

# Chapter 708A

2017 EDITION

## Regulation of Institutions Generally

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**POWERS OF INSTITUTIONS**

**708A.005 Powers of institutions; insurance transactions; rules.** (1) Except as otherwise limited in the Bank Act or the articles of incorporation of an institution, an institution shall have:

(a) Perpetual duration and succession in its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(b) The power to do all things necessary or convenient to carry out its business and affairs including, without limitation, the power to:

(A) Sue and be sued and complain and defend in its corporate name;

(B) Have a corporate seal, which may be altered at will, and use it or a facsimile thereof by impressing, affixing or reproducing it in any other manner;

(C) Make contracts, incur liabilities, borrow money, issue its notes, bonds and other obligations that may be convertible into other securities of the institution or include the option to purchase other securities of the institution;

(D) Conduct its business, locate offices and exercise the powers granted by the Bank Act within or without this state;

(E) Elect or appoint directors, officers, employees and agents of the institution;

(F) Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the institution;

(G) Make donations for the public welfare or for charitable, scientific or educational purposes;

(H) Transact any business permitted by the Bank Act; and

(I) Pay pensions and establish pension plans, and share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(c) The powers granted to institutions by the Bank Act;

(d) The power to be licensed as an insurance producer as required by ORS 744.053 to transact one or more of the classes of insurance described in ORS 744.062 except for title insurance; and

(e) All powers necessary or convenient to effect any or all of the purposes for which the institution is organized or to perform any or all of the acts expressly or impliedly authorized or required under the Bank Act.

(2) With respect to any exercise of the power granted under subsection (1)(d) of this section, other than the licensing of the institution to transact types of limited class insurance, as that term is defined in ORS 744.052, designated by the Director of the Department of Consumer and Business Services:

(a) The conduct by the institution of insurance producer activities shall be subject to the approval of the director. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities and the existence of satisfactory management for the insurance activity.

(b) The director may revoke or restrict the ongoing authority of the institution to engage in the insurance producer activity if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) The institution shall file a written report with the director no later than March 31 of each year disclosing the insurance activities of the institution. The required contents of the report shall be established by the director by rule. Reports filed with the director under this paragraph shall be available for public inspection in the office of the director.

(3) An institution licensed as an insurance producer, as that term is defined in ORS 731.104, shall not in any manner use customer information obtained from another insurance producer to promote, develop or solicit insurance business for the institution unless the other insurance producer consents to such use of the customer information. [1997 c.631 §116; 1997 c.831 §1a; 2001 c.191 §51; 2003 c.363 §6; 2003 c.364 §58a]

**708A.010 Investments and activities of Oregon commercial banks.** (1) Notwithstanding any provision of the Bank Act to the contrary, Oregon commercial banks may:

(a) Engage as principal or agent in activities in which national banks may engage as principal or agent and acquire and retain investments that national banks may acquire and retain, subject to conditions and restrictions that apply to national banks; and

(b) Engage as principal or agent in activities and acquire and retain investments that are permissible for state chartered banks under 12 C.F.R. 362.3(b) and 12 C.F.R. 362.4(c), subject to conditions and restrictions provided in 12 U.S.C. 1831a, 12 C.F.R. 362, and other applicable federal law.

(2) Notwithstanding any provision of the Bank Act to the contrary, subsidiaries of Oregon commercial banks may:

(a) Engage as principal or agent in activities in which subsidiaries of national banks may engage as principal or agent and acquire and retain investments that subsidiaries of national banks may acquire and retain, subject to conditions and restrictions that apply to subsidiaries of national banks; and

(b) Engage as principal or agent in activities and acquire and retain investments that are permissible for subsidiaries of state chartered bank subsidiaries under 12 C.F.R. 362.3(b) and 12 C.F.R. 362.4(c), subject to conditions and restrictions provided in 12 U.S.C. 1831a, 12 C.F.R. 362, and other applicable federal law.

(3) Activities and investments described in subsections (1) and (2) of this section that require notice to or approval of the Comptroller of the Currency do not require Oregon commercial banks or subsidiaries of Oregon commercial banks to give notice to or obtain approval from the Comptroller of the Currency, but Oregon commercial banks or subsidiaries of Oregon commercial banks shall give notice to or obtain approval from the Director of the Department of Consumer and Business Services. For purposes of this section, references in federal statutes, regulations and other authorities that prescribe the permissible activities and investments of national banks and subsidiaries of national banks refer whenever practicable to comparable provisions of Oregon law. The director may approve an activity or investment that requires the director's approval, subject to such conditions as the director deems appropriate.

(4) The purpose of this section is to grant Oregon commercial banks and subsidiaries of Oregon commercial banks all investment and activity power and authority, as principal or agent, permitted state chartered banks under federal law. [1997 c.631 §117; 2015 c.244 §34]

**708A.115 Investment in government obligations.** (1) Institutions may invest, without regard to any limitation based on stockholders' equity, in:

(a) Obligations of the United States, including those of its agencies and instrumentalities;

(b) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended; and

(c) Obligations of the State of Oregon or any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to

the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(2) Subject to a limitation of 20 percent of stockholders' equity, institutions may invest in obligations of any other state of the United States or obligations of any out-of-state county, city, school district, port district or other public body in the United States payable from ad valorem taxes, if the obligations are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal obligations.

(3) Obligations received in satisfaction of debts previously contracted in good faith are not subject to the limitations of this section, if the book value of such obligations in excess of the limitations of this section is reduced to the amount allowed under this section within six months after the date the obligations are acquired. [1997 c.631 §118; 1999 c.59 §215]

**708A.120 Investment in stock of other entity; rules.** (1) An institution may not invest any of the institution's assets in the capital stock of any other corporation or in a membership interest in any limited liability company, except:

(a) In the capital stock of the Federal Reserve Bank.

(b) In stock or a membership interest the institution acquired or purchased to save a loss on a preexisting debt. The institution shall sell the stock or membership interest within two years of the date the institution acquired or purchased the stock or membership interest. The Director of the Department of Consumer and Business Services may extend the time if the director finds that an extension will not be detrimental to the public interest and will not contravene any other law.

(c) In the capital stock or a membership interest of any safe deposit company that does an exclusive safe deposit business on premises the institution owns or leases upon 30 days' advance notice to the director subject to the same limitations applicable to a national bank.

(d) In the capital stock or a membership interest of an agricultural and livestock finance company, subject to the same limitations applicable to national banks and to the approval of the director.

(e) In the capital stock or a membership interest, eligible for purchase by national banks, of a small business investment company, but the aggregate investment in the

stock or membership interest may not exceed two percent of the institution's capital.

(f) In the common stock of any federally chartered corporation that is chartered for the purpose of providing secondary markets for the sale of mortgages by institutions.

(g) In the stock of the Federal Home Loan Bank.

(h) In the capital stock of a corporation exclusively engaged in a trust business or a banker's bank, subject to the same limitations applicable to national banks.

(i) In the capital stock of a bank service corporation, as provided in ORS 708A.130 to 708A.145.

(j) In the capital stock of a community development corporation, as provided in ORS 708A.150.

(k) If a trust company is not engaged in a banking business and if the director first approves the investment, the trust company may invest an amount that does not exceed 20 percent of the capital of the trust company:

(A) In the capital stock or a membership interest of a subsidiary investment company of a type defined in the Investment Company Act of 1940, as amended; or

(B) In a company one of the purposes of which is to act as a federal covered investment adviser or a state investment adviser, as defined in ORS 59.015, with all the powers a federal covered investment adviser or a state investment adviser customarily exercises.

(L) In adjustable rate preferred stock of the Student Loan Marketing Association established in 20 U.S.C. 1087-2, except that the aggregate investment in the stock may not exceed 15 percent of the institution's capital.

(m) In the capital stock or a membership interest of a company acquired for the purpose of strengthening the institution's capital structure or eliminating undesirable assets, as provided in ORS 708A.125.

(n) In the capital stock or a membership interest of a bank, limited liability company or corporation that is engaged in international or foreign banking or foreign banking in a dependency or insular possession of the United States, as provided in ORS 708A.155.

(o) In the capital stock of a corporation, or a membership interest in a limited liability company, that was created to establish ATMs, as provided in ORS 708A.160.

(2) An institution may invest the institution's assets in shares of any mutual fund, the assets of which are invested solely in obligations of the type described in and limited under ORS 708A.115.

(3) An institution may, subject to the director's approval, acquire or continue to hold the fully paid stock of a corporation or a membership interest in a limited liability company, one of the purposes of which is to assist the institution in handling real estate, claims, judgments or other assets or in holding title to the assets.

(4) An institution may acquire or continue to hold the fully paid stock of a corporation or a membership interest in a limited liability company, the purpose of which is to permit the institution to engage in any business in which a financial holding company, a bank holding company or a nonbank subsidiary of a financial holding company or a bank holding company is authorized to engage. This subsection does not apply unless the institution is the owner of at least 80 percent of the common stock of the subsidiary corporation or the membership interests of the limited liability company, except qualifying shares of directors or qualifying membership interests of members.

(5) An institution may, subject to the director's approval and to rules the director adopts, acquire and continue to hold at least 80 percent of the fully paid stock of a corporation, or at least 80 percent of the membership interests of a limited liability company, that is engaged in any business in which an institution is authorized to engage. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary.

(6) An institution may, subject to the director's approval and under rules the director adopts, acquire and continue to hold all the fully paid stock of a subsidiary corporation, or all of the membership interests of a limited liability company, that is engaged in the business of purchasing the stock of the institution for purposes of holding that stock and making a market for that stock, if not more than 20 percent of the net profit of the banking institution is disbursed to the subsidiary or the limited liability company in any one fiscal year. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary or the limited liability company. Acquisitions under this subsection may not exceed 15 percent of the institution's capital.

(7) An institution may acquire and hold all or part of the stock of a corporation, or the membership interests of a limited liability company, that is or may be licensed after the acquisition as an insurance producer as required by ORS 744.053 to transact one or more of the classes of insurance described in ORS 744.062, subject to the following requirements:

(a) Acquiring and holding the stock or the membership interests are subject to the director's approval. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities, and the existence of satisfactory management for the corporation or the limited liability company.

(b) The director may revoke or restrict the ongoing authority of the institution to hold stock in the corporation or membership interests in the limited liability company if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) For each calendar year during which an institution owns all or part of a corporation, or a limited liability company, that is licensed as an insurance producer as required by ORS 744.053, the institution shall file a written report with the director. The report must be filed not later than March 31 of the following year and shall disclose the insurance activities of the corporation or the limited liability company. The director shall establish the required contents of the report by rule. The reports filed with the director under this paragraph must be available for public inspection in the director's office.

(d) The corporation or limited liability company may not in any manner use customer information that the institution obtained from another insurance producer to promote, develop or solicit insurance business for the corporation or the limited liability company unless the other insurance producer consents to such use of the customer information.

(e) The corporation or the limited liability company is subject to the limitations that apply to depository institutions under ORS 746.213 to 746.219. For the purpose of this paragraph, "depository institution" has the meaning given that term in ORS 746.213. [1997 c.631 §119; 1997 c.772 §31b; 1997 c.831 §2a; 2001 c.191 §52; 2001 c.377 §47; 2003 c.363 §7; 2003 c.364 §59a; 2005 c.80 §4; 2005 c.194 §1; 2013 c.104 §3]

**708A.125 Stock in corporations acquired to strengthen capital or eliminate undesirable assets.** (1) An institution may carry fully paid and nonassessable capital stock of or membership interest in any other corporation or limited liability company as an asset, if:

(a) The institution's board of directors applies in writing to the Director of the Department of Consumer and Business Services;

(b) The director approves the application in writing;

(c) The institution obeys any limitations the director specifies in the director's approval; and

(d) The institution acquires the stock or membership interest for the purpose of strengthening the institution's capital structure or eliminating undesirable assets.

(2) The institution may hold the stock or membership interest as long as the director may determine, but in no event longer than 15 years.

(3) This section does not apply to any stock or membership interest that an institution may acquire in connection with insuring deposits, under ORS 708A.120, or in a purchase as a part of any transaction in which an institution borrows from the United States or an agency of the United States. This section does not repeal or in any way limit or modify ORS 711.470. [1997 c.631 §120; 2015 c.244 §35]

**708A.130 Definition for ORS 708A.135 to 708A.145.** As used in ORS 708A.135 to 708A.145, unless the context requires otherwise, "invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or otherwise, but does not include a payment for rent earned, goods sold and delivered or services rendered prior to the making of the payment. [1997 c.631 §121]

**708A.135 Investment in bank service corporation.** An Oregon commercial bank may invest not more than 10 percent of its capital in a bank service corporation. An Oregon commercial bank shall not invest more than five percent of its total assets in a bank service corporation. [1997 c.631 §122]

**708A.140 Discrimination by bank service corporation prohibited against non-stockholding depository institution; permitted conduct.** A bank service corporation shall not unreasonably discriminate in the provision of any services authorized under ORS 708A.130 to 708A.145 against any financial institution that does not own stock in the bank service corporation on the basis of the fact that the nonstockholding financial institution is in competition with a financial institution that owns stock in the bank service corporation, except that:

(1) It shall not be considered unreasonable discrimination for a bank service corporation, at its option, to either:

(a) Provide services to nonstockholding financial institutions only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; or

(b) If an Oregon commercial bank is authorized under ORS 708A.135 to invest in a bank service corporation, the bank service

corporation may require that the Oregon commercial bank invest in the stock of the bank service corporation, in which case the bank service corporation shall provide services to the Oregon commercial bank on the same basis as for other stockholder financial institutions of the bank service corporation.

(2) A bank service corporation may refuse to provide services to a nonstockholding financial institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the bank service corporation. [1997 c.631 §123]

**708A.145 Authorized services of bank service corporations; sale of insurance; regulation of services.** (1) A bank service corporation may perform any of the following services for financial institutions:

- (a) Check and deposit sorting and posting;
- (b) Computing and posting interest and other credits and charges;
- (c) Preparing and mailing checks, statements, notices and similar items; or
- (d) Any other clerical, bookkeeping, accounting, statistical or similar functions.

(2) In addition to the services that a bank service corporation may perform for financial institutions under subsection (1) of this section, a bank service corporation:

- (a) May perform for any person any service that any shareholders of the bank service corporation or any holding company or subsidiary of the shareholder may lawfully perform, except that a bank service corporation may not engage in the business of banking.
- (b) Is subject to the limitations with respect to selling insurance that apply to depository institutions under ORS 746.213 to 746.219. For the purpose of this paragraph, "depository institution" has the meaning given that term in ORS 746.213.

(3) A banking institution may not cause to be performed, by contract or otherwise, any of the services described in subsection (1) of this section for the banking institution, whether on or off the banking institution's premises, unless both the banking institution and the person that performs the services give a satisfactory assurance to the Director of the Department of Consumer and Business Services that the director may regulate and examine the performance of the services to the same extent as if the banking institution performed the services on the banking institution's own premises.

(4) The director may regulate and examine the performance of the services described

in subsection (1) of this section for financial institutions, and may regulate and examine a bank service corporation's performance of the services described in subsection (2) of this section. [1997 c.631 §124; 2003 c.363 §8; 2015 c.244 §36]

**708A.150 Community development corporations; authority to invest or organize; conditions; corporate form; functions.** (1) As provided in this section:

(a) A banking institution may invest its capital in a community development corporation.

(b) A banking institution may organize a community development corporation as a wholly owned subsidiary of the banking institution and invest its capital in the corporation.

(2) A banking institution may invest in or organize and invest in a community development corporation under subsection (1) of this section, if the following conditions are satisfied:

(a) The projects undertaken by the community development corporation must be predominantly of a civic, community or public nature, and not merely of a private or entrepreneurial nature.

(b) The banking institution's aggregate investment in community development corporations and their projects must not exceed two percent of its capital for any project and five percent of its capital for all projects, or 10 percent of its capital for all projects with the approval of the Director of the Department of Consumer and Business Services.

(c) The banking institution must submit to the director its proposal for investing in or organizing and investing in a community development corporation and the proposal must receive the director's approval.

(d) The membership of the board of directors of the community development corporation must be representative of the community in which the corporation is to operate.

(3) A community development corporation may be organized as a for-profit corporation under ORS chapter 60 or as a nonprofit corporation under the Oregon Nonprofit Corporation Law. A community development corporation must be authorized under its articles of incorporation or applicable law to:

(a) Acquire real estate. This paragraph does not authorize real estate investment that is primarily speculative in nature.

(b) Make equity investments in small businesses and in development projects that primarily benefit small businesses.

(c) Participate in joint ventures with outside partners.

(4) A banking institution wishing to invest in or organize and invest in a community development corporation shall submit to the director, on an application form designed by the director, a proposal that describes in detail the nature and scope of development activities the community development corporation intends to undertake.

(5) The director may submit an application to any appropriate state agency or city, county or other local government for its advice and assistance on determining the need and practicability of the projects proposed in the application. [1997 c.631 §125]

**708A.155 Investment in foreign banks.**

(1) If the Director of the Department of Consumer and Business Services approves, and subject to rules the director adopts in accordance with ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410, an institution may invest not more than 10 percent, in the aggregate, of the stockholders' equity in the institution in the stock of banks or corporations that are chartered or incorporated under the laws of the United States or another state. The banks or corporations in which the institution may invest under this section must be principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions, including the stock of one or more banks or corporations chartered or incorporated under section 25(a) of the Federal Reserve Act, as approved December 24, 1919.

(2) An institution shall apply to the director for permission to exercise the powers established in subsection (1) of this section. The application shall specify the name, the stockholders' equity in the institution filing the application, the powers for which the institution is applying and the place or places where the banking operations are to be carried on.

(3) The director may approve the application, in whole or in part, or may disapprove the application if the director believes that granting approval is inexpedient. The director may increase or decrease the number of places where the banking operations may be carried on.

(4) Before an institution may purchase stock in any bank or corporation described in subsection (1) of this section, the bank or corporation shall agree to restrict the bank's or corporation's operations or conduct the bank's or corporation's business in the man-

ner and under the limitations prescribed by the director for the places in which the business is to be conducted.

(5) If the director determines that a bank or corporation is not complying with the limitations the director prescribed, the director may investigate the matter. If the investigation shows that the bank or corporation, or the institution holding stock in the bank or corporation, has not complied with the limitations, the director may require the institution to dispose of stock holdings in the bank or corporation.

(6) An institution that invests in the capital stock of banks or corporations as provided in subsection (1) of this section shall furnish information concerning the condition of the banks or corporations to the director upon demand. The director may order special examinations of the banks or corporations. [1997 c.631 §126; 1999 c.59 §216; 2015 c.244 §37]

**708A.160 Corporation or limited liability company created to establish ATMs; banking institution as stockholder.** A banking institution may, subject to the approval of the Director of the Department of Consumer and Business Services, acquire and continue to hold a membership in or the fully paid stock of a limited liability company or corporation that is created to establish and operate ATM facilities. [1997 c.631 §127; 2015 c.244 §38]

**708A.165 Membership in Federal Reserve System; member bank, officers, directors and shareholders subject to duties and liabilities imposed by laws of this state.** (1) An Oregon commercial bank may subscribe to the capital stock and become a member of a Federal Reserve Bank.

(2) An Oregon commercial bank that is a member of a Federal Reserve Bank is subject to supervision and examination under the laws of this state. The Federal Reserve Board may also examine the Oregon commercial bank. The authorities of this state that have supervisory authority over an Oregon commercial bank may disclose to the Federal Reserve Board, or to examiners that the Federal Reserve Board appoints, all information the authorities of this state have about the affairs of any Oregon commercial bank that has become, or desires to become, a member of a Federal Reserve Bank.

(3) An Oregon commercial bank that is a member bank and the directors, principal officers and stockholders of the Oregon commercial bank are subject to all liabilities and duties that the laws of this state impose upon directors, officers and stockholders of Oregon commercial banks. [1997 c.631 §128; 2015 c.244 §39]

**708A.170 Securities powers.** An institution may, with the approval of the Director of the Department of Consumer and Business Services, purchase, sell, issue, underwrite and deal in securities to the same extent national banks may do so. [1997 c.631 §129]

**708A.175 Right to purchase, hold and dispose of real and personal property.** An institution may purchase, hold, convey, sell or lease:

(1) The real estate and improvements thereto in which the business of the institution is carried on, including, with its offices, other space in the same building to rent as a source of income.

(2) Furniture, fixtures, vaults, safe deposit boxes and other personal property necessary or convenient to carrying on the business of the institution.

(3) Real or personal property purchased by or conveyed to the institution in satisfaction of or on account of debts previously contracted in the course of its business, or otherwise acquired in the course of collecting debts.

(4) Real estate purchased at execution sale or under a judgment.

(5) Real estate conveyed to the institution in connection with its purchase of a bona fide contract of sale covering the real estate conveyed.

(6) Real estate purchased with the approval of the Director of the Department of Consumer and Business Services for the purpose of future location or expansion of the business of the institution.

(7) Real estate held in trust and real estate purchased with assets other than those of the institution. [1997 c.631 §131; 2003 c.576 §545]

**708A.180 Acquisition of personal property for leasing purposes.** An Oregon commercial bank may acquire and lease personal property at the request of a lessee that wishes to lease the personal property upon terms that require paying rents. Rents may include residual values, the payment of which a responsible third party guarantees. [1997 c.631 §132; 2015 c.244 §40]

**708A.185 Purchase of real estate contracts.** Institutions may purchase the vendor's interest in bona fide contracts covering the sale of real estate that comply with the requirements of ORS 708A.270. [1997 c.631 §133]

**708A.190 Acceptance of drafts and bills of exchange; issuance of letters of credit; obligation for participation share in bills; rules.** (1) An Oregon commercial bank may accept drafts or bills of exchange drawn upon it having not more than six

months' sight to run, exclusive of days of grace, that grow out of transactions involving the importation or exportation of goods, or that grow out of the domestic shipment of goods, or that are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(2) An Oregon commercial bank shall not accept drafts or bills of exchange or issue letters of credit, whether in a foreign or domestic transaction, for any one person to an amount equal at any one time in the aggregate to more than 20 percent of its capital, unless the Oregon commercial bank is fully secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance or letter of credit.

(3) Except as provided in subsection (5) of this section, an Oregon commercial bank shall not accept bills or issue letters of credit, or be obligated for a participation share in bills, to an amount equal at any time in the aggregate to more than 150 percent of its capital. The aggregate of acceptances or bills, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 percent of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for the Oregon commercial bank under this section.

(4) An Oregon commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, drawn under rules prescribed by the Director of the Department of Consumer and Business Services or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange, as required by the usages of trade in the respective countries, dependencies or insular possessions. An Oregon commercial bank shall not accept the drafts or bills of exchange for any one bank to any amount exceeding in the aggregate 20 percent of the capital of the accepting Oregon commercial bank, unless the draft or bill of exchange is accompanied by documents conveying or securing the title or by some other adequate security. An Oregon commercial bank shall not accept the drafts or bills of exchange in an amount exceeding at any time the aggregate of its capital.

(5) The director, under such conditions as the director may prescribe, may authorize, by rule or order, any Oregon commercial bank to accept bills and issue letters of credit, or be obligated for a participation share in bills, in an amount not exceeding at

any time in the aggregate 200 percent of its capital. [1997 c.631 §134]

**708A.195 Disposition of real and personal property.** (1) An institution shall promptly dispose of real and personal property that the institution may not own or hold under the Bank Act.

(2) An institution shall sell or exchange real estate that the institution acquires in accordance with ORS 708A.175 (3) and (4) for other real estate within 10 years after title has vested in the real estate, unless the Director of the Department of Consumer and Business Services extends the time. Title vests for purposes of this section on the date the institution receives a deed to the real estate. An institution may not exchange real estate for other real estate without the director's prior written consent. An institution may hold real estate the institution takes in exchange for other real estate for a period of time that the director fixes, not to exceed 10 years from the date of the exchange.

(3) An institution shall promptly dispose of personal property the institution acquires under ORS 708A.175 (3). [1997 c.631 §135; 2011 c.478 §2; 2015 c.244 §41]

**708A.200** [1997 c.631 §136; 2001 c.191 §53; 2001 c.377 §48; repealed by 2003 c.363 §16]

**708A.210 Challenge to validity of institution action; prohibition; exceptions.**

(1) Except as provided in subsection (2) of this section, the validity of an institution's action may not be challenged on the grounds that the institution lacks or lacked power to act.

(2) An institution's power to act may be challenged:

(a) In a proceeding by a stockholder against the institution to enjoin the act;

(b) In a proceeding by the institution, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the institution; or

(c) By the Director of the Department of Consumer and Business Services.

(3) In a stockholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized act, the court may enjoin or set aside the act if equitable and if all affected persons are parties to the proceeding, and may award damages for loss other than anticipated profits suffered by the institution or another party because of enjoining the unauthorized act. [1997 c.631 §137]

## LOANS GENERALLY

**708A.250 Lending money.** Except as specifically limited by the Bank Act and other applicable law, Oregon commercial banks have the general power to loan money upon terms and conditions that are consistent with safe and sound banking practices. [1997 c.631 §138; 2015 c.244 §42]

**708A.255 Interest rates on loans or uses of money; late charges.** (1) Except as otherwise provided in this section, the rate of interest or the amount of other charges that a financial institution may contract for and receive for a loan or use of money is not subject to limitation.

(2) If a borrower repays before maturity a loan that an Oregon commercial bank made, the Oregon commercial bank shall refund or credit to the borrower as provided in this subsection the unearned portion of the charges, if any. The amount of the refund may not be less than the total interest contracted for to maturity, less the greater of:

(a) Ten percent of the amount financed, or \$75, whichever is less; or

(b) The interest earned to the installment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of computations under this paragraph, the installment due date that precedes the date of prepayment is nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs more than 15 days after the preceding installment due date, the next succeeding installment due date is nearest the date of prepayment. In determining the simple interest rate, an Oregon commercial bank may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to accrued and unpaid interest and any amount remaining is applied to reduce the principal balance.

(3) Any installment of an installment loan or payment under an open-end credit arrangement that the borrower does not pay when due continues to bear interest until paid. In addition, if the borrower does not pay the installment or payment when due, the installment or payment may bear a late charge in an amount to which the Oregon commercial bank and the borrower agree. Except for loans secured by real property, an Oregon commercial bank may impose a late charge only if:

(a) The Oregon commercial bank does not receive the installment or payment within 10 days after the due date or, if the open-end credit arrangement is a credit card account,

the Oregon commercial bank does not receive the payment on or before the due date;

(b) The loan agreement or open-end credit arrangement provides for a late charge upon delinquent installments or payments; and

(c) The Oregon commercial bank provides a monthly billing, coupon or notice that discloses the date on which installments or payments are due and states that the Oregon commercial bank may impose a late charge if:

(A) The Oregon commercial bank does not receive payment within 10 days after the date on which the installment or payment is due; or

(B) In the case of an open-end credit arrangement that is a credit card account, the Oregon commercial bank does not receive payment on or before the date on which the payment is due. If the Oregon commercial bank and the borrower have provided in the note or other written loan agreement that the borrower will make payments on the loan by means of automatic deductions from a deposit account that the borrower maintains, this paragraph does not require the Oregon commercial bank to provide the borrower with a monthly billing, coupon or notice on any occasion in which insufficient funds are in the borrower's account to cover the amount of a loan payment on the date the loan payment becomes due and within the periods described in paragraph (a) of this subsection. [1997 c.631 §139; 1997 c.631 §139a; 2001 c.440 §1; 2015 c.244 §43]

**708A.260 Accepting own stock as collateral.** An Oregon commercial bank may not accept the Oregon commercial bank's own capital stock as collateral unless taking the Oregon commercial bank's own stock as collateral is necessary to prevent loss upon an indebtedness previously contracted in good faith. If the indebtedness is not paid in full within six months after the date on which the Oregon commercial bank took the stock as collateral, the Oregon commercial bank shall sell the stock promptly. [1997 c.631 §140; 2015 c.244 §44]

**708A.265 Accepting stock of other institutions as collateral.** An Oregon commercial bank may not accept or hold as loan collateral in the aggregate more than 25 percent of the capital stock of any other insured stock institution. [1997 c.631 §141; 2015 c.244 §45]

**708A.270 Real estate loans.** (1) With respect to any loans secured primarily by real estate, an Oregon commercial bank shall maintain a file containing such appraisal, evidence of merchantable title and insurance as may be required by the Director of the

Department of Consumer and Business Services.

(2) All loans made by an Oregon commercial bank to finance the construction of buildings and the improvements appurtenant thereto shall be subject to such requirements as the director may determine. [1997 c.631 §142]

**708A.275 Establishment of loan production office; notice; fee.** (1) An Oregon bank shall file a notice with the Director of the Department of Consumer and Business Services within 30 days after establishing a loan production office in this state or in another state. The notice must include:

(a) The name of the Oregon bank and the address of the main office;

(b) The name and address of the loan production office; and

(c) The name and address of the officer of the Oregon bank who is responsible for loan production office activities.

(2) An Oregon bank shall file a notice under subsection (1) of this section for each loan production office.

(3) Each notice that an Oregon bank files under subsection (1) of this section must be:

(a) Accompanied by a nonrefundable fee of \$100.

(b) Amended if a material change occurs in the information the Oregon bank provided under subsection (1) of this section. A fee is not required for amendments.

(4) An Oregon bank shall notify the director of the closure of a loan production office, the date of closure and the disposition of any records previously maintained at the loan production office. A fee is not required for a notice of closure. [1999 c.107 §5; 2015 c.244 §45a]

## LOAN AND OTHER OBLIGATION LIMITS

**708A.290 "Capital" defined for ORS 708A.290 to 708A.375.** As used in ORS 708A.290 to 708A.375, the term "capital," when referring to an Oregon commercial bank, means tier 1 and tier 2 capital, as defined under the federal risk-based capital guidelines of the appropriate federal banking agency and issued under 12 U.S.C. 1813, plus the balance of allowance for loan and lease losses excluded from tier 2 capital. The amounts described in this section shall be determined from the most recent consolidated report of condition and income filed under 12 U.S.C. 1817(a)(3). [1997 c.631 §143]

**708A.295 Limitations on amount of obligations to Oregon commercial bank; applicability.** Except as provided in ORS 708A.300 to 708A.375, the loans and other

obligations of a person to an Oregon commercial bank outstanding at any time shall not exceed 15 percent of the Oregon commercial bank's capital. Any loan made or other obligation acquired in accordance with ORS 708A.300 to 708A.375 shall be in addition to and shall not be applied against the 15 percent limitation. Any loan made or obligation acquired that complies with ORS 708A.290 to 708A.375 when made or acquired shall not be considered out of compliance on account of a subsequent decline in the capital of the Oregon commercial bank. Obligations in the name of one person for the benefit of another person shall be considered obligations of both the named person and the benefited person. [1997 c.631 §144]

**708A.300 Obligations secured by readily marketable collateral.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to or acquire other obligations of a person, not to exceed 10 percent of its capital, if:

(1) The loans or obligations are fully secured by readily marketable collateral having a market value that may be determined by reliable and continuously available price quotations;

(2) The market value is at least 15 percent greater than the amount of the obligation at the time it is incurred; and

(3) The market value is at all times while the obligation is outstanding at least 100 percent of the balance of principal, interest and other charges applicable to the obligation. [1997 c.631 §145]

**708A.305 Obligations of other financial institutions.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of other financial institutions without regard to amount in the form of time or demand deposits that it places with such other financial institutions. [1997 c.631 §146]

**708A.310 Obligations of indorser of discounted commercial paper.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person without regard to amount as an indorser, arising out of the discount of commercial or business paper owned by the person negotiating the paper.

(2) As used in this section, "commercial or business paper" means negotiable notes, drafts, acceptances or bills of exchange having a maturity of not more than six months, that have been given by one person to another in settlement of a commercial or business transaction involving the purchase of

goods, and upon which both parties to the transaction are liable either as maker, drawer, acceptor or indorser. [1997 c.631 §147]

**708A.315 Noncommercial short-term notes.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, not to exceed 15 percent of the bank's capital, as an indorser or guarantor of notes, other than commercial or business paper excepted under ORS 708A.310, having a maturity of not more than six months, and owned by the person indorsing and negotiating the same. [1997 c.631 §148]

**708A.320 Obligations secured by shipping documents.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to or acquire other obligations of a person without regard to amount, provided the obligations are fully secured by shipping documents conveying or securing title to goods or commodities in process of shipment. [1997 c.631 §149]

**708A.325 Installment consumer paper.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, not to exceed 25 percent of the Oregon commercial bank's capital, as an indorser or guarantor of negotiable or nonnegotiable installment consumer paper that carries a full or partial recourse indorsement or unconditional guarantee by the person transferring the obligation and conforms to rules prescribed by the Director of the Department of Consumer and Business Services.

(2) The 25 percent limitation of subsection (1) of this section does not apply to the extent the Oregon commercial bank relies primarily on the obligors on the consumer paper for the payment of the consumer paper, the Oregon commercial bank has reasonably adequate knowledge of the financial condition of the obligors on the consumer paper and an officer of the Oregon commercial bank certifies in writing that the creditworthiness of the obligors on the consumer paper has been evaluated. The certificate shall be retained as part of the records of the Oregon commercial bank. [1997 c.631 §150]

**708A.330 Bankers' acceptances of other financial institutions.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person without regard to amount in the form of bankers' acceptances of other financial institutions of the kind described in section 13 of the Federal Reserve Act. [1997 c.631 §151]

**708A.335 Obligations secured by documents covering readily marketable staples.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans and acquire other obligations of a person secured by documents of title covering readily marketable staples, provided the obligation does not exceed:

(a) 15 percent of the Oregon commercial bank's capital, where the principal amount of the obligation does not exceed 85 percent of the market value of the staples.

(b) 20 percent of the Oregon commercial bank's capital, where the principal amount of the obligation does not exceed 80 percent of the market value of the staples.

(c) 25 percent of the Oregon commercial bank's capital, where the principal amount of the obligation does not exceed 75 percent of the market value of the staples.

(d) 35 percent of the Oregon commercial bank's capital, where the principal amount of the obligation does not exceed 70 percent of the market value of the staples.

(e) 40 percent of the Oregon commercial bank's capital, where the principal amount of the obligation does not exceed 65 percent of the market value of the staples.

(2) If it is customary to insure the staples mentioned in subsection (1) of this section, the staples shall be fully covered by insurance.

(3) This section does not apply to obligations of a person secured by the same staples for more than 10 months.

(4) Staples, for purposes of this section, in addition to being readily marketable, must be either:

(a) Nonperishable; or

(b) Perishable, but frozen, freeze-dried, irradiated or refrigerated for the purpose of protecting the staple against deterioration. [1997 c.631 §152]

**708A.340 Obligations secured by documents covering livestock.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person, not to exceed 15 percent of the Oregon commercial bank's capital, secured by documents of title covering livestock if the principal amount of the obligation is not more than 80 percent of the market value of the livestock. Turkeys are considered livestock within the meaning of this section. [1997 c.631 §153]

**708A.345 Obligations secured by government obligations or shares of mutual fund or unit trust.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to

and acquire other obligations of any person if the obligation is secured by one or more of the following types of security and the principal amount of the obligation is not more than 90 percent of the market value of the security:

(1) Obligations of the United States, including those of its agencies and instrumentalities;

(2) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended;

(3) Obligations of the State of Oregon or any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment; or

(4) Shares in any mutual fund or unit trust, the assets of which are invested solely in obligations of the type described in subsections (1) to (3) of this section. [1997 c.631 §154]

**708A.350 Obligations secured by government bonds.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and accept other obligations of a person, not to exceed 20 percent of the Oregon commercial bank's capital, if:

(1) The obligation is secured by bonds of any state of the United States or bonds of any county, city, school district, port district or other public body in the United States;

(2) The principal amount of the obligation is not more than 90 percent of the market value of the bonds that secure the obligation;

(3) The bonds are payable from ad valorem taxes; and

(4) The bonds are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds. [1997 c.631 §155]

**708A.355 Insured and guaranteed obligations.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are insured, guaranteed or covered by commitments or agreements to take over or purchase made by a private mortgage insurance company, the State of Oregon, any

Federal Reserve Bank, the United States or any department, bureau, board, commission or agency of the United States, including any corporation wholly owned, directly or indirectly, by the United States. [1997 c.631 §156]

**708A.360 Obligations secured by deposits.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are fully secured by any kind of deposit held by the Oregon commercial bank, including but not limited to deposits held in an automatic savings to checking transfer account or a negotiable order of withdrawal account.

(2) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are fully secured at all times by any kind of deposit, including but not limited to deposits held in an automatic savings to checking transfer account or a negotiable order of withdrawal account that are fully insured, guaranteed or underwritten by the United States Government or any agency or instrumentality of the United States by virtue of any Act of Congress or amendments thereto. [1997 c.631 §157]

**708A.365 Obligations secured by life insurance policy values.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire obligations of a person not to exceed 10 percent of the Oregon commercial bank's capital that are secured by a life insurance policy having a cash surrender value of not less than 100 percent of the amount of the obligations, plus an amount equal to one annual premium on the insurance policy. [1997 c.631 §158]

**708A.370 Obligations secured by first lien on real estate.** In addition to obligations permitted by ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person not to exceed 10 percent of the Oregon commercial bank's capital that are secured by a first lien on real estate if the obligation does not exceed 80 percent of the fair market value of the real estate as determined by an independent appraisal. Obligations secured by a first lien on real estate that are subject to ORS 708A.295 may become exempt from ORS 708A.295 if:

(1) Title to the real estate has, in good faith, passed to another and the original maker of the note is no longer either directly or through some other person the owner of the real estate;

(2) The new owner has assumed the obligation and the Oregon commercial bank looks to the owner of the real estate rather than the maker of the obligation for payment;

(3) The obligation is not in default at the time the obligation becomes no longer subject to ORS 708A.295; and

(4) The obligation does not exceed 80 percent of the fair market value of the real estate at the time the obligation becomes no longer subject to ORS 708A.295. [1997 c.631 §159]

**708A.375 Obligations of guarantors.** In addition to obligations permitted by ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, in the form of a guaranty or otherwise, without regard to amount, on account of obligations previously contracted in good faith or to reduce the risk of loss. Any such obligations shall, however, be subject to ORS 708A.295 in determining whether the Oregon commercial bank may make additional loans to or acquire other obligations of the person. [1997 c.631 §160]

## DEPOSITS

**708A.400 Deposit accounts.** Oregon commercial banks may, consistent with applicable law and safe and sound banking practices, offer deposit accounts upon such terms and conditions as they consider appropriate. [1997 c.631 §161]

**708A.405 Deposits; FDIC insurance required.** Oregon commercial banks shall secure insurance for their deposits from the Federal Deposit Insurance Corporation or a similar organization organized under the laws of the United States. [1997 c.631 §162]

**708A.410 Savings accounts; conditions for withdrawal; interest rate; inadvertent overdraft.** (1) Within the limits established under applicable federal statutes and regulations, an Oregon commercial bank that receives savings accounts shall prescribe by the Oregon commercial bank's bylaws or by contract with the Oregon commercial bank's depositors, the time and conditions on which the Oregon commercial bank repays depositors or makes a repayment to the depositors' order.

(2) An Oregon commercial bank may require 30 days' notice to withdraw any sum up to \$5,000, 90 days' notice to withdraw any sum over \$5,000 and not over \$50,000, and 180 days' notice to withdraw any sum over \$50,000. The bank may limit, in the aggregate, withdrawals during a specified time period to the amount designated for the time period.

(3)(a) Except for negotiable orders of withdrawal and similar deposit accounts, withdrawal from which is subject to check, negotiable order of withdrawal or similar instrument, and except for inadvertent overdrafts, an Oregon commercial bank may not knowingly permit a depositor to overdraw the depositor's savings account.

(b) As used in paragraph (a) of this subsection, "inadvertent overdraft" means an overdraft that:

(A) The Oregon commercial bank does not expressly permit or provide for in bylaws or a deposit contract;

(B) Results from events or circumstances beyond the Oregon commercial bank's reasonable control; and

(C) Is eliminated within 14 days after the Oregon commercial bank becomes aware of the overdraft. [1997 c.631 §163; 2013 c.104 §4; 2015 c.244 §46]

**708A.415 Securing deposits by surety bond, letter of credit or insurance.** (1) An Oregon commercial bank may secure any of the funds deposited with the Oregon commercial bank by giving a surety bond, an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or a policy of insurance under which some person other than the Oregon commercial bank becomes liable for deposits, provided that the aggregate face amount of the bonds, letters of credit and policies of insurance does not exceed 20 percent of the capital of the Oregon commercial bank.

(2) A depositor may insure any deposit if the Oregon commercial bank is not a party to the insurance and does not pay any premium or other charges. [1997 c.631 §164]

**708A.420 Notice to depositor upon change in terms, charges, withdrawal conditions or decrease in interest rate; exception.** (1) If an Oregon commercial bank changes the terms, service charges or conditions for withdrawal of any deposit account, the Oregon commercial bank shall notify the depositor in writing before the change is effective. If an Oregon commercial bank decreases the interest rate on any deposit account, other than an account that by its terms provides for a floating, variable or indexed rate of interest, the Oregon commercial bank shall notify the depositor in writing before the change is effective. With respect to deposit accounts for which the terms provide for a floating, variable or indexed rate of interest, the Oregon commercial bank need not give notice to the depositor concerning changes in the interest rate other than by means of account statements the Oregon commercial bank provides to the depositor in the ordinary course, not

less than once each calendar quarter. For accounts that two or more depositors hold, the Oregon commercial bank may give or send the notice to any of the depositors. An Oregon commercial bank may notify a depositor under this section:

(a) In person;

(b) By sending the notice by regular mail to the last address shown in the Oregon commercial bank's deposit account records; or

(c) By sending the notice electronically in accordance with an agreement the depositor has with the Oregon commercial bank, provided that the Oregon commercial bank complies with all laws and regulations that apply to electronic consumer notices.

(2) The provisions of subsection (1) of this section do not apply to any change in the interest rate payable upon an account as described in ORS 86.245. [1997 c.631 §165; 2015 c.244 §47]

**708A.425 Deposit made in name of minor.** Any deposit in an Oregon commercial bank made to an account in the name of a minor must be held for the exclusive right and benefit of the minor free from the control or lien of all other persons, except other parties to the account and creditors, and must be paid, in accordance with the terms of the account, together with any interest on the deposit, to or upon the order of the minor. [1997 c.631 §166; 2015 c.244 §48]

**708A.430 Disposition of deposit on death of depositor.** (1) On the death of a depositor of an insured institution, if the deposit is \$25,000 or less, the insured institution, after receiving an affidavit as provided in subsection (3) of this section from a person that claims the deposit, or a declaration from the Department of Human Services or the Oregon Health Authority as provided in subsection (4) of this section, may pay the moneys on deposit to the credit of the deceased depositor, in the following order of priority, to:

(a) The surviving spouse at the surviving spouse's demand at any time after the depositor's death;

(b) The Oregon Health Authority or the Department of Human Services, if the authority or the department demands the payment not less than 46 days and no more than 75 days after the death of the depositor if the depositor does not have a surviving spouse and if the authority or department has a preferred claim under ORS 411.708, 411.795 or 416.350;

(c) The depositor's surviving children 18 years of age or older, if the depositor does not have a surviving spouse and the authority and department do not have a claim;

(d) The depositor's surviving parent, if the depositor does not have a surviving spouse or surviving child 18 years of age or older and if the authority and department do not have a claim; or

(e) The depositor's surviving brothers and sisters 18 years of age or older, if the depositor does not have a surviving spouse, surviving child 18 years of age or older or surviving parent and the authority and department do not have a claim.

(2)(a) An insured institution may not pay moneys on deposit under subsection (1)(c), (d) or (e) of this section earlier than 46 days after the death of the depositor.

(b) An insured institution may not pay moneys on deposit under subsection (1)(c), (d) or (e) of this section earlier than 76 days after the death of the depositor unless the financial institution obtains prior verbal or written authorization from the Oregon Health Authority or its designated representative and the Department of Human Services or its designated representative.

(3) An affidavit or declaration submitted under this section must:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant or declarant to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons that are entitled to the moneys by law.

(4) An insured institution shall accept from the Department of Human Services or the Oregon Health Authority, without additional requirements, a declaration under penalty of perjury meeting the requirements of subsection (3) of this section. A declaration submitted under this section must be signed by the declarant and must include the following sentence immediately above the signature line of the declarant: "I hereby declare under penalty of perjury that I am authorized by the Department of Human Services or the Oregon Health Authority to make this declaration, that the above statement is true to the best of my knowledge and belief, and that I understand that it is subject to penalty for perjury."

(5) In the event the depositor died intestate without known heirs, an estate administrator of the Department of State Lands

appointed under ORS 113.235 is the affiant or shall receive the moneys as escheat property.

(6) The insured institution shall determine the relationship of the affiant or declarant to the deceased depositor, but paying the moneys in good faith to the affiant or declarant discharges and releases the insured institution from any liability or responsibility for the transfer in the same manner and with the same effect as if the insured institution transferred, delivered or paid the moneys to a personal representative of the estate of the deceased depositor.

(7) A probate proceeding is not necessary to establish the right of the surviving spouse, Oregon Health Authority, Department of Human Services, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits after filing the affidavit or declaration. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person that withdraws the deposits shall account for the deposits to the personal representative.

(8) If an insured institution transfers moneys under subsection (1) of this section, the insured institution may require the transferee to furnish the insured institution with a written indemnity agreement that indemnifies the insured institution against loss for moneys the insured institution transferred to the extent of the amount of the deposit.

(9)(a) Moneys disbursed to the Department of Human Services under subsection (1) of this section may be made payable only to the department.

(b) Moneys disbursed to the Oregon Health Authority under subsection (1) of this section may be made payable only to the authority.

(10) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515. [1997 c.631 §167; 2003 c.395 §20; 2005 c.381 §26; 2007 c.369 §1; 2009 c.595 §1113; 2011 c.720 §217; 2015 c.244 §49; 2017 c.51 §1]

**708A.435 Adverse claim to deposit; notice; restraining order or other process; indemnity bond or letter of credit.** (1) An insured institution shall recognize an adverse claim to a deposit the insured institution holds only if the adverse claimant gives notice to the insured institution of the adverse claim and:

(a) Procures a restraining order, injunction or other appropriate process against the insured institution in an action wherein the person to whose credit the deposit stands is made a party and served with summons; or

(b) Delivers to the insured institution in a form, and with sureties acceptable to the insured institution, a bond or an irrevocable letter of credit that another insured institution has issued to indemnify the insured institution from any liability, damage and expenses that may arise from paying the adverse claim or dishonoring the check or other order of the person to whose credit the deposit stands.

(2) This section does not apply if the person in whose name the account is carried is a fiduciary for the adverse claimant, and the affidavit of the adverse claimant states the facts constituting the fiduciary relationship and the facts showing reasonable cause for the claimant's belief that the fiduciary is about to misappropriate the deposit.

(3) An insured institution may, at the insured institution's option, interplead a deposit that is subject to an adverse claim. [1997 c.631 §168; 2015 c.244 §50]

**708A.440 Checks drawn by agents presumed to be in authorized manner.** If a person who owns a deposit account subject to check authorizes another person as agent to draw checks against the account, the insured institution, in the absence of written notice to the contrary, may presume that any check the agent draws in the manner that the terms and conditions of the account authorize, including a check the agent draws to the agent's personal order, is for a purpose that the principal authorizes and is within the scope of the authority conferred upon the agent. [1997 c.631 §169; 2015 c.244 §51]

**708A.445 Checks of intoxicated, drugged or financially exploited persons.** An insured institution may refuse to pay any check, draft or order drawn upon the insured institution if the officers or employees of the insured institution have reason to believe that the person signing or indorsing the instrument was the victim of financial exploitation, as defined in ORS 124.050, or was so under the influence of liquor, drugs or controlled substances or otherwise so incapacitated as to make it reasonably doubtful whether the person was capable of transacting business at the time of signing or indorsing the check, draft or order. [1997 c.631 §170; 2015 c.244 §52]

**708A.450 Certified checks.** (1) An Oregon commercial bank shall certify a check only if the amount of the check actually stands to the credit of the drawer in collected funds on the books of the Oregon commercial bank.

(2) The amount of any certified check shall be immediately charged to the drawer's account. [1997 c.631 §171]

**708A.455 Definitions for ORS 708A.455 to 708A.515.** As used in ORS 708A.455 to 708A.515, unless the context requires otherwise:

(1)(a) "Account" means a contract of deposit of funds between a depositor and an insured institution.

(b) "Account" includes a checking account, savings account or certificate of deposit.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Joint account" means an account payable on request to one or more of two or more parties, with or without a right of survivorship.

(4)(a) "Multiple-party account" means a joint account, a P.O.D. account or a trust account.

(b) "Multiple-party account" does not include:

(A) Accounts established to deposit funds of a partnership, joint venture or other association for business purposes;

(B) Accounts that a person controls as the duly authorized agent or trustee for a corporation, limited liability company, unincorporated association, charitable or civic organization; or

(C) A regular fiduciary or trust account in which the relationship is established other than by deposit agreement.

(5) "Net contribution" of a party to a joint account as of any given time means:

(a) The sum of all deposits to the joint account made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance; and

(b) Any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(6) "Party" means:

(a) A person that, by the terms of a multiple-party account, has a present right, subject to request, to payment from the account;

(b) A P.O.D. payee or beneficiary of a trust account if the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original party or trustee;

(c) A guardian, conservator, personal representative or assignee, including an attaching creditor, of a party; or

(d) A person identified as a trustee of an account for another whether or not a beneficiary is named, other than a named beneficiary, unless the named beneficiary has a present right of withdrawal.

(7) "Payment" means withdrawing, paying on check or otherwise paying sums on deposit at a party's directive, a party's pledging sums on deposit and any setoff, reduction or other disposition of all or part of an account in accordance with a pledge.

(8) "P.O.D. account" means an account payable on request to one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees, or to one or more persons during the persons' lifetimes and on the death of all of the persons to one or more P.O.D. payees.

(9) "P.O.D. payee" means a person designated on a P.O.D. account as a person to whom the account is payable on request after the death of another person.

(10) "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of an account, including special requirements concerning necessary signatures and regulations of the insured institution.

(11) "Sums on deposit" means the balance payable on a multiple-party account, including interest, dividends and any deposit life insurance proceeds added to the account by reason of a party's death.

(12)(a) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries in which the relationship is established by the form of the account and the deposit agreement with the insured institution, and the trust has no subject other than the sums on deposit in the account whether or not the deposit agreement provides for payment to the beneficiary.

(b) "Trust account" does not include a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney-client.

(13) "Withdrawal" means payment to a party or to a third person by check or otherwise at a party's directive. [1997 c.631 §172; 2015 c.244 §53]

**708A.460 Application of ORS 708A.465 to 708A.475; liability and setoff rights of financial institutions.** The provisions of ORS 708A.465 to 708A.475 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, apply only to controversies between the parties, the P.O.D. payees or the beneficiaries and the creditors and other successors of the parties,

P.O.D. payees or beneficiaries, and do not apply to the power of withdrawal that a party, P.O.D. payee or beneficiary has under the terms of account contracts. The provisions of ORS 708A.485 to 708A.510 govern the liability of insured institutions that make payments under ORS 708A.485 to 708A.510, and an insured institution's setoff rights. [1997 c.631 §173; 2015 c.244 §56]

**708A.465 Ownership of multiple-party accounts.** (1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(2) A P.O.D. account belongs to the original party during the lifetime of the party and not to the P.O.D. payee or payees. If two or more persons are named as original parties, during their lifetimes, rights as between them are governed by subsection (1) of this section.

(3) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during the lifetime of the trustee. If two or more parties are named as trustees on the account, during their lifetimes beneficial rights as between them are governed by subsection (1) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary. [1997 c.631 §174]

**708A.470 Multiple-party accounts; disposition of deposit upon death of party or trustee; effect of will.** (1) Sums that remain on deposit in an insured institution at the death of a party to a joint account are rebuttably presumed to belong to the surviving party or parties as against the estate of the decedent. If two or more parties survive, each party's respective ownership during the party's lifetime must be in proportion to the party's previous ownership interest under ORS 708A.465, augmented by an equal share for each surviving party of any interest the decedent may have owned in the account immediately before death. The right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account:

(a) On the death of one of two or more original parties, subsection (1) of this section governs the rights to any sums that remain on deposit.

(b) On the death of the sole original party or the survivor of two or more original parties, any sums that remain on deposit belong to the P.O.D. payee or payees, if a P.O.D. payee or payees survive, or to the re-

maining P.O.D. payee or payees if one or more P.O.D. payees die before the original party. If two or more P.O.D. payees survive, a remaining P.O.D. payee does not have a right of survivorship after one of the P.O.D. payees dies unless the terms of the account or deposit agreement expressly provide for survivorship among remaining P.O.D. payees.

(3) If an account is a trust account:

(a) On the death of one of two or more trustees, subsection (1) of this section governs the rights to any sums that remain on deposit.

(b) On the death of the sole trustee or the survivor of two or more trustees, any sums that remain on deposit belong to the person or persons named as beneficiaries, if a beneficiary or beneficiaries survive, or to the remaining beneficiary if one or more beneficiaries die before the trustee, unless clear and convincing evidence exists of a contrary intent. If two or more beneficiaries survive, a remaining beneficiary does not have a right of survivorship after one of the beneficiaries dies unless the terms of the account or deposit agreement expressly provide for survivorship among remaining beneficiaries.

(4) Except as otherwise provided in this section, the death of any party to a multiple-party account does not affect the beneficial ownership of the account, other than to transfer the rights of the decedent as part of the decedent's estate.

(5) A will may not change a right of survivorship that arises from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation.

(6) The rebuttable presumption under subsection (1) of this section may be overcome by evidence establishing that:

(a) The deceased party intended a different result; or

(b) The deceased party lacked capacity when the joint account was established.

(7) An insured institution is not liable, with respect to sums that remain on deposit at the death of a party to a joint account, for distributing the sums to a surviving party or parties in accordance with the account agreement unless, before distributing the sums to a surviving party or parties:

(a) The insured institution has received notice in writing of an adverse claim under ORS 708A.435; and

(b) The adverse claimant proceeds as required under ORS 708A.435. [1997 c.631 §175; 2003 c.256 §1; 2015 c.244 §57]

**708A.475 Rights of survivorship based on form of account; alteration of form of account.** The provisions of ORS 708A.470 as to rights of survivorship are determined by the form of the account at the death of a party. Subject to satisfaction of the requirements of the insured institution, the form of an account may be altered by written order given by a party to the insured institution if the party signs the order and the insured institution receives the order during the party's lifetime, and if the party does not countermand the order with another written order during the party's lifetime. [1997 c.631 §176; 2015 c.244 §58]

**708A.480 Transfer of moneys upon death of depositor or trustee is not testamentary disposition.** Any transfers resulting from the application of ORS 708A.470 are effective by reason of the account contracts involved and ORS 708A.470, and are not to be considered as testamentary or subject to administration in the estate of a deceased party. [1997 c.631 §177]

**708A.485 Payment of deposit in multiple-party account to one or more parties; institution not required to determine source or use of funds in account.** An insured institution may enter into a multiple-party account to the same extent that the insured institution may enter into a single-party account. The insured institution may pay any multiple-party account, on request, to any one or more of the parties. An insured institution need not inquire as to the source of funds the insured institution receives for deposit to a multiple-party account, or as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions. [1997 c.631 §178; 2015 c.244 §59]

**708A.488 Withdrawal or payment conditioned on advance notice.** If an insured institution conditions withdrawal or payment on advance notice, for purposes of ORS 708A.455 to 708A.515, a request for withdrawal or payment is immediately effective and a notice of intent to withdraw is a request for withdrawal. [2015 c.244 §55]

**Note:** 708A.488 was added to and made a part of 708A.455 to 708A.515 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**708A.490 Joint account; payment to any party to account; payment to others.** An insured institution may pay any sums in a joint account, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the party demands payment. An insured institution may not pay the personal representative or heirs of a deceased party unless proofs of death are presented to the insured institution showing that the decedent was the last sur-

living party or unless no right of survivorship exists under ORS 708A.470. [1997 c.631 §179; 2015 c.244 §60]

**708A.495 P.O.D. account; payment to any original party; payment to others.** An insured institution may pay any P.O.D. account, on request, to any original party to the account. The insured institution may pay, on request, the P.O.D. payee or the personal representative or heirs of a deceased P.O.D. payee upon presentation to the insured institution of proof of death showing that the P.O.D. payee survived all persons named as original parties. The insured institution may pay the personal representative or heirs of a deceased original party if proof of death is presented to the insured institution showing that the decedent survived all other persons named on the account either as an original party or as P.O.D. payee. [1997 c.631 §180; 2015 c.244 §61]

**708A.500 Trust account; payment to any trustee; payment to others.** An insured institution may pay any trust account, on request, to any trustee. Unless the insured institution has received written notice that the beneficiary has a vested interest that does not depend upon the beneficiary's surviving the trustee, the insured institution may pay the personal representative or heirs of a deceased trustee if proof of death is presented to the insured institution showing that the decedent survived all other persons named on the account either as trustee or beneficiary. The insured institution may pay, on request, the beneficiary upon presentation to the insured institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. [1997 c.631 §181; 2015 c.244 §62]

**708A.505 Discharge of institution from liability for payments made; conditions.** A payment that an insured institution makes under ORS 708A.485, 708A.490, 708A.495 or 708A.500 discharges the insured institution from all claims for amounts the insured institution paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees or beneficiaries, or successors of the parties, P.O.D. payees or beneficiaries. The protection given by this section does not extend to payments an insured institution makes after receiving a written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the person that gives the notice withdraws the notice, the successor of any deceased party must concur in any demand for withdrawal in order for the protections that this section provides to extend to the insured institution. Any other notice or information shown to have been available

to an insured institution does not affect the insured institution's right to protection under this section. The protection that this section provides does not affect the rights of parties in disputes between the parties or the parties' successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts. [1997 c.631 §182; 2015 c.244 §63]

**708A.510 Right of institution to setoff; amount.** Without qualifying any other statutory or common law right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to an insured institution, the insured institution has a right to setoff against the account in which the party has or had a present right of withdrawal immediately before the party's death. The amount of the account that is subject to setoff is the proportion to which the debtor is, or was immediately before the death of the debtor, beneficially entitled and, in the absence of proof of net contributions, to an equal share with all parties that have present rights of withdrawal. [1997 c.631 §183; 2015 c.244 §64]

**708A.515 Designation of agent for account; powers of agent.** ORS 708A.455 to 708A.465 do not preclude a party to an account from adding the name of another person to the account with the designation "agent." The agent does not have a present or future interest in the sums on deposit in such account, but the insured institution may honor requests from the agent for payment from the account, unless the principal is deceased at the time the agent requests the payment and the insured institution has actual knowledge of the principal's death. An insured institution's payment from the account at the agent's request discharges the insured institution from all claims for amounts the insured institution paid. [1997 c.631 §184; 2015 c.244 §65]

#### GRANTING SECURITY INTERESTS IN INSTITUTION ASSETS

**708A.535 Granting security interests in institution assets.** (1) An institution may only grant security interests in its assets:

(a) To secure its indebtedness to a Federal Reserve Bank or Federal Home Loan Bank.

(b) To secure its borrowings from others with a maturity of 90 days or less, provided the value of the assets pledged shall not be more than 50 percent greater than the amount borrowed. If the value of the assets pledged is more than 25 percent greater than the amount borrowed or if the amount borrowed is greater than the stockholders' equity of the bank, the transaction shall first be approved in writing by the Director of the

Department of Consumer and Business Services.

(c) To secure its deposits that are not insured by the Federal Deposit Insurance Corporation provided:

(A) The value of aggregate assets pledged does not exceed 20 percent of its stockholders' equity; and

(B) The prior written approval of the director is obtained.

(d) To secure public funds pursuant to ORS 295.001 to 295.108, trust funds awaiting investment or distribution, or trust funds deposited with it by an institution.

(2) Notwithstanding any other provision of state law, when an institution grants a security interest in assets to secure public funds, the depositor of the public funds and any bailee of pledged securities or other assets shall be entitled to the status of a lien creditor as defined in ORS 79.0102.

(3) An institution shall grant a security interest in its assets only when authorized by a general or specific prior resolution of its board of directors.

(4) As used in this section, "public funds" means deposits belonging to:

(a) The State of Oregon that may be deposited to the official credit of the State Treasurer, and funds that may be deposited in an official capacity by any state officer, board or commission.

(b) Any county within this state deposited to the official credit of the county treasurer, including the funds of any irrigation or drainage district organized under the laws of this state, or any school district within this state where funds of the school district are deposited with the county treasurer, and funds that may be deposited in an official capacity by any county officer.

(c) Any port, port commission, dock or dock commission within this state that may be deposited to the credit of the port, port commission, dock or dock commission, or the treasurer thereof.

(d) Any city within this state deposited to the official credit of the city treasurer, and funds that may be deposited in an official capacity by any officer of any municipal corporation.

(e) Any school district within this state.

(f) Any district organized under the laws of this state with the power to levy taxes.

(g) Any housing authority organized and operating pursuant to ORS 456.055 to 456.235.

(h) The United States and any of its agencies and instrumentalities to be deposited in the manner and under the rules pre-

scribed by the United States Government. [1997 c.631 §185; 2001 c.445 §180; 2007 c.871 §31]

## REGULATORY ACCOUNTING

**708A.555 Generally accepted accounting principles.** Except as otherwise provided in the Bank Act or other applicable law, institutions shall keep books and records in accordance with accounting principles generally accepted in the United States (GAAP), consistently applied. [1997 c.631 §186; 2015 c.244 §66]

**708A.560 Real and personal property used in institution's business.** (1) Real estate, furniture, fixtures, vaults and safe deposit boxes necessary or convenient for the operation of an institution's business shall be carried on the books of the institution in an amount not to exceed 50 percent of its capital, as defined in ORS 708A.290.

(2) Within guidelines established by rules promulgated under ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410 the Director of the Department of Consumer and Business Services may authorize an institution to exceed the limitations prescribed in this section.

(3) Personal property acquired for lease to others in accordance with ORS 708A.180 is not subject to the limitations of this section. [1997 c.631 §187]

**708A.565 Certain stock.** An institution shall carry on the institution's books, at a value that does not exceed 15 percent of the stockholders' equity in the institution, any investments in stock of or membership interests in a company that engages in activities in which a financial holding company, a bank holding company or a nonbanking subsidiary of a financial holding company or bank holding company could engage under ORS 708A.120 (4). [1997 c.631 §188; 1999 c.59 §217; 2001 c.377 §49; 2015 c.244 §67]

**708A.570 Community development corporations.** Investments in community development corporations under ORS 708A.150 must be accounted for on an institution's books as "other assets." If the community development corporation is organized under the Oregon Nonprofit Corporation Law, the stock of the corporation purchased by the institution, or the institution's membership in the corporation if it does not issue stock, shall be carried on the books of the institution at a value not exceeding \$1. [1997 c.631 §189]

**708A.575 Market-making corporations.** An institution shall carry on the institution's books, at a value that does not exceed \$1, any investments in a corporation or limited liability company that is engaged in the business of purchasing the institution's stock

for purposes of holding and making a market for the stock. [1997 c.631 §190; 2015 c.244 §68]

**708A.580 Capital-strengthening corporations.** (1) An institution may not carry on the institution's books, at a value in excess of 20 percent of the institution's capital, the aggregate amount of stock of or membership interests in a corporation or limited liability company the institution acquired under ORS 708A.125 for the purpose of strengthening the institution's capital or eliminating undesirable assets.

(2) The institution each year shall amortize the book value of the stock or membership interests by not less than five percent of the original book value of the stock or membership interests. [1997 c.631 §191; 2015 c.244 §69]

**708A.585 Claims and judgments as assets.** An institution may not carry claims against the estates of insolvent persons or deceased or incompetent persons and judgments against any person as an asset on the institution's books for more than two years, unless the Director of the Department of Consumer and Business Services grants a written extension of time. This section does not apply to loans an institution makes to the personal representative, guardian, conservator or trustee of any estate. [1997 c.631 §192; 2015 c.244 §70]

**708A.590 Charging off real estate assets; use of generally accepted accounting principles.** (1) An institution that owns or holds any real estate other than as permitted in the Bank Act shall immediately charge the book value of the real estate to profit and loss or otherwise remove the real estate from the institution's books.

(2) An institution shall at all times value and record on the institution's books and records, in accordance with generally accepted accounting principles, real estate that the institution owns or holds in accordance with ORS 708A.175 (3) or (4). [1997 c.631 §193; 2011 c.478 §1]

**708A.595 Charging off personal property assets.** An institution may not carry goods, as defined in ORS 79.0102, and chattels, as defined in ORS 87.142, that the institution owns on account of collecting the institution's debts on the institution's books for more than two years after acquiring the goods or chattels, unless the Director of the Department of Consumer and Business Services extends the two-year period. [1997 c.631 §194; 2015 c.244 §71]

**708A.600 Charging off losses.** An institution shall charge off all debts:

(1) On which interest is past due and unpaid for 12 months, unless the debt is fully secured and in process of collection;

(2) That an examiner has classified as a loss; or

(3) Upon the instruction of the Director of the Department of Consumer and Business Services. [1997 c.631 §195; 2015 c.244 §72]

**708A.605 Separate accounts for foreign branches.** An institution shall maintain the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office. At the end of each year, the profit or loss accrued at each branch shall be transferred to the general ledger as a separate item. [1997 c.631 §196]

## OTHER PROVISIONS

### (Miscellaneous)

**708A.630 Negligent, excessive, dishonest or unlawful loans; civil liability of officer, director or employee.** Any officer, director or employee of an institution who knowingly or negligently loans the funds of the institution in a dishonest or unlawful manner or permits the funds of the institution to be so loaned, is liable for the full amount of the loan and for all damages that the institution, its stockholders or any other person has sustained in consequence thereof. The liability for the loan continues until the loan, with interest, is paid in full without loss to the institution. The amount of the liability may be collected by suit or action without first attempting to collect from the debtor. [1997 c.631 §197a]

**708A.635 Written policies regarding reporting to and obtaining approval of board; duty to report.** Institutions shall develop written policies regarding the types of matters that shall be reported to and approved by the institution's board of directors. An officer, director or employee of an institution shall not conceal from or fail to report to the board of directors of the institution any such matter. [1997 c.631 §198]

**708A.640 Receiving illegal compensation; misapplication of property and credit.** (1) An officer, director, agent or employee of an institution shall not ask for, receive or agree to receive any money, property or thing of value or of personal advantage, for:

(a) Procuring or endeavoring to procure for any person any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange by, the institution.

(b) Permitting any person to overdraw any account with the institution.

(2) An officer, director, stockholder, employee or agent of an institution shall not abstract or willfully misapply any of the

property of the institution, or willfully misapply its credit. [1997 c.631 §199]

**708A.645 Illegal guaranty or indorsement.** An officer, director or employee of an institution shall not make or deliver any guaranty or indorsement on behalf of the institution whereby the institution becomes liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts that the institution may legally make. [1997 c.631 §200]

**708A.650 Banking days; holidays.** (1) As used in this section:

(a) "Bank" means any banking institution, out-of-state state bank, out-of-state federal bank, national bank or extranational institution that engages in banking business in this state.

(b) "Banking day" means any day that is not an optional bank holiday.

(c) "Emergency" means any condition or occurrence that may interfere with conducting normal business operations at one or more of a bank's offices, or that poses an imminent or existing threat to the safety or security of persons or property.

(d) "Open for conducting banking business" means the office or offices of a bank are open to the public for carrying on substantially all business functions of the bank.

(e) "Optional bank holiday" means:

(A) Each Saturday and Sunday.

(B) New Year's Day on January 1.

(C) Martin Luther King, Jr.'s birthday on the third Monday in January.

(D) Presidents Day on the third Monday in February.

(E) Memorial Day on the last Monday in May.

(F) Independence Day on July 4.

(G) Labor Day on the first Monday in September.

(H) Columbus Day on the second Monday in October.

(I) Veterans Day on November 11.

(J) Thanksgiving Day on the fourth Thursday in November.

(K) Christmas Day on December 25.

(2) A bank may observe an optional bank holiday, other than a Saturday, that falls on a Saturday on the Saturday or on the preceding Friday. A bank may observe an optional bank holiday, other than a Sunday, that falls on a Sunday on the Sunday or on the succeeding Monday.

(3) Except as otherwise provided in this section, a bank shall be open for conducting banking business on each banking day.

(4) Any bank may remain closed on any optional bank holiday with respect to all or any of the bank's banking and other functions.

(5) Subject to any applicable federal law or regulation, a bank may close an office for any part or all of a banking day if the times or days which the office is open are posted on the premises of the office.

(6) If the Director of the Department of Consumer and Business Services determines that an emergency exists, the director may authorize a bank to close the bank's principal office or branch that the emergency affects. The office or branch may remain closed until the director determines that the emergency has ended and for such further time thereafter as the bank may reasonably require to prepare the office or branch to reopen.

(7) If the officers of a bank determine that an emergency exists that affects the principal office or a branch of the bank, the officers may close the office or branch without the director's approval for a period not to exceed 48 hours, excluding holidays, during the continuation of the emergency. A bank that closes an office or branch under this subsection shall give prompt notice of the bank's action to the director, or in the case of a national bank, to the Comptroller of the Currency.

(8) The principal officers of a bank may close the principal office or any branch of the bank on any day designated, by proclamation of the President of the United States or the Governor of this state, as a day of mourning, rejoicing, or other special observance.

(9) If an obligation that is payable at, by or through a bank falls due on a day on which the bank remains closed under this section, the obligation is due and payable on the next banking day on which the bank is open. Any act authorized, required or permitted to be performed at, by or with respect to any bank on a day on which the bank remains closed may be performed on the next banking day on which the bank is open, without liability or a loss of rights of any kind as a result of the closing. [1997 c.631 §1c; 1999 c.59 §218; 2015 c.244 §73]

**708A.655 Procedures for opening safe deposit box after death of person who was sole lessee or last surviving lessee of box.** (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death record or other evidence of

death satisfactory to the Oregon operating institution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains, inventory the contents of the box or remove property of the estate of the decedent pursuant to a small estate affidavit filed under ORS 114.515.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent's death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the Oregon operating institution and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the Department of State Lands appointed under ORS 113.235; or

(h) A person who is authorized to file an affidavit under ORS 114.515.

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal represen-

tative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon operating institution shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the Oregon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the

box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the Oregon operating institution shall provide to the affiant access to the decedent's property. The Oregon operating institution shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the Oregon operating institution shall allow the affiant to take possession of the personal property in the box.

(9) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section or ORS 114.535, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon operating institution may decline to open the box.

(10) If the interested person or affiant does not furnish the key needed to open the box, and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon operating institution may require that the interested person or affiant pay the expense of opening the box.

(11) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the Oregon operating institution. [1999 c.506 §2; 2001 c.10 §1; 2003 c.395 §21; 2011 c.422 §4; 2013 c.366 §82]

**708A.660 Savings promotion raffles; rules.** (1) As used in this section:

(a) "Financial institution" has the definition given that term in ORS 706.008.

(b) "Savings promotion raffle" means a contest in which a financial institution, or an agent of the financial institution, offers a chance for an individual member or depositor to win a designated prize by depositing in the individual member's or depositor's share account, deposit certificate account or other

savings account a specific amount of money during a specific period of time.

(2) Subject to subsection (3) of this section, a financial institution may conduct a savings promotion raffle within this state.

(3) A financial institution may not, in conducting a savings promotion raffle:

(a) Design, engage in, promote or conduct the savings promotion raffle in connection with selling or promoting a consumer product or service other than a share account, deposit certificate account or other savings account that the financial institution offers.

(b) Predetermine a winner, or other outcome, in the savings promotion raffle.

(c) Permit a director, officer, employee or agent of the financial institution to participate in the savings promotion raffle.

(d) Arbitrarily remove, disqualify, disallow or reject an application to enter into or attempt to participate in the savings promotion raffle.

(e) Fail to award the prize the financial institution offers in the savings promotion raffle.

(f) Print, publish, circulate or display by means of any medium an advertising or other statement concerning the savings promotion raffle that is false, deceptive or misleading.

(g) Require an entry fee, a payment or a promise to pay any valuable consideration as a condition of participating in or winning a prize from a savings promotion raffle, except that a financial institution may require an individual member or depositor to deposit a minimum amount to open a share account, deposit certificate account or other savings account and deposit a specific amount or maintain a specific balance for a specific time to participate in the savings promotion raffle and may charge any fee or amount to administer or maintain the individual member's or depositor's share account, deposit certificate account or other savings account that the financial institution ordinarily and customarily charges an individual member or depositor who does not participate in the savings promotion raffle.

(4) A financial institution, in conducting and administering a savings promotion raffle, shall ensure that every individual member or depositor who participates in the savings promotion raffle has an equal opportunity to submit or receive entries for the savings promotion raffle.

(5) A financial institution's violation of subsection (3) or (4) of this section is subject to a civil penalty as provided in ORS 706.980.

(6) This section applies uniformly throughout this state and within all political subdivisions and municipalities of this state.

A political subdivision of this state or a municipality within this state may not enact or adopt an ordinance, resolution, regulation, rule or other law to limit or restrict a financial institution's operation of a savings promotion raffle within this state.

(7) This section does not repeal or modify existing state laws with respect to gambling, except that a savings promotion raffle is not subject to existing state laws with respect to gambling.

(8) The Director of the Department of Consumer and Business Services may adopt rules to implement the provisions of this section. [2015 c.137 §2]

### (Financial Exploitation of Vulnerable Persons)

**708A.670 Definitions for ORS 708A.670 and 708A.675.** As used in this section and ORS 708A.675:

(1) "Financial exploitation" has the meaning given that term in ORS 124.050.

(2) "Financial institution" means a financial institution or a trust company as those terms are defined in ORS 706.008.

(3) "Law enforcement agency" has the meaning given that term in ORS 124.050.

(4) "Vulnerable person" has the meaning given that term in ORS 124.100.

(5) "Vulnerable person's account" means a contract of deposit of funds between a depositor and a financial institution where:

(a) The account is owned by a vulnerable person, whether individually or with one or more other persons; or

(b) A vulnerable person is a beneficiary of the account, including of a formal or informal trust account, a payable on death account, a conservatorship account or a guardianship account. [2017 c.290 §1]

**Note:** 708A.670 to 708A.680 were enacted into law by the Legislative Assembly but were not added to or made a part of the Bank Act or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**708A.675 Authority of financial institutions in cases of suspected financial exploitation; notifications; limitation on liability.** (1) When a financial institution reasonably believes, or has received information from the Department of Human Services, a law enforcement agency, or a district attorney's office demonstrating that it is reasonable to believe, that financial exploitation of a vulnerable person may have occurred, may have been attempted or is being attempted, and pending an investigation by the financial institution, the department, the law enforcement agency or the district

attorney's office, the financial institution may but is not required to:

(a) Refuse a transaction with or involving the vulnerable person;

(b) Refuse to permit the withdrawal or disbursement of funds contained in a vulnerable person's account;

(c) Prevent a change in ownership of a vulnerable person's account;

(d) Prevent a transfer of funds from a vulnerable person's account to an account owned wholly or partially by another person; or

(e) Refuse to comply with instructions given to the financial institution by an agent or attorney-in-fact under a power of attorney signed or purported to have been signed by the vulnerable person.

(2) A financial institution is not required to act under subsection (1) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted or is being attempted, but may use the financial institution's discretion to determine whether or not to act under subsection (1) of this section based on the information available to the financial institution at the time.

(3)(a) Except as provided in paragraph (b) of this subsection, a financial institution that acts under subsection (1) of this section shall make a reasonable effort to notify, orally or in writing, all parties currently authorized to transact business on the account concerning the financial institution's action.

(b) A financial institution is not required to provide the notice described in paragraph (a) of this subsection when the financial institution, in the financial institution's discretion, determines that providing notice could compromise an investigation of or response to the suspected financial exploitation.

(4) The authority granted to a financial institution under subsection (1) of this section will expire upon the sooner of:

(a) Fifteen business days after the date on which the financial institution first acted under subsection (1) of this section;

(b) When the financial institution is satisfied that the transaction or act will not result in financial exploitation of a vulnerable person; or

(c) Upon termination by an order of a court of competent jurisdiction.

(5) Unless otherwise directed by order of a court of competent jurisdiction, a financial institution may extend the duration under subsection (4) of this section based on a reasonable belief that the financial exploitation

of a vulnerable person may have occurred, may have been attempted, or may continue to occur or be attempted.

(6) A financial institution and all employees of a financial institution are immune from criminal, civil and administrative liability for actions taken under subsections (1) and (5) of this section if the actions were taken in good faith. [2017 c.290 §2]

**Note:** See note under 708A.670.

**708A.680 Contractual rights not restricted.** The authority granted to financial institutions under ORS 708A.675 is in addition to and not in lieu of any right a financial institution may have under the financial institution's deposit or other contract with the financial institution's customer. Nothing in ORS 708A.675:

(1) Restricts the rights of a financial institution to take or refuse to take any action pursuant to the financial institution's deposit or other contract with the financial institution's customer; or

(2) Requires a financial institution to comply with any provision of ORS 708A.675 when acting pursuant to the provisions of the financial institution's deposit or other

contract with the financial institution's customer. [2017 c.290 §3]

**Note:** See note under 708A.670.

### PENALTIES

**708A.990 Civil penalties.** (1) An institution that violates ORS 708A.560 shall forfeit a civil penalty in an amount the Director of the Department of Consumer and Business Services determines that is not more than \$50,000.

(2) An Oregon commercial bank that violates ORS 708A.420 shall forfeit a civil penalty in an amount the director determines that is not more than \$10,000. In addition, the director may revoke the Oregon commercial bank's charter.

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

(4) The director may recover a civil penalty as provided in ORS 706.980. [1997 c.631 §201; 2015 c.244 §74]

**708A.995 Criminal penalties.** Violation knowingly of any of the provisions of ORS 708A.635 is a Class C felony. [1997 c.631 §202]

