

# Enrolled Senate Bill 92

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CHAPTER .....

## AN ACT

Relating to regulating out-of-state financial institutions; creating new provisions; amending ORS 706.008, 713.010, 713.016, 713.020, 713.090, 713.130, 713.140, 713.150, 713.160, 713.170, 713.190, 713.200, 713.210, 713.220, 713.230, 713.240, 713.250, 713.260, 713.270, 713.280, 713.290 and 716.060; and declaring an emergency.

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

**SECTION 1.** ORS 706.008 is amended to read:

706.008. As used in the Bank Act[, *unless the context requires otherwise*]:

(1) "Bank" means a company, other than an extranational institution, that accepts deposits insured to any extent by the Bank Insurance Fund under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.

(2) "Bank holding company" means [any] a company that is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(3) "Bank service corporation" means a corporation **that is organized to perform services authorized by ORS 708A.145**, all of the capital stock of which is owned by one or more banking institutions or national banks[, *that is organized to perform services authorized by ORS 708A.145*].

(4) "Banking institution" means an Oregon commercial bank, an Oregon trust company or an Oregon savings bank.

(5) "Company" means an entity that is a company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(6) "Extranational institution" means a corporation, unincorporated company, partnership or association of two or more persons organized under the laws of a nation other than the United States, [any] a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that engages directly in a banking business.

(7) "Federal bank" means a national bank or [any other] **another** bank organized under the laws of the United States.

(8) "Federal savings bank" means a corporation chartered as a federal savings bank under the provisions of 12 U.S.C. 1464.

(9) "Financial holding company" means a company [as referred to] **that engages in activities described for a financial holding company** in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(10) “Financial institution” means **an** insured [*institutions*] **institution, an** extranational [*institutions,*] **institution, a** credit [*unions*] **union** as defined in ORS 723.006, **an** out-of-state credit [*unions*] **union** under ORS 723.042 and **a** federal credit [*unions*] **union**.

(11) “In-state federal stock bank” means a federal bank that issues capital stock, the home state of which is Oregon.

(12) “Institution” means an Oregon commercial bank or an Oregon trust company.

(13) “Insured institution” means a company, the deposits of which are insured under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.

(14) “Insured nonstock institution” means an insured institution that does not issue capital stock.

(15) “Insured stock institution” means an insured institution that issues capital stock.

(16) “National bank” means a bank that was organized under the provisions of the National Bank Act, as amended, 12 U.S.C. 21, et seq.

(17) “Non-Oregon institution” means:

(a) An out-of-state state bank engaging in banking business in Oregon;

(b) An out-of-state trust company transacting trust business in Oregon; and

(c) An extranational institution engaging in banking business in Oregon.

(18) “Nonstock bank” means a bank that does not issue capital stock.

(19) “Oregon bank” means an Oregon stock bank or Oregon nonstock bank.

(20) “Oregon commercial bank” means an Oregon stock bank that was chartered under ORS chapter 707 as a bank other than a stock savings bank.

(21) “Oregon nonstock bank” means a state nonstock bank **or savings bank**, the home state of which is Oregon.

(22) “Oregon operating institution” means:

(a) A bank that [*is engaging*] **engages** in banking business in this state;

(b) An extranational institution that [*is engaging*] **engages** in banking business in this state; or

(c) A trust company that [*is transacting*] **transacts** trust business in this state.

(23) “Oregon savings bank” or “savings bank” means an Oregon stock savings bank or an Oregon nonstock **savings** bank.

(24) “Oregon stock bank” means a state stock bank, the home state of which is Oregon.

(25) “Oregon stock savings bank” means an Oregon stock bank that was initially chartered as or was converted to a stock savings bank under the Bank Act.

(26) “Oregon trust company” means a trust company that was organized under the provisions of ORS chapter 707.

(27) “Out-of-state bank” means an out-of-state state bank or an out-of-state federal bank.

(28) “Out-of-state bank holding company” means a bank holding company [*whose*], **the** home state **of which** is not Oregon, and that is not the bank holding company of an Oregon stock bank or an in-state federal stock bank.

(29) “Out-of-state federal bank” means a federal bank, the home state of which is [*a state other than*] **not** Oregon.

(30) “Out-of-state financial holding company” means a financial holding company [*whose*], **the** home state **of which** is not Oregon, and that is not the financial holding company of an Oregon stock bank or an in-state federal stock bank.

(31) “Out-of-state state bank” means a state bank, the home state of which is [*a state other than*] **not** Oregon.

(32) “Out-of-state trust company” means a trust company that was organized under the laws of another state.

(33) “State bank” means a bank that was organized under the laws of a state.

(34) “State nonstock bank” means a nonstock bank that was organized under the laws of a state.

(35) “State stock bank” means a stock bank that was organized under the laws of a state.

(36) “Stock bank” means a bank that issues capital stock.

(37)(a) “Trust company” means *[any]* a company that is authorized under the provisions of ORS chapter 709 to transact trust business, *[and includes]* **including** the trust department of a bank[.].

(b) *[but]* “**Trust company**” does not include a corporation *[appointed by]* **that** a United States Bankruptcy Court **appoints** to serve as a bankruptcy trustee under Title 11, United States Code, *[when]* **during a time in which** the corporation is acting *[in its capacity]* as a bankruptcy trustee.

**SECTION 2.** ORS 713.010 is amended to read:

713.010. (1) Every activity *[engaged in by every]* **that an** out-of-state bank *[and]* **or** extranational institution **engages in while** conducting a banking business in this state is subject to *[all of]* the applicable provisions of the Bank Act.

(2) An out-of-state *[state]* bank that opens, occupies or maintains a branch in this state pursuant to and in accordance with the requirements of ORS 713.270 and that has *[been issued]* a certificate of authority *[by]* **from** the Director of the Department of Consumer and Business Services to conduct *[a]* banking business in this state pursuant to ORS 713.020[,] and 713.140 to 713.160[, *shall have]* **has** the same powers to engage in *[any]* **an** activity in this state *[as permitted to]* **that** the out-of-state *[state]* bank **has** under the laws of *[its]* **the out-of-state bank’s** home state, except that an out-of-state *[state]* bank may not transact trust business in this state unless *[it]* **the out-of-state bank** complies with ORS chapter 709. *[When there is]* **If** a conflict **exists** between the provisions of this chapter and the provisions of the laws of the home state of the out-of-state *[state]* bank, the laws of *[that]* **the out-of-state bank’s** home state control.

**SECTION 3.** ORS 713.016 is amended to read:

713.016. (1) An out-of-state *[state]* bank *[shall]* **may** not conduct banking business in this state unless *[its]* **the Federal Deposit Insurance Corporation insures the out-of-state bank’s** insurable deposits *[are insured by the Federal Deposit Insurance Corporation]* and the out-of-state *[state]* bank has received a certificate of authority to conduct banking business pursuant to ORS 713.020 and 713.140 to 713.160.

(2) *[Unless it complies with the requirements of ORS 713.025,]* An extranational institution *[shall]* **may** not conduct banking business in this state **unless the extranational institution complies with the requirements of ORS 713.025.** This subsection and ORS 713.025 do not apply to *[any]* **an** extranational institution *[having]* **that has** a branch office in this state and **was** lawfully conducting banking business on December 31, 1966.

**SECTION 4.** ORS 713.020 is amended to read:

713.020. The Director of the Department of Consumer and Business Services shall issue **a certificate of authority to conduct banking business in this state** to an out-of-state *[state]* bank or extranational institution that applies **for the certificate under ORS 713.140** and that **otherwise** complies with the requirements of this chapter. *[a certificate of authority to transact business in this state, provided for in ORS 713.140 to 713.160.]*

**SECTION 5.** ORS 713.090 is amended to read:

713.090. (1) *[Every]* **An** out-of-state *[state]* bank *[and every]* **or** extranational institution *[conducting]* **that conducts** banking business in this state shall file reports under oath with the Director of the Department of Consumer and Business Services in the form and giving the information the director *[may require]* **requires.**

(2) *[Every]* **An** out-of-state *[state]* bank *[and]* **or** extranational institution *[conducting]* **that conducts** banking business *[shall be]* **in this state is** subject to the fee provided in ORS 706.530 and to examination and regulation in the manner provided in ORS 706.500.

**(3) This section does not apply to a federal bank.**

**SECTION 6.** ORS 713.130 is amended to read:

713.130. (1) **Except as provided in subsection (2) of this section,** the Director of the Department of Consumer and Business Services *[shall]* **may** not issue a certificate of authority to an out-of-state *[state]* bank or extranational institution if the name of the out-of-state *[state]* bank or extranational institution does not conform to **the provisions of ORS 707.075,** *except as provided in subsection (2) of this section*].

(2) If the director determines that *[the name of the applicant]* **an out-of-state *[state]* bank or extranational institution that applies for a certificate of authority has a name that is deceptively similar to the name of another financial institution *[conducting]* that conducts a banking business in this state, the director *[shall]* may not issue a certificate of authority *[to the applicant]* unless the out-of-state *[state]* bank or extranational institution states *[the corporate name]* on the application for a certificate of authority under ORS 713.140 (1)(a) and in the filings required by ORS 713.140 (3) *[as]* **that the corporate name is** “\_\_\_\_\_ (name under which organized), an institution of \_\_\_\_\_ (place of organization),” the entirety of which *[shall be]* **is** the “real and true name” of the out-of-state *[state]* bank or extranational institution *[under]* **for the purposes of ORS chapter 648.****

*[(3) Nothing contained in this section shall preclude an out-of-state state bank or extranational institution from transacting business under one or more assumed business names, if the names meet the requirements of subsection (1) of this section, unless the director determines that the names will be confusingly similar to any financial institution, corporate, professional corporate, nonprofit corporate, cooperative, limited liability company, limited partnership, business trust, reserved or registered name currently on file with the Secretary of State or Director of the Department of Consumer and Business Services, or an assumed business name registered as provided in ORS 648.010.]*

**(3)(a) Except as provided in paragraph (b) of this subsection, this section does not preclude an out-of-state bank or extranational institution from transacting business under one or more assumed business names if the names conform to the provisions of ORS 707.075.**

**(b) An out-of-state bank or extranational institution may not transact business under a name that the director determines is confusingly similar to the name of a financial institution, corporation, professional corporation, nonprofit corporation, cooperative, limited liability company, limited partnership or business trust that is reserved, registered or on file with the Secretary of State or is registered as provided in ORS 648.010.**

**(c) The name designated under this section *[shall be accorded]* has the same legal effect under ORS 707.075 and ORS chapters 647 and 648 as the name of an Oregon state bank.**

**(d) *[Issuance of]* Issuing the certificate of authority *[shall]* does not abrogate or limit the law as to unfair competition or unfair trade practices or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names, trademarks and service marks.**

**SECTION 7.** ORS 713.140 is amended to read:

713.140. (1) To procure a certificate of authority to conduct banking business in this state, an out-of-state *[state]* bank or extranational institution shall apply to the Director of the Department of Consumer and Business Services. The application *[shall]* **must** state:

(a) The name, *[as designated under]* **in accordance with the provisions of ORS 713.130.**

(b) The state or country under the laws of which the out-of-state *[state]* bank or extranational institution *[was]* **is** organized.

(c) The date of organization.

(d) The period of duration of the out-of-state *[state]* bank or extranational institution, if the duration is not perpetual.

(e) A mailing address to which the director may send notices.

(f) The address of the main office of the out-of-state *[state]* bank or extranational institution in the state or country under the laws of which *[it]* **the out-of-state bank or extranational institution** is organized.

(g) *[Unless the out-of-state state bank or extranational institution is a corporation, limited partnership, limited liability company or business trust, the street address of the proposed registered office of the institution in this state, and the name of its proposed registered agent, who shall be amenable to service of process at the address.]* **The name of the proposed registered agent and the street address in this state of the proposed registered office that will receive service of process for the out-of-state bank or extranational institution.**

(h) The names and [*respective*] addresses of the president and secretary of the out-of-state [*state*] bank or extranational institution.

(i) [*Any*] Additional information that the director [*may*] by rule [*require*] **requires**.

(2) The director may prescribe and furnish forms for the application. The president or a vice president and secretary or an assistant secretary of the out-of-state [*state*] bank or extranational institution shall sign the application.

(3) The out-of-state [*state*] bank or extranational institution shall also take the steps necessary to become authorized to transact business:

(a) If a corporation, as a foreign corporation under ORS chapter 60;

(b) If a limited partnership, as a foreign limited partnership under ORS chapter 70;

(c) If a limited liability company, as a foreign limited liability company under ORS chapter 63;

or

(d) If a business trust, as a business trust under ORS 128.560 to 128.600.

(4) If the out-of-state [*state*] bank is an unincorporated company, partnership or association, [*it*] **the out-of-state bank** shall register [*its*] **the out-of-state bank's** name as an assumed business name as provided in ORS chapter 648.

**SECTION 8.** ORS 713.150 is amended to read:

713.150. (1) [*The*] **An** out-of-state [*state*] bank or extranational institution shall submit [*the*] **an** application for a certificate of authority, together with an application fee of [*\$500*] **\$2,500**, to the Director of the Department of Consumer and Business Services for filing. The out-of-state [*state*] bank or extranational institution shall also deliver with the completed application a certificate of existence or a document of similar import, duly authenticated by the official with custody of records in the state or country under whose law [*it*] **the out-of-state bank or extranational institution** is organized and a copy of the documents filed **with the Secretary of State** to comply with ORS 713.140 (3) [*evidencing filing of such documents by the Secretary of State*].

(2) If the director finds that [*such*] **the** application conforms to this chapter, the director, when all fees and charges have been paid, shall issue and return to the sender a certificate of authority to conduct banking business in this state with the copy of the filed application.

**SECTION 9.** ORS 713.160 is amended to read:

713.160. [*Upon the issuance of a certificate of authority by*] **After** the Director of the Department of Consumer and Business Services **issues a certificate of authority**, the out-of-state [*state*] bank or extranational institution [*shall be*] **is** authorized to conduct [*a*] banking business in this state, subject, however, to the right of this state to suspend or revoke the authority as provided in ORS 713.230.

**SECTION 10.** ORS 713.170 is amended to read:

713.170. [*Each*] **An** out-of-state state bank [*and each*] **or** extranational institution authorized to conduct banking business in this state shall have and continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as [*its*] **the out-of-state state bank's or extranational institution's** place of business in this state.

(2) A registered agent [*or authorized representative,*] in compliance with the requirements imposed by ORS 713.140 (3).

**SECTION 11.** ORS 713.190 is amended to read:

713.190. (1) [*The*] **A** registered agent appointed by an out-of-state [*state*] bank or extranational institution authorized to transact business in this state [*shall*] **must** be an agent of [*such institution upon whom any*] **the out-of-state bank or extranational institution upon which may be served** process, notice or demand required or permitted by law to be served upon the [*institution may be served*] **out-of-state bank or extranational institution**.

(2) The Director of the Department of Consumer and Business Services [*shall be*] **is** an agent of an out-of-state [*state*] bank or extranational institution upon [*whom any*] **which** process, notice or demand may be served, if:

(a) The out-of-state [*state*] bank or extranational institution is authorized to conduct banking business in this state, and:

(A) *[It]* **The out-of-state bank or extranational institution** fails to appoint or maintain a registered agent in this state;

(B) *[Its]* **The registered agent that the out-of-state bank or extranational institution appointed** cannot with reasonable diligence be found at the registered office;

(C) *[Its]* **The certificate of authority for the out-of-state bank or extranational institution** has been suspended or revoked; or

(D) *[It]* **The out-of-state bank or extranational institution** is an unincorporated company, partnership or association;

(b) The out-of-state *[state]* bank or extranational institution is conducting banking business in this state without the authorization *[provided by]* **required under** this chapter;

(c) The out-of-state *[state]* bank or extranational institution has been authorized to conduct banking business in this state and has withdrawn and consented to service on the director as prescribed in this chapter; or

(d) The out-of-state *[state]* bank or extranational institution has conducted banking business in this state without the authorization to do so, has ceased to conduct banking business and has become subject to service on the director as prescribed in this chapter.

(3)(a) Except as provided in subsection (4) of this section, service *[on the director of any such]* of process, notice or demand *[shall]* **must** be made **on the director** by:

*[a)]* (A) *[Service on]* **Serving** the director or a clerk on duty in *[any]* **an** office of the director *[of]* **with** a copy of the process, notice or demand *[with any]* **and** papers required by law to be delivered in connection with the service, or by mailing to the director a copy of the process, notice or demand by certified or registered mail, and **paying** a *[\$2]* **\$25** fee for each document being served; or

*[b)]* (B) *[Transmittal by the person instituting the proceedings of]* **Transmitting** notice of the service *[on]* **from the person that initiates the proceedings to** the director and **transmitting, by certified or registered mail,** a copy of the process, notice or demand and accompanying papers to the out-of-state *[state]* bank or extranational institution being served *[by certified or registered mail]*:

*[A)]* (i) At the last-registered office of the out-of-state *[state]* bank or extranational institution as shown by the records of the director; **or**

*[B)]* (ii) At *[such address, the use of which]* **an address that** the person *[initiating]* **that initiates** the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice<sup>;</sup> *[and]*.

*[C)]* (b) *[Filing]* **The person that initiates the proceedings shall file** with the appropriate court or other body, as part of the return of service, the return receipt of mailing and an affidavit *[of the person initiating the proceedings stating compliance]* **that states that the person complied** with this section.

(4) *[When]* **If** the out-of-state *[state]* bank or extranational institution that is being served with the process, notice or demand is not authorized to conduct banking business in this state and was not authorized to conduct banking business in this state at the time the transaction, event or occurrence upon which the suit or proceeding is based occurred, service *[shall]* **must** be made in *[the same manner as provided in]* **accordance with** subsection (3) of this section, except that the **plaintiff or the plaintiff's attorney shall immediately send** a copy of the process, notice or demand *[shall be sent forthwith]* by registered or certified mail *[by the plaintiff or the attorney of the plaintiff]* to the principal office or place of business of the out-of-state *[state]* bank or extranational institution, instead of the last-registered office of the out-of-state *[state]* bank or extranational institution.

(5) The director shall keep a record of all processes, notices and demands served upon the director under this section.

(6) *[Nothing contained in]* This section *[shall]* **does not** limit or affect the right to serve *[any]* process, notice or demand required or permitted by law to be served upon an out-of-state *[state]* bank or extranational institution in *[any other]* a manner *[now or hereafter]* permitted by law, or enlarge

the purposes for which service on the director is permitted where **other provisions of law limit** such purposes *[are limited by other provisions of law]*.

**SECTION 12.** ORS 713.200 is amended to read:

713.200. (1) *[Every]* **An** out-of-state *[state]* bank *[and every]* **or** extranational institution that has *[been issued]* a certificate of authority to conduct banking business in this state shall deliver *[to the Director of the Department of Consumer and Business Services, promptly after filing with the Secretary of State, all documents filed by]* **copies of documents that** the out-of-state *[state]* bank or extranational institution **filed** with the Secretary of State pursuant to ORS chapters 60, 63, 70 and 648 and ORS 128.560 to 128.600 **to the Director of the Department of Consumer and Business Services promptly after filing the documents with the Secretary of State.**

(2) If an out-of-state *[state]* bank or an extranational institution that has *[been issued]* a certificate of authority to conduct banking business in this state changes *[its]* **the out-of-state bank's or extranational institution's** name or duration, *[it]* **the out-of-state bank or extranational institution** shall apply to the director to amend *[its]* **the** certificate of authority.

(3) The requirements *[in respect to]* **for signing and submitting the application described in subsection (2) of this section to the director and that prescribe** the form and contents of the application<sup>]</sup>, *the manner of its signing and the submission of the application referred to in subsection (2) of this section to the director shall be* **are** the same as in the case of an original application for a certificate of authority under ORS 713.140. *[The]* Filing *[of]* the application for the amended certificate of authority by the director *[shall have]* **has** the same legal effect as *[the]* filing *[of]* the original certificate of authority.

**SECTION 13.** ORS 713.210 is amended to read:

713.210. (1) An out-of-state *[state]* bank or extranational institution that has *[been issued]* a certificate of authority to conduct banking business in this state may withdraw from this state by applying to the Director of the Department of Consumer and Business Services to withdraw. An application to withdraw *[shall]* **must** set forth:

(a) The name of the out-of-state *[state]* bank or extranational institution and the state or country under the laws of which *[it]* **the out-of-state bank or extranational institution** is organized.

(b) A statement that the out-of-state *[state]* bank or extranational institution no longer conducts banking business in this state.

(c) A statement that the out-of-state *[state]* bank or extranational institution surrenders *[its]* authority to conduct banking business in this state.

(d) A statement that the out-of-state *[state]* bank or extranational institution revokes the authority of *[its]* **the out-of-state bank's or extranational institution's** registered agent in this state to accept service of process, notice or demand and *[consents that]* **authorizes the director to accept on the out-of-state bank's or extranational institution's behalf** service of process, notice or demand in any action, suit or proceeding based upon *[any]* a transaction, event or occurrence *[which]* **that** took place in this state *[prior to]* **before** the filing of the application to withdraw *[may thereafter be made on such out-of-state state bank or extranational institution by service thereof on the director]*.

(e) A mailing address to which *[the person initiating any]* **a person that initiates** proceedings may mail a copy of *[any]* process, notice or demand<sup>]</sup>, *which]* **that** has been served on the director, to the out-of-state *[state]* bank or extranational institution.

(f) *[Such]* Additional information *[as may be]* **that is** necessary or appropriate to enable the director to determine and assess *[any]* unpaid fees or charges payable by *[such]* **the** out-of-state *[state]* bank or extranational institution as prescribed in the Bank Act.

(2) The **out-of-state bank or extranational institution may apply** *[application]* for withdrawal *[may be made]* on forms *[prescribed or furnished by]* the director **prescribes or furnishes.** *[and shall be signed by]* The **president or vice-president and secretary or assistant secretary of the** out-of-state *[state]* bank or extranational institution *[by its president or a vice president and by its secretary or an assistant secretary,]* **shall sign the application** and *[verified by]* one of the officers signing the application **shall verify the application** or, if the out-of-state *[state]* bank or

extranational institution is in the hands of a receiver or trustee, **the receiver or trustee shall sign and verify the application** *[shall be signed]* on behalf of the *[institution and verified by the receiver or trustee]* **out-of-state bank or extranational institution.**

(3) An out-of-state *[state]* bank or extranational institution that conducted banking business in this state without the authorization provided by this chapter *[will be]* **is** subject to service after *[it has ceased]* **ceasing** to conduct banking business in this state in the same manner as though *[it had been]* **the out-of-state bank or extranational institution was** authorized to conduct banking business, *[had]* later *[withdrawn]* **withdrew** and, in connection with *[such]* **the** withdrawal, *[had]* filed *[a consent to]* **an authorization for** service in the manner required by subsection (1)(d) of this section.

**SECTION 14.** ORS 713.220 is amended to read:

713.220. (1) **An out-of-state bank or extranational institution that applies to withdraw from this state under ORS 713.210 must deliver** the application *[to withdraw shall be delivered]* to the Director of the Department of Consumer and Business Services. If the director finds that *[such]* **the** application conforms to the provisions of this chapter, the director, when all fees and charges have been paid, shall file the application to withdraw and return the copy marked "Filed" to the sender.

(2) *[Upon the filing of the application to withdraw,]* The authority of the out-of-state *[state]* bank or extranational institution to conduct banking business in this state *[shall cease]* **ceases when the application to withdraw is filed.**

**SECTION 15.** ORS 713.230 is amended to read:

713.230. *[The]* **A** certificate of authority *[of]* **for** an out-of-state *[state]* bank or extranational institution to conduct banking business in this state may be revoked *[when]* **if the out-of-state bank or extranational institution:**

*[(1) The out-of-state state bank or extranational institution has not filed any report which it is required to file under the Bank Act or has not paid any fee which it is required to pay under the Bank Act;]*

**(1) Failed to file a report or pay a fee required under the Bank Act;**

*(2) [The out-of-state state bank or extranational institution has]* Failed to appoint or maintain a registered agent or office in this state as required by ORS 713.170 or *[has]* failed to maintain authority to transact business as required by ORS 713.140 (3);

*(3) [The out-of-state state bank or extranational institution has changed its]* **Changed the out-of-state bank's or extranational institution's** registered office or registered agent and *[has]* failed to submit *[to the Director of the Department of Consumer and Business Services]* a statement of the change **to the Director of the Department of Consumer and Business Services** as required by ORS 713.200 (1);

*(4) [A misrepresentation has been made of any]* **Misrepresented or allowed a misrepresentation of a** material matter in *[any]* **an** application, report, affidavit or other document *[submitted by such]* **that the** out-of-state *[state]* bank or extranational institution **submitted** pursuant to the Bank Act;

*(5) [The out-of-state state bank or extranational institution has]* Failed to submit for filing an application to amend *[its]* **the out-of-state bank's or extranational institution's** certificate of authority as required by ORS 713.200 (2); or

*(6) [The out-of-state state bank or extranational institution has]* Failed to submit for filing a certificate of merger or consolidation as required by ORS 713.260.

**SECTION 16.** ORS 713.240 is amended to read:

713.240. (1) *[Whenever]* **If** an out-of-state *[state]* bank or extranational institution has given cause for revocation of *[its]* **a** certificate of authority as provided in ORS 713.230 and has failed to correct the neglect, omission, misrepresentation or delinquency, the Director of the Department of Consumer and Business Services may revoke the right of the out-of-state *[state]* bank or extranational institution to conduct banking business in this state. The director shall mail a notice of the revocation to the mailing address shown for the out-of-state *[state]* bank or extranational institution in



the current records of the director **and** to the out-of-state [state] bank or extranational institution at [its] **the** registered office **for the out-of-state bank or extranational institution** in this state or [its] **the** principal office in [its] **the out-of-state bank's or extranational institution's** home state **or country**.

(2) After the director revokes the certificate of authority, all powers that this state conferred upon the out-of-state [state] bank or extranational institution [shall] cease, and thereafter [no] **a** person [shall] **may not** exercise or attempt to exercise [in this state any] power under the revoked certificate of authority **in this state**.

(3) [Whenever it is established to the satisfaction of] **If** the director **is satisfied** that [any] **an** out-of-state [state] bank or extranational institution[,] **that has had a** [the] certificate of authority [of which has been] revoked under subsection (1) of this section[,] has corrected the cause for revocation, the director shall restore the out-of-state [state bank] **bank's** or extranational [institution] **institution's** [to all its] former rights and privileges in the same manner as the director revoked the authority of the out-of-state [state] bank or extranational institution.

(4) [Any] **An** out-of-state [state] bank or extranational institution previously authorized to conduct banking business in this state that has had [its] **a** certificate of authority revoked and that has corrected the cause for revocation under subsection (1) of this section may apply [for reinstatement of its] **to reinstate the** certificate of authority within two years [of] **after** the date of revocation. The out-of-state [state] bank or extranational institution shall pay all fees [which] **that** accrued before the director revoked the certificate of authority and a reinstatement filing fee of \$100. The payment [shall] **must** accompany the application for reinstatement. If the director is satisfied that the **out-of-state bank or extranational institution has corrected the** cause for revocation [has been corrected], the director shall file the application for reinstatement [of the out-of-state state bank or extranational institution, entitling it to resume its], **which entitles the out-of-state bank or extranational institution to resume** business in this state. The director [shall] **may not** file the application for reinstatement unless the name of the out-of-state [state] bank or extranational institution conforms to ORS 713.130 and the application is filed within two years [of] **after** the date of revocation.

(5) Reinstatement under this section relates back to and takes effect as of the effective date of the revocation of the certificate of authority, so that the existence of the out-of-state [state] bank or extranational institution is deemed to have continued without interruption from that date.

**SECTION 17.** ORS 713.250 is amended to read:

713.250. (1) [No] **An** out-of-state [state] bank or extranational institution [conducting] **that conducts** banking business in this state without a certificate of authority [shall be permitted to] **may not** maintain [any] **an** action, suit or proceeding in [any] **a** court of this state until [such] **the** out-of-state [state] bank or extranational institution [shall have obtained] **obtains** a certificate of authority.

(2) [The failure of] **An** out-of-state [state bank] **bank's** or extranational [institution] **institution's failure** to obtain a certificate of authority to conduct banking business in this state [shall] **does not** impair the validity of [any] **a** contract or **an** act of [such] **the** out-of-state [state] bank or extranational institution, and [shall] **does not** prevent [such] **the** out-of-state [state] bank or extranational institution from defending [any] **an** action, suit or proceeding in [any] **a** court of this state.

(3) **An** out-of-state [state] bank or extranational institution that conducts banking business in this state without a certificate of authority [shall be] **is** liable to this state for the years or [parts thereof] **partial years** during which [it] **the out-of-state bank or extranational institution** conducted banking business in this state without a certificate of authority. [in an] **The amount of the liability is** equal to all fees, assessments and other charges [which would have been imposed upon] **that** the out-of-state [state] bank or extranational institution **would have paid** under the Bank Act had [it] **the out-of-state bank or extranational institution** duly applied for and received a certificate of authority to conduct banking business in this state [as required by this chapter and thereafter] **and** filed all reports required [by] **under** the Bank Act, plus all penalties imposed under

the Bank Act for failure to pay [such] **the** fees and charges. The Attorney General may bring proceedings to recover [all] amounts due this state under the provisions of this section.

**SECTION 18.** ORS 713.260 is amended to read:

713.260. [*Whenever*] **If** an out-of-state [state] bank or extranational institution that has [*been issued*] a certificate of authority under ORS 713.020 ceases to exist because of a statutory merger or consolidation with any other out-of-state [state] bank, **an** extranational institution or other entity, [*it*] **the resulting institution** shall, within 60 days after the effective date of [such] **the** merger or consolidation, file with the Director of the Department of Consumer and Business Services a certificate from the appropriate public officer of the state, territory or country under the laws of which [*it*] **the out-of-state bank or extranational institution** is organized, or other evidence satisfactory to the director[,] to the effect that [such] **the** out-of-state [state] bank or extranational institution has merged or consolidated and has [*thereby*] ceased to exist.

**SECTION 19.** ORS 713.270 is amended to read:

713.270. [(1) *Notwithstanding any other provision of the Bank Act, no out-of-state bank may conduct banking business at a branch located in this state unless the out-of-state bank has converted from, has assumed all or substantially all of Oregon deposit liabilities of or has merged with an insured institution that, by itself or together with any predecessor, has been engaged in banking business or otherwise has been lawfully accepting deposits at an office in this state for a period of not less than three years prior to the effective date of the conversion, assumption or merger.*]

[(2) *This section does not prohibit an out-of-state bank lawfully conducting a banking business in this state on October 4, 1997, from continuing to conduct banking business in this state.*]

**(1) An out-of-state bank, including a savings bank organized under the laws of another state, may open, occupy or maintain a branch in this state that results from:**

**(a) Acquiring another bank or branch of another bank that is located in this state; or**

**(b) Merging with or converting from another bank or branch of another bank that is located in this state.**

**(2) An out-of-state bank may conduct banking business in this state under the provisions of subsection (1) of this section or by opening one or more de novo branches in this state if the laws of the jurisdiction in which the out-of-state bank's principal office is located expressly permit an Oregon bank to open one or more de novo branches in the jurisdiction under conditions that are not more restrictive than the conditions this chapter imposes on an out-of-state bank.**

**(3) An out-of-state bank must submit an application for a certificate of authority to conduct banking business in this state to the Director of the Department of Consumer and Business Services at the time that the out-of-state bank files with the out-of-state bank's home state or primary federal regulator for approval to open, occupy or maintain a branch in this state.**

**(4) At the time the out-of-state bank applies for a certificate of authority, the out-of-state bank must pay the application fee prescribed in ORS 713.150.**

**(5) If the director authorizes an out-of-state bank to open, occupy or maintain a branch in this state, the out-of-state bank may exercise the powers and authorities that the laws of this state authorize for Oregon banks unless the laws of the out-of-state bank's home state limit the powers and authorities.**

**(6) If the director determines that an out-of-state bank's opening, occupying or maintaining of a branch in this state is not consistent with the laws of this state or that the branch would operate in an unsafe or unsound manner, the director shall notify the out-of-state bank that:**

**(a) The director has denied the out-of-state bank's application for a certificate of authority to conduct banking business in this state; and**

**(b) The out-of-state bank may not conduct banking business at a branch located in this state.**

(7) If the director determines that a branch that an out-of-state bank maintains in this state is being operated in violation of the laws of this state or that the branch is being operated in an unsafe or unsound manner, the director may take all enforcement actions the director could take with respect to an Oregon bank, except that the director shall notify the responsible bank supervisory agency of each enforcement action the director takes and, to the extent practicable, shall consult and cooperate with the responsible bank supervisory agency in pursuing and resolving the enforcement action.

**SECTION 20.** ORS 713.280 is amended to read:

713.280. **The Director of the Department of Consumer and Business Services may not deny a certificate of authority to** an out-of-state [state] bank or extranational institution [shall not be denied a certificate of authority by reason of the fact that] **solely because** the laws of the state or country under which [such] **the** out-of-state [state] bank or extranational institution is organized, [governing its] **or the laws that govern the** organization and internal affairs **of the out-of-state bank or extranational institution,** differ from the laws of this state. [Nothing contained in] This chapter [shall be construed to] **does not** authorize this state to regulate the organization or internal affairs of [such] **an** out-of-state [state] bank or extranational institution.

**SECTION 21.** ORS 713.290 is amended to read:

713.290. An extranational institution [shall] **may** not accept deposits at [any] **an** office in this state in an amount less than [\$100,000] **\$250,000,** unless the **Federal Deposit Insurance Corporation insures the** insurable deposits of [that] **the** office [are insured by the Federal Deposit Insurance Corporation] or [no such insurance is required under] the Federal Deposit Insurance Act and the regulations of the Federal Deposit Insurance Corporation [thereunder] **do not require insurance.**

**SECTION 22.** ORS 716.060 is amended to read:

716.060. (1) The guaranty fund [shall consist] **or liquidation account consists** of payments in cash made by the incorporators and of all sums credited to the guaranty fund as required by ORS 716.780 **or federal law.**

[ (2) *The incorporators shall deposit to the credit of the Oregon nonstock bank in cash as an initial guaranty fund an amount determined by the Director of the Department of Consumer and Business Services, which is the limit of their liability to that fund.* ]

[ (3) *Prior to the liquidation of the Oregon nonstock bank, the guaranty fund shall not be used except for losses and the repayment of contributions made by incorporators or directors as provided in ORS 716.800 (2), until the fund, together with undivided profits, exceeds 25 percent of the amount due depositors.* ]

[ (4) *The amounts contributed to the guaranty fund by the incorporators shall not constitute a liability of the Oregon nonstock bank, except as provided in this chapter. Any loss sustained by the Oregon nonstock bank in excess of that portion of the guaranty fund created from earnings may be charged against the contributions pro rata.* ]

**(2) If a financial institution that is converting to another type of financial institution has a guaranty fund or liquidation account, the Oregon nonstock bank that results from the conversion must maintain the guaranty fund or liquidation account and may use the guaranty fund or liquidation account only for the purposes for which the financial institution used the guaranty fund or liquidation account before the conversion.**

**SECTION 23.** (1) The amendments to ORS 706.008, 713.010, 713.016, 713.020, 713.090, 713.130, 713.140, 713.150, 713.160, 713.170, 713.190, 713.200, 713.210, 713.220, 713.230, 713.240, 713.250, 713.260, 713.270, 713.280, 713.290 and 716.060 by sections 1 to 22 of this 2011 Act become operative 91 days after the effective date of this 2011 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director by the amendments to ORS 706.008, 713.010, 713.016, 713.020, 713.090, 713.130, 713.140, 713.150, 713.160,

713.170, 713.190, 713.200, 713.210, 713.220, 713.230, 713.240, 713.250, 713.260, 713.270, 713.280, 713.290 and 716.060 by sections 1 to 22 of this 2011 Act.

**SECTION 24.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 4, 2011

Received by Governor:

Repassed by Senate May 25, 2011

.....M.,....., 2011

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Robert Taylor, Secretary of Senate

Approved:

.....M.,....., 2011

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House May 18, 2011

Filed in Office of Secretary of State:

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Bruce Hanna, Speaker of House

.....M.,....., 2011

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State