

Enrolled
House Bill 2199

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to financial regulation; creating new provisions; amending ORS 56.080, 112.810, 113.238, 114.535, 180.540, 183.635, 192.502, 192.555, 205.460, 293.353, 293.701, 293.718, 293.723, 294.831, 294.882, 294.895, 311.780, 317.057, 317.147, 399.240, 456.548, 458.670, 646A.628, 705.137, 705.635, 705.638, 705.640, 705.642, 706.515, 706.530, 706.580, 706.720, 713.300, 715.055, 717.235, 723.014, 723.114, 723.118, 723.136, 723.752, 723.822, 725.120, 725.145, 725.185, 725.340, 726.075 and 732.145; repealing ORS 705.620, 722.004, 722.008, 722.012, 722.014, 722.016, 722.018, 722.022, 722.024, 722.026, 722.028, 722.032, 722.034, 722.036, 722.038, 722.042, 722.044, 722.046, 722.048, 722.052, 722.056, 722.058, 722.062, 722.064, 722.066, 722.068, 722.072, 722.074, 722.102, 722.104, 722.106, 722.107, 722.108, 722.112, 722.113, 722.114, 722.116, 722.118, 722.122, 722.124, 722.132, 722.134, 722.136, 722.138, 722.142, 722.152, 722.154, 722.156, 722.162, 722.164, 722.202, 722.204, 722.206, 722.208, 722.212, 722.214, 722.252, 722.254, 722.256, 722.257, 722.258, 722.262, 722.264, 722.266, 722.268, 722.302, 722.304, 722.306, 722.308, 722.309, 722.311, 722.312, 722.314, 722.322, 722.324, 722.326, 722.328, 722.332, 722.334, 722.336, 722.338, 722.342, 722.352, 722.354, 722.356, 722.408, 722.416, 722.419, 722.432, 722.434, 722.436, 722.438, 722.442, 722.444, 722.446, 722.448, 722.452, 722.454, 722.456, 722.457, 722.458, 722.459, 722.462, 722.464, 722.468, 722.474, 722.476, 722.478, 722.482, 722.484, 722.502, 722.504, 722.506, 722.508, 722.512, 722.514, 722.516, 722.602, 722.606, 722.652, 722.654, 722.656, 722.658, 722.660 and 722.991; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 56.080 is amended to read:

56.080. (1) Except as provided in subsections (2), (3) and (4) of this section, the Secretary of State, within one year after a filing and not less than 20 days after written notice to the company or individual who submitted the document to the office, may withdraw any certificate issued or document filed by the Secretary of State, except filings pursuant to ORS chapter 647, on any ground existing at the time of the filing for which the Secretary of State could have originally refused to issue the certificate or file the document. The written notice shall state the reason for the proposed withdrawal.

(2) The Secretary of State, within one year after a filing, may withdraw from filing any document filed by the Secretary of State when the person who submitted the document advises the office that the document was submitted prematurely or by inadvertence or mistake. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal.

(3) The Secretary of State may withdraw without notice or hearing a certificate that the Secretary of State has issued or a document the Secretary of State has filed when the fee was paid with

a check that was returned to the office for lack of sufficient funds. Such withdrawal shall be retroactive to the date of filing.

(4) The Secretary of State shall withdraw a certificate the Secretary of State has issued or a document the Secretary of State has filed if the Secretary of State receives a final written order from the Director of the Department of Consumer and Business Services that establishes that the person named in the certificate or document has violated ORS 705.638, 707.005[,] **or** 707.010. [or 722.012.]

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

(6) A withdrawal from filing of a document under this section is retroactive to the date of the filing but [shall] **does** not relieve a person of any liability the person may have incurred while the document was filed with the office. The Secretary of State is not required to refund any fees paid in conjunction with the document withdrawn.

(7) At any time prior to a delayed effective date specified in a document, upon written request of the person or persons who originally filed the document with the Secretary of State, the document shall be withdrawn. Upon such withdrawal of a document, the document [shall have] **has** no further effect and shall be treated as if [it] **the document** had not been filed. The person requesting the withdrawal shall accompany the request with a written statement reflecting the basis of the person's authority to initiate the withdrawal.

SECTION 2. ORS 112.810 is amended to read:

112.810. (1) Any person having custody of a will:

(a) Shall deliver the will to the testator upon demand from the testator, unless the person having custody of the will is an attorney and is entitled to retain the will pursuant to ORS 87.430;

(b) May at any time deliver the will to the testator;

(c) Upon demand from the conservator, shall deliver the will to a conservator for the testator;

(d) Upon demand from the attorney-in-fact, shall deliver the will to an attorney-in-fact acting under a durable power of attorney signed by the testator expressly authorizing the attorney-in-fact to demand custody of the will;

(e) May deliver the will to any attorney licensed to practice law in Oregon willing to accept delivery of the will if the person does not know or cannot ascertain, upon diligent inquiry, the address of the testator; or

(f) Shall deliver the will to a court having jurisdiction of the estate of the testator or to a personal representative named in the will within 30 days after the date of receiving information that the testator is dead.

(2) With respect to a will held in a safe deposit box, compliance with ORS 708A.655[, 722.660] or 723.844 by the financial institution, trust company, savings association or credit union within which the box is located shall be deemed to be compliance with the requirements of this section.

SECTION 3. ORS 113.238 is amended to read:

113.238. (1) [Any] **A** person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Department of State Lands appointed under ORS 113.235.

(2) Except as provided by ORS 708A.430[, 722.262] and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Department of State Lands appointed under ORS 113.235.

The prohibition of this subsection:

(a) Applies to a guardian or conservator for the decedent; and

(b) Does not apply to a personal representative appointed under ORS 113.085 (3) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

(3) For purposes of this section, a known heir is an heir who has been identified and found.

SECTION 4. ORS 114.535 is amended to read:

114.535. (1) [Any] A person indebted to the decedent or having possession of personal property belonging to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. [Any] A person who has received property of the decedent under ORS 446.616[, 722.262] or 803.094, or [any] a similar statute providing for the transfer of property of an estate [which] **that** is not being probated, shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or [its] payment, delivery or transfer **of the property may be** compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(4) If the affidavit was signed by the Director of Human Services or a designee of the director, the director or the designee may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section.

SECTION 5. ORS 180.540 is amended to read:

180.540. (1) Except as provided in subsection (2) of this section, a seller or extender of credit may submit to the Department of Justice [any] a consumer contract issued by the seller or extender of credit for the purpose of obtaining review of the consumer contract for [its] **the consumer contract's** compliance with plain language standards in ORS 180.545.

(2) For the purpose of obtaining a review of a consumer contract for [its] **the consumer contract's** compliance with plain language standards in ORS 180.545, if a consumer contract:

(a) Is an insurance policy, the seller or extender of credit issuing the policy may submit [it] **the policy** to the Director of the Department of Consumer and Business Services.

(b) Is an agreement for a loan or other extension of credit in which the extender of credit is an insured institution, as defined in ORS 706.008, the extender of credit under the agreement may submit the agreement to the Director of the Department of Consumer and Business Services.

(c) Is an agreement for a loan or other extension of credit in which the extender of credit is a [savings association or federal association, as those terms are defined in ORS 722.004, a] credit union, as that term is defined in ORS 723.006, or a licensee under ORS chapter 725, the extender of credit under the agreement may submit the agreement to the Director of the Department of Consumer and Business Services.

(3) For purposes of this section, a consumer contract is a written contract made in the course of a consumer transaction to the value of \$50,000, excluding interest or finance charges, in which the contract involves any of the following, primarily for personal, family or household use:

(a) Real estate, goods or services as defined in ORS 646.605.

(b) Any extension of credit, including the lending of money.

SECTION 6. ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Higher Education and institutions of higher education listed in ORS 352.002.
- (g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (h) Department of Revenue.
- (i) Department of State Police.
- (j) Employment Appeals Board.
- (k) Employment Relations Board.
- (L) Energy Facility Siting Council.
- (m) Fair Dismissal Appeals Board.
- (n) Governor.
- (o) Land Conservation and Development Commission.
- (p) Land Use Board of Appeals.
- (q) Local government boundary commissions created pursuant to ORS 199.430.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Public Utility Commission.
- (u) Secretary of State.
- (v) State Accident Insurance Fund Corporation.
- (w) State Apprenticeship and Training Council.
- (x) State Board of Parole and Post-Prison Supervision.
- (y) State Land Board.
- (z) State Treasurer.
- (aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters [722,] 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

- (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- (b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

SECTION 7. ORS 192.502 is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency

determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron;
and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the

disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, [722,] 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court designates the information as confidential by rule under ORS 1.002.

SECTION 8. ORS 192.555 is amended to read:

192.555. (1) Except as provided in ORS 192.557, 192.559, 192.560, 192.565, 192.570 and 192.585 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

(a) [No] **A** financial institution [shall] **may not** provide [any] financial records of [any] a customer to a state or local agency.

(b) [No] **A** state or local agency [shall] **may not** request or receive from a financial institution [any] financial records of customers.

(2) Subsection (1) of this section [shall] **does** not preclude a financial institution, in [its] **the** discretion **of the financial institution**, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning [any] a suspected violation of the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but [shall be] **are** exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office [shall] **must** remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) [Any] Information showing that a directly held loan is in default.

(c) An appropriate state or local agency in connection with any business relationship or transaction between the financial institution and the customer, if the disclosure is made in the ordinary course of business of the financial institution and will further the legitimate business interests of the customer or the financial institution.

(3) [Nothing in] ORS 192.550 to 192.595 **do not prohibit** [prohibits] any of the following:

(a) The dissemination of any financial information [which] **that** is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, the Department of Consumer and Business Services of financial records [which] **that** relate solely to the exercise of [its] **the department's** supervisory function. The scope of the department's supervisory function shall be determined by reference to statutes [which] **that** grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(d) Compliance with the provisions of ORS 708A.655[722.660] or 723.844.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insufficient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.132.

SECTION 9. ORS 205.460 is amended to read:

205.460. (1) A person whose property is subject to an invalid claim of encumbrance may petition the circuit court of the county in which the person resides or in which the property is located for an order, which may be granted ex parte, directing the encumbrance claimant to appear at a hearing before the court and show cause why the claim of encumbrance should not be stricken and other relief provided by this section should not be granted. The court shall schedule the hearing no earlier than seven days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing under subsection (4) of this section.

(2) A petition under this section shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based.

(3) The petition and affidavit described in subsection (2) of this section shall be in substantially the following form:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) Case No. _____
))
) PETITION FOR AN
) ORDER STRIKING
v.) AND RELEASING
) ENCUMBRANCES,
) AWARDING COSTS

_____,) AND ATTORNEY FEES
Respondent,) AND ORDER TO
) SHOW CAUSE

Petitioner, _____ (insert name), by and through _____ (insert name and title of attorney for petitioner, if applicable), petitions this court, pursuant to ORS 205.460, for an order striking and releasing purported encumbrances, filed or recorded against Petitioner by Respondent, _____ (insert name or names) filed or recorded in book/reel/volume No. _____ on page _____ or document/fee/file/ instrument/microfilm No. _____ in the _____ (insert name of office where document was filed or recorded), and for an order, pursuant to ORS 205.460, for costs and attorney fees required to bring this action, on the grounds that the purported encumbrances have no basis in law or fact. Petitioner further requests that this court enter an order requiring Respondent to appear before this court and to show cause why the above order should not be entered. Finally, Petitioner requests an order from the court requiring Respondent to pay penalties and damages as provided in ORS 205.470.

DATED this ____ day of _____, ____.

Petitioner or Petitioner's Attorney

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) Case No. _____
)
) AFFIDAVIT OF
v.) _____
)
)
_____,)
Respondent.)

_____)
STATE OF OREGON)
) ss.
County of _____)

I, _____ (insert name of affiant), after being duly sworn, depose and say:
1. I am the above-entitled petitioner (or the attorney for the petitioner) in this matter.
2. The information contained in this affidavit is of my own personal knowledge.
3. Attached as numbered exhibits are true and correct copies of the following documents that were filed or recorded in the _____ (insert name of office where documents were filed or recorded) on _____ (insert date):

(List and attach document(s))

4. For any purported encumbrances identified above the following is true. The encumbrance is not authorized by statute, was not entered into consensually, and is not an equitable, constructive or other encumbrance imposed by a court of competent jurisdiction.

DATED this ____ day of _____, ____.

(Petitioner or Petitioner's Attorney)

SUBSCRIBED AND SWORN to before me this ____ day of _____, ____.

NOTARY PUBLIC FOR OREGON
My commission expires: _____

(4) A copy of the petition and the order directing the encumbrance claimant to appear under this section shall be served upon the encumbrance claimant:

(a) By service in the manner provided for personal service of summons under ORCP 7; or

(b) By mailing a true copy of the petition, affidavit and order to the encumbrance claimant at the encumbrance claimant's last-known address, both by first class mail and by certified or registered mail, return receipt requested. A notice mailed under this paragraph is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) The order to show cause shall be in substantially the following form and shall clearly state that if the encumbrance claimant fails to appear at the time and place noted, the claim of encumbrance shall be stricken and released and that the encumbrance claimant shall be ordered to pay the costs and reasonable attorney fees incurred by the petitioner at trial and on appeal:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) Case No. _____
)
) ORDER TO
v.) SHOW CAUSE
)
)
_____,)
Respondent.)

THIS MATTER came before the court on _____ (insert date) on Petitioner's Petition for an Order Striking and Releasing Encumbrances, Awarding Costs and Attorney Fees and Order to Show Cause. The court, having considered the petition, the Affidavit of _____ (insert name) and the attached exhibits, and it appearing to the court that there are sufficient grounds to issue an order to show cause,

IT IS HEREBY ORDERED that the Respondent, _____ (insert name), appear before this court on _____ (insert date), at _____ (insert time), to show cause why the petition should not be granted in its entirety.

IMPORTANT NOTICE:

IF YOU FAIL TO APPEAR AT THE ABOVE TIME AND PLACE, THE COURT MAY ENTER AN ORDER STRIKING AND RELEASING YOUR ENCUMBRANCE CLAIMS FILED AGAINST PETITIONER AND YOU MAY BE ORDERED TO PAY COSTS AND REASONABLE ATTORNEY FEES INCURRED BY THE PETITIONER.

DATED this ____ day of _____, ____.

Circuit Court Judge

(6) If the court determines that the claim of encumbrance is invalid, the court shall issue an order striking and releasing the claim of encumbrance and may award costs and reasonable attorney fees at trial and on appeal to the petitioner to be paid by the encumbrance claimant. If the court determines that the claim of encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney fees at trial and on appeal to the encumbrance claimant to be paid by the petitioner.

(7) The procedure set forth in this section is not available against a person lawfully conducting business as:

(a) An institution, a savings bank, a national bank, an out-of-state bank, a federal savings bank or an extranational institution, as those terms are defined in ORS 706.008, or a subsidiary of an entity described in this paragraph;

[(b) A savings association or a federal association, as those terms are defined in ORS 722.004, or a subsidiary of an entity described in this paragraph;]

[(c) (b) A financial holding company, a bank holding company, a savings and loan holding company or a subsidiary of a financial holding company, a bank holding company or a savings and loan holding company;

[(d) (c) A credit union, as defined in ORS 723.006, or a federal credit union;

[(e) (d) A consumer finance company subject to the provisions of ORS chapter 725;

[(f) (e) A mortgage banker or a mortgage broker, as those terms are defined in ORS 59.840, a mortgage servicing company or any other mortgage company; or

[(g) (f) An insurer as defined in ORS 731.106.

(8) The procedure set forth in this section is not available against:

(a) An officer, agency, department or instrumentality of the federal government;

(b) An officer, agency, department or instrumentality of this state; or

(c) An officer, agency, department or instrumentality of a political subdivision or public corporation in this state.

SECTION 10. ORS 293.353 is amended to read:

293.353. (1) As payment for expenses of processing banking-related transactions, the State Treasurer may charge each state agency having such transactions involving the State Treasury. The amount so charged shall be determined by the number of transactions processed by the State Treasurer and shall be paid in the manner determined by the State Treasurer to be most efficient and cost effective. The proceeds from such charges shall be deposited in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer, and such proceeds are continuously appropriated for payment of expenses of the office of the State Treasurer in processing banking-related transactions.

(2) When the State Treasurer transfers the assets of the local government investment pool to the state investment fund established under ORS 293.701 [(2)(o)] **(2)(n)** as authorized by ORS 294.882, "state agency," as used in this section, includes local government participants in the state investment fund.

SECTION 11. ORS 293.701 is amended to read:

293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

(1) "Council" means the Oregon Investment Council.

(2) "Investment funds" means:

(a) Public Employees Retirement Fund referred to in ORS 238.660;

(b) Industrial Accident Fund referred to in ORS 656.632;

(c) Consumer and Business Services Fund referred to in ORS 705.145;

(d) Employment Department Special Administrative Fund referred to in ORS 657.822;

(e) Insurance Fund referred to in ORS 278.425;

(f) Funds under the control and administration of the Department of State Lands;

(g) Oregon Student Assistance Fund referred to in ORS 348.570;

(h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or rules adopted thereunder;

- (i) Forest rehabilitation bonds sinking fund referred to in ORS 530.280;
- (j) Oregon War Veterans' Fund referred to in ORS 407.495;
- (k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;
- (L) World War II Veterans' Compensation Fund;
- (m) World War II Veterans' Bond Sinking Fund;

[(n) *Savings and loan association funds in the hands of the Director of the Department of Consumer and Business Services;*]

[(o)] **(n)** Funds in the hands of the State Treasurer that are not required to meet current demands;

[(p)] **(o)** State funds that are not subject to the control and administration of officers or bodies specifically designated by law;

[(q)] **(p)** Funds derived from the sale of state bonds;

[(r)] **(q)** Social Security Revolving Account referred to in ORS 237.490;

[(s)] **(r)** Investment funds of the State Board of Higher Education lawfully available for investment or reinvestment;

[(t)] **(s)** Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

[(u)] **(t)** Elderly and Disabled Special Transportation Fund established by ORS 391.800;

[(v)] **(u)** Education Stability Fund established by ORS 348.696;

[(w)] **(v)** Deferred Compensation Fund established under ORS 243.411; and

[(x)] **(w)** Trust for Cultural Development Account established under ORS 359.405.

(3) "Investment officer" means the State Treasurer in the capacity as investment officer for the council.

SECTION 12. ORS 293.718 is amended to read:

293.718. As payment for expenses of the investment officer, the State Treasurer may deduct monthly a maximum of 0.25 basis points of the most recent market value of assets under management for each of the investment funds. However, for the funds described in ORS 293.701 [(2)(o)] **(2)(n)**, a maximum of 0.435 basis points may be deducted monthly. Amounts so deducted shall be deposited into the Miscellaneous Receipts Account established in the General Fund for the State Treasurer, and are continuously appropriated for payment of the expenses of the State Treasurer as investment officer.

SECTION 13. ORS 293.723 is amended to read:

293.723. (1) Moneys in a fund established by law may not be discretely invested unless the law establishing the fund specifically indicates that the moneys may be invested. A provision in a law establishing a fund that requires interest earned by the fund to be retained by the fund is not, by itself, a specific indication that the moneys in the fund may be discretely invested.

(2) As used in this section, "discretely invested" means invested in something other than the state investment fund established under ORS 293.701 [(2)(o)] **(2)(n)**.

SECTION 14. ORS 294.831 is amended to read:

294.831. (1) The local government investment pool shall seek to obtain a competitive return on investments subject to the standards set forth in ORS 294.835 and consistent with the liquidity requirements demanded by the short term nature of local government deposits in the pool.

(2) The investment officer shall at all times hold investments which mature in three years or less, in an amount not less than an amount equal to the aggregate of all funds placed with the investment officer by local governments under ORS 294.805 to 294.895, which investments shall be from the funds defined in ORS 293.701 [(2)(p)] **(2)(o)**.

(3) Notwithstanding subsection (2) of this section, the investment officer may purchase legally issued general obligations of the United States and of the agencies and instrumentalities of the United States if the seller of the obligations agrees to repurchase the obligations within 90 days following the date on which the investment officer makes the investment. The price paid by the investment officer for such obligations may not exceed amounts or percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short Term Fund Board created by ORS 294.885.

(4) Investments and commitments of the investment pool which do not conform to the quality or maturity requirements set forth in ORS 294.805 to 294.895 shall be liquidated by the investment officer once the market value of such investments and commitments reaches book value, or as soon as is practicable thereafter.

SECTION 15. ORS 294.882 is amended to read:

294.882. (1) It is recognized that a time may come when the interest of local governments diminishes to the extent that participation in the local government investment pool no longer warrants its operation as a separate fund. If the local government investment pool decreases to a level below \$125 million, the State Treasurer may transfer the assets of the pool to the state investment fund established under ORS 293.701 [(2)(o)] **(2)(n)**. In that event, the local government investment pool participant accounts will be treated as are other state funds and accounts in receiving a proportionate share of the earnings of that investment fund. Notwithstanding ORS 294.860, 294.865, 294.870, 294.875 or 294.880, when the State Treasurer transfers the assets of the local government investment pool to the state investment fund, the distributions of income to local governments, payment of related expenses and the reporting, program examination and audit functions with respect to the investment pool participant accounts shall be administered in accordance with ORS 293.718, 293.751, 293.756, 293.761, 293.766, 293.771, 293.776 and 293.820.

(2) The State Treasurer, at the discretion of the treasurer may reestablish the local government investment pool as a separate fund, if the participant accounts increase to over \$125 million and in the State Treasurer's judgment, sufficient interest by local government exists to insure the local government investment pool will remain over \$125 million. Prior to reestablishing the pool as a separate fund, the State Treasurer shall first present a plan for operation, including the reasons for such action, to the Oregon Investment Council at a regularly scheduled meeting for its review and comment. The State Treasurer shall publish notice in the Secretary of State's administrative rules bulletin of the treasurer's intent to reestablish the pool as a separate fund at least 30 days prior to the meeting at which the Oregon Investment Council shall review the proposal, and notice of the meeting time and location of the Oregon Investment Council at which the proposal will be discussed.

SECTION 16. ORS 294.895 is amended to read:

294.895. The Oregon Short Term Fund Board shall:

(1) Advise the Oregon Investment Council and the investment officer in the management of the investment pool and in the investment of all funds defined in ORS 293.701 [(2)(p)] **(2)(o)** and invested pursuant to ORS 293.721.

(2) Review the rules promulgated by the investment officer as authorized under ORS 294.825 (4).

(3) Consult with the council and the investment officer on any matter relating to the investment and reinvestment of funds in the investment pool and on any matter relating to the investment or reinvestment of funds defined in ORS 293.701 [(2)(p)] **(2)(o)** and invested pursuant to ORS 293.721.

SECTION 17. ORS 311.780 is amended to read:

311.780. (1) Upon receipt of the notification from the Department of Revenue of the amount deferred on tax deferred property under ORS 311.740 to 311.780, the State Treasurer shall pay to the respective county tax collectors an amount equivalent to the full amount of tax listed by the department less three percent thereof.

(2) The department shall maintain accounts for each deferred property and shall accrue interest on the gross amount of taxes advanced.

(3) The funds provided for the payment made pursuant to subsection (1) of this section shall be made as investments from the excess funds mentioned in ORS 293.701 [(2)(o)] **(2)(n)**.

SECTION 18. ORS 317.057 is amended to read:

317.057. (1) As used in this section:

(a) "Extranational institution" has the meaning given that term in ORS 706.008;

(b) "Foreign association" means [*a foreign association as defined in ORS 722.004 or a federal association as defined in ORS 722.004,*] **a corporation organized to transact savings and loan business under federal law or under the laws of another state or territory of the United States, the home state or territory of which is a state or territory other than Oregon; and**

(c) "Out-of-state bank" has the meaning given that term in ORS 706.008.

(2) Except as provided in this section and ORS 713.300, an out-of-state bank, extranational institution or foreign association described in ORS 713.300, that engages in activities authorized under ORS 713.300, is not subject to any tax, license fee or charge for the privilege of doing business in this state or to any tax measured by net or gross income.

(3) If the out-of-state bank, extranational institution or foreign association acquires any property given as security for a mortgage or trust deed, all income accruing to the out-of-state bank, extranational institution or foreign association solely from the ownership, sale or other disposition of such property is subject to taxation in the same manner and on the same basis as income of corporations doing business in this state.

SECTION 19. ORS 317.147 is amended to read:

317.147. (1) As used in this section:

(a) "Farmworker housing" has the meaning given that term in ORS 315.163.

(b) "Lending institution" means a bank, mortgage banking company, trust company, savings bank, [*savings and loan association*,] credit union, national banking association, federal savings and loan association, federal credit union maintaining an office in this state, nonprofit community development financial institution or nonprofit public benefit corporation operating as a lending institution.

(2)(a) A lending institution shall be allowed a credit against the taxes otherwise due under this chapter for the tax year equal to 50 percent of the interest income earned during the tax year on loans to finance only costs directly associated with construction or rehabilitation of farmworker housing if, at the time the loan is made, the borrower certifies, to the satisfaction of the lender, that upon completion of the construction or rehabilitation and first occupation by farmworkers, the housing will comply with all occupational safety or health laws, rules, regulations and standards applicable for farmworker housing and that the housing will be occupied only by farmworkers and their immediate families.

(b) A copy of the certification described under paragraph (a) of this subsection shall be submitted to the Department of Revenue at the time that a credit under this section is first claimed.

(3) The credit allowed under this section applies only to loans to construct or rehabilitate farmworker housing located within this state.

(4) This credit applies only to loans made on or after January 1, 1990.

(5) The credit allowed in any one year may not exceed the tax liability of the taxpayer.

(6) If the loan has a term of longer than 10 years, then the credit shall be allowed only for the tax year of the taxpayer during which the loan is made and the nine tax years immediately following.

(7) The credit allowed under this section does not apply to loans in which the interest rate charged exceeds 13-1/2 percent per annum.

(8) The credit allowed under this section applies only to interest income from the loan and does not apply to any other loan fees or other charges collected by the lending institution with respect to the loan.

(9) The credit allowed under this section applies only to interest income actually collected by the lending institution during the tax year.

(10)(a) Except as provided in paragraph (b) of this subsection, if the lending institution sells the loan to another lending institution, then the credit shall pass to the assignee or transferee of the loan, subject to the same conditions and limitations as set forth in this section.

(b) A lending institution may assign, sell or otherwise transfer the loan to another person and retain the right to claim the credit granted under this section if the lending institution also retains responsibility for servicing the loan.

(c)(A) A lending institution that is not subject to taxation under this chapter may sell or otherwise transfer the credit allowed to the lending institution under this section to a taxpayer that is subject to taxation under this chapter.

(B) A transferee of a credit under this section shall be allowed the credit for the tax years that would have been allowable to the transferor had the transfer not occurred.

(C) The Department of Revenue shall by rule establish procedures for transferring a credit under this section.

SECTION 20. ORS 399.240 is amended to read:

399.240. (1) As used in this section:

(a) "Interest" includes service charges, renewal fees or other charges or fees associated with an obligation or liability.

(b) "Service member" means:

(A) A member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(B) A member of the Oregon National Guard who is called into active federal service under Title 10 of the United States Code.

(2) Notwithstanding ORS 82.010, 83.095, 708A.255, [722.354,] 723.502, 723.730 and 725.340, an obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member before being called into active service may not, during any part of the period of active service, bear interest in excess of six percent per year except by court order.

(3) The service member shall provide written notice to the creditor requesting that the rate of interest be reduced to six percent per year and shall include proof of the official orders showing that the service member is being called into active service of the state by the Governor under ORS 399.065 (1) or into active federal service under Title 10 of the United States Code.

(4) A creditor that receives a request under subsection (3) of this section to reduce a rate of interest may apply to the court for a determination that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially affected because of the active service of the member. If a court determines that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially affected because of the active service of the member, the court may order an interest rate that is just.

(5) A creditor must recompute the payment schedule to amortize the balance of the obligation or liability over the remainder of the obligation or liability at a rate of interest determined under subsection (2) or (4) of this section.

SECTION 21. ORS 456.548 is amended to read:

456.548. As used in ORS 456.548 to 456.725, unless the context requires otherwise:

(1) "Bonds" means any bonds, as defined in ORS 286A.001, or any other evidence of indebtedness, issued under ORS 456.515 to 456.725 or issued in anticipation of bonds and payable from the proceeds of bonds issued.

(2) "Capital reserve account" or "capital reserve accounts" means one or more of the special trust accounts that may be established by the Housing and Community Services Department within the Housing Finance Fund.

(3) "Consumer housing cooperative" means a cooperative corporation formed under ORS chapter 62 and whose articles of incorporation provide, in addition to the other requirements of ORS chapter 62, that:

(a) The consumer housing cooperative has been organized exclusively to provide housing facilities for persons and families of lower income and such social, recreational, commercial and communal facilities as may be incidental to such housing facilities.

(b) All income and earnings of the consumer housing cooperative shall be used exclusively for consumer housing cooperative purposes and that no unreasonable part of the net income or net earnings of the cooperative shall inure to the benefit or profit of any private individual, firm, corporation, partnership or association.

(c) The consumer housing cooperative is in no manner controlled or under the direction of or acting in the substantial interest of any private individual, firm, corporation, partnership or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any

transaction therewith, except that such limitation shall apply to the members of the cooperative only to the extent provided by rules of the department.

(d) The operations of the consumer housing cooperative may be supervised by the department and that the consumer housing cooperative shall enter into such agreements with the department as the department may require to provide regulation by the department of the planning, development and management of any housing project undertaken by the cooperative and the disposition of the property and other interests of the cooperative.

(4) "Development costs" means the costs that have been approved by the department as appropriate expenditures and includes, but is not limited to:

(a) Payments for options to purchase property for the proposed housing project site, deposits on contracts of purchase, payments for the purchase of property as approved by the department, legal, organizational and marketing expenses including payment of attorney fees, managerial and clerical staff salaries, office rent and other incidental expenses, payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work;

(b) Expenses for surveys as to need and market analyses; and

(c) Such other expenses incurred by the qualified housing sponsor as the department may deem necessary under ORS 456.548 to 456.725.

(5) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an agency or instrumentality thereof.

(6) "Housing development" means a development that contains housing units for persons or families of lower income and such other incidental elements of residential, commercial, recreational, industrial, communal or educational facilities as the department determines improve the quality of the development as it relates to housing for persons or families of lower income and the financial feasibility of the development.

(7) "Housing finance bond declaration" means a written instrument signed by the Director of the Housing and Community Services Department and on file with and bearing the certificate of approval of the State Treasurer or the designee of the State Treasurer, and all housing finance bond declarations supplemental to that instrument.

(8) "Housing Finance Fund" means the Housing Finance Fund established in ORS 456.720 (1).

(9) "Lending institution" means any bank, mortgage banking company, trust company, savings bank, [*savings and loan association*,] credit union, national banking association, federal savings and loan association or federal credit unit maintaining an office in this state, or any insurance company authorized to do business in this state.

(10) "Limited dividend housing sponsor" means a corporation, trust, partnership, association or other entity, or an individual that is a mortgagor.

(11) "Manufactured dwelling park nonprofit cooperative" has the meaning given that term in ORS 62.803.

(12) "Manufactured housing" means a dwelling unit manufactured off-site having a minimum width of 10 feet and a minimum area of 400 square feet built on a permanent chassis and designed to be used for permanent residential occupancy whether or not on a permanent foundation, and that contains permanent eating, cooking, sleeping and sanitary facilities and meets such standards as the department determines, by rule, are reasonable to maintain the quality, safety and durability of the dwelling, the sanitary requirements of the communities in which they are located and the security of the loans that the department may finance for the purchase of the dwellings.

(13) "Nonprofit housing corporation" means an organization formed under ORS chapter 65 and whose articles of incorporation provide, in addition to the other requirements of ORS chapter 65, that:

(a) The corporation has been organized exclusively to provide housing facilities for persons and families of lower income and such other social, recreational, commercial and communal facilities as may be incidental to such housing facilities.

(b) All the income and earnings of the corporation shall be used exclusively for corporation purposes and that no part of the net income or net earnings of the corporation may inure to the benefit of any private individual, firm, corporation, partnership or association.

(c) The corporation is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in transactions therewith.

(d) The operations of the corporation may be supervised by the department and that the corporation shall enter into such agreements with the department as the department may require to regulate the planning, development and management of any housing project undertaken by the corporation and the disposition of the property and other interests of the corporation.

(14) "Person of lower income" or "family of lower income" means:

(a) A person or family residing in this state whose income is not more than 80 percent of area median income, adjusted for family size, as determined by the State Housing Council based upon information from the United States Department of Housing and Urban Development;

(b) A person or family residing in this state whose income, adjusted for family size, is below the level the Housing and Community Services Department has determined to be necessary in order to obtain in the open market decent, safe and sanitary housing, including the cost of utilities and taxes, for not more than 25 percent of the gross income of the person or family; or

(c) Any person or family the department determines is appropriate to treat as a person of lower income or a family of lower income incidental to the accomplishment of department programs for persons and families of lower income described in paragraphs (a) and (b) of this subsection.

(15) "Project cost" or "costs of the project" means the sum of all reasonable expenses incurred by a qualified housing sponsor in undertaking and completing a housing project approved by the department. "Project costs" or "costs of the project" include but are not limited to the expenses incurred by a qualified housing sponsor for:

(a) Studies and surveys;

(b) Plans, specifications, architectural and engineering services;

(c) Legal, organizational and other special services;

(d) Financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated housing units;

(e) Movement of existing buildings to new sites; the cost of acquisition, or estimated fair market value, of land and other interests in real estate;

(f) Rehabilitation, reconstruction, repair or remodeling of existing buildings;

(g) Estimated carrying charges during construction and for a reasonable period thereafter;

(h) Placement of tenants or occupants and relocation services in connection with the housing project;

(i) Reasonable builder's or sponsor's profit and risk allowance; and

(j) Development costs not otherwise included in this subsection.

(16) "Qualified housing sponsor" includes, subject to the approval of the department:

(a) A consumer housing cooperative;

(b) A limited dividend housing sponsor;

(c) A nonprofit housing corporation;

(d) A for-profit housing sponsor including, but not limited to, an individual operating in compliance with the criteria adopted by the department under ORS 456.620 (1);

(e) A housing authority created by ORS 456.075;

(f) An urban renewal agency created by ORS 457.035; and

(g) Any city or county governing body or agency or department designated by the governing body.

(17) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including land development and acquisition, construction or rehabilitation of buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto and as the department de-

termines improve the quality of the development as it relates to housing for persons or families of lower income and the financial feasibility of the development. "Residential housing" includes, but is not limited to, a specific work or improvement within this state undertaken to provide mobile home or manufactured dwelling parks as defined in ORS 446.003. As used in this subsection, "land development" includes, but is not limited to, the improvement of streets and alleys and the construction of surface drains, sewers, curbing and sidewalks.

(18) "Residential loan" means any of the following:

(a) A loan that is for the acquisition, construction, improvement or rehabilitation of residential housing and, if the loan is for acquisition or construction of residential housing, that is secured by a first lien on real property located in the state and:

(A) Improved by a newly constructed, existing or rehabilitated residential structure for persons or families of lower income; or

(B) Unimproved if the proceeds of such loan shall be used for the erection of a residential structure thereon, whether or not such loan is insured or guaranteed by the United States or any instrumentality or agency thereof.

(b) An insured or guaranteed loan for the acquisition of manufactured housing or for the acquisition of a lot described in ORS 92.840 by a manufactured dwelling park tenant.

(c) A loan for the purchase of a proprietary lease and related cooperative shares in a housing cooperative formed under ORS chapter 62 secured by a security interest of first priority and a pledge or an assignment of proprietary leases and related cooperative shares.

(19) "Revolving account" means the Housing and Community Services Department Revolving Account created in ORS 456.574.

SECTION 22. ORS 458.670, as amended by section 16, chapter 45, Oregon Laws 2008, is amended to read:

458.670. As used in this section and ORS 458.675 to 458.700, unless the context requires otherwise:

(1) "Account holder" means a resident of this state who:

(a) Is 12 years of age or older;

(b) Is a member of a lower income household; and

(c) Has established an individual development account with a fiduciary organization.

(2) "Fiduciary organization" means an organization selected under ORS 458.695 to administer state moneys directed to individual development accounts and that is:

(a) A nonprofit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 2007; or

(b) A federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state.

(3) "Financial institution" means:

(a) An organization regulated under ORS chapters 706 to 716[722] or 723; or

(b) In the case of individual development accounts established for the purpose described in ORS 458.685 (1)(c), a financial institution as defined in ORS 348.841.

(4) "Individual development account" means a contract between an account holder and a fiduciary organization, for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into the financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(5) "Lower income household" means a household having an income equal to or less than 80 percent of the median household income for the area as determined by the Housing and Community Services Department. In making the determination, the department shall give consideration to any data on area household income published by the United States Department of Housing and Urban Development.

(6) "Resident of this state" has the meaning given that term in ORS 316.027.

SECTION 23. ORS 646A.628 is amended to read:

646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Consumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to ORS 646A.252 to 646A.270, 650.005 to 650.100, 697.005 to 697.095, 697.602 to 697.842, 705.350 and 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, [722,] 723, 725 and 726 to implement ORS 646A.600 to 646A.628.

SECTION 24. ORS 705.137 is amended to read:

705.137. (1) Except as provided in subsection (3) of this section, any document, material or other information that is in the possession or control of the Department of Consumer and Business Services for the purpose of administering ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905[,] **and** ORS chapters 59, [722,] 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in any private civil action. The Director of the Department of Consumer and Business Services may use such confidential documents, materials or other information in administering ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905[,] **and** ORS chapters 59, [722,] 723, 725 and 726, the Bank Act and the Insurance Code and in the furtherance of any other regulatory or legal action brought as a part of the director's duties.

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

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

(a) May authorize the sharing of confidential documents, materials and other information subject to subsection (1) of this section as appropriate among the administrative divisions and staff offices of the department created under ORS 705.115 for the purpose of administering and enforcing the statutes referred to in subsection (1) of this section, in order to enable the administrative divisions and staff offices to carry out their functions and responsibilities.

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

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

(4) Neither disclosure of documents, materials or other information to the director under this section nor the sharing of documents, materials or other information as authorized in subsection (3) of this section waives any applicable privilege or claim of confidentiality in the documents, materials or other information.

(5) This section does not prohibit the director from releasing final, adjudicated actions, including suspensions or revocations of certificates of authority or licenses, when the actions are otherwise open to public inspection, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

SECTION 25. ORS 705.635 is amended to read:

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

(2) Upon receiving a request for a certificate under subsection (1) of this section, the director shall within 10 business days determine whether the requested name and intended activity are in compliance with the provisions of the Bank Act and ORS chapters 59, 645, 705, 717, [722,] 725 and 726.

(3)(a) If the director determines that use of the requested name or intended activity is in compliance with the Bank Act and ORS chapters 59, 645, 705, 717, [722,] 725 and 726, the director shall issue a written certificate.

(b) If the director determines that use of the requested name or intended activity is not in compliance with the Bank Act and ORS chapters 59, 645, 705, 717, [722,] 725 and 726, the director shall promptly notify the requester in writing, who may:

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

(B) Request that the director conduct an administrative hearing. The hearing shall be conducted as a contested case hearing pursuant to ORS chapter 183.

SECTION 26. ORS 705.638 is amended to read:

705.638. (1) For purposes of this section, “company” means a corporation, nonprofit corporation, cooperative, limited liability company, partnership, limited liability partnership, limited partnership, business trust, association or other business entity.

(2) A company organized under the laws of this state for the purposes of conducting a banking business as defined in ORS 706.005 (6) either within or outside this state shall be organized under ORS chapter 707.

[3] *A company organized under the laws of this state to transact savings and loan business as defined in ORS 722.004 (25) either within or outside this state shall be organized under ORS chapter 722.*

SECTION 27. ORS 705.640 is amended to read:

705.640. (1) Whenever the Director of the Department of Consumer and Business Services has reason to believe that a person is violating *[any]* a provision of ORS 705.638, 707.005[,], **or** 707.010 *[or 722.012]*, the director:

(a) Shall have access to the premises where *[that]* **the** person is suspected of transacting banking business in violation of ORS 705.638, 707.005[,], **or** 707.010 *[or 722.012]* or where *[that]* **the** person may have books, accounts and records; and

(b) Shall have the power to examine, copy or take possession of the books, accounts and records of *[that]* **the** person in order to ascertain whether or not *[that]* **the** person has violated or is violating any provision of ORS 705.638, 707.005[,], **or** 707.010 *[or 722.012]*.

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

(3) When the director believes, from evidence satisfactory to the director, that *[any]* a person is violating the provisions of ORS 705.638, 707.005[,], **or** 707.010 *[or 722.012]*, the director may:

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

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

(4) An order under this section remains in effect until *[it is withdrawn by]* the director or *[by]* a court *[of competent jurisdiction]* **withdraws the order.**

SECTION 28. ORS 705.642 is amended to read:

705.642. (1) Whenever *[it appears to]* the Director of the Department of Consumer and Business Services **determines** that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of *[any of the provisions]* a **provision** of ORS 705.638, 707.005[,], **or** 707.010 *[or 722.012]* or any rule or order of the director, the director may bring suit in the name of

or on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the provisions of ORS 705.638, 707.005[,] **or** 707.010 [or 722.012] or [such] **the** rule or order. Upon a proper showing, the court shall grant a permanent or temporary injunction, restraining order or writ of mandamus. The court may fine the person against whom the order is entered not more than \$20,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for [any] **a** continuing violation [shall] **may** not exceed \$100,000. If the court finds that the defendant has violated [any] **a** provision of ORS 705.638, 707.005[,] **or** 707.010 [or 722.012 or any] **or a** rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

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

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

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph [shall] **must** be turned over to the General Fund of the State Treasury unless the court requires [other] **another** disposition.

SECTION 29. ORS 706.515 is amended to read:

706.515. (1) The Director of the Department of Consumer and Business Services may enter into cooperative, coordinating and information sharing agreements with [any] other bank supervisory agencies, **with the Financial Crimes Enforcement Network established by order of the United States Secretary of the Treasury or with [any] an organization affiliated with or representing one or more bank supervisory agencies. The director may enter into the agreements in order to examine or supervise a non-Oregon institution branch or other office or place of business located in this state or to examine or supervise a branch of a banking institution located in another state.** [with respect to the periodic examination or other supervision of any branch or other office or place of business in this state of any non-Oregon institution, or any branch of a banking institution located in any other state. The director may accept such supervisory agencies' reports of examination and reports of investigation in lieu of conducting the director's own examinations or investigations.] **The director may accept an agency report made pursuant to an agreement entered into under this section in lieu of the director's own examination or investigation.** The agreement may resolve conflicts of laws and specify the manner in which examination, supervision and application processes [shall] **will** be coordinated between this state and the home state of the non-Oregon institution.

(2) The director may enter into [contracts] **a contract** with [any] **a** bank supervisory agency that has concurrent jurisdiction over a banking institution or non-Oregon institution operating a branch or other office or place of business in this state[,] to engage the services of [such] **the** agency's examiners at a reasonable rate of compensation[,] or to provide the services of the director's examiners to [such] **the** agency at a reasonable rate of compensation. [Any such] **The** contract [shall be deemed] **is** exempt from competitive bidding requirements under the provisions of [ORS 279.835 to 279.855 and] ORS chapters 279A and 279B. The contract may resolve conflicts of laws and specify the manner in which examination, supervision and application processes [shall] **will** be coordinated between this state and the home state of the non-Oregon institution.

(3) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies *[having]* **that have** concurrent jurisdiction over **a non-Oregon institution branch or other office or place of business located in this state or a branch of a banking institution located in another state.** *[any branch or other office or place of business in this state of a non-Oregon institution, or any branch of a banking institution located in any other state, provided that the director may at any time take such actions independently if the director deems such actions to be necessary or appropriate to carry out the director's responsibilities or to ensure compliance with the laws of this state, but provided further, that in the case of a non-Oregon institution, the director shall recognize:]* **Conducting a joint examination or enforcement action under this section does not prevent the director from conducting an independent examination or enforcement action at any time if the director determines that carrying out the director's responsibilities or ensuring compliance with the laws of this state requires the independent action. With respect to examinations or enforcement actions that involve non-Oregon institutions, the director shall recognize:**

(a) The exclusive authority of the banking supervisory agency of the home state or country of the non-Oregon institution over corporate governance matters; and

(b) The primary responsibility of the banking supervisory agency of the home state or country of the non-Oregon institution over safety and soundness matters.

(4) *[Any fees collected by]* The director **may share fees collected** from non-Oregon institutions under the provisions of the Bank Act *[may be shared]* with *[other]* **another** bank supervisory *[agencies]* **agency** or *[any]* **an** organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between *[such parties]* **the agency or organization** and the director.

SECTION 30. ORS 706.530 is amended to read:

706.530. (1) Each banking institution and each non-Oregon institution shall pay each year to the Director of the Department of Consumer and Business Services the fee *[determined by reference to the schedule adopted by the director under ORS 705.620.]* **set in a schedule the director adopts by rule.** The fee shall be paid by the date set by the director in the rule establishing the schedule.

(2) **The director shall set or change the fee schedule described in subsection (1) of this section after considering:**

(a) **The amount of other moneys available for the director to use in performing the director's duties;**

(b) **The costs the director will incur in performing the director's duties in the year in which the director will collect the fee; and**

(c) **The amount the director needs to establish and maintain a reasonable emergency fund.**

SECTION 30a. ORS 706.580 is amended to read:

706.580. (1) *[When it appears to]* The Director of the Department of Consumer and Business Services *[that]* **may take an action described in subsection (2) of this section if** a banking institution or non-Oregon institution:

(a) **Conducts business in an unsafe or unauthorized manner;**

(b) **Refuses to submit records for inspection by an examiner or by the Department of Consumer and Business Services; or**

(c) **Violates a law of this state or the United States or a duly issued order of the director.** *[is violating any law or duly issued order of the director, is conducting its business in an unsafe or unauthorized manner, or has refused to submit its records for inspection by an examiner or examination by the Department of Consumer and Business Services:]*

[(1)] (2) **If the director believes a condition described in subsection (1) of this section exists,** the director may:

(a) Notify the appropriate bank supervisory agency, with respect to *[such]* **the** banking institution or non-Oregon institution, of the director's determination and the facts and circumstances on which *[such]* **the** determination is based;

(b) Provide the banking institution or non-Oregon institution with a statement of the charges on the basis of which the **director determined** [*determination was made*] that the banking institution or non-Oregon institution is violating the law or conducting [*its*] business in an unsafe or unauthorized manner;

(c) Notify the banking institution or non-Oregon institution of the date and place of a hearing before the director, or [*any*] a person designated by the director, with respect to the charges against the banking institution or non-Oregon institution; and

(d) Conduct a hearing pursuant to the notice given to the banking institution or non-Oregon institution under subsection (1)(c) of this section[,] and make findings with respect to each of the charges specified in the notice to the banking institution or non-Oregon institution.

[2)] **(3) After a hearing conducted under subsection (2) of this section,** the director may:

(a) By an order in writing:

(A) Direct the discontinuance of the illegal, unsafe or unauthorized practices; and

(B) Direct the banking institution or non-Oregon institution to take affirmative action to correct or remedy [*any conditions resulting*] **a condition that resulted** from the illegal, unsafe or unauthorized practice;

(b) Apply for and obtain an injunction or other appropriate order from a court [*having*] **that has** jurisdiction over the matter[, *enforcing*] **to enforce** the director's order issued under [*subsection (2)(a)*] **paragraph (a)** of this [*section*] **subsection;**

(c) Publish notice of [*any*] **an** order [*issued by*] the director **issued** pursuant to [*subsection (2)(a)*] **paragraph (a)** of this [*section*] **subsection;** and

(d) Suspend or revoke the authority of a non-Oregon institution to open, occupy or maintain a branch or branches in this state.

SECTION 31. ORS 706.720 is amended to read:

706.720. (1) The Director of the Department of Consumer and Business Services shall receive and file in the Department of Consumer and Business Services all reports required by the Bank Act.

(2) Except as provided in subsection (3) of this section and ORS 706.730, the records of the Department of Consumer and Business Services pertaining to the administration of the Bank Act are available for public inspection unless the director determines in [*the*] **a** particular instance that [*the public interest in disclosure of the records is outweighed by the interests of*] an Oregon operating institution or [*its*] **the** directors, stockholders, officers, employees and customers **of the Oregon operating institution have an interest in keeping the records confidential that outweighs the public interest in disclosing the records** [*in keeping the records confidential*], or that the records are exempt from disclosure under ORS 192.501 to 192.505. A determination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

(3) Except as provided in subsections (4) and (5) of this section, the following records of the department are exempt from disclosure or production and shall be treated as confidential as provided in ORS 705.137:

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) **Financial statements of and** investigatory information concerning persons subject to investigation by the director under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705. [*and financial statements of such persons.*]

(c) Proprietary information.

(d) Reviews of financial statements submitted to the director.

(e) Reports filed under ORS 706.655.

(f) Stockholder lists.

(g) **Correspondence, reports or other information obtained from or provided to the Financial Crimes Enforcement Network established by order of the United States Secretary of the Treasury.**

(4) Notwithstanding subsection (3) of this section, the director may disclose [*any*] **a** record [*of the department specified in this subsection pertaining*] **that is specified in this subsection and that**

pertains to an Oregon operating institution that has been liquidated under ORS 711.400 to 711.615 if the director determines in *[the]* a particular instance that the public interest in disclosure of the record outweighs the interests of the Oregon operating institution or *[its]* **of the directors, stockholders, officers, employees or customers of the Oregon operating institution** in keeping the record confidential. **The director may not in any circumstances, however, disclose a record or a portion of a record** *[Under no circumstances, however, shall the director disclose any such record or portion thereof]* that contains *[any]* proprietary information or *[any]* information *[relating to the individual]* **that relates to an individual's** financial activities or affairs *[of persons]* unless the director concludes that *[those]* **the** activities or affairs were a direct and substantial contributing factor in the failure of the Oregon operating institution. This subsection applies to the following records of the department:

(a) Examination reports and work papers, directives, orders and correspondence relating to examination reports;

(b) Investigatory information concerning persons subject to investigation by the director under ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705;

(c) Reviews of financial statements; and

(d) Reports filed under ORS 706.655.

(5) Notwithstanding ORS 40.270, an officer of the department may be examined concerning records that are exempt from disclosure under subsection (2) or (3) of this section and ORS 706.730. *[and]* The records are subject to production if the court before which a civil or criminal action is pending finds that *[such]* **the** examination and production is essential for establishing a claim or defense. In making a finding under this subsection, if the court views the records, the court shall do so in camera.

(6) A civil penalty imposed by the director under the Bank Act shall become subject to public inspection after the 20th day after the director imposes the civil penalty.

(7) All records of the department pertaining to the condition of Oregon operating institutions may be furnished to:

(a) The Federal Reserve Bank and *[its]* examiners **from the Federal Reserve Bank**.

(b) The Comptroller of the Currency of the United States and national bank examiners.

(c) The Federal Deposit Insurance Corporation and *[its]* examiners **from the Federal Deposit Insurance Corporation**.

(d) The Federal Home Loan Bank of which the operating institution is a member or to which the operating institution has applied for membership.

(e) The State Treasurer if the Oregon operating institution is or has applied to become a depository of public fund deposits.

(f) *[Any]* A supervisory authority that regulates financial institutions, financial holding companies or bank holding companies.

(g) The respective Oregon operating institution, or the financial holding company or bank holding company that controls an Oregon operating institution.

(8) The director shall prescribe and furnish to interested persons the forms for all reports required by the Bank Act.

(9) If the director is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and shall disclose only the nonexempt material.

SECTION 32. ORS 713.300 is amended to read:

713.300. (1) For purposes of this section, "foreign association" means *[a foreign association as defined in ORS 722.004 or a federal association as defined in ORS 722.004,]* **a corporation organized to transact savings and loan business under federal law or under the laws of another state or territory of the United States, the home state or territory of which is a state or territory other than Oregon.**

(2) Subject to subsection (3) of this section, *[any]* **an** out-of-state bank, extranational institution or foreign association, without being authorized to transact banking business or savings and loan business in this state, may take, acquire, hold and enforce notes secured by mortgages or trust deeds and make commitments to purchase such notes. The out-of-state bank, extranational institution or foreign association may foreclose the mortgages or trust deeds in the courts of this state, acquire the mortgaged property, hold, own and operate the property for a period not exceeding five years and dispose of the property. The activities authorized under this subsection by an out-of-state bank, extranational institution or foreign association *[shall]* **do** not constitute transacting business in this state for the purposes of ORS chapter 60.

(3) Before an out-of-state bank, extranational institution or foreign association engages in *[any of the activities]* **an activity** described in subsection (2) of this section, the bank, institution or association shall first file with the Department of Consumer and Business Services a statement signed by *[its]* **the** president, secretary, treasurer or general manager **of the bank, institution or association** indicating that the bank, institution or association designates the Director of the Department of Consumer and Business Services *[its]* **as the bank's, institution's or association's** attorney for service of process. The out-of-state bank, extranational institution or foreign association shall pay an initial filing fee of \$200 and an annual fee of \$200. The statement shall include the address of the principal place of business of the out-of-state bank, extranational institution or foreign association.

(4) The Director of the Department of Consumer and Business Services, upon receiving service of process as authorized by subsection (3) of this section, immediately shall forward all documents served upon the director to the principal place of business of the out-of-state bank, extranational institution or foreign association.

(5) The filing requirements of subsection (3) of this section do not apply to an out-of-state bank or extranational institution that has obtained a certificate of authority to transact banking business in this state under ORS 713.020., *or to a foreign association that has obtained a certificate of authority to transact savings and loan business in this state under ORS 722.502.* Notwithstanding subsection (3) of this section, *[such an]* **the** out-of-state bank, extranational institution or foreign association may take, acquire, hold and enforce notes secured by mortgages or trust deeds, make commitments to purchase *[such]* **the** notes and participate with other lenders authorized to do business in this state in *[the making of]* **making** loans for which *[such]* **the** notes are executed and delivered.

(6) An out-of-state bank, extranational institution or foreign association that indirectly engages in the activities described in subsection (2) of this section because of *[its]* **a** beneficial interest in a pool of notes secured by mortgages or trust deeds need not comply with subsection (3) of this section.

NOTE: Sections 33 through 35 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 36. ORS 715.055 is amended to read:

715.055. (1) A financial holding company or a bank holding company of an Oregon stock bank shall submit to the Director of the Department of Consumer and Business Services, *[copies of all]* **in a form and format specified by the director, a copy of specified** reports that the financial holding company or the bank holding company is required to submit to the Federal Reserve Board. The *[copies shall be submitted]* **financial holding company or bank holding company shall submit the copies** to the director within the time periods required by applicable federal law and regulation for *[the filing of the originals]* **filing the originals** with the Federal Reserve Board.

(2) The director may call for additional information from a financial holding company or a bank holding company, in *[such]* **a form and format [as]** **that** the director may prescribe by rule or order, if the director considers *[it]* **the additional information** necessary in order to obtain full knowledge of the condition of the Oregon stock bank *[which]* **that** the financial holding company or the bank holding company controls. The financial holding company or the bank holding company shall submit the *[report]* **additional information** to the director within the time period prescribed by the director.

(3) If a financial holding company or a bank holding company fails to submit a report or additional information as required by this section, the financial holding company or the bank holding company shall pay to the director a penalty of up to \$1,000 for each day [it] **the financial holding company or bank holding company** fails to comply. If the financial holding company or the bank holding company delays or refuses to pay the penalty upon demand by the director, the director may maintain an action in the director's name against the delinquent financial holding company or bank holding company for the recovery of the penalty.

SECTION 37. ORS 717.235 is amended to read:

717.235. (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] **a provision** 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] **an** 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] **a** controlling person is subject to [any] **a** 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] **a** 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.

SECTION 38. ORS 723.014 is amended to read:

723.014. The Director of the Department of Consumer and Business Services may not issue a certificate of approval under ORS 723.012 if *[any]* a person named in the articles of incorporation submitted for approval:

- (1) Is insolvent or bankrupt;
- (2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession;
- (3) Has willfully or repeatedly violated or failed to comply with *[any]* a provision of the Oregon Bank Act, *[the Savings Association Act,]* the Oregon Credit Union Act, the Oregon Consumer Finance Act, the Oregon Securities Law, the Oregon Mortgage Lender Law or the Pawnbrokers Act, or *[any]* an administrative rule or order adopted *[pursuant to any such Act]* **under an Act identified in this subsection;**
- (4) Has been convicted of a crime, an essential element of which is fraud;
- (5) Is not qualified to conduct a credit union business on the basis of such factors as training, experience and knowledge of the business;
- (6) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the credit union business;
- (7) 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
- (8) Is the subject of an order **that was issued by the regulatory authority of another state, or of the federal government, with authority over banking institutions, credit unions, consumer finance companies, savings associations, securities firms or mortgage lenders, that was** entered within the past five years *[subjecting]* **and that subjects** the person to a fine or other civil penalty or *[removing]* **removes** the person from an office in a state banking institution, a national bank, a state or federal credit union, a state or federal savings association or a consumer finance company, or from a position as a securities broker or dealer, a state or federal investment adviser or a mortgage lender.*[, that was issued by the regulatory authority of another state, or of the federal government, with authority over such banking institutions, credit unions, consumer finance companies, savings associations, securities firms or mortgage lenders.]*

SECTION 39. ORS 723.114 is amended to read:

723.114. (1) Each credit union shall pay to the Director of the Department of Consumer and Business Services each year **a fee set in a schedule the director adopts by rule.** *[the fee determined by reference to the schedule adopted by the director under ORS 705.620.]* The fee shall be paid by the date set by the director in the rule establishing the schedule.

(2) In addition to any fee collected under subsection (1) of this section, whenever the director devotes any extra attention to the affairs of a credit union, either upon determination by the director or upon request of the credit union, the fee for the extra service shall be the actual cost *[thereof]* **of the extra service.**

(3) **The director shall set or change the fee schedule described in subsection (1) of this section after considering:**

- (a) **The amount of other moneys available for the director to use in performing the director's duties;**
- (b) **The costs the director will incur in performing the director's duties in the year in which the director will collect the fee; and**
- (c) **The amount the director needs to establish and maintain a reasonable emergency fund.**

SECTION 40. ORS 723.118 is amended to read:

723.118. (1) The Director of the Department of Consumer and Business Services shall receive and file in the Department of Consumer and Business Services all reports required under this chapter.

(2) Except as provided in subsection (3) of this section, the records of the department pertaining to the administration of this chapter are available for public inspection unless the director deter-

mines in *[the]* a particular instance that *[the public interest in disclosing the records is outweighed by the interests of]* the credit union or *[its]* **the** directors, members, officers or employees **of the credit union have an interest** in keeping the records confidential **that outweighs the public interest in disclosing the records**, or that the records are exempt from disclosure under ORS 192.501 to 192.505. A determination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

(3) Except as provided in subsections (4) and (5) of this section, the following records of the department are exempt from disclosure or production and shall be treated as confidential as provided in ORS 705.137:

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) **Financial statements of and** investigatory information concerning persons subject to investigation by the director under ORS 723.014 or 723.132. *[and financial statements of those persons.]*

(c) Proprietary information.

(d) Reviews of financial statements submitted to the director.

(e) The name of a member or borrower and the amount of shares, deposits or debts of a member or borrower.

(f) Correspondence, reports or other information obtained from or provided to the Financial Crimes Enforcement Network established by order of the United States Secretary of the Treasury.

(4) Notwithstanding subsection (3) of this section and except as otherwise provided in this subsection, the director may disclose *[any]* a record *[of the department specified in this subsection pertaining]* **that is specified in this subsection and that pertains** to a credit union that has been liquidated under ORS 723.676 if the director determines in *[the]* a particular instance that the public interest in disclosing the record outweighs the interests of the credit union or *[its]* **of the** directors, members, officers or employees **of the credit union** in keeping the record confidential. The director may not disclose *[any]* a record or portion of a record that contains *[any]* proprietary information or *[any]* information *[relating to the individual]* **that relates to an individual's** financial activities or affairs *[of persons]* unless the director concludes that *[those]* **the** activities or affairs were a direct and substantial contributing factor in the failure of the credit union. This subsection applies to the following records of the department:

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) Investigatory information concerning persons subject to investigation by the director under ORS 723.014 or 723.132.

(c) Reviews of financial statements.

(d) Reports filed under ORS 723.106.

(5) Notwithstanding ORS 40.270, an officer of the department may be examined concerning records that are exempt from disclosure under subsection (2) or (3) of this section. *[and]* The records are subject to production if the court before which a civil or criminal action is pending finds that the examination and production is essential for establishing a claim or defense. In making a finding under this subsection, if the court views the records, the court shall do so in camera.

(6) All records of the department pertaining to the condition of credit unions may be furnished to:

(a) The National Credit Union Administration.

(b) The Federal Home Loan Bank of which the credit union is a member or to which the credit union has applied for membership.

(c) The State Treasurer if the credit union is a depository of public fund deposits.

(d) The respective credit union.

(7) If the director is requested to disclose *[any]* a record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of

law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and may disclose only the nonexempt material.

SECTION 41. ORS 723.136 is amended to read:

723.136. (1) The Director of the Department of Consumer and Business Services may enter into cooperative, coordinating and information sharing agreements with *[any other]* **another** credit union supervisory agency, **with the Financial Crimes Enforcement Network established by order of the United States Secretary of the Treasury or with *[any]* an organization affiliated with or representing one or more credit union supervisory agencies. The director may enter into the agreements in order to examine or supervise a non-Oregon institution branch or other office or place of business located in this state or to examine or supervise a branch of a credit union that is chartered in Oregon and is located in another state.** *[with respect to the periodic examination or other supervision of any branch or other office or place of business in this state of any non-Oregon institution, or any branch of a credit union that is chartered in Oregon and is located in any other state. The director may accept the supervisory agency's reports of examination and reports of investigation in lieu of conducting the director's own examinations or investigations.]* **The director may accept an agency report made pursuant to an agreement entered into under this section in lieu of the director's own examination or investigation.** The agreement may resolve conflicts of laws and specify the manner in which examination, supervision and application processes *[shall]* **will** be coordinated between this state and the home state of the non-Oregon institution. The director may also share information with the Federal Home Loan Bank and *[its]* **the directors of the Federal Home Loan Bank.**

(2) The director may enter into *[contracts]* **a contract** with *[any]* **a** credit union supervisory agency that has concurrent jurisdiction over a credit union operating a branch or other office or place of business in this state~~,~~ to engage the services of *[such]* **the** agency's examiners at a reasonable rate of compensation~~,~~ or to provide the services of the director's examiners to *[such]* **the** agency at a reasonable rate of compensation. *[Any such]* **The** contract *[shall be deemed]* **is** exempt from competitive bidding requirements under the provisions of *[ORS 279.835 to 279.855 and]* ORS chapters 279A and 279B. The contract may resolve conflicts of laws and specify the manner in which examination, supervision and application processes *[shall]* **will** be coordinated between this state and the home state of the non-Oregon institution.

(3) The director may enter into joint examinations or joint enforcement actions with other credit union supervisory agencies that have concurrent jurisdiction over **a non-Oregon institution branch or other office or place of business located in this state or a branch of a credit union that is chartered in Oregon and is located in another state.** *[any branch or other office or place of business in this state of a non-Oregon institution, or any branch of a credit union that is chartered in Oregon and is located in any other state, provided that the director may at any time take the actions independently if the director deems the actions to be necessary or appropriate to carry out the director's responsibilities or to ensure compliance with the laws of this state. In the case of a non-Oregon institution, the director may recognize:]* **Conducting a joint examination or enforcement action under this subsection does not prevent the director from conducting an independent examination or enforcement action at any time if the director determines that carrying out the director's responsibilities or ensuring compliance with the laws of this state requires the independent action. With respect to examinations or enforcement actions that involve non-Oregon institutions, the director may recognize:**

(a) The exclusive authority of the credit union supervisory agency of the home state of the non-Oregon institution over corporate governance matters; and

(b) The primary responsibility of the credit union supervisory agency of the home state of the non-Oregon institution over safety and soundness matters.

(4) *[Any fees collected by]* The director **may share fees collected** from non-Oregon institutions under the provisions of this chapter *[may be shared]* with *[other]* **another** credit union supervisory *[agencies]* **agency** or *[any]* **an** organization affiliated with or representing one or more credit union

supervisory agencies in accordance with agreements between [*such parties*] **the agency or organization** and the director.

SECTION 42. ORS 723.752 is amended to read:

723.752. Any credit union subject to this chapter shall be deemed an institution for savings within the meaning of the law that exempts such institutions from taxation. No law, except as stated in this section, that taxes corporations in any form, or the shares thereof or the accumulations therein, shall apply to credit unions doing business in accordance with this chapter unless the credit unions are specifically named in the law. [*However, credit unions subject to this chapter shall be subject to the same tax as mutual savings and loan associations.*]

SECTION 42a. ORS 723.822 is amended to read:

723.822. (1) The Director of the Department of Consumer and Business Services may issue and serve upon a credit union or a director, officer, committee member, employee or agent of a credit union an order to cease and desist from a practice or a violation as follows:

(a) The director may issue an order to cease and desist from an unsafe or unsound practice when the director has reasonable cause to believe that the person to whom the order is directed is engaging, has engaged or is about to engage in an unsafe or unsound practice in conducting the business of the credit union.

(b) The director may issue an order to cease and desist from a violation when the director has reasonable cause to believe that the person to whom the order is directed is violating, has violated or is about to violate a law, [*or*] **rule or regulation of this state or the United States**, an order of the director or [*any*] **a provision of the articles of incorporation or bylaws of the credit union.**

(2) An order under subsection (1) of this section [*shall*] **must** include the following:

(a) A statement of the facts [*constituting*] **that constitute** the practice or violation.

(b) A provision [*requiring*] **that requires** the person named in the order to cease and desist from the practice or violation. The provision may be mandatory or otherwise.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under ORS chapter 183.

(3) [*When*] **If** the practice or violation specified in the order or the continuation of the practice or violation is likely to prejudice the interest of the members of a credit union, the director may issue an order effective immediately or at a later date. In all other cases, the order [*shall be*] **is** effective 30 days after the date of the order unless the person named in the order requests a hearing [*thereon*] **on the order.**

(4) An order under this section remains in effect until [*it*] **a court order or the director withdraws the order** [*is withdrawn by the director or by a court order*].

(5) If an individual named in an order under this section fails to comply with the order, the director may issue an order [*removing or suspending*] **that removes or suspends** the individual from the office or position [*held by*] the individual **holds**. The removal or suspension is in addition to any penalty provided by ORS 723.995 for failure to comply with an order issued under this section.

SECTION 43. ORS 725.120 is amended to read:

725.120. (1) Application for [*the*] **a license required under ORS 725.045** shall be in writing in [*the*] **a form** prescribed by the Director of the Department of Consumer and Business Services. **The application** [*and*] shall contain the name and both the residence and business addresses of [*the*] **each individual applicant, of each member of a partnership or association that applies for a license and of each officer or director of a corporation that applies for a license.**[*and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof.*] The application shall also contain the county and city with street and number, if any, where the business is to be conducted and any other information [*which*] the director may require.

(2) *Notice of the filing of the application shall be posted in the office of the Department of Consumer and Business Services for 30 days and no license shall be issued before the expiration of such 30-day period. However, the director may waive the posting of notice and issue a license without regard*

to such 30-day period if the application is for a license at a location where a license has been surrendered because of:]

[*(a) The transfer of the business of the licensee, and the applicant is the transferee;*]

[*(b) The death of the licensee, and the applicant is a representative or heir of the licensee; or*]

[*(c) The change of the name under which the licensee does business, and the applicant is the same licensee.*]

[~~(3)~~ (2) An applicant, at the time *[of making application]* **the applicant applies for a license under this section**, shall pay to the director a license fee determined under ORS 725.185 for the period terminating on the last day of the current calendar year. *[In case the license is not issued for cause or if the application is withdrawn after the applicant has been investigated by the director, there shall be refunded to the applicant all the license fee except any portion thereof determined by the director to reflect administrative and investigative costs incurred by the section relative to the application. Otherwise no part of any license fee shall be refunded.]* **If the director denies the applicant a license for cause or if the applicant withdraws the application after the director investigates the applicant, the director shall refund the license fee paid under this subsection, less an amount that reflects the director's administrative and investigative costs for the application.**

SECTION 44. ORS 725.145 is amended to read:

725.145. The Director of the Department of Consumer and Business Services may disapprove an application for a license if *[any]* a person named in the application submitted pursuant to ORS 725.120:

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

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

(3) Has knowingly or repeatedly violated or failed to comply with any provision of the Oregon Bank Act, *[the Savings Association Act,]* the Oregon Credit Union Act, the Oregon Consumer Finance Act or the Pawnbrokers Act, or any administrative rule or order adopted *[pursuant to any such Act]* **under an Act identified in this subsection;**

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

(5) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving *[any]* **an** aspect of the consumer finance business;

(6) Is the subject of an order of the director~~,~~ subjecting the person to a fine or other civil penalty under the Bank Act~~,~~ **or** ORS chapter ~~[722 or]~~ 723 or this chapter, or removing the person from an office in any entity regulated under the Bank Act~~,~~ **or** ORS chapter ~~[722 or]~~ 723 or this chapter; or

(7) Is the subject of an order **that was issued by the regulatory authority of another state or of the federal government with authority over banking institutions, savings associations, credit unions or consumer finance companies, that was** entered within the past five years~~,~~ *subjecting* **and that subjects** the person to a fine or other civil penalty~~,~~ *or removing* **or removes** the person from an office in a state banking institution, a national bank, a state or federal savings association, a state or federal credit union or a consumer finance company~~,~~ *issued by the regulatory authority of another state or of the federal government with authority over such banking institutions, savings associations, credit unions or consumer finance companies.*

SECTION 45. ORS 725.185 is amended to read:

725.185. (1) Each licensee shall pay to the Director of the Department of Consumer and Business Services each year the license fee *[determined by reference to the schedule adopted by the director under ORS 705.620.]* **set in a schedule the director adopts by rule.** The fee shall be paid by the date set by the director in the rule establishing the schedule.

(2) In addition to any license fee collected under subsection (1) of this section, whenever the director devotes any extra attention to the affairs of a licensee, either upon determination by the

director or upon request of the licensee, the fee for the extra service shall be the actual cost [thereof] of the extra service.

(3) The director shall set or change the fee schedule described in subsection (1) of this section after considering:

(a) The amount of other moneys available for the director to use in performing the director's duties;

(b) The costs the director will incur in performing the director's duties in the year in which the director will collect the fee; and

(c) The amount the director needs to establish and maintain a reasonable emergency fund.

SECTION 46. ORS 725.340 is amended to read:

725.340. (1) Except as provided in ORS 725.615 and 725.622, a licensee may:

(a) Charge, contract for and receive in connection with a consumer finance loan made in accordance with this chapter a finance charge that, when expressed as an annual percentage rate, does not exceed the greater of:

(A) 36 percent; or

(B) 30 percentage points in excess of the discount [*rate on 90-day commercial paper in effect at the Federal Reserve Bank of San Francisco*] **window primary credit rate**. The Director of the Department of Consumer and Business Services on the [*first business day of each calendar year*] **second Friday of December** shall determine by order from published sources **available on that date** the discount rate upon which the annual percentage rate set forth in this subparagraph will be based **as of January 1 of the following calendar year**. The annual percentage rate set forth in this subparagraph shall apply to each new loan made during the succeeding [*12 months*] **calendar year** for the entire term of the loan, including all renewals of the loan.

(b) Contract for and receive in connection with a consumer finance loan made in accordance with this chapter, and in addition to the finance charge described in paragraph (a) of this subsection, other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services. For purposes of this paragraph, "fees, expenses or damages" includes, but is not limited to:

(A) Items exempted from the computation of the finance charge in accordance with the Truth in Lending Act, 15 U.S.C. 1605(d) and (e), as that Act existed on July 2, 2007, and similar pass-through fees or charges;

(B) Prepayment fees and late fees;

(C) Fees and damages in accordance with ORS 30.701;

(D) Actual expenses the licensee reasonably incurs in collecting a consumer finance loan that the borrower or consumer has failed to repay according to the terms of the consumer finance loan contract; and

(E) Amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court of law.

(c) For purposes of this subsection, "finance charge" and "annual percentage rate" have the meanings given those terms in the federal Truth in Lending Act, 15 U.S.C. 1601 et seq.

(2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less and requires repayment in substantially equal or consecutive monthly installments of principal and interest combined, the interest or consideration may be precomputed, contracted for and earned on scheduled unpaid principal balances on the assumption that all scheduled payments will be made when due. In such cases, every payment may be applied to the combined total of principal and precomputed interest until the contract is fully paid, and the acceptance or payment of interest or consideration on any loan made under the provisions of this subsection [*is not considered to*] **does not** constitute payment, deduction or receipt [*thereof*] **of the interest or consideration** in advance. The precomputed interest or consideration is subject to the following adjustments:

(a) When a default of more than 10 days in the payment of any scheduled installment occurs, the licensee may charge and collect a default charge not exceeding five percent of the unpaid

amount of the installment or \$5, whichever is less. A default charge may be collected only once on an installment, but may be collected at the time [it] **the default charge** accrues or at any time thereafter. A default charge may not be assessed with respect to an installment [which] **that** is paid in full on or within 10 days after a scheduled installment due date when an earlier maturing installment or a default or deferral charge on an earlier maturing installment may not have been paid in full even though all or part of such installment payment is applied to an earlier maturing installment, or a default or deferral charge.

(b) If the payment of all unpaid installments is deferred one or more full months, and if the contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual percentage rate specified in subsection (1)(a) of this section and previously disclosed to the borrower pursuant to the federal Truth in Lending Act applied to the sum of the installments deferred for the length of the deferral period. The deferral period is that period in which no scheduled installment is required to be paid by reason of the deferral. The charge may be collected at the time of deferral or at any time thereafter. A deferral charge may not be made for the deferral of any installment with respect to which a default charge has been collected, unless the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to any other rebate which may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of an unexpired month exceeding 15 days is considered to be a month.

(c) Upon prepayment in full of the unpaid balance of a precomputed loan, a rebate of unearned interest or consideration shall be made as provided in this paragraph. The amount of the rebate shall be not 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 or consideration 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 rebate computations under this subparagraph, the installment due date preceding the date of prepayment is [considered to be] 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 [considered to be] nearest to the date of prepayment. In determining the simple interest rate, the licensee may apply to the scheduled payments the actuarial method[,] by which each scheduled payment is applied first to accrued and unpaid interest or consideration[,] and any amount remaining is applied to reduction of the principal balance.

(3) If the borrower agrees to perform certain duties to insure or preserve the collateral and fails to perform those duties, the licensee may pay for the performance of [those] **the** duties and add the amounts paid to the unpaid principal balance. A charge may be made for sums advanced, at the rate provided for in the loan agreement.

(4) The loan contract may provide that after default and referral the borrower shall pay the licensee for reasonable attorney fees actually paid by the licensee to an attorney **who is** not a salaried employee of the licensee.

SECTION 47. ORS 726.075 is amended to read:

726.075. The Director of the Department of Consumer and Business Services may not grant a license to engage in the business of pawnbroker to any person if any person named in the application submitted pursuant to ORS 726.060:

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

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

(3) Has willfully or repeatedly violated or failed to comply with [any provision] **a provision** of the Oregon Bank Act, [the Savings Association Act,] the Oregon Credit Union Act, the Oregon

Consumer Finance Act or the Pawnbrokers Act, or any administrative rule or order adopted [*pursuant to any such Act*] **under an Act identified in this subsection;**

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

(5) Is not qualified to conduct a pawnbroker business on the basis of such factors as training, experience and knowledge of the business;

(6) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving [*any*] **an** aspect of the pawnbroker business;

(7) 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*] **an** entity regulated by either director; or

(8) Is the subject of an order **that was issued by the regulatory authority of another state or of the federal government with authority over such banking institutions, credit unions, consumer finance companies or savings associations, that was** entered within the past five years[, *subjecting*] **and that subjects** the person to a fine or other civil penalty[, *or removing*] **removes** the person from an office in a state banking institution, a national bank, a state or federal savings association, a state or federal credit union or a consumer finance company. [, *issued by the regulatory authority of another state or of the federal government with authority over such banking institutions, credit unions, consumer finance companies or savings associations.*]

SECTION 48. ORS 732.145 is amended to read:

732.145. (1) [*Every*] **A** subscription to the capital stock of an insurer in the process of organization [*shall*] **must** contain a stipulation that no sum shall be used for commission, promotion or organization expenses in excess of a stated percent of the amount paid upon the subscription. This stated amount [*shall*] **may** not exceed 15 percent.

(2) [*All*] Sums paid by subscribers and applicants [*shall*] **must** be deposited under an escrow agreement approved by the Director of the Department of Consumer and Business Services in a bank, trust company or savings [*and loan*] association in the state until the insurer has procured a certificate of authority from the director.

(3) Every subscription for stock or every application for insurance in an insurer made prior to [*its*] **the insurer's** receipt of a certificate of authority [*shall*] **must** contain a stipulation that the money, securities or evidences of debt advanced by the subscriber or applicant [*shall*] **must** be returned to the subscriber or applicant without [*any*] deduction in case the insurer fails to complete [*its*] **the insurer's** organization or procure [*its*] **the insurer's** certificate of authority or issue the policy applied for.

SECTION 49. ORS 705.620, 722.004, 722.008, 722.012, 722.014, 722.016, 722.018, 722.022, 722.024, 722.026, 722.028, 722.032, 722.034, 722.036, 722.038, 722.042, 722.044, 722.046, 722.048, 722.052, 722.056, 722.058, 722.062, 722.064, 722.066, 722.068, 722.072, 722.074, 722.102, 722.104, 722.106, 722.107, 722.108, 722.112, 722.113, 722.114, 722.116, 722.118, 722.122, 722.124, 722.132, 722.134, 722.136, 722.138, 722.142, 722.152, 722.154, 722.156, 722.162, 722.164, 722.202, 722.204, 722.206, 722.208, 722.212, 722.214, 722.252, 722.254, 722.256, 722.257, 722.258, 722.262, 722.264, 722.266, 722.268, 722.302, 722.304, 722.306, 722.308, 722.309, 722.311, 722.312, 722.314, 722.322, 722.324, 722.326, 722.328, 722.332, 722.334, 722.336, 722.338, 722.342, 722.352, 722.354, 722.356, 722.408, 722.416, 722.419, 722.432, 722.434, 722.436, 722.438, 722.442, 722.444, 722.446, 722.448, 722.452, 722.454, 722.456, 722.457, 722.458, 722.459, 722.462, 722.464, 722.468, 722.474, 722.476, 722.478, 722.482, 722.484, 722.502, 722.504, 722.506, 722.508, 722.512, 722.514, 722.516, 722.602, 722.606, 722.652, 722.654, 722.656, 722.658, 722.660 and 722.991 are repealed.

SECTION 50. (1) The amendments to ORS 56.080, 112.810, 113.238, 114.535, 180.540, 183.635, 192.502, 192.555, 205.460, 293.353, 293.701, 293.718, 293.723, 294.831, 294.882, 294.895, 311.780, 317.057, 317.147, 399.240, 456.548, 458.670, 646A.628, 705.137, 705.635, 705.638, 705.640, 705.642, 706.515, 706.530, 706.580, 706.720, 713.300, 715.055, 717.235, 723.014, 723.114, 723.118, 723.136, 723.752, 723.822, 725.120, 725.145, 725.185, 725.340, 726.075 and 732.145 by sections 1 to 32 and 36 to 48 of this 2009 Act and the repeal of statutes by section 49 of this 2009 Act become operative 90 days after the effective date of this 2009 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date set forth in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date, all the duties, functions and powers conferred on the director by the amendments to ORS 56.080, 112.810, 113.238, 114.535, 180.540, 183.635, 192.502, 192.555, 205.460, 293.353, 293.701, 293.718, 293.723, 294.831, 294.882, 294.895, 311.780, 317.057, 317.147, 399.240, 456.548, 458.670, 646A.628, 705.137, 705.635, 705.638, 705.640, 705.642, 706.515, 706.530, 706.580, 706.720, 713.300, 715.055, 717.235, 723.014, 723.114, 723.118, 723.136, 723.752, 723.822, 725.120, 725.145, 725.185, 725.340, 726.075 and 732.145 by sections 1 to 32 and 36 to 48 of this 2009 Act and the repeal of statutes by section 49 of this 2009 Act.

SECTION 51. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 8, 2009

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 Chief Clerk of House

 Speaker of House

Passed by Senate June 3, 2009

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 President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
 Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
 Secretary of State