

A-Engrossed Senate Bill 520

Ordered by the Senate April 10
Including Senate Amendments dated April 10

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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.

Changes amount of credit union assets that require credit union to obtain fidelity bond or irrevocable letter of credit from financial institution and amount of fidelity bond or irrevocable letter of credit required.

Provides that state credit union has powers and authorities of federal credit union, subject to certain findings of Director of Department of Consumer and Business Services. **Requires credit union to notify director at least 45 days before exercising power.**

Removes power of board of directors of credit union to exercise certain functions.

Increases aggregate limit on amount of loan that credit union may make to credit union member. Specifies limitations on liability of credit union director or officer under particular circumstances.

A BILL FOR AN ACT

1
2 Relating to credit unions; amending ORS 181.871, 723.122, 723.156, 723.276, 723.296, 723.326, 723.512
3 and 723.840; and repealing ORS 723.332.

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

5 **SECTION 1.** ORS 723.122 is amended to read:

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

| Total Assets | Minimum Amount of Bond or Letter of Credit |
|--------------------|--|
| \$0 to \$4,000,000 | \$250,000 or coverage equal to the credit |

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 | | union's total assets, |
| 2 | | whichever is less. |
| 3 | | |
| 4 | \$4,000,001 to \$50,000,000 | \$100,000 plus |
| 5 | | \$50,000 for each |
| 6 | | \$1,000,000 of total assets or |
| 7 | | fraction [<i>thereof</i>] of total assets |
| 8 | | over \$1,000,000. |
| 9 | | |
| 10 | \$50,000,001 to \$500,000,000 | \$2,550,000 plus |
| 11 | | \$10,000 for each |
| 12 | | \$1,000,000 of total assets or |
| 13 | | fraction [<i>thereof</i>] of total assets |
| 14 | | over [<i>\$1,000,000</i>] |
| 15 | | \$50,000,000, |
| 16 | | with a maximum of |
| 17 | | \$5,000,000. |
| 18 | | |
| 19 | More than \$500,000,000 | 1% of the credit |
| 20 | | union's total assets |
| 21 | | rounded to the |
| 22 | | nearest [<i>\$1,000,000</i>] |
| 23 | | \$100,000,000, |
| 24 | | with a maximum |
| 25 | | of \$9,000,000. |

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

(3) 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 must be reported to the director.

SECTION 2. ORS 723.156 is amended to read:

723.156. (1) Notwithstanding any other provision of law, **in addition to the powers and authorities provided under the laws of this state, a credit union may exercise any of the powers that were available to a federal credit union as of January 1, 2013. At least 45 days before exercising a power under this subsection, a credit union shall provide to the Director of the Department of Consumer and Business Services written notice of the credit union's intent to exercise the power. The notice must describe the power and specify the statutory or regulatory authority or other legal basis for the federal credit union power the credit union intends to exercise.**

(2) **Notwithstanding any other provision of law, in addition to the powers and authorities provided under the laws of this state,** a credit union may, [*upon prior*] **after obtaining** approval [*by*] **from** the director [*of the Department of Consumer and Business Services*] and subject to any

1 limitations [*prescribed by*] the director **prescribes**, exercise any of the powers conferred **after**
 2 **January 1, 2013**, upon a [*federally chartered*] **federal** credit union [*doing*] **that does** business in this
 3 state **and** that is subject to the regulations of the administrator of the National Credit Union Ad-
 4 ministration or the successor or successors of the administrator, **or any of the powers conferred**
 5 **on a credit union that is chartered under the laws of another state and does business in this**
 6 **state**, if the director finds that [*the exercise of*] **exercising** the [*power*] **powers**:

7 [(1)] (a) Serves the public and members' convenience and advantage; and

8 [(2)] (b) Equalizes and maintains the quality of competition [*between state chartered credit unions*
 9 *and federally chartered credit unions*] **among credit unions chartered under the laws of this**
 10 **state, of another state and under federal law.**

11 **SECTION 3.** ORS 723.276 is amended to read:

12 723.276. (1) At the organizational meeting of the board of directors and within 60 days
 13 [*following*] **after** each annual meeting of the members, the directors shall elect an executive officer,
 14 [*who may be designated as chairperson*] **whom the directors may designate as chairperson** of the
 15 board or president[;], a vice chairperson of the board or one or more vice presidents[;], a
 16 treasurer[;] and a secretary. The treasurer and the secretary may be the same individual. The per-
 17 sons [*elected by*] **that** the board of directors **elects** are the executive officers of the corporation.

18 (2) The terms of the officers are one year, or until the successors of the officers are chosen and
 19 have duly qualified.

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

21 [(4)] *The board of directors may employ an officer in charge of operations whose title is president,*
 22 *general manager, or another title that is designated in the bylaws of the credit union. The board of*
 23 *directors may instead designate the treasurer or an assistant treasurer to be in active charge of the*
 24 *affairs of the credit union.*]

25 [(5)] *The board of directors may appoint a security officer.*]

26 **SECTION 4.** ORS 723.296 is amended to read:

27 723.296. (1) The board of directors shall manage the business and affairs of the credit union. The
 28 duties of the board include, but are not limited to, the duties listed in this section. The board may
 29 not delegate duties listed in subsection (2) of this section. The board may delegate the duties listed
 30 in subsection (3) of this section to a committee, officer or employee of the credit union, who shall
 31 provide appropriate information to the board regarding the exercise of the duties.

32 (2) The board shall:

33 (a) Establish the requirements for membership in the credit union, including the par value, if
 34 any, of a share;

35 [(b)] *Declare dividends on shares and share certificates as provided by the bylaws;*]

36 [(c)] (b) Authorize interest refunds, if any, to members from income earned and received in
 37 proportion to the interest [*paid by them*] **the members pay** on classes of loans and under conditions
 38 that the board prescribes;

39 [(d)] (c) Authorize the employment of persons necessary to carry on the business of the credit
 40 union and fix the compensation of the manager or chief executive officer;

41 [(e)] (d) Authorize the conveyance of property;

42 [(f)] (e) Suspend members of the credit or supervisory committee for [*failure*] **failing** to perform
 43 [*their*] **the members'** duties;

44 [(g)] (f) Appoint any special committees the board considers necessary;

45 [(h)] *Perform other duties as the members of the credit union from time to time direct, and perform*

1 or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws
2 for the members;]

3 [(i)] **(g)** Limit the number of shares and the amount of deposits that *[may be owned by]* a member
4 **may own** and ensure that limitations adopted under this subsection apply alike to all members; and

5 [(j)] **(h)** Establish policies and controls regarding the investment of surplus funds.

6 (3) In addition to the duties listed in subsection (2) of this section, and subject to subsection (1)
7 of this section, the board shall:

8 (a) Act upon applications for membership. If this duty is delegated, a record of an approval or
9 denial of membership must be made available to the board. A person *[denied membership by]* **to**
10 **whom** a committee, officer or employee of the credit union **denies membership** may appeal the
11 denial to the board.

12 (b) Purchase a blanket fidelity bond, in accordance with ORS 723.122.

13 (c) Determine from time to time the interest rate or rates that shall be charged on loans.

14 (d) **Declare dividends on shares and share certificates in accordance with the provisions**
15 **of the bylaws and** determine the prospective dividend rate to be paid on shares and share certif-
16 icates and the interest rate or rates that will be paid on deposits and deposit certificates.

17 (e) Designate a depository or depositories for the funds of the credit union.

18 (f) Borrow or lend money to carry out the functions of the credit union.

19 **SECTION 5.** ORS 723.326 is amended to read:

20 723.326. *[(1) The supervisory committee by a unanimous vote may suspend any member of the credit*
21 *committee and shall report such action to the board of directors for appropriate action.]*

22 [(2)] **(1)** The supervisory committee by a unanimous vote may suspend any *[officer or]* member
23 of the board until the next members' meeting. The next members' meeting must be held not less than
24 14 nor more than 45 days after the suspension. At the meeting the members shall decide whether
25 to remove the suspended officer or board member.

26 [(3)] **(2)** **The board may remove** any member of the supervisory committee *[may be removed by*
27 *the board for failure]* **for failing** to perform duties prescribed in this chapter or in the credit union's
28 articles of incorporation, bylaws or policies.

29 [(4)] **(3)** A person may not serve as a director if the person has defaulted on payment of a vol-
30 untary obligation to the credit union or has otherwise caused the credit union to incur a financial
31 loss.

32 **SECTION 6.** ORS 723.512 is amended to read:

33 723.512. (1) *[No]* **A credit union may not make a loan** *[shall be made]* to any member in an
34 aggregate amount *[in excess of \$15,000]* **that exceeds \$100,000**, or 15 percent of the credit union's
35 equity, whichever is greater. In determining the amount of loans to be made to a member, loans for
36 which that member is a guarantor or surety *[shall]* **must** be included, as well as loans to persons
37 who are not individuals if the individual member is a principal or owner of the person who is not
38 an individual or the loan is for that member's benefit.

39 (2) The restrictions in subsection (1) of this section do not apply to any loan **that is** fully
40 guaranteed by shares or deposits.

41 **SECTION 7.** ORS 723.840 is amended to read:

42 723.840. (1) A person *[may not be held]* **is not** personally liable for an act or omission *[by]* the
43 person **does or fails to do** in good faith and in compliance with a statute, rule or order of the Di-
44 rector of the Department of Consumer and Business Services under this chapter regardless of
45 whether the statute, rule or order is later amended, rescinded or determined to be invalid by judicial

1 or other authority.

2 (2) A director or officer of a credit union is not personally liable to the credit union or
3 to members of the credit union for damages that result from the director's or officer's ex-
4 exercising judgment or discretion in connection with the director's or officer's duties or re-
5 sponsibilities or from the director's or officer's act or omission in rendering service to the
6 credit union, except to the extent that, in exercising judgment or discretion or in rendering
7 service to the credit union, the director or officer fails to act in good faith, with the care
8 an ordinarily prudent person in a like position would exercise under similar circumstances
9 and in a manner that the director or officer reasonably believes is in the best interests of
10 the credit union.

11 (3)(a) A director, in discharging the director's duties, may rely on information, opinions,
12 reports or statements, including financial statements and other financial data that any of the
13 following persons prepare or present:

14 (A) An officer or employee of the credit union that the director reasonably believes is
15 competent and reliable with respect to the matters the officer or employee prepares or pre-
16 sents;

17 (B) Legal counsel, public accountants or other persons with respect to matters that the
18 director reasonably believes are within the counsel's, accountant's or other person's profes-
19 sional or expert competence; or

20 (C) A committee of the board of directors of which the director is not a member if the
21 director reasonably believes that the committee merits the director's confidence.

22 (b) A director does not act in good faith, with due care or in a manner that the director
23 reasonably believes is in the interests of the credit union if the director has knowledge con-
24 cerning a matter that makes the director's reliance on the information, opinions, reports,
25 statements or data described in paragraph (a) of this subsection unwarranted.

26 (4) This section does not bar a cause of action against the credit union or change any
27 liability of the credit union that arises out of an act or omission of a director, officer or
28 other who is exempt from liability for negligence under this section.

29 **SECTION 8. ORS 723.332 is repealed.**

30 **SECTION 9.** ORS 181.871, as amended by section 2, chapter 28, Oregon Laws 2012, is amended
31 to read:

32 181.871. (1) ORS 181.870 to 181.887 do not apply to:

33 (a) A person certified by the Department of Public Safety Standards and Training as a police
34 officer or a parole and probation officer.

35 (b) A law enforcement officer of the United States.

36 (c) An officer or employee of this state, Oregon Health and Science University established by
37 ORS 353.020 or the United States while performing duties of the office or employment.

38 (d) A person appointed or commissioned by the Governor to perform law enforcement or security
39 services.

40 (e) An attorney admitted to practice law in this state while engaged in the practice of law.

41 (f) An insurance adjuster licensed in this state while performing duties authorized by the license.

42 (g) A person who monitors alarm systems that are not designed to detect threats to public safety
43 or personal well-being.

44 (h) A person while protecting the person's property.

45 (i) A person who repairs and installs intrusion alarms while repairing or installing intrusion

1 alarms.

2 (j) A person acting as an investigator as defined in ORS 703.401.

3 (k) A person performing crowd management or guest services, including, but not limited to, a
4 person described as a ticket taker, an usher, a parking attendant or event staff.

5 (L) A person who has a valid service permit issued by the Oregon Liquor Control Commission
6 pursuant to ORS 471.360 and who is an employee of a licensee of the commission when the person
7 is performing age verification and controlling access to premises of the licensee, if the person is not:

8 (A) Armed;

9 (B) Permitted to initiate confrontational activities, including physical contact and the confis-
10 cation of property; or

11 (C) Hired with the primary responsibility of taking enforcement action as described in ORS
12 181.870 (8)(f).

13 (m) A person performing security services at a facility regulated by the United States Nuclear
14 Regulatory Commission if the facility is operated by the person's employer.

15 (n) An individual while on active duty as a member of the armed services or while performing
16 duties as a law enforcement officer.

17 (o) An employee of a financial institution who has been designated as a security officer for the
18 financial institution pursuant to the Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) and regu-
19 lations adopted under the act [*or pursuant to ORS 723.276 (5)*].

20 (p) A person who provides security services as a volunteer or for de minimis consideration other
21 than money for an event operated for the benefit of a corporation that is organized not for profit
22 pursuant to ORS chapter 65 or any predecessor of ORS chapter 65 or that is exempt from taxation
23 under section 501(a) of the Internal Revenue Code as an organization described in section 501(c) of
24 the Internal Revenue Code.

25 (q) A student enrolled in a community college as defined in ORS 341.005 while engaged in non-
26 confrontational activities that contribute to campus safety under the direct or indirect supervision
27 of a law enforcement professional or private security professional certified or licensed by the De-
28 partment of Public Safety Standards and Training, provided the community college has conducted
29 a criminal background check on the student.

30 (2) The exemption provided by subsection (1)(k) of this section applies only:

31 (a) To a person who is not:

32 (A) Armed;

33 (B) Permitted to initiate confrontational activities, including physical contact and the confis-
34 cation of property; or

35 (C) Hired with the primary responsibility of taking enforcement action as described in ORS
36 181.870 (8)(f);

37 (b) If there is at least one person on-site who is certified or licensed under ORS 181.878 for ev-
38 ery 10 or fewer uncertified persons performing the services described in subsection (1)(k) of this
39 section;

40 (c) If any enforcement action, as described in ORS 181.870 (8)(f), other than incidental or tem-
41 porary action, is taken by or under the supervision of a person certified or licensed under ORS
42 181.878; and

43 (d) During the time when a crowd has assembled for the purpose of attending or taking part in
44 an organized event, including pre-event assembly, event operation hours and post-event departure
45 activities.

1 (3) The exemption provided by subsection (1)(L) of this section does not apply during an organ-
2 ized event that is on a scale substantially outside the ordinary course of the licensee's business.
3 _____