

B-Engrossed
House Bill 2205

Ordered by the Senate June 5
Including House Amendments dated February 5 and Senate Amendments
dated June 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.

[Requires person in business of making consumer finance loans to obtain license. Defines consumer finance loan.]

Draws distinction between consumer finance license and short term license for persons making specified types of loans.

Directs Director of Department of Consumer and Business Services to issue consumer finance [loan] license or short term [loan] license to qualified applicants.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to lender licenses; creating new provisions; amending ORS 725.010, 725.120, 725.140, 725.505
3 and 725.620; repealing ORS 725.625 and section 4, chapter 3, Oregon Laws 2006; and declaring
4 an emergency.

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

6 **SECTION 1.** ORS 725.010 is amended to read:

7 725.010. As used in this chapter:

8 *[(1) "Department" means the Department of Consumer and Business Services.]*

9 *[(2) "Director" means the Director of the Department of Consumer and Business Services.]*

10 **(1) "Consumer finance license" means a license issued under ORS 725.140 that authorizes**
11 **a person to make loans that meet the requirements of section 3 of this 2007 Act.**

12 **(2) "Consumer finance licensee" means a person authorized to make loans under a con-**
13 **sumer finance license.**

14 **(3) "Licensee" means every person licensed under this chapter.**

15 **(4) "Loan underwriting" means a documented evaluation, made before a lender makes a**
16 **loan, of the risk the lender would assume in making a loan to a specific borrower.**

17 **(5) "Short term license" means a license issued under ORS 725.140 that authorizes a**
18 **person to make payday loans or title loans, as defined in ORS 725.600.**

19 **SECTION 2.** Sections 3 to 5 of this 2007 Act are added to and made a part of ORS chapter
20 **725.**

21 **SECTION 3.** A consumer finance licensee must ensure that, for each calendar year:

22 **(1) 90 percent or more of the loans made by the consumer finance licensee have a term**
23 **of not less than six months;**

24 **(2) Loan underwriting is documented in the borrower's file for 90 percent or more of the**

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 loans made under the consumer finance license, with loan underwriting remaining valid at
2 the option of the licensee for any loan made within 12 months of the initial date of a previous
3 loan to that borrower; and

4 (3) 90 percent or more of the loans made by the consumer finance licensee are structured
5 to be repaid in fully amortized and substantially equal periodic payments, other than loans
6 that are secured by real estate or interests in farming implements or future farm crops or
7 made in accordance with ORS 725.345 or 725.347. For purposes of this subsection, a loan is
8 considered to have “substantially equal periodic payments” notwithstanding that:

9 (a) The first regularly scheduled periodic payment is larger due to additional interest that
10 accrues because the period between the date the loan is issued and the date of the first
11 regularly scheduled periodic payment is longer than the standard number of days in a period;

12 (b) The final regularly scheduled periodic payment is larger, if that payment is not more
13 than one and one-half times the amount of the next to last regularly scheduled periodic
14 payment; and

15 (c) Periodic payments may change due to an interest rate adjustment on an adjustable
16 rate loan, provided that the revised payments due after the change are substantially equal
17 until any further interest rate adjustment.

18 **SECTION 4.** (1) If, under a consumer finance license, a consumer finance licensee makes
19 a loan secured by an interest in a borrower’s vehicle, the licensee may not retain possession
20 of the title to the vehicle unless the licensee is recorded as a lienholder on the title or has
21 taken other commercially reasonable steps to be added as a holder of a security interest in
22 the vehicle.

23 (2) A consumer finance licensee may not require a borrower, as a condition of obtaining
24 a loan made under a consumer finance license, to provide a check or debit authorization for
25 one or more future payments.

26 (3) A borrower at the borrower’s sole discretion may deliver to a consumer finance
27 licensee, if the licensee so permits, one or more checks or debit authorizations to facilitate
28 timely future payments.

29 **SECTION 5.** (1) A person may apply for and hold both a consumer finance license and a
30 short term license.

31 (2) A person holding both a consumer finance license and a short term license shall:

32 (a) Maintain separate loan records for every activity conducted under each license; and

33 (b) File separate annual reports for lending activity conducted under each license.

34 **SECTION 6.** ORS 725.120 is amended to read:

35 725.120. (1) Application for *[the]* a license shall be in writing in the form prescribed by the Di-
36 rector of the Department of Consumer and Business Services. *[and]*

37 (2) The application shall:

38 (a) Contain the name and both the residence and business addresses of the applicant, and if the
39 applicant is a partnership, **limited liability company** or association, of every member thereof, and
40 if a corporation, **firm or joint stock company**, of each officer and director thereof; *[. The applica-*
41 *tion shall also contain]*

42 (b) Contain the county and city with street and number, if any, where the business is to be
43 conducted; *[and]*

44 (c) Designate whether the license applied for is a consumer finance license or a short
45 term license; and

1 **(d) Contain** any other information *[which]* **that** the director may require.

2 *[(2) Notice of the filing of the application shall be posted in the office of the Department of Con-*
3 *sumer and Business Services for 30 days and no license shall be issued before the expiration of such*
4 *30-day period. However, the director may waive the posting of notice and issue a license without regard*
5 *to such 30-day period if the application is for a license at a location where a license has been surren-*
6 *dered because of:]*

7 *[(a) The transfer of the business of the licensee, and the applicant is the transferee;]*

8 *[(b) The death of the licensee, and the applicant is a representative or heir of the licensee; or]*

9 *[(c) The change of the name under which the licensee does business, and the applicant is the same*
10 *licensee.]*

11 (3) An applicant at the time of making application shall pay to the director a license fee deter-
12 mined under ORS 725.185 for the period terminating on the last day of the current calendar year.
13 In case the license is not issued for cause or if the application is withdrawn after the applicant has
14 been investigated by the director, *[there]* **the license fee** shall be refunded to the applicant *[all the*
15 *license fee]* except any portion *[thereof]* **of the fee** determined by the director to reflect administra-
16 tive and investigative costs incurred by the section relative to the application. Otherwise no part
17 of any license fee *[shall]* **may** be refunded.

18 **SECTION 7.** ORS 725.140 is amended to read:

19 725.140. (1) Conditioned upon the applicant's compliance with this chapter and the payment of
20 the license fee, the Director of the Department of Consumer and Business Services, within 90 days
21 after the date of filing *[the]* **a completed** application referred to in ORS 725.120, shall disapprove
22 the application or shall issue and deliver a **consumer finance license or a short term** license to
23 the applicant to make loans in accordance with this chapter at the location specified in the appli-
24 cation. However, before issuing a license, the director must first find upon investigation:

25 (a) That the financial responsibility, experience, character and general fitness of the applicant,
26 and of the members thereof if the applicant is a partnership, **limited liability company** or associ-
27 ation, and of the officers and directors thereof if the applicant is a corporation, **firm or joint stock**
28 **company**, are such as to command the confidence of the community and to warrant the belief that
29 the business will be operated honestly, fairly and efficiently within the purposes of this chapter;
30 *[and]*

31 (b) That grounds for disapproval of an application described in ORS 725.145 do not exist and
32 that, in the judgment of the director, there are no other reasons or conditions that would warrant
33 the refusal to grant a license; **and**

34 **(c) If the applicant is applying for an additional license as provided in section 5 of this**
35 **2007 Act, that the applicant has filed the reports required under section 5 of this 2007 Act.**

36 (2) A license issued under this section shall be a continuing license and shall remain in full force
37 and effect until the license is surrendered by the licensee as provided in ORS 725.250 or revoked
38 or suspended as provided in ORS 725.230.

39 **SECTION 8.** ORS 725.505 is amended to read:

40 725.505. *[(1) In accordance with ORS chapter 183, the Director of the Department of Consumer and*
41 *Business Services may adopt rules for the purpose of carrying out this chapter.]*

42 **(1) In accordance with ORS chapter 183, the Director of the Department of Consumer**
43 **and Business Services may adopt rules to implement, administer and enforce this chapter**
44 **and to regulate lending terms and practices, consistent with this chapter, for the protection**
45 **of the public.**

1 (2) In addition to the notice requirements of ORS chapter 183, before the director adopts a rule,
2 the director shall submit a copy of the rule to each licensee.

3 **SECTION 9.** ORS 725.620 is amended to read:

4 725.620. (1) A lender in the business of making title loans shall include in every title loan con-
5 tract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the
6 consumer's attorney may file a complaint with the Director of the Department of Consumer and
7 Business Services as provided in this section.

8 (2) Any person claiming to be aggrieved by a practice that violates a provision of ORS 725.605,
9 725.610 or 725.615 or any rule adopted under ORS [725.625] **725.505 regulating a lender in the**
10 **business of making title loans**, or the person's attorney, may file with the director a verified
11 complaint in writing. The person shall state in the complaint the name and address of the lender
12 alleged to have committed the unlawful practice and the particulars of the alleged unlawful practice.
13 The director may require the person to set forth in the complaint other information that the director
14 considers pertinent. The person may file the complaint no later than one year after the alleged un-
15 lawful practice.

16 (3) After the filing of a complaint under this section, the director may cause an investigation to
17 be made under ORS 725.310.

18 **SECTION 10.** ORS 725.625 and section 4, chapter 3, Oregon Laws 2006, are repealed.

19 **SECTION 11.** This 2007 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
21 on July 1, 2007.