

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 2203

Ordered by the Senate May 30
Including House Amendments dated February 5 and Senate Amendments
dated May 30

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)

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.

Applies provisions of Oregon Consumer Finance Act to lenders that make loans to consumers in this state. [*Requires*] **Authorizes** Director of Department of Consumer and Business Services to develop and implement system to permit lenders to comply with lenders' obligations under law. Establishes minimum requirements for system. Prohibits lenders from charging consumers fees greater than fees that vendor or service provider charges to lenders for access to or use of system. Permits lenders to recover [*expenses*] **amounts** associated with collection of defaulted loan. Prohibits lenders from collecting loan principal, interest or fees unless lenders have or obtain license.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to short-term consumer loans; creating new provisions; amending ORS 725.370, 725.615 and
3 725.622; and declaring an emergency.

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

5 **SECTION 1.** ORS 725.370 is amended to read:

6 725.370. **Except as otherwise provided in section 4 of this 2007 Act,** loans made or payable
7 in other jurisdictions and lawful where made or payable, are not affected by this chapter.

8 **SECTION 2.** ORS 725.615 is amended to read:

9 725.615. **(1)** A lender in the business of making title loans may not:

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

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

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

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

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

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

22 [(2)] **(b)** Conduct a title loan business where liquor or lottery tickets are sold or where gambling

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 devices are located;

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

6 **(d) Charge the consumer more than the actual amount that the vendor or service pro-**
7 **vider charges the lender for access to or use of the system described in section 5 of this 2007**
8 **Act;**

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

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

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

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

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

21 **SECTION 2a. If House Bill 2204 becomes law, section 2 of this 2007 Act (amending ORS**
22 **725.615) is repealed and ORS 725.615, as amended by section 2, chapter _____, Oregon Laws**
23 **2007 (Enrolled House Bill 2204), is amended to read:**

24 725.615. (1) A lender in the business of making title loans may not:

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

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

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

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

32 **(e) Charge the consumer more than the actual amount that the vendor or service pro-**
33 **vider charges the lender for access to or use of the system described in section 5 of this 2007**
34 **Act;**

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

36 (A) A hold-harmless clause;

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

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

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

45 (E) A clause permitting the continuation of interest after repossession of the consumer's motor

1 vehicle, recreational vehicle, boat or mobile home;

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

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

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

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

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

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

15 (b) A lender in the business of making title loans may not collect a fee for a dishonored check
16 under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer for a
17 dishonored check under ORS 30.701. The lender may recover from the consumer any fee charged to
18 the lender by an unaffiliated financial institution for each dishonored check. For a dishonored check
19 or insufficient funds, the fees described in this subsection are the only remedy a lender may pursue
20 and the only fees a lender may charge.

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

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

26 725.622. (1) A lender in the business of making payday loans may not:

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

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

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

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

34 [(d)] (e) Charge a consumer any fee or interest other than a fee or interest described in para-
35 graph (a), [or] (b) or (c) of this subsection or in subsection (2) of this section;

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

37 (A) A hold-harmless clause;

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

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

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

1 [(f)] (g) Conduct a payday loan business where liquor or lottery tickets are sold or where gam-
2 bling devices are located;

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

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

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

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

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

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

24 (b) **Enters into or executes a loan contract with the lender in person, by mail, by tele-**
25 **phone or via the Internet while physically present in this state; or**

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

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

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

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

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

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

45 (3) **A vendor or service provider that operates or administers the system described in**

1 subsection (1) of this section may charge lenders a fee or fees for access to or use of the
2 system in amounts that the director must approve by rule.

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

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

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

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

24 (a) The terms and conditions of the loan substantially comply with the provisions of ORS
25 725.600 to 725.625;

26 (b) The lender proves to the Director of the Department of Consumer and Business Ser-
27 vices by clear and convincing evidence that the lender did not know that the lender was re-
28 quired to be licensed to make the loan; and

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

31 **SECTION 7.** Sections 4, 5 and 6 of this 2007 Act are added to and made a part of ORS
32 725.600 to 725.625.

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

36 (2) Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections
37 2 and 3 of this 2007 Act apply to loans made or renewed on or after the operative date
38 specified in section 11 of this 2007 Act.

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

40 **Sec. 8.** (1) Sections 4 and 6 of this 2007 Act and the amendments to ORS 725.370 by section 1
41 of this 2007 Act apply to loans made or renewed on or after the operative date specified in section
42 10 of this 2007 Act.

43 (2) Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections [2]
44 **2a** and 3 of this 2007 Act apply to loans made or renewed on or after the operative date specified
45 in section 11 of this 2007 Act.

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

6 (2) The Director of the Department of Consumer and Business Services may take any
7 action before the operative date specified in section 11 of this 2007 Act that is necessary to
8 enable the director to exercise, on and after the operative date specified in section 11 of this
9 2007 Act, all the duties, functions and powers conferred on the director by sections 5 and 6
10 of this 2007 Act.

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

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

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

16 **Sec. 11.** Section 5 of this 2007 Act and the amendments to ORS 725.615 and 725.622 by sections
17 [2] 2a and 3 of this 2007 Act become operative January 1, 2008.

18 **SECTION 12.** This 2007 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
20 on its passage.
21