Chapter 708

1961 REPLACEMENT PART

Regulation of Bank and Trust Company Operations Generally

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REGULATION OF INSURED DEPOSIT BANKS AND TRUST COMPANIES AND FOREIGN BANKS

708.005 Application of ORS 708.005 to 708.060. ORS 708.005 to 708.060 apply to foreign banks doing a general banking business in this state and to banks and trust companies whose deposits are insured, in whole or in part, by the Government of the United States or any agency or instrumentality of the United States by virtue of any Acts of Congress or amendments thereto. ORS 708.005 to 708.060 do not apply to banks and trust companies organized under the laws of this state whose deposit liabilities are not so insured.

708.010 Inapplicability of departmental banking laws. All assets of commercial and savings departments of banks and trust companies mentioned in ORS 708.005 may be commingled, and all deposit liabilities are to be chargeable against all such assets. All laws of this state relating to the segregation of assets, liabilities, capital and surplus between savings and commercial departments of banks and trust companies are inapplicable to banks and trust companies mentioned in ORS 708.005.

708.015 Demand and time deposits. Demand deposits of any bank or trust company mentioned in ORS 708.005 shall comprise all deposits payable upon demand. Time deposits shall comprise all savings accounts, time certificates of deposit, postal savings deposits and deposits with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn by check, or otherwise, prior to the date of maturity.

708.020 Reserve requirements; change by superintendent; Federal Reserve Banks. (1) Any bank or trust company mentioned in ORS 708.005 shall have on hand at all times, in lawful money of the United States, or on deposit payable on demand in reserve banks or trust companies, approved by the Superintendent of Banks, an amount equal to 15 percent of the total demand deposits, and five percent of the total time deposits. No such bank or trust company shall be required to maintain any reserve on deposits of the United States or deposits of postal savings funds. Cash items shall not be considered as part of the reserve of any such bank or trust company, excepting unpresented checks on other solvent banks or trust companies in the same town or city received in the regular course of business and payable forthwith.

(2) Whenever the Superintendent of Banks, after consulting with and securing the approval of the State Banking Board, shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by general regulations change from time to time the requirements as to reserves against demand or time deposits, or both. Such change shall not be operative or effective until reasonable notice thereof has been given to all banks and trust companies doing business in this state which are not members of the Federal Reserve System. The reserves so specified to be maintained by any such change shall not be less than 80 percent of the amount of the reserves required by law to be maintained by such bank or trust company on February 23, 1935, nor more than twice such requirement.

(3) If any bank or trust company mentioned in ORS 708.005 is or becomes a member of the Federal Reserve System, it shall comply with the reserve requirements of the Federal Reserve Act and its amendments. Its compliance therewith shall be in lieu of and shall relieve such bank or trust company from compliance with the provisions of this section relative to reserves.

708.025 Savings accounts; conditions for withdrawal; interest rate; pass book; overdrafts. (1) Any bank or trust company mentioned in ORS 708.005 receiving savings accounts must prescribe by its bylaws or by contract with its depositors, the time and conditions on which repayment is to be made to depositors. Any such bank or trust company receiving savings accounts may require 30 days' notice to withdraw any sum up to $100; 60 days' notice to withdraw any sum over $100 and not over $500; 90 days' notice to withdraw any sum over $500 and not over $1,000; four months' notice to withdraw any sum over $1,000 and not over $3,000; six months' notice to withdraw any sum over $3,000.

(2) The directors of any such bank or trust company may prescribe the rate of interest which shall be paid on savings accounts and the time of payment, terms and conditions thereof.

(3) A pass book may be issued to every depositor of a savings account, containing the rules and regulations adopted by the board of directors governing such account and deposit, in which book shall be entered each deposit made by and every payment made to such depositor. Except as provided in subsection (4) of this section, no payment of any check against such savings account shall be made unless accompanied by and entered in the pass book issued therefor, except for good cause and on assurance satisfactory to the officers of such bank or trust company.

(4) Where no pass book has been issued to the depositor, the bank or trust company shall pay funds from the savings account only to the depositor himself and not to any other person, whether or not acting for the depositor, except for good cause and on assurance satisfactory to the officers of the bank or trust company.

(5) No such bank or trust company shall permit a depositor to overdraw his savings account.

[Amended by 1961 c 96 §1]

708.027 Loans to which ORS 708.030 and 708.032 not applicable. ORS 708.030 and 708.032 do not apply to loans which are made to a construction, industrial, manufacturing or farming business by a bank or trust company mentioned in ORS 708.005:

(1) When a lien is taken, as a precaution against contingencies, on the borrower's real estate or on the real estate where the building and improvements are being or will be constructed, if repayment is expected from the operation of the borrower's business; and

(2) The loan was made primarily in reliance upon the borrower's general credit standing and forecast of operations.

[1961 c 165 §2]

708.030 Real estate loans; limitation and security; purchase of contracts as loan; appraisals, evidence of title and insurance. (1) Subject to the restrictions contained in ORS 708.305 to 708.370, any bank or trust company mentioned in ORS 708.005 may loan, upon obligations secured by real estate or leaseholds, not to exceed 25 percent of its capital, surplus and demand deposits, and 75 percent of its time deposits. All such obligations shall be secured by first liens on improved real estate or leaseholds; provided, that such liens may be subsequent to taxes not due, to taxes being paid in accordance with ORS 311.760 to 311.770, and bonded indebtedness for public improvements not due. However, no such obligation plus taxes not due or taxes being paid in accordance with ORS 311.760 to 311.770, and bonded indebtedness for public improvements not due, shall exceed the percentage of appraised value of the real estate or leasehold provided in subsection (4) of this section.

(2) No loan made under this section shall be made on any leasehold unless the lease has at least 10 years to run beyond the maturity date of the loan, or may be renewed so that it will not expire for at least 10 years after the maturity date of the loan. The appraised value of a leasehold, for the purpose of this section, is the full appraised value of the fee simple estate of the land and improvements, less the greater of:

(a) The value of the land without improvements; or

(b) The average annual rental due under the lease from the date the loan is made or acquired by the bank to the maturity of the loan, multiplied by 20.

(3) No bank or trust company shall make a loan secured by a leasehold if:

(a) The covenants and restrictions contained in the lease providing for forfeiture or reversion in the event of a breach are more onerous or burdensome than those contained in leases in general use in this state.

(b) The lease does not permit acquisition of the leasehold by the bank or trust company by voluntary conveyance and judicial process.

(c) The lease contains restrictions such as would jeopardize recovery of the security for the loan.

(4) The amount of loan authorized by subsection (1) of this section shall not exceed 50 percent of the appraised value of the real estate or leasehold offered as security and no such loan shall be made for a longer term than five years, except that:

(a) A loan may be made in an amount not to exceed sixty-six and two-thirds percent of the appraised value for a term not longer than 10 years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the instalment payments are sufficient to amortize 40 percent or more of the principal of the loan within a period of not more than 10 years

(b) A loan may be made in an amount not to exceed sixty-six and two-thirds percent of the appraised value for a term not

longer than 20 years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the instalment payments are sufficient to amortize the entire principal of the loan within a period of not more than 20 years.

(c) A loan may be made in an amount not to exceed 75 percent of the appraised value for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the instalment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity.

The limitations and restrictions imposed by this subsection shall not prevent the renewal or extension of loans made prior to August 20, 1957.

(5) The purchase of a bona fide contract covering sale of real estate constitutes a loan on real estate within the meaning of this section. The bank or trust company may acquire such contracts if the requirements of subsections (1) and (4) of this section are complied with. The appraised value of real estate covered by such contracts shall be determined as of the date of the purchase of the contract.

(6) Mortgages or other liens on real estate or leaseholds taken to secure a debt previously contracted in good faith or to facilitate the sale of real estate owned, shall not be restricted to the percentages or priorities prescribed in this section.

(7) Any such bank or trust company may make real estate loans secured by first liens upon forest tracts which are properly managed in all respects. Such loans shall be in the form of an obligation or obligations secured by mortgage, deed of trust or other such instrument. The amount of any such loan shall not exceed 40 percent of the appraised value of the economically marketable timber offered as security, and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance exceed 40 percent of the original appraised value of the economically marketable timber then remaining. No such loan shall be made for a longer term than two years; except that any such loan may be made for a term not longer than 10 years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the instalment payments are sufficient to amortize the principal of the loan within a period of not more than 10 years and at a rate of at least 10 percent per annum. All such loans secured by first liens upon forest tracts shall be included in the permissible aggregate of all real estate loans prescribed in this section, but no such bank or trust company shall make forest-tract loans in an aggregate sum in excess of 50 percent of its capital stock and surplus.

(8) There shall be maintained on file at the bank or trust company in support of such real estate or leasehold obligations, such appraisal, evidence of merchantable title and insurance as may be required by the Superintendent of Banks.

[Amended by 1955 c 315 §1; 1957 c.255 §1; 1961 c 220 §1]

708.032 Construction loans. Subject to the restrictions contained in ORS 708.305 to 708.370, any bank or trust company mentioned in ORS 708.005 may make loans to finance the construction of buildings and the improvements appurtenant thereto when the loan is secured by a first lien on the real estate where the building and improvements are being or are to be constructed. The loan shall mature in not to exceed 18 months and shall not exceed 70 percent of the sound market value of the real estate and the buildings and improvements to be constructed thereon. The bank or trust company making the loan shall require sufficient guaranty from the contractor, builder or owner for the completion of the construction in accordance with the plans and specifications and within the estimated contract price for the construction. Moneys advanced on construction loans under this section shall be made from time to time during the progress of construction upon a certificate of estimate to be furnished by the architect, contractor, builder, superintendent in charge of the construction or owner. If the loan exceeds the limitations set forth in ORS 708.030, the bank or trust company making such loan shall require the borrower to furnish a copy of an agreement entered into with a financially responsible person whereunder such person has agreed to refinance or purchase, without recourse, the entire loan upon completion of the construction, or in any event not later than 18 months after the date of the construction loan.

[1959 c 383 §1]

708.035 Stock in other corporations. (1) Upon the written application of the board of directors filed with the Superintendent of Banks and subject to his written

approval and in accordance with such further instructions and limitations as he may prescribe, any bank or trust company mentioned in ORS 708.005 may carry fully paid-up and nonassessable capital stock of any other corporation as an asset, provided:

(a) Such stocks are acquired for the purpose of strengthening the bank's or trust company's capital structure or the elimination of undesirable assets.

(b) The aggregate amount of such stocks carried on the books as an asset shall not be in excess of 20 percent of the bank's or trust company's unimpaired capital and surplus.

(c) Such bank or trust company shall not thereafter make a loan, directly or indirectly, to any such corporation unless the obligation is fully secured.

(d) Such stock may be held for such period as the Superintendent of Banks may determine, but in no event longer than that provided by law for the holding of real estate other than banking premises.

(e) The book value of such asset shall be amortized in the same manner as provided by law for the reduction of the book value of real estate other than banking premises.

(2) This section is not applicable to any stock that may be acquired by such bank or trust company in connection with the insurance of deposits, or in connection with stock that may be purchased as a part of any transaction whereby any such bank or trust company shall borrow from the United States or any agency thereof or instrumentality created thereby. This section does not repeal or in any way limit or modify ORS 707.330 and 711.470.

708.040 Obligations; limitation on amount or security. The limitations provided by law as to amount or security upon obligations to any bank or trust company mentioned in ORS 708.005, of any person, copartnership, association or corporation, are not applicable to that portion of any loan made by any bank or trust company which is secured or covered by guaranties or by commitments or agreements to take over or purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States.

708.045 [Repealed by 1955 c.310 §2]

708.050 Bad debts; charging off. All debts to any bank or trust company mentioned in ORS 708.005, on which interest is past due and unpaid for a period of 12 months, unless the same are well secured, and are in process of collection, shall be considered bad debts and shall be charged off upon instruction of the Superintendent of Banks, or any duly appointed examiner.

708.055 Insolvency and liquidation; lien of depositors. In the event of insolvency or voluntary or involuntary liquidation of any bank or trust company mentioned in ORS 708.005, the depositors thereof shall have a first, prior and exclusive lien upon all the assets of the bank or trust company. In the distribution of such assets or the proceeds thereof, the same first shall be applied to satisfy the amount due such depositors after the payment of the expenses of liquidation. Such lien of the depositors upon assets which have been pledged or hypothecated in accordance with the provisions of law shall be subject to the lien of those with whom the assets have been pledged or hypothecated.

708.060 Provisions inapplicable to foreign and insured deposit banks. Neither ORS 711.520 nor any other law in conflict with ORS 708.005 to 708.060 applies to banks and trust companies mentioned in ORS 708.005.

708.065 to 708.100 [Reserved for expansion]

RESERVE REQUIREMENTS AND RESERVE BANKS

708.105 Deficiency in reserve; loans, discounts, investments and profit distribution prohibited. Whenever the reserve of any bank or trust company falls below the amount required by law to be maintained, such bank shall not increase its loans and discounts other than the discounting or purchasing of bills of exchange payable at sight or on demand, nor make any investment of its funds or distribution of its profits until the reserve required by law is restored.

708.110 Deficiency in reserve; failure to make good; insolvency proceedings. Whenever the reserve of any bank or trust company is found by the Superintendent of Banks to be less than the amount required by law, the Superintendent of Banks shall notify such bank or trust company to make

good such reserve. If the bank or trust company fails for a period of 30 days to make good the reserve, the bank or trust company may be proceeded against as provided in the Bank Act for insolvency.

708.115 Deposit of reserve funds in approved banks. No bank or trust company shall deposit any of its reserve funds in any other bank or trust company, except a Federal Reserve Bank, unless such other bank or trust company has been approved as a reserve bank by the Superintendent of Banks and by a vote of a majority of the directors of such bank or trust company.

708.120 Reserve bank qualifications. No bank or trust company shall be approved by the Superintendent of Banks as a reserve bank unless it has an unimpaired paid-up capital and surplus of not less than $150,000. Before receiving appointment from the Superintendent of Banks, as a reserve bank, and at any time thereafter, such bank or trust company shall furnish to him such information or statements as he may require, and shall agree to maintain the reserve prescribed by law at all times. The Superintendent of Banks, in his discretion, may reject an application or cancel any such appointment.

708.125 to 708.200 [Reserved for expansion]

BORROWING, REDISCOUNTING AND PLEDGING ASSETS

708.205 Borrowed money and rediscounts; records kept; issuing notes or pledging assets; certificates of deposit. (1) Any bank or trust company borrowing money or rediscounting any of its notes shall at all times show on its books and accounts and in its reports the amount of such borrowed money or rediscounts.

(2) No officer, director or employe of any bank or trust company shall issue the note of the bank or trust company for borrowed money nor rediscount any note nor pledge any of the assets of such bank or trust company, except when authorized by resolution of the board of directors of the bank or trust company previously made and entered upon the minutes of the bank or trust company, under such rules and regulations and in such form as may be prescribed by the Superintendent of Banks. No bank or trust company shall issue its certificate of deposit for the purpose of borrowing money.

708.210 Pledge or hypothecation of assets. No bank or trust company shall pledge or hypothecate any of its assets except as authorized by the Bank Act.

708.215 Rediscounting and selling assets. (1) Any bank or trust company may rediscount or sell any of its assets for temporary purposes, with or without guaranty or indorsement, without any limitation under the terms of this section.

(2) Any bank or trust company may rediscount with and sell to a Federal Reserve Bank any such notes, drafts, bills of exchange, acceptances and other securities, with no restrictions, and as fully and to the same extent as this privilege is given to national bank members under the terms of the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto.

708.220 Limitation on borrowing money and collateral. (1) Any bank or trust company is authorized and empowered for any temporary purpose to borrow money or to borrow money and pledge or hypothecate as collateral security therefor its assets not exceeding 25 percent in excess of the amount borrowed, except that with the previous consent and approval of the Superintendent of Banks such collateral may be pledged up to but in no case to exceed 50 percent in excess of the amount borrowed. Any amount up to but not exceeding the amount of its capital and surplus may be borrowed without the consent of the Superintendent of Banks, but any amount borrowed in excess of the amount of its capital and surplus at such time actually paid in and remaining undiminished by losses or otherwise, must first be approved in writing by the Superintendent of Banks. No excess loan made to any such bank or trust company shall be invalid or illegal as to the lender, even though made without the consent of the Superintendent of Banks.

(2) Any pledge of collateral in excess of the amount permitted by law or to any depositor or creditor not permitted by law, is void as to that portion of the collateral pledged which is excessive or illegal. In case of liquidation such illegal or excessive collateral shall be returned to the Superintendent of Banks upon demand without the prior payment of the debt it was intended to secure, but the creditor or depositor is entitled to retain the collateral which could have been legally pledged.

708.225 Pledge of assets to secure public or trust funds; "public funds" defined. (1) Any bank or trust company may pledge its assets to secure public funds as authorized by the Bank Act, any trust funds awaiting investment or distribution and any trust funds deposited with it by any bank or trust company.

(2) As used in the Bank Act, "public funds" means:

(a) Funds belonging to the State of Oregon which may be deposited to the official credit of the State Treasurer, and funds which may be deposited in an official capacity by any state officer, board or commission.

(b) Funds belonging to any county within this state deposited to the official credit of the county treasurer, including the funds of any irrigation or drainage district duly organized under the laws of this state, or any school district within this state where funds of such school district are deposited with the county treasurer, and funds which may be deposited in an official capacity by any county officer.

(c) Funds belonging to any port, port commission, dock or dock commission, which may be deposited to the credit of such port, port commission, dock or dock commission, or the treasurer thereof.

(d) Funds belonging to any city deposited to the official credit of the city treasurer and funds which may be deposited in an official capacity by any officer of any municipal corporation.

(e) Funds belonging to any school district within the State of Oregon.

(f) Postal savings funds or funds belonging to the United States to be deposited in such manner and under such rules and regulations as may be prescribed by the United States Government.

708.230 Securing deposits by surety bond or insurance. (1) Any bank or trust company may secure any of the funds deposited with such bank or trust company by giving a surety bond or policy of insurance under which some person, partnership or corporation other than the bank or trust company becomes liable for such deposits; provided, the aggregate amount of such bonds or policies of insurance shall at no time exceed 20 percent of the capital of the bank or trust company.

(2) This section does not prevent a depositor from insuring any deposit if the bank or trust company is not a party to such insurance and does not pay any premium or other charges in connection therewith.

708.235 Security by both assets and bond; prorating. When any public funds or trust funds are secured by both assets of a bank or trust company and a bond of a surety company, such assets and bond shall each be held as security for a ratable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

708.240 Liability of custodian for securities pledged; expense of insurance. (1) The State Treasurer, county treasurer or any public officer having and holding in their possession or custody any public funds as defined by ORS 708.225, and the State of Oregon, the counties of the State of Oregon and all public and quasi-public corporations referred to in ORS 708.225, shall be jointly and severally liable for the return of any funds or securities pledged in accordance with ORS 708.225 to 708.240. For failure to promptly return any such funds or securities to the bank or trust company entitled thereto when all the conditions attending the pledging thereof have been fully complied with, such bank or trust company shall have its appropriate remedy by suit or action against such officials, the State of Oregon, counties of the State of Oregon and such public and quasi-public corporations, as provided by law.

(2) Nothing in ORS 708.225 to 708.240 means that the depositary bank is relieved from paying the expenses of any insurance covering funds or securities pledged.

708.245 Pledge of assets by certain individuals. No officer, director, employe, stockholder or agent of any bank or trust company shall pledge the assets of any bank or trust company to secure any funds deposited with such bank or trust company, or for any other purpose, except as provided in the Bank Act.

708.250 "Capital debentures" defined for ORS 708.255 to 708.270. As used in ORS 708.255 to 708.270, "capital debentures" means and includes capital notes, capital debentures and any other form of unsecured obligations, issued by any bank or trust company to evidence borrowings from the Reconstruction Finance Corporation, or any

other agency of the United States, or borrowings made pursuant to any Act of Congress, where the rights of the lender are in all respects subordinate to the rights of depositors.

708.255 Borrowing from federal agencies or pursuant to federal statute. Any bank or trust company organized under the laws of this state may borrow money from the Reconstruction Finance Corporation, or any other agency of the United States, or pursuant to any Act of Congress, and issue its capital debentures to evidence such borrowings. Such borrowings shall be in such amounts and on such terms as may be approved by the Superintendent of Banks and authorized by the board of directors of the borrowing bank or trust company. No approval of or consent by stockholders shall be necessary or required in connection with any such borrowings.

708.260 Use of funds borrowed; sources for repayment. (1) The funds borrowed as provided in ORS 708.255 may be used for any proper purpose approved by the Superintendent of Banks. The rights of the lender shall be subordinate in all respects to the rights of depositors of the bank or trust company.

(2) Except in cases where the borrowing bank or trust company goes into liquidation, such borrowings and interest thereon are enforceable only against such sources and funds, and in such manner as shall be approved by the Superintendent of Banks and the board of directors of the bank or trust company, at the time of the borrowing. In the event of liquidation, such borrowings shall be a charge on and payable out of assets remaining after depositors and other prior claims and the expenses of liquidation have been paid.

708.265 Additional borrowing from other sources; instruments evidencing indebtedness; sources for repayment. (1) In addition to the borrowings authorized by ORS 708.255 and 708.260, any such bank or trust company may borrow other funds from any source available for any proper purpose approved by the Superintendent of Banks. Such borrowings shall be on such terms and in such amounts as may be approved by the Superintendent of Banks and authorized by the board of directors of such banks or trust company and are to be known as "capital borrowings."

(2) To evidence such indebtedness the bank or trust company may execute and deliver such instruments as it may decide upon, the rights and priorities of such lenders to be fixed by the evidence of indebtedness issued at the time of such borrowings, provided the rights of the lenders are in all respects subordinate to the rights of the depositors.

(3) Except in cases where the borrowing bank or trust company goes into liquidation, such borrowings and interest thereon are enforceable only against such sources and funds, and in such manner as shall be approved by the Superintendent of Banks and the board of directors of the bank or trust company, at the time of the borrowing. In the event of liquidation, such borrowings shall be a charge on and payable out of assets remaining after depositors and other prior claims and the expenses of liquidation have been paid.

708.270 Capital debentures previously issued ratified. Nothing contained in ORS 708.250 to 708.275 invalidates any capital debentures issued prior to December 15, 1933, by any bank or trust company if the same substantially comply with ORS 708.250 to 708.275. The validity of all such capital debentures is expressly declared and ratified.

708.275 Existing powers to borrow or secure not affected. Nothing contained in ORS 708.250 to 708.275 affects in any manner existing powers and rights of any bank or trust company to borrow money or give security therefor.

708.280 to 708.300 [Reserved for expansion]

LOANS AND INVESTMENTS

708.305 Loans by and obligations to banks; limitation on amount; "obligation" defined. (1) The total obligations to any bank or trust company of any person, copartnership, association or corporation shall at no time exceed 10 percent of the aggregate paid-up and unimpaired capital and surplus of such bank or trust company, subject to the exceptions set forth in ORS 708.310 to 708.370. Any loan made under any of such exceptions shall be in addition to the 10 percent loan limitation.

(2) The limitations of this section shall not apply to letters of credit or bankers' acceptances provided for in ORS 708.380 or to time or demand deposits in approved reserve

banks or other banks or trust companies operating in this state.

(3) The term "obligations" includes the direct liability of the maker or acceptor of paper discounted with or sold to such bank or trust company, the liability of the drawer, indorser, assignor or guarantor and, in case of obligations of a copartnership or association, the obligations of the several members thereof and, in case of obligations of a corporation, the obligations of all subsidiaries of the corporation in which the corporation owns or controls a majority interest. Obligations negotiated in another name for the benefit or use of any person, copartnership, association or corporation shall be included in the obligations of such person, copartnership, association or corporation.

[Amended by 1955 c 310 §1]

708.310 Obligations of indorser of discounted commercial paper. Obligations as indorser arising out of the discount of commercial or business paper actually owned by the person, copartnership, association or corporation negotiating the same are not subject under ORS 708.305 to any limitation based upon such capital and surplus. Commercial or business paper exempted from the 10 percent limitation in this section means negotiable notes, drafts, acceptances or bills of exchange having a maturity of not more than six months, which have been given by one person, copartnership, association or corporation to another in settlement of a commercial or business transaction involving the purchase of goods, and upon which both parties to the transaction are liable either as maker, drawer, acceptor or indorser.

708.315 Obligations secured by shipping documents. Obligations drawn in good faith against actually existing values and secured by shipping documents, conveying or securing title to goods or commodities in process of shipment are not subject under ORS 708.305 to any limitation based upon such capital and surplus.

708.320 Noncommercial short-term notes. Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under ORS 708.310, having a maturity of not more than six months, and owned by the person, corporation, association or copartnership indorsing and negotiating the same, are subject under ORS 708.305 to a limitation of 15 percent of such capital and surplus.

708.325 Contracts for conditional sale of commodities. Obligations as indorser, assignor or guarantor of conditional sale contracts actually owned by the person, copartnership, association or corporation indorsing, assigning or guaranteeing the same, which arise out of the sale of commodities and conform to the rules and regulations prescribed by the Superintendent of Banks, are subject to a limitation of 20 percent of the capital and surplus.

708.330 Bankers' acceptances of other banks. Obligations in the form of bankers' acceptances of other banks of the kind described in section 13 of the Federal Reserve Act are not subject under ORS 708.305 to any limitation based upon such capital and surplus.

708.335 Obligations secured by documents covering insured staples. (1) Obligations of any person, copartnership, association or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, issued by an adequately bonded warehouse, or other such documents transferring or securing title covering readily marketable, nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, are subject under ORS 708.305:

(a) To a limitation of 15 percent of such capital and surplus when the market value of the staples securing the obligation is not at any time less than 115 percent of the face amount of the obligation.

(b) To a limitation of 20 percent of such capital and surplus when the market value of the staples securing the additional obligation is not at any time less than 120 percent of the face amount of such additional obligation.

(c) To a limitation of 25 percent of such capital and surplus when the market value of the staples securing the additional obligation is not at any time less than 125 percent of the face amount of the additional obligation.

(d) To a limitation of 30 percent of such capital and surplus when the market value of the staples securing the additional obligation is not at any time less than 130 percent of the face amount of the additional obligation.

(e) To a limitation of 35 percent of such capital and surplus when the market value of the staples securing the additional obligation

is not at any time less than 135 percent of the face amount of the additional obligation.

(f) To a limitation of 40 percent of such capital and surplus when the market value of the staples securing the additional obligation is not at any time less than 140 percent of the face amount of the additional obligation.

(2) This section does not apply to obligations of one person, copartnership, association or corporation arising from the same transactions or secured upon the identical staples for more than 10 months.

708.340 Obligations secured by documents covering livestock. Obligations of any person, copartnership, association or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 125 percent of the face amount of the notes covered by such documents are subject under ORS 708.305 to a limitation of 15 percent of such capital and surplus. Turkeys are considered as livestock within the meaning of this section.

708.345 Notes secured by interest-bearing obligations of United States, state and political subdivisions. Obligations of any person, copartnership, association or corporation in the form of notes secured by interest-bearing obligations of the United States, this state, or any county, incorporated city, town or port or school district of this state, issued in compliance with law, and which have not defaulted in the payment of either principal or interest thereof within five years next preceding the date of the investment, where the amount of the security is not at any time less than 110 percent of the face amount of such loans, are not subject under ORS 708.305 to any limitation based upon such capital and surplus.

708.350 Interest-bearing obligations of United States, state and political subdivisions. Interest-bearing obligations of the United States, this state, or any county, incorporated city, town or port or school district of this state, issued in compliance with law, and which have not defaulted in the payment of either principal or interest thereof within five years next preceding the date of the investment, are not subject under ORS 708.305 to any limitation based upon such capital and surplus.

708.355 Demand notes secured by deposit account assignment. Obligations of any person, copartnership, association or corporation in the form of notes payable upon demand are not subject to any limitation when fully secured by a bona fide assignment of a deposit account subject to time restrictions, provided such deposit account is fully insured, guaranteed or underwritten by the United States Government or any agency or instrumentality of the United States by virtue of any Acts of Congress or amendments thereto, and provided the time restrictions to which such deposit account is subject are not in excess of six months.

708.360 Notes secured by life insurance policy assignment. Obligations of any person, copartnership, association or corporation in the form of notes secured by a bona fide assignment of a life insurance policy or policies having a cash surrender value of not less than 100 percent of the amount of the obligations, plus an amount equal to one annual premium on the insurance policy or policies, are subject under ORS 708.305 to a limitation of 10 percent of such capital and surplus.

708.365 Notes secured by first lien on real estate. Subject to the limitations of ORS 708.030, obligations of any person, copartnership, association or corporation in the form of notes secured by a first lien on real estate are subject under this exception to a limitation of 10 percent of such capital and surplus.

708.370 Loans guaranteed by Federal Reserve Bank, United States or instrumentality. The limitations provided by law as to amount or security upon obligations to any bank or trust company of any person, copartnership, association or corporation are not applicable to that portion of any loan made by any bank or trust company which is secured or covered by guaranties, or by commitments or agreements to take over or purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States.

708.375 Obligations as additional security. Notwithstanding the limitation on obligations otherwise provided by law, any bank or trust company, with the written permission of the Superintendent of Banks, may permit any person, copartnership, association or corporation to become obligated to it for any amount for the purpose of providing additional security to any obligations previously contracted in good faith. Thereafter such obligation shall be considered the same as a direct obligation as maker in determining whether or not any additional loans may be made to such person, copartnership, association or corporation.

708.380 Acceptance of drafts and bills of exchange; issuance of letters of credit. (1) Any bank or trust company may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods, or which grow out of transactions involving the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(2) No bank or trust company shall accept drafts or bills of exchange or issue letters of credit, whether in a foreign or domestic transaction, for any one person, company, firm or corporation to an amount equal at any one time in the aggregate to more than 20 percent of its paid-up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance of letter of credit.

(3) No bank or trust company shall accept bills to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital and surplus. The aggregate of acceptances growing out of domestic transactions shall in no event exceed 50 percent of its capital stock and surplus.

(4) No bank shall issue letters of credit to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus.

(5) Any bank or trust company may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, drawn under the regulations to be prescribed by the Superintendent of Banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange, as required by the usages of trade in the respective countries, dependencies or insular possessions, but no bank or trust company shall accept such drafts or bills of exchange for any one bank to any amount exceeding in the aggregate 20 percent of the paid-up and unimpaired capital and surplus of the accepting bank, unless the draft or bill of exchange is accompanied by documents conveying or securing the title or by some other adequate security; provided further, that no bank or trust company shall accept such drafts or bills of exchange in an amount exceeding at any time the aggregate of its paid-up and unimpaired capital and surplus.

(6) None of the regulations or restrictions contained in this section shall apply to loans, discounts or other extensions of credit secured by liberty bonds or by other bonds or securities issued by the United States Government, if the market value of such liberty bonds or other securities exceeds by 10 percent the amount of any such loan, discount or other extension of credit.

708.385 Investments; valuation; entry on books. All investments made by any bank or trust company shall be charged or entered on the books of the bank or trust company in a sum not to exceed their cost to such bank or trust company.

708.390 Notes or bonds secured by mortgage insurance and mortgage participation certificates. Any savings bank may purchase, own, hold, transfer, assign and convey notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company in accordance with ORS chapter 746.

708.395 Real and personal property, right to purchase, hold and dispose of. Any corporation doing a banking or trust business in this state under the Bank Act, may purchase, hold, convey, sell or lease real or personal property for the following purposes, and no others:

(1) The lots and buildings in which the business of the bank or trust company is

carried on, including, with its banking offices, other apartments in the same building to rent as a source of income.

(2) Furniture and fixtures, vaults and safe deposit vaults and boxes and other personal property as may be necessary to carry on the business of such bank or trust company.

(3) Real or personal property purchased by or conveyed to such bank or trust company in satisfaction of or on account of debts previously contracted in the course of its business.

(4) Real estate purchased at execution sale or decree under securities held by such bank or trust company.

(5) Real estate conveyed to such bank or trust company in connection with its purchase of a bona fide contract of sale covering the real estate so conveyed.

708.400 Restrictions on real and personal property used in business. (1) Real estate, furniture, fixtures and safe deposit vaults and boxes mentioned in subsections (1) and (2) of ORS 708.395 shall not in the aggregate be carried on the books of the bank or trust company as an asset to an amount exceeding 50 percent of its paid-up capital and surplus. No bank or trust company shall invest over 25 percent of its paid-up capital and surplus in furniture and fixtures.

(2) Any bank or trust company which is carrying such real estate and furniture and fixtures as an asset in an amount exceeding 50 percent of its capital and surplus on March 3, 1933, may continue to so carry such property, but shall charge off such reasonable sum as from time to time may be determined by the Superintendent of Banks.

(3) After May 28, 1925, the authority of a two-thirds vote of all directors is necessary to authorize the purchase of any lot and building mentioned in subsection (1) of ORS 708.395, or the construction of any such building.

(4) Whenever such bank or trust company ceases to use such real estate and improvements thereon as its place of business, it shall sell the same or reduce its book value, as required in ORS 708.410.

708.405 Removal of unauthorized real estate from assets. Any bank or trust company acquiring any real estate after May 28, 1925, in any manner other than provided by ORS 708.395 and 708.400 shall immediately, upon receiving notice from the Superintendent of Banks, charge the same to profit and loss or otherwise remove the same from the assets. When such loss impairs the capital of the bank or trust company the impairment shall be made good in the manner provided in the Bank Act.

708.410 Reduction of book value and disposition of real property. (1) Real estate acquired under subsections (3) and (4) of ORS 708.395 shall be sold within five years after title thereto is acquired, as provided in this section.

(2) All real estate purchased by any bank or trust company at sales under pledges, mortgages or deeds of trust for its benefit for money loaned and all real estate conveyed to it by borrowers in satisfaction and discharge of loans made thereon and all other real estate owned or held by it, except as provided in ORS 708.395 to 708.405, must be:

(a) Reduced in book value not less than 10 percent within two years after title is acquired, and in addition thereto not less than 20 percent within three years after title is acquired, and in addition thereto not less than 20 percent within four years after title is acquired, unless such time is extended by the Superintendent of Banks.

(b) Sold or exchanged for other real estate by such bank or trust company within five years after title thereto has vested in it by purchase or otherwise, or within such time as may be extended by the Superintendent of Banks. However, no exchange of such real estate for other real estate shall be made unless and until written consent has been given by the Superintendent of Banks. Any real estate so taken in exchange may be held for such period of time as the Superintendent of Banks may fix, but not to exceed five years.

708.415 When title deemed vested. For the purpose of ORS 708.395 to 708.420, title is deemed to be vested in a bank or trust company on the date such bank or trust company first had title either by deed direct or by deed or conveyance to any other person, copartnership, association or corporation for the benefit of such bank or trust company, or on the date when entitled to have a deed under sheriff's certificate of sale. Deeds or conveyances held in good faith as security for loans are not included in the deeds mentioned in this section.

708.420 Unsold real estate not carried as asset. If any real estate is not sold within the time prescribed by ORS 708.410, it shall not thereafter be carried as an asset of the bank or trust company. This section does not apply to real estate purchased with funds other than the capital and resources of such bank or trust company, nor to any real estate held in trust.

708.425 Undivided interest in real estate, loans on. No bank or trust company shall make any loan secured by an undivided interest in real estate, but a lien may be taken on an undivided interest in real estate to secure a debt previously contracted in good faith.

708.430 Stock of other or subsidiary corporations, investment in. (1) After May 28, 1925, no bank or trust company shall invest any of its assets in the capital stock of any other corporation except as follows:

(a) In the capital stock of the Federal Reserve Bank.

(b) In such stock as it may acquire or purchase to save a loss on a pre-existing debt. Such stock shall be sold, however, within 12 months of the date acquired or purchased, or within such further time as may be granted by the Superintendent of Banks.

(c) In the capital stock of any safe deposit company organized and existing under the laws of this state and doing an exclusive safe deposit business on premises owned or leased by the bank or trust company, if the purchasing and holding of such stock is first duly authorized by resolution of the board of directors of the bank or trust company and by the written approval of the Superintendent of Banks, stating the number and amount of the shares which the bank or trust company may purchase and hold, and if the Superintendent of Banks is given unrestricted examination into the assets, accounts and affairs of such safe deposit company.

(d) In the capital stock of agricultural and livestock finance companies to the same extent, in the same manner and subject to the same limitations as national banks are authorized, and subject to the approval of the Superintendent of Banks.

(e) In the capital stock, eligible for purchase by national banks, of small business investment companies, but the aggregate investment in such stock shall not exceed one percent of the capital and surplus of the bank or trust company.

(f) In the shares of a state development credit corporation formed under ORS chapter 63, but the aggregate investment in such shares shall not exceed one percent of the capital and surplus of the bank or trust company.

(g) In the common stock of the Federal National Mortgage Association, but the investment in such stock shall not exceed the minimum required for the sale of mortgages to the association by the laws creating the association and the rules and regulations pertaining thereto.

(h) In the case of the trust companies only, in the capital stock of a subsidiary investment company to an amount not to exceed 20 percent of the paid-in capital and surplus of such trust company, provided such investment is first approved by the Superintendent of Banks. The right given in this subsection is strictly limited to trust companies not engaged in a general banking business.

(2) Any bank or trust company may acquire or, if already acquired, may continue to hold the fully paid stock of a subsidiary corporation, one of the purposes of which is to assist the bank or trust company in handling real estate, claims, judgments or other assets or in holding title to such assets, provided the bank is the owner of all the common stock of the subsidiary corporation, except qualifying shares of directors, and provided such stock is carried on the books of the bank at a value not exceeding $1. [Amended by 1959 c 107 §1, 1959 c 660 §18, 1961 c 97 §1]

708.435 Acquisition of own stock prohibited; exception. No state bank or trust company shall accept as collateral or be the purchaser of its own capital stock, except in cases where the taking of such collateral or such purchase is necessary to prevent loss upon an indebtedness previously contracted in good faith, in which case, unless full payment of the indebtedness is made, such stock shall be sold by such bank or trust company within six months from the date it was received as collateral or acquired by purchase.

708.440 Loans on stocks of other banks, trust companies or corporations. (1) No bank or trust company shall make a loan secured by the stock of another bank or trust company, if by making the loan the

total stock of the other bank or trust company held by the loaning bank or trust company as collateral will exceed in the aggregate 25 percent of the capital stock of the other bank or trust company. No loan upon the capital stock of any bank or trust company shall be made unless such bank or trust company has been in existence at least two years and has earned and paid a dividend upon its capital stock.

(2) No bank or trust company shall loan more than five percent of its total resources upon the capital stock of any one corporation whatsoever as collateral security.

708.445 Dealing in chattels or manufacturing prohibited; sale of property acquired in satisfaction of indebtedness. No state bank or trust company shall employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial or manufacturing plants of any kind. It may, however, sell all kinds of property which may came into its possession as security for loans or in the ordinary collection of debts, but goods or chattels so coming into the possession of any bank or trust company shall be disposed of as soon as possible and shall not be considered a part of the assets of the bank or trust company after the expiration of six months from the date of acquiring same.

708.450 Investment in title plant by trust companies. Trust companies, not doing a banking business under the provisions of the Bank Act, and conducting a title business, may invest an amount not to exceed one-half of its capital stock and surplus in a title plant as a part of its assets, except that whenever any trust company ceases to use such title plant in its business it shall, within six months thereof, sell the same or cease to carry it as an asset.

708.455 Claims and judgments, carrying as assets. Claims against the estates of deceased or incompetent persons or against the estates of insolvent persons, copartnerships, associations or corporations and judgments against any person, copartnership, association or corporation shall not be carried as an asset upon the books of any bank or trust company for a longer period than two years, unless a written extension of time is granted by the Superintendent of Banks; provided, duly authorized loans made to the executor, administrator, guardian or trustee of any estate shall not be so limited.

708.460 Loans to officers, directors, employes and companies controlled by them. Unless the written consent of the Superintendent of Banks has been obtained, no bank or trust company shall loan, directly or indirectly, to any director, officer or employe thereof, and no director, officer or employe thereof shall borrow from the bank or trust company any of its funds, except subject to the following requirements:

(1) The combined obligations of directors, officers and employes of the bank or trust company shall not exceed 50 percent of its paid-up capital and surplus.

(2) The obligations of any employe or of any officer actively engaged in the management of any bank or trust company shall not exceed five percent of the paid-up capital and surplus of the corporation.

(3) The obligations to the bank or trust company of any officer who is actively engaged in the management of the bank or trust company, or of any employe, must be fully secured by good collateral.

(4) Every officer, director or employe of any bank or trust company who desires to borrow money shall make application in writing to the board of directors of the bank or trust company or to the executive or finance committee of the board of directors for any such loan, stating the line of credit, terms and security offered. Such application shall be approved in writing by a majority of the board of directors or of the executive or finance committee before any such loan shall be made. Any copartnership, association or corporation in which an officer, director or employe of the bank or trust company is a partner, officer or director, or in which the aggregate stock owned or controlled by any one or more than one of the officers, directors or employes of the bank or trust company is 20 percent or more of its outstanding capital shall likewise make application in writing before any such loan shall be made. Such application shall be approved the same as for a loan to an officer, director or employe. Obligations negotiated in another name for the benefit or use of any person, copartnership, association or corporation shall be included in the obligations of such persons, copartnership, association or corporation. The approval of

any such loan by the board of directors or the executive or finance committee shall be made a part of the minutes of the next directors' meeting of such bank or trust company.

708.465 Obligations secured by first lien on real estate, when not included in total of borrower's obligation. Obligations secured by a first lien on real estate and upon which there is no default in either principal or interest and which are not in excess of 50 percent of the valuation of the real estate, as provided by law, shall not be included with other obligations of the maker for the purpose of determining the total amount which may be loaned to such maker if title to the real estate has, in good faith, passed to another and the original maker of the note is no longer either directly or through some other person, copartnership, association or corporation the owner of the real estate and if the bank or trust company looks to the owner of the real estate rather than the maker of the obligation for payment.

708.470 Negligent, excessive and dishonest loans; civil liability of officer, director or employe. Any officer, director or employe of any bank or trust company who knowingly or negligently loans the funds of the bank or trust company in a dishonest manner or contrary to the provisions of law, or who knowingly or negligently permits the funds of such bank to be so loaned, shall be held liable in his personal and individual capacity for the full amount of the loan and for all damages which the bank or trust company, its stockholders or any other person has sustained in consequence thereof. The liability for the amount of any such loan shall continue until the loan, together with interest, is paid in full without loss to the bank or trust company. The amount of such liability may be collected from such officer, director or employe by suit or action without first attempting to collect from the debtor.

708.475 Concurrence by director in illegal loan; concealment of loans by officers, directors or employes. (1) No director of any bank or trust company organized under the laws of this state shall concur in any vote or act of the directors of the bank or trust company, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed under the Bank Act.

(2) No officer, director or employe of any bank or trust company organized under the laws of this state shall intentionally conceal from the officers or directors of the bank or trust company any discounts or loans made by it between the regular meetings of its board of directors, or the purchase of any securities or the sale of its securities during the same period, or knowingly fail to report to the board of directors when required to do so by law all discounts or loans made by it and all securities purchased by it between the regular meetings of its board of directors.

708.480 Maximum interest rates on loans by banks. Notwithstanding ORS chapter 82, any state or national bank authorized to do business in this state may contract for and receive for a loan or use of money:

(1) On any loan payable in approximately equal instalments, interest at a rate not exceeding 10 percent per annum, or, in lieu of interest on that part of the original principal amount of the loan not exceeding $500, a charge at a rate not exceeding $8 per annum per $100 of the original principal amount of the loan not exceeding $500. If any such instalment loan providing for charges in excess of interest at 10 percent per annum is repaid before maturity, except as provided in subsection (3) of this section, the unearned portion of such charges shall be refunded to the borrower. Any instalment not paid at maturity may bear interest from the date of maturity at a rate not exceeding 10 percent per annum.

(2) On any loan not payable in approximately equal instalments, interest at a rate not exceeding 10 percent per annum.

(3) On any loan, not in renewal or extension of a prior loan, the interest to maturity of which does not exceed $3, a charge not exceeding $3 in lieu of interest to maturity. The payment of any loan before maturity does not entitle the borrower to a refund by which interest or charges are reduced to less than $5

[1953 c 388 §1]

708.485 to 708.500 [Reserved for expansion]

DEPOSITS AND WITHDRAWALS

708.505 Minor's deposits. When any deposit is made by or in the name of any

minor, the same shall be held for the exclusive right and benefit of the minor and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon, to the person in whose name the deposit has been made. The receipt or acquittance of such minor shall be valid and sufficient release and discharge to the bank or trust company for the deposit or any part thereof.

708.510 Trust deposits. When any deposit is made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust are given in writing to the bank or trust company, in the event of the death of the trustee, the deposit or any part thereof, together with the interest thereon, may be paid to the person for whom the deposit was made.

708.515 Joint deposits. When a deposit is made in any bank or trust company in the name of two or more persons, payable to any of such persons, such deposit or any part thereof, or any interest, or dividend thereon, may be paid to any of such persons, whether the other be living or not. The receipt or acquittance of the person so paid shall be valid and sufficient release and discharge of such corporation for any payment so made.

708.520 Disposition of deposit on death intestate of depositor. (1) On the death intestate of any depositor of any bank or trust company, such bank or trust company may pay, if such depositor was married, to the surviving spouse, or if there is no surviving spouse, to the surviving children of lawful age, or if the depositor left no surviving spouse or children, to his or her surviving parent or parents, or if there is no surviving spouse, surviving child or surviving parent, to the depositor's surviving brothers and sisters of lawful age, the moneys on deposit to the credit of the deceased depositor in cases where the amount of deposit does not exceed $1,000, upon receipt of an affidavit from the surviving spouse, or if there be no surviving spouse, from the surviving children of lawful age, or if the depositor left no surviving spouse or children, an affidavit from his surviving parent or parents, or if there be no surviving parent or parents, an affidavit from such depositor's surviving brothers and sisters that the depositor died intestate and had on deposit in all banks and trust companies within the State of Oregon money not exceeding $1,000.

(2) The affidavit shall show the relationship of the affiant or affiants to the deceased depositor and shall embody a promise to pay the expenses of last sickness and funeral expenses and just debts of the deceased out of the deposit to the full extent thereof if necessary.

(3) The bank or trust company shall be obligated to determine the relationship of the affiant or affiants to the deceased depositor.

(4) No probate proceeding is necessary to establish the right of the surviving spouse or surviving children or surviving brothers and sisters to withdraw the deposits upon the filing of an affidavit as in this section provided. However, whenever an administrator is appointed in an estate where a withdrawal of deposits has been had in compliance with the Bank Act, the person so withdrawing the deposits shall account for them to the administrator.

(5) The penalty provided in ORS 116.990 does not apply to transactions had under this section.

708.525 Adverse claim to deposit; notice; restraining order or other process; indemnity bond. (1) Notice to any bank or trust company doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person is not effectual to cause such bank to recognize the adverse claimant unless the adverse claimant also either:

(a) Procures a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons, or

(b) Executes to the bank or trust company, in form and with sureties acceptable to it, a bond indemnifying the bank or trust company from any and all liability, loss, damage, costs and expenses for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank or trust company.

(2) This section does not apply in any instance where the person to whose credit

the deposit stands is a fiduciary for the adverse claimant, and the facts constituting such relationship, as also the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant.

708.530 Checks drawn by agents in authorized manner. Whenever any person, firm or corporation, being the owner of any deposit account subject to check in any bank or trust company, authorizes any person as agent or officer of such person, firm or corporation to draw checks on the bank against the account, the bank or trust company, in the absence of written notice to the contrary, shall be justified in presuming that any check drawn by the agent or officer in the form or manner authorized by the principal, including checks drawn to personal order of agent or officer, was drawn for a purpose authorized by the principal and within the scope of the authority conferred upon the agent or officer.

708.535 Checks of intoxicated or drugged persons. It is lawful for any bank or trust company to refuse to pay any check, draft or order drawn upon it when the officers of the bank or trust company have reason to believe that the person signing or indorsing the instrument is or was so under the influence of liquor or drug as to make it reasonably doubtful whether such person is or was at the time of signing or indorsing such check, draft or order capable of transacting business. No damages shall be awarded in any action against the bank or trust company or its officers for refusing in good faith to pay any such check, draft or order for such reason.

708.540 Stop payment orders; duration and effect. (1) No revocation, countermand or stop payment order relating to the payment of any check or draft against an account of a depositor in any bank or trust company shall remain in effect for more than six months after the service thereof on the bank or trust company, unless the same is renewed in writing. Renewals shall be in effect for not more than 90 days from date of service thereof on the bank or trust company, but renewals may be made from time to time.

(2) Any bank which in good faith acts upon a revocation, countermand or stop payment order, whether verbal or written, shall be protected in so doing against the drawer of the check or other parties.

708.545 Payment of forged and raised checks; delay in presenting checks for payment. (1) No bank or trust company which has paid and charged to the account of a depositor a forged or raised check issued in the name of the depositor, shall be liable to the depositor for the amount paid thereon, unless within 30 days after the return to the depositor of the voucher representing such payment, the depositor notifies the bank or trust company that the check so paid is forged or raised. Furthermore, if the depositor fails to call at the bank for the purpose of securing the return of the voucher within three months from the date on which the check is paid, the bank shall be under no further liability on account of such payment.

(2) Where a check or other instrument payable on demand at any bank or trust company doing business in this state is presented for payment more than six months from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment.

708.550 Nonpayment of check through error. No bank or trust company shall be liable to a depositor because of nonpayment through mistake or error and without malice of a check which should have been paid, unless the depositor alleges and proves actual damage by reason of such nonpayment, and in such event the liability shall not exceed the amount of damage so proved.

708.555 Certified checks. (1) No owner, officer, director, stockholder, agent, clerk or employe of any bank or trust company shall certify to a check unless the amount thereof actually stands to the credit of the drawer on the books of the bank or trust company.

(2) The amount of any check certified shall be at once charged to the drawer's account, there to remain until the certified check is paid or retired.

(3) Where a check is certified by the bank or trust company on which it is drawn, the certification is an engagement to pay according to the tenor of the check as drawn by the drawer, except as it may be expressly qualified by the certifying bank, and is an

admission by the certifying bank only of the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the check.

(4) Certification of a check or other negotiable instrument which has been materially altered in body or indorsement in any respect after issuance by the drawer or maker shall impose no liability upon the certifying bank or trust company, except that in the hands of a holder in due course payment may be enforced according to the original tenor of the instrument.

708.560 to 708.600 [Reserved for expansion]

SUSPENSION OR RESTRICTION OF PAYMENT OF BANK'S LIABILITIES

708.605 Suspending or restricting payment of liabilities; duration. (1) The State Banking Board, whenever it is of the opinion that such action is necessary for the protection of the interests of the depositors and other creditors of any bank or trust company and is in the public interest, may, through the Superintendent of Banks, order such bank or trust company forthwith to suspend or restrict the payment in any manner of its liabilities to depositors and other creditors except as provided in ORS 708.605 to 708.640.

(2) Such order of the State Banking Board shall become effective upon receipt by the bank or trust company of written or telegraphic notice thereof signed by the Superintendent of Banks and shall continue in full force and effect until released or modified by order of the State Banking Board in writing. In no event shall the suspension and restriction exceed a period of 90 days, but such suspension and restriction and the possession mentioned in ORS 708.610 by the Superintendent of Banks may be extended for further periods not to exceed 90 days each upon the written order of the State Banking Board.

708.610 Taking possession of bank by superintendent; powers of superintendent; expenses. (1) Immediately upon the taking effect of the order mentioned in ORS 708.605, the Superintendent of Banks shall take possession of the books, records and assets of every description of the bank or trust company, and take such action as may be necessary to conserve the assets of the bank or trust company pending further disposition of its business as provided by law.

(2) The Superintendent of Banks while so in possession shall have all the rights, powers and privileges given to the Superintendent of Banks in connection with insolvent banks or trust companies. During the time the Superintendent of Banks remains in the possession of the bank or trust company the rights of all parties with respect thereto shall, subject to the other provisions of ORS 708.605 to 708.660, be the same as if the Superintendent of Banks had taken possession of the bank or trust company because of insolvency.

(3) All orders, rules, regulations and actions of the State Banking Board under ORS 708.605 to 708.660 shall be carried out through the Superintendent of Banks.

(4) All expenses of the Superintendent of Banks while so in possession of the bank or trust company and its assets and properties shall be paid out of the assets of such bank or trust company and shall be a lien thereon prior to any other lien.

708.615 Pro rata withdrawals by depositors. While the bank or trust company is in the hands of the Superintendent of Banks under ORS 708.610, he may set aside and make available for withdrawal by depositors on a ratable basis such amounts as in his opinion may safely be used for such purpose.

708.620 Receiving new deposits; segregation. (1) The State Banking Board may, in its discretion, permit the Superintendent of Banks to receive deposits. Deposits so received while the bank or trust company is in the hands of the Superintendent of Banks under ORS 708.610 shall not be subject to any limitation as to payment or withdrawal.

(2) Such deposits, together with such pro rata or limited amounts as shall be released for payment to depositors as provided in ORS 708.615, shall be segregated and held and used solely to meet such deposit liability and such pro rata or limited amount so released and shall not be used to liquidate any indebtedness of the bank or trust company existing at the time the Superintendent of Banks took possession, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank or trust company existing at the time the Superintendent of Banks took possession.

(3) Such deposits received while the bank or trust company is in the hands of the Superintendent of Banks shall be kept on

hand in cash, invested in direct obligations of the United States or deposited with an approved reserve bank.

708.625 Termination of suspension or restriction. The State Banking Board may, by order, provide that after a date fixed by such order, which date shall be at least 10 days subsequent to the date of the order, the suspension or restriction on payment of liabilities of the bank or trust company designated in the order shall cease. Immediately upon the termination of the suspension or restriction on payment of liabilities of the bank or trust company designated in such order, the Superintendent of Banks shall surrender possession of the assets and properties of the bank or trust company to the proper officers thereof. The receipt of such officers operates as a full release of the Superintendent of Banks.

708.630 Notice of termination of suspension or restriction order. (1) At least 10 days before the date on which the suspension or restriction on the payment of liabilities is terminated, the Superintendent of Banks shall cause a notice to be published in a newspaper in the city, town or county in which the bank or trust company is located, and if no newspaper is published in such city, town or county, then in a newspaper to be selected by the Superintendent of Banks and published in the State of Oregon. Only one publication of such notice shall be required.

(2) Such notice shall specify:

(a) The date on which the suspension or restriction on the payment of liabilities will be removed;

(b) That the provisions of ORS 708.620 pertaining to the segregation of deposits will not be effective after such date; and

(c) That the segregated deposits after the removal of the restriction or suspension will be general deposits.

(3) On or before the date of the publication of such notice, the Superintendent of Banks shall mail, postage prepaid, to each depositor in the bank or trust company whose deposit has been segregated as provided by ORS 708.620 a copy of such notice addressed to the last known address of each such depositor as shown by the records of the bank or trust company.

(4) The Superintendent of Banks shall hand a copy of such notice to every depositor making a deposit in the bank or trust company after the date of such newspaper publication and up to the time when the suspension or restriction on the payment of liabilities of the bank or trust company is removed.

708.635 Deposits to remain segregated until termination notice has been given. Whenever the State Banking Board, by order, removes the restrictions or suspensions on the payment of liabilities of any bank or trust company, and the Superintendent of Banks surrenders possession of the assets and properties of the bank or trust company to the proper officers thereof, before the 10 days' notice provided for by ORS 708.630 has been given, the bank or trust company must keep deposits segregated under ORS 708.620 separate and apart from its other assets until such notice has been given by the bank or trust company in the manner provided in ORS 708.630. After such notice has been given, such segregated deposits shall become general deposits and may be mingled with the other assets of the bank or trust company and the provisions of ORS 708.620 with respect to segregation of deposits shall no longer be in effect.

708.640 Use of suspended deposits to pay indebtedness of depositor. Nothing in ORS 708.605 to 708.660 prevents the assignment of any suspended deposit liability or the application of all or a part of such suspended deposit to payment at maturity of any indebtedness of the depositor to the bank or trust company which existed at the time the suspension became effective, but no deposit liability subsequently assigned may be so applied.

708.645 Assignment or transfer of capital stock invalid. While the payment of the liabilities of any bank or trust company is suspended or restricted as provided in ORS 708.605, no assignment or transfer of the capital stock of the bank or trust company shall be valid.

708.650 Suspension or restriction of liability payment is not evidence of insolvency. No order of the State Banking Board under ORS 708.605 to 708.660 with reference to any bank or trust company nor the taking possession of the assets and properties of such bank by the Superintendent of Banks pursuant to ORS 708.605 to 708.660 shall be deemed an act of insolvency of the bank or

trust company, nor raise any presumption of insolvency thereof.

708.655 Compliance with ORS 708.605 to 708.660 as a defense to depositor's action. Compliance with the terms and conditions of ORS 708.605 to 708.660 and orders, rules and regulations promulgated by virtue thereof shall operate in any court as a full defense to any suit or action brought by any depositor or creditor against any bank or trust company with respect to any deposit or contract liability.

708.660 Superintendent's powers not restricted. Nothing contained in ORS 708.605 to 708.660 limits or restricts the rights, powers and duties given to the Superintendent of Banks by law.

708.665 to 708.700 [Reserved for expansion]

MISCELLANEOUS PROHIBITED PRACTICES

708.705 False statements, reports and book entries. No officer, director, owner or employe of any bank or trust company in this state shall:

(1) Wilfully or knowingly subscribe to or make or cause to be made any false statement or report to the Superintendent of Banks, or any false entry in the books or accounts of any bank or trust company.

(2) Knowingly subscribe to or exhibit false papers with the intent to deceive any person authorized to examine into the affairs of such bank or trust company, or the directors of such bank or trust company.

(3) Knowingly state or publish any false report or statement of such bank or trust company or prepare any false minutes, with intent to deceive any examiner or any person authorized to examine the affairs of such bank or trust company or the directors thereof.

(4) Fail to make proper entry upon the books or records of such bank or trust company to disclose the true condition of such bank or trust company.

(5) Make any entry upon the books or records of such bank or trust company with intent to deceive or conceal the true condition thereof.

708.710 False and omitted entries as to business, affairs or condition in books, reports and statements. No officer, director, employe or agent of any bank or trust company organized under the laws of this state shall:

(1) Make a false or untrue entry in any book, report or statement of the business, affairs or condition, in whole or in part, of such bank or trust company, with intent to deceive any officer, director, agent, examiner or any person employed or lawfully appointed to examine into the condition or into any of its affairs, or any public officer, office or board, to which such bank or trust company is required by law to report, or which has authority by law to examine into any of its affairs.

(2) With like intent, wilfully omit to make a new entry of any matter particularly pertaining to the business, property, affairs, assets or accounts of such bank or trust company, in any book, report or statement of the bank or trust company, made, written or kept by him or under his direction.

708.715 Receiving illegal compensation; misapplication of property and credit. (1) No officer, director, agent, teller, clerk or employe of any bank or trust company shall ask for, receive or consent or agree to receive, any commission, emolument, gratuity, compensation or reward, or any promise of any commission, emolument, gratuity, compensation or reward, or any money, property or thing of value or of personal advantage, for:

(a) Procuring or endeavoring to procure for any person, firm or corporation any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange by any such bank or trust company.

(b) Permitting any person, firm or corporation to overdraw any account with such bank or trust company.

(2) No officer, director, owner, trustee, employe or agent of any bank or trust company in this state shall abstract or wilfully misapply any of the money, funds or property of such bank or trust company, or wilfully misapply its credit.

708.720 Illegal guaranty or indorsement. No officer, director or agent of any bank or trust company in this state shall make or deliver any guaranty or indorsement on behalf of the bank or trust company whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which the bank or trust company may legally make.

708.725 Advertising greater capital, surplus or undivided profits than actually maintained. No bank, banker or trust company shall advertise or set forth on the stationery of such bank or trust company or otherwise, a greater capital, surplus or undivided profits than are actually maintained at any office or offices in this state.

708.730 to 708.985 [Reserved for expansion]

PENALTIES

708.990 Penalties. (1) Violation knowingly by any officer, director or employe of any provision of ORS 708.105 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $5,000, or by imprisonment in the penitentiary for not more than five years, or by both.

(2) Violation by any officer, director or employe of any provision of ORS 708.210 to 708.220 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $5,000, or by imprisonment in the penitentiary for not more than five years, or by both.

(3) Violation by any officer, director, agent, stockholder or employe of any bank or trust company of any provision of ORS 708.230 to 708.245 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $10,000, or by imprisonment in the penitentiary for not more than 10 years, or by both.

(4) Wilful violation of ORS 708.555 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000.

(5) Violation of any provision of ORS 708.475 or 708.720 is punishable, upon conviction, by a fine of not less than $500 nor more than $1,000, or by imprisonment in the county jail for not less than one month nor more than one year, or by both.

(6) Violation of any of the provisions of ORS 708.705 to 708.715 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $5,000, or by imprisonment in the penitentiary for not more than 10 years, or by both.

CERTIFICATE OF LEGISLATIVE COUNSEL

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

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel