

A-Engrossed
House Bill 2070

Ordered by the House February 25
Including House Amendments dated February 25

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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.

[Requires banking institution board of directors to hold regular meeting at least once every two months.]

Permits Director of Department of Consumer and Business Services to specify by rule minimum frequency with which board of directors of banking institution must meet.

Permits banking institution to give director *[of Department of Consumer and Business Services]* uncertified copy of audit committee report.

Permits institution to invest assets in membership interests of limited liability companies in specific circumstances.

Permits exception to prohibition against Oregon commercial bank's knowing allowance of depositor overdraft of deposit account if overdraft is inadvertent.

A BILL FOR AN ACT

1
2 Relating to financial institutions; amending ORS 707.670, 707.740, 708A.120 and 708A.410.

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

4 **SECTION 1.** ORS 707.670 is amended to read:

5 707.670. (1)*[(a)]* The board of directors of a banking institution shall hold regular meetings *[as*
6 *provided in this subsection]*. **The Director of the Department of Consumer and Business Ser-**
7 **VICES may specify by rule, in accordance with ORS 183.315, 183.330, 183.335 and 183.341 to**
8 **183.410, the minimum frequency with which a board of directors of a banking institution**
9 **must meet.**

10 *[(b) Unless paragraph (c) of this subsection is applicable, the board of directors shall hold a reg-*
11 *ular meeting at least once every month.]*

12 *[(c) Notwithstanding paragraph (b) of this subsection, with the approval of the Director of the De-*
13 *partment of Consumer and Business Services, the board of directors of a banking institution may hold*
14 *regular meetings as infrequently as once each calendar quarter.]*

15 (2) A quorum at any meeting of the board of directors *[shall consist]* **consists** of:

16 (a) If the banking institution has a fixed board size, a majority of the members of the whole
17 board.

18 (b) If the banking institution has a variable-range board size, a majority of the number of di-
19 rectors prescribed or, if no number is prescribed, a majority of the number in office immediately
20 before the meeting begins.

21 (3) If less than a quorum of directors is present at a meeting, *[they]* **the directors** may adjourn
22 until the next meeting.

23 (4) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors

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 present is the act of the board of directors unless the articles of incorporation or bylaws require the
2 vote of a greater number of directors.

3 (5) Meetings of the board of directors, regular or special, may be held either within or
4 *[without]* **outside** this state.

5 (6) Meetings of the board of directors *[shall]* **must** be held upon such notice as is prescribed in
6 the bylaws. **A director's** attendance *[of a director]* at a meeting *[shall constitute]* **constitutes** a
7 waiver of notice of *[such]* **the** meeting, except where a director attends a meeting for the express
8 purpose of objecting to the transaction of any business because the meeting is not lawfully called
9 or convened. **The notice or waiver of notice of a meeting of the board of directors does not**
10 **need to specify either** *[Neither]* the business to be transacted at *[nor]* **or** the purpose of *[any]* **the**
11 meeting *[of the board of directors need be specified in the notice or waiver of notice of such meeting]*
12 unless required by the bylaws or by law.

13 (7) Unless *[otherwise restricted by]* the articles of incorporation or bylaws **provide otherwise**,
14 members of the board of directors of a banking institution or any committee designated by the board
15 may hold a meeting of the board or committee by means of conference telephone or similar com-
16 munications equipment that allows all persons participating in the meeting to hear each other.
17 Participation in a meeting under this subsection *[shall constitute]* **constitutes** presence in person
18 at the meeting.

19 **SECTION 2.** ORS 707.740 is amended to read:

20 707.740. The board of directors of a banking institution shall annually appoint an examining or
21 audit committee of not fewer than three directors of the banking institution who are not active of-
22 ficers of the banking institution or not fewer than three other persons who are approved by the
23 Director of the Department of Consumer and Business Services. The examining or audit committee
24 shall examine and study the report of each examination *[made by]* **that** bank supervising authorities
25 **make** and report to the board of directors within 60 days after *[receipt of]* **receiving** the report
26 *[relative to]* **concerning the** criticisms and suggestions contained in the report and comment on any
27 matter relative to the affairs of the banking institution that in *[its]* **the audit committee's** judgment
28 should be known to the directors. The report *[shall]* **must** be recorded in the minute book of the
29 banking institution, and a *[certified]* copy transmitted to the director *[within five days]* **upon the**
30 **director's request.**

31 **SECTION 3.** ORS 708A.120 is amended to read:

32 708A.120. (1) An institution *[shall]* **may** not invest any of *[its]* **the institution's** assets in the
33 capital stock of any other corporation **or in a membership interest in any limited liability**
34 **company**, except:

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

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

42 (c) In the capital stock **or a membership interest** of any safe deposit company *[doing]* **that**
43 **does** an exclusive safe deposit business on premises *[owned or leased by]* the institution **owns or**
44 **leases** upon 30 days' advance notice to the director subject to the same limitations applicable to a
45 national bank.

1 (d) In the capital stock **or a membership interest** of an agricultural and livestock finance
2 [companies] **company**, subject to the same limitations applicable to national banks and to the ap-
3 proval of the director.

4 (e) In the capital stock **or a membership interest**, eligible for purchase by national banks, of
5 a small business investment [companies] **company**, but the aggregate investment in the stock
6 [shall] **or membership interest may** not exceed two percent of the **institution's** capital [of the
7 institution].

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

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

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

13 (i) In the capital stock of a bank service [corporations] **corporation**, as provided in ORS
14 708A.130 to 708A.145.

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

16 (k) If a trust company is not engaged in a banking business and if the **director first approves**
17 **the** investment [is first approved by the director], the trust company may invest an amount [not to]
18 **that does not** exceed 20 percent of the capital of the trust company:

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

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

24 (L) In adjustable rate preferred stock of the Student Loan Marketing Association established in
25 20 U.S.C. 1087-2, [but] **except that** the aggregate investment in the stock [shall] **may** not exceed 15
26 percent of the **institution's** capital [of the institution].

27 (m) In the capital stock **or a membership interest** of a company acquired for the purpose of
28 strengthening the institution's capital structure or [the elimination of] **eliminating** undesirable as-
29 sets, as provided in ORS 708A.125.

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

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

35 (2) An institution may invest [its] **the institution's** assets in shares of any mutual fund, the
36 assets of which are invested solely in obligations of the type described in and limited under ORS
37 708A.115.

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

42 (4) An institution may acquire or continue to hold the fully paid stock of a corporation **or a**
43 **membership interest in a limited liability company**, the purpose of which is to permit the insti-
44 tution to engage in any business in which a financial holding company, a bank holding company or
45 a nonbank subsidiary of a financial holding company or a bank holding company is authorized to

1 engage. This subsection does not apply unless the institution is the owner of at least 80 percent of
 2 the common stock of the subsidiary corporation **or the membership interests of the limited li-**
 3 **ability company**, except qualifying shares of directors **or qualifying membership interests of**
 4 **members.**

5 (5) An institution may, subject to the **director's** approval [*of the director*] and to rules
 6 [*promulgated by*] the director **adopts**, acquire and continue to hold at least 80 percent of the fully
 7 paid stock of a corporation, **or at least 80 percent of the membership interests of a limited li-**
 8 **ability company, that is** engaged in any business in which an institution is authorized to engage.
 9 Except as otherwise permitted by statute or rule, the investment limitations applicable to the insti-
 10 tution apply to the subsidiary.

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

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

24 (a) [*The acquisition*] **Acquiring** and holding [*of such*] **the stock or the membership interests**
 25 **are** [*shall be*] subject to the **director's** approval [*of the director*]. The director shall base consider-
 26 ation for approval on the condition of the institution, the adequacy of a formal business plan for the
 27 insurance activities, and the existence of satisfactory management for the corporation **or the lim-**
 28 **ited liability company.**

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

33 (c) For each calendar year during which an institution owns all or part of [*any*] a corporation,
 34 **or a limited liability company, that is** licensed as an insurance producer as required by ORS
 35 744.053, the institution shall file a written report with the director. The report [*shall*] **must** be filed
 36 [*no*] **not** later than March 31 of the following year and shall disclose the insurance activities of the
 37 corporation **or the limited liability company**. The **director shall establish the** required contents
 38 of the report [*shall be established by the director*] by rule. The reports filed with the director under
 39 this paragraph [*shall*] **must** be available for public inspection in the **director's** office [*of the*
 40 *director*].

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

45 (e) The corporation **or the limited liability company is** [*shall be*] subject to the limitations

1 *[applicable]* **that apply** to depository institutions under ORS 746.213 to 746.219. For the purpose of
2 this paragraph, “depository institution” has the meaning given that term in ORS 746.213.

3 **SECTION 4.** ORS 708A.410 is amended to read:

4 708A.410. (1) Within the limits established under applicable federal statutes and regulations, an
5 Oregon commercial bank *[receiving]* **that receives** savings accounts shall prescribe by *[its]* **the**
6 **Oregon commercial bank’s** bylaws or by contract with *[its]* **the Oregon commercial bank’s**
7 depositors, the time and conditions on which repayment is to be made to depositors or to *[their]* **the**
8 **depositors’** order.

9 (2) A bank may require 30 days’ notice to withdraw any sum up to \$5,000, 90 days’ notice to
10 withdraw any sum over \$5,000 and not over \$50,000, and 180 days’ notice to withdraw any sum over
11 \$50,000. **The bank may limit, in the aggregate,** withdrawals during a specified time period *[may*
12 *be limited in the aggregate]* to the amount designated for *[that]* **the** time period.

13 (3)(a) Except for negotiable orders of withdrawal and similar deposit accounts, withdrawal from
14 which is made subject to check, **and except for inadvertent overdrafts,** an Oregon commercial
15 bank *[shall]* **may** not knowingly permit a depositor to overdraw the depositor’s savings account.

16 (b) **As used in paragraph (a) of this subsection, “inadvertent overdraft” means an over-**
17 **draft that:**

18 (A) **Is not expressly permitted or provided for in the bylaws or deposit contract of the**
19 **Oregon commercial bank;**

20 (B) **Results from events or circumstances beyond the Oregon commercial bank’s rea-**
21 **sonable control; and**

22 (C) **Is eliminated within 14 days after the Oregon commercial bank becomes aware of the**
23 **overdraft.**

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