

TITLE 52A

INSURANCE AND FINANCE ADMINISTRATION

Chapter 705. Department of Consumer and Business Services; Financial Institutions Generally

Chapter 705

1993 EDITION

Department of Consumer and Business Services; Financial Institutions Generally

ADMINISTRATION

(Generally)

- 705.010 Definitions for ORS 705.010 to 705.350
- 705.105 Department of Consumer and Business Services; director; qualifications; confirmation; designation as Insurance Commissioner; bond or letter of credit; seal
- 705.115 Department organization
- 705.117 Consumer Advocacy Section
- 705.125 Deputy director; subordinate officers and personnel
- 705.135 Delegation; rules; employee indebtedness; reporting

(Financial Provisions)

- 705.145 Consumer and Business Services Fund; sources; uses; revolving account; Banking Education Assessment Account
- 705.155 Petty cash funds
- 705.165 Disposition of moneys accruing from department enforcement of certain laws

SECURITIES AND FRANCHISE LAWS; ADMINISTRATIVE PROVISIONS

- 705.300 Duties of director regarding securities, commodities and franchises
- 705.310 Evidentiary effect of certain records regarding securities, commodities and franchises; fees
- 705.320 Certified documents; effect
- 705.330 Withdrawal of certain documents; review; effect
- 705.340 Access to director's and department records regarding securities, commodities and franchises
- 705.350 Fees for certain documents; rules

FINANCIAL INSTITUTIONS

(Foreign and Extranational Banks)

- 705.500 Authorized activities of foreign or extranational banking corporation; filing and license fees
- 705.510 Exemption from fees and taxes for foreign or extranational banking corporations

(Miscellaneous Provisions)

- 705.600 Time schedule for customer to draw against deposit
- 705.610 Appointment of financial institution examiners
- 705.620 Rule for schedule of fees to be collected from financial institutions
- 705.630 Charging for extra expenses

CROSS REFERENCES

- Administrative procedures and rules of state agencies, 183.310 to 183.550
- Bank Act, Chs. 706 to 716
- Banking institutions, Ch. 706
- Consumer Finance Act, Ch. 725
- Credit Union Act, Ch. 723
- Oregon Capital Corporation, 284.750 to 284.795
- Pawnbrokers Act, Ch. 726
- Savings Association Act, Ch. 722
- Savings banks, Ch. 716
- Stock savings banks, Ch. 716
- Trust companies, Ch. 706, 709
- 705.145
- Workers' Memorial Scholarship Account established in fund, 654.200
- 705.600
- Availability of funds deposited with financial institutions, 708.508, 722.257, 723.444

INSURANCE AND FINANCE ADMINISTRATION

705.005 [1985 c.762 §2; repealed by 1987 c.373 §85]

ADMINISTRATION

(Generally)

705.010 Definitions for ORS 705.010 to 705.350. As used in ORS 705.010 to 705.350:

(1) "Board" means the Workers' Compensation Board.

(2) "Department" means the Department of Consumer and Business Services.

(3) "Director" means the director of the department. [1987 c.373 §1; 1993 c.744 §9]

705.100 [1985 c.762 §3; repealed by 1987 c.373 §85]

705.105 Department of Consumer and Business Services; director; qualifications; confirmation; designation as Insurance Commissioner; bond or letter of credit; seal. (1) The Department of Consumer and Business Services is created.

(2) The department shall be under the supervision and control of a director who shall be responsible for the functions of the department.

(3) Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint the director, who shall hold office at the pleasure of the Governor. The person appointed as director shall be well qualified by training and experience to perform the functions of the office.

(4) The director shall receive such salary as is provided by law or, if not so provided, as is fixed by the Governor.

(5) With respect to the duties, functions and powers imposed upon the director under the insurance and workers' compensation laws, the director may be designated by the title of Insurance Commissioner.

(6) Before entering upon the functions of office, the director shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in the penal sum fixed by the Governor.

(7) The department shall have an official seal. Any certificate or other document or paper executed by the department pursuant to its authority and sealed with its seal, and all copies of papers certified by it and authenticated by the seal, shall in all cases be evidence equally and in like manner as the original and shall have the same force and effect as would the original in any suit or proceeding in any court in this state. [1987 c.373 §2; 1991 c.331 §108; 1993 c.744 §10]

705.110 [1985 c.762 §4; repealed by 1987 c.373 §85]

705.115 Department organization. (1) The director, with the approval of the Governor, shall organize and reorganize the department in the manner the director considers necessary to conduct the work of the department properly.

(2) The functions of the department may be divided into administrative divisions or staff offices. Each division or office shall be under the supervision of a person appointed by the director, with the approval of the Governor. The appointee shall serve at the pleasure of the director, not be subject to the State Personnel Relations Law and be well qualified by technical training and experience in the functions the appointee is to perform. [1987 c.373 §4]

705.117 Consumer Advocacy Section. The Director of the Department of Consumer and Business Services shall establish within the department a Consumer Advocacy Section not later than January 1, 1988. [1987 c.774 §152(1)]

Note: 705.117 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 705 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

705.120 [1985 c.762 §5; repealed by 1987 c.373 §85]

705.125 Deputy director; subordinate officers and personnel. (1) With the approval of the Governor, the director may appoint a deputy director who shall serve at the pleasure of the director, not be subject to the State Personnel Relations Law and have full authority to act for the director, subject to the control of the director. The appointment of the deputy director shall be by written order filed with the Secretary of State.

(2) Except as provided in ORS 705.115 and subsection (1) of this section, the director, subject to applicable provisions of the State Personnel Relations Law, shall appoint all subordinate officers and employees of the department, prescribe their functions and fix their compensation. [1987 c.373 §5]

705.130 [1985 c.762 §6; repealed by 1987 c.373 §85]

705.135 Delegation; rules; employee indebtedness; reporting. (1) The director may delegate any duties, powers and functions within the department, under such conditions as the director deems appropriate.

(2) In accordance with ORS 183.310 to 183.550, and in addition to other rulemaking authority prescribed by law, the director may adopt rules for the purpose of carrying out the functions of the department.

(3) The director shall adopt rules governing circumstances under which employees or any category of employees of the department may or may not be or become indebted to or

hold any interest in any entity subject to regulation by the department. The rules shall provide for reporting any such indebtedness or interest and for preventing or resolving possible conflicts of interest arising therefrom. [1987 c.373 §6]

705.140 [1985 c.762 §6a; repealed by 1987 c.373 §85]

(Financial Provisions)

705.145 Consumer and Business Services Fund; sources; uses; revolving account; Banking Education Assessment Account. (1) There is created in the State Treasury a fund to be known as the Consumer and Business Services Fund, separate from the General Fund. All moneys collected or received by the department, except moneys collected pursuant to ORS 735.612, shall be paid into the State Treasury and credited to the Consumer and Business Services Fund. Moneys in the fund may be invested in the same manner as other state moneys and any interest earned shall be credited to the fund.

(2) The department shall keep a record of all moneys deposited in the Consumer and Business Services Fund which shall indicate, by separate account, the source from which the moneys are derived, the interest earned and the activity or program against which any withdrawal is charged.

(3) Should moneys credited to any one account be withdrawn, transferred or otherwise used for purposes other than the program or activity for which the account is established, interest shall accrue on the amount withdrawn from the date of withdrawal and until such funds are restored.

(4) Moneys in the fund shall provide and are appropriated for the administrative expenses of the department and for its expenses in carrying out its functions and duties under any provision of law.

(5) It is the intention of the Legislative Assembly that the performance of the various duties and functions of the department in connection with each of its programs shall be financed by the fees, assessments and charges established and collected in connection with those programs.

(6) There is created by transfer from the Consumer and Business Services Fund a revolving administrative account in the amount of \$100,000. The revolving account shall be disbursed by checks or orders issued by the director or the board and drawn upon the State Treasury, to carry on the duties and functions of the department and the board. All checks or orders paid from the revolving account shall be reimbursed by a warrant drawn in favor of the department

charged against the Consumer and Business Services Fund and recorded in the appropriate subsidiary record.

(7) For the purposes of ORS chapter 656, the revolving account created pursuant to subsection (6) of this section may also be used to:

(a) Pay compensation benefits; and

(b) Refund to employers amounts paid to the Consumer and Business Services Fund in excess of the amounts required by ORS chapter 656.

(8) There is established in the Consumer and Business Services Fund the Banking Education Assessment Account. All moneys in the account are appropriated continuously for use by the Conference of State Bank Supervisors Education Foundation to provide quality training and education for state bank examiners. [1987 c.373 §17; 1989 c.711 §6; 1993 c.744 §11]

705.150 [1985 c.762 §7; repealed by 1987 c.373 §85]

705.155 Petty cash funds. The director and the board may in their discretion establish and maintain petty cash funds for the purpose of making change and paying other petty incidental expenses in the administration of the functions of the department and the board. [1987 c.373 §19]

705.160 [1985 c.762 §8; repealed by 1987 c.373 §85]

705.165 Disposition of moneys accruing from department enforcement of certain laws. (1) Except as provided in ORS 59.255, 59.890, 59.995, 59.996 and 645.950, the net amount accruing to the Department of Consumer and Business Services from all fees, charges, interest, fines, penalties and miscellaneous revenues from all sources under ORS chapters 59 and 645, ORS 59.840 to 59.960, 650.005 to 650.085 and 705.350 shall, after deduction of refunds, be paid over to the State Treasurer and deposited in a separate subaccount in the Consumer and Business Services Fund created under ORS 705.145 at least monthly and is appropriated only for the expenses of the department in carrying out its functions and duties under ORS chapters 59 and 645, ORS 59.840 to 59.960, 650.005 to 650.085 and 705.350.

(2) Any amount deposited in the separate subaccount in the Consumer and Business Services Fund as provided in subsection (1) of this section that at the end of each quarter is determined by the director to be in excess of the amount needed to administer ORS chapters 59 and 645, ORS 59.840 to 59.960 and 650.005 to 650.085 shall be transferred to the General Fund and shall become available for general governmental expenses. [1987 c.414 §143; 1989 c.473 §1; 1993 c.508 §43; 1993 c.744 §12]

705.170 [1985 c.762 §9; repealed by 1987 c.373 §85]

705.180 [1985 c.762 §10, 10a; repealed by 1987 c.373 §85]

705.190 [1985 c.762 §13; repealed by 1987 c.373 §85]

705.200 [1985 c.762 §12; repealed by 1987 c.373 §85]

705.210 [1985 c.762 §13a; repealed by 1987 c.373 §85]

705.220 [1985 c.762 §13b; repealed by 1987 c.373 §85]

705.230 [1985 c.762 §14; repealed by 1987 c.373 §85]

705.240 [1985 c.762 §15; repealed by 1987 c.373 §85]

SECURITIES AND FRANCHISE LAWS; ADMINISTRATIVE PROVISIONS

705.300 Duties of director regarding securities, commodities and franchises. The director shall keep books, as records of office, showing all acts, matters and things done by the director under ORS chapters 59 and 645 and ORS 650.005 to 650.085. [1987 c.414 §71; 1989 c.179 §5]

705.310 Evidentiary effect of certain records regarding securities, commodities and franchises; fees. (1) Copies of all records and papers of the department relating to duties, functions and powers of the director and the department under ORS chapters 59 and 645 and ORS 650.005 to 650.085, certified by the director, shall be received in evidence in all cases equally and with like effect as the original.

(2) The department shall collect a fee as set by rule for making copies of any document filed in the department and relating to the duties, functions and powers of the director under ORS chapters 59 and 645 and ORS 650.005 to 650.085. For certifying the document it shall collect, in addition, a fee of \$2. [1987 c.414 §72; 1989 c.179 §6]

705.320 Certified documents; effect. When certified by the director, all certificates issued by the director and all copies of documents filed in the department that relate to the duties, functions and powers of the director under ORS chapters 59 and 645 and ORS 650.005 to 650.085 shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the facts stated in the certificates or documents. A certificate by the director as to the compliance or noncompliance of the document with provisions of ORS chapters 59 or 645 or ORS 650.005 to 650.085, or as to the existence or nonexistence of the facts relating to the matters contained in the documents that would appear from the presence or absence of documents filed in the department, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the existence or nonexistence of the facts stated in the certificates or documents. [1987 c.414 §75; 1989 c.179 §7]

705.330 Withdrawal of certain documents; review; effect. (1) Within one year

after a filing under ORS chapters 59 or 645 or ORS 650.005 to 650.085, the director may withdraw from filing any document filed by the director when the person who submitted the document advises the department that the document was submitted prematurely or by inadvertence or mistake. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal.

(2) The director may withdraw without notice or hearing a certificate that the director has issued or a document that the director has filed under ORS chapters 59 or 645 or ORS 650.005 to 650.085 when the fee was paid with a check that was returned to the department for lack of sufficient funds. Such withdrawal shall be retroactive to the date of filing.

(3) Any decision under this section may be reviewed in accordance with the provisions of ORS 183.310 to 183.550.

(4) A withdrawal from filing of a document under this section is retroactive to the date of the filing but shall not relieve a person of any liability the person may have incurred while the document was filed with the department. The director is not required to refund any fees paid in conjunction with the document withdrawn. [1987 c.414 §73; 1989 c.179 §8]

705.340 Access to director's and department records regarding securities, commodities and franchises. (1) The director by rule shall adopt a schedule establishing priority of access among members of the general public, governmental agencies and other persons to records of the director and the department relating to the duties, functions and powers under ORS chapters 59 and 645 and ORS 650.005 to 650.085 for use at times that the director finds that demands for access to the records and to the time and resources of the director and the department cannot be satisfied readily.

(2) The director shall not be responsible for the accuracy of information contained in the records and provided under this section or ORS 192.410 to 192.505. [1987 c.414 §74; 1989 c.179 §9]

705.350 Fees for certain documents; rules. Notwithstanding ORS 192.410 to 192.505, the director shall establish by rule reasonable fees for the following that relate to the duties, functions and powers of the director under ORS chapters 59 and 645 and ORS 650.005 to 650.085:

(1) Computer generated lists on paper and electronic data processing media;

(2) Terminal access to the files of the department;

(3) Microfilm records of the files of the department; and

(4) Copies of the programs and files on paper or electronic data processing media. [1987 c.414 §76; 1989 c.179 §10]

FINANCIAL INSTITUTIONS

(Foreign and Extranational Banks)

705.500 Authorized activities of foreign or extranational banking corporation; filing and license fees. (1) Subject to subsection (2) of this section, any foreign or extranational banking corporation or foreign association described in subsection (6) of this section, without being authorized to transact business in this state, may take, acquire, hold and enforce notes secured by real estate mortgages or trust deeds and make commitments to purchase such notes. The foreign or extranational banking corporation or foreign association may foreclose the mortgages and trust deeds in the courts of this state, acquire the mortgaged property, hold, own and operate the property for a period not exceeding five years and dispose of the property. The activities authorized under this subsection by such a foreign or extranational banking corporation or foreign association shall not constitute transacting business in this state for the purposes of ORS chapter 60.

(2) Before a foreign or extranational banking corporation or foreign association engages in any of the activities described in subsection (1) of this section, it shall first file with the director a statement signed by its president, secretary, treasurer or general manager that it constitutes the director its attorney for service of process, and shall pay an initial filing fee of \$200 and an annual license fee of \$200. The statement shall include the address of the principal place of business of the foreign or extranational banking corporation or foreign association.

(3) The director, upon receiving service of process as authorized by subsection (2) of this section, immediately shall forward all documents served upon the director to the principal place of business of the foreign or extranational banking corporation or foreign association.

(4) This section is not applicable to a national banking association organized under laws of the United States. Such a banking association may, without the necessity of complying with subsection (2) of this section, take, acquire, hold and enforce notes secured by real estate mortgages or trust deeds, make commitments to purchase such notes and participate with other lenders authorized to do business in this state in the making of

loans for which such notes are executed and delivered.

(5) A foreign or extranational banking corporation or foreign association that indirectly engages in the activities described in subsection (1) of this section because of its beneficial interest in a pool of notes secured by real estate mortgages or trust deeds need not comply with subsection (2) of this section.

(6) For purposes of this section:

(a) A foreign banking corporation is a corporation that is organized under the laws of another state to do a banking or trust business but is not subject under ORS 713.010 to the Bank Act.

(b) An extranational banking corporation is a corporation that is organized under the laws of a nation other than the United States to do a banking or trust business but is not subject under ORS 713.010 to the Bank Act.

(c) A foreign association includes any association incorporated under the laws of any other state or territory or any association organized and existing under the laws of the United States, unless the association has received a certificate of authority from the director or maintains an office in the State of Oregon. [1987 c.94 §113]

705.510 Exemption from fees and taxes for foreign or extranational banking corporations. Engaging in the activities authorized by ORS 705.500 shall not subject a foreign or extranational banking corporation or foreign association described in ORS 705.500 to any tax, license fee or charge, except as provided in ORS 705.500, for the privilege of doing business within the State of Oregon or to any tax measured by net or gross income. However, if the foreign or extranational banking corporation or foreign association acquires any property given as security for such a mortgage or trust deed, all income accruing to the foreign or extranational banking corporation or foreign association solely from the ownership, sale or other disposal of such property is subject to taxation in the same manner and on the same basis as income of corporations doing business in this state. [1987 c.94 §114]

(Miscellaneous Provisions)

705.600 Time schedule for customer to draw against deposit. (1) In accordance with ORS 183.310 to 183.550, the director shall adopt by rule a schedule of maximum time periods within which a banking institution or national bank as defined in ORS 706.005, a savings association or federal association as defined in ORS 722.004, and a credit union or federal credit union must permit a customer to draw against an item

which has been deposited to the customer's account. The schedule shall provide for reasonable periods of time for the collection of deposited items. The director may gather from banking institutions, national banks, savings associations, federal associations, credit unions and federal credit unions such information as the director requires for adopting the rule authorized by this subsection. The schedule shall take effect January 1, 1988. The schedule may be amended from time to time.

(2) The director may by rule limit the application of the schedule adopted under subsection (1) of this section with respect to items of more than \$3,000 to new customer accounts and to customer accounts with a history of items drawn against insufficient funds or other account problems.

(3) A financial institution as defined in ORS 706.005 that is in compliance with the requirements of the Expedited Funds Availability Act (Title VI, Public Law 100-86, 12 U.S.C. 4001 to 4010) shall also be considered to be in compliance with rules of the director adopted under this section and with ORS 708.508, 722.257 and 723.444.

(4) As used in this section:

(a) "Customer" means any person who has an account with the banking institution, national bank, savings association, federal association, credit union or federal credit union.

(b) "Item" has the meaning given that term in ORS 74.1040 and includes without limitation checks, negotiable orders of withdrawal and share drafts. [1987 c.491 §2; 1989 c.310 §1; 1993 c.18 §154; 1993 c.229 §25; 1993 c.318 §14]

705.610 Appointment of financial institution examiners. The director shall appoint examiners to conduct, as required by law, all examinations of entities subject to ORS chapters 706 to 725. [1987 c.373 §20]

705.620 Rule for schedule of fees to be collected from financial institutions. (1) The director shall each year prior to April 15, adopt by rule in a single rulemaking proceeding one or more schedules of fees to be collected during that year by the director from banking institutions and out-of-state banking institutions under ORS 706.530, from savings associations under ORS 722.606, from credit unions under ORS 723.114 and from licensees under ORS 725.185.

(2) The rule shall provide that the date for payment of the fees assessed under the schedule or schedules shall be the same for all institutions assessed.

(3) In setting the schedule or schedules, the director shall take into consideration:

(a) The amount of all other funds available to the director collecting the fees under that schedule;

(b) The costs which the director collecting the fees under that schedule will incur in performing the duties of the director during the year in question; and

(c) The amount needed by the director collecting the fees under that schedule to establish and maintain a reasonable emergency fund. [1987 c.171 §2; 1993 c.264 §§3,3a]

705.630 Charging for extra expenses.

(1) When the department incurs extra expenses in performing its functions and the director determines that the expenses are incurred for the primary benefit of another person, the director may charge and collect from the person an amount equal to the reasonable actual extra expenses incurred. The director shall notify the person of the amounts to be charged either before the expenses are incurred or as soon as practicable after the director determines that amounts incurred should be charged under this section.

(2) A person who is charged an amount under this section may request a contested case hearing before the director for review of the charge. [1987 c.309 §2]

INSURANCE AND FINANCE ADMINISTRATION
