

# TITLE 53

## FINANCIAL INSTITUTIONS

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### Chapter 706

#### 1985 REPLACEMENT PART

### Administration and Enforcement of Banking Laws Generally

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## FINANCIAL INSTITUTIONS

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## GENERAL PROVISIONS

**706.005 Definitions for Bank Act.** As used in the Bank Act, unless the context requires otherwise:

(1) "Action" includes suits and legal proceedings.

(2) "Bank" means a corporation with capital stock that is organized under the laws of this state and is authorized to engage in a banking business. "Bank" includes the banking department of a trust company authorized to do a banking business.

(3) "Bank Act" means ORS chapters 706 to 716.

(4) "Banking business" means the business of soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a pass book or other writing, but does not include:

(a) Depositing money or its equivalent in escrow or with an agent, pending investments in real estate or securities for or on account of a principal; or

(b) The business of a savings and loan association or a building and loan association.

(5) "Banking day" means a day a banking institution is required to be open for the normal conduct of its business but does not include Saturday or any day the bank is closed under ORS 707.430.

(6) "Banking institution" means a bank, a trust company, a savings bank or a stock savings bank.

(7) "Board" means the State Banking Board.

(8) "Branch" means an office or other place, except a principal place of business, at which:

(a) A bank receives money or its equivalent from the public for deposit and conducts a general banking business.

(b) A trust company engages in the business of acting as a fiduciary.

(c) CBCT facilities are installed and operated off the premises of the principal place of business and branches of institutions described in paragraphs (a) and (b) of this subsection, and of national banks in accordance with ORS 714.210 to 714.992.

(9) "Capital" means the aggregate par value of all classes of outstanding stock of an institution.

(10) "Demand deposits" means all deposits payable on demand.

(11) "Extranational institution" includes:

(a) A corporation organized under the laws of a nation other than the United States and doing a banking or trust business within this state;

(b) An unincorporated company, partnership or association of two or more individuals organized under the laws of a nation other than the United States and doing a banking or trust business within this state;

(c) An incorporated company, partnership or association of two or more individuals doing a banking or trust business if persons who are not citizens of the United States and not residents of this state own a majority interest of the business and are entitled to more than half the profits of the business, or who would, if it were dissolved, be entitled to more than one-half the net assets of the business; or

(d) An individual who is not a citizen of the United States and not a resident of this state doing a banking or trust business in the name and right of the individual.

(12) "Fiduciary" means a personal representative, conservator, receiver, trustee, assignee for the benefit of creditors or one acting in a court appointed position of trust or any other position of trust.

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

(14) "Foreign institution" includes:

(a) A corporation organized under the laws of another state doing a banking or trust business within this state, except a national bank whose principal office as designated in its articles of incorporation is located in the State of Oregon;

(b) An unincorporated company, partnership or association of two or more individuals organized under the laws of another state doing a banking or trust business;

(c) An incorporated company, partnership or association of two or more individuals doing a banking or trust business if persons who are citizens of the United States but not residents of this state own a majority interest of the business and are entitled to more than half the profits of the business, or who would, if it were dissolved, be entitled to more than one-half the net assets of the business; or

(d) Every citizen of the United States but nonresident of this state doing a banking or trust business in the name and right of the citizen.

"Foreign institution" does not include a national bank that has its principal office, as designated in its articles of incorporation, outside the State of Oregon, and that maintains a branch in the State of Oregon on January 1, 1974.

(15) "Institution" means a bank or a trust company.

(16) "National bank" means a national bank authorized to do business in this state.

(17) "Officer" of a banking institution means a chief executive officer, president, vice president, secretary, treasurer or cashier.

(18) "Personal representative" means a personal representative as defined in ORS 111.005 (26).

(19) "Principal place of business" means the location in Oregon of the principal office or main office of a banking institution.

(20) "Savings bank" means a corporation without capital stock which is organized under the laws of this state and is authorized to engage in a banking business.

(21) "Section," when used to refer to the administrative unit administering and enforcing the Bank Act, means the Banking Section of the Financial Institutions Division of the Department of Commerce.

(22) "Supervisor" means the Supervisor of the Banking Section.

(23) "Surplus" represents the cumulative total of amounts transferred from undivided profits, any capital contributed for shares in excess of their par value, capital contributed other than for shares, and reduced by amounts converted into capital stock.

(24) "Time deposits" comprise all deposits, however evidenced, which may be restricted as to time of withdrawal.

(25) "Trust company" means any corporation which is authorized to engage in the business of acting as a fiduciary and includes the trust department of a bank or savings bank, but does not include a corporation appointed by a United States Bankruptcy Court to serve as a bankruptcy trustee under Title 11, United States Code, when the corporation is acting in its capacity as a bankruptcy trustee.

(26) "Unimpaired capital" is capital of an institution which has not become impaired as provided in ORS 711.305.

(27) "Customer Bank Communication Terminal" or "CBCT" means an electronic or other automated device through which a customer of a

banking institution or national bank, or someone specifically authorized by the customer, may communicate to the banking institution or national bank:

(a) A request to withdraw money from an account or a previously authorized line of credit;

(b) An instruction to receive or transfer funds for the customer's benefit; and

(c) A request for information concerning the existence and condition of the customer's account and lines of credit with the banking institution.

(28) "Stock savings bank" means a corporation with capital stock organized under the laws of this state, authorized to engage in a banking business, and which has converted from a savings bank under provisions of ORS chapter 716, or which was converted to a federal stock savings bank under the provisions of the Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320).

(29) "Out-of-state banking institution" means any bank organized under the laws of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Utah or Washington, or any national bank or bank holding company that has its principal place of business in one of such states. Provided however that except as permitted under ORS 715.070, "out-of-state banking institution" does not include any bank, national bank or bank holding company organized under the laws of any of the states enumerated in this subsection or having its principal place of business in one of such states if the bank, national bank or bank holding company is owned or controlled, either directly or indirectly, by another bank, national bank or bank holding company that is organized under the laws of a state or that has its principal place of business in a state other than this state or those states enumerated in this subsection.

(30) "Bank holding company" means any company that is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(31) "Principal place of business" of a national bank or bank holding company means that state in which the deposits of the national bank or the total deposits of all the bank holding company's banking subsidiaries are the largest.

(32) "Bank in danger of failing" means a bank that was chartered prior to December 31, 1981, that had assets of more than \$100 million as of December 31, 1984, and:

(a) That is insolvent as defined by ORS 711.405;

(b) Whose capital is impaired as defined by ORS 711.305;

(c) To which the Federal Deposit Insurance Corporation is prepared to offer financial assistance to facilitate an acquisition of its stock, an acquisition of its assets and assumption of its liabilities, or its merger with another corporation; or

(d) That the supervisor has determined is subject to and suffering from severe financial conditions and circumstances which threaten the future financial stability and viability of the bank.

(33) "In-state banking institution" means a banking institution, a national bank having its principal place of business in Oregon or a bank holding company having its principal place of business in Oregon. [1973 c.797 §2; 1975 c.193 §1; 1975 c.725 §1; 1983 c.37 §1, 1985 c.12 §1; 1985 c.451 §1; 1985 c.627 §3; 1985 c.762 §16]

**706.010** [Amended by 1971 c 743 §413; repealed by 1973 c.797 §428]

**706.020** [Repealed by 1973 c.797 §428]

**706.025** [1963 c.580 §68; repealed by 1973 c.797 §428]

**706.030** [Repealed by 1973 c 797 §428]

**706.040** [Repealed by 1973 c 797 §428]

**706.050** [Repealed by 1973 c.797 §428]

**706.060** [Repealed by 1973 c.797 §428]

**706.070** [Repealed by 1973 c.797 §428]

**706.080** [Repealed by 1973 c 797 §428]

**706.090** [Repealed by 1973 c.797 §428]

**706.100 Applicability of general corporation laws.** (1) The following sections in ORS chapter 57 (1973 Replacement Part) shall apply to institutions: ORS 57.040, 57.080 (2), 57.085, 57.088, 57.111 (1), 57.116, 57.126, 57.141, 57.150 to 57.170, 57.190, 57.193, 57.206, 57.211, 57.241, 57.255, 57.260, 57.331, 57.355 (1) and (2), 57.360 to 57.375, 57.380 to 57.395, 57.411, 57.781, 57.786 to 57.793, 57.798, 57.805 and 57.992.

(2) In applying ORS chapter 57 as provided in this section, unless the context requires otherwise:

(a) "Corporation Division" or "division" means the Banking Section.

(b) "Corporation Commissioner" or "commissioner" means the supervisor.

(c) "Corporation" and "domestic corporation" means a banking institution. [Amended by 1973 c 797 §3; 1975 c.544 §1; 1979 c.88 §1, 1981 c 192 §2; 1983 c.296 §1, 1983 c.367 §1, 1985c 762 §17; 1985 c.796 §1]

**706.205** [1963 c.580 §69; 1973 c.797 §4, repealed by 1985 c.762 §196]

**706.210** [Repealed by 1963 c 580 §103]

**706.215** [1963 c.580 §70; 1973 c.797 §5; repealed by 1985 c 762 §196]

**706.218** [1973 c 797 §6; repealed by 1985 c.762 §196]

**706.220** [Repealed by 1963 c.580 §103]

**706.225** [1963 c 580 §71; 1973 c 797 §7; 1974 s.s. c 27 §1; repealed by 1985 c.762 §196]

**706.226** [1977 c.135 §7; repealed by 1985 c 762 §196]

**706.228** [1973 c.797 §8; repealed by 1985 c.762 §196]

**706.230** [Repealed by 1963 c.580 §103]

**706.235** [1963 c.580 §72, 1973 c.797 §9; repealed by 1985 c.762 §196]

**706.240** [Repealed by 1963 c 580 §103]

**706.245** [1963 c 580 §73, 1969 c.314 §101, 1973 c.797 §10; 1985 c 786 §5, renumbered 706 900]

**706.250** [Repealed by 1963 c.580 §103]

**706.255** [1963 c 580 §75; 1973 c.797 §11; renumbered 706.905]

**706.260** [Renumbered 706.285]

**706.265** [1963 c.580 §76, 1973 c.797 §12; 1974 s.s. c.27 §2; 1985 c.762 §21a; 1985 c 786 §6; renumbered 706.910]

**706.270** [Repealed by 1963 c.580 §103]

**706.280** [Amended by 1959 c 210 §1, repealed by 1963 c 580 §103]

**706.285** [Formerly 706.260; 1973 c.797 §13; 1981 c.192 §3, repealed by 1985 c.762 §196]

**706.290** [Amended by 1973 c 797 §14; repealed by 1985 c 762 §196]

**706.410** [Amended by 1973 c.797 §15; 1985 c 762 §23, renumbered 706.775]

**706.420** [Repealed by 1973 c.797 §428]

**706.430** [Amended by 1973 c.797 §16; 1975 c.544 §2; 1979 c.88 §2; renumbered 706.780]

**706.440** [Amended by 1973 c.797 §17; renumbered 706 785]

**706.450** [Amended by 1963 c.580 §77; 1969 c.43 §1; 1973 c 797 §18; repealed by 1985 c.762 §196]

**706.455** [1973 c 797 §19; repealed by 1985 c.762 §196]

**706.460** [Amended by 1963 c.580 §78; 1971 c 734 §169; 1973 c.797 §20, 1985 c.762 §25; renumbered 706 790]

**706.470** [Repealed by 1971 c.734 §21]

**706.475** [1971 c 734 §171; 1973 c.797 §21, repealed by 1985 c.762 §196]

**706.480** [Amended by 1963 c.580 §79; repealed by 1971 c.743 §21]

**706.490** [Repealed by 1973 c.797 §428]

## SUPERVISION OF BANKING INSTITUTIONS

**706.500 Inspection of banking institutions; examination program with federal regulators.** (1) Each banking institution is sub-

ject to the inspection of the supervisor. The supervisor shall conduct an examination of the condition and resources of each banking institution, and determine whether the banking institution is complying with the laws of this state and such other matters as the supervisor may prescribe. Except as provided in subsections (2) and (4) of this section, the examinations shall be conducted not more than 24 months apart.

(2) The supervisor may participate in any program offered by the Federal Deposit Insurance Corporation or the Federal Reserve Board that provides for joint or alternate examinations of banking institutions by the supervisor and the Federal Deposit Insurance Corporation or the Federal Reserve Board.

(3) In addition to the examinations under subsection (1) or (2) of this section, the supervisor may conduct examinations of a banking institution at any other time.

(4) Instead of making an examination of a banking institution under subsection (1) or (2) of this section, the supervisor may accept an examination or report made under the Federal Reserve Act or under other statutes of the United States authorizing insurance of deposits. [Amended by 1973 c.797 §22; 1981 c.192 §4; 1985 c.786 §7]

**706.510** [Repealed by 1973 c.797 §428]

**706.520 Request by directors or stockholders for examination; fees.** When requested in writing by the board of directors of a banking institution or stockholders owning a majority of the capital stock of an institution, the supervisor may make or cause to be made an examination into the affairs and conditions of the banking institution. For the examination the banking institution shall pay the fee imposed under ORS 706.544. [Amended by 1973 c.797 §23, 1985 c.762 §26; 1985 c.786 §8]

**706.530 Annual fees paid by banks and savings banks.** (1) Each bank and savings bank shall pay each year to the supervisor the fee determined by the supervisor under subsection (2) of this section.

(2) The supervisor may charge and collect a fee from each bank or savings bank, according to a fee schedule established by the supervisor by rule, for the purpose of defraying the costs of performing the duties of supervision, enforcement and other duties imposed by law upon the supervisor in respect to banks and savings banks and their branches. In setting the fee schedule and allocating fees among the banks and savings banks, the supervisor shall take into consideration the costs of performing the duties of the

supervisor relative to each bank and savings bank, the cost of developing and maintaining a reasonable emergency fund and the amount of all other moneys paid to the supervisor. The fee schedule shall be subject to the approval of the Administrator of the Financial Institutions Division. Fees under this section shall be assessed and paid not later than April 15 of each year. [Amended by 1969 c.94 §1; 1971 c.68 §1; 1973 c.797 §24; 1977 c.135 §8; 1985 c.762 §27a; 1985 c.786 §9]

**706.540 Annual fees paid by trust companies.** The supervisor shall charge and collect a fee from each trust company, according to a fee schedule established by the supervisor by rule, for the purpose of defraying the costs of performing supervision, enforcement and other duties imposed by law upon the supervisor in respect to trust companies. The fee schedule shall be subject to the approval of the Administrator of the Financial Institutions Division. Fees under this section shall be collected at the time of each regular examination of a trust company. [Amended by 1969 c.94 §2, 1971 c.68 §2; 1973 c.797 §25; 1977 c.135 §9; 1983 c.296 §1a; 1985 c.762 §28a; 1985 c.786 §10]

**706.544 Costs for special examination or other actions taken by section.** A banking institution shall pay to the supervisor the actual costs of the section, as determined by the supervisor, for conducting any special examination or taking any action under ORS 706.600. [1973 c.797 §25a; 1977 c.135 §10; 1985 c.762 §30a; 1985 c.786 §11]

**706.548** [1973 c.797 §26; repealed by 1985 c.762 §196 and 1985 c.786 §69]

**706.550** [Amended by 1963 c.580 §80; 1973 c.797 §27; repealed by 1985 c.762 §196 and 1985 c.786 §69]

**706.555** [1973 c.797 §28, 1985 c.796 §2; renumbered 706.795]

**706.560 Appraisal of securities and audit by supervisor.** (1) When a banking institution has been examined by an examiner and the examiner finds securities which are of doubtful value, the examiner shall report the same to the supervisor, who may, at the expense of the banking institution, investigate and appraise the securities.

(2) The supervisor may, in the discretion of the supervisor or whenever requested to do so by a banking institution, make an audit of the affairs of the banking institution. The section shall be reimbursed by the institution for all costs incurred by the section in conducting the audit. [Amended by 1973 c.797 §29]

**706.570 Requiring banking institution to keep proper records and accounts; civil penalty.** (1) If upon examination of a banking

institution it appears to the supervisor that the banking institution does not keep books and accounts in such a manner as to enable the supervisor or examiners of the Financial Institutions Division to readily ascertain the true condition of the banking institution, the supervisor may require any officer of the banking institution to open and keep books or accounts as the supervisor prescribes.

(2) If a banking institution fails to open and keep the books and accounts prescribed by the supervisor, the supervisor shall send written notice to the banking institution of the supervisor's intent to assess and collect the penalty under this subsection. For each day the banking institution fails to open and keep the books and accounts after receiving notice from the supervisor, the banking institution is subject to a penalty of \$100. The penalty shall be paid by the banking institution when it receives a notice and demand for the amount of the penalty from the supervisor. If the banking institution delays or refuses to pay the penalty upon demand by the supervisor, the penalty shall be recovered in the name of the supervisor in an action brought by the Attorney General. All sums collected for penalties imposed by this section shall be paid into the State Treasury and credited as provided in ORS 705.240. [Amended by 1973 c.797 §30, 1985 c.762 §31]

**706.580 Illegal, unauthorized or unsafe practices; ordering discontinuance.** When it appears to the supervisor that a banking institution is violating any law or is conducting its business in an unsafe or unauthorized manner, the supervisor shall, by an order in writing, direct the discontinuance of the illegal, unsafe or unauthorized practices. [Amended by 1973 c.797 §31]

**706.590** [Repealed by 1973 c 797 §428]

**706.600 Authority of supervisor to protect creditors and depositors of banking institution.** (1) The supervisor may take one or more of the actions described in this section to protect the interest of the creditors and depositors of a banking institution if any of the following occurs:

(a) It is unsafe or inexpedient for the banking institution to continue to transact business.

(b) Extraordinary withdrawals of money are jeopardizing the interests of remaining depositors.

(c) A director or officer has abused that person's trust or has been guilty of misconduct in an official position injurious to the banking institution.

(d) The banking institution has suffered a serious loss by fire, floods, burglary, disaster or otherwise.

(e) The banking institution neglects or refuses to observe an order of the supervisor under ORS 706.580 or refuses to submit to the inspection of an examiner.

(f) A director or officer refuses to be examined under oath regarding the affairs of the banking institution.

(2) For purposes of subsection (1) of this section and subject to subsections (4) and (5) of this section, the supervisor may take any of the following actions in regard to a banking institution:

(a) Take immediate possession and control of the property and affairs of the banking institution.

(b) If the supervisor has issued an order under ORS 706.580, enter the banking institution to monitor and enforce implementation of the order.

(c) Direct the sale of all or part of the banking institution's assets, or portions thereof, and the assumption of all or part of its liabilities.

(d) Direct the conversion, reorganization or consolidation of the banking institution, either with or without a merger.

(e) Direct the merger of the banking institution.

(f) Direct the sale of a banking institution.

(g) Direct the banking institution to develop and endeavor to implement an acquisition plan, under which the banking institution will acquire or be acquired by a national bank or banking institution, or a state or federal savings association.

(h) Take any other action that the supervisor determines is necessary and expedient to facilitate the sale of the stock or assets of the banking institution, or the sale, conversion, reorganization, consolidation or merger of the banking institution.

(3) Notwithstanding any other provision of law and pursuant to ORS 706.544, any actual costs incurred by the section under this section shall be paid by the banking institution to the supervisor for deposit in the Financial Institutions Division Account. The moneys deposited in the Financial Institutions Division Account under this subsection shall not be considered as a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific biennial appropriations or amounts

authorized to be expended from the Financial Institutions Division Account for any biennial period.

(4) Paragraphs (c) to (h) of subsection (2) of this section are available to the supervisor only when a banking institution is in immediate danger of insolvency.

(5) At any time after the supervisor has taken action under subsection (2) of this section, the banking institution may apply to the State Banking Board to review the supervisor's actions. After hearing from the supervisor and the banking institution, but not later than the 15th day after the board receives the application for review, the board by order shall approve or disapprove the supervisor's action. The order by the board is subject to judicial review under ORS 183.470 to 183.485 upon petition by the supervisor or the banking institution. [Amended by 1973 c.797 §32; 1985 c.786 §12]

**706.610 Examiners required to report insolvency of banking institution.** An examiner of the Financial Institutions Division, having knowledge of the insolvency or unsafe condition of a banking institution shall report the fact in writing, over the examiner's signature, to the supervisor. [Amended by 1973 c.797 §33; 1985 c.762 §32]

**706.620 Records kept by supervisor.** The supervisor shall keep proper books showing the acts, matters and things by the supervisor done under the provisions of the Bank Act. [Amended by 1973 c.797 §34]

**706.630 Regular reports of condition; publication; additional reports as required by supervisor.** (1) The supervisor shall call for the report of condition of banking institutions, foreign institutions and branches of foreign and extranational institutions at the close of business on the same day on which a report is required from national banking associations by the federal regulatory agencies.

(2) The report of each banking and foreign institution and each branch of a foreign and extranational institution required in subsection (1) of this section shall:

(a) Show its assets and liabilities combined for all departments at the close of business on the day specified.

(b) Be sworn to by an officer of the banking institution making the report and attested by not less than two directors of the banking institution.

(c) Exhibit in detail, and under appropriate heads, the total liabilities and resources of the

banking institution at the close of business on the day specified.

(d) Be transmitted to the supervisor within the time allowed by federal regulations for submission of reports of national bank associations to the federal regulatory agencies.

(e) Be published by the institution, according to the form prescribed by the supervisor, in a newspaper of general circulation in the county in which the banking institution is located, within 10 days after the report is transmitted to the supervisor; and proof of the publication shall be furnished to the supervisor by each banking institution within 10 days after the date of publication.

(3) The supervisor may require additional reports of condition at any time the supervisor considers it necessary. The additional reports shall meet the requirements of subsection (2) of this section except they need not be published.

(4) Trust companies not conducting a banking business are not required to submit the reports required in subsection (1) of this section, but shall submit reports as may be required by the supervisor. [Amended by 1973 c.797 §35; 1975 c.544 §3; 1975 c.725 §6a; 1977 c.135 §11; 1983 c.37 §2]

**706.640** [Repealed by 1973 c.797 §428]

**706.650 Delay or failure to furnish reports of condition.** If a banking institution delays or fails to furnish reports in the manner required under ORS 706.630, the banking institution is subject to a penalty of \$25 a day for each day while in default. The penalty shall be paid by the banking institution upon receiving notice or demand for the amount of the penalty from the supervisor. If the penalty is not paid upon demand by the supervisor, the supervisor shall proceed to collect the penalty in the manner prescribed by ORS 706.570 (2). If the supervisor determines that the default was unavoidable, the supervisor may waive the penalty. [Amended by 1973 c.797 §36]

**706.655 Records of extensions of credit by banking institutions.** (1) Each banking institution shall submit to the supervisor each calendar quarter a copy of such records concerning extensions of credit by the banking institution to its executive officers, directors and principal shareholders, and the related interests of those persons, as are required by rule of the supervisor.

(2) The supervisor may require a banking institution to file records under subsection (1) of this section more often than quarterly, as the supervisor determines is necessary.

(3) The supervisor shall adopt rules governing the submission of records concerning extensions of credit, as required under subsections (1) and (2) of this section, and the identification of the persons to whom the extensions are made. The rules shall be consistent with provisions of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 and regulations adopted by the Federal Reserve Board and the Federal Deposit Insurance Corporation thereunder:

(a) In order that banking institutions may satisfy the requirements of subsections (1) and (2) of this section by submitting copies of records required to be maintained under such federal laws and regulations; and

(b) In order to otherwise minimize the inconvenience to banking institutions of having to maintain separate records for the federal regulators and the supervisor. [1985 c.786 §2]

**706.660 Report of earnings and dividends.** (1) Each banking institution, foreign institution, extranational institution and each branch of every foreign and extranational institution shall submit to the supervisor a report of earnings and dividends when called for by the supervisor. The supervisor shall call for a report of earnings and dividends on the same day on which an earnings and dividends report is required from national banking associations by the federal regulatory agencies. The report shall be for a period designated by the supervisor in the call.

(2) The report shall be in the form prescribed by the supervisor and shall show all losses sustained, expenses and taxes paid, gross earnings and profits, losses recovered since the last report, payments made by stockholders and all amounts carried to surplus, undivided profits or dividends paid.

(3) The supervisor may require additional reports of earnings and dividends at any time the supervisor considers it necessary. The additional reports shall meet the requirements of subsection (2) of this section. [Amended by 1973 c.797 §37; 1979 c.88 §3]

**706.670 Report of dividend declaration.** Within 10 days after the declaration of any dividend, an institution shall forward to the supervisor a report of the dividend declared. This report shall also be included in the report required in ORS 706.660. [Amended by 1973 c.797 §38]

**706.680 Failure to make reports of earnings and dividends and dividend declarations.** A banking institution, foreign institu-

tion, extranational institution and any branch of a foreign or extranational institution which fails to make and submit any report required by ORS 706.660 or 706.670 is subject to a penalty of \$25 for each day the reports are delayed beyond the time allowed by ORS 706.660 or 706.670. The penalty shall be collected in the manner provided in ORS 706.570. [Amended by 1973 c.797 §39, 1979 c.88 §4]

**706.690 Transfer of stock or controlling interest; notice to and approval by supervisor.** (1) If the supervisor determines that the condition of an institution is such that any transfer of the capital stock of the institution would jeopardize the interest of its depositors, the supervisor shall notify the institution in writing that when any shares of the capital stock of the institution are to be transferred on the books or records of the institution, the officer proposing to make the transfer shall report in writing to the supervisor the proposed transfer of stock. A transfer of stock shall not be made, after the date such a notice is issued, unless the transfer agent first obtains the written consent of the supervisor. The supervisor shall notify the institution of the supervisor's decision within 30 days after receiving the report.

(2) If a director or officer of an institution, a transfer agent, vendee or vendor has reason to believe that a transfer of stock creates or changes a controlling interest in an institution, that person shall immediately notify the supervisor of the transfer. A transfer that creates a controlling interest in, or changes the control of, an institution shall not be entered upon the books of the institution or become effective until:

(a) Notice has been received at the office of the supervisor; and

(b) The sale, exchange or other disposition has been approved in writing by the supervisor.

(3) For purposes of this section, a controlling interest of an institution exists if a person, directly or indirectly, acting through one or more other persons, owns or has power to vote 25 percent or more of any class of voting stock of an institution or of a corporation that is or becomes a bank holding company as defined in ORS 715.010 unless:

(a) The stock of the institution is held in a fiduciary capacity and not for the benefit of the person or of the shareholders, employees or members of the person; or

(b) The stock is acquired, not as a means of circumventing ORS chapter 715, but by the person in the ordinary course of business to secure or

collect a debt previously contracted in good faith and the person disposes of the stock within two years after the acquisition of the stock. The supervisor may extend the period if an extension will not be detrimental to the public interest or in contravention of any other law.

(4) The supervisor shall approve or disapprove the transfer in accordance with the standards provided by ORS 707.080 (1). The supervisor also may disapprove a transfer under subsection (2) of this section if any of the reasons stated by ORS 707.145 apply to the proposed new owner of the shares. [Amended by 1973 c.797 §40; 1975 c.544 §4, 1977 c.135 §12; 1979 c.88 §5; 1985 c.12 §15, 1985 c.786 §13]

**706.700 Resignation of officers; notice to supervisor.** An officer of a banking institution who voluntarily disqualifies himself, retires or resigns from the position of the officer shall give 30 days prior written notice to the supervisor. [Amended by 1963 c.195 §1; 1973 c.797 §41]

**706.710 Waiver of disqualification, retirement or resignation notices; reducing effective date.** The supervisor may, by writing, waive the notices provided for in ORS 706.690 and 706.700, or shorten the period after the notice when the resignation, disqualification or retirement becomes effective. [Amended by 1973 c.797 §42, 1975 c.544 §5]

**706.720 Reports filed with supervisor; public inspection of records; exemptions; forms.** (1) The supervisor shall receive and file in the Banking Section all reports required by the Bank Act.

(2) Except as provided in subsection (3) of this section and ORS 706.730, the records of the Banking Section and the State Banking Board are available for public inspection unless the supervisor determines in the particular instance that the public interest in disclosure of the records is outweighed by the interests of a banking institution or its directors, stockholders, officers, employees and customers in keeping the records confidential, or that the records are exempt from disclosure under ORS 192.500. A determination by the supervisor under this subsection is subject to review under ORS 192.410 to 192.500.

(3) Except as provided in subsections (4) and (5) of this section, the following records of the section and the board are exempt from disclosure or production:

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) Investigatory information concerning persons subject to investigation by the supervisor under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155, 707.705 or 716.085 and financial statements of such persons.

(c) Proprietary information.

(d) Operational audits and reviews of financial statements submitted to the supervisor.

(e) Reports filed under ORS 706.655.

(f) Stockholder lists.

(g) Reports of the supervisor under ORS 706.915.

(4) Notwithstanding subsection (3) of this section, the supervisor may disclose any record of the section specified in this subsection pertaining to an institution that has been liquidated under ORS 711.400 to 711.615 if the supervisor, with the concurrence of the State Banking Board, determines in the particular instance that the public interest in disclosure of the record outweighs the interests of the banking institution or its directors, stockholders, officers, employees or customers in keeping the record confidential. Under no circumstances, however, shall the supervisor disclose any such record or portion thereof that contains any proprietary information or any information relating to the individual financial activities or affairs of persons unless the supervisor concludes that those activities or affairs were a direct and substantial contributing factor in the failure of the institution. This subsection applies to the following records of the section:

(a) Examination reports and work papers, directives, orders and correspondence relating to examination reports;

(b) Investigatory information concerning persons subject to investigation by the supervisor under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155, 707.705 or 716.085;

(c) Operational audits and reviews of financial statements; and

(d) Reports filed under ORS 706.655.

(5) Notwithstanding ORS 40.270, an officer of the section or member of the board may be examined concerning records that are exempt from disclosure under subsection (2) or (3) of this section and ORS 706.730 and the records are subject to production if the court before which a civil or criminal action is pending finds that such examination and production is essential for establishing a claim or defense. In making a finding under this subsection, if the court views the records, the court shall do so in camera.

(6) A civil penalty imposed by the supervisor shall become subject to public inspection:

(a) After the 20th day after the supervisor imposes the civil penalty, if the board does not review the civil penalty.

(b) On the date the board approves, disapproves or reduces the civil penalty.

(7) The State Banking Board may inspect all records of the Banking Section pertaining to the condition of banking institutions. The supervisor shall furnish to the board, upon request of the board, all records of the section that pertain to violations of law to which ORS 706.920 applies. The supervisor also may furnish such records without request. The board shall not disclose any records.

(8) All records of the Banking Section pertaining to the condition of banking institutions may be furnished to:

(a) The Federal Reserve Bank and its examiners.

(b) The Comptroller of the Currency of the United States and national bank examiners.

(c) The Federal Deposit Insurance Corporation and its examiners.

(d) The State Treasurer if the banking institution is a depository of public fund deposits.

(e) The following, if a merger, purchase or consolidation is prospective or imminent of institutions supervised by the supervisor, or if the following supervise an institution that owns or controls an institution under the supervisor's supervision:

(A) The Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section.

(B) The Federal Home Loan Bank.

(C) Regulators of out-of-state institutions or foreign bank holding companies or subsidiaries of foreign bank holding companies.

(f) The respective banking institution, or the out-of-state institution, foreign bank holding company or subsidiary of a foreign bank holding company that controls a banking institution.

(g) A holding company of a bank.

(9) The supervisor shall prescribe and furnish to interested persons the forms for all reports required by the Bank Act.

(10) If the supervisor is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the supervisor shall separate the

exempt and nonexempt material and shall disclose only the nonexempt material. [Amended by 1973 c.797 §43; 1975 c.515 §6; 1983 c.37 §3; 1983 c.367 §2; 1985 c.762 §33a; 1985 c.786 §14]

**706.725 False statements, reports and book entries.** An officer, director, stockholder or employe of any banking institution shall not:

(1) Knowingly subscribe to or make or cause to be made any false statement or report to the supervisor or any false entry in the books or accounts of the banking institution.

(2) Knowingly subscribe to or exhibit false papers with the intent to deceive any person authorized to examine into the affairs of the banking institution.

(3) Knowingly state or publish any false report or statement of the banking institution or prepare any false minutes, with intent to deceive the directors of the banking institution or any person authorized to examine the affairs of the banking institution.

(4) Make improper or fail to make proper entry upon the books or records or in any statement or report of the banking institution with intent to deceive or conceal the true condition of the banking institution. [1973 c.797 §44]

**706.730 Prohibition against disclosing depositor and debtor names; exceptions.**

(1) The State Banking Board, supervisor or any other person employed by the Financial Institutions Division shall not knowingly disclose the name of a person who is a depositor or debtor of a banking institution, or the amount of the person's deposit or debt, except as follows:

(a) The supervisor or the employe may disclose such information as may be required under ORS 706.720 (5) or as may be necessary in the performance of the supervisor's or employe's official duty including any duty under ORS 295.018.

(b) The supervisor may maintain a record of borrowers from banking institutions and may give information concerning the total liabilities of a borrower to a banking institution owning obligations of the borrower.

(2) Subsection (1) of this section does not prohibit disclosure of the name of any debtor or the amount of the person's debt included in reports that are filed under ORS 706.655, if the reports were filed by a banking institution that has been liquidated or is in the process of being liquidated under ORS 711.400 to 711.615 and if disclosure is otherwise allowed under ORS 706.720. [Amended by 1973 c.797 §45, 1975 c.515 §7; 1985 c.762 §§34, 34a; 1985 c.786 §15]

**706.740** [Amended by 1963 c.195 §2, 1963 c.580 §81; 1973 c.797 §46; repealed by 1985 c.762 §196]

**706.775 Enforcement of Bank Act; production of witnesses and evidence; fees and mileage of witnesses.** (1) For the purpose of an investigation or proceeding under the Bank Act, the supervisor may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the supervisor considers relevant or material to the inquiry.

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matter, the judge of the circuit court for any county, on the application of the supervisor, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of subpoena issued from the court or a refusal to testify therein.

(3) Each witness who appears before the supervisor under a subpoena shall receive the fees and mileage provided for witnesses in civil cases, except that a witness subpoenaed at the instance of parties other than the supervisor or an examiner shall not be compensated for attendance or travel unless the supervisor certifies that the testimony of the witness was material to the matter investigated.

(4) The supervisor in any investigation may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court. [Formerly 706.410]

**706.780 Notice to law enforcement officers of Bank Act violations; exception.**

If the supervisor has reason to believe that a person has violated any provision of the Bank Act for which criminal prosecution is provided, the supervisor shall give the information relative to the violation to the appropriate federal, state or local law enforcement officer having jurisdiction of the violation. However, this section does not apply when a director or officer of an institution has reported the information to the appropriate law enforcement agency under ORS 707.735. [Formerly 706.430]

**706.785 Attorney General to conduct actions; assistance of district attorneys.**

The Attorney General shall conduct all actions begun by the supervisor under authority of the Bank Act, and may require the assistance of the district attorney of the district in which the action is conducted. [Formerly 706.440]

**706.790 Adoption of rules.** (1) In accordance with ORS 183.310 to 183.550, the

supervisor may adopt rules for the purpose of carrying out the Bank Act.

(2) In addition to the notice requirements of ORS 183.310 to 183.550, before the supervisor adopts a rule, the supervisor shall submit a copy of the rule to each banking institution. [Formerly 706.460]

**706.795 Adoption of rules comparable to federal law and regulations.** Notwithstanding any other provision of law, the supervisor may, in accordance with ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410, make rules authorizing a banking institution to exercise any of the powers conferred upon a federally chartered bank, trust company, credit union, savings and loan association or savings association or institution doing business in this state that is subject to the regulations of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration or the successor or successors of them, if the supervisor finds that the exercise of the power:

(1) Serves the public convenience and advantage; and

(2) Equalizes and maintains the quality of competition between state chartered banking institutions and federally chartered banking institutions. [Formerly 706.555]

## STATE BANKING BOARD

**706.900 State Banking Board; appointment; qualifications; vacancy; compensation and expenses.** (1) The State Banking Board is established within the Department of Commerce. The board shall consist of five members appointed by the Governor. The members shall be subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565. Three of the members of the board shall each have at least five years' employment as senior officers of a banking institution in this or any other state and shall be employed as such at the time of appointment. The other two members shall be members of the general public with no occupational or directorial interest in any banking institution, national bank, state or federal savings association or state or federal credit union. If a vacancy occurs, the appointment to fill the vacancy shall be for the unexpired term.

(2) A member of the State Banking Board is entitled to compensation and expenses as provided in ORS 292.495. [Formerly 706.245]

**706.905 Board to select chairman; meetings; quorum.** (1) The board shall

annually select one of its members as chairman, who shall preside at the meetings of the board. In the absence of the chairman some other member of the board may serve as chairman. The board shall meet as determined by the board, or upon call of the chairman.

(2) A majority of the board constitutes a quorum for the transaction of business. A vacancy on the board shall not impair the right of the remaining members to perform all the duties and exercise all the functions and authority of the board. [Formerly 706.255]

**706.910 Powers and duties of board; expenses.** (1) The board may:

(a) Inquire into the needs of banking institutions and the functions and the business policy of the section;

(b) Make recommendations to the section concerning the adoption of rules and policies and the proposal of legislation for the welfare and progress of the banking institutions, the public and the banking business in Oregon; and

(c) Exercise any powers conferred on the board by law.

(2) The expenses of the board shall be paid from moneys available to the section for payment of the administrative expenses of the section. [Formerly 706.265]

**706.915 Supervisor's report to board on failure of banking institution.** (1) The supervisor shall prepare and submit to the State Banking Board a report described in subsection (2) of this section:

(a) When a banking institution is liquidated; or

(b) When a banking institution is merged, sold or consolidated with the approval of the supervisor due to its insolvency or impending insolvency.

(2) In the report, the supervisor shall:

(a) Give a full and complete statement, to the best of the supervisor's knowledge, of the reasons for the failure of the banking institution;

(b) Describe specifically any violations of law or noncompliance with the institution's own internal procedures that are directly connected with the failure;

(c) Provide a statement of the liabilities and resources of the institution; and

(d) Provide any other information that the supervisor believes should be included in the report.

(3) The supervisor shall submit the report to the board not later than the 90th day:

(a) After the date on which the supervisor transfers the duty of liquidating the institution to the Federal Deposit Insurance Corporation under ORS 711.465 or after the date on which the supervisor completes the liquidation of the banking institution, whichever date is earlier.

(b) After the date on which the sale, merger or consolidation takes effect.

(4) The board shall review the report and may suggest to the supervisor changes that it believes ought to be made in the report or information that ought to be added to it. The supervisor may amend the report according to the suggestions.

(5) Not later than the 15th day after the supervisor submits the report or amended report to the board, the supervisor shall prepare a summary of the report. The summary shall not be exempt from disclosure but shall be available to the public. The summary shall not contain any information that is confidential under ORS 706.720 (3)(a) to (f) or 706.730, or mention any names of employes, officers or directors of the banking institution or the name of any other person whose privacy, in the opinion of the supervisor, would be unreasonably infringed by disclosure.

(6) Except as provided in subsection (5) of this section, the supervisor, any member of the board or any employe of the section shall not publicly disclose any report prepared under this section.

(7) The supervisor, the board and the section shall be immune from liability for any claim for injury to any person:

(a) Resulting from the publication of a summary of a report under this section, except for publication of any matter that is included in the summary through negligence, in bad faith or with malice.

(b) Resulting from public disclosure of a report by any person other than the supervisor, any member of the board or any employe of the section. If the supervisor, a member of the board or any employe of the section publicly discloses a report, the person making the disclosure shall not be immune from liability.

(c) Resulting from actions taken in good faith by the supervisor, members of the board and employes of the section in connection with the preparation of the report or presentation of the report to the board. [1985 c.786 §16]

**706.920 Supervisor's report to board on violations of law.** (1) The supervisor shall

report to the State Banking Board each calendar quarter on all violations of law of the nature described in this subsection that have occurred during the previous calendar quarter. The violations to be reported are as follows:

(a) Any violation for which an order or directive is issued under ORS 706.580.

(b) Any violation of statutory requirements and limitations under the Bank Act concerning loans by a banking institution, or concerning collateral that a banking institution may accept for loans.

(c) Any failure to obey or put into effect any order or directive of the supervisor.

(d) Any refusal to submit to an examination of the supervisor.

(e) Any filing of a false report with the supervisor, when the person required to file the report knew or should have known that the report was false.

(f) Operation as a banking institution by any person without a proper certificate, in violation of ORS 707.010.

(g) Repeated violations or a continuing pattern of violations by a person of any provision or provisions of the Bank Act or rules adopted thereunder.

(h) Any violation of any provision of the Bank Act or rules adopted thereunder that the supervisor determines to be of major significance.

(2) The supervisor shall state in regard to each violation reported under subsection (1) of this section:

(a) Whether the supervisor imposed a civil penalty; and

(b) If no civil penalty was imposed, what other action, if any, has been or will be taken by the supervisor.

(3) The board may request the supervisor to provide additional information about violations reported or unreported by the supervisor. [1985 c.786 §17]

## PENALTIES

**706.980 Civil penalties.** (1) Any person who violates any provision of the Bank Act, or any lawful rule or final order of the supervisor for which a civil penalty is not expressly provided, shall forfeit a civil penalty in an amount determined by the supervisor of not more than \$2,000 for each offense, or \$10,000 in the aggregate for all such offenses within any three-month period. In the case of individuals, the civil penalty shall be

not more than \$1,000 for each offense or \$5,000 in the aggregate for all such offenses within any three-month period. Each violation is a separate offense.

(2) Any person who violates ORS 706.610 and 706.725 shall forfeit a civil penalty in an amount determined by the supervisor of not more than \$5,000. In addition, a person violating ORS 706.610 shall forfeit the person's office.

(3) Any person who violates ORS 706.730 shall forfeit a civil penalty, in an amount determined by the supervisor, of not more than \$1,000. In addition, the violator shall forfeit the violator's office.

(4) All money forfeited under subsections (1), (2) and (3) of this section shall be paid to the State Treasurer to be deposited in the Financial Institutions Division Account.

(5) In addition to any other civil penalty, any person who violates any provision of the Bank Act or any lawful rule or final order of the supervisor may be required to forfeit and pay to the State Treasurer to be deposited in the Financial Institutions Division Account a civil penalty in an amount determined by the supervisor but not to exceed the amount by which the person profited in any transaction which violates any such provision, rule or order.

(6) The State Banking Board without hearing may review and reduce, approve or disapprove any civil penalty imposed by the supervisor under the Bank Act. The board may not reduce, approve or disapprove a civil penalty later than the 20th day after the date of the order of the supervisor imposing the penalty.

(7) The civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(8) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

(9) If a civil penalty is assessed against a director, officer or employe of a banking institution, unless the supervisor provides otherwise, the director, officer or employe shall forfeit the penalty and the penalty shall not be paid either directly or indirectly by the banking institution.

(10) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in the Bank Act. [1985 c.786 §18]

**706.990 Criminal penalties.** Violation of ORS 706.725 is a Class C felony. [Amended by 1973 c.797 §48, 1975 c.544 §6]