

# Senate Bill 438

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that fidelity bond or letter of credit required of credit union must be in amount required in National Credit Union Administration regulations.

Defines organization for purposes of determining credit union membership to include corporation, limited liability company, partnership or association, trust, estate or other entity.

Requires that election or appointment of credit union executive officers and other officials occur within 60 days after organizational meeting or annual meeting.

Raises limit from \$25,000 to \$100,000 for loans credit union may make to credit union officials without requiring approval of board of directors.

Requires credit union to establish reserve for loan losses in accordance with generally accepted accounting principles issued by Financial Accounting Standards Board.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to regulation of credit unions; creating new provisions; amending ORS 723.032, 723.122,  
3 723.172, 723.186, 723.252, 723.276, 723.292, 723.532 and 723.631; and declaring an emergency.

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

5 **SECTION 1.** ORS 723.032 is amended to read:

6 723.032. (1) A credit union may establish a place of business or change the credit union's place  
7 of business within this state upon written notice to the Director of the Department of Consumer and  
8 Business Services.

9 (2) A credit union may establish additional places of business upon written application to the  
10 director. The application [*shall*] **must** be accompanied by a fee in an amount that the director sets  
11 by rule. The fee [*shall*] **must** be paid only with applications for the establishment of new places of  
12 business. Except as provided in subsection (3) of this section, mobile facilities described in sub-  
13 section (3) of this section are [*considered*] new places of business. The fee is not required to be paid  
14 with applications relating to the acquisition or relocation of existing places of business. The director  
15 may approve or disapprove the application. If the director does not disapprove an application within  
16 30 days after **receiving** a completed application, [*is received,*] the application [*shall be considered*]  
17 **is** approved.

18 (3) A credit union may establish one or more mobile facilities to engage in credit union oper-  
19 ations. Mobile facilities of a credit union [*having*] **that have** the membership described in ORS  
20 723.172 [(2)(a)] **(3)(a)** may operate in this state or in other states. Mobile facilities of a credit union  
21 [*having*] **that have** the membership described in ORS 723.172 [(2)(b)] **(3)(b)** may operate only within  
22 the well-defined local community, neighborhood or rural district served by the credit union. An ap-  
23 plication and fee are not required under this section for mobile facilities that exercise permissible  
24 credit union powers or engage in permissible credit union activities but that do not accept deposits.

25 (4) The director may limit or restrict [*the ability of*] a credit [*union*] **union's ability** to establish  
26 additional places of business upon written notice to the credit union if the director determines that

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the *[safety and soundness of the]* credit *[union]* **union's safety and soundness** would be adversely  
 2 affected by *[any]* **an** addition.

3 (5) A credit union may share office space with one or more credit unions and contract with  
 4 *[any]* **a** person or corporation to provide facilities or personnel.

5 **SECTION 2.** ORS 723.122 is amended to read:

6 723.122. (1) *[Each]* **A** credit union shall obtain and maintain a fidelity bond or irrevocable letter  
 7 of credit issued by an insured institution, as defined in ORS 706.008, *[which]* **that** includes coverage  
 8 in accordance with *[any]* rules of the Director of the Department of Consumer and Business Ser-  
 9 vices, to protect the credit union against losses caused by occurrences *[covered therein]* such as  
 10 fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication of duty and all acts of  
 11 *[its]* agents, directors, officers, committee members, employees or attorneys **of the credit union**. The  
 12 minimum amount of the bond or letter of credit *[shall be determined]* **is** based on the amount of the  
 13 credit union's total assets in accordance with the following table:

14 [ \_\_\_\_\_ ]

<i>Assets</i>	<i>Minimum Amount of Bond or Letter of Credit</i>
<i>\$0 to \$10,000</i>	<i>Coverage equal to the credit union's assets.</i>
<i>\$10,001 to \$1,000,000</i>	<i>\$10,000 for each \$100,000 or fraction thereof.</i>
<i>\$1,000,001 to \$50,000,000</i>	<i>\$100,000 plus \$50,000 for each \$1 million or fraction thereof over \$1 million.</i>
<i>\$50,000,001 to \$295,000,000</i>	<i>\$2.55 million plus \$10,000 for each \$1 million or fraction thereof over \$50 million.</i>
<i>More than \$295,000,000</i>	<i>\$5 million.</i>

41 [ \_\_\_\_\_ ]

42  
 43  
 44  
 45 **Assets** **Minimum Amount**

1		<b>of Bond</b>
2		<b>or Letter of Credit</b>
3		
4	<b>\$0 to \$4,000,000</b>	<b>\$250,000 or</b>
5		<b>coverage equal</b>
6		<b>to the credit</b>
7		<b>union’s assets.</b>
8		
9	<b>\$4,000,001 to \$50,000,000</b>	<b>\$100,000 plus</b>
10		<b>\$50,000 for each</b>
11		<b>\$1,000,000 or</b>
12		<b>fraction thereof.</b>
13		
14	<b>\$50,000,001 to \$500,000,000</b>	<b>\$2,550,000 plus</b>
15		<b>\$10,000 for each</b>
16		<b>\$1,000,000 or</b>
17		<b>fraction thereof</b>
18		<b>over \$1,000,000,</b>
19		<b>with a maximum of</b>
20		<b>\$5,000,000.</b>
21		
22	<b>More than \$500,000,000</b>	<b>1% of the credit</b>
23		<b>union’s assets</b>
24		<b>rounded to the</b>
25		<b>nearest \$1,000,000,</b>
26		<b>with a maximum</b>
27		<b>of \$9,000,000.</b>

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(2) [Each] **A fidelity** bond or letter of credit [shall] **must** include a faithful performance clause to cover the chief financial officer. [Each] **The director must approve the fidelity** bond or letter of credit [shall be approved by the director who] **and** may require such additional amounts as the director considers necessary.

(3) [All bond claims or] Claims upon a **fidelity bond or** letter of credit that exceed one percent of the credit union’s reserves and undivided earnings or that are related to the errors or omissions of an officer, director or committee member [shall] **must** be reported to the director.

**SECTION 3.** ORS 723.172 is amended to read:

723.172. (1) **As used in this section:**

(a) **“Organization” means a corporation, limited liability company, partnership or association, trust, estate or other entity and a director, officer, employee, member, partner, personal representative, trustee or volunteer of the corporation, limited liability company, partnership or association, trust, estate or other entity.**

(b) **“Well-defined local community, neighborhood or rural district” means one or more adjacent precincts, districts, cities, counties or other boundaries defined by the state or a unit of local government or by a state or local government agency.**

1        [(1)] (2) The membership of a credit union *[shall be]* **is** limited to and *[consist]* **consists** of the  
 2 incorporators to the articles of incorporation and *[such]* other persons within the common bond set  
 3 forth in the bylaws *[as]* **that** have been duly admitted **as** members, have paid the required entrance  
 4 fee or membership fee, or both, have subscribed for one or more shares and have paid the initial  
 5 installment *[thereon]* **on the shares**, and have complied with such other requirements as the articles  
 6 of incorporation or bylaws specify.

7        [(2)] (3) Credit union membership may include:

8        (a) One or more groups, each having a common bond of occupation or association; or

9        (b) Persons who live or work in, or organizations located within, a well-defined local community,  
 10 neighborhood or rural district.

11       [(3)] (4) Credit union membership may also include any of the immediate family of a person who  
 12 is eligible for membership in the credit union under subsection [(2)] (3) of this section.

13       [(4) *For purposes of this section, a “well-defined local community, neighborhood or rural district”*  
 14 *shall consist of one or more adjacent precincts, districts, cities, counties or other boundaries defined*  
 15 *by the state or a unit of local government or by any state or local government agency.*]

16       (5) In determining whether adjacent precincts, districts, cities, counties or other boundaries de-  
 17 fined by the state or a unit of local government or by any state or local government agency form  
 18 a well-defined local community, neighborhood or rural district, the Director of the Department of  
 19 Consumer and Business Services shall consider:

20       (a) *[Any]* **An** interaction or shared *[interests]* **interest** that *[tie]* **ties** the precincts, districts,  
 21 cities, counties or other boundaries together;

22       (b) The size of the population of the proposed well-defined local community, neighborhood or  
 23 rural district;

24       (c) The size of the geographic area of the proposed well-defined local community, neighborhood  
 25 or rural district; and

26       (d) *[Any]* Other criteria that the director considers relevant in accordance with the purposes  
 27 of this chapter.

28       (6)(a) A credit union may not add a group with a separate bond of occupation or association to  
 29 *[its]* **the credit union’s** membership unless, at the time the group is added to the *[membership of the*  
 30 *credit union]* **credit union’s membership**, the group does not contain more than 3,000 members.

31       (b) The limitation in paragraph (a) of this subsection does not apply to:

32       (A) *[Any]* **A** group the director determines could not feasibly or reasonably establish a new  
 33 credit union *[due to a lack of]* **because the group lacks** volunteer resources, financial resources or  
 34 other factors the director considers important to the likelihood of the successful formation of a new  
 35 credit union; or

36       (B) *[Any]* **A** group transferred to the credit union in connection with a merger, consolidation  
 37 or transfer approved by the director, or in connection with the liquidation of another credit union.

38       (7) Notwithstanding subsection [(2)] (3) of this section, a credit union, *[whose]* **the** membership  
 39 **of which** includes one or more groups, *[each having]* **that have** a common bond of occupation or  
 40 association, may add to *[its]* **the credit union’s** membership persons who live or work in, or or-  
 41 ganizations located within, a well-defined local community, neighborhood or rural district if:

42       (a) The director determines that the well-defined local community, neighborhood or rural district  
 43 is underserved by other depository institutions, as defined in section 19(b)(1)(A) of the Federal Re-  
 44 serve Act, [(12 U.S.C. 461(b)(1)(A))], based on data of the National Credit Union Administration and  
 45 the federal banking agencies, as defined in section 3 of the Federal Deposit Insurance Act, [(12

1 U.S.C. 1813[]]; and

2 (b) The credit union establishes and maintains an office or facility in the well-defined local  
3 community, neighborhood or rural district at which credit union services are available.

4 (8) In reviewing a proposed amendment to a credit union’s bylaws that would include an addi-  
5 tional group within the credit union’s membership, the director shall consider:

6 (a) Whether, within the preceding year, the credit union has engaged in any unsafe or unsound  
7 practice that is material;

8 (b) Whether the credit union has the capitalization, administrative capability and financial re-  
9 sources to serve the additional group; and

10 (c) Other factors the director may prescribe by rule.

11 **SECTION 4.** ORS 723.186 is amended to read:

12 723.186. [*Members who leave the field of membership may be permitted to retain their membership*  
13 *in the credit union as a matter of general policy of the board of directors.*] **A member who leaves**  
14 **the credit union’s field of membership may be permitted to retain the member’s membership**  
15 **in the credit union.**

16 **SECTION 5.** ORS 723.252 is amended to read:

17 723.252. (1) [*The*] **A credit union [shall] must** be directed by a board [*consisting*] **that consists**  
18 of an odd number of directors, at least five in number, [*to be*] **who are** elected by and from the  
19 **credit union’s** members in the manner provided in the credit union’s bylaws. [*All*] Members of the  
20 board [*shall*] hold office for such terms as the bylaws provide.

21 (2) The board of directors shall appoint a supervisory committee of not less than three members  
22 at the organizational meeting and within [*30*] **60** days following each annual meeting of the members  
23 for such terms as the bylaws provide.

24 (3) The board of directors shall appoint a credit committee [*consisting*] **that consists** of an odd  
25 number[,] not less than three [*in number,*] for such terms as the bylaws provide, or **may in lieu of**  
26 **the credit committee appoint a credit manager. The members of the credit union may instead**  
27 **elect the members of the credit committee from among the membership of the credit union**  
28 **at the annual members’ meeting.** [*said credit committee may be elected at the annual members’*  
29 *meeting by and from the members, or in lieu of a credit committee, a credit manager may be*  
30 *appointed.*]

31 (4) The board of directors may appoint [*alternate*] **temporary or successor** directors[,] **or**  
32 **temporary or successor** credit committee or supervisory committee members to serve in place of  
33 absent [*officials*] **directors or committee members.**

34 **SECTION 6.** ORS 723.276 is amended to read:

35 723.276. (1) At [*their*] **the** organizational meeting **of the board of directors** and within [*30*] **60**  
36 days following each annual meeting of the members, the directors shall elect an executive officer,  
37 who may be designated as chairperson of the board or president; a vice chairperson of the board  
38 or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may  
39 be the same individual. The persons [*so*] elected [*shall be*] **by the board of directors are** the exec-  
40 utive officers of the corporation.

41 (2) The terms of the officers [*shall be*] **are** one year, or until [*their*] **the successors of the offi-**  
42 **cers** are chosen and have duly qualified.

43 (3) The duties of the officers [*shall*] **must** be prescribed in the bylaws.

44 (4) The board of directors may employ an officer in charge of operations whose title [*shall be*]  
45 **is** president, general manager, or [*such other*] **another** title [*as may be*] **that is** designated in the

1 bylaws of the credit union[; *or, in lieu thereof,*]. The board of directors may **instead** designate the  
2 treasurer or an assistant treasurer to be in active charge of the affairs of the credit union.

3 (5) The board of directors may appoint a security officer.

4 **SECTION 7.** ORS 723.292 is amended to read:

5 723.292. The board of directors shall meet at least monthly. **A meeting of the board of direc-**  
6 **tors that occurs as part of an annual meeting of the credit union's membership is a monthly**  
7 **meeting for the purposes of this section for the month in which the annual meeting occurs.**

8 **SECTION 8.** ORS 723.532 is amended to read:

9 723.532. (1) For the purposes of this section, "management team" means [*any*] **an** individual who  
10 holds a position **in a credit union** of vice president or higher or who has policymaking authority.

11 (2) A credit union may make loans to [*its*] individual directors, members of [*its*] **the credit un-**  
12 **ion's** management team, credit managers and members of [*its*] **the credit union's** supervisory and  
13 credit committees, provided that:

14 (a) The loan complies with all lawful requirements under this chapter with respect to loans to  
15 other borrowers and is not on terms more favorable than [*those*] **terms** extended to other borrowers;

16 (b) The **credit union's board of directors has approved the** combined aggregate amount of  
17 loans to [*any one such*] **an individual described in this subsection** that exceeds five percent of the  
18 credit union's equity or [*\$25,000*] **\$100,000**, whichever is less[, *has been approved by the credit union's*  
19 *board of directors*]; and

20 (c) The combined aggregate amount of [*such*] **the** loans to [*all such individuals*] **an individual**  
21 **described in this subsection** may not exceed 10 percent of the credit union's assets.

22 (3) Except **as provided in this subsection or** when approved by the board of directors of the  
23 credit union, [*no*] **a** director, officer or committee member [*shall be permitted to*] **may not** become  
24 **a** surety or guarantor for [*any*] **a** loan or advance made by the credit union. [*except*] **A director,**  
25 **officer or committee member may without the approval of the board of directors become a**  
26 **surety or guarantor** for the spouse or children of the director, officer or committee member.

27 (4) The Director of the Department of Consumer and Business Services may waive the require-  
28 ments of this section by rule or order [*upon request of*] **at** a credit [*union*] **union's request.** The  
29 Director **of the Department of Consumer and Business Services** may establish by rule a higher  
30 amount than **the amount** set in subsection (2)(b) of this section and **may specify by rule** the type  
31 of loans to directors, officers or committee members that [*must be approved by*] the board of direc-  
32 tors of the credit union **must approve.**

33 **SECTION 9.** ORS 723.631 is amended to read:

34 723.631. (1) A credit union shall establish and maintain a regular reserve for contingencies. The  
35 Director of the Department of Consumer and Business Services may adopt rules prescribing:

36 (a) Minimum net worth requirements for credit unions; and

37 (b) Actions [*to be taken by*] a credit union **must take** when the net worth of the credit union  
38 falls below the applicable minimum net worth requirement.

39 (2) In addition to the regular reserve required in subsection (1) of this section, a credit union  
40 shall establish a reserve for loan losses **in accordance with generally accepted accounting**  
41 **principles issued by the Financial Accounting Standards Board or a successor organization.**  
42 [*The credit union shall allocate sufficient funds each month to the reserve for loan losses to maintain*  
43 *the reserve for loan losses in an amount at least equal to the credit union's best estimate of the losses*  
44 *the credit union expects to sustain in the liquidation of currently outstanding loans.*]

45 **SECTION 10.** (1) **The amendments to ORS 723.032, 723.122, 723.172, 723.186, 723.252,**

1 723.276, 723.292, 723.532 and 723.631 by sections 1 to 9 of this 2009 Act become operative 90  
2 days after the effective date of this 2009 Act.

3 (2) The Director of the Department of Consumer and Business Services may take any  
4 action before the operative date of this 2009 Act that is necessary to enable the director to  
5 exercise, on and after the operative date of this 2009 Act, all the duties, functions and powers  
6 conferred on the director by the amendments to ORS 723.122, 723.172, 723.532 and 723.631 by  
7 sections 2, 3, 8 and 9 of this 2009 Act.

8 SECTION 11. This 2009 Act being necessary for the immediate preservation of the public  
9 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
10 on its passage.

11 \_\_\_\_\_