by rule or order, impose on a registration such conditions, limitations and restrictions as the director 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 director 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 director:

(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 director. [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 Commission of this state, may request approval of such plan by the director.

(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 director 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 director shall, after the hearing, consider the fairness of the terms and conditions of the plan, and, if the director finds that the plan is fair, just and equitable and free from fraud, shall approve it, subject to such conditions, limitations and restrictions as the director may impose. If the director finds that the plan is unfair, unjust or inequitable or not free from fraud, the director 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 director may by order deny, suspend or revoke any registration, if the director 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

director of which the applicant, registrant or issuer had notice;

(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 director any false representation of a material fact, or has suppressed or withheld from the director any material information;

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

(h) 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.

(2) The director 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 director 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; 1989 c.197 §4]

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 selling securities unlawfully; recovery by purchaser; limitations on proceeding. (1) A person who sells a security is liable as provided in subsection (2) of this section to a purchaser of the security if the person:

(a) Sells a security in violation of the Oregon Securities Law or of any condition, limitation or restriction imposed upon a registration or license under the Oregon Securities Law; or

(b) 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 the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(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 equal to the greater of the rate of interest specified in ORS 82.010 for judgments and decrees for the payment of money or the rate provided in the security if the security is an interest-bearing obligation, less any amount received on the security; or

(b) If the purchaser 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 interest specified in ORS 82.010 for judgments and decrees for the payment of money 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 the nonseller 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 that person.

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

(5) Except as otherwise provided in this subsection, no action or suit may be commenced under this section more than three years after the sale. An action under this section for a violation of paragraph (b) of subsection (1) of this section or ORS 59.135 may be commenced within three years after the sale or two years after the person bring-

ing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

(6) No action may be commenced under this section solely because an offer was made prior to registration of the securities.

(7) Any person having a right of action against a broker-dealer, mortgage broker, investment adviser or against a salesperson acting within the course and scope or apparent course and scope of authority of the salesperson, 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), 1985 c 349 §13, 1987 c 158 §10, 1987 c 603 §6, 1989 c 197 §5]

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

59.125 Effect of notice of offer to repay purchaser; exceptions; registration of transaction. (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 ORS 59.115 (2)(a) 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.

(4) An offer to repay the purchaser pursuant to this section involves the offer or sale of a security. The transaction must be registered under ORS 59.055 unless there is an exemption from the registration requirement. [1967 c.537 §13(6); 1985 c.349 §14]

59.127 Liability of person purchasing securities unlawfully; recovery by seller; limitation on proceeding. (1) A person who purchases a security is liable as provided in subsection (2) of this section to the person selling the security, if the person:

(a) Purchases a security in violation of any condition, limitation or restriction imposed upon a registration under the Oregon Securities Law; or

(b) Purchases 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 were made, not misleading (the seller not knowing of the untruth or omission), and if the person does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

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

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

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

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

(3) Every person who directly or indirectly controls a purchaser liable under subsection (1) of this section, every partner, officer, or director of such purchaser, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the purchase is also liable jointly and severally with and to the same extent as the purchaser, unless the nonpurchaser sustains the burden of proof that the nonpurchaser 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 the person.

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

(5) Except as otherwise provided in this subsection, no action or suit may be commenced under this section more than three years after the purchase. An action under

this section for a violation of paragraph (b) of subsection (1) of this section or ORS 59.135 may be commenced within three years after the purchase or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

(6) Any person having a right of action against a broker-dealer, mortgage broker, investment adviser or against a salesperson acting within the course and scope or apparent course and scope of the authority of the salesperson, under this section shall have a right of action under the bond provided in ORS 59.175. [1975 c.300 §2; 1985 c 349 §14a; 1987 c.158 §11, 1987 c 603 §7]

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

59.131 Effect of notice of intent to return unlawfully purchased security; contents of notice; registration of transaction. (1) Except as provided in subsection (3) of this section, no action or suit may be commenced under ORS 59.127 if the seller has received before suit a written notice of intent to return the security as outlined in subsection (2) of this section.

(2) The notice shall contain:

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

(b) A statement of the effect on the seller'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 seller accepts the offer and gives notice of acceptance within three days after receipt of the offer and fails to receive the contents of such offer as specified in paragraph (a) of subsection (2) of this section within one day from the date the notice of acceptance was sent; or

(b) If the seller elects to recover damages as specified in paragraph (b) of subsection (2) of this section and gives notice of the election within 30 days after receipt of the offer.

(4) An offer to tender the security pursuant to this section involves the offer for sale of a security. The transaction must be registered under ORS 59.055 unless there is an exemption from the registration requirement. [1975 c.300 §3; 1985 c.349 §15; 1987 c.603 §8]

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 director 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 Effect of registration or license. (1) Neither the fact that an application for registration or a license under the Oregon Securities Law has been filed nor the fact that a person is effectively licensed or a security is effectively registered constitutes a finding by the director 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 director 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, 1989 c 197 §6]

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

59.155 Director of the Department of Insurance and Finance is agent for service of process; manner of service; exceptions. (1) The director 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 director:

(a) Every licensee or registrant or applicant for a license or registration of a security, 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) Serving the director or a clerk on duty at the Department of Insurance and Finance a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, or by mailing to the department a copy of the process, notice or demand by certified or registered mail, and a $2 fee for each party being served;

(b) Transmittal by the person instituting the proceeding of notice of the service on the director 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 director; 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) The procedure permitted by this section shall not be available when personal jurisdiction can otherwise be obtained in this state.

(4) After completion of initial service upon the director, no additional documents need be served upon the director to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process. [1967 c.537 §16; 1987 c.603 §9; 1989 c.197 §7]

59.160 [Repealed by 1967 c.537 §36]

(Licensing of Broker-Dealers, Mortgage Brokers, Investment Advisers and Salespersons)

59.165 Licensing of broker-dealers, mortgage brokers, investment advisers and salespersons required. (1) It is unlawful for any person to transact business in this state as a broker-dealer, mortgage broker or salesperson unless the person is licensed under the Oregon Securities Law.

(2) No broker-dealer, mortgage broker or investment adviser shall be licensed in this state unless the broker-dealer, mortgage broker or investment adviser has at least one salesperson licensed in this state.

(3) It is unlawful for a broker-dealer, mortgage broker, investment adviser, issuer or owner of securities to employ a salesperson to act in this state unless the salesperson is licensed under the Oregon Securities Law to the broker-dealer, mortgage broker, investment adviser, issuer or owner of securities. Only a natural person may be licensed as a salesperson. No person:

(a) May be licensed as a salesperson for more than one broker-dealer, mortgage broker, investment adviser, issuer or owner of securities at the same time, except as may be allowed by rule or order of the director.

(b) May be licensed as a salesperson unless the person is employed by a broker-dealer, mortgage broker, investment adviser, issuer or owner of securities.

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

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

(b) Is licensed as a broker-dealer without the imposition of a condition under ORS 59.215 (4). [1967 c.537 §17; 1973 c.366 §5; 1985 c.349 §16; 1987 c.603 §10; 1989 c.197 §8]

Note: Section 19, chapter 197, Oregon Laws 1989, provides:

Sec. 19. Any person registered as a broker-dealer, mortgage broker, investment adviser or salesperson under ORS chapter 59 as of the day immediately preceding the effective date of this Act [October 3, 1989], who is subject to ORS chapter 59 on and after the effective date of this Act need not obtain a license under ORS chapter 59 as amended by this Act until the registration issued to the broker-dealer, mortgage broker, investment adviser or salesperson before the effective date of this Act under ORS chapter 59 has expired. The broker-dealer, mortgage broker, investment adviser or salesperson is considered to be licensed under and subject to ORS chapter 59 on and after the effective date of this Act until the expiration of the registration. [1989 c.197 §19]

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

59.175 Procedures for licensing; examination; bond; fees. (1) The director by rule shall establish procedures for licensing broker-dealers, mortgage brokers, investment advisers and salespersons. The director may coordinate licensing with any national registration or licensing system.

(2) The director may require an applicant for a license as a broker-dealer, mortgage broker 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 a license as a salesperson is made, to pass

an examination on such person's knowledge and understanding of the Oregon Securities Law and the securities business. The director may establish by rule a fee for the examination.

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

(4) Every applicant for a license as a broker-dealer, mortgage broker or investment adviser shall file with the director a corporate surety bond or such other security as the director may approve by rule running to the State of Oregon in the sum of $10,000. However, a mortgage broker who is in the business of executing transactions only as set forth in ORS 59.035 (7) shall not be subject to the bond requirement set forth in this section.

(5) If the application, surety bond or other security and fees are in order and the director 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 director shall license the broker-dealer, mortgage broker, investment adviser or salesperson.

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

(7) The Director of the Department of Insurance and Finance shall charge and collect for:

(a) An application for a license as a broker-dealer, mortgage broker or investment adviser, a fee of $100;

(b) An application to renew a license as a broker-dealer, mortgage broker or investment adviser, a fee of $50;

(c) An application for a license as a salesperson, a fee of $15; and

(d) An application to renew a license as a salesperson, a fee of $15.

(8) The fees under this section are not refundable. [1967 c.537 §18; 1969 c.137 §4; 1971 c.624 §3, 1985 c.349 §17; 1987 c.603 §11; 1989 c.197 §9]

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

59.185 Expiration of license; rules for renewal; change in personnel. (1) Every license of a broker-dealer, mortgage broker or investment adviser expires one year after the date of issuance unless the director establishes a different expiration date for purposes of coordination with any national registration or licensing system.

(2) Every license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale or one year after the date of issuance, whichever is sooner. Every license of a salesperson licensed to a broker-dealer, mortgage broker or investment adviser expires on the same date that the license of the broker-dealer, mortgage broker or investment adviser expires.

(3) The director by rule shall establish procedures for renewing licenses of broker-dealers, mortgage brokers, investment advisers and salespersons.

(4) 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, mortgage broker or investment adviser, written notification of such change shall promptly be filed with the director. 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 licensee. [1967 c 537 §19 (1), (2), (3); 1969 c.137 §5; 1985 c.349 §18, 1987 c.603 §12; 1989 c.197 §10]

59.190 [Repealed by 1967 c.537 §36]

59.193 [1973 c.366 §9; 1975 c.491 §3; 1985 c.349 §19; repealed by 1987 c.603 §30]

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

(2) Every broker-dealer, mortgage broker, investment adviser and salesperson shall file such financial reports or other information as the director by rule or order may require and shall promptly correct any document filed with the director which is or becomes incomplete or inaccurate in any material respect. [1967 c.537 §19(4), (5); 1985 c.349 §20; 1987 c.603 §13; 1989 c.197 §11]

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 license. Except as provided in ORS 59.215, the director may by order deny, suspend or revoke a license of a person as a broker-dealer, mortgage broker,

investment adviser or salesperson if the director finds that the applicant or licensee:

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

(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 director.

(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 a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, 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 director denying, suspending or revoking a license as a broker-dealer, mortgage broker, investment adviser or salesperson.

(11) Is the subject of an order of the director under ORS chapter 645 involving a violation of any provision of the Oregon Commodity Code or any rule or order of the director adopted or entered under ORS chapter 645.

(12) Is the subject of any of the following orders that are currently effective and were issued within the last five years:

(a) An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration or license as a broker-dealer, mortgage broker, investment adviser or salesperson, or the substantial equivalent of those terms as defined in the Oregon Securities Law;

(b) A suspension or expulsion from membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act or the Investment Advisers Act of 1940;

(c) A United States Postal Service fraud order;

(d) A cease and desist order entered after notice and opportunity for hearing by the director, the securities agency or administrator of another state or a Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission; or

(e) An order by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act.

(13) Has failed, reasonably to supervise the salespersons of the applicant or licensee.

(14) Has failed to comply with the requirements of ORS 59.195 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require. [1967 c.537 §20(1), 1969 c 137 §6, 1985 c.349 §21, 1987 c 603 §14; 1989 c 197 §12]

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

(1) This section shall not apply to ORS 59.205 (1).

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

(a) The broker-dealer, mortgage broker or investment adviser if the broker-dealer, mortgage broker or investment adviser is an individual; or

(b) A salesperson of the broker-dealer, mortgage broker or investment adviser.

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

(4) If the director finds that an applicant for an initial license or a license renewal as a broker-dealer is not qualified as an investment adviser, the director may condition the applicant's license as a broker-dealer upon its not transacting business in this state as an investment adviser. [1967 c.537 §20(2); 1985 c.349 §22; 1987 c.603 §15; 1989 c.197 §13]

59.220 [Repealed by 1967 c.537 §36]

59.225 Cancellation of license or application; application for withdrawal; effect of suspension or revocation. (1) If the director finds that an applicant or licensee has ceased to do business as a broker-dealer, mortgage broker, investment adviser or salesperson, or has failed to maintain a bond or other security required by ORS 59.175 (4) or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the director may cancel the license or application.

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

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

(4) The suspension of a registration of securities suspends the license of any salesperson licensed to the issuer or owner of the securities. The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of any salesperson licensed to the issuer or owner of the securities. [1967 c.537 §20(3), (4), (5); 1985 c.349 §23; 1987 c.603 §16; 1989 c.197 §14]

59.230 [Repealed by 1967 c.537 §36]

(Powers of Director of the Department of Insurance and Finance)

59.235 General supervision over persons dealing in securities. The director shall have general supervision and control over all issuers, registrants of securities, broker-dealers, mortgage brokers, investment advisers and salespersons 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 and their records and everything connected with their activities shall be subject to examination by the director at any time. The provisions of this section and of any section of the Oregon Securities Law relating to examinations shall extend to any person who should have been licensed as a broker-dealer, mortgage broker, investment adviser or salesperson, any person exempted by rule from those definitions or any person whose license has expired or has been withdrawn, canceled, suspended or revoked. The director may collect from each such person the actual expenses incurred in that examination. [1967 c.537 §21; 1985 c.349 §24, 1987 c.603 §17, 1989 c.197 §15]

59.240 [Repealed by 1955 c.198 §2]

59.245 Investigations; publicity with respect to violations; cease and desist order. The director:

(1) May make such public or private investigations within or outside this state as the director 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 director, 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 director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation of the Oregon Securities Law or any rule or order of the director; and

(4) If the director has reason to believe that any person has been engaged, or is engaging, or is about to engage in any violation of the Oregon Securities Law, the director may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation. [1967 c.537 §22; 1973 c.366 §6]

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

59.255 Enjoining violations; fine; appointment of receiver; damages to private parties. (1) Whenever it appears to the director 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 director, the director may bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the Oregon Securities Law or such rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The court may fine the person against whom the order is entered not more than $5,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $20,000. If the court finds that the defendant has violated any provision of the Oregon Securities Law or any such rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond. If the director prevails, the director shall be entitled to costs, and reasonable attorney fees at trial and on appeal to be fixed by the court.

(2) The director may include in any action authorized by subsection (1) of this section:

(a) A claim for restitution or damages under ORS 59.115 or 59.127, 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; or

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph shall be turned over to the General Fund of the State Treasury unless the court requires other disposition. [1967 c.537 §23; 1971 c.394 §1, 1975 c.300 §4; 1981 c.897 §10; 1985 c 349 §26]

59.260 [Repealed by 1967 c 537 §36]

59.265 Procedure when assets or capital of broker-dealer, mortgage broker or investment adviser found impaired; involuntary liquidation. (1) When the director ascertains that the assets or capital of any broker-dealer, mortgage broker or investment adviser are impaired, or that such person's affairs are in an unsound condition, the director 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 director shall inventory the assets and liabilities of such person. The director shall file one copy of the inventory in the office of the director 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 the last-known address of the shareholder or partner. 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 director to take such possession, the director 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 director, 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 director 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 director 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 director, subject to the approval of the court, and, upon certification by the director, shall be paid out of the funds in the hands of the director as such receiver. [1967 c.537 §24; 1987 c.603 §18]

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; financial statements. (1) In accordance with this section and ORS 183.310 to 183.550 the director may from time to time make, amend and rescind such rules

as are necessary to carry out the provisions of the Oregon Securities Law. The director may classify securities, persons and matters within the jurisdiction of the director, and prescribe different requirements for different classes.

(2) No rule may be made, amended or rescinded unless the director 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.

(3) All financial statements required by the Oregon Securities Law shall be prepared in accordance with generally accepted accounting principles. The director may by rule 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. [1967 c.537 §28; 1987 c.603 §19]

59.295 Notice of orders; hearings on orders. (1) Upon the entry of an order under the Oregon Securities Law, the director shall promptly give appropriate notice of the order as provided in this subsection. The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after entry of the order. The notice shall be given to:

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

(b) The applicant or licensee and any salesperson affected thereby with respect to orders entered pursuant to ORS 59.205; or

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

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS 183.310 to 183.550. 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 director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license or registration notwithstanding the fact that the license or registration has expired, if the initial order of revocation was issued prior to expiration of the license or registration. [1967 c.537 §26; 1985 c.349 §27; 1987 c.603 §22; 1989 c.197 §16]

59.305 Judicial review of orders. (1) A person aggrieved by an order of the director which has been the subject of a timely application for hearing before the director shall be entitled to judicial review of the order under ORS 183.310 to 183.550.

(2) No decree of a reviewing court under ORS 183.310 to 183.550 shall bar the director 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 subpoenas in proceedings before director. (1) For the purpose of an investigation or proceeding under the Oregon Securities Law, the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1967 c 537 §29; 1989 c.980 §5a]

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

59.325 Certified copies of documents; fee; effect of certification. (1) The director shall furnish to any person, upon payment of a fee established by rule, copies (certified 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.

(2) A certificate of the director as to compliance or noncompliance with licensing or 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; 1987 c.603 §23; 1989 c.197 §17]

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, 59.125, 59.135 and 59.145 and 59.165 (1) 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 59.165 (1) 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 59.165 (4), insofar 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); 1987 c.603 §29]

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 behalf of the publisher 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)]

59.350 Treatment of certain transactions. For purposes of this chapter:

(1) A transaction with a husband and wife is treated as a transaction with one person. The securities may be held jointly or individually.

(2) A transaction with an entity is treated as a transaction with one person. However, if an entity is formed substantially for the purpose of acquiring the securities that are offered, each security holder shall be counted as a separate person. [1985 c.349 §11]

Note: 59.350 was added to and made a part of ORS chapter 59 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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 director 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]

59.370 Limitation on liability for good faith act or omission. 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 director, 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. [1987 c.603 §21]

59.375 [1967 c.537 §34, repealed by 1987 c.603 §30]

(Required Reports and Statements)

59.405 [1971 c.641 §3; 1975 c.491 §4; repealed by 1987 c.603 §30]

59.410 [Repealed by 1967 c.537 §36]

59.415 [1971 c.641 §4, 1981 c.897 §11, repealed by 1987 c.603 §30]

59.420 [Repealed by 1967 c 537 §36]

59.425 [1971 c.641 §5; repealed by 1987 c.603 §30]

59.430 [Repealed by 1967 c.537 §36]

59.435 [1971 c.641 §6, 1981 c.897 §12; repealed by 1987 c.603 §30]

59.440 [Repealed by 1967 c.537 §36]

59.445 [1971 c.641 §7; repealed by 1987 c.603 §30]

59.450 [Repealed by 1967 c.537 §36]

59.451 Prohibition against filing false statement by person under investigation or examination. It is unlawful for any person who is the subject of an investigation under ORS 59.245 or examination under ORS 59.235, directly or indirectly, to make or file or cause to be made or filed with the director any statement, report or document which is false in any material respect or manner. [1985 c.349 §25]

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 the heirs, children, dependents, members of family, administrators, survivors, executors or assigns of the purchaser or holder, any right to funeral or burial services contingent upon the death of the purchaser, holder, children, dependents, or members of 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 of 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 Director of the Department of Insurance and Finance 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 holder or the executors or administrators of such purchaser or holder 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 fees at trial and on appeal to be fixed by the court. However, the recovery against the surety shall not exceed the amount of the bond. [Amended by 1981 c.897 §13]

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 Director of the Department of Insurance and Finance, on or before the 10th day of each month, a verified statement showing the total amount of money received by the person on account of the sale of outstanding and unredeemed shares theretofore issued by the person 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. 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 the person's own contract as evidenced by the share sold and disposed of by the person. 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 the State Treasurer shall be entitled to collect the fees authorized pursuant to state law pertaining to and regulating title insurance. [Amended by 1971 c.200 §5; 1973 c.794 §14]

59.690 Director of the Department of Insurance and Finance may examine books of seller. The Director of the Department of Insurance and Finance is authorized to examine the books and accounts of any person doing business within the purview of ORS 59.670 whenever in the judgment of the director 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 the person's 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 the person's 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 the person's 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 the broker's 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 the broker's 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-dealer receiving securities from customer. No broker-dealer engaged in the business of purchasing and selling stocks or bonds as a broker-dealer, knowing that the broker-dealer is insolvent, shall accept or receive from a customer ignorant of the 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 broker-dealer shall be deemed insolvent within the meaning of this section whenever the aggregate of the property of the broker-dealer is not, at a fair valuation, sufficient in amount to pay the debts of the broker-dealer. [Amended by 1987 c.158 §12]

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

(1) While having in the possession of the broker-dealer, 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 the possession of the broker-dealer stocks or bonds belonging to a customer on which the broker-dealer has a lien for indebtedness due to the broker-dealer by the customer, pledge the same for more than the amount due to the broker-dealer thereon, or otherwise dispose thereof for the broker-dealer's own benefit, with or without the customer's consent, and without having in possession of the broker-dealer or subject to control of the broker-dealer, stocks or bonds of the kind and amount to which the customer is then entitled, for delivery to the customer upon demand of the customer 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-dealer, upon payment or tender of the amount the same was pledged to secure. [Amended by 1987 c 158 §13]

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 the person, 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 the person may tend to convict the person of a crime or subject the person 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 the person may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against the person 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 Criminal penalties. (1) Violation of any provision of this chapter or any rule adopted by the director under this chapter, except ORS 59.315 (2), 59.660 to 59.700 or 59.810, is a Class B felony.

(2) Violation of ORS 59.315 (2), 59.660 to 59.700 or 59.810 is a Class A misdemeanor. [1967 c 537 §35, 1981 c 292 §5, 1987 c 603 §24]

59.995 Civil penalties; effect of non-payment. (1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of this chapter or any rule or order of the director shall be subject to a penalty of not more than $5,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $20,000.

(3) The penalty shall not be imposed except by order following the filing of a complaint and hearing or other proceeding before the director or representative of the director under rules or orders adopted by the director.

(4) When an order assessing a civil penalty becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it constitutes a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon the title to any interest in property owned by the person against whom the order is entered, and execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) The provisions of ORS 183.310 to 183.550 shall govern all proceedings under this section. [1973 c 366 §10; 1975 c.491 §5; 1983 c.696 §7; 1985 c.349 §28; 1989 c.197 §18]