

Enrolled House Bill 2203

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to short-term consumer loans; creating new provisions; amending ORS 725.370, 725.615 and 725.622; and declaring an emergency.

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

SECTION 1. ORS 725.370 is amended to read:

725.370. **Except as otherwise provided in section 4 of this 2007 Act,** loans made or payable in other jurisdictions and lawful where made or payable, are not affected by this chapter.

SECTION 2. ORS 725.615 is amended to read:

725.615. (1) A lender in the business of making title loans may not:

[(1)] (a) Include any of the following provisions in a title loan contract:

[(a)] (A) A hold-harmless clause;

[(b)] (B) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;

[(c)] (C) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course;

[(d)] (D) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to a security interest executed in connection with the loan; or

[(e)] (E) A clause permitting the continuation of interest after repossession of the consumer's motor vehicle, recreational vehicle, boat or mobile home;

[(2)] (b) Conduct a title loan business where liquor or lottery tickets are sold or where gambling devices are located;

[(3)] (c) Charge the consumer more than one fee under ORS 30.701 for dishonored checks when the consumer issues more than one check to the lender. However, the lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check;

(d) Charge the consumer more than the actual amount that the vendor or service provider charges the lender for access to or use of the system described in section 5 of this 2007 Act;

[(4)] (e) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle, boat or mobile home whose title secures the title loan;

[(5)] (f) Make more than one outstanding loan that is secured by one title;

[6] (g) Renew a loan that is secured by one title more than six times after the loan is first made; or

[7] (h) Make a new loan, secured by a title, to a consumer on the same day that a previous loan, secured by the same title, expires if the lender has renewed the previous loan six times. The lender shall wait at least until the next day after the expiration date of the previous loan before making the new loan to the consumer.

(2) The provisions of ORS 725.600 to 725.625 do not prevent a lender from recovering amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court of law.

SECTION 2a. If House Bill 2204 becomes law, section 2 of this 2007 Act (amending ORS 725.615) is repealed and ORS 725.615, as amended by section 2, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2204), is amended to read:

725.615. (1) A lender in the business of making title loans may not:

(a) Make or renew a title loan at a rate of interest that exceeds 36 percent per annum, excluding a one-time origination fee for a new loan;

(b) Charge an origination fee for a new title loan of more than \$10 for each \$100 of the amount of the loan;

(c) Make or renew a title loan for a term of less than 31 days;

(d) Charge a consumer any fee or interest other than a fee or interest described in paragraph (a) [or], (b) or (e) of this subsection or in subsection (2) of this section;

(e) Charge the consumer more than the actual amount that the vendor or service provider charges the lender for access to or use of the system described in section 5 of this 2007 Act;

[e] (f) Include any of the following provisions in a title loan contract:

(A) A hold-harmless clause;

(B) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;

(C) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course;

(D) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to a security interest executed in connection with the loan; or

(E) A clause permitting the continuation of interest after repossession of the consumer's motor vehicle, recreational vehicle, boat or mobile home;

[f] (g) Conduct a title loan business where liquor or lottery tickets are sold or where gambling devices are located;

[g] (h) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle, boat or mobile home whose title secures the title loan;

[h] (i) Make more than one outstanding loan that is secured by one title;

[i] (j) Renew an existing loan that is secured by one title more than two times after the loan is first made; or

[j] (k) Make a new title loan to a consumer within seven days of the date on which a previous title loan expires.

(2)(a) A lender in the business of making title loans may not charge the consumer more than one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many checks or debit agreements the lender obtains from the consumer for the transaction. The fee may not exceed \$20.

(b) A lender in the business of making title loans may not collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer for a dishonored check under ORS 30.701. The lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check. For a dishonored check

or insufficient funds, the fees described in this subsection are the only remedy a lender may pursue and the only fees a lender may charge.

(3) The provisions of ORS 725.600 to 725.625 do not prevent a lender from recovering amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court of law.

SECTION 3. ORS 725.622, as amended by section 1, chapter 3, Oregon Laws 2006, is amended to read:

725.622. (1) A lender in the business of making payday loans may not:

(a) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, excluding a one-time origination fee for a new loan;

(b) Charge an origination fee for a new payday loan of more than \$10 for each \$100 of the amount of the loan;

(c) Charge a consumer more than the actual amount that the vendor or service provider charges the lender for access to or use of the system described in section 5 of this 2007 Act;

~~[(c)]~~ (d) Make or renew a payday loan for a term of less than 31 days;

~~[(d)]~~ (e) Charge a consumer any fee or interest other than a fee or interest described in paragraph (a), ~~[or]~~ (b) or (c) of this subsection or in subsection (2) of this section;

~~[(e)]~~ (f) Include in a payday loan contract:

(A) A hold-harmless clause;

(B) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;

(C) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course; or

(D) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to a security interest executed in connection with the loan;

~~[(f)]~~ (g) Conduct a payday loan business where liquor or lottery tickets are sold or where gambling devices are located;

~~[(g)]~~ (h) Renew an existing payday loan more than two times; or

~~[(h)]~~ (i) Make a new payday loan to a consumer within seven days of the day that a previous payday loan expires.

(2) A lender in the business of making payday loans may not charge the consumer more than one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many checks or debit agreements the lender obtains from the consumer for the transaction. The fee may not exceed \$20. A lender in the business of making payday loans may not collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer for a dishonored check under ORS 30.701. The lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check. For a dishonored check or insufficient funds, the fees described in this subsection are the only remedy a lender may pursue and the only fees a lender may charge.

(3) The provisions of ORS 725.600 to 725.625 do not prevent a lender from recovering amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court of law.

SECTION 4. (1) Notwithstanding ORS 725.370, a person that makes a payday loan or title loan is subject to ORS chapter 725 if in the person's capacity as a lender the person makes a loan to a consumer who resides in or maintains a domicile in this state and if the consumer:

(a) Negotiates or agrees to the terms of the loan in person, by mail, by telephone or via the Internet while physically present in this state;

(b) Enters into or executes a loan contract with the lender in person, by mail, by telephone or via the Internet while physically present in this state; or

(c) Makes a payment on the loan in this state.

(2) For purposes of this section, a consumer makes a payment on a loan in this state if a lender debits an account the consumer holds in a branch of a financial institution located in this state or if the consumer makes a payment with a negotiable instrument drawn on a branch of a financial institution located in this state.

SECTION 5. (1) The Director of the Department of Consumer and Business Services may, by contract with a vendor or service provider or otherwise, develop and implement a system by means of which a lender may determine whether a consumer has an outstanding loan, the number of loans the consumer has outstanding, the dates on which the consumer entered into or renewed any loan contract subject to ORS 725.600 to 725.625 and any other information necessary to comply with the provisions of ORS 725.600 to 725.625. The director by rule may specify the form and contents of the system but shall ensure at a minimum that the information entered into or stored by the system is:

(a) Accessible to and usable by lenders and the director from any location in this state; and

(b) Secured against public disclosure, tampering, theft or unauthorized acquisition or use.

(2) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure and is not subject to discovery, subpoena or other compulsory process except in an action brought under this chapter.

(3) A vendor or service provider that operates or administers the system described in subsection (1) of this section may charge lenders a fee or fees for access to or use of the system in amounts that the director must approve by rule.

(4) If the system described in subsection (1) of this section is developed and implemented, lenders subject to ORS 725.600 to 725.625 shall enter or update information required by the system described in subsection (1) of this section within one business day after conducting any loan transaction that generates any of the information required by the system. The lender shall continue to enter and update the required information for any loans subject to ORS 725.600 to 725.625 that are outstanding or have not yet expired after the date on which the lender ceases making such loans. Within 10 business days after ceasing to make loans subject to ORS 725.600 to 725.625 the lender shall submit to the director for approval a plan for continuing compliance with this subsection. The director shall promptly approve or disapprove the plan and may require the lender to submit a new or modified plan that ensures compliance with this subsection.

(5) The director by rule shall establish requirements for the retention, archiving and deletion of information entered into or stored by the system described in subsection (1) of this section.

SECTION 6. (1) Except as provided in subsection (2) of this section, a lender may not deposit a consumer's check, withdraw funds electronically from a consumer's account, or otherwise collect the principal of, interest on, or any fees or charges for a loan subject to ORS 725.600 to 725.625 if at the time the lender makes the loan the lender does not have a current and valid license to make loans in this state.

(2) A lender subject to ORS 725.600 to 725.625 may process a payment for or collect a loan if:

(a) The terms and conditions of the loan substantially comply with the provisions of ORS 725.600 to 725.625;

(b) The lender proves to the Director of the Department of Consumer and Business Services by clear and convincing evidence that the lender did not know that the lender was required to be licensed to make the loan; and

(c) The lender obtains a license under ORS 725.600 to 725.625 within 90 days after becoming aware of or receiving actual notice of the requirement for a license.

SECTION 7. Sections 4, 5 and 6 of this 2007 Act are added to and made a part of ORS 725.600 to 725.625.

SECTION 8. (1) Sections 4 and 6 of this 2007 Act and the amendments to ORS 725.370 by section 1 of this 2007 Act apply to loans made or renewed on or after the operative date specified in section 10 of this 2007 Act.

(2) Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections 2 and 3 of this 2007 Act apply to loans made or renewed on or after the operative date specified in section 11 of this 2007 Act.

SECTION 8a. If House Bill 2204 becomes law, section 8 of this 2007 Act is amended to read:

Sec. 8. (1) Sections 4 and 6 of this 2007 Act and the amendments to ORS 725.370 by section 1 of this 2007 Act apply to loans made or renewed on or after the operative date specified in section 10 of this 2007 Act.

(2) Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections [2] 2a and 3 of this 2007 Act apply to loans made or renewed on or after the operative date specified in section 11 of this 2007 Act.

SECTION 9. (1) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in section 10 of this 2007 Act that is necessary to enable the director to exercise, on and after the operative date specified in section 10 of this 2007 Act, all the duties, functions and powers conferred on the director by section 4 of this 2007 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in section 11 of this 2007 Act that is necessary to enable the director to exercise, on and after the operative date specified in section 11 of this 2007 Act, all the duties, functions and powers conferred on the director by sections 5 and 6 of this 2007 Act.

SECTION 10. Sections 4 and 6 of this 2007 Act and the amendments to ORS 725.370 by section 1 of this 2007 Act become operative July 1, 2007.

SECTION 11. Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections 2 and 3 of this 2007 Act become operative January 1, 2008.

SECTION 11a. If House Bill 2204 becomes law, section 11 of this 2007 Act is amended to read:

Sec. 11. Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections [2] 2a and 3 of this 2007 Act become operative January 1, 2008.

SECTION 12. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by House February 13, 2007

Repassed by House June 7, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 4, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State