Chapter 717

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Sale of Checks

717.010 Definitions

717.020 Short title

717.030 License to sell checks required

717.040 When license not required

717.050 Qualifications for license

717.060 Content of application

717.070 Fee, financial statement and surety bond

717.075 Surety bond; requirements

717.080 Deposit of letter of credit or securities in lieu of surety bond

717.084 Return of securities upon termination of license

717.086 Deficient securities, letter of credit or bond; filing and depositing of new or supplemental bond, letter of credit or securities

717.090 Investigation; issuance of license

717.095 Disapproval of application for license

717.100 Reports required of certain licensees

717.110 Fee upon issuance, renewal of license; term

717.120 Agents and subagents; license not required

717.130 Liability of licensee

717.140 Check to bear name of licensee

717.150 Revocation and suspension of licenses

717.160 Denial, revocation or suspension of license; procedure

717.910 Civil penalties

717.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Bank" means a state chartered bank or savings bank or a national bank authorized to do business in this state.

(2) "Check" means any check, draft, money order, personal money order or other instrument for the transmission or payment of money.

(3) "Deliver" means to deliver a check to the first person who, in payment for the check, makes or purports to make a remittance of or against the face amount of the check, whether the deliveror signs the check or charges a fee in addition to the face amount.

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

(5) "Licensee" means a person licensed by the director pursuant to this chapter.

(6) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller of the personal money order as agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller, the purchaser or remitter or some other person.

(7) "Sell" means to sell, issue or deliver a check. [1965 c.503 §2; 1973 c.797 §403; 1985 c.762 §51; 1987 c.373 §55; 1993 c.744 §23]

717.020 Short title. This chapter may be cited as the "Sale of Checks Act." [1965 c.503 §1]

717.030 License to sell checks required. Except as provided in ORS 717.040, a person or agents or subagents of the person, shall not engage in the business of selling checks, as a service or for a fee or other consideration, unless licensed under this chapter. The business of selling checks does not, of itself, constitute banking or branch banking for the purposes of the Bank Act. [1965 c.503 §3; 1973 c.797 §404]

717.040 When license not required. A license to sell checks is not required of:

(1) Banks, trust companies, building and loan associations and savings and loan associations.

(2) Incorporated telegraph companies to the extent they receive money for immediate transmission by telegraph.

(3) Agents or subagents of a licensee if they are persons referred to in subsections (1) and (2) of this section and ORS 717.120. [1965 c.503 §4; 1973 c.797 §405]

717.050 Qualifications for license. An applicant for a license to sell checks shall have a net worth of at least $100,000 computed according to generally accepted accounting principles. [1965 c.503 §5; 1973 c.797 §406]

717.060 Content of application. An application for a license to sell checks shall be in writing, under oath and in the form prescribed by the director. The application shall state the full name and business address of:

(1) The proprietor, if the applicant is an individual.

(2) Every member, if the applicant is a partnership or association, except that if the applicant is a joint stock association having 50 or more members, only the name and business address of the association and each officer and director of the association is required to be stated on the application.

(3) Every trustee and officer, if the applicant is a trust.

(4) The corporation and each officer and director of the corporation, if the applicant is a corporation. [1965 c.503 §6; 1973 c.797 §407]

717.070 Fee, financial statement and surety bond. An application for a license to sell checks shall be accompanied by:

(1) A fee of $250, payable to the director. The fee is not refundable but if the license is granted, the fee shall apply to the license fee for the first license year.

(2) Financial statements of the applicant reasonably showing the applicant's compliance with the requirements of ORS 717.050. The director may require that the financial statements be certified to by an independent public accountant.

(3) A surety bond issued as provided in ORS 717.075 or by a security deposit as provided in ORS 717.080.

(4) A list of the locations at which the business is to be conducted if the bond accompanying the application is in a principal sum of less than $150,000. [1965 c.503 §7(1); 1973 c.797 §408; 1977 c.135 §40]

717.075 Surety bond; requirements. (1) A surety bond accompanying an application for a license to sell checks shall be:

(a) Issued by a bonding or insurance company authorized to do business in this state;

(b) In the principal sum of $25,000 for the first location and an additional principal sum of $5,000, to a maximum principal sum of $150,000, for any other Oregon location at which the applicant or agents or subagents of the applicant propose to sell checks;

(c) In a form satisfactory to the director; and

(d) Payable to the State of Oregon for the benefit of any claimants against the applicant or agents or subagents of the applicant to secure the faithful performance of the obligations of the applicant and the agents or subagents of the applicant with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks.

(2) The surety shall give the director at least 30 days' written notice before it cancels or terminates its liability under the bond.

(3) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(4) Claimants against the applicant or agents or subagents of the applicant may bring suit directly on the bond, or the Attorney General may bring suit on the bond on behalf of claimants, in one action or successive actions. [1973 c.797 §409]

717.080 Deposit of letter of credit or securities in lieu of surety bond. (1) In lieu of a surety bond or of any portion of the principal sum of the surety bond, the applicant may deposit with the director or with a bank, trust company or national bank in this state that has been designated by the applicant and approved by the director, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or stocks, bonds, notes, debentures or other obligations of the United States, any agency or instrumentality of the United States, this state or a city, county, school district or instrumentality of this state, or guaranteed by the United States or this state. The letter of credit or securities deposited as provided in this subsection shall be in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required surety bond or portion of the surety bond and shall be held to secure the same obligations as would the required surety bond.

(2) Securities deposited with the director shall be deposited with the State Treasurer. The depositor may receive all interest and dividends on the deposited securities. With the approval of the director, the depositor may substitute other securities for those deposited. [1965 c.503 §7(2), (3); 1973 c.797 §410; 1991 c.331 §118]

717.084 Return of securities upon termination of license. If a license to sell checks is terminated, securities deposited under ORS 717.080 shall be returned to the licensee upon:

(1) Proof to the director that all issued and outstanding checks of the licensee, the agents or subagents of the licensee, have been paid;

(2) The posting by a licensee of a surety bond, in a form meeting the requirements of ORS 717.075, in an amount to be determined by the director not to exceed the amount of all of the issued and outstanding checks of the licensee, the agents or subagents of the licensee, which have not been paid; or

(3) Proof to the director that the only checks of the licensee outstanding are those for which the purchaser, the payee or any other holder has been reimbursed and those for which the funds for their redemption have been deposited in compliance with ORS 98.302 to 98.436. [1973 c.797 §411]

717.086 Deficient securities, letter of credit or bond; filing and depositing of new or supplemental bond, letter of credit or securities. If the director determines that the bond, or letter of credit or securities filed or deposited under ORS 717.070, 717.075 and 717.080 are insecure, deficient in amount or exhausted in whole or in part, the director may by written order require the filing of a new or supplemental bond or the deposit of new or additional letters of credit or securities. A licensee shall comply with the order of the director within 10 days following service of the order upon the licensee. [1973 c.797 §412; 1991 c.331 §119]

717.090 Investigation; issuance of license. (1) When an application for a license to sell checks has been filed with the director and is accompanied by the fee and documents required by ORS 717.070, 717.075 and 717.080, the director shall investigate the qualifications of the applicant and determine if the financial responsibility, financial condition, business experience, character and general fitness of the applicant indicate that the applicant's business will be conducted honestly, carefully and efficiently. If the director determines that such qualifications have been met, that the applicant has a net worth of $100,000 and that the bond or deposit of a letter of credit or of securities is in the prescribed amount, the director shall issue to the applicant a license to engage in the business of selling checks in this state.

(2) In conducting the investigation of an applicant, the director may investigate and consider the qualifications of officers and directors of an applicant. [1965 c.503 §8; 1973 c.797 §413; 1991 c.331 §120]

717.095 Disapproval of application for license. The director may disapprove an application for a license to sell checks if the director finds during an investigation made pursuant to ORS 717.090 that any person named in the application submitted pursuant to ORS 717.060:

(1) Is insolvent, either in the sense that the person's liabilities exceed the person's

assets or that the person cannot meet obligations as they mature, or is in such financial condition that the person cannot continue in business with safety to the person's customers;

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession;

(3) Has willfully or repeatedly violated or failed to comply with any provisions of the Oregon Bank Act or any rule or order of the director;

(4) Has been convicted of a crime, an essential element of which is fraud;

(5) Is not qualified to engage in the business of selling checks on the basis of such factors as training, experience and knowledge of the business;

(6) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the banking business or of the business of selling checks;

(7) Is the subject of an order of the Director of the Department of Consumer and Business Services, subjecting the person to a fine or other civil penalty, or removing the person from an office in any entity regulated by either director; or

(8) Is the subject of an order entered within the past five years, subjecting the person to a fine or other civil penalty, or removing the person from an office in a state banking institution, a national bank, a state or federal savings association, a state or federal credit union or a consumer finance company, issued by the regulatory authority of another state or of the Federal Government, with authority over such banking institutions, savings association, credit unions or consumer finance companies. [1977 c.135 §39; 1985 c.762 §52]

717.100 Reports required of certain licensees. A licensee, whose surety bond or security deposit as required by ORS 717.070, 717.075 and 717.080 is in a principal sum of less than $150,000, shall file quarterly reports with the director showing the locations at which checks are sold in this state as of January 1, April 1, July 1 and October 1 in each year. The reports shall be filed with the director not later than the 15th day after the end of the quarter for which the report is made. Within 10 days after the date the report is filed, the principal sum of the bond or securities shall be increased or may be decreased to reflect any increase or decrease in the number of locations at which a licensee sells checks. [1965 c.503 §9; 1973 c.797 §414]

717.110 Fee upon issuance, renewal of license; term. Upon payment to the director on or before April 15 of each year of a fee of $250 for the first year and $150 for each year thereafter, a license issued under this chapter shall be valid until terminated voluntarily by the licensee or revoked or suspended by order of the director. [1965 c.503 §10; 1973 c.797 §415]

717.120 Agents and subagents; license not required. A licensee may conduct the business of selling checks at one or more locations in this state through agents and subagents appointed by the licensee. Agents or subagents so appointed shall not be required to obtain a license under ORS 717.030. [1965 c.503 §11; 1973 c.797 §416]

717.130 Liability of licensee. A licensee who sells checks, whether directly or through an agent or subagent is liable:

(1) For the payment of all checks which the licensee sells as the maker or drawer of a similar negotiable instrument is liable under the negotiable instrument laws of this state; and

(2) For checks on which the licensee is not designated as maker or drawer, as if the licensee had signed the check as drawer. [1965 c.503 §12; 1973 c.797 §417]

717.140 Check to bear name of licensee. Every check sold by a licensee, directly or through an agent or subagent, shall bear the name of the licensee clearly imprinted thereon. [1965 c.503 §13]

717.150 Revocation and suspension of licenses. (1) The director may revoke or suspend a license on any ground that the director may refuse to grant a license or for violation of any provision of this chapter.

(2) If the director has reasonable cause to believe that grounds for revocation of a license exist, the director may investigate the business, books and records of the licensee. [1965 c.503 §14; 1973 c.797 §418]

717.160 Denial, revocation or suspension of license; procedure. (1) Except for nonpayment of the fee required by ORS 717.110 and as provided in subsection (2) of this section, a license shall not be denied, revoked or suspended by the director without opportunity for a hearing in accordance with ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500.

(2) If the immediate protection of the public interest so requires, a license may be suspended without a hearing in accordance with ORS 183.430 (2).

(3) An order of the director denying, revoking or suspending a license issued under this chapter shall state the grounds upon which the order is based and, except for a

summary order issued in accordance with ORS 183.430 (2) shall not become effective for at least 20 days after written notice of the order has been sent by registered or certified mail to the applicant or licensee at the principal place of business of the applicant or licensee.

(4) Appeals from orders of the director may be taken to the courts of this state as provided by ORS 183.415 to 183.500. [1955 c.503 §15; 1971 c.734 §173; 1973 c.797 §419]

717.910 Civil penalties. (1) Any person who violates ORS 717.030 shall 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 of not more than $1,000 for individuals and $50,000 for corporations.

(2) 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.

(3) 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. [1975 c.544 §54; 1991 c.734 §95]

717.990 [1965 c.503 §16; 1973 c.797 §420; repealed by 1975 c.544 §62]

CHAPTERS 718 TO 720

[Reserved for expansion]