Chapter 707

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Organization to Conduct Banking Business;
Stockholders, Directors and Officers

ORGANIZATION TO CONDUCT BANKING BUSINESS

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ORGANIZATION TO CONDUCT BANKING BUSINESS

(Generally)

707.005 Organization required to engage in banking or trust business. It is unlawful for any person to engage in or transact a banking or trust business within this state except by means of an entity duly organized for the purpose.

[1973 c.797 s.50; 1997 c.631 s.29]

707.010 Certificate required to transact banking business. A person who has not received a certificate to do a banking business from the Director of the Department of Consumer and Business Services, except a national bank, shall not:

(1) Advertise that it is receiving or accepting money on deposit.

(2) Use a sign at its place of business containing words indicating that the place is a place of business:

(a) Of a banking institution;

(b) Where deposits are received or payments made on check; or

(c) Where any other form of banking business is transacted.

(3) Make use of or circulate any letterheads, blank notes, blank receipts, certificates, circulars or any written or printed paper containing words indicating that the business is the business of a banking institution.

(4) Transact business under any name that the director determines leads the public to believe that its business is that of a banking institution or that it is affiliated with a banking institution.

(5) Solicit or receive deposits or transact business in the manner of a banking institution or in such a manner as to lead the public to believe that its business is that of a banking institution. [Amended by 1973 c.797 s.51; 1997 c.631 s.30]

707.020 Violation of ORS 707.005 or 707.010; investigation; injunction. (1) The Director of the Department of Consumer and Business Services may examine the accounts, books and papers of every person the director has reasonable cause to believe is violating any provision of ORS 707.005 or 707.010.

(2) When the director believes, from evidence satisfactory to the director, that any person is violating the provisions of ORS 707.005 or 707.010, the director may cause a complaint to be filed in the circuit court of the county in which the person conducts business to enjoin and restrain the person from continuing the violation. The court shall have jurisdiction of the proceeding and may make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper. [Amended by 1973 c.797 s.52; 1997 c.631 s.31]

707.023 [1993 c.229 s.7; repealed by 1997 c.631 s.567]

707.025 Organization of banking institution for purpose of merging with, acquiring assets of or assuming liabilities of financial institution; procedure; conditions. (1) A banking institution may be organized under this section solely for the purpose of merging with, acquiring the assets of or assuming the liabilities of one or more existing financial institutions pursuant to ORS chapter 711 and, except as otherwise provided in this section, without authority to engage in or transact banking or trust business.

(2) The banking institution may be organized under this section by one or more persons or a corporation.

(3) Notwithstanding ORS 707.050, 707.070, 707.080 to 707.120, 707.140, 707.170, 707.200 and 707.210 (1) and such other sections as may specifically be inconsistent with this section, a banking institution described in subsection (1) of this section shall be organized as follows:

(a) The incorporator shall submit to the Director of the Department of Consumer and Business Services for filing articles of incorporation executed in duplicate, signed by the prospective incorporator or incorporators, and such other information as the director may require, which may include the additional information required in an application under ORS 707.070 or 716.028 if the banking institution organized under this section is to survive the merger, will purchase assets or will assume liabilities, together with an organizational fee of $2,500.

(b) Such articles of incorporation shall specify:

(A) The name and address of each incorporator.

(B) The information required under ORS 707.110 (2)(a), (b) and (g) and (3).

(C) The term of its existence, which may be perpetual.

(D) The purpose of the corporation, which shall be limited to the purposes set forth in subsection (1) of this section. However, if the corporation is to be the resulting bank in such merger, the articles may also contain all purposes allowed a banking institution under the Bank Act, provided the implementation of such purposes are conditioned upon consummation of such merger.

(E) The name and address of each director of the board of directors, which shall be composed of not less than three directors.

(4) Unless the director finds that approval of the articles would violate ORS 707.145 or other applicable law, the

director shall file the articles and issue a certificate of incorporation in accordance with ORS 707.120, if:

(a) The director finds that the articles conform to subsection (3) of this section; and

(b) The director finds that the banking institution, following any merger or assumption of liabilities, will meet the requirements of ORS 707.080 (1) and (2).

(5) Upon issuance of the certificate of incorporation, the corporate existence of the banking institution shall begin and the banking institution may issue stock.

(6)(a) After the issuance of the certificate of incorporation, the new banking institution shall file a certified copy of its bylaws with the director within 90 days. If the director finds such bylaws to be consistent with the requirements of the Bank Act, the director shall issue a provisional charter to such bank.

(b) The provisional charter shall expire one year after its date of issuance. However, the director may extend such expiration period. If a merger or assumption of liabilities is not consummated before the provisional charter expires, the interim bank shall cease to exist and its articles of incorporation and charter shall be void.

(c) For purposes of ORS chapter 711, a provisional charter issued under this section shall be deemed a charter, where appropriate.

(d) If the merger or assumption of liabilities is consummated and the banking institution organized under this section survives the transaction, the director shall issue to the banking institution a charter to do a banking business either as an Oregon commercial bank or as an Oregon stock savings bank.

(7) A banking institution organized solely for the purposes set forth in subsection (1) of this section for which a charter has been issued may, with the director's approval, have initial paid-in capital in an amount less than that required by ORS 707.050 prior to consummation of a proposed merger. [1979 c.88 s.8; 1997 c.631 s.32]

707.029 [1985 c.12 s.3; 1987 c.216 s.1; 1987 c.371 s.2; 1987 c.373 s.51a; 1995 c.6 s.5; repealed by 1997 c.631 s.567]

707.030 [Repealed by 1973 c.797 s.428]

707.035 Conversion of trust company to Oregon bank. A trust company that desires to also conduct a banking business may convert to an Oregon bank in accordance with the provisions of ORS 711.070 and 711.080. [1997 c.631 s.39]

707.040 [Repealed by 1973 c.797 s.428]

707.050 Initial paid-in capital requirement. (1) Every institution or Oregon stock savings bank shall have at the time of issuance of its charter, initial paid-in capital of not less than $1,500,000. The Director of the Department of Consumer and Business Services may require a lesser or greater amount of initial paid-in capital for a particular institution or Oregon stock savings bank if the director determines that the lesser or greater amount is sufficient or is necessary for safe and sound operation of the institution or Oregon stock savings bank.

(2) The initial paid-in capital of an institution or Oregon stock savings bank must be paid either in cash or by exchange of real property and improvements thereon. The real property and improvements must be approved by the director as meeting all applicable requirements of law and all other conditions and standards that the director adopts by rule, including but not limited to a proper appraisal by a qualified appraiser. [Amended by 1963 c.195 s.3; 1973 c.797 s.53; 1985 c.786 s.24; 1997 c.631 s.33]

707.060 [Repealed by 1973 c.797 s.428]

707.070 Application for authority to organize banking institution; fee; contents. Any number of persons, not less than five, desiring to organize a banking institution shall, as prospective incorporators, first submit an application to the Director of the Department of Consumer and Business Services for a permit to organize a banking institution. The applicants shall pay to the director at the time of their application a fee of $2,500, no part of which shall be refunded. The application shall be signed by one of the applicants and shall include the following information:

(1) The proposed location of the initial principal place of business.

(2) The class or classes of stock proposed to be issued, the proposed offering price per share and the aggregate dollar amount of the proposed initial paid-in capital.

(3) The corporate name.

(4) The names of the proposed senior officers and the initial directors, at least three of whom shall also be among the incorporators.

(5) The residence addresses and occupations of the proposed incorporators and directors.

(6) The proposed articles of incorporation meeting the requirements of ORS 707.110.

(7) The number of shares of voting stock proposed to be subscribed for by the incorporators and each of the proposed directors and senior officers, and the names of any other persons who are expected to subscribe for, to own or to control more than 10 percent of the voting stock and the amount of stock for which each proposes to subscribe.

(8) Evidence satisfactory to the director of the character, financial responsibility and ability of the incorporators, directors and senior officers.

(9) Evidence satisfactory to the director, in the form of a business plan and such additional information as the director may require, demonstrating that the proposed banking institution is likely to be financially successful.

(10) The proposed operating policies of the banking institution.

(11) A statement as to whether the banking institution is to be a trust company, an Oregon commercial bank or an Oregon stock savings bank, and, if the proposed Oregon commercial bank or Oregon stock savings bank is applying for trust powers, a statement to that effect.

(12) Any other information that the director may require. [Amended by 1971 c.68 s.3; 1973 c.797 s.54; 1977 c.135 s.13; 1979 c.88 s.9; 1997 c.631 s.36]

707.075 Banking institution name. (1) The corporate name of a banking institution:

(a) Shall not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall be distinguishable from any other financial institution, corporate, professional corporate, nonprofit corporate, cooperative, limited liability company, limited partnership, business trust, reserved or registered name currently on file with the Secretary of State or Director of the Department of Consumer and Business Services, or an assumed business name registered as provided in ORS 648.010.

(2) The director may refuse to permit the use of any name if the director determines that the name is deceptively similar to the name of a financial institution already lawfully transacting banking business or accepting deposits in this state.

(3) Nothing contained in this section shall preclude a banking institution from transacting business under one or more assumed business names, if the names meet the requirements of subsection (1) of this section, unless the director determines that the names will be confusingly similar to any financial institution, corporate, professional corporate, nonprofit corporate, cooperative, limited liability company, limited partnership, business trust, reserved or registered name currently on file with the Secretary of State or Director of the Department of Consumer and Business Services, or an assumed business name registered as provided in ORS 648.010. [1985 c.762 s.36; 1997 c.631 s.37]

707.080 Investigation and ruling on application; conditional approval; appeal. (1) When an application to organize has been submitted, the Director of the Department of Consumer and Business Services shall determine whether:

(a) The purposes of the proposed banking institution as stated in the proposed banking institution's articles of incorporation and the application are consistent with the Bank Act;

(b) The character, financial responsibility and general fitness of the persons named in the application are such as to command the confidence of the community in which the proposed banking institution is to be located and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;

(c) The proposed directors and officers are competent to manage successfully a banking institution;

(d) The suggested capitalization is adequate for the proposed banking institution's anticipated development and growth within a reasonable period of time; and

(e) There is reasonable assurance of sufficient volume of business for the proposed banking institution to be economically viable.

(2) If the director is satisfied that the applicant meets the standards prescribed in subsection (1) of this section the director shall note the approval and the date on each copy of the application. If the director is not satisfied or believes that the public interest will be endangered the director shall note the disapproval of the director and the date on each copy of the application.

(3) The director shall acknowledge receipt of an application and shall notify the applicants of approval or disapproval of the application. The director shall file the original of an approved application in the office of the

director.

(4) The director shall act to approve or disapprove an application within 60 days from receipt of the application, unless a majority of the applicants and the director agree to extend the time an additional 30 days.

(5) The director may grant conditional approval of any application and require the applicants to make additional showing or changes in the proposed banking institution as the director considers advisable.

(6) The applicants may appeal the decision of the director to any court of appropriate jurisdiction. [Amended by 1973 c.797 s.55; 1975 c.544 s.8a; 1997 c.631 s.40]

707.090 Refusal to file articles of incorporation or grant charter after approval of application. If, after approving the application for authority to organize, it appears to the Director of the Department of Consumer and Business Services that the articles of incorporation, the organization or proposed manner of conducting business do not comply with the terms of the application, the requirements of approval or the requirements of law, the director may refuse to file the articles of incorporation or to grant a charter. [Amended by 1973 c.797 s.56; 1997 c.631 s.41]

707.100 Time for submitting articles of incorporation. Within 30 days after authority to organize has been finally granted, the prospective incorporators shall submit to the Director of the Department of Consumer and Business Services articles of incorporation. If articles of incorporation are not received by the director within the specified time, the authority to organize is void. [Amended by 1973 c.797 s.57; 1997 c.631 s.42]

707.110 Execution and submission of articles of incorporation; contents. (1) Any number of persons, not less than five, may associate themselves by articles of incorporation to establish an institution or Oregon stock savings bank. The articles of incorporation shall be executed in duplicate, signed by the prospective incorporators and submitted to the Director of the Department of Consumer and Business Services.

(2) The articles of incorporation shall specify:

(a) The name of the institution or Oregon stock savings bank.

(b) The initial principal place where its business is to be transacted, designated by legal description or street and number in the city or town.

(c) The names of the prospective incorporators.

(d) The term of its existence, which may be perpetual.

(e) The purpose for which the institution or Oregon stock savings bank is formed.

(f) The initial board of directors of the institution or Oregon stock savings bank, composed of not fewer than five persons, at least three of whom shall be prospective incorporators.

(g) If the stockholders will have preemptive rights, a statement of such rights.

(3) In addition, the articles of incorporation:

(a) Must prescribe the classes of shares and the number of shares of each class that the institution or Oregon stock savings bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical to those of other shares of the same class except to the extent otherwise permitted by ORS 707.262.

(b) Must authorize one or more classes of shares that together have unlimited voting rights, and one or more classes of shares which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the institution or Oregon stock savings bank upon dissolution.

(c) May authorize one or more classes of shares that:

(A) Have special, conditional or limited voting rights, or no voting rights, except to the extent prohibited by this chapter;

(B) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the institution or Oregon stock savings bank, the shareholder or another person or upon the occurrence of a designated event;

(ii) For cash, indebtedness, securities or other property; or

(iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(C) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

(D) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the institution or Oregon stock savings bank.

(4) The description of the designations, preferences, limitations and relative rights of share classes in subsection (3)(c) of this section is not exhaustive.

(5) The articles of incorporation also may contain any lawful provisions:

(a) Regulating the business or conduct of affairs of the institution or Oregon stock savings bank;

(b) Defining, limiting and regulating the powers of the directors; or

(c) Eliminating or limiting the personal liability of a director to the institution or Oregon stock savings bank or its shareholders for monetary damages for conduct as a director, provided that no such provisions shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective, and such provision shall not eliminate or limit the liability of a director for:

(A) Any breach of the director's duty of loyalty to the institution or Oregon stock savings bank or its shareholders;

(B) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(C) Any unlawful distribution under the Bank Act; or

(D) Any transaction from which the director derived an improper personal benefit. [Amended by 1973 c.797 s.58; 1987 c.197 s.1a; 1989 c.324 s.3; 1997 c.631 s.43]

707.120 Issuance of certificate of incorporation when filings conform to law. (1) If the Director of the Department of Consumer and Business Services finds that the articles of incorporation conform to law, the director shall within 60 days after receiving the articles of incorporation and when all fees have been paid:

(a) Indorse on each of the duplicate originals the word “Filed,” and the month, day and year of the filing.

(b) File one of the duplicate originals in the office of the director.

(c) Issue a certificate of incorporation to which the director shall affix the other duplicate original.

(2) The certificate of incorporation, with one of the duplicate originals affixed thereto shall be returned to the incorporators or their representative.

(3) Upon issuance of the certificate of incorporation the corporate existence of a banking institution begins. [Amended by 1973 c.797 s.59; 1997 c.631 s.44]

707.130 [Amended by 1973 c.797 s.60; 1987 c.197 s.1b; 1989 c.324 s.4; repealed by 1997 c.631 s.567]

707.140 Submission of organization information; issuance of charter. (1) When subscriptions totaling not less than the amount of the initial paid-in capital have been received, the incorporators shall submit for filing with the Director of the Department of Consumer and Business Services:

(a) A list of stockholders, showing name, address, number of shares and amount paid, certified by the president or cashier.

(b) A certificate of any escrow agent holding moneys in escrow as payment for subscriptions to stock of the institution or Oregon stock savings bank showing the amount held.

(c) A list of the directors and senior officers elected.

(d) A copy of its bylaws certified to by its president or cashier.

(e) Evidence of approval by the Federal Deposit Insurance Corporation of the Oregon commercial bank's or Oregon stock savings bank's application for deposit insurance.

(2) Upon receiving the items referred to in subsection (1) of this section, the director shall examine the condition of the institution or Oregon stock savings bank. If, upon examination, the director determines that the institution or Oregon stock savings bank has complied with the requirements of the Bank Act and that the amount of the institution's or Oregon stock savings bank's initial paid-in capital has been paid or is held in escrow for release upon issuance of a charter, the director shall issue to the institution or Oregon stock savings bank a charter, which, depending on the form of the application and the approval of the director, shall be to do a banking business either as an Oregon commercial bank or as an Oregon stock savings bank, or to do a trust business, or to do both a banking and trust business. [Amended by 1973 c.797 s.61; 1987 c.216 s.2; 1997 c.631 s.47]

707.145 Refusal of authority to organize. The Director of the Department of Consumer and Business Services may disapprove an application for a permit to organize or refuse to approve the articles of incorporation or to grant a charter upon a finding that any person named in the application to organize or in other documents submitted for filing:

(1) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or that the person cannot

meet the person's 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 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 conduct a banking business 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 other business that may lawfully be conducted by an insured institution;

(7) Is the subject of an order of the director subjecting the person to a fine or a civil penalty, or removing the person from an office in any entity regulated by the director; or

(8) Is the subject of an order entered within the past five years, directing the person to cease and desist from any fraudulent or unlawful business or banking practice, subjecting the person to a fine or other civil penalty, or removing the person from an office in a financial institution or a consumer finance company issued by the banking supervisor of another state or by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or by any other agency of the federal government or another state with regulatory authority over such financial institutions or consumer finance companies. [1977 c.135 s.19; 1985 c.762 ss.37,37a; 1985 c.786 s.25; 1987 c.373 s.52; 1997 c.631 s.48]

707.150 Review of refusal of authority to organize; appeal. Notwithstanding the provisions of ORS 183.310 to 183.550, the Director of the Department of Consumer and Business Services may, without prior hearing or opportunity therefor, refuse to grant authority to organize a banking institution. In case authority to organize is refused by the director, the applicants may within 30 days after the refusal appeal the decision to any court of appropriate jurisdiction. [Amended by 1971 c.734 s.172; 1973 c.797 s.62; 1975 c.544 s.8b; 1997 c.631 s.49]

707.155 Authority to require additional investigatory information; fingerprinting. (1) In the course of investigating any person named in the application to organize or in other documents submitted for filing, the Director of the Department of Consumer and Business Services may require the person to provide additional information for the director's further inquiry. For the purpose of such further inquiry, the director may require any of the following persons to submit to fingerprinting:

(a) Any person required to be named in the application to organize.

(b) Any person named in the proposed articles of incorporation of the banking institution or documents submitted for filing as a prospective incorporator or as a director, president or chief executive officer of the banking institution.

(2) Fingerprints acquired under subsection (1) of this section may be submitted to appropriate law enforcement agencies, including the Federal Bureau of Investigation, for the purpose of discovering any unlawful activities of the person. [1985 c.786 s.23; 1997 c.631 s.50]

707.160 Transaction of business prior to organization; failure to complete organization; liability. (1) A banking institution shall not transact any business, except as is incidental or necessary to its organization, until it has received its charter from the Director of the Department of Consumer and Business Services.

(2) An institution or Oregon stock savings bank that fails to obtain paid subscriptions in at least the amount of its approved initial paid-in capital and complete its organization and receive from the director a charter, within one year after the date of approval of its articles of incorporation, ceases to exist and the articles of incorporation are void.

(3) All persons purporting to act as or on behalf of a banking institution, knowing there was no incorporation, are jointly and severally liable for all liabilities created while so acting. [Amended by 1969 c.44 s.1; 1973 c.797 s.63; 1989 c.324 s.5; 1997 c.631 s.51]

707.170 Effective date of charter; commencement of business; effect of failure to commence business. (1) A charter shall specify the date on which it becomes effective, which shall not be more than 90 days after the date of issuance of the charter, unless an extension of time is granted by the Director of the Department of Consumer and Business Services.

(2) A banking institution shall commence business on the effective date specified in its charter. If a banking

institution fails to commence business on the effective date specified in the charter or according to any extension of time granted by the director it ceases to exist and its articles of incorporation and charter are void. [Amended by 1973 c.797 s.64; 1997 c.631 s.52]

707.180 Location of principal place of business; change upon approval. The initial principal place of business of a banking institution shall be specified in its articles of incorporation. The principal place of business may be changed upon application of the banking institution to the Director of the Department of Consumer and Business Services. The director shall determine whether the change in location is advisable or justified and whether the public convenience and advantage will be promoted and shall approve or disapprove the change of location. An appeal from the decision of the director may be taken to any court of appropriate jurisdiction. [Amended by 1973 c.797 s.65; 1975 c.544 s.8c; 1997 c.631 s.53]

707.190 [Repealed by 1973 c.797 s.428]

707.195 Offering documents for sale of stock; approval by director. At or after the time the articles of incorporation are submitted for filing, the incorporators shall submit the proposed offering documents for the sale of the banking institution's stock to the Director of the Department of Consumer and Business Services for review. No subscriptions for stock in the institution or Oregon stock savings bank may be accepted prior to the date on which the director approves the offering documents. [1997 c.631 s.46]

707.200 Payments by subscribers of full amount of stock subscriptions; escrow. The subscribers to the stock of a newly organized institution or Oregon stock savings bank shall pay in, prior to the time a charter is issued, directly to the institution or Oregon stock savings bank or by deposit with an escrow agent acceptable to the Director of the Department of Consumer and Business Services to be released upon the issuance of a charter, the full amount of their stock subscriptions, which shall total an aggregate amount not less than the initial paid-in capital approved by the director. The payment must be in cash or by exchange of real property and improvements thereon. The real property and improvements are subject to approval by the director as provided in ORS 707.050. [Amended by 1973 c.797 s.66; 1983 c.296 s.2; 1985 c.786 s.26; 1987 c.216 s.3; 1997 c.631 s.54]

707.210 Stock issuance after obtaining charter; form of stock certificate; issuance of stock without certificate. (1) An institution or Oregon stock savings bank shall not issue any share of stock until its charter has been issued and ORS 707.200 has been complied with.

(2) Except as provided in subsection (3) of this section, each certificate representing shares of the stock of an institution or Oregon stock savings bank shall:

(a) Be signed by two officers of the institution or Oregon stock savings bank designated in the bylaws, and may be sealed with the seal of the institution or Oregon stock savings bank or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or registrar other than the institution or Oregon stock savings bank itself or an employee of the institution or Oregon stock savings bank. In the case of any person who, as an officer, has signed or whose facsimile signature has been placed upon such certificate and has ceased being such officer before such certificate is issued, the certificate may be issued by the institution or Oregon stock savings bank with the same effect as if the person were such officer at the date of its issue.

(b) If the institution or Oregon stock savings bank is authorized to issue shares of more than one class, state upon the face or back of the certificate, or state that the institution or Oregon stock savings bank will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and, if the institution or Oregon stock savings bank is authorized to issue any class in series, state the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(c) State that the institution or Oregon stock savings bank is organized under the laws of this state.

(d) State the name of the person to whom issued.

(e) State the number and class of shares, and the designation of the series, if any, which such certificate represents.

(3) In lieu of issuing certificates representing shares under subsection (2) of this section, the board of directors of an institution or Oregon stock savings bank may authorize the institution or Oregon stock savings bank to issue some or all of the shares of any or all of its classes or series without certificates. The authorization shall not affect shares

already represented by certificates until the shares are surrendered to the institution or Oregon stock savings bank. Within a reasonable time after the issuance or transfer of shares without certificates, the institution or Oregon stock savings bank shall send the shareholder a written statement of the information required on certificates under subsection (2) of this section.

(4) No share shall be issued until such share is fully paid.

(5) At the request of any holder of two or more certificates of the stock of any institution or Oregon stock savings bank organized under the laws of this state, such institution or Oregon stock savings bank shall, upon the surrender of the certificates, issue to the holder of such stock one certificate, or a statement pursuant to subsection (3) of this section, for all shares of stock of any one class in such institution or Oregon stock savings bank owned by the stockholder if the number of such shares owned by the stockholder in the particular class equals or exceeds 100. [Amended by 1959 c.108 s.1; 1965 c.189 s.1; 1973 c.797 s.67; 1987 c.197 s.2; 1989 c.324 s.6; 1995 c.131 s.1; 1997 c.631 s.55]

707.215 [1973 c.797 s.68; 1987 c.197 s.3; 1989 c.324 s.7; repealed by 1997 c.631 s.567]

707.220 Stock record; contents; inspection. (1) An institution or Oregon stock savings bank shall keep a stock ledger or register that shall show the name and mailing address of and the number of shares held by each stockholder of record. The institution or Oregon stock savings bank shall also maintain a record of transfers of stock, stating the time when made, the number of shares transferred and to whom transferred.

(2) The stock ledger or register shall be available for inspection and copying, during regular business hours at a reasonable location specified by the institution or Oregon stock savings bank, by a stockholder of the institution or Oregon stock savings bank upon at least five days' prior written notice if:

(a) The stockholder's demand for inspection is made in good faith and for a proper purpose;

(b) The stockholder described with reasonable particularity the stockholder's purpose; and

(c) The stock ledger or register requested is directly connected to the stockholder's purpose. [Amended by 1973 c.797 s.69; 1997 c.631 s.56]

707.230 Transfer of stock. The shares of stock of an institution or Oregon stock savings bank shall be transferred on the books of the institution or Oregon stock savings bank in such manner as the bylaws may provide and as required in ORS 707.220. A transfer of stock is not valid while an institution or Oregon stock savings bank is under notice from the Director of the Department of Consumer and Business Services to make good any impairment of its stockholders' equity, until the impairment has been made good. [Amended by 1973 c.797 s.70; 1997 c.631 s.57]

707.240 [1969 c.635 s.1; 1973 c.797 s.71; 1995 c.130 s.1; repealed by 1997 c.631 s.567]

707.242 Bylaws. The initial bylaws of an institution shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation or by bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of the institution not inconsistent with law or the articles of incorporation. [1989 c.324 s.9; 1997 c.631 s.58]

(Amendment of Articles of Incorporation)

707.244 Amendment of articles of incorporation; purposes for amendment. (1) An institution or Oregon stock savings bank may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in the original articles of incorporation at the time of making such amendment.

(2) In particular, and without limitation upon such general power of amendment, an institution or Oregon stock savings bank may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the institution or Oregon stock savings bank has authority to issue.

(e) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(f) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and relative rights in respect to all or any part of its shares, whether issued or unissued.

(g) To change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes.

(h) To create new classes of shares with rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(i) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(j) To divide any class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(k) To authorize the board of directors to establish, out of authorized but unissued shares, series of any class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(L) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect to which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(m) To revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any class and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the institution or Oregon stock savings bank, whether then or thereafter authorized. [1989 c.324 s.10; 1997 c.631 s.59]

707.246 Manner of amending articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(1) If an institution or Oregon stock savings bank has issued shares of stock:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for giving notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2)(a) If an institution or Oregon stock savings bank has not issued any shares of stock, the articles of incorporation may be amended by resolution adopted by a majority of the directors.

(b) If the provisions of the articles of incorporation relating to the duration, purposes, authorized shares, rights or preferences of shares, or internal affairs of the institution or Oregon stock savings bank are amended by the directors prior to the issuance of stock, the directors shall immediately notify in writing each person who is a party to any agreement for the subscription of stock of the institution or Oregon stock savings bank. Such notice shall set forth the text of the amendment and state that the subscriber may, within 30 days after delivery or mailing of the notice of amendment, rescind the subscriber's subscription by notice in writing delivered or mailed to the directors at an address specified. If a notice of rescission is not delivered or mailed within 30 days, the subscriber may not thereafter assert the fact of the amendment as the basis for avoiding the subscription agreement or asserting any claim against any person.

(3) Any number of amendments may be submitted to the shareholders or directors and voted upon by them at one meeting. [1989 c.324 s.11; 1997 c.631 s.60]

707.248 Shareholders authorized to vote on amendment to articles of incorporation. (1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(c) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(d) Change the designations, preferences, limitations or relative rights of the shares of such class.

(e) Change the shares of such class into the same or a different number of shares of the same class or another class or classes.

(f) Create a new class of shares with rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class with rights and preferences prior or superior to the shares of such class.

(g) Divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so.

(h) Limit or deny the existing preemptive rights of the shares of such class.

(i) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(2) Different series of the same class of shares shall not constitute different classes of shares for the purpose of voting by classes upon a proposed amendment, except when a series will be adversely affected by an amendment in a manner different from other shares of the same class. [1989 c.324 s.12; 1997 c.631 s.61]

707.250 Execution of amendments to articles of incorporation. The articles of amendment shall be executed in duplicate by the institution or Oregon stock savings bank by its president or a vice president and by its cashier, its secretary or an assistant secretary and shall set forth:

(1) The name of the institution or Oregon stock savings bank.

(2) If the amendment alters or changes any provision of the original or amended articles of incorporation, an identification by reference or description of the affected provision and a statement of its text as it is amended to read. If the amendment strikes or deletes any provision of the original or amended articles of incorporation, an identification by reference or description of the provision so stricken or deleted and a statement that it is stricken or deleted. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders.

(4) The number of shares outstanding and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and, if the manner in which the same shall be effected is not set forth in the amendment, a statement of the manner in which the same shall be effected.

(7) If such amendment was adopted by a majority of the directors pursuant to ORS 707.246 (2)(a), then, in lieu of the information required by subsections (3), (4) and (5) of this section, a statement that no shares have yet been issued and that the amendment was authorized as provided in ORS 707.246 (2)(a). The date of the adoption of the amendment by a majority of the directors shall be included. Articles of amendment under this subsection may be executed as provided in this section or by a majority of the directors. [1989 c.324 s.13; 1997 c.631 s.62]

707.252 Filing of amended articles of incorporation. Duplicate originals of the articles of amendment shall be delivered to the Director of the Department of Consumer and Business Services. If the director finds that the articles of amendment conform to law, the director shall, when all fees and charges have been paid as in this chapter prescribed:

(1) Indorse on each such duplicate originals the word “Filed” and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in the office of the director.

(3) Return one duplicate original of the articles of amendment to the banking institution or its representative. [1989 c.324 s.14; 1997 c.631 s.63]

707.254 Effective date of amended articles of incorporation; effect on existing cause of action. (1) Upon

approval and filing of the amendment by the Director of the Department of Consumer and Business Services, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against such banking institution, any pending suit to which such banking institution shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such banking institution under its former name shall abate for that reason. [1989 c.324 s.15; 1997 c.631 s.64]

707.256 Restated articles of incorporation. (1) An institution or Oregon stock savings bank may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the previously existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by ORS 707.110 to be included in the original articles of incorporation except that no statement need be made with respect to the initial principal place of business or the number or names of directors constituting the initial board of directors or the names of the incorporators.

(2) Restated articles of incorporation when executed and submitted for filing with the Director of the Department of Consumer and Business Services shall supersede the previously existing articles of incorporation and amendments thereto. The director shall, upon request, certify a copy of the articles of incorporation, the articles of incorporation as restated or any amendments to either thereof.

(3) The restated articles of incorporation, when submitted for filing, shall be accompanied by a statement, executed in duplicate by the institution or Oregon stock savings bank by its president or a vice president and by its cashier, its secretary or an assistant secretary, setting forth the following:

(a) The name of the institution or Oregon stock savings bank.

(b) The date of the adoption of the restated articles of incorporation by the shareholders.

(c) The number of shares outstanding and the number of shares entitled to vote thereon, and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(d) The number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively.

(e) If the restated articles of incorporation provide for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, a statement of the manner in which the same shall be effected. [1989 c.324 s.16; 1997 c.631 s.65]

(Shares)

707.258 Terms of class of shares or series within class determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations and relative rights, within the limits set forth in ORS 707.110, of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the institution or Oregon stock savings bank must deliver to the Director of the Department of Consumer and Business Services for filing, articles of amendment which are effective without shareholder action that set forth:

(a) The name of the institution or Oregon stock savings bank;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors. [1989 c.324 s.28; 1997 c.631 s.66]

707.260 Fractional shares. (1) An institution or Oregon stock savings bank may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; or

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the following information:

(a) The name of the issuing institution or Oregon stock savings bank and a statement that it is organized under the law of this state;

(b) The name of the person to whom the scrip is issued; and

(c) The number and class of shares and the designation of the series, if any, for which the certificate may be exchanged.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, receive dividends and participate in the assets of the institution or Oregon stock savings bank upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; or

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [1989 c.324 s.32; 1997 c.631 s.67]

707.262 Share options. Subject to any provisions set forth in its articles of incorporation and subject to preemptive rights, if any, of existing shareholders, an institution or Oregon stock savings bank may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the institution or Oregon stock savings bank shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the institution or Oregon stock savings bank on the exercise of any such right or option. No such rights or options shall be issued to a director, officer or employee of the institution or Oregon stock savings bank or of any subsidiary thereof unless the issuance is approved at the annual meeting or a special meeting by the holders of at least two-thirds of the outstanding shares entitled to vote thereon, or unless such issuance is pursuant to a plan previously so approved. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. [1989 c.324 s.29; 1997 c.631 s.68]

707.264 [1989 c.324 s.30; repealed by 1997 c.631 s.567]

707.266 Expenses of organization or issue of shares. The reasonable charges and expenses of organization or reorganization of an institution or Oregon stock savings bank, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such institution or Oregon stock savings bank out of the consideration received by it in payment for its shares without rendering such shares not fully paid and nonassessable. [1989 c.324 s.31; 1997 c.631 s.69]

707.268 Restrictions on redemption of shares. No redemption or purchase of shares shall be made by an institution or Oregon stock savings bank when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the shareholders with prior or equal rights to the assets of the institution or Oregon stock savings bank upon involuntary dissolution. [1989 c.324 s.33; 1997 c.631 s.70]

707.270 Effect of redemption of shares; statement of cancellation. (1) When shares of an institution or Oregon stock savings bank are redeemed, the shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that shares when redeemed shall not be reissued, in which case a statement of cancellation shall be submitted for filing as provided in this section, shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled, which the institution or Oregon stock

savings bank is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be executed in duplicate by the institution or Oregon stock savings bank by an authorized officer and shall set forth:

(a) The name of the institution or Oregon stock savings bank.

(b) The number of shares canceled through redemption, itemized by classes and series.

(c) The number of shares that the institution or Oregon stock savings bank has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be submitted to the Director of the Department of Consumer and Business Services for filing. If the director finds that such statement conforms to law, the director shall, when all fees and charges have been paid as prescribed by this chapter:

(a) Indorse on each duplicate original the word “Filed” and the month, day and year of the filing thereof.

(b) File one duplicate original in the office of the director.

(c) Return the other duplicate original to the institution or Oregon stock savings bank or its representative.

(4) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction in the number of authorized shares of any class in any other manner permitted by the Bank Act. [1989 c.324 s.34; 1997 c.631 s.71]

707.272 Paid-in capital; use; retained earnings reserve; approval of director for redemption of shares. (1) The paid-in capital of an institution or Oregon stock savings bank may be increased from time to time by resolution of the board of directors directing that all or a part of the retained earnings of the institution or Oregon stock savings bank be transferred to paid-in capital.

(2) An institution or Oregon stock savings bank may, by resolution of its board of directors and with the approval of the Director of the Department of Consumer and Business Services, apply part of its paid-in capital to the reduction or elimination of any deficit in retained earnings arising from losses.

(3) An institution or Oregon stock savings bank may, by resolution of its board of directors, create a reserve or reserves out of its retained earnings for any proper purpose or purposes and may abolish any such reserve in the same manner. Retained earnings of the institution or Oregon stock savings bank to the extent so reserved shall not be available for the payment of dividends or other distributions by the institution or Oregon stock savings bank except as expressly permitted by the Bank Act.

(4) An institution or Oregon stock savings bank may redeem shares of its stock only with the prior approval of the director. A class or series of shares may be designated redeemable upon certain terms and conditions in advance of its issuance with the prior approval of the director, in which event no further approval shall be required to redeem the shares in accordance with the terms and conditions approved.

(5) The director may refuse to approve a reduction in paid-in capital under subsection (2) of this section or redemption of shares under subsection (4) of this section if the director determines that the remaining paid-in capital of the institution or Oregon stock savings bank would be inadequate for the safe and sound operation of the institution or Oregon stock savings bank.

(6) The director may by rule or order waive the requirement for prior approval of redemptions of shares. [1989 c.324 s.35; 1997 c.631 s.72]

707.310 [Amended by 1973 c.797 s.72; 1973 c.823 s.140; 1974 c.36 s.23; 1987 c.197 s.4; 1987 c.916 s.1; 1989 c.324 s.36; 1989 c.331 s.28; 1989 c.701 s.64; 1995 c.334 s.3; repealed by 1997 c.631 s.567]

707.320 [Amended by 1973 c.797 s.73; repealed by 1997 c.631 s.567]

707.330 [Amended by 1973 c.797 s.74; repealed by 1997 c.631 s.567]

707.340 [Amended by 1973 c.797 s.75; repealed by 1997 c.631 s.567]

707.345 [1963 c.500 s.2; repealed by 1973 c.797 s.428]

707.350 Payment required prior to issuance of certificate of stock. (1) An institution or Oregon stock savings bank shall not issue any certificate of stock until full payment for the stock has been received. Stock sold after initial organization of the institution or Oregon stock savings bank shall be paid in the same manner as required in the

organization of an institution or Oregon stock savings bank.

(2) Notwithstanding subsection (1) of this section, an institution or Oregon stock savings bank shall have the power to create and issue the number of shares of stock stated in its articles of incorporation or the amendments thereto. [Amended by 1969 c.635 s.2; 1973 c.797 s.76; 1977 c.135 s.16; 1983 c.37 s.4; 1997 c.631 s.73]

707.355 [1977 c.135 s.15; repealed by 1997 c.631 s.567]

707.360 [Amended by 1969 c.635 s.3; repealed by 1973 c.797 s.428]

707.370 [Amended by 1973 c.797 s.78; repealed by 1997 c.631 s.567]

707.380 Limitation on dividends. The board of directors of an institution or Oregon stock savings bank may, at any regular meeting, declare a dividend, but the amount of the dividend shall not be greater than its unreserved retained earnings, deducting therefrom, to the extent not already charged against earnings or reflected in a reserve, the following:

(1) All bad debts, which are debts on which interest is past due and unpaid for at least six months, unless the debt is fully secured and in the process of collection.

(2) All other assets charged off as required by the Director of the Department of Consumer and Business Services or a state or federal examiner.

(3) All accrued expenses, interest and taxes of the institution or Oregon stock savings bank. [Amended by 1973 c.797 s.79; 1997 c.631 s.74]

707.390 [Repealed by 1973 c.797 s.428]

707.400 Suspension of payment of dividends. The Director of the Department of Consumer and Business Services may require any institution or Oregon stock savings bank to suspend the payment of any dividends if the director determines that the payment of dividends would result in the remaining stockholders' equity of the institution or Oregon stock savings bank being inadequate for the safe and sound operation of the institution or Oregon stock savings bank. [Amended by 1963 c.580 s.82; 1973 c.797 s.80; 1997 c.631 s.75]

707.410 Record of dividends declared. At meetings of the board of directors where dividends are declared, a complete record of the proceedings and business transacted by the board of directors shall be entered in the minutes in the manner required by the Director of the Department of Consumer and Business Services. The minutes shall show that a detailed financial statement as of the last day of the month previous to the month during which the meeting is held was the basis of the decision of the board. [Amended by 1963 c.195 s.4; 1973 c.797 s.81]

707.415 Report of dividends declared. Within 10 days after the declaration of any dividend, an institution or Oregon stock savings bank shall forward to the Director of the Department of Consumer and Business Services a report of the dividend declared. This report shall also be included in the report required in ORS 706.660. [1997 c.631 s.77]

707.420 [Amended by 1973 c.797 s.82; repealed by 1997 c.631 s.567]

707.430 [Amended by 1961 c.57 s.1; 1973 c.797 s.83; 1975 c.544 s.9; 1985 c.627 s.1; 1989 c.582 s.1; 1989 c.596 s.1; 1995 c.373 s.1; repealed by 1997 c.631 s.567]

707.440 [1989 c.324 s.38; repealed by 1997 c.631 s.567]

707.450 [1987 c.916 s.12; repealed by 1997 c.631 s.567]

STOCKHOLDERS, DIRECTORS AND OFFICERS

(Stockholder Meetings)

707.610 Annual and special stockholder meetings; notice of orders. (1) A stockholders' meeting for the election of a board of directors and transaction of other business shall be held in this state within 120 days after the close of the fiscal year of the institution or Oregon stock savings bank. If an institution or Oregon stock savings bank was issued one or more orders by the Director of the Department of Consumer and Business Services under ORS 706.580 within the fiscal year immediately preceding the date of the stockholders' meeting, the institution or Oregon stock savings bank shall include in every notice required for the stockholders' meeting under ORS 707.611:

(a) A copy of ORS 706.580; and

(b) A statement that the institution or Oregon stock savings bank received such an order or orders.

(2) A special meeting of stockholders may be called at any time by the chief executive officer, a majority of the board of directors, any other person or group authorized by the articles of incorporation or bylaws of the institution or Oregon stock savings bank to call such meetings, or not fewer than three stockholders holding in the aggregate not less than one-third of the outstanding voting stock of the institution or Oregon stock savings bank. The articles of incorporation or bylaws of the institution or Oregon stock savings bank may reserve to an officer or the board of directors the authority to designate the time and place of such a meeting. However, the meetings shall be held in the State of Oregon. Unless the director consents to a later meeting date, the meetings shall be held not later than 45 days after the call for the meeting is issued. [Amended by 1957 c.59 s.1; 1967 c.170 s.1; 1973 c.797 s.84; 1983 c.296 s.3; 1985 c.786 s.27; 1987 c.177 s.1; 1989 c.324 s.39; 1997 c.631 s.78]

707.611 Notice of meeting. Written or printed notice stating the place, date and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 days nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, the secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the institution or Oregon stock savings bank, with postage prepaid. [1989 c.324 s.43; 1997 c.631 s.79]

707.612 Action without meeting. Any action required by this chapter to be taken at a meeting of the shareholders or directors of an institution or Oregon stock savings bank or any other action which may be taken at a meeting of the shareholders, directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the shareholders or directors or all of the members of the committee entitled to vote with respect to the subject matter thereof. The consent shall be delivered to the institution or Oregon stock savings bank for inclusion in the minutes or for filing with the corporate records. The action shall be effective on the date on which the last signature is placed on the consent or consents or at such earlier time as is set forth therein. Such consent or consents shall have the same force and effect as a unanimous vote of such shareholders, directors or committee members and may be stated as such in any articles or document filed under this chapter. If not otherwise determined in accordance with ORS 707.615, the record date for determining shareholders entitled to take action by consent without a meeting is the date the first shareholder signs the consent. [1989 c.324 s.52; 1997 c.631 s.80]

707.613 Shareholder waiver of notice; effect of attendance at meeting. (1) A shareholder may, at any time, waive any notice required by this chapter, the articles of incorporation or bylaws. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the institution or Oregon stock savings bank for inclusion in the corporate records.

(2) Attendance at a meeting by a shareholder waives objection to:

(a) Lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to the holding of the meeting or the transacting of business at the meeting; and

(b) Consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [1989 c.324 s.51; 1997 c.631 s.81]

707.615 Record date. (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of an institution or Oregon stock savings bank may provide that the stock transfer books shall be closed for a stated period, not to exceed in any case 70 days. If the stock transfer books shall be closed for the purpose of determining the shareholders entitled to notice of or

to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(2) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders. The record date, in any case, shall be not more than 70 days and, in the case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the close of business on the business day before the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(3) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the meeting is adjourned to a date more than 120 days from the original meeting date. [1989 c.324 s.44; 1997 c.631 s.82]

707.617 Shareholders list for meeting. (1) The officer or agent having charge of the stock transfer books for shares of an institution or Oregon stock savings bank shall make, at least 10 days prior to each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof. The list shall be arranged in alphabetical order, with the address of and the number of shares held by each shareholder and, for a period of 10 days prior to such meeting, shall be kept on file at the registered office of the institution or Oregon stock savings bank and shall be subject to inspection by any shareholder at any time during usual business hours. Such list also shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to which shareholders are entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. [1989 c.324 s.45; 1997 c.631 s.83]

707.619 Voting entitlement of shares. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by the Bank Act.

(2) Neither shares of its own stock held by the institution or Oregon stock savings bank in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the institution or Oregon stock savings bank shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time. The prohibition of this subsection does not apply if, under the terms of a trust in which such shares are held, the manner in which such shares shall be voted may be determined by the trustee, by a donor or beneficiary of the trust or by some other person named in the trust, and such shares are actually voted in the manner determined or directed by the trustee, donor, beneficiary or other person so authorized.

(3) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

(4) In electing each director for whose election the shareholder has a right to vote, every shareholder entitled to vote at such election shall have the right to vote, either in person or by proxy, the number of shares owned by the shareholder. If the articles of incorporation specifically permit cumulative voting, every shareholder shall have the right to cumulate the shareholder's votes either by giving one candidate as many votes as the number of such directors multiplied by the number of the shareholder's shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another domestic or foreign corporation, a limited liability company, a partnership or another entity may be voted by such officer, agent or proxy as the governing documents of the entity may prescribe or, in absence of such provision, as the board of directors or other governing body of the entity holding the shares may determine.

(6) Shares held by a personal representative, administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote

shares held by the trustee without a transfer of the shares to the name of the trustee.

(7) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under control of a receiver may be voted by such receiver without a transfer into the receiver's name if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.

(8) Shares may be voted by a pledgee or attorney-in-fact of the shareholder if authorized by the pledge agreement or power of attorney and evidence of such authority is presented to the institution or Oregon stock savings bank upon request.

(9) On and after the date on which written notice of redemption of shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with another institution or Oregon stock savings bank with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares. [1989 c.324 s.47; 1997 c.631 s.84]

707.620 Special stockholder meeting called by director. If the Director of the Department of Consumer and Business Services considers it expedient the director may call a meeting of the stockholders of any institution or Oregon stock savings bank by giving 15 days' notice of the meeting to the stockholders in the manner prescribed in ORS 707.611. All necessary expense incurred in the serving of the notice shall be paid by the institution or Oregon stock savings bank. [Amended by 1973 c.797 s.85; 1997 c.631 s.85]

707.621 Quorum. (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting at the time the vote is taken and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the Bank Act or the articles of incorporation.

(2) Once a share is represented at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. [1989 c.324 s.46; 1997 c.631 s.86]

707.623 Modification of quorum or voting requirements. (1) The articles of incorporation may provide for a lesser or greater quorum requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter, but in no event shall a quorum for shareholders, or any voting group of shareholders, consist of less than one-third of the votes entitled to be cast on any matter by the shareholders or voting group of shareholders. The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds a greater quorum or voting requirement must meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect. An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement must meet the quorum requirement and be adopted by the vote and voting groups required to take action immediately prior to the change or deletion. [1989 c.324 s.48; 1997 c.631 s.87]

707.625 Exemption from personal liability for good faith acts or omissions in compliance with statute, rule or order. A person may not be held personally liable for an act done or omitted by the person in good faith and in compliance with a statute, rule or order of the Director of the Department of Consumer and Business Services under this chapter regardless of whether the statute, rule or order is later amended, rescinded or determined to be invalid by judicial or other authority. [1987 c.445 s.4; 1997 c.631 s.88]

707.630 [Repealed by 1973 c.797 s.428]

707.640 [Amended by 1973 c.797 s.86; 1985 c.786 s.28; repealed by 1997 c.631 s.567]

(Directors and Officers)

707.642 Organizational meeting of directors; notice. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held, either within or

without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting. The incorporators who called the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time, place and purpose of the meeting. [1989 c.324 s.27; 1997 c.631 s.89]

707.644 Committees of board of directors; limitations. (1) If provided by the articles of incorporation or the bylaws, the board of directors, by resolution adopted by a majority of all the directors in office when the action is taken, may designate from among its members one or more committees. To the extent provided in the resolution or in the articles of incorporation or the bylaws of the banking institution, the committees shall have and may exercise all the authority of the board of directors in the management of the banking institution.

(2) No committee shall have the authority of the board of directors in reference to:

(a) Amending the articles of incorporation;

(b) Approving dividends or other distributions to shareholders of an institution or Oregon stock savings bank;

(c) Filling vacancies on the board of directors or on any of its committees;

(d) Approving the reacquisition of shares of the institution or Oregon stock savings bank;

(e) Adopting a plan of merger or consolidation;

(f) Recommending to the shareholders the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the institution or Oregon stock savings bank other than in the usual and regular course of its business;

(g) Recommending to the shareholders a voluntary dissolution of the institution or Oregon stock savings bank or a revocation thereof;

(h) Amending the bylaws of the banking institution; or

(i) Approving the issuance or sale or contract for sale of shares or determining the designation and relative rights, preferences and limitations of a class or series of shares of the institution or Oregon stock savings bank.

(3) Notwithstanding subsection (2) of this section, the board of directors may authorize a committee to take action described in subsection (2)(i) of this section pursuant to a stock option or other stock compensation plan, or by approving the maximum number of shares to be issued and delegating to the committee the authority to determine all or any part of the terms of the issuance or sale or contract of sale and the determination of the designation and relative rights, preferences and limitations of the class or series of shares.

(4) The designation of committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or such member by law. [1989 c.324 s.50; 1997 c.631 s.90]

707.646 Staggered terms for directors. (1) If there are six or more directors, the articles of incorporation or the bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible. In that event, the terms of directors in the first group expire at the first annual meeting after their election; the terms of the second group expire at the second annual meeting after their election; and the terms of the third group, if any, expire at the third annual meeting after their election. Thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If the institution or Oregon stock savings bank has cumulative voting, terms of directors may be staggered only if authorized by the articles of incorporation, and no class shall have fewer than three members. [1989 c.324 s.26; 1997 c.631 s.91]

707.648 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the

director. [1989 c.324 s.49]

707.650 [Amended by 1973 c.797 s.87; 1975 c.544 s.9a; 1977 c.135 s.17; 1983 c.37 s.5; repealed by 1983 c.296 s.12]

707.660 General standards for directors. (1) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the banking institution whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member, if the director reasonably believes the committee merits confidence.

(2) A director is not acting in good faith if the director has knowledge concerning a matter in question that makes reliance otherwise permitted by subsection (1) of this section unwarranted.

(3) When evaluating any offer of another party to make a tender or exchange offer for any equity security of the banking institution, or any proposal to merge the banking institution with another banking institution or to purchase or otherwise acquire all or substantially all the properties and assets of the banking institution, the directors of a banking institution may, in determining what the directors believe to be in the best interests of the banking institution, give due consideration to the social, legal and economic effects on employees, customers and suppliers of the banking institution and on the communities and geographical areas in which the banking institution and its subsidiaries operate, the economy of the state and nation, the long term as well as short term interests of the banking institution and its stockholders, including the possibility that these interests may be best served by the continued independence of the banking institution, and other relevant factors. [Amended by 1973 c.797 s.88; 1975 c.725 s.7; 1997 c.631 s.92]

707.665 General standards for officers. (1) In discharging the duties of an officer, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the banking institution whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(2) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (1) of this section unwarranted. [1997 c.631 s.94]

707.670 Regular meetings of directors; quorum; notice; meetings by telephone. (1)(a) The board of directors of a banking institution shall hold regular meetings as provided in this subsection.

(b) Unless paragraph (c) of this subsection is applicable, the board of directors shall hold a regular meeting at least once every month.

(c) Notwithstanding paragraph (b) of this subsection, with the approval of the Director of the Department of Consumer and Business Services, the board of directors of a banking institution may hold regular meetings as infrequently as once each calendar quarter.

(2) A quorum at any meeting of the board of directors shall consist of:

(a) If the banking institution has a fixed board size, a majority of the members of the whole board.

(b) If the banking institution has a variable-range board size, a majority of the number of directors prescribed or, if no number is prescribed, a majority of the number in office immediately before the meeting begins.

(3) If less than a quorum of directors is present at a meeting, they may adjourn until the next meeting.

(4) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(5) Meetings of the board of directors, regular or special, may be held either within or without this state.

(6) Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or

convened. Neither the business to be transacted at nor the purpose of any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws or by law.

(7) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of a banking institution or any committee designated by the board may hold a meeting of the board or committee by means of conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other. Participation in a meeting under this subsection shall constitute presence in person at the meeting. [Amended by 1963 c.166 s.1; 1973 c.797 s.89; 1983 c.296 s.4; 1989 c.324 s.40; 1993 c.255 s.1; 1997 c.631 s.95]

707.675 Report of loans and investments. The board of directors shall designate an officer of the banking institution to prepare and submit to the board at every meeting or to a committee of not less than three members of the board of directors a report, in such detail as the board may direct, of the loans and investments made during the preceding month or since the last report, and information concerning loans to officers, directors and employees. The board of directors shall examine the report and make it a part of the record of the meeting by recording the report in full in the minutes. [1973 c.797 s.90; 1995 c.316 s.3; 1997 c.631 s.96]

707.680 Special board meetings called by director; penalty for failure to attend. (1) The Director of the Department of Consumer and Business Services may call a meeting of the board of directors of any banking institution by mailing a notice of the meeting to each director. The notice shall state the purpose of the meeting and designate the time and place where the meeting shall be held.

(2) A director who fails to appear at the meeting without proper cause is subject to a penalty of up to $1,000 for each meeting the director fails to attend. The penalty shall be collected in the manner prescribed by ORS 706.570. [Amended by 1973 c.797 s.91; 1997 c.631 s.97]

707.690 Filling director vacancy. Subject to ORS 707.705, any vacancy in the board of directors may be filled by the board for the unexpired term at a regular meeting after the vacancy occurs or as otherwise provided in the bylaws of the banking institution. [Amended by 1985 c.786 s.29; 1997 c.631 s.98]

707.700 Selection and control of officers by directors; effect of removal of officers or chief executive. (1) After a charter has been issued to a banking institution, the board of directors shall elect a chief executive officer who shall also be a director, a president who also may be the chief executive officer, at least one vice president, and a cashier or secretary, and may appoint such other officers and employees as the board of directors considers necessary or appropriate.

(2) The board of directors may define the duties, fix the compensation, dismiss, fill vacancies and require bonds or irrevocable letters of credit for the faithful performance of the duties of the employees and officers of the banking institution.

(3) In the event the board dismisses an officer, the officer shall no longer serve as a director.

(4) Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the banking institution will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [Amended by 1973 c.797 s.92; 1983 c.37 s.6; 1985 c.786 s.32; 1989 c.324 s.41; 1991 c.331 s.110; 1997 c.631 s.99]

707.705 Investigation of new director, president and chief executive officer; fingerprinting; disapproval of election or appointment. (1) Before a person first takes office as director, president or chief executive officer of a banking institution, the name of the person shall be submitted to the Director of the Department of Consumer and Business Services, with any information about the person that the director may require.

(2) The director shall investigate each person whose name is submitted under this section to determine the character, honesty, financial responsibility and competence of the person. In the course of investigating any person under this section, the director may require the person to provide additional information for the director's further inquiry. For the purpose of such further inquiry, the director may require the person to submit to fingerprinting. Fingerprints acquired under this subsection may be submitted to appropriate law enforcement agencies, including the Federal Bureau of Investigation, for the purpose of discovering any unlawful activities of the person.

(3) The director may disapprove the election or appointment of the person for any reason stated in ORS 707.145. The director shall issue the disapproval in writing to the board of directors that submitted the person's name. A copy of

the disapproval shall be served personally or by certified mail upon the disapproved person. The disapproval may be issued without a prior administrative hearing.

(4) A person whom the director disapproves under this section may appeal the disapproval as a contested case pursuant to ORS 183.415 to 183.500. [1985 c.786 s.31; 1997 c.631 s.100]

707.710 Removal of officer or director. (1) For any reason specified in subsection (2) of this section, the Director of the Department of Consumer and Business Services by order may direct the board of directors of a banking institution to remove a director or officer of the banking institution.

(2) The director may issue an order of removal under subsection (1) of this section:

(a) For any reason stated in ORS 707.145; or

(b) If the person who is the subject of the order has refused otherwise to comply with any written requirements or instructions of the director.

(3) An order of removal under this section shall be in writing and may be issued without a prior administrative hearing. A copy of the order shall be served personally or by certified mail upon the person to be removed.

(4) Upon receipt of an order of removal the director or officer shall be suspended from office.

(5) The person suspended from office may appeal the order of the director as a contested case under ORS 183.415 to 183.500.

(6) Upon expiration of the period in which to file an appeal under ORS 183.415 to 183.500 or when the order of the director is affirmed on appeal, the board of directors by resolution shall remove the person from office and declare the office vacant.

(7) Any officer or director of a banking institution who is suspended or removed under this section shall not act in any official capacity, conduct any of the business of the banking institution or have access to the books, records or assets of the banking institution as an officer, director or stockholder, without receiving permission from the director. [Amended by 1973 c.797 s.93; 1983 c.296 s.5; 1985 c.762 ss.38,38a; 1985 c.786 s.33; 1997 c.631 s.101]

707.720 Violation of law or omission of duty by officer or director. An officer or director of a banking institution shall not, as an officer or director, willfully do any act which is expressly forbidden by the Bank Act or omit to perform any duty imposed upon the officer or director by the Bank Act. [Amended by 1973 c.797 s.94; 1997 c.631 s.102]

707.730 Official communications from Department of Consumer and Business Services; submission to directors. Every official communication directed by the Director of the Department of Consumer and Business Services or any examiner to a banking institution or to any officer of a banking institution, relating to an investigation or examination conducted by the Department of Consumer and Business Services or containing suggestions or recommendations as to the conduct of the business of the banking institution, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and noted in the minutes of the meeting of the board in the manner prescribed by the director. [Amended by 1973 c.797 s.95; 1985 c.762 s.39; 1997 c.631 s.103]

707.735 Officers and directors to notify law enforcement officers of certain criminal violations; investigations; costs. (1) If an officer or director of a banking institution has reason to believe that a person has violated any provision of law that has resulted or could result in loss to the banking institution and for which criminal prosecution is provided, the officer or director shall give the information relative to the violation to the appropriate federal, state or local law enforcement officer having jurisdiction of the violation, and to the Director of the Department of Consumer and Business Services.

(2) If the matter is referred to a district attorney or to the Attorney General, such officer promptly shall investigate the violation and institute such action against the person as the information and investigation requires or justifies. The cost of the investigation and action shall be paid by the county or state in the manner in which other criminal actions are paid. [1979 c.88 s.7; 1997 c.631 s.104]

707.740 Examining or audit committee; duties. The board of directors of a banking institution shall annually appoint an examining or audit committee of not fewer than three directors of the banking institution who are not active officers of the banking institution or not fewer than three other persons who are approved by the Director of the Department of Consumer and Business Services. The examining or audit committee shall examine and study the report of each examination made by bank supervising authorities and report to the board of directors within 60 days after

receipt of the report relative to criticisms and suggestions contained in the report and comment on any matter relative to the affairs of the banking institution that in its judgment should be known to the directors. The report shall be recorded in the minute book of the banking institution, and a certified copy transmitted to the director within five days. [Amended by 1973 c.797 s.96; 1981 c.192 s.5; 1985 c.786 s.34; 1997 c.631 s.105]

(Indemnification of Directors, Officers, Employees and Agents)

707.744 Definitions for ORS 707.744 to 707.764. As used in ORS 707.744 to 707.764:

(1) “Director” means an individual who is or was a director of a banking institution or an individual who, while a director of a banking institution, is or was serving at the banking institution's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director is considered to be serving an employee benefit plan at the banking institution's request if the director's duties to the banking institution also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. “Director” includes, unless the context requires otherwise, the estate or personal representative of a director.

(2) “Expenses” includes counsel fees.

(3) “Banking institution” includes any domestic or foreign predecessor entity of a banking institution in a merger or other transaction in which the predecessor's existence ceased upon the consummation of the transaction.

(4) “Liability” means the obligation to pay a judgment, settlement, penalty or fine, including an excise tax assessed with respect to an employee benefit plan or reasonable expenses incurred with respect to a proceeding.

(5) “Officer” means an individual who is or was an officer of a banking institution or an individual who, while an officer of a banking institution, is or was serving at the banking institution's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. An officer is considered to be serving an employee benefit plan at the banking institution's request if the officer's duties to the banking institution also impose duties on or include services by the officer to the employee benefit plan or to participants in or beneficiaries of the plan. “Officer” includes, unless the context requires otherwise, the estate or personal representative of an officer.

(6) “Party” includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(7) “Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal. [1989 c.324 s.17; 1997 c.631 s.106]

707.746 Authority to indemnify directors. (1) Except as provided in subsection (4) of this section, a banking institution may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The conduct of the individual was in good faith;

(b) The individual reasonably believed that the individual's conduct was in the best interests of the banking institution, or at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A banking institution may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the banking institution in which the director was adjudged liable to the banking institution; or

(b) In connection with any other proceeding charging improper personal benefit to the director in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the banking institution is limited to reasonable expenses incurred in connection with the proceeding. [1989 c.324 s.18; 1997 c.631 s.107]

707.748 Mandatory indemnification. Unless limited by its articles of incorporation, a banking institution shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the banking institution against reasonable expenses incurred by the director in connection with the proceeding. [1989 c.324 s.19; 1997 c.631 s.108]

707.749 [1985 c.786 s.20; 1987 c.216 s.4; renumbered 707.849 in 1989]

707.750 [1977 c.135 s.20; 1981 c.192 s.6; repealed by 1985 c.786 s.70]

707.752 Advance for expenses. (1) A banking institution may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the banking institution a written affirmation of the director's good faith belief that the director has met the standard of conduct described in ORS 707.746; and

(b) The director furnishes the banking institution a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Any authorization of payments under this section may be made by provision in the articles of incorporation, or bylaws, by a resolution of the shareholders or board of directors or by contract. [1989 c.324 s.20; 1997 c.631 s.109]

707.754 Court-ordered indemnification. Unless the banking institution's articles of incorporation provide otherwise, a director of the banking institution who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under ORS 707.748, in which case the court shall also order the banking institution to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in ORS 707.746 or was adjudged liable as described in ORS 707.746 (4), whether the liability is based on a judgment, settlement or proposed settlement or otherwise. [1989 c.324 s.21; 1997 c.631 s.110]

707.755 [1985 c.786 s.21; renumbered 707.855 in 1989]

707.756 Determination and authorization of indemnification. (1) A banking institution may not indemnify a director under ORS 707.746 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in ORS 707.746.

(2) A determination that indemnification of a director is permissible shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under paragraph (a) of this subsection, by a majority vote of a committee duly designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding. However, directors who are parties to the proceeding may participate in designation of the committee;

(c) By special legal counsel selected by the board of directors or its committee in the manner prescribed in paragraph (a) or (b) of this subsection, or if a quorum of the board of directors cannot be obtained under paragraph (a) of this subsection and a committee cannot be designated under paragraph (b) of this subsection, the special legal counsel shall be selected by majority vote of the full board of directors, including directors who are parties to the proceeding; or

(d) In the case of an institution or Oregon stock savings bank, by the shareholders.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those

entitled under subsection (2)(c) of this section to select counsel. [1989 c.324 s.22; 1997 c.631 s.111]

707.758 Indemnification of officers, employees and agents. Unless a banking institution's articles of incorporation provide otherwise:

(1) An officer of the banking institution is entitled to mandatory indemnification under ORS 707.748 and is entitled to apply for court-ordered indemnification under ORS 707.754, in each case to the same extent as a director under ORS 707.748 and 707.754.

(2) The banking institution may indemnify and advance expenses under ORS 707.744 to 707.762 to an officer, employee or agent of the banking institution to the same extent as to a director. [1989 c.324 s.23; 1997 c.631 s.112]

707.760 [1985 c.786 s.22; renumbered 707.860 in 1989]

707.762 Insurance. A banking institution may purchase and maintain insurance on behalf of an individual against liability asserted against or incurred by the individual who is or was a director, officer, employee or agent of the banking institution or who, while a director, officer, employee or agent of the banking institution, is or was serving at the request of the banking institution as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The banking institution may purchase and maintain the insurance even if the banking institution has no power to indemnify the individual against the same liability under ORS 707.746 or 707.748. [1989 c.324 s.24; 1997 c.631 s.113]

707.764 Application of ORS 707.744 to 707.762. (1) The indemnification and provisions for advancement of expenses provided by ORS 707.744 to 707.762 shall not be deemed exclusive of any other rights to which directors, officers, employees or agents may be entitled under the banking institution's articles of incorporation or bylaws, any agreement, general or specific action of its board of directors, vote of shareholders or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Specifically and not by way of limitation, a banking institution shall have the power to make or agree to make any further indemnification, including advancement of expenses, of:

(a) Any director as authorized by the articles of incorporation, any bylaws approved, adopted or ratified by the shareholders or any resolution or agreement approved, adopted or ratified, before or after such indemnification or agreement is made, by the shareholders, provided that no such indemnification shall indemnify any director from or on account of acts or omissions for which liability could not be eliminated under ORS 707.110 (5)(c); and

(b) Any officer, employee or agent who is not a director as authorized by its articles of incorporation or bylaws, general or specific action of its board of directors or agreement. Unless the articles of incorporation, or any such bylaws, agreement or resolution provide otherwise, any determination as to any further indemnity under this paragraph shall be made in accordance with ORS 707.756.

(2) If articles of incorporation limit indemnification or advance of expenses, any indemnification and advance of expenses are valid only to the extent consistent with the articles of incorporation.

(3) ORS 707.744 to 707.762 do not limit a banking institution's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to a proceeding. [1989 c.324 s.25; 1997 c.631 s.114]

707.849 [Formerly 707.749; repealed by 1995 c.314 s.3]

707.855 [Formerly 707.755; repealed by 1997 c.631 s.567]

707.860 [Formerly 707.760; 1995 c.314 s.1; repealed by 1997 c.631 s.567]

707.990 [Repealed by 1973 c.797 s.428]