# TITLE 52A

# INSURANCE AND FINANCE ADMINISTRATION

Chapter 705. Department of Consumer and Business Services

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# Chapter 705

**2013 EDITION**

## Department of Consumer and Business Services


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## ADMINISTRATION

### (Generally)

**705.010 Definitions.** As used in this chapter:

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

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

(3) "Director" means the Director of the Department of Consumer and Business Services. [1987 c.373 §1; 1993 c.744 §9; 1999 c.59 §213]

**705.100** [1985 c.762 §3; repealed by 1987 c.373 §85]

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

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

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

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

(5) With respect to the duties, functions and powers imposed upon the director under the insurance laws, the director may be designated by the title of Insurance Commissioner or may appoint a person under ORS 705.115 to serve under the supervision and control of the director as Insurance Commissioner.

(6) Before entering upon the functions of office, the director shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case in the penal sum fixed by the Governor.

(7) The department shall have an official seal. Any certificate or other document or paper executed by the department pursuant to its authority and sealed with its seal, and all copies of papers certified by it and authenticated by the seal, shall in all cases be evidence equally and in like manner as the original and shall have the same force and effect as would the original in any suit or proceeding in any court in this state. [1987 c.373 §2; 1991 c.331 §108; 1993 c.744 §10; 1997 c.631 §526; 2003 c.802 §179]

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

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

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

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

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

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

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

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

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

**705.135 Delegation; rules; employee indebtedness; reporting.** (1) The Director of the Department of Consumer and Business Services may delegate any duties, powers and functions of the director or of the Department of Consumer and Business Services,

under such conditions as the director deems appropriate.

(2) In accordance with ORS chapter 183, and in addition to other rulemaking authority prescribed by law, the director may adopt rules for the purpose of carrying out the functions of the department.

(3) The director shall adopt rules governing circumstances under which employees or any category of employees of the department may or may not be or become indebted to or hold any interest in any entity subject to regulation by the department. The rules shall provide for reporting any such indebtedness or interest and for preventing or resolving possible conflicts of interest arising therefrom. [1987 c.373 §6; 2003 c.802 §180]

**705.137 Information that is confidential or not subject to disclosure; public officer privilege; permitted uses of confidential information.** (1) Except as provided in subsection (3) of this section, a document, material or other information that is in the possession or control of the Department of Consumer and Business Services for the purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in a private civil action. The Director of the Department of Consumer and Business Services may use a confidential document, material or other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code and in furthering a regulatory or legal action brought as a part of the director's duties.

(2) A document, material or other information to which subsection (1) of this section applies is subject to the public officer privilege described in ORS 40.270.

(3) In order to assist in the performance of the director's duties, the director may:

(a) Authorize sharing a confidential document, material or other information that is subject to subsection (1) of this section as appropriate among the administrative divisions and staff offices of the department created under ORS 705.115 for the purpose of administering and enforcing the statutes identified in subsection (1) of this section, in order to enable the administrative divisions and staff offices to carry out the functions and responsibilities of the administrative divisions and staff offices.

(b) Share a document, material or other information, including a confidential document, material or other information that is subject to subsection (1) of this section or that is otherwise confidential under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners, if the recipient agrees to maintain the confidentiality of the document, material or other information.

(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners. As provided in this section, the director shall maintain the confidentiality of documents, materials or other information received upon notice or with an understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(4) Disclosing a document, material or other information to the director under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

(5) This section does not prohibit the director from releasing a final, adjudicated action, including a suspension or revocation of a certificate of authority or a license if the action is otherwise open to public inspection, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or affiliates or subsidiaries of the National Association of Insurance Commissioners. [2001 c.377 §2; 2009 c.541 §24; 2009 c.604 §25]

**705.138 Confidential and privileged documents; conditions for sharing with chief insurance regulatory official.** (1) The Director of the Department of Consumer and Business Services may share confidential and privileged documents, material or information the director receives under ORS 732.517 to 732.592 with a chief insurance regulatory official in accordance with ORS 705.137:

(a) Only if the regulatory official's jurisdiction has a statute or rules that are sub-

stantially similar in effect to ORS 732.586; and

(b) Only if the regulatory official agrees in writing not to disclose the documents, material or information.

(2) The director shall enter into a written agreement with the National Association of Insurance Commissioners that governs how the director and the association may use or share documents, material or information the director receives under ORS 732.517 to 732.592, including documents, material or information the director receives as a consequence of the director's participation in a supervisory college under ORS 732.571. The agreement must:

(a) Specify procedures and protocols for maintaining the confidentiality and security of documents, material and information the director shares with the association and the association's affiliates or subsidiaries;

(b) Specify conditions under which the association may share the documents, material or information with other state, federal or international regulatory agencies;

(c) State that the director retains ownership of the documents, material and information the director shares with the association and the association's affiliates and subsidiaries and that the association's use of the documents, material or information is subject to the director's control;

(d) Require the director or the association to notify an insurer if a subpoena or other request compels the association or the association's affiliates or subsidiaries to disclose or produce documents, material or information the director has shared with the association;

(e) Require the association to consent to an insurer's intervention in an administrative or judicial proceeding that may result the association or the association's affiliates or subsidiaries having to disclose or produce documents, material or information the director shared with the association; and

(f) State that the association must maintain, in accordance with ORS 705.137, the confidentiality of the documents, material or information the association receives from the director. [2013 c.370 §2]

**705.139 Agreements with other agencies regarding sharing and use of confidential information; contents.** (1) The Director of the Department of Consumer and Business Services may enter into agreements with other state, federal, foreign and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and its affiliates or subsidiaries, governing the sharing and use of information consistent with ORS 705.137.

(2) An agreement under this section must specify the duration of the agreement, the purpose of the agreement, the methods that may be employed for terminating the agreement and any other necessary and proper matters.

(3) An agreement under this section does not relieve the director of any obligation or responsibility imposed by law.

(4) The director may expend funds of the Department of Consumer and Business Services and may supply services for the purpose of carrying out an agreement under this section.

(5) Agreements under this section are exempt from ORS 190.410 to 190.440 and 190.480 to 190.490. [2001 c.377 §3]

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

**705.141 Criminal records check; fingerprints required; persons subject to requirement.** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Consumer and Business Services may require the fingerprints of a person who is applying for a license, or renewal of a license, under ORS 744.001, 744.059 or 744.326 or a person who:

(1)(a) Is employed or applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the person has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(c) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(d) That has mailroom duties as a primary duty or job function;

(e) In which the person has responsibility for auditing the department;

(f) That has personnel or human resources functions as a primary responsibility;

(g) In which the person has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(h) In which the person has access to tax or financial information about individuals or business entities. [2007 c.619 §1; 2010 c.87 §10; 2011 c.447 §21]

**Note:** 705.141 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 705 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**(Licensing)**

**705.143 Combined license processing; rules.** (1) The Department of Consumer and Business Services may establish one or more combined license processing programs. Participation in a combined license processing program by a state agency is voluntary. Notwithstanding any other provision of law, agencies participating in a combined license processing program may:

(a) Use combined license applications;

(b) Adopt standardized license terms under subsection (2) of this section;

(c) Charge adjusted license fees established under subsection (2) of this section;

(d) Issue combined license documents; and

(e) Take any other action authorized under rules adopted pursuant to subsection (3) of this section that provides a simplified procedure for processing licenses issued pursuant to the program.

(2) Notwithstanding any other provision of law, the Department of Consumer and Business Services may establish a standardized term for licenses of state agencies participating in a combined license processing program. If the department establishes a standardized term under the provisions of this subsection, the agencies participating in the program shall adjust the fees established by statute for each license in an appropriate manner to ensure that there is no revenue loss by reason of the change in the term of the license.

(3) The Department of Consumer and Business Services may adopt rules necessary for implementation of combined license processing programs. Any agency participating in a combined license processing program may:

(a) Agree to be bound by the rules adopted by the Department of Consumer and Business Services; and

(b) Adopt any other rules necessary for participation in a combined license processing program. [2005 c.73 §1; 2007 c.768 §59]

**Note:** 705.143 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 705 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**(Financial Provisions)**

**705.145 Consumer and Business Services Fund; sources; uses; revolving account; assignment of certain moneys to single account; contracts for state building code training programs.** (1) There is created in the State Treasury a fund to be known as the Consumer and Business Services Fund, separate and distinct from the General Fund. All moneys collected or received by the Department of Consumer and Business Services, except moneys required to be paid into the Workers' Benefit Fund, shall be paid into the State Treasury and credited to the Consumer and Business Services Fund. Moneys in the fund may be invested in the same manner as other state moneys and any interest earned shall be credited to the fund.

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

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

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

(5) Except as provided in ORS 705.165, it is the intention of the Legislative Assembly that the performance of the various duties and functions of the department in connection with each of its programs shall be financed by the fees, assessments and charges established and collected in connection with those programs.

(6) There is created by transfer from the Consumer and Business Services Fund a revolving administrative account in the amount of $100,000. The revolving account shall be disbursed by checks or orders issued by the director or the Workers' Compensation Board and drawn upon the State Treasury, to carry on the duties and functions of

the department and the board. All checks or orders paid from the revolving account shall be reimbursed by a warrant drawn in favor of the department charged against the Consumer and Business Services Fund and recorded in the appropriate subsidiary record.

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

(a) Pay compensation benefits; and

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

(8) Notwithstanding subsections (2), (3) and (5) of this section and except as provided in ORS 455.220 (1), the moneys derived pursuant to ORS 446.003 to 446.200, 446.210, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646, 446.661 to 446.756 and 455.220 (1) and deposited to the fund, interest earned on those moneys and withdrawals of moneys for activities or programs under ORS 446.003 to 446.200, 446.210, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646 and 446.661 to 446.756, or education and training programs pertaining thereto, must be assigned to a single account within the fund.

(9) Notwithstanding subsections (2), (3) and (5) of this section, the moneys derived pursuant to ORS 455.240 or 460.370 or from state building code or specialty code program fees for which the amount is established by department rule pursuant to ORS 455.020 (2) and deposited to the fund, interest earned on those moneys and withdrawals of moneys for activities or programs described under ORS 455.240 or 446.566 to 446.646, 446.661 to 446.756 and 460.310 to 460.370, structural or mechanical specialty code programs or activities for which a fee is collected under ORS 455.020 (2), or programs described under subsection (10) of this section that provide training and education for persons employed in producing, selling, installing, delivering or inspecting manufactured structures or manufactured dwelling parks or recreation parks, must be assigned to a single account within the fund.

(10) Notwithstanding ORS 279.835 to 279.855 and ORS chapters 279A and 279B, the department may, after consultation with the appropriate specialty code advisory boards established under ORS 455.132, 455.135, 455.138, 480.535 and 693.115, contract for public or private parties to develop or provide training and education programs relating to the state building code and associated licensing or certification programs. [1987 c.373 §17; 1989 c.711 §6; 1993 c.744 §11; 1995 c.641 §16; 1999 c.518 §1; 2001 c.319 §1; 2001 c.710 §13; 2003 c.655 §84a; 2003 c.675 §47; 2003 c.794 §322; 2005 c.755 §53; 2009 c.567 §35; 2013 c.698 §11]

**705.148 Transfers from Consumer and Business Services Fund to Workers' Benefit Fund; purpose; amount; liability limit.** (1) The Director of the Department of Consumer and Business Services shall transfer workers' compensation premium assessment revenue from the Consumer and Business Services Fund to the Workers' Benefit Fund to finance the cost of carrying out the provisions of ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985.

(2) The amount of total transfers during any one year shall be limited to an amount that will produce an ending cash balance approximating six months of projected expenditures in the Workers' Benefit Fund in regard to its functions under ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985.

(3) The transfers may be conducted annually, quarterly or monthly. Total annual transfers shall comply with subsection (2) of this section.

(4) The department's funded liability for claims costs pursuant to ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985, shall be limited to the amount of moneys included in the transfers determined by the director to be available for these purposes. [1995 c.641 §27]

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

**705.155 Petty cash funds.** The Director of the Department of Consumer and Business Services and the Workers' Compensation Board may in their discretion establish and maintain petty cash funds for the purpose of making change and paying other petty incidental expenses in the administration of the functions of the Department of Consumer and Business Services and the board. [1987 c.373 §19]

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

**705.165 Disposition of moneys accruing from department administration and enforcement of certain laws.** (1) Except as provided in ORS 59.255, 59.995, 86A.130, 86A.992 and 645.950, the net amount accruing to the Department of Consumer and Business Services from all fees, charges, interest, penalties and miscellaneous revenues from all sources under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 86A.095 to 86A.198, 650.005 to 650.100 and 705.350 shall, after deduction of refunds, be paid over to the State Treasurer and deposited in a separate subaccount in the Consumer and Business Services Fund created under ORS 705.145 at least monthly and may be used only for the expenses of the department in carrying out its functions and duties

under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995, 86A.095 to 86A.198, 650.005 to 650.100 and 705.350.

(2) Any amount deposited in the separate subaccount in the Consumer and Business Services Fund as provided in subsection (1) of this section that at the end of each quarter is determined by the Director of the Department of Consumer and Business Services to be in excess of the amount needed to administer ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995, 86A.095 to 86A.198 and 650.005 to 650.100 shall be transferred to the General Fund and shall become available for general governmental expenses. [1987 c.414 §143; 1989 c.473 §1; 1993 c.508 §43; 1993 c.744 §12; 1995 c.79 §353; 2001 c.319 §§2,3; 2005 c.755 §§54,55; 2011 c.597 §286]

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

**705.175 Warrant for collection of debt owed Department of Consumer and Business Services.** (1) If any amount due the Department of Consumer and Business Services is not paid within 30 days of the date payment becomes due, and no provision has been made to secure the payment, the department may issue a warrant. The warrant may be filed with the county clerk of any county in this state and recorded in the County Clerk Lien Record of the county in which it is filed. The amount of a warrant issued under this section shall include the principal amount of the debt, any added interest accumulated pursuant to ORS 82.010 or other applicable law and any costs associated with the recording, indexing and serving of the warrant and any satisfaction or release thereof. A copy of the warrant shall be mailed to the debtor by the department at the last known address of the debtor.

(2) After receiving the warrant, the county clerk shall enter the warrant in the County Clerk Lien Record in the manner described in ORS 205.125. The warrant shall have the effect described in this section and ORS 205.125 and 205.126 and may be enforced as provided in this section and ORS 18.854, 205.125 and 205.126. [2003 c.578 §2]

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

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

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

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

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

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

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

**(Boards)**

**705.250 Frequency of board meetings.** (1) The Electrical and Elevator Board established in ORS 455.138, the Board of Boiler Rules established in ORS 480.535 and the State Plumbing Board established in ORS 693.115 shall each meet at least four times per year at times and places specified by the Director of the Department of Consumer and Business Services after consultation with the board, or at times and places specified by the call of a majority of the members of the board after consultation with the director.

(2) The Building Codes Structures Board established in ORS 455.132, the Residential and Manufactured Structures Board established in ORS 455.135, the Mechanical Board established in ORS 455.140 and the Construction Industry Energy Board established in ORS 455.492 shall each meet at least twice per year at times and places specified by the Director of the Department of Consumer and Business Services after consultation with the board, or at times and places specified by the call of a majority of the members of the board after consultation with the director. [2011 c.272 §20]

**Note:** 705.250 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 705 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## SECURITIES AND FRANCHISE LAWS; ADMINISTRATIVE PROVISIONS

**705.300 Records of actions of director regarding securities, commodity and franchise laws.** The Director of the Department of Consumer and Business Services shall keep books, as records of office, showing all acts, matters and things done by the director under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100. [1987 c.414 §71; 1989 c.179 §5]

**705.310 Evidentiary effect of certain records regarding securities, commodities and franchises; fees.** (1) Copies of all records and papers of the Department of Consumer and Business Services relating to duties, functions and powers of the Director of the Department of Consumer and Business Services and the department under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100, certified by the director, shall be received in evidence in all cases equally and with like effect as the original.

(2) The department shall collect a fee as set by rule for making copies of any document filed in the department and relating to the duties, functions and powers of the director under ORS chapter 645 and ORS

59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100. For certifying the document it shall collect, in addition, a fee of $2. [1987 c.414 §72; 1989 c.179 §6]

**705.320 Certified documents; effect.** When certified by the Director of the Department of Consumer and Business Services, all certificates issued by the director and all copies of documents filed in the Department of Consumer and Business Services that relate to the duties, functions and powers of the director under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100 shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the facts stated in the certificates or documents. A certificate by the director as to the compliance or noncompliance of the document with provisions of ORS chapter 645 or ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 or 650.005 to 650.100, or as to the existence or nonexistence of the facts relating to the matters contained in the documents that would appear from the presence or absence of documents filed in the department, shall be taken and received in all courts, public offices and official bodies of this state as prima facie evidence of the existence or nonexistence of the facts stated in the certificates or documents. [1987 c.414 §75; 1989 c.179 §7]

**705.330 Withdrawal of certain documents; review; effect.** (1) Within one year after a filing under ORS chapter 645 or ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 or 650.005 to 650.100, the Director of the Department of Consumer and Business Services may withdraw from filing any document filed by the director when the person who submitted the document advises the Department of Consumer and Business Services that the document was submitted prematurely or by inadvertence or mistake. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal.

(2) The director may withdraw without notice or hearing a certificate that the director has issued or a document that the director has filed under ORS chapter 645 or ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 or 650.005 to 650.100 when the fee was paid with a check that was returned to the department for lack of sufficient funds. Such withdrawal shall be retroactive to the date of filing.

(3) Any decision under this section may be reviewed in accordance with the provisions of ORS chapter 183.

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

**705.340 Access to director's and department records regarding securities, commodities and franchises; rules; accuracy of information.** (1) The Director of the Department of Consumer and Business Services by rule shall adopt a schedule establishing priority of access among members of the general public, governmental agencies and other persons to records of the director and the Department of Consumer and Business Services relating to the duties, functions and powers under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100 for use at times that the director finds that demands for access to the records and to the time and resources of the director and the department cannot be satisfied readily.

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

**705.350 Fees for certain documents; rules.** Notwithstanding ORS 192.410 to 192.505, the Director of the Department of Consumer and Business Services shall establish by rule reasonable fees for the following that relate to the duties, functions and powers of the director under ORS chapter 645 and ORS 59.005 to 59.451, 59.710 to 59.830, 59.991, 59.995 and 650.005 to 650.100:

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

(2) Terminal access to the files of the Department of Consumer and Business Services;

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

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

**705.500** [1987 c.94 §113; repealed by 1997 c.631 §567]

**705.510** [1987 c.94 §114; repealed by 1997 c.631 §567]

**705.600** [1987 c.491 §2; 1989 c.310 §1; 1993 c.18 §154; 1993 c.229 §25; 1993 c.318 §14; repealed by 1997 c.631 §567]

## FINANCIAL INSTITUTIONS

**705.610 Appointment of financial institution examiners.** The Director of the Department of Consumer and Business Services shall appoint examiners to conduct, as required by law, all examinations of entities

subject to ORS chapters 706 to 725. [1987 c.373 §20]

**705.620** [1987 c.171 §2; 1993 c.264 §§3,3a; 1995 c.192 §1; repealed by 2009 c.541 §49]

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

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

**705.635 Certificate of approval of certain business registry names filed under ORS 56.023.** (1) A person may submit a written request for a certificate from the Director of the Department of Consumer and Business Services for purposes of complying with the provisions of ORS 56.023. The request shall provide such information as the director may require by rule or order.

(2) Upon receiving a request for a certificate under subsection (1) of this section, the director shall within 10 business days determine whether the requested name and intended activity are in compliance with the provisions of the Bank Act and ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapters 59, 645, 705, 717, 725 and 726.

(3)(a) If the director determines that use of the requested name or intended activity is in compliance with the Bank Act and ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapters 59, 645, 705, 717, 725 and 726, the director shall issue a written certificate.

(b) If the director determines that use of the requested name or intended activity is not in compliance with the Bank Act and ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapters 59, 645, 705, 717, 725 and 726, the director shall promptly notify the requester in writing, who may:

(A) Amend the name or activity and submit a written request to the director for reconsideration; or

(B) Request that the director conduct an administrative hearing. The hearing shall be conducted as a contested case hearing pursuant to ORS chapter 183. [2001 c.315 §45; 2009 c.541 §25]

**705.638 "Company" defined; organization requirements for companies conducting banking business.** (1) For purposes of this section, "company" means a corporation, nonprofit corporation, cooperative, limited liability company, partnership, limited liability partnership, limited partnership, business trust, association or other business entity.

(2) A company organized under the laws of this state for the purposes of conducting a banking business as defined in ORS 706.005 (6) either within or outside this state shall be organized under ORS chapter 707. [2001 c.315 §44; 2009 c.541 §26]

**705.640 Enforcement authority regarding conduct of banking business; court order; cease and desist order; civil penalty.** (1) Whenever the Director of the Department of Consumer and Business Services has reason to believe that a person is violating a provision of ORS 705.638, 707.005 or 707.010, the director:

(a) Shall have access to the premises where the person is suspected of transacting banking business in violation of ORS 705.638, 707.005 or 707.010 or where the person may have books, accounts and records; and

(b) Shall have the power to examine, copy or take possession of the books, accounts and records of the person in order to ascertain whether or not the person has violated or is violating any provision of ORS 705.638, 707.005 or 707.010.

(2) If a person refuses to grant access to the premises or refuses to comply with the provisions of subsection (1) of this section, the director may apply for an order to require compliance with the provisions of subsection (1) of this section from a court that has jurisdiction over the matter.

(3) When the director believes, from evidence satisfactory to the director, that a person is violating the provisions of ORS 705.638, 707.005 or 707.010, the director may:

(a) Issue an order finding the person in violation, directing the person to cease and desist from the violation and assessing a penalty equal to the costs of investigation plus $1,000, but not exceeding $5,000; and

(b) Publish notice of an order issued by the director pursuant to paragraph (a) of this subsection.

(4) An order under this section remains in effect until the director or a court withdraws the order. [2001 c.315 §46; 2009 c.541 §27]

**705.642 Injunction authority regarding conduct of banking business; penalty; attorney fees; claims for restitution, damages or disgorgement of illegal gains.** (1) Whenever the Director of the Department of

Consumer and Business Services determines that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of a provision of ORS 705.638, 707.005 or 707.010 or any rule or order of the director, the director may bring suit in the name of or on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the provisions of ORS 705.638, 707.005 or 707.010 or the rule or order. Upon a proper showing, the court shall grant a permanent or temporary injunction, restraining order or writ of mandamus. The court may impose a penalty against the person of not more than $20,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for a continuing violation may not exceed $100,000. If the court finds that the defendant has violated a provision of ORS 705.638, 707.005 or 707.010 or a rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include either of the following in any action authorized by subsection (1) of this section:

(a) A claim for restitution or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical.

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph must be turned over to the General Fund of the State Treasury unless the court requires another disposition. [2001 c.315 §47; 2009 c.541 §28; 2011 c.597 §287]

**705.700** [1999 c.1082 §1; renumbered 455.840 in 2001]

**705.705** [1999 c.1082 §3; renumbered 455.842 in 2001]

**705.710** [1999 c.1082 §4; renumbered 455.844 in 2001]

**705.715** [1999 c.1082 §5; renumbered 455.846 in 2001]

**705.720** [1999 c.1082 §7; renumbered 455.848 in 2001]

**705.730** [2001 c.165 §1; repealed by 2005 c.118 §1]

**705.732** [2001 c.165 §2; repealed by 2005 c.118 §1]