

2017 LEGISLATION ALERTS

Financial Institutions

HB 2161 (Ch. 35) Credit Union Governance

HB 2161 makes several amendments to ORS chapter 723, which governs credit unions chartered by the State of Oregon.

ORS 723.022 provides for amendments to the articles of incorporation and the bylaws of a credit union. The current statute provides that amendments are to be submitted to the Director of the Department of Consumer and Business Services (DCBS) for approval or disapproval, and that the Director must approve or disapprove within 30 days. HB 2161 eliminates the requirement that the Director act within 30 days.

The current statute also provides that amendments to either the articles or the bylaws become effective upon approval by the Director. HB 2161 retains that provision for amendments to the articles, but provides that amendments to bylaws become effective 30 days after submission, unless the Director within that time notifies the submitter that the Director either disapproves the amendments or requires additional information. If the Director requires additional information, the amendments will become effective 30 days after it is submitted, unless the Director disapproves the amendments within that time.

HB 2161 amends ORS 723.202 by adding an additional basis upon which a credit union may expel a member: Namely, where the member creates an undue risk of loss to the credit union, as determined in accordance with the credit union's bylaws.

ORS 723.292 currently requires that credit union boards meet at least 10 different times in 10 different months during each calendar year. HB 2161 replaces that statutory requirement with a requirement that a credit union board hold regular meetings, and permits the DCBS Director to issue a rule specifying the minimum frequency of meetings.

HB 2161 takes effect on January 1, 2018.

HB 2346 (Ch. 51) Distributions From a Decedent's Account

ORS 708A.430 within the Oregon Bank Act and ORS 723.466 in the credit union statute provide a means for distribution of the balance remaining in a decedent's bank or credit union account upon the filing of an affidavit by one of the persons listed in the statutes. Under current law, the Department of Human Services (DHS) and the Oregon Health Authority (OHA) may file such an affidavit under limited circumstances where DHS or OHA has a preferred claim against the decedent's estate.

HB 2346, introduced at the request of DHS, makes several changes to these statutes.

DHS and OHA are second in line (behind a surviving spouse) to claim the funds in the decedent's account. Others in line to file claims under these statutes (in descending order of priority) are the decedent's surviving adult children, parents, and adult siblings. To give a spouse time to claim the funds in the account, DHS

and OHA are not permitted to file their claims until the 46th day following the decedent's death, and the claim must be filed within 75 days after the decedent's death. To give DHS and OHA time to perfect their claim, HB 2346 clarifies that the financial institution may not distribute the proceeds of the decedent's account to the decedent's children, parents, or siblings sooner than 46 days after the decedent's death, and may only distribute the proceeds to such relatives prior to 76 days after the decedent's death if the institution gets prior verbal or written authorization from OHA and DHS.

Under the current law, DHS and OHA may only claim funds in the decedent's account by filing the affidavit described in ORS 708A.430 and 723.466. HB 2346 creates a second pathway for these agencies. In lieu of filing the affidavit, DHS and OHA may submit a declaration made under penalty of perjury. The contents of the declaration must mirror those of the affidavit and must include a specific declaration of authorization.

HB 2346 takes effect on January 1, 2018.

HB 2610 (Ch. 55) Oregon Business Corporation Act

HB 2610 makes several changes to the Oregon Business Corporation Act to address the use of certain electronic technology by incorporating terminology and concepts from the Uniform Electronic Transmissions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-Sign). The bill is primarily intended to facilitate the use of electronic transmission and signature of corporate documents and creates a number of new provisions to this effect.

HB 2610 takes effect on January 1, 2018.

HB 2622 (Ch. 290) Financial Exploitation

HB 2622 creates specific statutory authority for banks, trust companies, and credit unions to take certain protective actions with respect to the accounts of "vulnerable persons" (as defined in ORS 124.100).

An institution, in the exercise of its discretion, may (but is not required to) take action (including limiting account access) when the institution reasonably believes that "financial exploitation" (as defined in ORS 124.050) of a vulnerable person may have occurred, may have been attempted, or is being attempted.

Generally, an institution that limits account access under HB 2622 must make a reasonable effort to notify, orally or in writing, all parties currently authorized to transact business on the account concerning the institution's action. However, such notice is not required when the institution in its discretion determines that providing notice could compromise an investigation of or response to the suspected exploitation.

HB 2622 provides that a financial institution and its employees are immune from criminal, civil, and administrative liability for actions taken in good faith under the bill.

Many financial institutions have language in their deposit account contracts allowing the institution to take actions of the type described in HB 2622. Therefore, HB 2622 provides that its provisions are in addition to and not in lieu of any right the institution may have under its contract, and that HB 2622 does not restrict the institution's rights to take or refuse to take any action pursuant to its contract and does not require the institution to comply with the provisions of HB 2622 when the institution acts pursuant to the provisions of its contract.

HB 2622 took effect on October 1, 2017.

SB 254 (Ch. 644) Data Match System

SB 254 mandates that "financial institutions" (banks and credit unions doing business in Oregon) participate in a new "data match system" – a system for the exchange of information between financial institutions and the Oregon Department of Revenue (ODR), under which the institutions would periodically (not more often than quarterly) receive a list of the names and Social Security or TIN numbers of "delinquent debtors" (persons for whom

a warrant has been issued by ODR) and compare the ODR list against the institution's list of persons holding accounts at the institution. The bill does not prescribe a time frame within which institutions must report back any matches.

ODR may temporarily exempt a financial institution from participation in the data match system if it determines that the institution's participation would not be cost-effective for ODR or would be unduly burdensome for the institution, or if the institution provides written notice from its supervisory authority that the institution has been determined to be undercapitalized.

The bill shields financial institutions and their affiliates from liability under Oregon law for any disclosure of information to ODR, for encumbering or surrendering assets held by the institution in response to an ODR notice of lien or levy, and for any other action taken in good faith to comply with SB 254.

The bill provides that if ODR through use of the data match system determines that a delinquent debtor is also delinquent in child support payments, ODR must wait 30 days before it issues a garnishment to the institution to collect the debt for which the warrant was issued. The bill does not require ODR to report the results of the data match to child support collection authorities. The bill adds a new section to ORS chapter 25, permitting (with limitations) DOJ's Division of Child Support to make agreements with ODR and other divisions within the DOJ for the provision of information reported to the Division of Child Support by an employer pursuant to ORS 25.790 regarding the hiring or rehiring of individuals in Oregon. The bill provides that this information may be used for purposes other than paternity establishment or child support enforcement, including but not limited to debt collection.

SB 254 provides that, except as otherwise permitted by law, a person may not:

- a. Disclose to a delinquent debtor that information relating to the debtor was transmitted using the data match system within the 45-day period prior to the disclosure; or

- b. Knowingly use or disclose information relating to the debtor that was transmitted to or from the ODR through the data match system for any purpose except the collection of debts by ODR or purposes that are reasonably necessary for the functioning of the system. This prohibition does not apply to information that is in the person's control or possession prior to the transmission to or from ODR, or to information that enters a person's control or possession through means unrelated to the data match system.

SB 254 authorizes ODR to impose civil penalties (a) upon financial institutions for failure to participate in the data match system or to comply with department rules; and (b) upon any person who violates the prohibitions against disclosing information to delinquent debtors or using or disclosing information obtained through the data match system for an unpermitted purpose.

A penalty against a financial institution can only be levied if the institution failed to remedy its noncompliance within 30 days after ODR provided notice of the noncompliance, and only if the noncompliance made ODR unable to identify a delinquent debtor. The initial penalty for a noncompliant financial institution may be up to \$1,000, and additional penalties of up to \$1,000 each may be levied if the institution continues to be noncompliant.

Penalties on persons (including financial institutions) who violate the limitations on disclosure and use of information obtained through the data match system range from up to \$1,000 for knowingly using or disclosing information on a delinquent debtor to up to \$2,500 for disclosing to a delinquent debtor that information relating to the debtor is being transmitted through the data match system.

The ODR rules must be adopted not later than July 1, 2018, which is also the date on which the Act becomes operative.