

A-Engrossed
House Bill 2204

Ordered by the House February 5
Including House Amendments dated February 5

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.

Limits maximum rate of interest on title loans. Limits amount of loan origination fee. Sets minimum 31-day loan term for title loans. Prohibits charges other than interest, origination fee and fee for dishonored check or insufficient funds. Prohibits renewal of title loan more than two times. Prohibits lender from making new title loan to consumer within seven days of expiration of previous title loan. Limits amount of fee for dishonored check or insufficient funds. Prohibits recovery of statutory damages and attorney fees from consumer for dishonored check.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to title loans; creating new provisions; amending ORS 725.340 and 725.615; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 725.615 is amended to read:

6 725.615. (1) A lender in the business of making title loans may not:

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

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

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

12 **(d) Charge a consumer any fee or interest other than a fee or interest described in par-**
13 **agraph (a) or (b) of this subsection or in subsection (2) of this section;**

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

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

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

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

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

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

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

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

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

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

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

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

15 **(j) Make a new title loan to a consumer within seven days of the date on which a previous**
16 **title loan expires.**

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

21 **(b) A lender in the business of making title loans may not collect a fee for a dishonored**
22 **check under ORS 30.701 or seek or recover statutory damages and attorney fees from a**
23 **consumer for a dishonored check under ORS 30.701. The lender may recover from the con-**
24 **sumer any fee charged to the lender by an unaffiliated financial institution for each dishon-**
25 **ored check. For a dishonored check or insufficient funds, the fees described in this**
26 **subsection are the only remedy a lender may pursue and the only fees a lender may charge.**

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

29 725.340. (1) Except as provided in ORS **725.615** and 725.622, a licensee may charge, contract for
30 and receive any interest or consideration for loans, secured or unsecured, as agreed upon by the
31 licensee and the borrower.

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

41 (a) When a default of more than 10 days in the payment of any scheduled installment occurs, the
42 licensee may charge and collect a default charge not exceeding five percent of the unpaid amount
43 of the installment or \$5, whichever is less. A default charge may be collected only once on an in-
44 stallment, but may be collected at the time it accrues or at any time thereafter. A default charge
45 may not be assessed with respect to an installment which is paid in full on or within 10 days after

1 a scheduled installment due date when an earlier maturing installment or a default or deferral
 2 charge on an earlier maturing installment may not have been paid in full even though all or part
 3 of such installment payment is applied to an earlier maturing installment, or a default or deferral
 4 charge.

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

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

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

21 (B) The interest or consideration earned to the installment due date nearest the date of pre-
 22 payment, computed by applying the simple interest rate of the loan to the actual principal balances
 23 outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate
 24 computations under this subparagraph, the installment due date preceding the date of prepayment
 25 is considered to be nearest if prepayment occurs 15 days or less after that installment date. If pre-
 26 payment occurs more than 15 days after the preceding installment due date, the next succeeding
 27 installment due date is considered to be nearest to the date of prepayment. In determining the sim-
 28 ple interest rate, the licensee may apply to the scheduled payments the actuarial method, by which
 29 each scheduled payment is applied first to accrued and unpaid interest or consideration, and any
 30 amount remaining is applied to reduction of the principal balance.

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

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

38 **SECTION 3. The amendments to ORS 725.615 by section 1 of this 2007 Act apply to title**
 39 **loans made or renewed on or after July 1, 2007.**

40 **SECTION 4. This 2007 Act being necessary for the immediate preservation of the public**
 41 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
 42 **on July 1, 2007.**