

Chapter 714

1993 EDITION

Branch Banking

BRANCH BANKING

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- Extranational institutions, Ch. 713
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FINANCIAL INSTITUTIONS

BRANCH BANKING

714.010 [Repealed by 1973 c.797 §428]

714.020 [Repealed by 1973 c.797 §428]

714.030 Branches not in compliance with chapter prohibited. (1) Except as expressly authorized in ORS 714.030 to 714.130 and 714.210 to 714.992, an institution shall not open or maintain any branch.

(2) This section does not apply to branches of foreign or extranational institutions existing or authorized to do business in this state as a foreign or extranational institution on February 28, 1933. After February 28, 1933, in every respect a branch of a foreign or extranational institution described in this subsection shall be governed by and comply with ORS 714.030 to 714.130 and 714.210 to 714.992, to the same extent as institutions organized and doing business in this state on February 28, 1933.

(3) Except as provided in subsection (2) of this section with respect to foreign institutions and extranational institutions and except as provided in ORS 714.133 or 714.135 with respect to out-of-state banking institutions, neither foreign institutions, extranational institutions nor out-of-state banking institutions shall establish branches. [Amended by 1973 c.797 §321; 1975 c.725 §17; 1993 c.229 §15]

714.040 Application required to establish branch; fee; time limitation; penalty.

(1) Before any branch is established, the board of directors of an institution desiring to establish a branch shall file an application with the director. The fee for filing the application is \$500. The application shall be investigated, approved or disapproved and subject to appeal in the same manner as is provided in ORS 707.080 for the organization of an institution. An institution shall not establish or operate any branch without first receiving the written approval of the director.

(2) A branch shall commence business within one year after the application for the branch has been approved by the director. If a branch fails to commence business within the year or according to any extension of time granted by the director, the approval of the application shall be withdrawn and the branch may not operate.

(3) For each day an institution operates a branch without first receiving the written approval of the director, the institution is subject to a penalty of \$100. The penalty shall be assessed and collected as prescribed in ORS 706.570 (2). [Amended by 1971 c.68 §4; 1973 c.797 §322; 1975 c.544 §40a; 1977 c.135 §26; 1993 c.255 §21]

714.050 [Amended by 1973 c.797 §323; repealed by 1979 c.826 §1]

714.055 [1973 c.797 §324; repealed by 1979 c.826 §1]

714.060 Authority to establish branches; powers at out-of-state branches. (1) An institution may establish and maintain one or more branches at any place within or without the State of Oregon, if the unimpaired capital and surplus of the institution is equal to the aggregate amount required by law to organize institutions in the places where the main office and branches are to be located or is sufficient to maintain an acceptable ratio of capital and surplus to deposit liabilities, as determined by the director.

(2) An institution that opens, occupies and maintains one or more branches in any state outside this state may exercise the powers at the branch or branches as would be permitted at the place or places with the type of charter that most nearly corresponds to the charter of the institution, unless the director determines that the exercise of the powers or any of them would be contrary to the public interest or would endanger the institution. This section shall not be construed to permit an institution that opens, occupies or maintains one or more branches in a state outside this state to use said branch or branches to engage in any activities within this state which are not permitted for the institution under the laws of this state. [Amended by 1973 c.797 §325; 1985 c.12 §7; 1993 c.229 §16; 1993 c.255 §3]

714.065 [1973 c.797 §326; repealed by 1975 c.193 §13]

714.070 [Repealed by 1973 c.797 §428]

714.080 Reports of deposits of branches. Upon the call for a report of condition by the director, a banking institution which operates a branch shall report to the director the total of deposits received and held by it through each branch. [Amended by 1973 c.797 §327]

714.090 [Amended by 1971 c.68 §5; repealed by 1973 c.797 §428]

714.100 [Amended by 1963 c.195 §11; 1969 c.360 §1; 1973 c.797 §328; repealed by 1993 c.255 §4]

714.110 Moving or discontinuing branch. A branch, once established, may not be moved or discontinued without the previous written approval of the director. [Amended by 1973 c.797 §329]

714.120 [Repealed by 1963 c.402 §11]

714.130 National bank's authority to establish branches. A national bank engaged in a general banking business in this state may perform all acts which institutions of this state are permitted to perform under ORS 714.030 to 714.130 and 714.210 to 714.992, if the national bank complies with the particular conditions and restrictions prescribed for institutions of this state, with the exercise of like privileges. [Amended by 1973 c.797 §330]

714.133 Establishment of branch by out-of-state banking institution. (1) An out-of-state banking institution may occupy and maintain a branch in this state if the branch is acquired by the out-of-state banking institution pursuant to a merger with or the assumption of deposit liabilities from a savings association or federal association as defined in ORS 722.004 if:

(a) The savings association or federal association has been engaged in business in this state for a period of not less than three years prior to the effective date of the merger or assumption; and

(b) The merger or assumption is permitted by the laws of the home state of the out-of-state banking institution and the savings association or federal association.

(2) In determining whether the savings association or federal association has conducted business for at least three years in this state, the time in which business was conducted in this state by a predecessor of the savings association or federal association shall be included. [1993 c.229 §18]

714.135 Additional branches of out-of-state banking institution. (1) Subject to the provisions and requirements of ORS 714.030 to 714.110, an out-of-state banking institution that is occupying and maintaining one or more branches in Oregon, either pursuant to a merger under ORS 711.017, to a purchase and assumption transaction under ORS 711.211, or to a merger or purchase and assumption transaction under ORS 714.133, may thereafter open, occupy and maintain one or more additional de novo branches in this state with the prior approval of the director. An application for approval submitted pursuant to this section shall contain such information as required by the director, shall be accompanied by the fee prescribed in ORS 714.040, and shall be processed as provided in ORS 714.040.

(2) Notwithstanding subsection (1) of this section, no out-of-state banking institution may open, occupy or maintain an additional branch or branches pursuant to subsection (1) of this section unless:

(a) The appropriate state supervisor agrees to supply the director with any examination reports and reports of condition as the director considers sufficient to allow the director to ascertain on a current basis the financial condition of the out-of-state banking institution; and

(b) The out-of-state banking institution complies with the requirements of ORS 713.016, 713.020, 713.050 and 713.120 to 713.170; and

(c) The out-of-state banking institution supplies the director with any information the director requires by rule. [1993 c.229 §19]

714.140 Application to establish branch banks in foreign countries or invest in foreign banks required; approval or rejection by director. (1) Upon the approval of the director and subject to rules promulgated by the director pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410 an institution which is a member of the Federal Reserve System may:

(a) If it possesses a capital and surplus of at least \$1 million, establish branches in foreign countries or dependencies or insular possessions of the United States to further foreign commerce of the United States and to act, if required to do so, as the fiscal agent of the United States.

(b) Invest an amount not exceeding in the aggregate 10 percent of its paid-in capital and surplus in the stock of banks or corporations chartered or incorporated under the laws of the United States or of any other state, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions, including the stock of one or more banks or corporations chartered or incorporated under section 25 (a) of the Federal Reserve Act, as approved December 24, 1919.

(2) An institution shall file with the director an application for permission to exercise the powers established in subsection (1) of this section. The application shall specify the name, capital and surplus of the institution filing it, the powers applied for, and the place or places where the banking operations are to be carried on.

(3) The director may approve or reject the application, in whole or in part, if the granting of the application is considered inexpedient. The director may increase or decrease the number of places where the banking operations may be carried on. [Amended by 1973 c.797 §331]

714.150 Investment in foreign banks; agreement between foreign bank and director as prerequisite; effect of failure to comply with agreement. (1) Before an institution may purchase stock in any corporation mentioned in ORS 714.140 (1)(b), the corporation shall agree to restrict its operations or conduct its business in the manner and under the limitations prescribed by the director for the places in which the business is to be conducted.

(2) If the director determines that the limitations prescribed are not being complied with, the director may investigate the matter. If the investigation shows that the corporation or the institution holding stock in the corporation has not complied with the limitations, the director may require the institution to dispose of stock holdings in the corporation. [Amended by 1973 c.797 §332]

714.160 Furnishing information about foreign branches or foreign banks to director on demand; examination of foreign branches or foreign banks. An institution operating foreign branches or investing in the capital stock of banks or corporations, as provided in ORS 714.140 (1), shall furnish information concerning the condition of the branches, banks or corporations to the director upon demand, and the director may order special examinations of the branches, banks or corporations. [Amended by 1973 c.797 §333]

714.170 Separate accounts for foreign branches. An institution shall maintain the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office. At the end of each year, the profit or loss accrued at each branch shall be transferred to the general ledger as a separate item. [Amended by 1973 c.797 §334]

714.180 Mobile banking facilities. Upon approval of the director, an institution may establish one or more mobile facilities to accept deposits, accept and pay demands for withdrawals, issue cashier's checks, traveler's checks and other instruments and to perform other services and engage in other business of the bank. Each mobile facility shall be affiliated with an approved office of the institution, and shall operate within and about the community served by the approved office. [1991 c.31 §2]

Note: 714.180 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapters 706 to 716, but was not added to or made a part of ORS chapter 714 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

AUTOMATED TELLER MACHINES

714.200 Definitions for ORS 714.210 to 714.992. As used in ORS 714.210 to 714.992:

(1) "Access area" means any paved walkway or sidewalk that is within 50 feet of an automated teller machine or night deposit facility. The term does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) An "access device" as defined in Federal Reserve Board Regulation E. (12 C.F.R.

Part 205), adopted under the Electronic Fund Transfer Act (15 U.S.C. 1601 et seq.); or

(b) A key or other mechanism issued by a banking institution to its customer to give the customer access to the banking institution's night deposit facility.

(3) "Automated teller machine" or "ATM" means any electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations, or used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.

(4) "Banking institution" includes a national bank.

(5) "Candlefoot power" means a light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

(6) "Control" of an access area or defined parking area means the present authority to determine how, when and by whom the access area or defined parking area is to be used and how it is to be maintained, lighted and landscaped.

(7) "Defined parking area" means that portion of any parking area open for customer parking that is:

(a) Contiguous to the access area of an ATM or night deposit facility;

(b) Regularly, principally and lawfully used for parking by users of the ATM or night deposit facility while the users conduct transactions during hours of darkness; and

(c) Owned or leased by the operator of the ATM or night deposit facility or owned or controlled by the party leasing the ATM or night deposit facility site to the operator. The term does not include any parking area that is not open or regularly used for parking by users of the ATM or night deposit facility who are conducting transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subsection and would therefore otherwise be a defined parking area, only the single parking level designated by the operator of the ATM and night deposit facility to be the most directly accessible to the users of the ATM and night deposit facility shall be a defined parking area.

(8) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(9) "Night deposit facility" means a receptacle that is provided by a financial institution for the use of its customers in delivering cash, checks and other items to the financial institution.

(10) "Operator" means any financial institution or other business entity, or any person who operates an ATM or night deposit facility. [1975 c.193 §11; 1985 c.762 §45; 1993 c.381 §1]

714.210 Use of ATMs; permitted uses; verification; application of ORS 714.040 to 714.110. (1) A banking institution, through its own facilities or those of a corporation described in ORS 714.240, may make available for use by its customers one or more ATMs. An ATM may receive or dispense cash, provide information and initiate transactions in accordance with the request or instruction of the customer or the customer's agent. Every transaction initiated through an ATM shall be subject to verification by the banking institution either by direct wire transmission or otherwise.

(2) ORS 714.040 to 714.110 do not apply to the establishment and maintenance of ATMs pursuant to ORS 706.005, 714.200 to 714.992 and 716.645 or 714.065 prior to its repeal by section 13, chapter 193, Oregon Laws 1975. [1975 c.193 §3; 1993 c.381 §2]

714.220 Operation of ATMs; use of banking institution employees. Except for ATMs located on the premises of the principal place of business of a banking institution or the general banking branches thereof, an ATM shall be unmanned or manned by someone who is not an employee of the banking institution utilizing the facility; provided, however, that employees of the banking institution may be in the vicinity of such a facility solely for the purposes of providing physical security, instruction in the use of the facility and the installation, maintenance and repair thereof. [1975 c.193 §4; 1993 c.381 §3]

714.230 [1975 c.193 §5; repealed by 1989 c.245 §1]

714.240 Corporation created to establish ATMs; banking institution as stockholder. Notwithstanding ORS 708.430 and 716.588, a banking institution may, subject to the approval of the director, acquire and continue to hold a membership in or the fully paid stock of a corporation created to establish and operate ATM facilities. [1975 c.193 §6; 1979 c.810 §1; 1989 c.245 §2; 1993 c.381 §4]

714.250 Use of ATM facilities by banking institutions not having offices within state; use of facilities by savings associations or credit unions. (1) ATM facilities may be made available to banking institutions which do not have banking offices within this state and to savings associations or credit unions which do not have offices

within this state provided that reciprocal privileges with respect to like facilities maintained by those institutions, savings associations or credit unions outside this state are thereby obtained for the benefit of banking institutions with banking offices in this state and savings associations or credit unions with offices in this state.

(2) ATM facilities may be made available to savings associations or credit unions with offices in this state upon such terms and conditions as may be agreed upon by the participating institutions with respect to their use or with respect to their membership or stock ownership in a corporation described in ORS 714.240. [1975 c.193 §7; 1979 c.810 §2; 1993 c.381 §5]

714.260 Report to director of installation or removal of ATM; investigation. Within 30 days following the installation or removal of an ATM, the owner or lessee utilizing such facility shall report its installation or removal to the director in such detail as the director may by regulation require concerning the location, type and use of such facility. The director may require such other reports and conduct such investigations as the director may deem necessary and appropriate to enforce the provisions of ORS 706.005, 714.200 to 714.992 and 716.645 and to assist the director in the preparation and maintenance of an inventory of ATM facilities established pursuant to ORS 706.005, 714.200 to 714.992 and 716.645. [1975 c.193 §8; 1993 c.381 §6]

714.270 Prohibitions on use of ATM for banking information. No person shall use or attempt to use an ATM facility for the purpose of obtaining any information concerning the account or line of credit of a customer with a banking institution without the prior approval of the customer. No person having received prior approval of the customer shall utilize such authority to obtain through the use of the ATM any information not necessary to the transaction which the customer seeks to accomplish through its use. [1975 c.193 §9; 1993 c.381 §7]

714.280 Legislative intent of ATM and night deposit facility law. (1) It is the intent of the Legislative Assembly in enacting ORS 714.280 to 714.315 to enhance the safety of consumers using ATMs and night deposit facilities in Oregon without discouraging the siting of ATMs and night deposit facilities in locations convenient to consumers' homes and workplaces. Since decisions concerning safety at ATMs and night deposit facilities are inherently subjective, the Legislative Assembly intends to establish as the standard of care applicable to operators of ATMs and night deposit facilities in connection with user safety, the compliance with the objec-

tive standards and information requirements of ORS 714.280 to 714.315. The Legislative Assembly further recognizes the need for uniformity as to the establishment of safety standards for ATMs and night deposit facilities and intends with ORS 714.280 to 714.315 to supersede and preempt any rule, regulation, code or ordinance of any city, county, municipality or local agency regarding customer safety at ATMs and night deposit facilities in this state.

(2) It is not the intent of the Legislative Assembly in enacting ORS 714.280 to 714.315 to impose a duty to relocate or modify ATMs or night deposit facilities upon the occurrence of any particular events or circumstances, but rather to establish a means for the evaluation of all ATMs and night deposit facilities as provided in ORS 714.210 to 714.992. [1993 c.381 §§9,11]

714.285 Adoption of procedures for evaluating safety of ATM or night deposit facilities. Before installing any ATM or night deposit facility, the operator shall adopt procedures for evaluating the safety of the ATM or night deposit facility. For ATMs and night deposit facilities installed on or before July 1, 1994, operators shall adopt procedures not later than July 1, 1994. The procedures shall include a consideration of the following:

(1) The extent to which the lighting for the ATM or night deposit facility complies or will comply with the standards required by ORS 714.290 and 714.295.

(2) The presence of landscaping, vegetation or other obstructions in the area of the ATM or night deposit facility, the access area and the defined parking area.

(3) The incidence of crimes of violence in the immediate neighborhood of the ATM or night deposit facility, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge. [1993 c.381 §10]

714.290 Deadlines for compliance with ORS 714.295. (1) Each operator of an ATM or night deposit facility installed after July 1, 1994, shall comply with ORS 714.295. Compliance with ORS 714.295 by operators of ATMs and night deposit facilities existing on or before July 1, 1994, shall be optional until July 1, 1996, and mandatory thereafter. This section shall apply to an operator of an ATM or night deposit facility only to the extent that the operator controls the access area or defined parking area to be lighted.

(2) If an access area or a defined parking area is not controlled by the operator of an ATM or night deposit facility, and if the person who leased the ATM or night deposit facility site to the operator controls the ac-

cess area or defined parking area, the person who controls the access area or defined parking area shall comply with ORS 714.295 regarding any ATM or night deposit facility installed after July 1, 1994. Regarding any ATM or night deposit facility installed on or before July 1, 1994, the person shall comply with ORS 714.295 no later than July 1, 1996. [1993 c.381 §12]

714.295 Lighting requirements for ATMs and night deposit facilities. The operator, owner or other person responsible for the ATM or night deposit facility shall provide lighting during hours of darkness for an open and operating ATM or night deposit facility and any defined parking area, access area and the exterior of an enclosed ATM or night deposit facility installation according to the following standards:

(1) There shall be a minimum of 10 candlefoot power at the face of the ATM or night deposit facility and extending in an unobstructed direction outward five feet.

(2) There shall be a minimum of two candlefoot power within 50 feet in all unobstructed directions from the face of the ATM or night deposit facility. In the event the ATM or night deposit facility is located within 10 feet of the corner of the building and the ATM or night deposit facility is generally accessible from the adjacent side, there shall be minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building.

(3) There shall be a minimum of two candlefoot power in that portion of the defined parking area within 60 feet of the ATM or night deposit facility. [1993 c.381 §13]

714.300 Issuance of safety information to customers of ATMs and night deposit facilities. The issuers of access devices shall furnish customers receiving the devices with notices of basic safety precautions which customers should employ while using an ATM or night deposit facility. This information shall be furnished by personally delivering or by mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. This information shall be furnished with respect to access devices issued after July 1, 1994, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an access device has been issued on or before July 1, 1994, the information shall be delivered or mailed to the customer on or before December 31, 1994. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a

single notice need be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1501 et seq.). [1993 c.381 §14]

714.305 Exempted ATMs and night deposit facilities. The requirements of ORS 714.280 (2) and 714.285 to 714.295 shall not apply to any ATM or night deposit facility that is:

(1) Located inside of a building, unless it is a freestanding installation that exists for the sole purpose of providing an enclosure for the ATM or night deposit facility.

(2) Located inside of a building, except to the extent that a transaction can be conducted from outside the building.

(3) Located in any area, including any access area, building, enclosed space or

parking area that is not controlled by the operator. [1993 c.381 §15]

714.310 Preemption of local regulation. ORS 714.200 to 714.315 supersedes and preempts all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities and local agencies regarding customer safety at ATMs or night deposit facilities located in Oregon. [1993 c.381 §16]

714.315 Creation of rebuttable presumption. Compliance with ORS 714.280 to 714.300 shall create a rebuttable presumption that the operator of the ATM or night deposit facility in question has provided adequate measures for the safety of users of the ATM or night deposit facility. [1993 c.381 §17]

PENALTIES

714.990 [Repealed by 1973 c.797 §428]

714.992 Penalties. Violation knowingly of ORS 714.270 is a Class C felony. [1975 c.193 §10]