Chapter 717

2003 EDITION

Money Transmission

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717.084 [1973 c.797 §411; repealed by 1999 c.571 §30]

717.086 [1973 c.797 §412; 1991 c.331 §119; repealed by 1999 c.571 §30]

717.090 [1965 c.503 §8; 1973 c.797 §413; 1991 c.331 §120; repealed by 1999 c.571 §30]

717.095 [1977 c.135 §39; 1985 c.762 §52; repealed by 1999 c.571 §30]

717.100 [1965 c.503 §9; 1973 c.797 §414; repealed by 1999 c.571 §30]

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717.200 Definitions. As used in ORS 717.200 to 717.320, 717.900 and 717.905, unless the context requires otherwise:

(1) "Applicant" means a person filing an application for a license under ORS 717.200 to 717.320, 717.900 and 717.905.

(2) "Authorized delegate" means a person designated by the licensee under the provisions of ORS 717.200 to 717.320, 717.900 and 717.905 to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

(4) "Controlling person" means any person in control of a licensee or applicant for a license.

(5) "Controlling shareholder" means any person, or group of persons acting in concert, that owns 25 percent or more of any voting class of an applicant's stock.

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

(7) "Electronic instrument" means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use. "Electronic instrument" does not include a card or other tangible object that is redeemable by the issuer in the issuer's goods or services.

(8) "Executive officer" means the licensee's president, chairperson of the executive committee, senior officer responsible for the licensee's business, chief financial officer and any other person who performs similar functions.

(9) "Licensee" means a person licensed under ORS 717.200 to 717.320, 717.900 and 717.905.

(10) "Material litigation" means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in the applicant's or licensee's annual audited financial statements, report to shareholders or similar documents.

(11) "Money transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile or electronic transfer.

(12) "Payment instrument" means any electronic or written check, draft, money order, traveler's check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. "Payment instrument" does not include any credit card voucher, any letter of credit or any instrument that is redeemable by the issuer in goods or services.

(13) "Outstanding payment instrument" means any payment instrument issued by a licensee that has been sold in the United States directly by the licensee or any payment instrument issued by a licensee that has been sold in the United States by an authorized delegate of the licensee, that has been reported to the licensee as having been sold and that has not yet been paid by or for the licensee.

(14) "Permissible investments" means:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, that are eligible for purchase by member banks of the Federal Reserve System;

(d) Any investment security bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States Government, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills, notes or bonds, debentures or stock traded on any national securities exchange or national market system, mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(g) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national securities exchange;

(h) Receivables that are due to a licensee from the licensee's authorized delegates under a contract described in ORS 717.270 and that are not past due or doubtful of collection; or

(i) Any other investments or security device approved by the Director of the Department of Consumer and Business Services.

(15) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(16) "Remit" means either to make direct payment of the funds to a licensee or representatives of a licensee authorized to receive those funds, or to deposit the funds in a bank, credit union or savings and loan association or other similar financial institution in an account specified by the licensee.

(17) "Security device" means a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other similar security acceptable to the Director of the Department of Consumer and Business Services. [1999 c.571 §2; 2001 c.104 §283]

717.205 License required to conduct money transmission business; relationship to banking. (1) A person, other than a person that is exempt under ORS 717.210, may not conduct a money transmission business without a license as provided in ORS 717.200 to 717.320, 717.900 and 717.905.

(2) A licensee may conduct business in this state at one or more locations that are directly or indirectly owned by the licensee, or through one or more authorized delegates, or both. A licensee is required to obtain only one license under ORS 717.200 to 717.320, 717.900 and 717.905.

(3) The conduct of a money transmission business by itself does not constitute banking or branch banking for the purposes of the Bank Act.

(4) The Director of the Department of Consumer and Business Services has jurisdiction over a person conducting a money transmission business whether or not the person is a licensee or authorized delegate. [1999 c.571 §3]

717.210 Exemptions; waiver; rules. (1) ORS 717.200 to 717.320, 717.900 and 717.905 do not apply to:

(a) Any company that accepts deposits in this state and that is insured under the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., as amended.

(b) Credit unions or trust companies.

(c) The United States Government or any department, agency or instrumentality thereof.

(d) The United States Postal Service.

(e) Any state or political subdivision of a state.

(f) The provision or electronic transfer of government benefits for any federal, state or county government or other agency as defined in the Federal Reserve Board Regulation E (12 C.F.R. part 205), by a contractor for and on behalf of the United States Government or any department, agency or instrumentality of the United States, or any state or any political subdivision of a state.

(g) The provision or handling of electronic or other transfer of escrowed moneys by an escrow agent licensed under ORS 696.511.

(h) Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in ORS 717.270.

(i) Any bank holding company as defined in the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended, or any financial holding company as defined in ORS 706.008.

(j) Any savings and loan holding company as defined in 12 U.S.C. 1467a (a)(1)(D), as amended.

(2) The Director of the Department of Consumer and Business Services by rule or order may modify or waive the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons if the director determines that adequate regulation of the person or group of persons is provided by law or by another agency of this state.

(3) The director by rule or order may temporarily suspend the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons while the director considers whether an exemption should be granted and during the pendency of any rulemaking proceeding proposing to create an exemption. [1999 c.571 §4; 2001 c.377 §50]

717.215 Requirements for licensees; net worth; permissible investments. (1) Each licensee shall at all times have a net worth of not less than $100,000, calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates shall have an additional net worth of $25,000 per location in this state, not to exceed a maximum of $500,000.

(2) Every applicant, at the time of filing of an application for a license under ORS 717.200 to 717.320, 717.900 and 717.905 and at all times after a license is issued, shall be in good standing in the state of its incorporation or organization.

(3) Each licensee shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the Director of the Department of Consumer and Business Services if the dollar volume of a licensee's outstanding payment instruments does not exceed the amount of any security device posted by the licensee under ORS 717.225.

(4) In the event of the bankruptcy of the licensee, permissible investments, even if commingled with other assets of the licensee, are considered by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments. [1999 c.571 §5]

717.220 License application. (1) Each application for a license under ORS 717.200 to 717.320, 717.900 and 717.905 shall be made in writing, under oath, and in a form prescribed by rule by the Director of the Department of Consumer and Business Services.

(2) For all applicants, the application shall contain:

(a) The exact name of the applicant, the applicant's principal address, any fictitious name, assumed business name or trade name used by the applicant in the conduct of its business and the location of the applicant's business records;

(b) The history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the application;

(c) A history of operations and a description of the business activities in which the applicant seeks to be engaged in this state;

(d) A list identifying the applicant's proposed authorized delegates in the state, if any, at the time of the filing of the license application;

(e) A sample authorized delegate contract, if applicable;

(f) A sample form of payment instrument, if applicable;

(g) The address of each location at which the applicant and its authorized delegates, if any, propose to conduct a money transmission business in this state;

(h) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable; and

(i) A business plan.

(3) If the applicant is a corporation, the application shall contain:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(d) The name, business and residence address, and employment history for the past five years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's money transmission business;

(e) The name, business and residence address, and employment history for the five-year period prior to the date of the application of any controlling shareholder of the applicant;

(f) The history of material litigation and criminal convictions for the five-year period prior to the date of the application of every executive officer or controlling shareholder of the applicant;

(g) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position and, if available, a copy of the applicant's audited financial statements for the immediately preceding two-year period. If the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period, or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years, in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's foreign regulator may be submitted to satisfy the requirements of this paragraph; and

(h) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of the application.

(4) If the applicant is not a corporation, the application shall contain:

(a) The name, business and residence address, personal financial statement and employment history for the past five years of each principal of the applicant and the name, business and residence address, and employment history for the past five years of any other person or persons that will be in charge of the applicant's money transmission business;

(b) The history of material litigation and criminal convictions for the five-year period prior to the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(c) Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, a copy of the applicant's audited financial statements for the immediately preceding two-year period.

(5) The director, for good cause shown, may waive any requirement of this section with respect to any license application or may allow an applicant to submit substituted information in a license application in lieu of the information required under subsection (2) of this section. [1999 c.571 §6]

717.225 Security devices. (1) Each license application shall be accompanied by a security device in the amount of $25,000. If the applicant proposes to engage in business under ORS 717.200 to 717.320, 717.900 and 717.905 at more than one location through authorized delegates or otherwise, the amount of the security device shall increase by $5,000 per location, not to exceed a maximum of $150,000. The security device shall be in a form satisfactory to the Director of the Department of Consumer and Business Services and shall run to the State of Oregon for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission and payment of money in connection with the sale and issuance of payment instruments or transmission of money. The aggregate liability on any security device shall not exceed the principal sum of the security device. Claimants against the licensee may bring suit directly on the security device or the director may bring suit on behalf of such claimants, either in one action or in successive actions.

(2) In lieu of the requirements of subsection (1) of this section, a licensee may deposit with the director, or with insured institutions as defined in ORS 706.008 located in this state and designated by the licensee and approved by the director, securities in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device applicable under subsection (1) of this section or portion thereof. The securities shall be held to secure the same obligations as would the security device. The depositor shall be entitled to receive all interest and dividends on the securities and may, with the approval of the director, substitute other securities for those deposited. The director, in writing, for good cause shown, may require the depositor to substitute other securities for those deposited. As used in this subsection, "securities" includes interest-bearing stocks and bonds, notes, debentures or other obligations of the United States Government or any agency or instrumentality of the United States Government, or guaranteed by the United States Government, or of this state, or of a city, county, district or instrumentality of this state, or guaranteed by this state.

(3) The security device shall remain in effect until cancellation, which may occur only after 30 days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the 30-day period.

(4) The security device shall remain in place for no longer than five years after the licensee ceases money transmission operations in this state. However, notwithstanding this provision, the director may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security device acceptable to the director for the security device in place at the time the licensee ceases money transmission operations in this state.

(5) In the event of bankruptcy of the licensee, the security device shall be considered by operation of law to be held in trust for the benefit of purchasers and holders of the licensee's outstanding payment instruments. [1999 c.571 §7]

717.230 Application fee. Each application shall be accompanied by a nonrefundable application fee in the amount of $1,000, payable to the Director of the Department of Consumer and Business Services. The application fee shall also constitute the license fee for the applicant's first year of activities if the license is granted. [1999 c.571 §8]

717.235 License issuance; grounds for disapproval of application; appeals. (1) Upon the filing of a complete application, the Director of the Department of Consumer and Business Services shall review the application and may investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The director may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. The director may disapprove an application if the director finds that the applicant:

(a) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or that the person cannot meet obligations as they mature, or that the person is in such financial condition that the person cannot continue in business with safety to the person's customers;

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

(c) Has willfully or repeatedly violated or failed to comply with any provisions of the Oregon Bank Act, Oregon Securities Law, Savings Association Act, Oregon Credit Union Act, Oregon Consumer Finance Act or Pawnbrokers Act or any rule or order of the director adopted under those laws;

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

(e) Is not qualified to engage in the business of money transmission on the basis of such factors as training, experience and knowledge of the business;

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

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

(h) Is the subject of an order entered within the past five years, subjecting the person to a fine or other civil penalty or removing the person from an office in a state or federally chartered, licensed or regulated financial services company.

(2) The director may also disapprove an application if the director finds that any controlling person is subject to any provision of subsection (1) of this section except subsection (1)(a) or (e) of this section. If a controlling person is the sole owner of the applicant, then the director may disapprove an application if the director finds that the controlling person is subject to any provision of subsection (1) of this section.

(3) If the director finds that the applicant's business will be conducted honestly, fairly and in a manner commanding the confidence and trust of the community, and that the applicant has fulfilled the requirements imposed by ORS 717.200 to 717.320, 717.900 and 717.905 and has paid the required license fee, the director shall issue a license to the applicant authorizing the applicant to conduct money transmission business in this state for a term of one year. If these requirements have not been met, the director shall deny the application in writing and shall describe the reasons for the denial.

(4) An order of the director denying an application under ORS 717.200 to 717.320, 717.900 and 717.905 shall state the grounds upon which the order is based and shall not become effective for at least 20 days after written notice of the order has been sent by registered or certified mail to the applicant at the principal place of business of the applicant.

(5) Appeals from an order of the director denying an application may be taken to the

courts of this state as provided by ORS chapter 183. [1999 c.571 §9]

717.240 License renewal; annual fee; renewal report; license suspension. (1) Each licensee shall pay to the Director of the Department of Consumer and Business Services a nonrefundable annual fee of $500 or such other fee as established by the director by rule, not to exceed $1,000, for renewal of a license.

(2) At the time the licensee pays the renewal fee, the licensee shall submit an annual renewal report in a form prescribed by the director. The annual renewal report shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement, including a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. In the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) For the most recent quarter for which data are available prior to the date of the renewal application, but not more than 120 days prior to the renewal date, a description of the number of payment instruments sold by the licensee in this state, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding;

(c) A description of any material changes to any of the information submitted by the licensee on the licensee's original application that have not previously been reported to the director on any other report required to be filed with the director;

(d) A list of the licensee's permissible investments; and

(e) A list of the locations within this state at which business regulated by ORS 717.200 to 717.320, 717.900 and 717.905 is being conducted by either the licensee or its authorized delegate.

(3) If a licensee has not filed a renewal report or paid the renewal fee before the license expires, and has not been granted an extension of time to do so by the director, the director shall hold a hearing at which the licensee may show cause as to why the license should not be suspended pending compliance with the requirements of this section. The director shall notify the licensee in writing of the licensee's rights under this subsection. The licensee may waive the hearing. [1999 c.571 §10]

717.245 Events requiring filing of report with director. Within 15 days following the occurrence of any one of the events listed in this section, a licensee shall file a written report with the Director of the Department of Consumer and Business Services describing the event and the event's expected effect on the licensee's activities in this state:

(1) The filing for bankruptcy or reorganization by the licensee or the licensee's sole owner;

(2) The commencement of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities;

(3) Any felony indictment of the licensee or any of its key officers or directors;

(4) Any felony conviction of the licensee or any of its key officers or directors; or

(5) The theft of payment instruments from the licensee in an amount equal to or greater than 10 percent of a licensee's monthly amount of outstanding payment instruments. [1999 c.571 §11]

717.250 Notice of change or acquisition of control of licensee; waiver. (1) Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the change to the Director of the Department of Consumer and Business Services in writing and in a form the director may prescribe by rule. The notice shall be accompanied by such information, data and records as the director may require by rule.

(2) Notwithstanding subsection (1) of this section, the director may waive the notice requirement if the director determines that the change in control does not pose any risk to the interests of the public. [1999 c.571 §12]

717.255 Examination of licensee; notice; costs. (1) The Director of the Department of Consumer and Business Services may conduct an annual on-site examination of a licensee upon reasonable notice to the licensee. The examination may be conducted at the principal place of business of the licensee. Upon reasonable notice, the director may also conduct an examination of any location of the licensee and its authorized delegates. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of other states. In lieu of an annual on-site examination, the director may accept the examination report of an agency of another state or a report prepared by an independent accountancy organization. Reports so accepted are considered for all purposes as an official report of the director.

(2) The director may conduct an on-site examination of a licensee or any authorized delegate without prior notice to the licensee or authorized delegate if the director has a reasonable basis to believe that the licensee or authorized delegate is in violation of any provision of ORS 717.200 to 717.320, 717.900 and 717.905. The examination may be conducted at the principal place of business of the licensee or authorized delegate.

(3) The director shall have authority to examine under oath all persons whose testimony the director may require in order to conduct the examination.

(4) Each licensee examined under this section shall pay $60 per hour for each examiner, plus costs of an examination, to the director. The director may maintain an action for the recovery of such costs in any court of competent jurisdiction. [1999 c.571 §13; 2001 c.104 §284]

717.260 Retention of records. (1) Each licensee shall make, keep and preserve the following books, accounts and other records for a period of three years:

(a) A record of each payment instrument sold;

(b) A general ledger, posted at least once per month, containing all assets, liabilities, capital, income and expense accounts;

(c) Settlement sheets received from authorized delegates;

(d) Bank statements and bank reconciliation records;

(e) Records of outstanding payment instruments;

(f) Records of each payment instrument paid within the three-year period; and

(g) A list of the names and addresses of all the licensee's authorized delegates.

(2) Books, accounts and other records required to be maintained under subsection (1) of this section may be maintained:

(a) In a photographic, electronic or other similar form.

(b) At a location outside this state, so long as the books, accounts and other records are made accessible to the Director of the Department of Consumer and Business Services following seven days' written notice. [1999 c.571 §14]

717.265 Suspension or revocation of license; appeals. (1) The Director of the Department of Consumer and Business Services may by order suspend or revoke a license issued under ORS 717.200 to 717.320, 717.900 and 717.905 if the director finds that:

(a) Any fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying the application;

(b) The licensee's net worth is inadequate and the licensee, following 10 days' written notice from the director, fails to take such steps as the director considers necessary to remedy the inadequacy;

(c) The licensee has violated any material provision of ORS 717.200 to 717.320, 717.900 and 717.905 or of any rule or order validly adopted or issued by the director under ORS 717.200 to 717.320, 717.900 and 717.905;

(d) The licensee is conducting its business in an unsafe or unsound manner;

(e) The licensee is insolvent;

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors or has admitted in writing its inability to pay its debts as they become due;

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy proceeding;

(h) The licensee refuses to permit the director to make any examination authorized by ORS 717.200 to 717.320, 717.900 and 717.905;

(i) The licensee knowingly fails to make any report required by ORS 717.200 to 717.320, 717.900 and 717.905;

(j) The licensee has failed to maintain the security device or other securities as required by ORS 717.225;

(k) The licensee has engaged in fraud in the conduct of the money transmission business;

(L) The licensee knowingly has submitted false information to the director; or

(m) The licensee has failed to terminate an authorized delegate when so ordered by the director.

(2) The suspension or revocation of a license shall not:

(a) Affect the licensee's civil or criminal liability for acts committed prior to the suspension or revocation;

(b) Affect the liability of the surety on the licensee's security device; or

(c) Entitle the licensee to a return of any part of the license or renewal fee.

(3) Except for nonpayment of any fees required by ORS 717.200 to 717.320, 717.900 and 717.905 and except as provided in subsection (4) of this section, a license shall not be revoked or suspended by the director without opportunity for a hearing in accordance with ORS chapter 183.

(4) If required to protect the public interest, a license may be suspended without a hearing in accordance with ORS 183.430 (2).

(5) An order of the director revoking or suspending a license issued under ORS 717.200 to 717.320, 717.900 and 717.905 shall state the grounds upon which the order is based and, except for a summary order issued in accordance with ORS 183.430 (2), shall not become effective for at least 20 days after written notice of the order has been sent by registered or certified mail to the licensee at the principal place of business of the licensee.

(6) Appeals from an order of the director revoking or suspending a license may be taken to the courts of this state as provided by ORS chapter 183. [1999 c.571 §15]

717.270 Conduct of money transmission business through authorized delegates; contracts. Licensees desiring to conduct a money transmission business through authorized delegates shall authorize each delegate to operate pursuant to an express written contract. The contract shall specify the following:

(1) That the licensee appoints the person as the licensee's delegate with authority to engage in money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Director of the Department of Consumer and Business Services; and

(3) That licensees, authorized delegates and subdelegates are subject to supervision and regulation by the director. [1999 c.571 §16]

717.275 Requirements for authorized delegates. (1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the Director of the Department of Consumer and Business Services.

(2) All money transmission activities conducted by authorized delegates shall be strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time prescribed shall result in liability of the authorized delegate to the licensee for three times the licensee's actual damages.

(4) An authorized delegate is considered to consent to the director's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with ORS 717.200 to 717.320, 717.900 and 717.905.

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate that exceeds the delegate's authority is subject to cancellation of the delegate's contract and further disciplinary action by the director.

(6) All funds, not including fees, received by an authorized delegate from the sale or delivery of a payment instrument issued by a licensee, or received by an authorized delegate for transmission, shall constitute trust funds owned by and belonging to the licensee during the period beginning when the funds are received by the authorized delegate and ending when the funds or an equivalent amount are remitted by the authorized delegate to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(7) An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time the authorized delegate first knows of the theft or loss. [1999 c.571 §17]

717.280 Order suspending or barring authorized delegate; grounds; appeals. (1) For any reason specified in subsection (2) of this section, the Director of the Department of Consumer and Business Services may issue an order suspending or barring an authorized delegate from continuing to be or becoming an authorized delegate during the period specified in the order. An order issued under this section shall require the licensee to terminate the licensee's relationship with the authorized delegate during the period specified in the order.

(2) The director may issue an order under subsection (1) of this section if the director finds that an authorized delegate or any director, officer, employee or controlling person of the authorized delegate has:

(a) Violated any provision of ORS 717.200 to 717.320, 717.900 and 717.905 or of any rule adopted or order issued under ORS 717.200 to 717.320, 717.900 and 717.905;

(b) Engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of

the licensee or the business of money transmission; or

(c) Made or caused to be made in any application or report filed with the director, or in any proceeding before the director, any statement that was, at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact that is required to be stated in the application or report.

(3) Except as provided in subsection (4) of this section, the director shall not issue an order under this section without opportunity for a hearing in accordance with ORS chapter 183.

(4) If required for the immediate protection of the public interest, an authorized delegate may be suspended without a hearing in accordance with ORS 183.430 (2).

(5) An order of the director suspending or barring an authorized delegate under this section shall state the grounds upon which the order is based and, except for a summary order issued in accordance with ORS 183.430 (2), shall not become effective for at least 20 days after written notice of the order has been sent by registered or certified mail to the authorized delegate at the authorized delegate's principal place of business.

(6) Appeals from an order of the director suspending or barring an authorized delegate may be taken to the courts of this state as provided by ORS chapter 183. [1999 c.571 §18]

717.285 Limit on responsibility of licensee; costs and attorney fees. (1) The responsibility of a licensee to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased plus statutory interest.

(2) In addition to any amounts under subsection (1) of this section, the court may award a prevailing party reasonable costs and attorney fees. [1999 c.571 §19]

717.290 Cease and desist order; appeals. (1) If the Director of the Department of Consumer and Business Services determines that any person has engaged in, is engaging in or is about to engage in any act or practice constituting a violation of any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of any rule adopted or order issued under ORS 717.200 to 717.320, 717.900 and 717.905, the director may order the person to cease and desist from the unlawful act or practice and take any affirmative action as may be necessary to carry out the provisions of ORS 717.200 to 717.320, 717.900 and 717.905.

(2) Except as provided in subsection (3) of this section, the director shall not issue an order under this section without opportunity for a hearing in accordance with ORS chapter 183.

(3) If required for the immediate protection of the public interest, a cease and desist order may be issued without a hearing in accordance with ORS 183.430 (2).

(4) A cease and desist order of the director under ORS 717.200 to 717.320, 717.900 and 717.905 shall state the grounds upon which the order is based and, except for a summary order issued in accordance with ORS 183.430 (2), shall not become effective for at least 20 days after written notice of the order has been sent by registered or certified mail to the person at the person's principal place of business.

(5) Appeals from a cease and desist order of the director may be taken to the courts of this state as provided by ORS chapter 183. [1999 c.571 §20]

717.295 Injunctions; consent orders. (1) If the Director of the Department of Consumer and Business Services believes that any person has engaged in, is engaging in or is about to engage in any act or practice constituting a violation of any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of any rule or order adopted or issued under ORS 717.200 to 717.320, 717.900 and 717.905, the director may initiate an action in the Circuit Court for Marion County to enjoin the act or practice and to enforce compliance with any provision of ORS 717.200 to 717.320, 717.900 and 717.905 or of any rule or order adopted or issued under ORS 717.200 to 717.320, 717.900 and 717.905. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted or a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond. The court may award a prevailing party reasonable attorney fees and costs.

(2) The director may enter into consent orders at any time with any person to resolve any matter arising under ORS 717.200 to 717.320, 717.900 and 717.905. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of any rule or order adopted or issued under ORS 717.200 to 717.320, 717.900 and 717.905, has been violated, nor need it constitute a

finding by the director that the person has violated any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of any rule or order adopted or issued under ORS 717.200 to 717.320, 717.900 and 717.905.

(3) Notwithstanding the issuance of a consent order, the director may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the director from so doing. [1999 c.571 §22]

717.300 Subpoena authority. (1) For purposes of an investigation or proceeding under ORS 717.200 to 717.320, 717.900 and 717.905, the Director of the Department of Consumer and Business Services may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena issued pursuant to this section or a party or witness refuses to testify on any matter, the judge of the circuit court of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify. [1999 c.571 §23]

717.305 Consent to jurisdiction of courts; director as agent for service of process. (1) Any licensee, authorized delegate or other person that knowingly engages in the money transmission business under ORS 717.200 to 717.320, 717.900 and 717.905, with or without filing a license application, is considered to have:

(a) Consented to the jurisdiction of the courts of this state for all actions arising under ORS 717.200 to 717.320, 717.900 and 717.905; and

(b) Appointed the Director of the Department of Consumer and Business Services as the licensee's, delegate's or person's lawful agent for the purpose of accepting service of process in any action, suit or proceeding that may arise under ORS 717.200 to 717.320, 717.900 and 717.905.

(2) Within three business days after service of process upon the director, the director shall transmit by certified mail copies of all lawful process accepted by the director as an agent to the person for whom service of process is accepted at the person's last known address. Service of process shall be considered complete three business days after the director deposits copies of the documents in the United States mail. [1999 c.571 §26]

717.310 Rules. (1) The Director of the Department of Consumer and Business Services may adopt rules for the purpose of carrying out the provisions of ORS 717.200 to 717.320, 717.900 and 717.905.

(2) In addition to the notice requirements of ORS chapter 183, before the director adopts a permanent rule, the director shall submit a copy of the proposed rule to each licensee. [1999 c.571 §25]

717.315 Deposit of moneys in Consumer and Business Services Fund. All fees, charges, costs and fines collected by the Director of the Department of Consumer and Business Services under ORS 717.200 to 717.320, 717.900 and 717.905 shall be paid to the State Treasurer and credited as provided in ORS 705.145. [1999 c.571 §28]

717.320 Short title. ORS 717.200 to 717.320, 717.900 and 717.905 may be cited as the "Oregon Money Transmitters Act." [1999 c.571 §27]

717.900 Civil penalties. (1) If the Director of the Department of Consumer and Business Services finds that a person has violated any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of a rule adopted or order issued under ORS 717.200 to 717.320, 717.900 and 717.905, the director may impose a civil penalty in an amount specified by the director, not to exceed $1,000 for each violation or, in the case of a continuing violation, $1,000 for each day that the violation continues. Civil penalties under this section shall be imposed in the manner described in ORS 183.745. A penalty shall not be assessed under this section until after the person subject to the penalty has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(2) Appeals from orders of the director under this section may be taken to the courts of this state as provided by ORS chapter 183.

(3) The director may compromise and settle with and collect civil penalties from any person for violations of any provision of ORS 717.200 to 717.320, 717.900 and 717.905, or of any rule adopted or order issued under ORS 717.200 to 717.320, 717.900 and 717.905. [1999 c.571 §21]

717.905 Criminal penalties. (1) Except as provided in this section, violation of any provision of ORS 717.200 to 717.320, 717.900 and 717.905 is a Class A misdemeanor.

(2) Any person that makes a material, false statement in any document filed or required to be filed under ORS 717.200 to 717.320, 717.900 and 717.905 with the intent to deceive the recipient of the document is guilty of a Class C felony.

(3) Any person that engages in the business of money transmission without a license is guilty of a Class C felony. [1999 c.571 §24]

717.910 [1975 c.544 §54; 1991 c.734 §95; repealed by 1999 c.571 §30]

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

CHAPTERS 718 TO 720

[Reserved for expansion]