Chapter 724

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Industrial Loan Companies

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724.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Foreign industrial loan company" means every corporation contemplating doing business in this state under this chapter, if organized in any county, state or territory of the United States other than this state.

(2) "Industrial loan company" means any corporation which, in the regular course of its business, loans money and issues its own choses of action in the manner provided by this chapter.

724.020 Incorporation of industrial loan companies. Corporations may be incorporated under and by virtue of this chapter in the same manner as may be provided by law for banks, except as otherwise provided in this chapter.

724.030 Organizations exempted from chapter. Banks, trust companies, mutual savings banks and savings and loan associations are not subject to the provisions of this chapter.

724.040 Application of chapter to corporations existing before 1925. Any corporation organized, existing and doing any business in this state prior to May 28, 1925, on a plan which would come within the scope of the regulatory provisions of this chapter shall fully comply with and be subject to all the regulatory provisions of this chapter and shall be subject to the supervision and control of the Superintendent of Banks as provided in this chapter. However, nothing in this chapter shall affect or modify the capitalization, mode of organization or corporate existence of any such corporation, and it may sell the full amount of its authorized, as of May 28, 1925, capital stock on the terms and conditions theretofore approved by the Corporation Commissioner.

724.050 Certain persons prohibited from becoming officers. No person who has been convicted for the violation of the banking laws of this or any other state, or of the United States, shall be permitted to engage in or become an officer or official of any corporation organized under this chapter.

724.060 Certain acts prohibited. (1) No officer, director, agent, stockholder or employe of a corporation under this chapter shall fraudulently receive money or money's worth in exchange for the issuance of any choses in action of such corporation, when he knows or has good reason to believe that the corporation is insolvent.

(2) No officer, director, agent, stockholder or employe of a corporation under this chapter shall directly or indirectly receive a bonus, commission, remuneration, gift, speculative interest or gratuity of any kind from any person, firm or corporation for granting, procuring or endeavoring to procure, for any person, firm or corporation any loan by or out of the funds of the corporation under this chapter, or the purchase or sale of any securities or property for or on account of such corporation.

(3) No officer, director or employe of such corporation shall borrow, or shall knowingly permit any of its officers, directors or employes to borrow any of its funds in violation of the provisions of this chapter.

(4) No person shall violate or knowingly aid or abet the violation of any provision of this chapter for which no penalty has been prescribed. No person shall fail to perform any act which it is made his duty to perform in this chapter and for which failure no penalty has been prescribed.

724.070 to 724.100 [Reserved for expansion]

724.110 Minimum capital stock requirements; increasing and decreasing capital stock. (1) The capital stock of any corporation incorporated under this chapter shall be not less than $50,000 in any city having a population of less than 200,000 inhabitants, and shall be not less than $150,000 in any city having 200,000 or more inhabitants, according to the last official census. The capital stock of any such corporation shall be divided into shares of the par value of $100 each. No corporation organized under this chapter shall create more than one class of stock.

(2) Any industrial loan company may increase or decrease its capital stock or otherwise amend its articles of incorporation, in any manner not inconsistent with the provisions of this chapter, by a vote of the stockholders representing two-thirds of its capital at any regular meeting, or special meeting duly called for that purpose in the manner prescribed by its bylaws. However, notice of a meeting to increase or decrease capital stock shall first be published once a week for four weekly issues in a newspaper published in the place in which such corporation is located, or if there is no newspaper published in such place, then in some news-

paper published in the same county. The notice shall state the purpose of the meeting, the amount of the present capital of the industrial loan company and the proposed new capital. A certificate of the fact and the terms of the amendment shall be executed by a majority of the directors and filed as articles of incorporation are required to be filed pursuant to ORS 724.020. No increase of capital stock shall be valid until 25 percent of the amount thereof has been subscribed and actually paid in and a certificate of increase received from the Superintendent of Banks. Not less than one-twelfth of the balance of the authorized increase shall be paid in cash to the corporation within 30 days from the date the increase is authorized, and each 30 days thereafter until fully paid. No reduction of the capital stock shall be made to an amount less than is required for capital, nor be valid, nor warrant the cancelation of stock certificates, until such reduction has been approved by the Superintendent of Banks.

724.120 Amount of paid-in stock necessary before articles filed; organizational expenses limited. Before the articles of incorporation of any corporation incorporated under this chapter are filed, there must be paid in cash for the benefit of the corporation to a treasurer, selected by the subscribers, not less than 25 percent of the amount of the capital stock. Not less than one-twelfth of the balance of the capital stock shall be paid in cash to the corporation within 30 days from the date of incorporation, and each 30 days thereafter until fully paid. No corporation organized under this chapter shall expend for a plan of operation, organization expense and the sale of its capital stock an amount in excess of 10 percent of the paid-in capital stock.

724.130 Financial powers of industrial loan companies. Every corporation under the provisions of this chapter shall have power:

(1) To loan money on personal security, or otherwise, and to deduct interest therefor in advance at the rate of 10 percent per annum, or less, and, in addition, to receive and require uniform weekly or monthly instalments on its certificates of investment, purchased by the borrower simultaneously with the loan transaction, or otherwise, and pledged with the corporation as security for the loan, with or without an allowance of interest on such instalments. No certificates or securities of any nature shall be sold to the borrower simultaneously with a loan transaction at a price in excess of the actual book value of the certificates or securities so sold.

(2) To charge for a loan made pursuant to this section a fee of $3 or less on loans under $100, and a maximum fee of three percent on loans of $100 or more, for expenses in examining and investigating the character and circumstances of the borrower. No additional charge shall be made except to reimburse the corporation for money actually expended for additional service actually rendered the borrower. No charge shall be collected unless a loan has been made.

(3) To impose an extension charge of five cents or less per week on each dollar delinquent one full week or more. However, no extension charge shall be imposed upon any one instalment for more than four weeks, and when such extension charge is paid the time of payment of each subsequent instalment shall be extended for the length of time for which the charge was made.

(4) To sell or negotiate choses in action for the payment of money at any time, and to receive payment therefor in instalments or otherwise with an allowance of not to exceed six percent per annum interest on such choses in action. However, no foreign industrial loan company, authorized under this chapter, shall sell or negotiate choses in action other than its certificates of investment purchased by borrowers and pledged as security for loans, as provided in subsection (1) of this section. Nothing contained in this section authorizes corporations under this chapter to receive deposits or to issue certificates of deposit or to create any liability due on demand. The issuance of choses in action authorized in this section shall be approved as to form by the Superintendent of Banks, and shall bear the indorsement on the face of the instrument, "This is not a certificate of deposit."

(5) To purchase its own capital stock; provided, that in no case shall such corporation pay therefor a sum in excess of the par value thereof. Further, at no time shall such purchases decrease the amount of capital stock outstanding of such corporation to less than 75 percent of the authorized amount thereof.

(6) In addition to the powers enumerated in this section, every corporation under this chapter shall have the general powers conferred upon corporations by ORS chapter 57 except as expressly limited in this chapter.

724.140 Restrictions on loans, investments and deposits. No corporation under this chapter shall:

(1) Make any loan on the sole security of makers, co-makers, indorsers, sureties or guarantors for a longer period than 18 months from the date thereof.

(2) Make any loans secured by chattel mortgage for a longer period than two years from the date thereof.

(3) Hold at any one time the primary obligations of any person for more than five percent of the amount of the paid-up capital and surplus of such industrial loan company. However, if such obligations are secured by conditional sales contracts, accounts receivable, or warehouse receipts issued by a bonded warehouse, covering readily marketable, nonperishable commodities, the limitation shall be 10 percent instead of five percent. Such loans shall be deemed to be secured within the meaning of this chapter:

(a) When the market value of the commodities covered by the warehouse receipts or the aggregate unpaid balance of the conditional sales contracts is not at any time less than 125 percent of such obligations; or

(b) When the aggregate unpaid balance of the accounts receivable is at no time less than 200 percent of such obligations.

(4) Hold at any one time the obligations of persons purchased from any person in excess of 20 percent of the aggregate paid-up capital and surplus of such industrial loan company.

(5) Hold at any one time the obligations of persons secured by real estate aggregating more than one-third of the total resources of such industrial loan company.

(6) Loan in excess of five percent of its paid-up capital and surplus on the security of its own capital stock, unless such security is necessary to prevent loss upon a debt previously contracted in good faith. Stock so acquired shall be sold at public or private sale within six months from the time of its acquisition.

(7) Make any loan or discount, nor shall any officer or employe thereof on behalf of such corporation make any loan or discount, directly or indirectly, to any director, officer or employe of such corporation; nor shall any director, officer or employe of such corporation become obligated to such corporation as a co-maker, indorser, surety or guarantor.

(8) Invest any of its funds, otherwise than as authorized in this chapter, except in such investments as are by law legal investments for commercial banks. Any goods or chattels, title to which is acquired by such corporation in the ordinary collection of debts or by virtue of having held or received them as security for loans, shall be disposed of as soon as possible and shall not be considered a part of the assets of such corporation after the expiration of 18 months from the date of acquiring them.

(9) Have outstanding at any time its investment certificates or other evidence of debt, in an aggregate sum in excess of two times the aggregate amount of its paid-up capital and surplus, exclusive of investment certificates hypothecated with the corporation issuing them.

(10) Pledge or hypothecate any of its securities to any creditor, except that it may borrow and rediscount an amount not to exceed in the aggregate the amount of the paid-up capital and surplus thereof, and may pledge as security therefor assets of the corporation not exceeding two times the amount borrowed and rediscounted.

(11) Exact a surrender charge on investment certificates issued by the corporation.

(12) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depositary by a vote of the majority of the directors of the executive committee, exclusive of any director who is an officer, director or trustee of the depositary so designated, and unless such other corporation has been designated a reserve agent for that purpose by the Superintendent of Banks.

724.150 Cash reserve. Corporations under this chapter shall at all times maintain a cash reserve equal to five percent of its issued and outstanding investment certificates, exclusive of those hypothecated with the corporation issuing them.

724.160 Restrictions concerning real estate. Corporations under this chapter may purchase, hold and convey real estate for the following purposes, but for no other:

(1) Such as is necessary for the convenient transaction of its business, including with its business offices other apartments in the same building to rent as a source of income. However, the corporation shall not invest an amount in excess of 25 percent of its capital, surplus and undivided profits in such real estate.

(2) Such as is conveyed to it in satisfac-

tion of debts previously contracted in the course of its business.

(3) Such as it purchases at sale under judgments, decrees or mortgage foreclosures under securities held by it, but the corporation shall not bid at any such sale a larger amount than is necessary to satisfy its debt and costs.

(4) Real estate shall be conveyed under the corporate seal of such corporation and the hand of its president or vice president and secretary or treasurer. No real estate acquired in the cases contemplated in this section shall be held for a longer period than five years unless used as business quarters by the corporation. If any real estate is not sold within that time, it shall not thereafter be carried as an asset.

724.170 Declaration of dividends; relation to surplus. The directors of every corporation under this chapter may, at certain times, and in such manner as its bylaws prescribe, after providing for all expenses, interest and taxes accrued or due, declare and pay dividends to the stockholders of such corporation as may be appropriated for that purpose under its bylaws. However, before any dividend is declared the corporation shall set aside to surplus not less than 10 percent of the dividend to be declared until such surplus amounts to 15 percent of its authorized capital stock. Unearned interest, accrued and uncollected interest shall not be distributed as a part of the profits, nor carried on the books as such.

724.180 Reduction of capital stock and surplus limited. No corporation organized under this chapter shall reduce its capital stock and surplus to an amount less than is required by this chapter to be maintained by such corporation or less than any indebtedness of such corporation other than its certificates of investment.

724.190 Corporation taxes and fees. Corporations under this chapter shall be taxed as other general corporations. All organization fees, annual license fees or other fees or penalties payable under the general corporation laws to the Corporation Commissioner or Secretary of State or payable under this chapter shall be paid to the Superintendent of Banks for the benefit of the State Banking Fund.

724.200 Reports. Every corporation under this chapter shall file with the Superintendent of Banks a regular report on or before January 25 of each year showing in detail and under appropriate heads, the total liabilities and resources of the corporation as of the preceding December 31, according to form prescribed by the Superintendent of Banks, verified by the president, manager or treasurer and attested by at least two directors. Every such corporation shall make and file special reports when and as called for by the Superintendent of Banks.

724.210 Penalty for failure to file reports. Every corporation under this chapter which fails to file any report required to be filed by this chapter within the time specified shall be subject to a penalty of $10 per day for each day's delay. This penalty shall be paid into the State Banking Fund by such corporation upon receiving demand from the Superintendent of Banks. A civil action for the recovery of any such penalty may be brought by the Attorney General in the name of the Superintendent of Banks.

724.220 Annual examinations. The Superintendent of Banks or his duly appointed examiner, without previous notice, shall visit each corporation under this chapter at least once in each year for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are empowered to administer oaths and to examine under oath any director, officer, employe or agent of such corporation, or any other person, and to summon witnesses and require the production of books, accounts, papers or records as provided by law in the case of banks and trust companies. However, in the discretion of the Superintendent of Banks, the examination of a foreign industrial loan company, or of a domestic industrial loan company which has no outstanding investment certificates other than those hypothecated with such company, may be confined only to an ascertainment of its compliance with the provisions of this chapter. The Superintendent of Banks may make such other full or partial examination as he deems necessary.

724.230 Annual fees. (1) The Superintendent of Banks shall collect from each corporation under this chapter for each examination an amount regulated by the capital and surplus of the industrial loan

company at the time of the examination, according to the following schedule:

For all industrial loan companies having a capital and surplus of:

Over	But does not exceed	Fee
$ 0	$ 75,000	$ 50
75,000	150,000	100
150,000	300,000	150
300,000		200

(2) In addition thereto, the industrial loan company shall pay at the same time an amount equal to one one-hundredth of one percent of its total net resources. However, in the case of a foreign industrial loan company, or of a domestic industrial loan company which has no outstanding investment certificates other than those hypothecated with such company, the additional fee shall be limited to an amount which, together with the initial fee based upon capital and surplus, is sufficient to defray the cost of the examination.

724.240 Bad debts; judgments as assets. (1) Any debt due a corporation under this chapter, upon which there has been no payment either of principal, interest or extension charge for a period of six months, unless such debt is well secured and in course of collection by legal process or probate proceedings, shall be considered a bad debt, and shall be charged off the books of such corporation.

(2) A judgment held by such corporation shall not be considered an asset of the corporation after two years from the date of its rendition, unless with the written permission of the Superintendent of Banks specifying an additional period. Time consumed by an appeal from such judgment shall be excluded.

724.250 Bonds of officers and employes. The board of directors of each corporation under this chapter shall require its active officers and employes, and such other officers as they designate, each to give a surety bond, in such sum as the board shall specify and the Superintendent of Banks shall approve, conditioned for the faithful and honest discharge of his duties and for the faithful application of all moneys, funds and valuables which shall come into his possession or under his control.

724.260 Powers and duties of Superintendent of Banks in supervision of industrial loan companies. (1) If it appears to the Superintendent of Banks that any corporation under this chapter has violated or failed to comply with the provisions of its articles of incorporation or any law of this state, or whenever it appears from the report of any such corporation or the Superintendent of Banks has reason to conclude that the capital of any such corporation is impaired or reduced below the amount required by law, he may, by an order under his hand and official seal, addressed to such corporation, direct such corporation to discontinue the violation and to comply with the law or to make good the deficiency or impairment of capital alleged by him to exist within 60 days after the date of such requisition. If it appears to the superintendent that the corporation is conducting business in an unsafe or injurious manner he may in like manner direct the discontinuance of any such unsafe or injurious practices. The orders shall require the corporation to show cause why the orders should not be observed. If upon hearing it appears to the Superintendent of Banks that the order should be made final, he shall proceed to do so, and the corporation shall immediately comply with the order made by the Superintendent of Banks.

(2) The corporation shall have 10 days after the order is made final in which suit may be commenced to restrain enforcement of the order, and unless suit is so commenced and enforcement of such order is enjoined within 10 days by the court in which suit is brought, then the corporation shall comply with the order.

(3) Upon failure of any corporation to comply with such order, or if any such corporation refuses to submit its books, papers and concerns to the inspection or examination of the Superintendent of Banks or to anyone authorized by him to make examinations, or if any officer of such corporation refuses to be examined under oath touching the concerns of such corporation, or if such corporation neglects or refuses to observe any order made by the Superintendent of Banks pursuant to his supervision, as authorized by this chapter, the Superintendent of Banks may forthwith take possession of the property and business of the corporation and retain possession until the corporation resumes business or its affairs are finally liquidated. On taking possession of the property and business of any such corporation, the Superintendent of Banks may proceed to

liquidate it in the manner provided by the statutes relating to banks.

(4) Nothing in this chapter limits, restricts or in any way affects the powers or discretion of the Superintendent of Banks under any other statute to issue a permit authorizing any corporation under this chapter to issue and dispose of choses in action in such amounts and upon such terms and conditions as he may deem necessary to the issue of such securities and to establish such rules and regulations as may be reasonable or necessary to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in the permit and to amend, alter or revoke any permit issued by him or to refuse to issue such permit or otherwise authorize the issue of such securities.

(5) The Superintendent of Banks, if not otherwise expressly provided in this chapter, shall have such supervisory powers over corporations organized under this chapter as provided by law in case of banks and trust companies.

724.270 to 724.300 [Reserved for expansion]

724.310 Foreign corporations; requirements before doing business in state. Every foreign corporation desiring to transact any industrial loan business within the provisions of this chapter shall, in addition to the other requirements of this chapter, comply with all the laws of this state relating to foreign corporations, except that all declarations, powers of attorney, articles of incorporation, annual reports and all other papers whatsoever required by such laws to be filed with the Corporation Commissioner shall be filed with the Superintendent of Banks, and all filing fees, annual license fees and moneys whatsoever payable to the Corporation Commissioner shall be paid by such foreign corporation to the Superintendent of Banks, who shall issue to it the certificate of authority to transact business in this state provided for in the corporation laws. Before obtaining such certificate of authority, the foreign corporation shall also furnish the Superintendent of Banks with a statement sworn to by the president or treasurer and attested by two directors of the corporation, showing an itemized account of its assets and liabilities and all such other information touching its affairs as the Superintendent of Banks may require. The corporation shall appoint an attorney in each county in which it operates an office, who shall be a resident thereof, and shall file with the Superintendent of Banks a written instrument duly signed and sealed, authorizing such attorney to acknowledge service of process in behalf of such corporation, consenting that service of process, mesne or final, upon such attorney, shall be taken and held as if served upon the corporation according to the laws of this or any other state, and waiving all claims or right of error by reason of such acknowledgment of service. If, after examination of all documents filed by the foreign corporation in accordance with those requirements and after the corporation has complied with all the requirements of this chapter, the Superintendent of Banks is satisfied that its business will be operated honestly, fairly and efficiently within the purposes of this chapter, he may issue to such foreign corporation a certificate of authority to transact business under the provisions of this chapter.

724.320 Revocation of certificate of authority. The Superintendent of Banks for cause may at any time revoke the certificate of authority of any foreign corporation authorized to do business in this state under the provisions of this chapter.

724.330 Doing business for unauthorized foreign corporation prohibited. No person, agent or corporation shall do business, or attempt to do business, in this state for any foreign industrial loan company which is not at the time the holder of a valid certificate of authority, as provided for in ORS 724.310.

724.340 to 724.980 [Reserved for expansion]

724.990 Penalties. (1) Violation of subsection (1) of ORS 724.060 is a felony and is punishable, upon conviction, by a fine not exceeding $1,000 or by imprisonment in the penitentiary not exceeding 10 years, or both.

(2) Violation of subsection (2) of ORS 724.060 is a felony and is punishable, upon conviction, by a fine of not more than $2,000 or by imprisonment in the penitentiary for not more than three years, or both.

(3) Violation of subsection (3) of ORS 724.060 renders the offender personally liable for any loss or damages which the corporation, its shareholders or any person may sustain in consequence thereof. Violation of that subsection is also a felony and is punishable, upon conviction, as provided in subsection (2) of this section.

(4) Violation of subsection (4) of ORS

724.060 is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail for not more than one year, or both.

(5) Violation of ORS 724.330 is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail not exceeding 30 days, or both.