# Chapter 708

## 1989 EDITION

# Regulation of Institutions Generally


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## REGULATION OF INSTITUTIONS

**708.005** [Repealed by 1973 c.797 §428]

**708.006 Definitions.** As used in this chapter:

(1) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(2) "Obligations" includes:

(a) The direct liability of the maker or acceptor of paper discounted with or sold to an institution;

(b) The liability of the drawer, indorser or assignor;

(c) If obligations of a copartnership or association, the obligations of the several members of the copartnership or association; and

(d) If obligations of a corporation, the obligations of all subsidiaries of the corporation in which the corporation owns or controls 50 percent or more of the capital stock. [1973 c.797 §98]

**708.010 Inapplicability of departmental banking laws.** All assets of commercial and savings departments of banks may be commingled. All deposit liabilities are chargeable against all assets. [Amended by 1973 c.797 §99]

**708.015** [Repealed by 1973 c 797 §428]

**708.020** [Amended by 1963 c 195 §5, 1963 c 580 §83; 1971 c.138 §1, repealed by 1973 c 797 §428]

**708.025 Savings accounts; conditions for withdrawal; interest rate.** (1) Within the limits established under applicable federal statutes and regulations, a bank receiving savings accounts shall prescribe by its bylaws or by contract with its depositors, the time and conditions on which repayment is to be made to depositors or to their order. The bank shall give a copy of the terms and conditions of repayment to the depositor when the account is opened.

(2) A bank may require 30 days' notice to withdraw any sum up to $500; 90 days' notice to withdraw any sum over $500 and not over $5,000; and 180 days' notice to withdraw any sum over $5,000. Withdrawals during a specified time period may be limited in the aggregate to the amount designated for that time period.

(3) The directors of a bank may prescribe, within the limits established under applicable federal statutes and regulations, the rate of interest which shall be paid on savings accounts and the time, terms and conditions of payment of interest.

(4) Except for negotiable order of withdrawal accounts and similar deposit accounts, withdrawal from which is made subject to check, a bank shall not knowingly permit a depositor to overdraw the depositor's savings account. [Amended by 1961 c 96 §1, 1973 c 797 §100, 1981 c.192 §7]

**708.026 Deposits; FDIC insurance required.** Banks shall secure insurance for their deposits from the Federal Deposit Insurance Corporation or a similar organization organized under the laws of the United States. [1973 c 797 §100a]

**Note:** 708 026 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 708 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

**708.027** [1961 c 165 §2, repealed by 1973 c.797 §428]

**708.030** [Amended by 1955 c 315 §1; 1957 c.255 §1; 1961 c 220 §1; 1965 c.168 §1; 1971 c 209 §1; 1973 c.797 §101, 1979 c 199 §1; 1985 c.554 §1, renumbered 708 484]

**708.032** [1959 c.383 §1, 1973 c 797 §109, renumbered 708.068]

**708.034** [1973 c 797 §102, 1975 c.544 §10, 1977 c 135 §21, 1979 c.199 §2, repealed by 1985 c.554 §13]

**708.035** [Amended by 1973 c 797 §112, renumbered 708 078]

**708.036** [1979 c.199 §7; repealed by 1985 c 554 §13]

**708.038** [1973 c.797 §103; repealed by 1985 c 554 §13]

**708.040** [Amended by 1973 c.797 §113; renumbered 708 082]

**708.043** [1979 c 199 §6, repealed by 1985 c 554 §13]

**708.044** [1973 c 797 §104; repealed by 1979 c.199 §9]

**708.045** [Repealed by 1955 c.310 §2]

**708.048** [1973 c.797 §105, 1979 c 199 §3, repealed by 1985 c 554 §13]

**708.050** [Amended by 1973 c.797 §114, renumbered 708 088]

**708.052** [1973 c.797 §106; 1985 c.554 §2; renumbered 708 486]

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

**708.058** [1973 c 797 §107; renumbered 708 488]

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

**708.062** [1973 c 797 §108; repealed by 1985 c.554 §13]

**708.068** [Formerly 708.032, 1977 c.135 §22; 1985 c.554 §3; renumbered 708 491]

**708.072** [1973 c 797 §110, repealed by 1985 c.554 §13]

**708.078 Stock in other corporations.** (1) Upon the written application of the board of directors filed with the director and subject to the written approval of the director and any limitations the director may prescribe, an institution may carry fully paid-up and nonassessable capital stock of any other corporation as an asset, if:

(a) The stocks are acquired for the purpose of strengthening the institution's capital structure or the elimination of undesirable assets.

(b) The aggregate amount of the stocks carried on the books as an asset is not in excess of 20 percent of the institution's unimpaired capital and surplus.

(2) An institution carrying the capital stock of another corporation shall not make a loan, directly or indirectly, to the corporation unless the obligation is fully secured.

(3) The stock may be held for such period as the director may determine, but in no event longer than that provided under ORS 708.410 for the holding of real estate other than banking premises.

(4) The book value of the asset shall be amortized in the manner provided in ORS 708.410 for the reduction of the book value of real estate other than banking premises.

(5) This section is not applicable to any stock that may be acquired in connection with the insurance of deposits, any stock that may be acquired under ORS 708.430 or stock that may be purchased as a part of any transaction in which an institution borrows from the United States or an agency of the United States. This section does not repeal or in any way limit or modify ORS 711.470. [Formerly 708.035; 1987 c.911 §14]

**708.082 Obligations; limitation on amount or security.** The limitations provided by law as to amount or security upon obligations to an institution of any person are not applicable to that portion of any loan made by an institution which is insured or secured or covered by guaranties or by commitments or agreements to take over or purchase, made by any Federal Reserve Bank, the United States, any agency of the United States or any corporation wholly owned or controlled, directly or indirectly, by the United States. [Formerly 708.040, 1979 c 199 §4]

**708.088 Bad debts; charging off.** (1) Upon instruction of the director, an institution shall charge off all bad debts.

(2) A bad debt is a debt:

(a) On which interest is past due and unpaid for 12 months, unless the debt is well secured and in process of collection; or

(b) Which is classified by an examiner as a bad debt. [Formerly 708 050]

## RESERVE REQUIREMENTS AND RESERVE DEPOSITORY BANKS

**708.100 Reserve requirements.** (1) An institution shall have on hand at all times an amount in reserve equal to 15 percent of the total demand deposits and five percent of the total time deposits. The amount shall be held on hand in lawful money of the United States or in money on deposit in reserve institutions approved by the department, including the Federal Reserve Bank, and payable on demand or evidenced by certificates of deposits which mature in one year or less, or in federal funds sold to reserve banks approved by the director. The reserve required on time deposits may be in the form of unpledged direct obligations of the United States Government or its agencies, in bankers' acceptances, in bonds of the State of Oregon or any county or school district or other municipal corporation of this state that mature within one year. An institution shall not be required to maintain any reserve on deposits of the United States. Cash items shall not be considered as part of the reserve of an institution, excepting unpresented checks on other solvent banking institutions, foreign institutions or national banking associations or on any other solvent business organization with the authority to issue checks received in the regular course of business and payable forthwith. The method of computing reserves and the forms to be used shall be prescribed by the director. For the purposes of this subsection, "direct obligations of the United States" include obligations of the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Housing Administration, Federal Intermediate Credit Bank, Federal Land Bank, Federal National Mortgage Association and public housing agencies, and other such obligations backed by the full faith and credit of the United States or guaranteed for payment under a pledge of annual contributions sufficient to provide for the payment of all principal and interest instalments when due.

(2) If an unanticipated reserve deficiency exists at the close of any banking day due to necessary delayed posting of cash items or the clearance of large cash items without notification, the institution shall eliminate the reserve deficiency within three banking days. If a deficiency is not eliminated within the three-day period, the institution is subject to a penalty to be assessed and collected by the director at the time of the examination of the institution or more frequently, as determined by the director. The penalty shall be assessed on the basis of average daily deficiencies from the expiration of the three-day period until the deficiency is eliminated at a rate of two percent per annum above the lowest rate applicable to borrowings by a member bank from its Federal Reserve Bank on the first day of the calendar month in which the deficiency first occurs. The penalty may be recovered as provided in ORS 706.980. All moneys received by the director under this subsection shall be deposited with

the State Treasurer and credited to the Insurance and Finance Fund created under ORS 705.145.

(3) Upon instruction of the director an institution shall replace with acceptable reserves any reserves classified by the director as substandard. [1973 c 797 §115, 1975 c.544 §11; 1981 c.7 §1; 1985 c.762 §40; 1987 c.373 §53]

708.105 [Amended by 1973 c.797 §118; renumbered 708.126]

**708.108 Institutions complying with federal law excused from state reserve requirements.** (1) If an institution becomes a member of the Federal Reserve System, it shall comply with the reserve requirements of the Federal Reserve Act and its amendments. Compliance with the Federal Reserve Act relieves the institution from compliance with ORS 708.100 and 708.116.

(2) If an institution or an extranational institution is not a member of the Federal Reserve System, compliance by the institution or extranational institution with Regulation D of the Federal Reserve Board as required by the Monetary Control Act of 1980 relieves the institution or extranational institution from compliance with ORS 708.100 and 708.116. [1973 c.797 §116, 1981 c.7 §2]

708.110 [Amended by 1973 c.797 §119, renumbered 708.136]

708.115 [Amended by 1963 c.195 §6, 1973 c 797 §120, renumbered 708.146]

**708.116 Reserve requirements; change by Department of Insurance and Finance.** If the director determines that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction make it advisable, the director may by rule, as provided in ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410, change the reserve requirements established under ORS 708.100. The reserves required under the rule shall not be less than 50 percent nor more than 200 percent of the amount of the reserves required under ORS 708.100. [1973 c 797 §117]

708.120 [Repealed by 1973 c 797 §428]

**708.126 Deficiency in reserve; loans, discounts, investments and profit distribution prohibited.** If the reserve is not corrected under ORS 708.100 (2), an institution shall not increase its loans and discounts except the discounting or purchasing of bills of exchange payable at sight or on demand, nor make any investment of its funds or distribution of its profits until the required reserve is restored. [Formerly 708.105]

**708.136 Deficiency in reserve; notice for correction.** If the reserve of an institution is found by the director to be less than the amount required under ORS 708.100 and 708.116, the director shall notify the institution to make good the reserve. [Formerly 708.110]

**708.146 Deposit of reserve funds in approved reserve depositories; approval of depositories; conditions.** (1) A bank shall not deposit any of its reserve funds in any other bank, national bank, foreign or extranational institution except a Federal Reserve Bank, unless the bank, national bank, foreign or extranational institution has been approved as a reserve depository by the director and a majority of the directors of the depositing bank.

(2) A bank, national bank, foreign or extranational institution applying for approval as a reserve depository and approved reserve depositories shall furnish the director with the information the director may require to evaluate the bank, national bank, foreign or extranational institution as a reserve depository.

(3) A bank, national bank, foreign or extranational institution shall not be approved by the director as a reserve depository unless it has an unimpaired paid-up capital and surplus of $1 million or more.

(4) The director may deny an application or cancel any appointment as a reserve depository.

(5) The restrictions of subsection (1) of this section shall not apply to deposits which are fully insured by the Federal Deposit Insurance Corporation. [Formerly 708.115; 1983 c.37 §7]

## BORROWING, REDISCOUNTING AND PLEDGING ASSETS

**708.205 Borrowed money and rediscounts; records kept; issuing notes or pledging assets; certificates of deposit.** (1) An institution borrowing money or rediscounting any of its notes shall show on its books and in its reports the amount borrowed or rediscounted.

(2) An officer, director or employee of an institution may issue the note of the institution for borrowed money, rediscount any note or pledge the assets of the institution only:

(a) When authorized by previous resolution of the board of directors of the institution entered upon the minutes of the institution; and

(b) Under rules and in the form prescribed by the director pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410.

(3) A bank shall not issue its certificate of deposit for the purpose of borrowing money. [Amended by 1973 c.797 §121]

**708.210 Pledge of assets.** An institution shall not pledge any of its assets except as authorized in ORS 707.310, 708.212, 708.220, 708.225 and 709.030. [Amended by 1973 c.797 §122; 1975 c 544 §12]

**708.212 Borrowing from Federal Home Loan Bank.** An institution may borrow from the Federal Home Loan Bank and pledge collateral therefor according to the laws creating the Federal Home Loan Bank and the regulations made pursuant to the laws. [1973 c.797 §123]

**708.215 Rediscounting and selling assets.** (1) An institution may rediscount or sell any of its assets for temporary purposes.

(2) An institution may rediscount with and sell to a Federal Reserve Bank any notes, drafts, bills of exchange, acceptances and other securities, to the same extent as this privilege is given to national bank members under the terms of the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto. [Amended by 1973 c 797 §124]

**708.220 Limitation on borrowing money, pledge of assets and collateral.** (1) A bank may, for any temporary purpose, borrow money and may pledge its assets as security for the loan, but the value of the assets pledged shall not be more than 50 percent greater than the amount borrowed. If the value of the assets pledged is more than 25 percent greater than the amount borrowed or if the amount borrowed is greater than the capital and surplus of the bank, the transaction shall first be approved in writing by the director. If the approval of the director is not obtained, the loan is not invalid or illegal as to the lender.

(2) A bank, with the prior written approval of the director, may pledge a portion of its assets as security for any uninsured portion of a deposit received by the bank, provided that the pledging of the assets in question:

(a) Will not result in the aggregate total of assets pledged under this subsection exceeding 20 percent of the aggregate paid-up and unimpaired capital and surplus of the bank;

(b) Will leave free of any pledge under this subsection sufficient paid-up and unimpaired capital and surplus to meet the minimum capital requirements established by applicable regulations of the Federal Deposit Insurance Corporation; and

(c) Will not, by reducing the unimpaired capital and surplus of the bank, place it in violation of the provisions of ORS 708.305 to 708.370 limiting the total obligations of a person to a bank.

(3) Any pledge of collateral to any depositor or creditor not permitted by law, or in excess of the amount prescribed in subsections (1) and (2) of this section, is void as to that portion of the collateral pledged which is excessive or illegal. In case of liquidation the illegal or excessive collateral shall be returned to the director upon demand without the prior payment of the debt it was intended to secure, but the creditor or depositor may retain the collateral which is legally pledged. [Amended by 1973 c.797 §125; 1989 c.304 §1]

**708.225 Pledge of assets to secure public or trust funds; "public funds" defined.** (1) A bank may pledge its assets to secure:

(a) Public funds;

(b) Trust funds awaiting investment or distribution; and

(c) Trust funds deposited with it by an institution.

(2) As used in this section, "public funds" means funds belonging to:

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

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

(c) Any port, port commission, dock or dock commission, which may be deposited to the credit of the port, port commission, dock or dock commission, or the treasurer thereof.

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

(e) Any school district within the State of Oregon.

(f) Any district organized under the laws of this state with the power to levy taxes.

(g) Any housing authority organized and operating pursuant to ORS 456.055 to 456.235.

(h) The United States and any of its agencies and instrumentalities to be deposited in the manner and under the rules prescribed by the United States Government.

(3) Notwithstanding any other provision of state law, when a bank pledges securities or any other assets to secure public funds,

the custodian of such public funds shall be a lien creditor, as defined in ORS 79.3010 (3), with respect to the securities or assets which have been pledged to secure such funds. [Amended by 1973 c.797 §126, 1989 c.231 §1]

**708.230 Securing deposits by surety bond or insurance.** (1) An institution may secure any of the funds deposited with the institution by giving a surety bond or policy of insurance under which some person other than the institution becomes liable for deposits except the aggregate amount of the bonds or policies of insurance shall not exceed 20 percent of the capital of the institution.

(2) A depositor may insure any deposit if the institution is not a party to the insurance and does not pay any premium or other charges. [Amended by 1973 c.797 §127]

**708.235 Security by both assets and bond; prorating.** If trust funds or public funds are secured by the assets of an institution and a bond of a surety company, the assets and bond shall be held as security for a ratable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds. [Amended by 1973 c.797 §128]

708.240 [Repealed by 1973 c 797 §428]

708.245 [Repealed by 1973 c.797 §428]

**708.250 "Capital debentures" defined for ORS 708.265 and 708.272.** "Capital debentures" means capital notes,. capital debentures and any other form of unsecured obligations issued by an institution to evidence borrowings where the rights of the lender are subordinate to the rights of the depositors. [Amended by 1963 c.195 §7, 1973 c.797 §130]

708.255 [Amended by 1963 c.195 §8; repealed by 1973 c.797 §428]

708.260 [Repealed by 1973 c 797 §428]

**708.265 Borrowing from approved sources; issuance of capital debentures; sources for repayment.** (1) An institution may borrow funds from any source available for any proper purpose approved by the director and issue capital debentures to evidence the borrowings. The terms and amounts of the capital debentures shall be approved by the director and authorized by the board of directors of the institution.

(2) The rights and priorities of the lenders shall be stated in the capital debenture.

(3) Except where the borrowing institution goes into liquidation, capital debentures and interest thereon are enforceable only against the sources, and in the manner, approved by the director and the board of directors of the institution at the time of the borrowing. If liquidation occurs, capital debentures shall be paid out of assets remaining after depositors, other prior claims and the expenses of liquidation have been paid. [Amended by 1973 c.797 §131]

708.270 [Repealed by 1973 c 797 §428]

**708.272 Issuance of convertible capital debentures.** (1) Subject to any limitation in its articles, a banking institution may, in connection with the issue, subscription or sale of any of its bonds or capital debentures, grant to the purchaser or holder thereof, the right to convert them into shares of stock of any class or classes.

(2) The terms and conditions of the conversion rights not fixed by the articles shall be fixed by a resolution adopted by the board of directors.

(3) The terms and conditions of the conversion rights shall be set forth in the certificate or other instruments evidencing the securities in connection with the issue, subscription or sale in which the rights are granted.

(4) If at the time of granting conversion rights, or at any later time, the institution is not authorized by its articles to issue all the shares of stock required for the satisfaction of the rights, the additional number of shares of stock required to be issued upon the exercise of the conversion rights shall be authorized by an amendment to the articles. The authorization by the shareholders to amend the articles acts as a waiver by the shareholders of their preemptive rights. [1973 c.797 §132; 1983 c.37 §8]

708.275 [Repealed by 1973 c.797 §428]

## LOANS AND INVESTMENTS

**708.300 "Capital and surplus" defined for ORS 708.305 to 708.380.** As used in ORS 708.305 to 708.380 the term "capital and surplus" includes capital debentures with a maturity date of more than five years. [1973 c 797 §134]

**708.305 Limitations on amount of obligations to bank; applicability.** (1) Except as provided in ORS 708.310 to 708.370 and subsection (2) of this section, the total obligations of a person to a bank which are outstanding at one time and which are not fully secured, as provided in subsection (2) of this section, by collateral having a market value at least equal to the amount of the obligation shall not exceed 15 percent of the aggregate paid-up and unimpaired capital and surplus. Any loan made under any of such exceptions shall be in addition to the 15 percent loan limitation.

(2) Obligations of a person in the form of notes or other evidences of indebtedness which are fully secured by readily marketable collateral having a market value which may be determined by reliable and

continuously available price quotations, which market value is at least 15 percent greater than the amount of the obligation at the time it is incurred, and which market value is at all times while the obligation is outstanding at least 100 percent of the balance of principal, interest and other charges applicable to the obligation, shall not exceed 10 percent of the aggregate paid-up and unimpaired capital and surplus.

(3) The limitations of this section shall not apply to time or demand deposits in banks or approved reserve depositories.

(4) Obligations negotiated in another name for the benefit of any person shall be included in the obligations of the person benefited. [Amended by 1955 c.310 §1; 1973 c.797 §133, 1975 c 544 §13, 1983 c 37 §9]

**708.310 Obligations of indorser of discounted commercial paper.** (1) Obligations as indorser arising out of the discount of commercial or business paper actually owned by the person negotiating the same are not subject under ORS 708.305 to any limitation based upon capital and surplus.

(2) As used in this section "commercial or business paper" means negotiable notes, drafts, acceptances or bills of exchange having a maturity of not more than six months, which have been given by one person to another in settlement of a commercial or business transaction involving the purchase of goods, and upon which both parties to the transaction are liable either as maker, drawer, acceptor or indorser. [Amended by 1973 c 797 §135]

**708.315 Obligations secured by shipping documents.** Obligations drawn in good faith against actually existing values and secured by shipping documents, conveying or securing title to instruments, goods or commodities in process of shipment are not subject under ORS 708.305 to any limitation based upon capital and surplus. [Amended by 1973 c.797 §136]

**708.320 Noncommercial short-term notes.** Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under ORS 708.310, having a maturity of not more than six months, and owned by the person indorsing and negotiating the same, are subject under ORS 708.305 to a limitation of 15 percent of capital and surplus. [Amended by 1973 c.797 §137]

**708.325 Instalment consumer paper.** (1) Obligations as indorser or guarantor of negotiable or nonnegotiable instalment consumer paper which carry a full recourse indorsement or unconditional guarantee by the person transferring the obligation and conform to the rules prescribed by the director, are subject to a limitation of 25 percent of capital and surplus.

(2) The limitation of subsection (1) of this section does not apply if the bank relies primarily on the makers of the obligations for the payment of the obligations, the bank has a reasonably adequate knowledge of the financial condition of the makers of the obligations and an officer of the bank certifies in writing that the responsibility of the makers of the obligations has been evaluated. The certificate shall be retained as part of the records of the bank. [Amended by 1973 c.797 §138, 1983 c.37 §10]

**708.330 Bankers' acceptances of other banks.** Obligations in the form of bankers' acceptances of other banks of the kind described in section 13 of the Federal Reserve Act are not subject under ORS 708.305 to any limitation based upon capital and surplus. [Amended by 1973 c 797 §139]

**708.335 Obligations secured by documents covering readily marketable staples.** (1) Obligations of any person in the form of notes or drafts secured by documents of title covering readily marketable staples shall not exceed:

(a) 15 percent of capital and surplus where the principal amount of the obligation does not exceed 85 percent of the market value of the staples.

(b) 20 percent of capital and surplus where the principal amount of the obligation does not exceed 80 percent of the market value of the staples.

(c) 25 percent of capital and surplus where the principal amount of the obligation does not exceed 75 percent of the market value of the staples.

(d) 35 percent of capital and surplus where the principal amount of the obligation does not exceed 70 percent of the market value of the staples.

(e) 40 percent of capital and surplus where the principal amount of the obligation does not exceed 65 percent of the market value of the staples.

(2) If it is customary to insure the staples mentioned in subsection (1) of this section, the staples shall be fully covered by insurance.

(3) This section does not apply to obligations of a person arising from the same transactions or secured upon the identical staples for more than 10 months.

(4) A staple for purposes of subsection (1) of this section, in addition to being readily marketable, must be either:

(a) Nonperishable; or

(b) Perishable, but frozen, freeze-dried, irradiated or refrigerated for the purpose of protecting the staple against deterioration. [Amended by 1973 c.797 §140; 1985 c 424 §1]

**708.340 Obligations secured by documents covering livestock.** (1) Obligations of any person in the form of notes or drafts secured by documents of title covering livestock are subject to a limitation under ORS 708.305 to 15 percent of capital and surplus where the principal amount of the obligation is not more than 80 percent of the market value of the livestock.

(2) Turkeys are considered as livestock within the meaning of this section. [Amended by 1973 c 797 §141]

**708.345 Notes secured by governmental obligations or shares of mutual fund or unit trust.** (1) Obligations of any person in the form of secured notes are not subject under ORS 708.305 to any limitation based upon capital and surplus if the principal amount of the obligation is not more than 90 percent of the market value of the security and the obligation is secured by:

(a) Obligations of the United States, including those of its agencies and instrumentalities;

(b) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended;

(c) Obligations of the State of Oregon, any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment; or

(d) Shares in any mutual fund or unit trust, the assets of which are invested solely in obligations of the type described in paragraphs (a), (b) and (c) of this subsection.

(2) Notwithstanding the limitation under ORS 708.305, obligations of any person in the form of secured notes are subject to a limitation of 20 percent of capital and surplus if the principal amount of the obligation is not more than 90 percent of the market value of the securities and the obligation is secured by bonds of any state of the United States or bonds of any county, city, school district, port district or other public body in the United States payable from ad valorem taxes and the bonds are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds. [Amended by 1973 c.797 §142; 1975 c.544 §14; 1983 c 37 §11; 1985 c.786 §35]

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

**708.355 Demand notes secured by deposit account assignment.** Obligations of any person in the form of notes payable upon demand are not subject to any limitation when fully secured by a bona fide assignment of any kind of deposit account, including but not limited to an automatic savings to checking transfer account or a negotiable order of withdrawal account, if the account is fully or partially insured, guaranteed or underwritten by the United States Government or any agency or instrumentality of the United States by virtue of any Acts of Congress or amendments thereto. [Amended by 1963 c 502 §1; 1973 c.797 §143, 1981 c.192 §8]

**708.360 Notes secured by life insurance policy assignment.** Obligations of any person in the form of notes secured by a bona fide assignment of a life insurance policy having a cash surrender value of not less than 100 percent of the amount of the obligations, plus an amount equal to one annual premium on the insurance policy, are subject under ORS 708.305 to a limitation of 10 percent of capital and surplus. [Amended by 1973 c.797 §144]

**708.365 Notes secured by first lien on real estate.** Obligations of any person in the form of notes secured by a first lien on real estate are subject to a limitation of 10 percent of capital and surplus. [Amended by 1973 c 797 §145; 1985 c.554 §4]

**708.370 Loans guaranteed by Federal Reserve Bank, United States or instrumentality.** The limitations provided in ORS 708.305 to 708.365 as to amount or security upon obligations to any bank of any person are not applicable to that portion of any loan which is secured or covered by guaranties or by agreements to take over or purchase made by private company mortgage insurance or guaranty, any Federal Reserve Bank or the United States or any department, bureau, board, commission or agency of the United States, including any corporation wholly owned, directly or indirectly, by the United States. [Amended by 1973 c.797 §146]

**708.375 Obligations of guarantors.** Notwithstanding ORS 708.305 to 708.365 and with the written permission of the director, any person may become obligated to a bank for any amount to provide additional security to any obligations previously contracted in good faith. Such obligation shall be considered the same as a direct obligation as maker in determining whether any additional loans may be made to the person. [Amended by 1973 c.797 §147]

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

(2) A bank shall not accept drafts or bills of exchange or issue letters of credit, whether in a foreign or domestic transaction, for any one person to an amount equal at any one time in the aggregate to more than 20 percent of its paid-up and unimpaired capital and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance or letter of credit.

(3) Except as provided in subsection (5) of this section, a bank shall not accept bills or issue letters of credit, or be obligated for a participation share in bills, to an amount equal at any time in the aggregate to more than 150 percent of its paid-up and unimpaired capital and surplus. The aggregate of acceptances or bills, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 percent of the aggregate of all acceptances, including obligations for a participation share in such acceptances authorized for such bank under this section.

(4) A bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, drawn under rules prescribed by the director or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange, as required by the usages of trade in the respective countries, dependencies or insular possessions. A bank shall not accept the drafts or bills of exchange for any one bank to any amount exceeding in the aggregate 20 percent of the paid-up and unimpaired capital and surplus of the accepting bank, unless the draft or bill of exchange is accompanied by documents conveying or securing the title or by some other adequate security. A bank shall not accept the drafts or bills of exchange in an amount exceeding at any time the aggregate of its paid-up and unimpaired capital and surplus.

(5) The director, under such conditions as the director may prescribe, may authorize, by rule or order, any bank to accept bills and issue letters of credit, or be obligated for a participation share in bills, in an amount not exceeding at any time in the aggregate 200 percent of its paid-up and unimpaired capital and surplus. [Amended by 1973 c.797 §148; 1979 c.88 §10; 1983 c.37 §12]

**708.385 Investments; valuation; entry on books.** Investments made by a bank shall be entered on the books of the bank in a sum not to exceed their cost to the bank calculated according to accepted principles of accounting. [Amended by 1973 c.797 §149]

**708.388 Investment in governmental obligations.** (1) Institutions may invest, without regard to any limitation based on capital and surplus in:

(a) Obligations of the United States, including those of its agencies and instrumentalities;

(b) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended; and

(c) Obligations of the State of Oregon, any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(2) Subject to a limitation of 20 percent of capital and surplus, institutions may invest in obligations of any other state of the United States or obligations of any out-of-state county, city, school district, port district or other public body in the United States payable from ad valorem taxes, if the obligations are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal obligations.

(3) Obligations received in satisfaction of debts previously contracted in good faith are not subject to the limitations of this section if the book value of such obligations in excess of the limitations of this section is reduced to the amount allowed under this section within six months after the date the obligations are acquired. [1973 c.797 §150, 1975 c.544 §15; 1981 c.192 §9, 1983 c.37 §13]

**708.390** [Amended by 1967 c.359 §702; repealed by 1973 c.797 §428]

**708.395 Real and personal property, right to purchase, hold and dispose of.** An institution may purchase, hold, convey, sell or lease:

(1) The lots and buildings in which the business of the institution is carried on, including, with its offices, other apartments in the same building to rent as a source of income.

(2) Furniture and fixtures, vaults and safe deposit vaults and boxes and other personal property as necessary to carry on the business of the institution.

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

(4) Real estate purchased at execution sale or decree under securities held by the institution.

(5) Real estate conveyed to the institution in connection with its purchase of a bona fide contract of sale covering the real estate conveyed.

(6) Real estate purchased with the approval of the director for the purpose of future location or expansion of the business of the institution. [Amended by 1963 c.502 §2, 1973 c.797 §151]

**708.400 Restrictions on real and personal property used in business.** (1) Real estate, furniture, fixtures and safe deposit vaults and boxes mentioned in ORS 708.395 (1), (2) and (6) shall not in the aggregate be carried on the books of an institution as an asset to an amount exceeding 50 percent of its paid-up capital, surplus, undivided profits and capital debentures with a maturity of five years or more, and only 25 percent of its paid-up capital, surplus, undivided profits and capital debentures with a maturity of five years or more may represent furniture and fixtures. Within guidelines established by rules promulgated under ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410 the director may authorize an institution to exceed the limitations prescribed under this subsection.

(2) A two-thirds vote of all directors is necessary to authorize the purchase of any lot and building or the construction of any building mentioned in ORS 708.395 (1).

(3) If an institution does not use the real estate and improvements thereon as its place of business, it shall sell the same or reduce its book value, as required in ORS 708.410. [Amended by 1963 c.502 §3; 1973 c.797 §152; 1975 c.544 §16]

**708.405 Removal of unauthorized real estate from assets.** An institution acquiring any real estate in any manner other than provided by ORS 708.395 and 708.400 shall immediately, upon receiving notice from the director, charge the real estate to profit and loss or otherwise remove the real estate from the assets. If the loss impairs the capital of the institution the impairment shall be made good in the manner provided in ORS 711.310 to 711.320. [Amended by 1973 c.797 §153]

**708.410 Reduction of book value and disposition of real property.** All real estate purchased by any bank at sales under pledges, mortgages or deeds of trust for its benefit for money loaned, all real estate conveyed to it by borrowers in satisfaction and discharge of loans and all other real estate owned or held by it, except as provided in ORS 708.395 (1), (5) and (6), 708.400 and 708.405, shall be:

(1) Reduced in book value not less than five percent per year each year after title is vested, unless the time is extended by the director.

(2) Sold or exchanged for other real estate by the bank within 15 years after title has vested in it unless the time is extended by the director. An exchange of real estate for other real estate shall not be made until written consent has been given by the director. Any real estate taken in exchange may be held for a period of time as the director may fix, but not to exceed 15 years. [Amended by 1973 c.797 §154; 1987 c.528 §1]

**708.415 When title deemed vested.** For the purpose of ORS 708.395 to 708.420, title is vested in an institution on the date the institution first had title either by deed direct or by deed or conveyance to any other person for the benefit of the institution, or when entitled to have a deed under sheriff's certificate of sale. Deeds or conveyances held in good faith as security for loans are not included in the deeds mentioned in this section. [Amended by 1973 c.797 §155]

**708.420 Unsold real estate not carried as asset.** If any real estate is not sold within the time prescribed by ORS 708.410, it shall not be carried as an asset of the institution. This section does not apply to real estate held in trust or real estate purchased with funds other than the capital and resources of the institution. [Amended by 1973 c 797 §156]

708.425 [Amended by 1973 c.797 §157; renumbered 708.489]

**708.428 Acquisition and leasing of personal property.** (1) A bank may acquire and lease personal property upon terms requiring payment, during the minimum period of the lease, of rents which will exceed the total expenditures by the bank in the acquisition, ownership, maintenance and protection of the property. Rents may include residual values, the payment of which is guaranteed by a responsible third party.

(2) Obligations as lessee of personal property under this section shall be included in the total obligations of a person and subject to the limitations of ORS 708.305.

(3) Personal property acquired for lease is an investment and is not subject to the limitations for fixed assets under ORS 708.400. [1973 c.797 §158; 1975 c.544 §17; 1981 c.192 §10]

**708.430 Investment in stock of other corporations.** (1) An institution shall not invest any of its assets in the capital stock of any other corporation except:

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

(b) In stock acquired or purchased to save a loss on a preexisting debt. The stock shall be sold within two years of the date acquired or purchased. The director may extend the time if the director finds that an extension will not be detrimental to the public interest and will not contravene any other law.

(c) In the capital stock of any safe deposit company organized and existing under the laws of this state and doing an exclusive safe deposit business on premises owned or leased by the institution, if the purchasing and holding of the stock is first authorized by resolution of the board of directors of the institution and by the written approval of the director. The board of directors and director shall state in the authorization the number and amount of the shares which the institution may purchase and hold. The director may examine, unrestricted, the assets, accounts and affairs of the safe deposit company.

(d) In the capital stock of agricultural and livestock finance companies subject to the same limitations applicable to national banks and to the approval of the director.

(e) In the capital stock, eligible for purchase by national banks, of small business investment companies, but the aggregate investment in the stock shall not exceed two percent of the capital and surplus of the institution.

(f) In the common stock of any federally chartered corporation that is chartered for the purpose of providing secondary markets for the sale of mortgages by institutions.

(g) In the stock of the Federal Home Loan Bank.

(h) In the capital stock of a corporation exclusively engaged in a trust business or a banker's bank, but the aggregate investment in the stock shall not exceed 10 percent of the capital and surplus of the institution.

(i) In the capital stock of bank service corporations as provided in ORS 708.431 to 708.434.

(j) In the capital stock of a community development corporation as provided in ORS 708.444.

(k) If a trust company is not engaged in a general banking business and if the investment is first approved by the director, the trust company may invest an amount not to exceed 20 percent of the paid-in capital and the surplus of the trust company:

(A) In the capital stock of a subsidiary investment company defined in the Investment Company Act of 1940; or

(B) In a company one of the purposes of which is to act as an investment adviser as defined in ORS 59.015 (6), with all the powers customarily exercised by an investment adviser.

(L) In adjustable rate preferred stock of the Student Loan Marketing Association established in 20 U.S.C. sec. 1087-2, but the aggregate investment in the stock shall not exceed 15 percent of the capital and surplus of the institution.

(2) An institution may invest its assets in shares of any mutual fund, the assets of which are invested solely in obligations of the type described in and limited under ORS 708.388.

(3) An institution may, subject to the approval of the director, acquire or continue to hold the fully paid stock of a corporation, one of the purposes of which is to assist the institution in handling real estate, claims, judgments or other assets or in holding title to the assets. An institution may acquire or continue to hold the fully paid stock of a corporation the purpose of which is to permit the institution to engage in any business that a bank holding company or a subsidiary of a bank holding company is authorized to engage in. This subsection does not apply unless the institution is the owner of all the common stock of the subsidiary corporation, except qualifying shares of directors, and the stock is carried on the books of the institution at a value not exceeding 15 percent of capital and surplus.

(4) An institution may, subject to the approval of the director and to rules promulgated by the director, acquire and continue to hold all of the fully paid stock of a corporation engaged in any business that an institution is authorized to engage in, if the stock is carried on the books of the institution at a value not exceeding 15 percent of capital and surplus. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary.

(5) An institution may, subject to the approval of the director and under rules promulgated by the director, acquire and continue to hold all the fully paid stock of a subsidiary corporation engaged in the business of purchasing the stock of the institu-

tion for purposes of holding that stock and making a market for that stock, if the stock of the subsidiary is carried on the books of the institution at a value not exceeding $1, and if not more than 20 percent of the net profit of the banking institution is disbursed to the subsidiary in any one fiscal year. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary. Acquisitions under this subsection shall not exceed 15 percent of the capital and surplus of the institution.

(6) An institution may acquire and hold all or part of the stock of a corporation which is or may thereafter be licensed under ORS 744.002 as an agent to transact one or more of the classes of insurance described in ORS 744.115 except for title insurance, subject to the following requirements:

(a) The acquisition and holding of such stock shall be subject to the approval of the director. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities, and the existence of satisfactory management for the corporation.

(b) The director may revoke or restrict the ongoing authority of the institution to hold stock in the corporation if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) If the corporation conducts the insurance agency activity in a branch or office in which the institution carries on its banking business, the insurance agency activity shall be physically separated from those parts of the premises in which the institution carries on the banking business.

(d) All persons who act on behalf of the corporation to transact insurance, as that term is defined in ORS 731.146, shall be employees of the corporation only and shall not while employed by the corporation be in any manner employed or compensated by or perform any work for the institution.

(e) The name of the corporation and any assumed business name used by it shall not be identical to that of the institution.

(f) Prior to selling any policy of insurance, the corporation shall disclose in writing to the purchaser that the corporation is owned in whole or part by the institution and that the purchaser shall not be required to purchase the insurance from the corporation as a condition of obtaining any service from or engaging in any transaction with the institution.

(g) For each calendar year during which an institution owns all or part of any corporation licensed under ORS 744.002 as an agent, the institution shall file a written report with the director. The report shall be filed no later than March 31 of the following year and shall disclose the insurance activities of the corporation. The required contents of the report shall be established by the director by rule. The reports filed with the director under this paragraph shall be available for public inspection in the office of the director.

(h) The corporation shall not in any manner use customer information obtained by the institution from another insurance agent to promote, develop or solicit insurance business for the corporation unless the other insurance agent consents to such use of the customer information.

(i) The corporation shall be subject to the limitations applicable to lending institutions under ORS 746.180 and 746.185 to 746.211. For the purpose of this subsection, the term "lending institution" has the meaning set forth in ORS 746.185.

(7) An institution may invest up to 15 percent of its paid-in capital and surplus in the stock of the Oregon Capital Corporation authorized to be created under ORS 284.750 to 284.795, 316.104, 317.084, 317.140, 317.267 and 318.031. [Amended by 1959 c.107 §1; 1959 c 660 §18; 1961 c.97 §1; 1963 c.195 §9; 1973 c.797 §159; 1975 c.544 §18, 1977 c.135 §23, 1981 c 68 §2; 1981 c 192 §10a, 1983 c.37 §14, 1983 c 321 §1; 1985 c.430 §1, 1985 c 786 §36, 1987 c 603 §28, 1987 c.911 §16, 1987 c 916 §2, 1989 c 331 §29, 1989 c 701 §65]

**Note:** Sections 2, 3 and 4, chapter 458, Oregon Laws 1987, provide

**Sec. 2.** (1) Notwithstanding ORS 708 430, for the period commencing on the effective date of this 1987 Act [September 27, 1987] and ending January 1, 1992, an institution may invest any of its assets in the capital stock of one or more real estate development corporations that are solely engaged in investing in, holding, managing, leasing, selling, subdividing and improving real property

(2) Investment of the institution in the stock of a real estate development corporation shall be subject to the prior approval of the director and to the following requirements·

(a) The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the real estate development corporation and satisfactory management for the corporation.

(b) The director may revoke or restrict the ongoing authority of the real estate development corporation to engage in real estate development activities if the condition of the institution substantially deteriorates or the activities of the corporation are adversely affecting the institution.

(c) No officer or director of the institution or of the real estate development corporation, and no related interest of any such person, shall engage in any real estate activity or transaction with the corporation. For purposes of this paragraph, the term "related interest" shall have the meaning established for that term by rule of the director pursuant to ORS 706.655.

(d) The aggregate investment by the institution in the stock of real estate development corporations shall not exceed 15 percent of the unimpaired capital and surplus of the institution.

(e) The original equity position of the real estate development corporation in individual projects shall not exceed 49 percent. Where the director subsequently finds that the financial deterioration of a project is such that a higher equity position is necessary to protect the investment of the corporation or institution, the director may permit investment in excess of 49 percent in such project.

(f) The real estate development corporation shall not engage in providing real estate brokerage services except as to properties owned in whole or in part by the institution or any holding company or subsidiary or affiliate thereof

(g) Any loans made by the institution to the real estate development corporation shall be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and shall not involve more than the normal risk of repayment or present other unfavorable features. Loans by the institution to all real estate development corporations in which the institution has an ownership interest are limited under ORS 708 305

(h) The institution shall not take any action to coerce a potential borrower into giving the institution an interest as stockholder in the potential borrower as a condition for receiving a loan from the institution

(i) The activities of the real estate development corporation in investing in, holding, managing, leasing, selling, subdividing and improving real property shall be limited to real properties located within this state or within 100 miles of the main office, or a branch office located within this state, of the institution having the ownership interest in the corporation.

(j) For each calendar year during which an institution owns all or any part of the capital stock of a real estate development corporation, the institution shall file a written report with the director The report shall be filed no later than March 31 of the following year and shall disclose the total amounts, the ranges of interest rates and the ranges of maturities for each of the following categories of loans:

(A) All loans made by the institution during the calendar year to all real estate development corporations in which the institution has the controlling interest,

(B) All loans made by the institution during the calendar year to all real estate development corporations in which the controlling interest is held by another institution or by a national bank, a state or federal savings bank, a state or federal savings and loan association or a state or federal credit union, and

(C) All loans made by the institution during the calendar year to real estate development corporations other than those described in subparagraph (A) or (B) of this paragraph, where the loans are of the same types made by the institution during the year to one or more real estate development corporations described in subparagraph (A) or (B) of this paragraph.

(k) As used in paragraph (j) of this subsection, "controlling interest" means having the direct or indirect ownership or power to vote more than 50 percent of any class of voting stock of the real estate development corporation or having control in any manner over the election of a majority of the directors of the corporation

(L) The reports filed with the director under paragraph (j) of this subsection shall be available for public inspection in the office of the director [1987 c.458 §2]

**Sec. 3.** Repeal of section 2 of this Act by section 4 of this Act shall not affect or impair the rights of an institution that has invested any of its assets under section 2 of this Act to continue to hold an interest in any capital stock acquired prior to January 1, 1992. [1987 c 458 §3]

**Sec. 4.** Section 2 of this Act is repealed on January 1, 1992. [1987 c 458 §4]

**708.431 Definitions for ORS 708.431 to 708.434.** As used in ORS 708.431 to 708.434, unless the context requires otherwise:

(1) "Bank service corporation" means a corporation, all of the capital stock of which is owned by one or more banks or national banks organized to perform services authorized by ORS 708.434.

(2) "Depository institution" means a banking institution, extranational institution, foreign institution, national bank, state or federally chartered savings and loan association, state or federally chartered credit union, or any other person authorized by state or federal law to engage in a banking business.

(3) "Invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or otherwise, but does not include a payment for rent earned, goods sold and delivered or services rendered prior to the making of the payment.

(4) "Person" means an individual, corporation, partnership, association, joint stock company, business trust or unincorporated organization. [1973 c 797 §160; 1981 c.192 §11; 1983 c 37 §15]

**708.432 Investment in bank service corporation.** One 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. No bank shall invest more than five percent of its total assets in bank service corporations. [1973 c 797 §161, 1983 c 37 §16]

**708.433 Discrimination by bank service corporation prohibited against nonstockholding depository institution; permitted conduct.** No bank service corporation shall unreasonably discriminate in the provision of any services authorized under chapter 37, Oregon Laws 1983, to any depository institution that does not own stock in the bank service corporation on the basis of the fact that the nonstockholding depository institution is in competition with a depository institution that owns stock in the bank service corporation, except that:

(1) It shall not be considered unreasonable discrimination for a bank service corporation, at its option, to either:

(a) Provide services to nonstockholding depository institutions only at a price that

fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; or

(b) If the depository institution is authorized under ORS 708.432 to invest in a bank service corporation, the bank service corporation may require that the depository institution invest in the stock of the bank service corporation, in which case the bank service corporation shall provide services to the depository institution on the same basis as for other stockholder depository institutions of the bank service corporation.

(2) A bank service corporation may refuse to provide services to a nonstockholding depository institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the bank service corporation. [1973 c.797 §162; 1983 c 37 §17]

**Note:** The Legislative Counsel has not, pursuant to ORS 173.160, undertaken to substitute specific ORS references for the words "this Act" [chapter 37, Oregon Laws 1983] in ORS 708.433 Chapter 37, Oregon Laws 1983, amended ORS sections which may be found by referring to the 1983 Comparative Section table located in volume 15 of Oregon Revised Statutes (1983 Replacement Parts).

**708.434 Authorized services of bank service corporations; sale of insurance; regulation of services.** (1) A bank service corporation may perform any of the following services for depository institutions: 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 depository institution.

(2) In addition to the services which may be performed by a bank service corporation for depository institutions under subsection (1) of this section, a bank service corporation:

(a) May perform for any person any service which may lawfully be performed by all shareholders of the bank service corporation, or by any holding company or subsidiary of any such shareholder, except that a bank service corporation shall not take deposits.

(b) With respect to the sale of insurance, shall be subject to the limitations applicable to lending institutions under ORS 746.180 and 746.185 to 746.211. For the purpose of this paragraph, the term "lending institution" has the meaning set forth in ORS 746.185.

(3) A banking institution may not cause to be performed, by contract or otherwise, any of the services described in subsection (1) of this section for itself, whether on or off its premises, unless assurances satisfactory to the director are furnished to the director by both the banking institution and the person performing the services that the performance of the services will be subject to regulation and examination by the director to the same extent as if the services were performed by the banking institution itself on its own premises.

(4) The director may regulate and examine the performance of the services described in subsection (1) of this section for depository institutions, and may regulate and examine the performance by bank service corporations of the services described in subsection (2) of this section. [1973 c.797 §§163, 164, 1983 c 37 §18, 1987 c 650 §10]

**708.435 Acquisition of own stock prohibited; exception.** An institution shall not purchase or accept as collateral its own capital stock, except where the purchase or taking of collateral is necessary to prevent loss upon an indebtedness previously contracted in good faith. If full payment of the indebtedness is not made, the stock shall be sold by the institution within six months from the date it was purchased or received as collateral. [Amended by 1973 c.797 §165]

**708.440 Loans on stocks of other institutions.** (1) An institution shall not make a loan secured by the stock of another institution, if by making the loan the total stock of the other institution held as collateral will exceed in the aggregate 25 percent of the capital stock of the other institution. A loan upon the capital stock of an institution shall not be made unless the institution has restored in either its surplus or undivided profit accounts the full amount of its guaranty fund.

(2) An institution shall not loan in the aggregate more than five percent of its total resources upon the capital stock of a single corporation as collateral security. [Amended by 1963 c.195 §10; 1973 c.797 §166]

**708.444 Community development corporations; authority to invest or organize; conditions; corporate form; functions.** (1) As provided in this section:

(a) An institution may invest its paid-in and unimpaired capital and unimpaired surplus in a community development corporation.

(b) An institution may organize a community development corporation as a wholly-owned subsidiary of the institution and invest the institution paid-in and unimpaired capital and unimpaired surplus in the corporation.

(2) An institution may invest in or organize and invest in a community development corporation under subsection (1) of this

section if the following conditions are satisfied:

(a) The projects undertaken by the community development corporation must be predominantly of a civic, community or public nature, and not merely of a private or entrepreneurial nature.

(b) The institution's aggregate investment in community development corporations and their projects must not exceed five percent of its capital and surplus.

(c) Investments must be accounted for on the institution's books under other "assets."

(d) The institution must submit to the director its proposal for investing in or organizing and investing in a community development corporation and the proposal must receive the director's approval.

(e) The membership of the board of directors of the community development corporation must be representative of the community in which the corporation is to operate.

(f) If the corporation is organized under the Oregon Nonprofit Corporation Law, the stock of the corporation purchased by the institution, or the institution's membership in the corporation if it does not issue stock, shall be carried on the books of the institution at a value not exceeding $1.

(3) A community development corporation may be organized as a for-profit corporation under ORS chapter 60 or as a nonprofit corporation under the Oregon Nonprofit Corporation Law.

(4) For purposes of this section, a community development corporation is a corporation that is authorized under its articles of incorporation to:

(a) Acquire real estate. This paragraph does not authorize real estate investment that is primarily speculative in nature.

(b) Make equity investments in small businesses and in development projects that primarily benefit small businesses.

(c) Participate in joint ventures with outside partners. [1983 c 321 §3, 1987 c 197 §5]

**708.445** [Amended by 1973 c 797 §167; renumbered 708.451]

**708.446 Proposal to invest in or organize community development corporation; approval by director.** (1) An institution shall submit to the director, on an application form designed by the director, its proposal to invest in or organize and invest in a community development corporation. The institution shall describe in detail on the application the scope of development activities that the community development corporation will undertake. The director shall approve or disapprove the application as provided in this section. If the director approves an application to organize a community development corporation, the institution shall incorporate the proposed community development corporation as provided by law.

(2) The director may submit an application to any appropriate state agency or city, county or other local government for its advice and assistance on determining the need and practicability of the projects proposed in the application. [1983 c.321 §4]

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

**708.451 Dealing in chattels or manufacturing prohibited; sale of property acquired in satisfaction of indebtedness.** Except as provided in ORS 708.428, an institution shall not employ its funds, directly or indirectly, in trade or commerce, by buying or selling except for account promotion ordinary goods, chattels, wares and merchandise, or by owning or operating industrial or manufacturing plants of any kind. It may, however, sell property which may come into its possession as security for loans or in the ordinary collection of debts, but goods or chattels so coming into the possession of an institution shall be disposed of as soon as possible and shall not be considered a part of the assets of the institution two years after the date the property is acquired, unless such period is extended by the director. [Formerly 708.445; 1987 c 528 §2]

**708.455 Claims and judgments as assets.** Claims against the estates of insolvent persons or deceased or incompetent persons and judgments against any person shall not be carried as an asset upon the books of an institution for more than two years, unless a written extension of time is granted by the director. This section does not apply to loans made to the personal representative, guardian or trustee of any estate. [Amended by 1973 c 797 §168]

**708.460 Loans to directors, officers, employees; conditions; prohibitions; exemptions.** (1) An institution may loan its funds to officers and employees of the institution if:

(a) The combined obligations of officers and employees of the institution do not exceed 50 percent of its paid-up capital and surplus.

(b) The obligations of any employee or of any officer actively engaged in the management of the institution do not exceed five percent of the paid-up capital and surplus of the institution.

(c) The obligations of an employee or of an officer who is actively engaged in the

management of the institution in excess of $10,000 are fully secured by good collateral.

(2) The limitations of paragraphs (a) and (b) of subsection (1) of this section do not apply to loans to officers and employees of the institution if the loan is secured by an assignment of a deposit account described in ORS 708.355.

(3) An institution shall not make a loan upon which a director, the president, the chief executive officer, a vice president, the cashier or the secretary of the institution is an obligor unless:

(a) A majority of the directors of the institution first have approved the loan; and

(b) The loan is made under a written agreement.

(4) A director of an institution shall not participate in any vote or act of the directors to approve a loan upon which the director is an obligor.

(5) The directors of an institution, if the institution makes loans to its directors, officers or employees, shall establish written procedures for approving such loans.

(6) Officers of the institution shall report all loans to directors, officers and employees to the board of directors at its next regular meeting after the loan is made.

(7) A loan to a copartnership, association or corporation in which an officer, director or employee of the institution is a partner, officer or director, or in which the aggregate stock owned or controlled by any one or more than one of the officers, directors or employees of the institution is 20 percent or more of its outstanding capital shall be subject to the same conditions applicable under this section to a loan to the particular officer, director or employee.

(8) Obligations negotiated in another name for the benefit or use of any person shall be included in the obligations of the person.

(9) Subsections (3) and (4) of this section apply to any extension of credit to the persons named in those subsections, except the following:

(a) An advance against accrued salary or other accrued compensation, or an advance for the payment of expenses incurred or to be incurred on behalf of the institution.

(b) Indebtedness of $5,000 or less arising by reason of any general arrangement by which an institution acquires charge or time credit accounts, or makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest-bearing overdraft credit plan or any similar open-end credit plan. The director by rule may adopt conditions and restrictions on the kinds of indebtedness that may qualify under this paragraph.

(c) Any other kind of indebtedness that the director declares by rule not to be subject to subsections (3) and (4) of this section.

(10) Notwithstanding paragraph (a) of subsection (3) of this section, the directors of an institution need not first approve a loan to a person named in that subsection unless the loan, when aggregated with all other loans to that person and to all related interests of that person, as defined by rule, exceeds the higher of $25,000 or five percent of the institution's capital and unimpaired surplus. In no event shall an institution make a loan to a person named in subsection (3) of this section in an amount which, when aggregated with all other loans to that person and all related interests of that person, exceeds $500,000, except by complying with subsections (3) and (4) of this section. The definition of "related interest" for purposes of this subsection shall be consistent with the definition of that term by rule under ORS 706.655. [Amended by 1963 c.502 §4; 1973 c.797 §169, 1975 c 544 §19, 1981 c.192 §11a; 1983 c.37 §19, 1985 c 786 §37]

**708.465 Including obligations secured by first lien on real estate as part of borrower's total obligation.** Obligations secured by a first lien on real estate shall not be included with other obligations of the maker for the purpose of determining the total amount which may be loaned to the maker if:

(1) Title to the real estate has, in good faith, passed to another and the original maker of the note is no longer either directly or through some other person the owner of the real estate;

(2) The institution looks to the owner of the real estate rather than the maker of the obligation for payment;

(3) There is no default in either principal or interest; and

(4) The obligations are not in excess of 80 percent of the valuation of the real estate. [1973 c.797 §170]

**708.470 Negligent, excessive, dishonest or unlawful loans; civil liability of officer, director or employee.** Any officer, director or employee of an institution who knowingly or negligently loans the funds of the institution in a dishonest or unlawful manner or permits the funds of the institution to be so loaned, is liable for the full amount of the loan and for all damages which the institution, its stockholders or any other person has sustained in consequence thereof. The liability for the loan continues until the loan, with interest, is paid in full without loss to

the institution. The amount of the liability may be collected by suit or action without first attempting to collect from the debtor. [Amended by 1973 c.797 §171]

**708.475 Reporting certain transactions to board.** An officer, director or employee of an institution shall not conceal from or fail to report to the board of directors of the institution any transaction occurring between the regular meetings of the board of directors involving:

(1) Any discounts or loans made by the institution; or

(2) The purchase or sale of securities. [Amended by 1973 c.797 §172; 1981 c.192 §11b; 1985 c.786 §38]

**708.480 Interest rates on loans by banks; penalty for late payment.** (1) Except as otherwise provided in this section, there is no limitation on the rate of interest or on the amount of other charges which a bank or national bank may contract for and receive for a loan or use of money.

(2) If a loan made by a bank or national bank is repaid before maturity, the unearned portion of the charges, if any, shall be refunded or credited to the borrower as provided in this subsection. The amount of the refund shall not be less than the total interest contracted for to maturity, less the greater of:

(a) Ten percent of the amount financed or $75, whichever is less; or

(b) The interest earned to the instalment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate computations under this paragraph, the instalment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that instalment date. If prepayment occurs more than 15 days after the preceding instalment due date, the next succeeding instalment due date shall be considered to be nearest to the date of prepayment. In determining the simple interest rate, the lender may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to accrued and unpaid interest and any amount remaining is applied to reduction of the principal balance.

(3) Any instalment of an instalment loan or payment under an open-end credit arrangement that is not paid when due shall continue to bear interest until paid. In addition, if the instalment or payment is not paid when due, the instalment or payment may bear a late charge of not greater than five percent of the amount of the instalment or payment, or $5, whichever is more. However, except for loans secured by real property, the lender may impose a late charge only if:

(a) The instalment or payment is not received by the lender within 15 days after the due date, or if the 15-day period expires on a Saturday, Sunday or legal holiday, by the end of the next business day;

(b) A monthly billing, coupon or notice is provided by the lender disclosing the date on which instalments or payments are due and that a late charge may be imposed if payment is not received by the lender within 15 days thereafter; and

(c) The loan agreement or open-end credit arrangement provides for a late charge upon delinquent instalments or payments. [1953 c.388 §1; 1965 c.338 §1, 1973 c.797 §173; 1975 c.544 §20; 1977 c.692 §2; 1981 c.412 §4; 1981 c.910 §7a; 1985 c.796 §3; 1987 c.485 §1]

**708.484 Real estate loans.** (1) Subject to the restrictions contained in ORS 708.305 to 708.370, any bank may make loans upon obligations secured by first liens or junior liens on real estate or leaseholds. The lien may be subsequent to taxes not due and bonded indebtedness for public improvements not due.

(2) A mortgage on real estate may be a first lien within the meaning of this section although subordinate to another lien if the bank:

(a) Holds funds pledged by or on behalf of the borrower in an amount sufficient to cover at all times the prior lien; and

(b) May, if not restricted by provisions of the loan agreement, at any time, effect payment on the prior lien. [Formerly 708.030]

**708.485** [1973 c.797 §173a, repealed by 1981 c.412 §24]

**708.486 Purchase of real estate contracts as loans.** The purchase of a bona fide contract covering sale of real estate constitutes a loan on real estate within the meaning of ORS 708.484 and 708.488. The bank may acquire contracts if the requirements of ORS 708.484 and 708.488 are complied with. [Formerly 708.052]

**708.488 Real estate loans; evidence of title and insurance.** In support of a real estate or leasehold obligation, a bank shall maintain a file containing such appraisal, evidence of merchantable title and insurance as may be required by the director. [Formerly 708.058]

**708.489 No loans made on undivided interest in real estate.** An institution shall not make any loan secured by an undivided interest in real estate, but a lien may be taken on an undivided interest in real estate

to secure a debt previously contracted in good faith. [Formerly 708 425]

708.490 [1975 c 625 §4; 1977 c.791 §4; 1981 c 192 §12; repealed by 1981 c 412 §24]

**708.491 Construction loans.** Subject to the restrictions contained in ORS 708.305 to 708.370, any bank may make loans to finance the construction of buildings and the improvements appurtenant thereto when the loan is secured by a lien on the real estate where the building and improvements are being or are to be constructed. The bank making the loan shall require sufficient guaranty from the contractor, builder or owner for the completion of the construction in accordance with the plans and specifications and within the estimated contract price for the construction. Moneys on the loans shall be advanced from time to time during the progress of construction upon a certificate of estimate to be furnished by the architect, contractor, builder, supervisor in charge of the construction or owner. [Formerly 708 068]

## DEPOSITS AND WITHDRAWALS

**708.500 Notice to depositor upon change in terms, charges, withdrawal conditions or decrease in interest rate.** If a bank changes the terms, the service charges, or conditions for withdrawal of any deposit account, the bank shall notify the depositor in writing before the change is effective. If a bank decreases the interest rate on any deposit account, other than an account which by its terms provides for a floating, variable or indexed rate of interest, it shall notify the depositor in writing before the change is effective. With respect to deposit accounts which by their terms provide for a floating, variable or indexed rate of interest, the bank shall not be required to give notice to the depositor concerning changes in the interest rate other than by means of account statements provided to the depositor in the ordinary course, not less than once each calendar quarter. Any notice required by this section may be given to the depositor in person or sent to the depositor by regular mail at the last address shown on the bank's deposit account records. In the case of accounts held in the names of two or more depositors, the bank may give or send the notice to any of the depositors. [1975 c.544 §23; 1979 c 88 §11; 1981 c.192 §13; 1983 c.37 §20]

708.503 [1985 c.804 §2; repealed by 1987 c.491 §9]

708.505 [Repealed by 1973 c.797 §428]

**708.506 Deposit made in name of minor.** When any deposit is made by or in the name of a minor, the deposit shall be held for the exclusive right and benefit of the minor free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon, to the person in whose name the deposit has been made. The receipt of the minor is a valid and sufficient release and discharge to the institution for the deposit or any part thereof. [1975 c.544 §24]

**708.508 Time period for drawing against item deposited in banking institution or national bank; disclosure.** (1) A banking institution or national bank shall allow a customer who deposits an item in the customer's account to draw against the item within the time period applicable to that item under the schedule adopted by the Director of the Department of Insurance and Finance under ORS 705.600.

(2) Except as provided in subsection (3) of this section, in any agreement between a banking institution or national bank and its customer, the banking institution or national bank may not specify a period of time for purposes of drawing on an item that is longer than any applicable period specified in the schedule adopted by the Director of the Department of Insurance and Finance under ORS 705.600.

(3) This section does not prohibit a banking institution or national bank and its customer from agreeing to a longer period than that specified in the schedule adopted by the Director of the Department of Insurance and Finance for drawing against items because of special circumstances, if the agreement is not contained in a preprinted form and is entered into by the banking institution or national bank only in special circumstances.

(4) The provisions of this section do not alter or impair any right or obligation under ORS chapter 74.

(5) Banking institutions and national banks shall disclose in writing the schedule adopted by the Director of the Department of Insurance and Finance under ORS 705.600 and in effect on the date of the disclosure. For persons who became account holders prior to the date on which the Director of the Department of Insurance and Finance adopts the schedule under ORS 705.600 and who remain account holders thereafter, the disclosure shall be made within 30 days after the director adopts the schedule. For persons who become account holders after the date on which the director adopts the schedule, the disclosure shall be made prior to the opening of the account holder's account.

(6) Every banking institution and national bank shall post or provide in a conspicuous location in its principal place of business and at each branch a notice stating the schedule adopted by the administrator under ORS 705.600.

(7) As used in this section:

(a) "Customer" means any person who has an account with the banking institution or national bank.

(b) "Item" has the meaning given that term under ORS 705.600. [1987 c 491 §4]

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

**708.511** [1975 c.544 §25; repealed by 1977 c.555 §18]

**708.512** [1973 c.797 §174; repealed by 1975 c.544 §62]

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

**708.516** [1975 c 544 §26; repealed by 1977 c 555 §18]

**708.520 Disposition of deposit on death of depositor.** (1) On the death of a depositor of an institution or a national bank, if the deposit is $15,000 or less, the institution or national bank may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor to:

(a) The surviving spouse;

(b) If there is no surviving spouse, to the Adult and Family Services Division, on demand of the division within 60 days from the death of the depositor where there is a preferred claim arising under ORS 411.795, 412.600, 413.200 or 414.105, or if there is no claim by the division, to the surviving children 18 years of age or older;

(c) If the depositor left no surviving spouse, Adult and Family Services Division claim or children, to the depositor's surviving parents; or

(d) If there is no surviving spouse, Adult and Family Services Division claim, surviving child or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all banks in Oregon do not exceed $15,000;

(c) Show the relationship of the affiant or affiants to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the deposit to the full extent of the deposit if necessary.

(e) In the event the decedent died intestate without known heirs, the Director of the Division of State Lands shall be the affiant.

(3) The institution shall determine the relationship of the affiant to the deceased depositor, however payment of such moneys in good faith to the affiant or affiants shall discharge and release the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered, or paid to a personal representative of the estate of the decedent.

(4) A probate proceeding is not necessary to establish the right of the surviving spouse, Adult and Family Services Division claim, or surviving children or surviving parent or surviving brothers and sisters or the Director of the Division of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(5) When an institution or a national bank transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit. [Amended by 1969 c.193 §1, 1969 c.591 §302; 1973 c.797 §175; 1975 c.479 §1, 1981 c.298 §3, 1987 c 658 §1]

**708.525 Adverse claim to deposit; notice; restraining order or other process; indemnity bond.** (1) A bank or national bank shall recognize an adverse claim to a deposit it holds if the adverse claimant gives notice to the bank or national bank of its claim and:

(a) Procures a restraining order, injunction or other appropriate process against the bank or national bank in an action wherein the person to whose credit the deposit stands is made a party and served with summons; or

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

(2) This section does not apply where the person to whose credit the deposit stands is a fiduciary for the adverse claimant, and the affidavit of the adverse claimant states the facts constituting the relationship and the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit. [Amended by 1973 c.797 §176]

**708.530 Checks drawn by agents presumed to be in authorized manner.** If a person, who owns a deposit account subject to check, authorizes another person as agent to draw checks on the bank or national bank

against the account, the bank or national bank, in the absence of written notice to the contrary, may presume that any check drawn by the agent in the manner authorized by the principal, including checks drawn to the personal order of the agent, is drawn for a purpose authorized by the principal and within the scope of the authority conferred upon the agent. [Amended by 1973 c.797 §177]

**708.535 Checks of intoxicated or drugged persons.** (1) A bank or national bank may refuse to pay any check, draft or order drawn upon it when the officers of the bank or national bank have reason to believe that the person signing or indorsing the instrument was so under the influence of liquor, drugs or controlled substances as to make it reasonably doubtful whether the person was at the time of signing or indorsing the check, draft or order capable of transacting business.

(2) A bank, national bank or the principal officers of a bank or national bank are not liable for damages for refusing in good faith to pay any check, draft or order pursuant to subsection (1) of this section. [Amended by 1973 c.797 §178, 1979 c.744 §63]

**708.540** [Repealed by 1963 c.402 §11]

**708.545** [Repealed by 1963 c.402 §11]

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

**708.555 Certified checks.** (1) A bank shall certify a check only if the amount of the check actually stands to the credit of the drawer in collected funds on the books of the bank.

(2) The amount of any check certified shall be immediately charged to the drawer's account. [Amended by 1963 c 402 §4, 1973 c.797 §179]

**708.600 Definitions for ORS 708.600 to 708.661.** As used in ORS 708.600 to 708.661, unless the context requires otherwise:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit and share account.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

(4) A "multiple-party account" is any of the following types of account: A joint account, a P.O.D. account or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(5) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for the party, less all withdrawals made by or for the person that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(6) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original party or trustee. Unless the context requires otherwise, it includes a guardian, conservator, personal representative or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the named beneficiary has a present right of withdrawal.

(7) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge.

(8) "P.O.D. account" means an account payable on request to one person during the lifetime of the person and on the death of the person to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(9) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(10) "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of ORS 708.600 to 708.656 the request for withdrawal or payment is treated as immediately

effective and a notice of intent to withdraw is treated as a request for withdrawal.

(11) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(12) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution, and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(13) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party. [1977 c 555 §1; 1987 c 373 §53a]

708.605 [Repealed by 1973 c 797 §428]

**708.606 Application of ORS 708.611 to 708.621; liability and setoff rights of financial institutions.** The provisions of ORS 708.611 to 708.621 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between those persons and their creditors and other successors, and have no bearing on the power of withdrawal of those persons as determined by the terms of account contracts. The provisions of ORS 708.631 to 708.656 govern the liability of financial institutions that make payments pursuant thereto, and their setoff rights. [1977 c 555 §2]

708.610 [Repealed by 1973 c.797 §428]

**708.611 Ownership of multiple-party accounts.** (1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(2) A P.O.D. account belongs to the original party during the lifetime of the party and not to the P.O.D. payee or payees. If two or more persons are named as original parties, during their lifetimes rights as between them are governed by subsection (1) of this section.

(3) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during the lifetime of the trustee. If two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (1) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary. [1977 c 555 §3]

708.615 [Repealed by 1973 c 797 §428]

**708.616 Multiple-party accounts; disposition of deposit upon death of party or trustee; effect of will.** (1) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent, unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during their lifetimes shall be in proportion to their previous ownership interests under ORS 708.611 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before death; and the right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account:

(a) On death of one of two or more original parties, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On death of the sole original party or the survivor of two or more original parties, any sums remaining on deposit belong to the P.O.D. payee or payees, if surviving, or to the survivor of them if one or more die before the original party. If two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account:

(a) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the estate of the decedent.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will. [1977 c 555 §4]

708.620 [Amended by 1963 c.580 §84; repealed by 1973 c.797 §428]

**708.621 Right of survivorship based on form of account; alteration of form of account.** The provisions of ORS 708.616 as to rights of survivorship are determined by the form of the account at the death of a party. The form of an account may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during the lifetime of the party. [1977 c 555 §5]

708.625 [Repealed by 1973 c.797 §428]

**708.626 Transfer of moneys upon death of depositor or trustee is not testamentary disposition.** Any transfers resulting from the application of ORS 708.616 are effective by reason of the account contracts involved and ORS 708.616, and are not to be considered as testamentary or subject to administration in the estate of a deceased party. [1977 c 555 §6]

708.630 [Repealed by 1973 c.797 §428]

**708.631 Payment of deposit in multiple-party account to one or more parties; institution not required to determine source or use of funds in account.** Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions. [1977 c 555 §7]

708.635 [Repealed by 1973 c.797 §428]

**708.636 Joint account; payment to any party to account; payment to others.** Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under ORS 708.616. [1977 c.555 §8]

708.640 [Repealed by 1973 c 797 §428]

**708.641 P.O.D. account; payment to any original party; payment to others.** Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original parties. Payment may be made to the personal representative or heirs of a deceased original party if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as an original party or as P.O.D. payee. [1977 c.555 §9]

708.645 [Repealed by 1973 c.797 §428]

**708.646 Trust account; payment to any trustee; payment to others.** Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon the beneficiary's surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. [1977 c 555 §10]

708.650 [Repealed by 1973 c.797 §428]

**708.651 Discharge of institution from liability for payments made; conditions.** Payment made pursuant to ORS 708.631, 708.636, 708.641 or 708.646 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection given by this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand

for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided by this section. The protection provided by this section shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts. [1977 c.555 §11]

708.655 [Repealed by 1973 c 797 §428]

**708.656 Right of institution to setoff; amount.** Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before the death of the party a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before the death of the debtor, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal. [1977 c 555 §12]

708.660 [Repealed by 1973 c 797 §428]

**708.661 Designation of agent for account; powers of agent.** Nothing in ORS 708.600 to 708.661, 716.024, 723.426 or 723.432 shall preclude a party to an account from adding the name of another person to such an account with the designation "agent." Such agent shall have no present or future interest in the sums on deposit in such account, but the financial institution may honor requests for payment from such account by such agent, unless the principal is deceased at the time the payment is requested and the financial institution has actual knowledge of such death. Payments from such account by such financial institution at the request of such agent shall discharge such financial institution from all claims for amounts so paid. [1977 c 555 §14]

## MISCELLANEOUS PROHIBITED PRACTICES

708.705 [Repealed by 1973 c.797 §428]

708.710 [Repealed by 1973 c.797 §428]

**708.715 Receiving illegal compensation; misapplication of property and credit.** (1) An officer, director, agent or employee of an institution shall not ask for, receive or agree to receive any money, property or thing of value or of personal advantage, for:

(a) Procuring or endeavoring to procure for any person any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange by the institution.

(b) Permitting any person to overdraw any account with the institution.

(2) An officer, director, stockholder, employee or agent of an institution shall not abstract or wilfully misapply any of the property of the institution, or wilfully misapply its credit. [Amended by 1973 c 797 §180]

**708.720 Illegal guaranty or indorsement.** An officer, director or employee of an institution shall not make or deliver any guaranty or indorsement on behalf of the institution whereby the institution becomes liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which the institution may legally make. [Amended by 1973 c 797 §181]

708.725 [Repealed by 1973 c 797 §428]

## PENALTIES

**708.980 Civil penalties.** (1) Any officer, director or employee of an institution who violates ORS 708.126 shall forfeit a civil penalty in an amount determined by the director of not more than $2,500 for each offense.

(2) An institution that violates:

(a) ORS 708.210, 708.215 and 708.220 shall forfeit a civil penalty in an amount determined by the director of not more than $50,000.

(b) ORS 708.230 shall forfeit a civil penalty in an amount determined by the director of not more than $10,000. In addition, the director may revoke the charter of the violating institution.

(3) All money forfeited under subsections (1) and (2) of this section shall be paid to the State Treasurer to be deposited in the Insurance and Finance Fund.

(4) The civil penalty may be recovered as provided in ORS 706.980. [1975 c 544 §27]

**708.990 Criminal penalties.** Violation knowingly of any of the provisions of ORS 708.715 is a Class C felony. [Amended by 1973 c 797 §182, 1975 c 544 §21]