

Enrolled House Bill 2204

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 title loans; creating new provisions; amending ORS 725.340, 725.600 and 725.615; and declaring an emergency.

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

SECTION 1. ORS 725.600 is amended to read:

725.600. As used in ORS 725.600 to 725.625:

(1) A lender is:

(a) "In the business of making title loans" if at least 10 percent of all loans made by the lender are title loans.

(b) "In the business of making payday loans" if at least 10 percent of all loans made by the lender are payday loans.

(2) "Lender" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. "Lender" does not include a financial institution or trust company, as those terms are defined in ORS 706.008.

(3)(a) "Payday loan" means a loan, other than a purchase money loan:

(A) Made primarily for personal, family or household purposes;

(B) Made for a period of 60 days or less or for which the lender may demand repayment within 60 days; and

(C) Usually evidenced by a check or electronic repayment agreement provided by or on behalf of the borrower.

(b) "Payday loan" does not include a loan for a period of more than 60 days, the repayment of which the lender may accelerate upon a default by the borrower.

(4) "Title loan" means:

(a) A loan, other than a purchase money loan, **that is:**

[(a)](A) Secured by the title to a motor vehicle, recreational vehicle, boat or mobile home;

(B) Made for a period of 60 days or less[;]

[(C)] with a single payment payback; and

[(D)] (C) Made by a lender in the business of making title loans; [or]

(b) **A loan** that is secured, substantially equivalent to a title loan as defined in paragraph (a) of this subsection, and designated as a title loan by rule or order of the Director of the Department of Consumer and Business Services[.]; **or**

(c) **A sale-leaseback arrangement between a consumer and a purchaser for a motor vehicle, recreational vehicle, boat or mobile home when:**

(A) Title and all rights to the vehicle, boat or mobile home do not transfer from the consumer to the purchaser in a bona fide sale of the vehicle, boat or mobile home, or the consumer retains equity in the vehicle, boat or mobile home following the consumer's sale to the purchaser;

(B) The purchaser and the consumer agree within 60 days of the consumer's sale of the vehicle, boat or mobile home to the purchaser that the consumer has an option to or will repurchase the vehicle, boat or mobile home from the purchaser for a nominal price or a price other than the market value of the vehicle, boat or mobile home determined at the time the lease expires;

(C) The purchaser or an agent of the purchaser, during the term of any lease of the vehicle, boat or mobile home to the consumer, holds a check, electronic repayment agreement or other evidence provided by or on behalf of the consumer of the consumer's agreement to repurchase the vehicle, boat or mobile home; or

(D) The director by rule or order designates the sale-leaseback arrangement as a title loan.

SECTION 2. ORS 725.615 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) of this subsection or in subsection (2) of this section;

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

[(3)] *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;*

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

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

[(7)] *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.*

(j) **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.

SECTION 3. ORS 725.340, as amended by section 2, chapter 3, Oregon Laws 2006, is amended to read:

725.340. (1) Except as provided in ORS **725.615** and 725.622, a licensee may charge, contract for and receive any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee and the borrower.

(2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less and requires repayment in substantially equal or consecutive monthly installments of principal and interest combined, the interest or consideration may be precomputed, contracted for and earned on scheduled unpaid principal balances on the assumption that all scheduled payments will be made when due. In such cases, every payment may be applied to the combined total of principal and precomputed interest until the contract is fully paid, and the acceptance or payment of interest or consideration on any loan made under the provisions of this subsection is not considered to constitute payment, deduction or receipt thereof in advance. The precomputed interest or consideration is subject to the following adjustments:

(a) When a default of more than 10 days in the payment of any scheduled installment occurs, the licensee may charge and collect a default charge not exceeding five percent of the unpaid amount of the installment or \$5, whichever is less. A default charge may be collected only once on an installment, but may be collected at the time it accrues or at any time thereafter. A default charge may not be assessed with respect to an installment which is paid in full on or within 10 days after a scheduled installment due date when an earlier maturing installment or a default or deferral charge on an earlier maturing installment may not have been paid in full even though all or part of such installment payment is applied to an earlier maturing installment, or a default or deferral charge.

(b) If the payment of all unpaid installments is deferred one or more full months, and if the contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual percentage rate previously disclosed to the borrower pursuant to the Federal Consumer Credit Protection (Truth-in-Lending) Act applied to the sum of the installments deferred for the length of the deferral period. The deferral period is that period in which no scheduled installment is required to be paid by reason of the deferral. The charge may be collected at the time of deferral or at any time thereafter. A deferral charge may not be made for the deferral of any installment with respect to which a default charge has been collected, unless the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to any other rebate which may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of an unexpired month exceeding 15 days is considered to be a month.

(c) Upon prepayment in full of the unpaid balance of a precomputed loan, a rebate of unearned interest or consideration shall be made as provided in this paragraph. The amount of the rebate shall be not less than the total interest contracted for to maturity, less the greater of:

(A) Ten percent of the amount financed or \$75, whichever is less; or

(B) The interest or consideration earned to the installment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate

computations under this subparagraph, the installment due date preceding the date of prepayment is considered to be nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs more than 15 days after the preceding installment due date, the next succeeding installment due date is considered to be nearest to the date of prepayment. In determining the simple interest rate, the licensee may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to accrued and unpaid interest or consideration, and any amount remaining is applied to reduction of the principal balance.

(3) If the borrower agrees to perform certain duties to insure or preserve the collateral and fails to perform those duties, the licensee may pay for the performance of those duties and add the amounts paid to the unpaid principal balance. A charge may be made for sums advanced, at the rate provided for in the loan agreement.

(4) The loan contract may provide that after default and referral the borrower shall pay the licensee for reasonable attorney fees actually paid by the licensee to an attorney not a salaried employee of the licensee.

SECTION 4. The amendments to ORS 725.600 and 725.615 by sections 1 and 2 of this 2007 Act apply to title loans that are made, entered into or renewed on or after July 1, 2007.

SECTION 5. 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 July 1, 2007.

Passed by House February 13, 2007

Received by Governor:

Repassed by House June 5, 2007

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

Approved:

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Chief Clerk of House

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

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Speaker of House

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Governor

Passed by Senate June 1, 2007

Filed in Office of Secretary of State:

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President of Senate

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

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Secretary of State