

OREGON BANKERS ASSOCIATION

House Bill 2350-A (with -4 amendments dated 5/8/15) May 11, 2015

This bill would modernize the Oregon Bank Act, ORS chapter 706 - 716. The Bank Act was last updated in 1997. Many changes have occurred in banking over the last 18 years. HB 2350 revises many provisions in the Bank Act to make them better fit the realities of 21st century banking.

HB 2350 does not contain any sweeping reforms or bold new initiatives. Instead, it is a collection of minor modernizations and corrections to the Bank Act. The bill was drafted by the Oregon Bankers Association in close collaboration with the Department of Consumer and Business Services.

Main features of the bill are:

- Modifications to the definitions for the Bank Act, which are primarily collected in sections 706.005 and 706.008;
- Narrowing definition of “trust business” to acting as trustee of a trust;
- Updating cross-references throughout the Act to federal laws in effect as of January 1, 2016;
- Expressly requiring banking institutions that take deposits in Oregon to keep books and accounts;
- Revising the rules regarding the names used by banking institutions, to better coordinate with the laws and regulations for naming business entities;
- Limiting incorporators of institutions to individuals, vs “persons”;
- Modifying the rules in ORS chapter 707 regarding the submission for approval of stock offering documents and the payment of stock subscriptions;
- Providing that plans to compensate bank insiders with bank stock must be approved by DCBS and 2/3 of the stockholders;
- Permitting amended or restated articles of incorporation to have a delayed effective date;
- Clarifying process for gaining DCBS approval for exchange of real property for stock;

- Enhancing disclosure to shareholder of orders received by an institution;
- Enhancing statutory duties of directors and officers of institution regarding good faith, prudent care, actions in the institution's best interests;
- Correcting problems with nomenclature used throughout the Bank Act to identify various types of financial institutions;
- Requiring that institution's audit committee be composed of at least 3 outside directors;
- Allowing institutions to be members of LLCs to strengthen capital structure, own ATMs, etc;
- Deleting requirement that rents payable under a personal property lease must exceed the bank's total expenditures;
- Permits sending change-of-terms notices to customers via email;
- Authorizing bank refusal to pay check where it suspects that customer is victim of financial exploitation; and
- Permitting approval of conversion of Oregon bank by simple board and stockholder majorities.

The -4 Amendments dated May 8, 2015 were developed in collaboration with DCBS to modernize the rules in chapter 714 pertaining to the establishment of bank branches, bringing these rules into line with changes being made by other legislation concerning branches of credit unions.

ORS Chapter 705

Section 1. 705.137 Permits DCBS to share documents with and receive documents from Federal Reserve Board.

Requested by DCBS

Section 2. 705.139 Permits DCBS to enter into agreements with Federal Reserve Board.

Requested by DCBS

Section 3. Adds Section 4 to ORS Chapter 706

Section 4. Requires financial institution to file notice with DCBS re: opening or closure of loan production office.

Transplanted from 708A.275 because section applies to all financial institutions and not just banks.

ORS Chapter 706

Section 5. 706.005 Deletes reference to savings and loan associations in (6).

Revises definition of "officer" in new (23) to include any individual designated as an officer by the board pursuant to 707.700".

Adds definition of "outside director" in new (25).

Revises definition of "trust business" in new (29) - limited to acting as trustee of a trust.

Section 6. 706.008 Revises definition of "bank service corporation" to include LLCs.

Deletes definitions of "federal savings bank", "in-state federal stock bank", "insured nonstock institution", "insured stock institution", "state nonstick" bank and "state stock bank".

These terms are either used very infrequently throughout Bank Act or are essentially self-defining.

- Section 7. 706.015 Updates cross-reference to federal laws, regulations to January 1, 2015.
- Section 8. 706.500 Deletes “authorizing insurance of deposits” in (5) - re: DCBS acceptance of other reports.
- Section 9. 706.570 Adds new (1), requiring banking institutions and non-Oregon institutions doing banking business in Oregon to keep books and accounts.
Deletes references to “non-Oregon institutions” in subsections (2) and (3), since DCBS doesn’t examine them.
- Section 10. 706.630 Deletes requirement that bank call report set forth total liabilities/resources of the bank.
- Section 11. 706.650 Non substantive grammatical changes only
- Section 12. 706.720 Amends (4) to extend confidentiality protection to records/information of any person (*vs “individual”*) unless person’s activities/affairs were contributing factor in institution’s failure.
- Section 13. 706.723 Amends (1) and (2) to extend confidentiality protection to records/reports described in 706.720 (3). Inserts reference to 706.720(3) into subsection (2).
- Section 14. 706.795 Amends to allow DCBS to authorize banking institutions to exercise any power conferred on any financial institution that is “conducting banking or trust business in this state” (*vs “taking deposits” or “transacting trust business”*).

ORS Chapter 707

- Section 15. 707.010 Makes section applicable to persons who have not received either a charter or a certificate to do a banking business from DCBS.
Makes section inapplicable to national bank that was lawfully transacting banking business in Oregon on June 30, 2011 and has continuously done so thereafter.
- Section 16. 707.025 Non substantive changes
- Section 17. 707.075 Modifies rules regarding use of names of banking institutions to clarify that names of financial

institutions are registered with DCBS rather than with Secretary of State.

Section 18. 707.110 Changes “persons” to “individuals” re: who can serve as incorporators and initial directors.
Under 706.005, “person” includes entities as well as individuals.

Revises (2)(g) to require articles of incorporation to state that the institution will be governed by a board of not less than 5 individuals elected by the stockholders.

Section 19. 707.184 Amends (2) to specify that change of registered agent address notice be sent to the institution’s CEO and to permit registered agents to send notices of change of address electronically.

Section 20. 707.195 Permits submission of proposed stock offering documents to DCBS for review either before, at or after filing articles.

Section 21. 707.200 Deletes provision allowing stock subscribers of newly organized institution to pay subscriptions directly to the institution.

Provides that in absence of fraud, board’s judgment as to adequacy of real property/improvements presented as consideration for stock is conclusive.

Provides that institutions can’t issue stock until charter has been issued. *(Transplanted from 707.210)*

Section 22. 707.210 Prohibition against stock issuance before receipt of charter transferred to 707.200.

Section 23. 707.254 Permits amendment to articles to have delayed effective date.

Section 24. 707.256 Permits restated articles to have delayed effective date.

Section 25. 707.350 Amends subsection (1) to clarify that real property/improvements exchanged for stock post initial organization must be approved by the Director, including provision of an appraisal.

Amends subsection (2) to require that a plan for issuing stock to director, officer or employee as compensation for services must be approved by DCBS. *(Requirement for approval is currently implied).*

- Section 26. 707.415 Deletes requirement that report of declared dividend be included with report required under 707.660.
- Section 27. 707.610 Amends (1) to require that notice to stockholders of annual meeting must be accompanied by description of any orders received by the institution under 706.580.
- Amends (2) to generally require that a special stockholders' meeting must be held not less than 10 nor more than 60 days after call for meeting is issued.
- Section 28. 707.612 Provides that action taken by stockholders or directors without a meeting will be effective on date last signature is placed on the records, or at such earlier or later date as is set forth therein.
- Section 29. 707.620 Allows DCBS to direct institution/stock savings bank to call stockholders' meeting (*as alternative to calling the meeting itself*).
- Section 30. 707.660 Adds new (1), requiring directors to discharge duties in good faith, with prudent care, in manner director reasonably believes to be in institution's best interests.
- Throughout, changes nomenclature from "banking institution" to "institution or Oregon stock savings bank".
- Problem is with current (3) (new (4)), which deals with tenders and exchange offers for equity securities of a "banking institution or Oregon stock savings bank". There are 2 problems with this nomenclature: (a) "banking institution" is defined in 706.008 to include Oregon stock savings banks, so calling them out here is redundant if "banking institution" is used; (b) "banking institution" also includes Oregon non-stock savings banks, which don't issue equity securities. By changing the nomenclature to "institution or Oregon stock savings bank", this section covers only stock entities: Oregon commercial banks, Oregon trust companies and Oregon stock savings banks.*
- Section 31. 707.665 Adds new (1), requiring officers to discharge duties in good faith, with prudent care, in manner director reasonably believes to be in institution's best interests.
- In (2), amends nomenclature to "institution or Oregon stock savings bank". See comment under 707.660.

Section 32. 707.690 Clarifies that a vacancy on the board may be filled by the remaining directors.

Amends nomenclature to "institution or Oregon stock savings bank". *See comment under 707.660.*

Section 33. 707.740 Requires that examining or audit committee be composed of not less than 3 outside directors.

Chapter 708A

Section 34. 708A.010 Permits Oregon commercial banks to engage in certain activities as principal or agent.
Requested by DCBS

Section 35. 708A.125 Allows institutions to hold membership interests in LLCs to strengthen the institution's capital structure or eliminate undesirable assets.

Section 36. 708A.145 Re: services performed by bank service corporations, amends (2) (a) by deleting "take deposits" and substituting "engage in the business of banking".

Section 37. 708A.155 Amends (3) to clarify possible actions by DCBS.

Section 38. 708A.160 Permits investment in LLC established to create/operate ATMs.

Section 39. 708A.165 Non substantive grammatical changes

Section 40. 708A.180 Deletes requirement that rents payable under the minimum term of a personal property lease in which Oregon commercial bank invests must exceed the banks total expenditures.

Section 41. 708A.195 Amends (2) to change vesting date for REO to date deed is received.

Section 42. 708A.250 Amends nomenclature from "institutions" to "Oregon commercial banks". *Statute grants lending authority. "Institutions" includes trust companies, which don't engage in lending.*

Section 43. 708A.255 Amends nomenclature from "financial institution" to "Oregon commercial bank".
"Financial institution" includes credit unions and trust companies. Trust companies

do not lend, and credit unions are not governed by the Bank Act.

- Section 44. 708A.260 Amends nomenclature from "institution" to "Oregon commercial bank." *See note under 708A.250.*
- Section 45. 708A.265 Amends nomenclature from "institution" to "Oregon commercial bank". *See note under 708A.250.*
- Section 45 a 708A.275 Amends notice requirements for establishment of loan production offices.
- Section 46. 708A.410 In (2), changes nomenclature from "bank" to "Oregon commercial bank".
To make nomenclature consistent throughout the sections in this series on deposits.
- In (3), adds reference to "negotiable order of withdrawal or similar instrument".
- Section 47. 708A.420 Amends (1) to provide that change of terms notice may be sent to depositor by email.
- Section 48. 708A.425 Revises nomenclature from "financial institution" *which includes credit unions* to "Oregon commercial bank".
To make consistent with other statutes in series.
- Section 49. 708A.430 Revises nomenclature from "financial institution" *which includes credit unions* to "Oregon commercial bank".
To make consistent with other statutes in series.
- Revises (1) to permit affidavit on decedent's account to be submitted by 1 or more persons. *ie, children, siblings.*
- Section 50. 708A.435 Revises nomenclature from "Oregon operating institution" to "insured institution".
"Oregon operating institution" includes trust companies. Trust companies are not authorized to take deposits. "Insured institution" = company whose deposits are insured by FDIC.
- Section 51. 708A.440 Revises nomenclature from "financial institution" to "insured institution".
"Financial institution" includes credit unions, which are not governed by the Bank Act.
- Section 52. 708A.445 Authorizes bank to refuse to pay check where reason to believe person signing or

indorsing it was the victim of financial exploitation as defined in 124.050.

Requested by DCBS

- Section 53. 708A.455 Throughout, revises nomenclature from “financial institution” to “insured institution”; and deletes reference to “share account” (*Credit unions*).
- Inserts reference to “limited liability company” in definition of “joint account”.
- Section 54. Adds section 55 to 708A.455-708A.515
- Section 55. If institution conditions withdrawal/ payment on advance notice, for purposes of 708A.455-708A.515, request for withdrawal/ payment is immediately effective and motive of intent to withdraw is a request for withdrawal.
- Section 56. 708A.460 Revises nomenclature: “financial institution” to “insured institution”.
- Section 57. 708A.470 Revises nomenclature from “bank” to “insured institution”.
- Section 58. 708A.475 Revises nomenclature: “financial institution” to “insured institution”.
- Section 59. 708A.485 Revises nomenclature: “financial institution” to “insured institution”.
- Section 60. 708A.490 Revises nomenclature: “financial institution” to “insured institution”.
- Section 61. 708A.495 Revises nomenclature: “financial institution” to “insured institution”.
- Section 62. 708A.500 Revises nomenclature: “financial institution” to “insured institution”.
- Section 63. 708A.505 Revises nomenclature: “financial institution” to “insured institution”.
- Section 64. 708A.510 Revises nomenclature: “financial institution” to “insured institution”.
- Section 65. 708A.515 Deletes cross-references to 716.024, 723.426 or 723.432.
- Revises nomenclature: “financial institution” to “insured institution”.

Section 66.	708A.555	Makes specific reference to accounting principles generally accepted in the United States (GAAP).
Section 67.	708A.565	Inserts reference to "membership interests" in companies engaged in permissible holding company activities.
Section 68.	708A.575	Adds reference to investment in LLCs.
Section 69.	708A.580	Adds reference to investment in LLCs.
Section 70.	708A.585	Adds reference to conservators.
Section 71.	708A.595	Inserts cross references to 79.0102 and 87.142 to define "goods" and "chattels".
Section 72.	708A.600	Changes reference in (2) from "bad debt" to "loss".
Section 73.	708A.650	Adds "out-of-state federal bank" to definition of "bank" in bank holiday statute.
Section 74.	708A. 990	Corrects nomenclature; grammatical changes

Chapter 709

Section 75.	709.130	Inserts reference to "members" <i>in recognition of fact that trust company may be organized as an LLC rather than as a corporation.</i>
Section 76.	709.150	In (3), revises nomenclature: "real or personal securities" to "secured by real or personal property.
Section 77.	709.175	In (2) (b), revises nomenclature: "connected to" to "affiliated with".
Section 78.	709.330	In (2), adds reference to the sale or transfer of liabilities. In (3) and (4), expands coverage to estates, conservatorships and other fiduciary relationships.
Section 79.	Deleted.	

Section 80. 709.535 Limits requirement for stockholder/member approval of transfer of substantially all asset, liabilities of Oregon trust company outside ordinary course of business to stockholders/members of the selling trust company.

Chapter 711

Section 81. 711.085 Clarifies that simple majorities of the board and stockholders may approve the conversion of an Oregon bank.

Section 82. 711.135 Corrects typographical error in (1)(a); replaces "Oregon stock bank" with "insured stock institution" in (1)(b).

Section 83. 711.405 Re: definition of "insolvent institution", clarifies that liabilities on capital debentures are excluded from the calculation of liabilities; and deletes provision that bonds will be valued in accordance with DCBS rules.

Section 84. 711.520 Clarifies application of assets of insolvent/liquidating Oregon stock bank to payment of certain expenses and obligations.

Chapter 713

Section 85. 713.010 Amended subsection (2) to conform with 713.270 (5) re: powers of out-of-state bank with branch in Oregon.

Section 86. 713.130 Adds (1)(a), clarifying that name of out-of-state or extranational institution cannot be indistinguishable from name of other financial institution chartered or certificated by DCBS to do banking business; name of any other entity; or any reserved, registered or assumed business name on file with Secretary of State.

Revises (2) to provide that director may prohibit use by out-of-state or extranational institution of name determined to be not distinguishable from that of a financial institution lawfully transacting banking business or making loans in Oregon.

Revises (3)(b), regarding use of name by out-of-state bank or extranational institution.

Section 87.	713.300	Revises (3) to delete requirement that out-of-state bank, extranational institution or foreign association file designation of DCBS as attorney for service of process before it engages in activities permitted under (2). Requires such institution to file notice with DCBS stating that it intends to engage in one or more of the activities permitted under (2).
Section 88.	713.990	Grammatical changes only
Section 88a	714.025	Replaces requirement for branch applications with requirement for notice to DCBS. Permits DCBS to limit or restrict ability to establish new branch if adverse affect on safety and soundness. <i>Sections 88a through 88g bring sections into line with similar changes being made in ORS chapter 723 on credit unions.</i>
Section 88b	714.035	Conforming changes to 714.025 re: mobile facilities.
Section 88c	714.049	DCBS investigation of notice regarding new branch.
Section 88d	714.054	DCBS failure to limit/restrict new branch within 30 days = approval
Section 88e	714.059	DCBS certificates for branches.
Section 88f	714.064	Commencement of business in new branch.
Section 88g	714.095	Out-of-state banks opening new Oregon branches.
Section 89.	714.995	Grammatical changes only
Section 89A.	205.460	Adjusts nomenclature to reflect definition changes in 706.008
Section 90.	706.660	Repealed. <i>Requested by DCBS.</i>
	706.680	Repealed. <i>Requested by DCBS.</i>
Section 91.		Effective Date
Section 92.		Operation Date
Section 93.		Emergency Clause