



STATE OF OREGON
Legislative Counsel Committee

April 10, 2017

To: Representative Mitch Greenlick
From: David Fang-Yen, Deputy Legislative Counsel
Subject: House Bill 2112-1 amendments

Attached are your requested -1 amendments to House Bill 2112. The amendments remove the 60-day notice provision and make violation of the bill's requirements actionable under Oregon's unfair trade practices statute.

As set forth in our opinion dated February 7, 2017 (LC 4174), the requirement that a financial institution disclose its reason for unilaterally closing a customer account, as applied to a national bank, is subject to preemption challenge. Please note that nothing in the -1 amendments changes that preemption analysis. Specifically, bringing the requirement within the unfair trade practices law does not insulate the requirement from preemption challenges.

Additionally, please note the following:

- Instead of amending the Bank Act, as the introduced version of House Bill 2112 did, the -1 amendments create a standalone provision of law and incorporate by reference the definition of "financial institution" from the Bank Act. This was done to avoid the assertion that a law that facially applies to credit unions is not applicable to credit unions if the law is made a part of the Bank Act. While I do not think this assertion is legally defensible, I thought it best to make this change to avoid any question of the law's applicability.
- I removed the provision that exempted a financial institution from compliance with the law if the account closure was due to suspected illegal activity. The provision was originally intended to allow the financial institution to close the account without waiting 60 days under those circumstances. With only the disclosure requirement remaining, however, the provision seemed counter to the intent of the bill.
- ORS 646.608 appears twice in the -1 amendments because it was "double amended" by sections 9 and 10, chapter 523, Oregon Laws 2015. This means that the 2015 law amended that statute twice, with one set of amendments becoming operative in 2020. Since two forms of ORS 646.608 exist (the one currently in effect and the one that will become operative in 2020), both must be separately amended in the -1 amendments.

Encl.