

# House Bill 2205

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 **as introduced**.

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

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 (1) **"Consumer finance loan" means a loan that is unsecured or secured by personal or**  
10 **real property and that has periodic payments and terms longer than six months.**

11 (2) **"Consumer finance loan license" means a license issued under ORS 725.140 to a lender**  
12 **that is in the business of making consumer finance loans.**

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

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

15 (4) **"Loan underwriting" means an analysis of a borrower's financial status and ability**  
16 **to repay a loan.**

17 (5) **"Short term loan license" means a license issued under ORS 725.140 to a lender that**  
18 **is in the business of making payday loans or title loans. As used in this subsection, "in the**  
19 **business of making payday loans" and "in the business of making title loans" have the**  
20 **meanings given those terms in ORS 725.600.**

21 **SECTION 2.** Sections 3 to 5 of this 2007 Act are added to and made a part of ORS chapter  
22 **725.**

23 **SECTION 3.** A lender is in the business of making consumer finance loans if for each  
24 **calendar year:**

25 (1) **90 percent or more of the loans made by the lender are consumer finance loans;**

26 (2) **Loan underwriting is documented in the borrower's file for 90 percent or more of the**  
27 **loans, with loan underwriting remaining valid at the option of the lender for any loan made**  
28 **within 12 months of the initial date of a previous consumer finance loan to that borrower;**  
29 **and**

**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       **(3) 90 percent or more of the loans made by the lender are structured to be repaid in fully**  
 2 **amortized and substantially equal periodic payments, other than loans that are secured by**  
 3 **real estate or interests in farming implements or future farm crops. For purposes of this**  
 4 **subsection, a loan is considered to have “substantially equal periodic payments”**  
 5 **notwithstanding that:**

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

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

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

15       **SECTION 4. (1) If a lender in the business of making consumer finance loans makes a**  
 16 **loan secured by an interest in a borrower’s vehicle, the lender may not retain possession of**  
 17 **the title to the vehicle unless the lender is recorded as a lienholder on the title.**

18       **(2) A lender in the business of making consumer finance loans may not require a bor-**  
 19 **rower, as a condition of obtaining a loan, to provide a post-dated check or debit authorization**  
 20 **for one or more future payments.**

21       **(3) Notwithstanding subsection (2) of this section, the borrower and the lender may agree**  
 22 **to have one or more future payments automatically transferred from the borrower’s account**  
 23 **to the lender’s account, provided the use of automatic transfer financially benefits the bor-**  
 24 **rower. Financial benefit to the borrower may include, but is not limited to, a reduction in**  
 25 **the interest rate below the interest rate charged by the lender to other borrowers for a**  
 26 **similar loan in which payments are not made through automatic transfer.**

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

29       **(2) A person holding both a consumer finance loan license and a short term loan license**  
 30 **shall:**

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

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

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

34       725.120. (1) Application for *[the]* a license shall be in writing in the form prescribed by the Di-  
 35 rector of the Department of Consumer and Business Services. *[and]*

36       **(2) The application shall:**

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

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

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

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

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

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

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

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

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

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

16        725.140. (1) Conditioned upon the applicant's compliance with this chapter and the payment of  
 17 the license fee, the Director of the Department of Consumer and Business Services, within 90 days  
 18 after the date of filing [the] **a completed** application referred to in ORS 725.120, shall disapprove  
 19 the application or shall issue and deliver a **consumer finance loan license or a short term loan**  
 20 license to the applicant to make loans in accordance with this chapter at the location specified in  
 21 the application. However, before issuing a license, the director must first find upon investigation:  
 22

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

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

32        **(c) If the applicant is applying for an additional license as provided in section 5 of this**  
 33 **2007 Act, that the applicant has filed the reports required under section 5 of this 2007 Act.**

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

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

38        725.505. [(1) In accordance with ORS chapter 183, the Director of the Department of Consumer and  
 39 Business Services may adopt rules for the purpose of carrying out this chapter.]

40        **(1) The Director of the Department of Consumer and Business Services is vested with**  
 41 **power to supervise and regulate lenders under this chapter by rule and to do all things nec-**  
 42 **essary and convenient in the exercise of that power.**

43        (2) In addition to the notice requirements of ORS chapter 183, before the director adopts a rule,  
 44 the director shall submit a copy of the rule to each licensee.  
 45

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

2        725.620. (1) A lender in the business of making title loans shall include in every title loan con-  
3 tract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the  
4 consumer's attorney may file a complaint with the Director of the Department of Consumer and  
5 Business Services as provided in this section.

6        (2) Any person claiming to be aggrieved by a practice that violates a provision of ORS 725.605,  
7 725.610 or 725.615 or any rule adopted under ORS [725.625] **725.505 regulating a lender in the**  
8 **business of making title loans**, or the person's attorney, may file with the director a verified  
9 complaint in writing. The person shall state in the complaint the name and address of the lender  
10 alleged to have committed the unlawful practice and the particulars of the alleged unlawful practice.  
11 The director may require the person to set forth in the complaint other information that the director  
12 considers pertinent. The person may file the complaint no later than one year after the alleged un-  
13 lawful practice.

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

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

17        **SECTION 11. (1) If a person holding a license on the effective date of this 2007 Act does**  
18 **not hold the appropriate consumer finance loan license or short term loan license, the person**  
19 **shall apply for the appropriate license not later than 30 days after the effective date of this**  
20 **2007 Act.**

21        **(2) The determination of which license shall be applied for shall be based on the previous**  
22 **365 days during which the person made payday loans, title loans or consumer finance loans.**

23        **SECTION 12. This 2007 Act being necessary for the immediate preservation of the public**  
24 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
25 **on July 1, 2007.**