

TITLE 53

FINANCIAL INSTITUTIONS

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Chapter 706

1993 EDITION

Administration and Enforcement of Banking Laws Generally

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FINANCIAL INSTITUTIONS

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GENERAL PROVISIONS

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

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

(2) "Appropriate state supervisor" means the home state supervisor with supervisory and regulatory jurisdiction over an out-of-state banking institution in its home state.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Commercial bank" means a bank, a savings bank, a stock savings bank, a national bank, a foreign institution or an extranational institution.

(12) "Customer Bank Communication Terminal" or "CBCT" means an electronic or other automated device through which a customer of a banking institution or national bank, or someone specifically authorized by the customer, may communicate to the banking institution or national bank:

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

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

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

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

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

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

(16) "Extranational institution" includes:

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

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

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

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

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

(18) "Fiduciary" means a personal representative, conservator, receiver, trustee, as-

signee for the benefit of creditors or one acting in a court-appointed position of trust or any other position of trust.

(19) "Financial institution" means banking institutions, national banks, extranational institutions, foreign institutions, federal associations, credit unions as defined in ORS 723.006, out-of-state credit unions doing business in this state under ORS 723.042 and federal credit unions.

(20)(a) "Foreign institution" includes:

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

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

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

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

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

(21) "Home state" means, with respect to an out-of-state banking institution, the state under the laws of which the out-of-state banking institution is incorporated or otherwise organized.

(22) "In-state banking institution" means a banking institution, a national bank having its principal place of business in Oregon or a bank holding company having its principal place of business in Oregon.

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

(24) "Like-type banking organization" means, with respect to an out-of-state banking institution, an in-state banking institution or a savings association or federal association as defined in ORS 722.004 with the type of charter that most nearly corresponds to the charter of the out-of-state

banking institution, as determined by the director.

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

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

(27) "Out-of-state banking institution" means any bank organized under the laws of any state other than Oregon, or any national bank that has its principal place of business in one of such states, or bank holding company that has its principal place of business in one of such states.

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

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

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

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

(32) "State" means any state of the United States, other than this state, the District of Columbia, any territory of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands and the Northern Mariana Islands.

(33) "Stock savings bank" means a corporation with capital stock organized under the laws of this state, authorized to engage in a banking business, and which has converted from a savings bank under provisions of ORS chapter 716, from a stock savings association chartered under the provisions of ORS chapter 722, from a federally chartered stock savings and loan association or a federally chartered stock savings bank or which was converted to a federal stock savings bank under the provisions of the Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320).

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

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

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

(37) "Unimpaired capital" is capital of an institution which has not become impaired as provided in ORS 711.305. [1973 c.797 §2; 1975 c.193 §1; 1975 c.725 §1; 1983 c.37 §1; 1985 c.12 §1; 1985 c.451 §1; 1985 c.627 §3; 1985 c.762 §16; 1987 c.373 §47; 1987 c.371 §1; 1987 c.445 §7; 1991 c.331 §109; 1993 c.229 §1; 1993 c.318 §6; 1993 c.744 §22]

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

706.020 [Repealed by 1973 c.797 §428]

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

706.030 [Repealed by 1973 c.797 §428]

706.040 [Repealed by 1973 c.797 §428]

706.050 [Repealed by 1973 c.797 §428]

706.060 [Repealed by 1973 c.797 §428]

706.070 [Repealed by 1973 c.797 §428]

706.080 [Repealed by 1973 c.797 §428]

706.090 [Repealed by 1973 c.797 §428]

706.100 [Amended by 1973 c.797 §3; 1975 c.544 §1; 1979 c.88 §1; 1981 c.192 §2; 1983 c.296 §1; 1983 c.367 §1; 1985 c.762 §17; 1985 c.796 §1; 1987 c.197 §1; 1987 c.414 §166a; repealed by 1989 c.324 §75]

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

706.210 [Repealed by 1963 c.580 §103]

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

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

706.220 [Repealed by 1963 c.580 §103]

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

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

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

706.230 [Repealed by 1963 c.580 §103]

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

706.240 [Repealed by 1963 c.580 §103]

706.245 [1963 c.580 §73; 1969 c.314 §101; 1973 c.797 §10; 1985 c.786 §5; renumbered 706.900]

706.250 [Repealed by 1963 c.580 §103]

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

706.260 [Renumbered 706.285]

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

706.270 [Repealed by 1963 c.580 §103]

706.280 [Amended by 1959 c.210 §1; repealed by 1963 c.580 §103]

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

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

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

706.420 [Repealed by 1973 c.797 §428]

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

706.440 [Amended by 1973 c.797 §17; renumbered 706.785]

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

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

706.460 [Amended by 1963 c.580 §78; 1971 c.734 §169; 1973 c.797 §20; 1985 c.762 §25; renumbered 706.790]

706.470 [Repealed by 1971 c.734 §21]

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

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

706.490 [Repealed by 1973 c.797 §428]

SUPERVISION OF BANKING INSTITUTIONS

706.500 Inspection of banking institutions; examination program with federal regulators. (1) Each banking institution is subject to the inspection of the director. The director shall conduct an examination of the condition and resources of each banking institution, and determine whether the banking institution is complying with the laws of this state and such other matters as the director may prescribe. Except as provided in subsections (2) and (4) of this section, the examinations shall be conducted not more than 24 months apart.

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

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

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

706.510 [Repealed by 1973 c.797 §428]

706.520 Request by directors or stockholders for examination; fees. When requested in writing by the board of directors of a banking institution or stockholders owning a majority of the capital stock of an institution, the director may make or cause to be made an examination into the affairs and conditions of the banking institution. For the examination the banking institution

shall pay the fee imposed under ORS 706.544. [Amended by 1973 c.797 §23; 1985 c.762 §26; 1985 c.786 §8]

706.530 Annual fees paid by banking institutions. Each banking institution, and each out-of-state banking institution which has merged with or purchased the assets and assumed the liabilities of an in-state banking institution under ORS 711.017 or 711.211, or has merged with or purchased the assets and assumed the liabilities of a savings association or federal association under ORS 714.133, shall pay each year to the director the fee determined by reference to the schedule adopted by the director under ORS 705.620. The fee shall be paid by the date set by the director in the rule establishing the schedule. [Amended by 1969 c.94 §1; 1971 c.68 §1; 1973 c.797 §24; 1977 c.135 §8; 1985 c.762 §27a; 1985 c.786 §9; 1987 c.171 §3; 1987 c.373 §48; 1993 c.229 §3; 1993 c.264 §4]

706.540 [Amended by 1969 c.94 §2; 1971 c.68 §2; 1973 c.797 §25; 1977 c.135 §9; 1983 c.296 §1a; 1985 c.762 §28a; 1985 c.786 §10; 1987 c.171 §4; 1987 c.373 §49; repealed by 1993 c.264 §5]

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

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

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

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

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

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

706.570 Requiring banking institution to keep proper records and accounts; civil penalty. (1) If upon examination of a banking institution it appears that the banking institution does not keep books and accounts in such a manner as to enable the director to readily ascertain the true condition of the banking institution, the director may require any officer of the banking institution to open

and keep books or accounts as the director prescribes.

(2) If a banking institution fails to open and keep the books and accounts prescribed by the director, the director shall send written notice to the banking institution of intent to assess and collect the penalty under this subsection. For each day the banking institution fails to open and keep the books and accounts after receiving notice from the director, the banking institution is subject to a penalty of \$100. The penalty shall be paid by the banking institution when it receives a notice and demand for the amount of the penalty from the director. If the banking institution delays or refuses to pay the penalty upon demand, the penalty shall be recovered in the name of the director in an action brought by the Attorney General. All sums collected for penalties imposed by this section shall be paid into the Consumer and Business Services Fund created by ORS 705.145. [Amended by 1973 c.797 §30; 1985 c.762 §31; 1987 c.373 §50]

706.575 Certificate as evidence that document is filed with director. (1) A certificate attached to a copy of a document filed by the director, bearing the director's signature, which may be in facsimile, is conclusive evidence that the original document or a facsimile thereof is on file with the office.

(2) All certificates issued by the director in accordance with the provisions of this chapter and all copies of documents filed in the office of the director in accordance with the provisions of this chapter, when certified by the director, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts stated in the certificates or documents. A certificate by the director, as to the existence or non-existence of the facts relating to institutions which would appear from the presence or absence of documents filed in the office of the director or the compliance or noncompliance with provisions of this chapter, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts stated in the certificates or documents. [1989 c.324 §2]

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

706.590 [Repealed by 1973 c.797 §428]

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

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

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

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

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

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

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

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

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

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

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

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

(e) Direct the merger of the banking institution.

(f) Direct the sale of a banking institution.

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

(h) Take any other action that the director determines is necessary and expedient to facilitate the sale of the stock or assets of

the banking institution, or the sale, conversion, reorganization, consolidation or merger of the banking institution.

(3) Notwithstanding any other provision of law and pursuant to ORS 706.544, any actual costs incurred by the department under this section shall be paid by the banking institution to the director for deposit in the Consumer and Business Services Fund. The moneys deposited in the Consumer and Business Services Fund under this subsection shall not be considered as a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific biennial appropriations or amounts authorized to be expended from the Consumer and Business Services Fund for any biennial period.

(4) Subsection (2)(c) to (h) of this section are available to the director only when a banking institution is in immediate danger of insolvency. [Amended by 1973 c.797 §32; 1985 c.786 §12; 1993 c.318 §7]

706.610 Examiners required to report insolvency of banking institution. An examiner of the Department of Consumer and Business Services, having knowledge of the insolvency or unsafe condition of a banking institution shall report the fact in writing, over the examiner's signature, to the director. [Amended by 1973 c.797 §33; 1985 c.762 §32]

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

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

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

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

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

(c) Exhibit in detail, and under appropriate heads, the total liabilities and resources of the banking institution at the close of business on the day specified.

(d) Be transmitted to the director within the time allowed by federal regulations for

submission of reports of national bank associations to the federal regulatory agencies.

(3) The director may require additional reports of condition at any time the director considers it necessary. The additional reports shall meet the requirements of subsection (2) of this section.

(4) Trust companies not conducting a banking business are not required to submit the reports required in subsection (1) of this section, but shall submit reports as may be required by the director. [Amended by 1973 c.797 §35; 1975 c.544 §3; 1975 c.725 §6a; 1977 c.135 §11; 1983 c.37 §2; 1989 c.269 §1; 1991 c.67 §188]

706.640 [Repealed by 1973 c.797 §428]

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

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

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

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

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

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

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

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

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

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

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

706.690 Transfer of stock or controlling interest; notice to and approval by director. (1) If the director determines that the condition of an institution is such that any transfer of the capital stock of the institution would jeopardize the interest of its depositors, the director shall notify the institution in writing that when any shares of the capital stock of the institution are to be transferred on the books or records of the institution, the officer proposing to make the transfer shall report in writing to the direc-

tor the proposed transfer of stock. A transfer of stock shall not be made, after the date such a notice is issued, unless the transfer agent first obtains the written consent of the director. The director shall notify the institution of the director's decision within 30 days after receiving the report.

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

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

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

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

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

(b) The stock is acquired, not as a means of circumventing ORS chapter 715, but by the person in the ordinary course of business to secure or collect a debt previously contracted in good faith and the person disposes of the stock within two years after the acquisition of the stock. The director may extend the period if an extension will not be detrimental to the public interest or in contravention of any other law.

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

706.700 Resignation of officers; notice to director. An officer of a banking institution who is voluntarily disqualified or retires or resigns from the position of the officer shall give 30 days prior written notice to the director. [Amended by 1963 c.195 §1; 1973 c.797 §41; 1987 c.158 §150]

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

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

(2) Except as provided in subsection (3) of this section and ORS 706.730, the records of the Department of Consumer and Business Services pertaining to the administration of the Bank Act are available for public inspection unless the director determines in the particular instance that the public interest in disclosure of the records is outweighed by the interests of a banking institution or its directors, stockholders, officers, employees and customers in keeping the records confidential, or that the records are exempt from disclosure under ORS 192.501 to 192.505. A determination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

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

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

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

(c) Proprietary information.

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

(e) Reports filed under ORS 706.655.

(f) Stockholder lists.

(4) Notwithstanding subsection (3) of this section, the director may disclose any record of the department specified in this subsection pertaining to an institution that has been liquidated under ORS 711.400 to 711.615 if the director determines in the particular instance that the public interest in disclosure of the record outweighs the interests of the banking institution or its directors, stockholders, officers, employees or customers in keeping the record confidential. Under no circumstances, however, shall the director disclose any such record or portion thereof that contains any proprietary information or any information relating to the individual fi-

financial activities or affairs of persons unless the director concludes that those activities or affairs were a direct and substantial contributing factor in the failure of the institution. This subsection applies to the following records of the department:

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

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

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

(d) Reports filed under ORS 706.655.

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

(6) A civil penalty imposed by the director under the Bank Act shall become subject to public inspection after the 20th day after the director imposes the civil penalty.

(7) All records of the department pertaining to the condition of banking institutions may be furnished to:

(a) The Federal Reserve Bank and its examiners.

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

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

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

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

(A) The Federal Home Loan Bank.

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

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

bank holding company that controls a banking institution.

(g) A holding company of a bank.

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

(9) If the director is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and shall disclose only the nonexempt material. [Amended by 1973 c.797 §43; 1975 c.515 §6; 1983 c.37 §3; 1983 c.367 §2; 1985 c.762 §33a; 1985 c.786 §14; 1987 c.373 §50a; 1993 c.318 §8]

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

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

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

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

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

706.730 Prohibition against disclosing depositor and debtor names; exceptions.

(1) The director or any other person employed by the Department of Consumer and Business Services shall not knowingly disclose the name of a person who is a depositor or debtor of a banking institution, or the amount of the person's deposit or debt, except as follows:

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

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

(2) Subsection (1) of this section does not prohibit disclosure of the name of any debtor or the amount of the person's debt included in reports that are filed under ORS 706.655, if the reports were filed by a banking institution that has been liquidated or is in the process of being liquidated under ORS 711.400 to 711.615 and if disclosure is otherwise allowed under ORS 706.720. [Amended by 1973 c.797 §45; 1975 c.515 §7; 1985 c.762 §§34,34a; 1985 c.786 §15; 1993 c.318 §9]

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

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

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

(3) Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2), except that a witness subpoenaed at the instance of parties other than the director or an examiner shall not be compensated for attendance or travel unless the director certifies that the testimony of the witness was material to the matter investigated.

(4) The director in any investigation may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court. [Formerly 706.410; 1989 c.980 §19]

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

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

706.790 Adoption of rules. (1) In accordance with ORS 183.310 to 183.550, the director may adopt rules for the purpose of carrying out the Bank Act.

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

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

(1) Serves the public convenience and advantage; and

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

706.800 Adoption of rules relating to out-of-state banking institutions. The director may adopt rules relating to out-of-state banking institutions described in ORS 705.620, 706.530, 706.805, 707.023, 711.205, 711.211, 713.011, 714.030, 714.060, 714.133 and 714.135. The rules may define terms and may interpret, implement or enforce the provisions of ORS 705.620, 706.530, 706.805, 707.023, 711.205, 711.211, 713.011, 714.030, 714.060, 714.133 and 714.135. [1993 c.229 §21]

706.805 Examination of branches of out-of-state banking institutions; suspension or revocation of authority to maintain branch. (1) The director shall have the power at any time in the discretion of the director to examine every branch located in this state of an out-of-state banking institution for the same purposes and to the same extent as provided in the case of like-type banking organizations under this chapter.

(2) The director may, upon notice and an opportunity to be heard, suspend or revoke the authority of an out-of-state banking institution to open, occupy or maintain a branch or branches in this state if the director finds that the out-of-state banking institution:

- (a) Has violated any law;
- (b) Is conducting its business in an unauthorized or unsafe manner;
- (c) Is in an unsafe or unsound condition to transact its business;
- (d) Cannot with safety and expediency continue business;
- (e) Has neglected or refused to comply with the terms of a duly issued order of the director;
- (f) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner for the department; or
- (g) Has refused to be examined upon oath regarding its affairs. [1993 c.229 §5]

706.815 Single account for moneys relating to supervision of banking institutions. Notwithstanding ORS 705.145 (2), moneys received or expended by the director under this chapter relating to the supervision of banking institutions may be deposited in or withdrawn from a single account. The director need not establish a separate account in the Consumer and Business Services Fund relating to the supervision of banks, savings banks and stock savings banks and a separate account relating to the supervision of trust companies. [1993 c.264 §2]

706.900 [Formerly 706.245; 1987 c.373 §51; repealed by 1993 c.318 §2]

706.905 [Formerly 706.255; repealed by 1993 c.318 §2]

706.910 [Formerly 706.265; repealed by 1993 c.318 §2]

706.915 [1985 c.786 §16; repealed by 1993 c.318 §2]

706.920 [1985 c.786 §17; repealed by 1993 c.318 §2]

PENALTIES

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

more than \$1,000 for each offense or \$5,000 in the aggregate for all such offenses within any three-month period. Each violation is a separate offense.

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

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

(4) All money forfeited under subsections (1), (2) and (3) of this section shall be paid to the State Treasurer to be deposited in the Consumer and Business Services Fund.

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

(6) The civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction or may be imposed as provided in ORS 183.090.

(7) In any court action with respect to a civil penalty, including judicial review under ORS 183.090, the court may review the penalty as to both liability and reasonableness of amount.

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

(9) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in the Bank Act. [1975 c.544 §8; 1985 c.786 §18; 1991 c.734 §94; 1993 c.318 §10]

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