Chapter 707

1971 REPLACEMENT PART

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ORGANIZATION OF BANKS AND TRUST COMPANIES

707.010 Necessity of organizing under Bank Act to advertise or operate as bank or trust company. (1) No person, association, copartnership or corporation, either domestic or foreign, except national banks, not subject to the supervision of the Superintendent of Banks and not required by the Bank Act to report to him, and which has not received a certificate to do a banking or trust business from the Superintendent of Banks, shall:

(a) Advertise that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit therefor.

(b) Make use of any office sign, at the place where such business is transacted, having therein any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business transacted.

(c) Make use of or circulate any letterheads, blank notes, blank receipts, certificates, circulars or any written or printed, or partly written and partly printed, paper having thereon any artificial or corporate name or other word or words indicating that such business is the business of a bank, savings bank or trust company.

(d) Transact business under any name or title which contains the word "bank," "banker," "bankers," "banking," "saving bank," or any other word in a foreign language having the same or similar meaning, or "savings," "trust," "trustee," "trusteed" or "trust company."

(2) No person, association, copartnership or corporation mentioned in subsection (1) of this section, nor any agent of a foreign corporation not having an established place of business in this state, shall solicit or receive deposits or transact business in the way or manner of a bank, savings bank or trust company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank or trust company.

(3) Every person, association, copartnership or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the Bank Act.

707.020 Violation of ORS 707.010; investigation; forfeiture; injunction. (1) The Superintendent of Banks or his deputy or examiner may examine the accounts, books and papers of every person, association, copartnership or corporation mentioned in ORS 707.010, in order to ascertain whether such person, association, copartnership or corporation has violated or is violating any provision of ORS 707.010.

(2) Any person, association, copartnership or corporation, domestic or foreign, violating any provision of ORS 707.010 shall forfeit to the state $100 a day for every day or part thereof during which such violation continues.

(3) Upon action brought by the Superintendent of Banks, the court may issue an injunction restraining any such person, copartnership, association or corporation from further using words in violation of ORS 707.010, or from further transacting business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank or trust company during the pendency of such action and for all time, and may make such other order or decree as may be proper.

707.030 Compliance with Bank Act required to use "trust" in name or operate trust business; forfeiture for violation. No corporation shall have or use the word "trust," "trustee" or "trusteed" as part of its name, and no person, copartnership or association shall have or use the word "trust," "trustee" or "trusteed" as part of an assumed name, and no corporation shall be authorized to act as trustee or to conduct a trust business, as defined by the laws of this state, except by full compliance with the provisions of the Bank Act, but the word "trustee" following the true name of a person is not deemed doing business under an assumed name. Any person, copartnership, association or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part thereof during which such violation continues.

707.040 Incorporators; natural persons; number required. Corporations may be organized under the laws of this state by any number of natural persons not less than three, to conduct, as provided in the Bank

Act and not otherwise, any one or more of the following businesses:

(1) Commercial bank.

(2) Savings bank.

(3) Trust company.

707.050 Paid-up cash capital stock requirement. Every bank or trust company organized after September 2, 1963, within this state, under the Bank Act, shall have a paid-up in cash capital stock not less than $100,000.

[Amended by 1963 c.195 §3]

707.060 Determining population for Bank Act purposes. For the purpose of the Bank Act, the population shown and determined by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, is deemed to be the population of any city in which any such bank is to be organized. If the principal place of business of any bank or trust company so organized is located outside the corporate limits of any city, then the population within a radius of three miles of its principal place of business, which is not included within the boundaries of any municipal corporation, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classification under the Bank Act.

707.070 Application for authority to organize; fee; contents. Any number of persons, not less than three, citizens of the United States and residents of this state, may file an application with the Superintendent of Banks for authority to organize a bank or trust company or for authority to circulate a stock subscription list for the organization of a bank or trust company. The applicants shall pay to the Superintendent of Banks at the time of their application a fee of $500, which fee shall in no case be refunded. No persons shall organize a bank or trust company or circulate a stock subscription list for the organization of a bank or trust company until written authority for that purpose has been obtained from the Superintendent of Banks. The application shall be in duplicate and shall specify to the extent then determined in regard to the proposed bank or trust company:

(1) The proposed location.

(2) The amount of the capital stock and the class or classes of capital stock proposed to be issued.

(3) The corporate name.

(4) The names of the proposed subscribers to the capital stock and the amount of stock for which each probably will subscribe.

(5) The names of the persons, partnerships, associations or corporations which propose to own or control more than one-half of the capital stock.

(6) The names of the proposed active managers and directors.

(7) Evidence of the character, financial responsibility and ability of the incorporators, directors and manager.

(8) Evidence of the need and advisability of granting such authority.

(9) Any other information which the Superintendent of Banks may require.

[Amended by 1971 c.68 §3]

707.080 Investigation and ruling on application; conditional approval; appeal. (1) When the application mentioned in ORS 707.070 has been filed, the Superintendent of Banks shall make such investigation of the facts and conditions as he deems necessary. The Superintendent of Banks shall indorse on each duplicate original application, with the date, the word "Approved" over his official signature if the result of the investigation satisfies him:

(a) That the proposed bank or trust company is being formed for legitimate objects as contemplated by the Bank Act.

(b) That the character, financial responsibility and general fitness of the persons named in the application are such as to command the confidence of the community in which the proposed bank or trust company is to be located and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted.

(c) That the proposed directors and officers are competent to successfully manage a banking or trust business.

(d) That there is reasonable assurance of sufficient volume of business so that the proposed bank or trust company will be successful.

(e) That the organization of the proposed bank or trust company is justified.

(f) That the public convenience and advantage will be promoted by the opening of the proposed bank or trust company.

(2) If the Superintendent of Banks is not satisfied as provided in subsection (1) of this section or believes that the public interest will be endangered he shall indorse,

with the date, the word "Disapproved" on each duplicate original application.

(3) One of the duplicate original applications shall be filed in the office of the Superintendent of Banks and the other returned by mail to the applicants.

(4) Such action shall be taken by the Superintendent of Banks within 60 days from the filing in his office of the application, but in the event that a majority of the applicants and the Superintendent of Banks mutually agree, the time may be extended an additional 30 days.

(5) The Superintendent of Banks may grant a conditional approval of any application requiring the applicants to make such additional showing or such changes in the proposed bank or trust company as he may consider advisable.

(6) If the applicants are dissatisfied with the decision of the Superintendent of Banks they may make appeal to the State Banking Board, as provided in ORS 707.150.

707.090 Refusal of charter after authorization. If, after approving the application for authority to organize, it appears to the Superintendent of Banks that the articles of incorporation or that the organization or manner of conducting business do not comply with the terms of the application, the requirements of his approval or the requirements of law, he may refuse to approve the articles of incorporation or to grant a charter, notwithstanding the fact that he has previously authorized the organization of such bank or trust company.

707.100 Time of filing articles of incorporation and paying fees. Within 30 days after authority to organize has been finally granted, the incorporators shall file articles of incorporation and pay to the Superintendent of Banks the organization and filing fees required by law. If articles of incorporation are not filed within the time so specified, the authority to organize shall be void.

707.110 Execution and filing of articles of incorporation; contents. (1) When authorized in writing by the Superintendent of Banks any number of persons, not less than three, citizens of the United States and residents of this state, may associate themselves by articles of incorporation to establish a state bank or trust company under and upon the terms and conditions and subject to the liabilities prescribed in the Bank Act, and not otherwise. The articles of incorporation shall be executed in duplicate by the persons joining therein, who shall acknowledge the same before any officer authorized to take acknowledgments of deeds, and be filed in the office of the Superintendent of Banks.

(2) The articles of incorporation shall specify:

(a) The name by which the bank or trust company is to be known.

(b) The place where its business is to be transacted, which place shall be designated specifically by legal description or street and number in the city or town.

(c) The amount of its capital stock, which shall be divided into shares of $100 each or into shares of such less amount as may be provided in the articles of incorporation.

(d) The names and places of residence of the incorporators and the number of shares subscribed for by each.

(e) The term of its existence, which may be perpetual.

(f) The purpose for which the corporation is formed.

(g) The board of directors of the bank or trust company, composed of not less than three incorporators, who shall serve until the next annual meeting of the stockholders, or until their successors are regularly elected and qualified.

(3) The articles of incorporation also may contain any provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the business, for the conduct of the affairs of the bank, or for defining, limiting and regulating the powers of the directors.

707.120 Approval or disapproval of articles of incorporation; issuance of certificate. The Superintendent of Banks shall, within 60 days after receiving the articles of incorporation mentioned in ORS 707.110, indorse upon them his approval or disapproval, with the date, over his signature. If the articles of incorporation are disapproved, he shall return them to the incorporators. If approved, he shall retain one copy thereof in his office and issue to the persons filing such articles of incorporation, upon payment of the proper fees therefor, a certificate of incorporation under his official seal, showing the name assumed by the bank or trust company, the duration of its existence, the

amount of its capital stock, the date of the filing of its articles of incorporation, the date of approval thereof, and the location of its place of business. The incorporators shall retain the duplicate of such articles of incorporation as part of the records of such bank or trust company, and thereafter its corporate existence shall begin.

707.130 Organization and annual license fees. An organization fee shall be paid to the Superintendent of Banks by the incorporators, which shall be like in amount to that payable under the general corporation laws of this state, as specified in ORS 57.761. An annual license fee the same as paid under the general corporation laws of this state, as specified in ORS 57.767, shall likewise be paid to the Superintendent of Banks. All fees payable prior to May 28, 1925, to the Secretary of State or the Corporation Commissioner for the State of Oregon, by any bank, bankers, trust company or corporation doing a trust business, shall be paid to the Superintendent of Banks.

707.140 Filing organization papers; issuance of charter. (1) The Superintendent of Banks shall examine into the condition of any bank or trust company when such bank or trust company files with the Superintendent of Banks:

(a) A copy of its articles of incorporation, as required by ORS 707.110.

(b) A list of stockholders, showing name, address, number of shares and amount paid on same, sworn to by the president or cashier.

(c) The sworn certificate of the president, cashier, secretary or treasurer, that all requirements of law have been complied with.

(d) A list of the directors and officers elected.

(e) The oaths of office of the directors and officers of the bank or trust company.

(f) A copy of its bylaws certified to by its president or cashier.

(2) If, upon such examination, it appears that the bank or trust company has complied with the requirements of the permit to organize and the provisions of the law and is entitled to commence business, the Superintendent of Banks forthwith shall issue to the bank or trust company, under his hand and official seal, a charter to do a banking or trust business. Any charter so issued shall specify the date on which it becomes effective, which in no event shall be more than 30 days after the date of issuance unless an extension of time is granted by the Superintendent of Banks.

707.150 Review of refusal of authority to organize. Notwithstanding the provisions of ORS 183.310 to 183.500, the superintendent may, without prior hearing or opportunity therefor, refuse to grant authority to organize a bank or trust company. In case authority to organize is refused by the superintendent, the bank or trust company may within 10 days thereafter request a hearing before the State Banking Board. Such request shall be in writing and a copy thereof shall be served upon the superintendent. The State Banking Board shall fix a date for a hearing which shall be within 20 days after the filing of the request. The hearing shall be conducted as a contested case in accordance with ORS 183.310 to 183.500. Within 20 days after the hearing the State Banking Board shall decide the matter by a written decision signed by the members of the State Banking Board and which shall be filed with the Superintendent of Banks.

[Amended by 1971 c.734 §172]

707.160 Transaction of business prior to organization; failure to complete organization. (1) No bank or trust company shall transact any business, except such as is incidental or necessary, preliminary to its organization, until it has received its charter from the Superintendent of Banks, as provided in ORS 707.140.

(2) Any bank or trust company which fails to pay in its capital and complete its organization, as provided in the Bank Act, and receive from the Superintendent of Banks a charter, within twelve months from the date of approval of its articles of incorporation, shall cease to exist and such articles of incorporation shall be null and void.

[Amended by 1969 c.44 §1]

707.170 When business deemed commenced; supervision by Banking Division and subjection to laws; failure to commence business. Any bank or trust company organized on or after May 28, 1925, shall be deemed to have commenced business on the effective date specified in its charter. Thereafter such bank or trust company shall be under the supervision of the Banking Division and subject to all the provisions of the Bank Act or the laws of this state and to all rules and regulations prescribed by the

Superintendent of Banks. If any such bank or trust company fails to commence business on the effective date specified in the charter, or any extension of time granted by the Superintendent of Banks, it shall cease to exist and its articles of incorporation and charter shall be null and void.

707.180 Business location; change upon approval by superintendent. Every bank and trust company shall transact its business in the place specified in its articles of incorporation. The place where its business is to be transacted may be changed upon application of the bank or trust company to the Superintendent of Banks, but no such change of location shall become effective until approved by the Superintendent of Banks. The Superintendent of Banks shall determine whether or not the change in location is advisable or justified and whether the public convenience and advantage will be promoted and shall, in his discretion, approve or disapprove of such change of location. An appeal from the decision of the Superintendent of Banks may be taken to the State Banking Board in the same manner as an appeal on an original charter or application for authority to organize. If the articles of incorporation of any bank or trust company do not designate by street and number or by specific legal description the place where it shall do business, then the place where it is doing business on June 4, 1929, shall be deemed to be its place of business.

707.190 Payment of authorized capital before commencement of business. No bank or trust company shall be authorized to commence business in this state until the full amount of its authorized capital has been paid in, in cash.

707.200 Twenty percent guaranty fund. The subscribers to the capital stock of a bank or trust company shall pay in, in cash, at the time of the payment of stock subscriptions, an amount equal to not less than 20 percent of the respective stock subscriptions in addition to the par value thereof. This amount shall constitute a guarantee or expense fund to be used in liquidation of the cost of organization and for the general expenses of the bank or trust company. At such time as the gross operating revenues are sufficient to pay the operating expenses any remaining balance in such guarantee or expense fund shall be transferred to the undivided profits account.

707.210 Stock issuance upon payment of authorized capital and guaranty fund; form of certificate. (1) No bank or trust company shall issue any share of stock until ORS 707.190 and 707.200 have been complied with.

(2) Each certificate representing shares of the stock of an incorporated state bank or trust company shall comply in form and content with the requirements of ORS 57.121. However, such certificate need not contain a statement of the par value of the shares represented thereby if such certificate contains a statement identifying the records of the bank or trust company in which such par value is recorded and stating the location of such records.

[Amended by 1959 c.108 §1; 1965 c.189 §1]

707.220 Stock record; contents; inspection. Every incorporated state bank or trust company shall keep a stock ledger or register which shall at all times during the usual hours for the transaction of business be subject to the inspection of any stockholder of such bank or trust company. Such ledger or register shall show the name and residence of and the number of shares held by each stockholder, and also all transfers of stock, stating the time when made, the number of shares and to whom transferred.

707.230 Shares as personal property; transfer of stock. The shares of stock of any bank or trust company are deemed personal property and shall be transferred on the books of such bank or trust company in such manner as the bylaws may provide and as by law required. No transfer of stock is valid while any such bank or trust company is under notice from the Superintendent of Banks or any duly appointed examiner to make good any impairment of its capital stock, nor until such impairment has been made good.

707.240 Employe stock option plans. (1) As used in this section:

(a) "Bank" means that term as defined in ORS 706.030.

(b) "Trust company" means that term as defined in ORS 706.060.

(2) A bank or trust company may adopt and perform employe stock option or employe stock purchase plans approved by the Superintendent of Banks and shareholders holding

two-thirds of the stock in the bank or trust company.

(3) Applications for approval by the Superintendent of Banks shall include:

(a) A description of all material provisions of the plan;

(b) A proposed notice of shareholders meeting, proxy and proxy statement;

(c) The number of shares authorized but unissued to be allocated to the plan;

(d) The proposed amendments to articles of incorporation creating authorized but unissued stock with respect to which no prescriptive rights shall attach;

(e) A provision in the plan that no employe who applies for or is granted a stock option shall participate in the administration of the plan;

(f) Data demonstrating that the number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank or trust company; and

(g) In the case of a stock option plan, data demonstrating that the number of shares subject to the plan is not unreasonable in relation to the capital structure and anticipated growth of the bank or trust company.

(4) A bank or trust company may, by amendment of its articles of incorporation, authorize an increase in its common stock in the category of authorized but unissued stock and it may issue such stock from time to time to employes in the performance of an approved stock option or stock purchase plan.

(5) The increase in capital resulting from performance of stock option or stock purchase plans shall not affect loan limits or other restrictions based on capital or capital and surplus until the bank or trust company certifies under oath to the Superintendent of Banks that the stock has been issued and the amount paid for it is not less than par value at the time the employe became eligible under the plan or less than 90 percent of book value at the time when the employe became eligible under the plan, whichever is the greater.

[1969 c.635 §1]

GENERAL POWERS OF BANKS AND TRUST COMPANIES

707.310 Powers of banks and trust companies. Upon the issuing of the charter by the Superintendent of Banks, the bank or trust company receiving the charter becomes a body corporate and subject to all the rights, privileges and limitations enacted, granted or conferred upon like corporations by the laws of the State of Oregon, and, in addition to the powers conferred by the general corporation laws of this state, has the following powers:

(1) To sue and be sued.

(2) To contract and be contracted with.

(3) To have and to use a corporate seal and alter the same at pleasure.

(4) To elect directors, two-thirds of whom shall be residents of this state, except in case of foreign banks authorized to do business in this state.

(5) To make bylaws, not inconsistent with law, regulating the manner in which its general business shall be conducted, and the privileges granted to it by law exercised and enjoyed.

(6) To exercise by its directors, duly authorized officers or agents, all such powers as are usual in carrying on a banking or trust business, by buying, discounting and negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidence of debt, by receiving deposits of money upon which interest may or may not be paid, by buying and selling coin and bullion, by buying and selling exchange, foreign and domestic, issuing letters of credit, and by loaning money on personal security or real estate, as provided in the Bank Act.

(7) To lease, hold, purchase and convey any and all real estate in the manner provided in the Bank Act and not otherwise.

(8) To act as fiscal or transfer agent, executor, administrator, guardian of estates, assignee, receiver, depositary and trustee, provided such bank or trust company has complied with the laws of this state relating to the organization and regulation of trust companies.

(9) To purchase and hold for the purpose of becoming a member of the Federal Reserve System so much of the capital stock of the Federal Reserve Bank of San Francisco as will qualify it for membership, pursuant to the Act of Congress approved December 23, 1913, (38 Stat. 251) entitled The Federal Reserve Act; to become a member of the Federal Reserve System and to have and exercise all powers not in conflict with the laws of this state which are conferred upon any member bank by The Federal Reserve Act. Such member bank and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state.

707.320 Membership in Federal Reserve System. (1) As used in this section:

(a) "Federal Reserve Act" means the Act of Congress approved December 23, 1913, (38 Stat. 251) as amended.

(b) "Federal Reserve Board" means the Federal Reserve Board created and described in the Federal Reserve Act.

(c) "Federal Reserve Bank" means the Federal Reserve Banks created and organized under authority of the Federal Reserve Act.

(d) "Member bank" means any national bank, state bank or banking and trust company which becomes a member of one of the Federal Reserve Banks.

(2) Any bank or trust company incorporated under the laws of this state may subscribe to the capital stock and become a member of a Federal Reserve Bank.

(3) Any bank or trust company incorporated under the laws of this state which becomes a member of a Federal Reserve Bank, is by the Bank Act vested with all powers conferred upon member banks of the Federal Reserve Banks by the terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described in the Bank Act. All such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers conferred by this section.

(4) A compliance on the part of any such bank or trust company with the reserve requirements of the Federal Reserve Act is a full compliance with those provisions of the laws of this state which require banks or trust companies to maintain cash balances in their vaults or with other banks, and no such bank or trust company shall be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act.

(5) Any such bank or trust company shall continue to be subject to the supervision and examination required by the laws of this state, except that the Federal Reserve Board has the right, if it deems necessary, to make examinations. The authorities of this state having supervision over such bank or trust company may disclose to the Federal Reserve Board, or to examiners duly appointed by it, all information in reference to the affairs of any bank or trust company which has become, or desires to become, a member of a Federal Reserve Bank.

707.330 Obtaining benefit of federal banking laws; membership in Federal Deposit Insurance Corporation. Every bank or trust company organized and existing under the laws of this state may do and perform any act and thing necessary to obtain the advantages and benefits of or to comply with any provision of the Act of Congress approved June 16, 1933, (48 Stat. 162) entitled the Banking Act of 1933, and any amendments thereto or any Act substituted therefor, and any rules and regulations promulgated pursuant thereto, in so far as such Act or any Act substituted therefor pertains to state banks or trust companies. Without in any manner limiting the generality of the foregoing, every such bank or trust company may become a stockholder of the Federal Deposit Insurance Corporation, subscribe for, purchase and pay for stock in such corporation, do and perform any act and thing necessary to become a stockholder thereof or which may be required of a stockholder thereof, and generally do and perform any act and thing necessary or required under the terms of such Act, and any amendments thereto or any Act substituted therefor, to secure the benefits of the deposit insurance and other advantages provided by such Act, and any amendments thereto or any Act substituted therefor applicable to state banks and trust companies.

707.340 Obtaining benefit of federal laws for relief of banks and trust companies; purchase of stock in Federal Home Loan Bank. With the approval of the Superintendent of Banks and subject to any limitations which he may prescribe, any bank or trust company may take advantage of any law enacted by the Congress of the United States for the relief or benefit of banks and trust companies to the full extent provided by any such law, and for this purpose may purchase stock in any corporation organized under such an Act of Congress or do any other thing required in order to take full advantage of the benefits of any such law. Without in any manner limiting the generality of the foregoing, and notwithstanding limitations otherwise prescribed by law, any bank or trust company may purchase stock in the Federal Home Loan Bank and may

borrow from such bank and pledge collateral therefor under the terms and to the extent required by the laws creating such bank and rules and regulations made pursuant thereto.

707.345 Purchase of stock in bank service corporation; performance of services for competing banks; restrictions on activities of corporation; regulation of bank services. (1) As used in this section, unless the context requires otherwise:

(a) "Bank service corporation" means a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of the corporation.

(b) "Bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items or any other clerical, bookkeeping, accounting, statistical or similar functions performed for a bank.

(c) "Invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or otherwise, except a payment for rent earned, goods sold and delivered or services rendered prior to the making of the payment.

(2) Notwithstanding any limitation or prohibition otherwise imposed by law on banks, but subject to the requirements of this section, any two or more banks may invest an amount not to exceed 10 percent of the paid-in and unimpaired capital and unimpaired surplus of each bank in a bank service corporation. However, if stock of a bank service corporation is owned by two banks, and one of the banks ceases to utilize the services of the corporation and ceases to own stock thereof, and leaves the other bank as the only bank owning stock of the corporation, the corporation may continue to function as such and the other bank may continue to own stock thereof.

(3) Whenever a bank applies for a type of bank services for itself from a bank service corporation which performs the same type of bank services for another bank, and the applying bank is competitive with any bank which owns stock of the corporation, the corporation shall offer to perform the services applied for by either:

(a) Issuing its stock to the applying bank and performing bank services for the applying bank on the same basis as for the other banks owning its stock; or

(b) Performing bank services for the applying bank at rates no higher than necessary to fairly reflect the cost of the services, including the reasonable cost of the capital provided to the corporation by its stockholders, at the option of the corporation, unless comparable services at competitive over-all cost are available to the applying bank from another source, or unless the performing of the services sought by the applying bank would be beyond the practical capacity of the corporation. In any action, suit or proceeding to enforce the duty imposed by this section upon a bank service corporation, or for damages for the breach thereof, the burden is upon the corporation to show the availability from another source of comparable services at competitive over-all cost.

(4) A bank service corporation may not engage in any revenue-producing activity other than the performance of bank services for banks and, to an extent not exceeding one-half of its total activity, the performance of similar services for persons or organizations other than banks.

(5) A bank may not cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, unless assurances satisfactory to the Superintendent of Banks are furnished to the Superintendent of Banks by both the bank and the person or organization performing the services that the performance thereof will be subject to regulation and examination by the Superintendent of Banks to the same extent as if the services were being performed by the bank itself on its own premises. The Superintendent of Banks may so regulate and examine the performance of the services.

[1963 c.500 §2]

707.350 Increase or decrease of capital stock; authorization procedure; payment of increased capital; conversion of surplus fund into paid-in capital. (1) Any bank or trust company doing business in this state or any corporation organized to conduct a banking or trust business may at any time increase or reduce its capital stock, but not below the minimum provided by ORS 707.050, after having first received the written approval of the Superintendent of Banks and by the vote of the shareholders owning at least two-thirds of the stock in the bank or trust company at any regular or special stockholders'

meeting which may be called for that purpose.

(2) When the increase or decrease of capital stock has been authorized at a stockholders' meeting, the president or secretary of the bank or trust company shall prepare a certificate in the form prescribed by the Superintendent of Banks containing a copy of the resolution, as passed by the stockholders at such meeting, authorizing the increase or decrease of capital stock. Such certificate shall be verified by oath of the president or secretary of the bank or trust company and forthwith transmitted to the Superintendent of Banks.

(3) Upon receipt of such certificate, the Superintendent of Banks may, in his discretion, authorize the increase or decrease of the capital stock of the bank or trust company. The Superintendent of Banks, after such increase or decrease has been authorized and approved, shall thereupon issue his certificate showing the amount to which the capital stock has been increased or decreased by authority of the resolution, as certified to the Superintendent of Banks.

(4) No bank or trust company shall issue any certificate of stock under any increase of capital until full payment for the stock has been received by the bank and trust company. The amount of any increased capital stock shall be paid in the same manner as required in the organization of a bank or trust company, except that the whole or any part of the surplus fund of any bank or trust company, if held as the exclusive property of the stockholders, may at any time, with the approval of the Superintendent of Banks, but not otherwise, be converted into paid-in capital, in which event such surplus shall be restored in the manner provided for by ORS 707.380 to 707.420, until the whole amount of the surplus fund shall be not less than 50 percent of the aggregate paid-up capital stock.

[Amended by 1969 c.635 §2]

707.360 Sale of capital stock increase. In case of any increase of capital stock, the board of directors of the bank or trust company shall first offer the additional stock, to the extent that it is not appropriated to the performance of employe stock option or employe stock purchase plans, pro rata to all stockholders of record at such price, not less than par, as they may deem best for the interests of the bank or trust company. Any shares not appropriated to the performance of employe stock option or employe stock purchase plans and still remaining unsold 30 days after the increase of capital stock is authorized may then be sold to any person on the same or better terms.

[Amended by 1969 c.635 §3]

707.370 Reduction of capital stock; surrender of certificates. Whenever the capital stock of any bank or trust company is reduced, as provided in ORS 707.350, every stockholder, owner or holder of any stock certificate shall surrender the same for cancellation and shall be entitled to receive a new certificate for that portion of the stock remaining in force after the reduction has been made. Any stock certificate which is not surrendered for cancelation and reissue, under any decrease of capital stock, shall be null and void as to the amount represented by the decrease. No dividends shall be paid to any stockholder until the old certificate has been surrendered and canceled.

707.380 Limitation on dividends. No bank or trust company shall declare or pay any dividend to an amount greater than its net undivided profits then on hand, deducting therefrom:

(1) All losses.

(2) All debts, unless the same are well secured, on which interest for a period of one year is past due and unpaid and debts upon which final judgment has been recovered but has been for more than one year unsatisfied and on which interest for a period of one year is unpaid, unless the same are well secured.

(3) All assets or depreciation which the Superintendent of Banks or a duly appointed examiner may have required to be charged off.

(4) All expenses, interest and taxes accrued or due from the bank or trust company.

707.390 Declaration of dividends. After providing for the deductions set forth in ORS 707.380, the board of directors of any state bank or trust company may, at any regular meeting, declare a dividend out of so much of the net undivided profits of the bank or trust company as they judge expedient. Interest unpaid, although due or accrued, shall not be included in the calculation of net undivided profits. No bank or trust company shall, except with the previous written consent of the Superintendent

of Banks, enter or at any time carry on its books any of its assets at a valuation exceeding the actual cost to the bank or trust company.

707.400 Conditions precedent to dividend declaration and payment. (1) Before any dividend is declared, or the net profits for the period covered by the dividend which is in anywise disposed of, not less than one-fifth of such net profits shall be carried to a surplus fund until the surplus fund amounts to 50 percent of the paid-in capital of the bank or trust company, or if the capital of the bank or trust company is less than the minimum required by law for the organization of a bank or trust company in the place where the bank or trust company is located, then the surplus shall be so increased until the combined capital and surplus is 50 percent in excess of the minimum amount of capital required for the organization of a bank or trust company in the locality.

(2) The Banking Division may, in its discretion, require any bank or trust company to suspend the payment of any dividends until all requirements made by the Banking Division have been complied with.

[Amended by 1963 c.580 §82]

707.410 Record of dividends declared. A full and complete record of the proceedings and business transacted by the board of directors of any bank or trust company shall, at all meetings where dividends may be declared, be spread upon the bank's minutes in such manner as may be required by the Superintendent of Banks. Such record shall show, as of the first day of the month during which the meeting is held, the gross earnings of the bank or trust company, the disposition of same by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund and amount of dividends, and the amount of undivided profits remaining.

[Amended by 1963 c.195 §4]

707.420 Losses charged to surplus; restoration of surplus before dividend payment. Any loss sustained by any bank or trust company in excess of its undivided profits shall be charged to its surplus fund. Its surplus fund shall thereafter be reimbursed from the earnings. No dividends shall thereafter be declared or paid by any such bank or trust company in excess of one-half of its net earnings until the surplus fund is restored to at least the amount from which the surplus was originally reduced, provided the surplus funds at the time of such reduction did not exceed 50 percent of the paid-up capital.

707.430 Closing banks on Saturdays. (1) Any bank may remain closed on Saturdays with respect to all or any of its banking and other functions. When any obligation payable at, by or through a bank falls due on a Saturday on which such bank remains closed with respect to all or any of its functions, it shall be due and payable on the next succeeding business day. Any act authorized, required or permitted to be performed at, by or with respect to any such bank on a Saturday may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such closing.

(2) As used in this section, "bank" includes any state bank, national bank, Federal Reserve Bank, trust company and safe deposit company, doing business in this state.

[Amended by 1961 c.57 §1]

STOCKHOLDERS, DIRECTORS AND OFFICERS

707.610 Annual and special stockholder meetings. The annual meeting of stockholders of every incorporated state bank or trust company for the election of a board of directors consisting of not less than three members, and transaction of other business, shall be held in the town or city in which the main office of such bank or trust company is located at such time within the month of January as the bylaws of the bank or trust company may provide. If the requirements of any state or federal supervisory authority for the filing of proxy statements or other reports by a bank or trust company necessarily preceding its annual meeting shall, in the opinion of the Superintendent of Banks, render it impossible or impracticable for such bank or trust company to give its stockholders an adequate period of notice of an annual meeting within the month of January, the Superintendent of Banks may authorize such bank or trust company to hold its annual meeting at such time within the month of February as its bylaws shall provide, or be amended to provide; and such authorization shall remain in effect until revoked or modified by the Superintendent of Banks. A special meeting may be called at

any time for the purpose of electing directors to fill any vacancy in the board of directors, in the manner provided by the bylaws of such bank or trust company, or for the transaction of other business.
[Amended by 1957 c.59 §1; 1967 c.170 §1]

707.620 Special stockholder meeting at call of superintendent. Whenever the Superintendent of Banks deems it expedient he may call a meeting of the stockholders of any bank or trust company organized or existing under the laws of this state, by giving notice of such meeting for 15 days previous thereto. All necessary expense incurred in the serving of such notice shall be borne by the bank or trust company whose stockholders are required to convene.

707.630 Inspection of records by stockholders. Every stockholder of any incorporated bank or trust company is entitled, at reasonable times and for proper purposes, to inspect all the books and records of such bank or trust company, if the written consent of the Superintendent of Banks thereto is first obtained. The consent of the Superintendent of Banks is not necessary in cases where the bank or trust company has given its consent to the inspection of its books and records. The right given by this section does not extend to an inspection of private trusts.

707.640 Directors; citizenship and residence requirements. Each director of any bank or trust company, incorporated under the laws of this state, must be a citizen of the United States. At least two-thirds of the directors must be residents of this state or must reside within 100 miles of the place of business of the bank or trust company at the time of their election and during their continuance in office; provided, at least one director must be a resident of the State of Oregon. If at any time, when not more than two-thirds of the directors are resident as required by this section, any director ceases to be a resident as required by this section, he shall cease to be a director of any such bank or trust company and his office shall be vacant.

707.650 Directors; stock ownership requirements. No person is eligible for election as director of a bank or trust company unless he is a stockholder of such bank or trust company, owning in his own right shares of the par value of at least $500. Every person elected to be a director who, after such election, ceases to be the owner in his own right of such amount of stock or hypothecates or in any way pledges such stock as security for any loan or debt, shall immediately notify the Superintendent of Banks in writing of such sale or hypothecation, and such director may be removed from the office of director by the Superintendent of Banks. Any executor or executrix, administrator or administratrix holding shares of a bank or trust company of the par value of $500, in his or her representative capacity, is eligible for election as a director thereof.

707.660 Oath of directors; oath of resident agents of foreign banks or trust companies. (1) Each director, when appointed or elected, shall take an oath that he will, as far as the duty devolves on him, diligently and honestly administer the affairs of the bank or trust company, that he will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the bank or trust company, that he is the owner in good faith and in his own right of shares of stock of the par value required by ORS 707.650, subscribed by him or standing in his name on the books of the bank or trust company, and that the same to an amount equal to the par value of at least $500 is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, certified by the officer before whom it is taken, and immediately transmitted to the Superintendent of Banks and filed and preserved in his office.

(2) The managers or agents residing in this state, of any foreign corporation transacting any banking or trust business in this state, shall take oath that they will, as far as the duty devolves on them, diligently and honestly administer the affairs of such bank or trust company and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to such bank or trust company. Such oath shall be subscribed by the managers or agents taking it, certified by the officer before whom it is taken, and immediately transmitted to the Superintendent of Banks and filed and preserved in his office.

(3) No person, in taking the oath provided by this section, shall swear or affirm falsely as to the ownership of stock or with relation to the nonhypothecation or pledging thereof.

707.670 Regular meetings of directors; report of loans and investments. The board of directors of every bank or trust company shall hold a regular meeting at least once every month. The board of directors shall designate any officer or officers of the bank or trust company to prepare and submit to the board at every such meeting a report, in such detail as the board may direct, of the loans and investments made during the preceding month or since the last report, also the aggregate of the then existing liability direct, indirect or contingent to the bank or trust company of every officer, director and employe. The board of directors shall examine and pass upon such report and make it a part of the record of the meeting by recording the report in full in the minutes. The record shall show their approval or disapproval of the report and be subscribed to by each director present at the meeting.
[Amended by 1963 c.166 §1]

707.680 Special meetings of directors at call of superintendent; failure to attend. Whenever the Superintendent of Banks deems it expedient or necessary he may call a meeting of the board of directors of any bank or trust company organized or existing under the laws of this state, by a personal notice of such meeting delivered to each director, stating the purpose of the meeting and designating the time and place within the State of Oregon, where the meeting shall be held. The director of any bank or trust company who fails to appear at such meeting without proper cause, after due notice by the Superintendent of Banks as provided in this section, is subject to a penalty of $100 for each day he neglects or fails to appear pursuant to such notice. Such penalty shall be collected in the manner prescribed by ORS 706.570.

707.690 Filling board of director vacancies. Any vacancy in the board of directors may be filled by the board for the unexpired term at the first regular meeting after the vacancy occurs.

707.700 Selection and control of officers by directors. Directors of a bank or trust company to which the Superintendent of Banks has issued a charter shall elect a president, who shall be a director and a resident of this state, and one or more vice presidents. The directors may appoint and employ a cashier, who shall be a resident of this state, a treasurer and all necessary officers, agents and servants, define their duties, fix their compensation, dismiss them, fill vacancies and require bonds for the faithful performance of their duties.

707.710 Removal of officers and directors. Any officer or director of a state bank or trust company found by the Superintendent of Banks to be dishonest, reckless or incompetent, or who refuses to comply with the law or rules and regulations of the Banking Division, or who refuses to comply with any written requirements or instructions of the Superintendent of Banks, shall be removed from office by the board of directors of such bank or trust company upon the written demand of the Superintendent of Banks. Upon receipt of such written demand, the board of directors of any bank or trust company shall thereupon pass a resolution removing such officer or director and declaring his office vacant as demanded by the Superintendent of Banks. Any officer or director who is removed under this section shall thereupon cease to act in any official capacity or conduct any of the business of the bank or trust company. Upon notice by the Superintendent of Banks, such person removed as an officer or director shall not have access to the books, records or assets of the bank or trust company either as an officer, director or stockholder, without receiving permission from the Superintendent of Banks. The officer so removed shall have the rights of appeal to the State Banking Board.

707.720 Violation of law or omission of duty by officer or director. No officer or director of a bank or trust company in this state shall wilfully do any act, as such officer or director, which is expressly forbidden by law, or wilfully omit to perform any duty imposed upon him as such officer or director by law.

707.730 Official communications from Banking Division; submission to directors. (1) Every official communication directed by the Superintendent of Banks or any examiner to any bank or trust company or to any officer thereof, relating to an investigation or examination conducted by the Banking Division or containing suggestions or recommendations as to the conduct of the business of the bank or trust company, shall

be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in such form and in such manner as may be prescribed and directed by the Superintendent of Banks.

(2) No officer of any bank or trust company shall fail to comply with subsection (1) of this section.

707.740 Examining committee; audit; reports to directors and superintendent. (1) There shall be appointed annually by the board of directors of every bank or trust company an examining committee of not less than three stockholders of the bank or trust company who are not active officers thereof, whose duty it shall be to examine and study the report of each examination made by bank supervising authorities. The examining committee shall report to the board of directors within 45 days after receipt of the report of the examination relative to criticisms and suggestions contained in the report rendered by the supervising authorities and shall be charged with the duty of commenting on any matter relative to the affairs of the bank which in its judgment should be known to the directors. The board of directors shall cause the report to be recorded in the minute book of the bank or trust company, and a duly certified copy thereof to be transmitted to the Superintendent of Banks within five days.

(2) The board of directors of any bank or trust company may employ competent persons approved by the Superintendent of Banks to make an audit or examination of the bank or trust company, and the report prepared by such persons shall be submitted to the board of directors and made a part of the minutes of the next regular meeting. A copy of the report shall be transmitted to the Superintendent of Banks.

(3) The Superintendent of Banks may accept the report of such persons appointed with his approval or may accept the report of a clearinghouse examiner in lieu of the report to be made by the examining committee, as provided by this section.

PENALTIES

707.990 Penalties. (1) Violation of subsection (3) of ORS 707.660 is punishable, upon conviction, by imprisonment in the penitentiary for not more than five years.

(2) Violation of ORS 707.720 is punishable, upon conviction, by a fine of not less than $100 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.

(3) Violation of subsection (2) of ORS 707.730 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 30 days nor more than six months, or by both. In addition the violator shall forfeit his office.

CERTIFICATE OF LEGISLATIVE COUNSEL

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

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel