

A-Engrossed
House Bill 2871

Ordered by the House April 30
Including House Amendments dated April 30

Sponsored by Representatives MERKLEY, DINGFELDER, Senator AVAKIAN; Representatives BONAMICI, GALIZIO, RILEY, ROSENBAUM, SHIELDS, TOMEI, Senators METSGER, MONROE

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.

Sets maximum **finance charge or** interest rate at 36 percent per annum for all consumer **finance, payday and title** loans of \$50,000 or less. Permits lenders to charge only one origination fee of not more than \$10 of each \$100 of loan amount of title or payday loans, or \$30, whichever is less. [*Permits lenders to charge only one origination fee of not more than five percent of loan amount or \$30, whichever is less, for loans other than title or payday loans.*] Subjects open-end loan plans to 36 percent per annum interest cap. Restricts title lenders from making or renewing title loans for terms of less than 31 days and from renewing title loans more than two times. Prohibits title lenders from charging certain fees for dishonored checks.

Requires brokers making payday, title or consumer finance loans to be licensed by Department of Consumer and Business Services.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to consumer loans; creating new provisions; amending ORS 725.010, 725.045, 725.340,
3 725.345, 725.347, 725.505, 725.610, 725.615, 725.620 and 725.622; repealing ORS 725.625 and section
4 4, chapter 3, Oregon Laws 2006; and declaring 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)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee**
10 **or consideration, the person:**

11 **(A) Processes, receives or accepts for delivery to a lender an application for a loan, in-**
12 **dividually or in conjunction or cooperation with another person;**

13 **(B) Accepts and delivers to a lender all or most of the proceeds of a payment made in**
14 **connection with a loan; or**

15 **(C) Assists in making a loan in a material capacity other than as a lender.**

16 **(b) "Broker or facilitator" does not include a mortgage broker or loan originator, as**
17 **those terms are defined in ORS 59.840, or an employee of a licensee.**

18 **(2) "Consumer finance loan" means a loan or line of credit that is unsecured or secured**
19 **by personal or real property and that has periodic payments and terms longer than 60 days.**

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

21 (3) "Licensee" means [*every*] a person licensed under this chapter.

22 **SECTION 2.** ORS 725.045 is amended to read:

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.

1 725.045. (1) *[No person, without first obtaining a license under this chapter, shall make a consumer*
2 *loan of \$50,000 or less, except as provided under ORS 82.010, 82.020 and 82.025.] Without first ob-*
3 *taining a license under this chapter, a person may not conduct a business in which the per-*
4 *son makes a loan described in subsection (2) of this section or acts as an agent, broker or*
5 *facilitator for a person that makes a loan described in subsection (2) of this section, except*
6 *as provided under ORS 82.010, 82.020 and 82.025.*

7 (2) This section applies to loans of \$50,000 or less that are:

8 (a) Payday loans, as defined in ORS 725.600;

9 (b) Title loans, as defined in ORS 725.600; or

10 (c) Consumer finance loans.

11 (3) This section does not apply to a person that does not collect a fee or consideration
12 in connection with a loan described in subsection (2) of this section or an application for a
13 loan described in subsection (2) of this section and that:

14 (a) Does not interact directly with a borrower or consumer;

15 (b) Acts solely as an intermediary between the borrower or consumer and a lender or a
16 person that conducts business as a broker or facilitator for a loan described in subsection
17 (2) of this section;

18 (c) Transmits information, electronically or otherwise, concerning the borrower or con-
19 sumer to a lender or a person that conducts business as a broker or facilitator for a loan
20 described in subsection (2) of this section; or

21 (d) Prepares, issues or delivers a negotiable instrument to a lender or a person that
22 conducts business as a broker or facilitator for a loan described in subsection (2) of this
23 section for subsequent delivery to a borrower or consumer.

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

26 725.340. *[(1) Except as provided in ORS 725.622, a licensee may charge, contract for and receive*
27 *any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee and the*
28 *borrower.]*

29 (1) Except as provided in ORS 725.615 and 725.622, a licensee may:

30 (a) Charge, contract for and receive in connection with a consumer finance loan made in
31 accordance with this chapter a finance charge that, when expressed as an annual percentage
32 rate, does not exceed 36 percent. For purposes of this paragraph, “finance charge” and “an-
33 nual percentage rate” have the meanings given those terms in the federal Truth in Lending
34 Act, 15 U.S.C. 1601 et seq.

35 (b) Contract for and receive in connection with a consumer finance loan made in ac-
36 cordance with this chapter, and in addition to the finance charge described in paragraph (a)
37 of this subsection, other reasonable and bona fide fees, expenses or damages, subject to
38 oversight and regulation by the Department of Consumer and Business Services. For pur-
39 poses of this paragraph, “fees, expenses or damages” includes, but is not limited to:

40 (A) Items exempted from the computation of the finance charge in accordance with the
41 Truth in Lending Act, 15 U.S.C. 1605(d) and (e), as that Act existed on the effective date of
42 this 2007 Act, and similar pass-through fees or charges;

43 (B) Prepayment fees and late fees;

44 (C) Fees and damages in accordance with ORS 30.701;

45 (D) Actual expenses the licensee reasonably incurs in collecting a consumer finance loan

1 **that the borrower or consumer has failed to repay according to the terms of the consumer**
 2 **finance loan contract; and**

3 **(E) Amounts associated with the collection of a defaulted loan that are authorized by**
 4 **statute or awarded by a court of law.**

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

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

23 (b) If the payment of all unpaid installments is deferred one or more full months, and if the
 24 contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual
 25 percentage rate **specified in subsection (1)(a) of this section and** previously disclosed to the
 26 borrower pursuant to the [*Federal Consumer Credit Protection (Truth-in-Lending) Act*] **federal Truth**
 27 **in Lending Act** applied to the sum of the installments deferred for the length of the deferral period.
 28 The deferral period is that period in which no scheduled installment is required to be paid by reason
 29 of the deferral. The charge may be collected at the time of deferral or at any time thereafter. A
 30 deferral charge may not be made for the deferral of any installment with respect to which a default
 31 charge has been collected, unless the default charge is deducted from the deferral charge. If pre-
 32 payment of the loan in full occurs during the deferral period, in addition to any other rebate which
 33 may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the
 34 unexpired months in the deferral period, for which purpose a fraction of an unexpired month ex-
 35 ceeding 15 days is considered to be a month.

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

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

40 (B) The interest or consideration earned to the installment due date nearest the date of pre-
 41 payment, computed by applying the simple interest rate of the loan to the actual principal balances
 42 outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate
 43 computations under this subparagraph, the installment due date preceding the date of prepayment
 44 is considered to be nearest if prepayment occurs 15 days or less after that installment date. If pre-
 45 payment occurs more than 15 days after the preceding installment due date, the next succeeding

1 installment due date is considered to be nearest to the date of prepayment. In determining the sim-
2 ple interest rate, the licensee may apply to the scheduled payments the actuarial method, by which
3 each scheduled payment is applied first to accrued and unpaid interest or consideration, and any
4 amount remaining is applied to reduction of the principal balance.

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

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

12 **SECTION 4.** ORS 725.345 is amended to read:

13 725.345. (1) As used in this section and ORS 725.347, "open-end loan plan" means a plan or ar-
14 rangement, the agreement for which expressly states that it is made pursuant to this section under
15 which loans are made, and under which:

16 (a) The licensee may permit the borrower to obtain advances of money from the licensee from
17 time to time or the licensee may advance money on behalf of the borrower from time to time as
18 directed by the borrower;

19 (b) The unpaid principal balances and interest or consideration are debited to an account;

20 (c) Interest or consideration is calculated on the unpaid principal balance in the borrower's ac-
21 count from time to time, which balance may include all advances made on behalf of the borrower
22 and all charges authorized under ORS 725.340 and this section; and

23 (d) The borrower has the privilege of paying the unpaid balance in full or in installments.

24 (2) A licensee may make loans under an open-end loan plan and may contract for and receive
25 interest or consideration **only** as provided in ORS 725.340.

26 *[(3) In addition to the interest or consideration permitted under ORS 725.340, a licensee may con-*
27 *tract for and receive on any loan such additional charges as may be agreed upon by the licensee and*
28 *the borrower.]*

29 *[(4) (3) A security interest in real or personal property may be taken to secure an open-end loan*
30 *plan. Any security interest in real or personal property shall be promptly released if there has been*
31 *no outstanding balance for 12 months and the borrower either does not have or surrenders the*
32 *unilateral right to create a new outstanding balance or if the account is terminated at the borrow-*
33 *er's request and paid in full.*

34 *[(5) (4) ORS 725.050 (2), 725.340 (2) and 725.360 (1), (2) and (4) do not apply to any open-end loan*
35 *plan.*

36 *[(6) (5) The open-end loan plan agreement shall contain the name and address of the borrower*
37 *and of the licensee and shall disclose the date of the agreement, the method of determining the*
38 *minimum periodic payments which will be required to pay the initial and any subsequent advances,*
39 *the conditions under which interest or consideration may be imposed, the method of determining the*
40 *principal balance upon which interest or consideration may be imposed, the method of determining*
41 *the amount of the interest or consideration, each periodic rate and the range of balances to which*
42 *each rate is applicable and the corresponding annual percentage rate in accordance with Regulation*
43 *Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the*
44 *Consumer Credit Protection Act (15 U.S.C. 1604), and the nature of the security taken.*

45 *[(7) (6) Except for an account which the licensee deems to be uncollectible or with respect to*

1 which delinquency collection procedures have been instituted, the licensee shall deliver or cause to
2 be delivered to the borrower, for each billing cycle at the end of which there is an unpaid balance
3 of more than \$1 in the account or with respect to which interest or consideration is imposed, a
4 statement setting forth the outstanding balance in the account at the beginning of the billing cycle,
5 the nature, date and amount of any subsequent advance during the cycle, the amounts and dates of
6 payments credited to the account during the billing cycle, the amount of any interest or consider-
7 ation debited to the account during the billing cycle, each periodic rate and the range of balances
8 to which each rate is applicable and the corresponding annual percentage rate in accordance with
9 Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section
10 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), the balance on which the interest or
11 consideration was calculated, a statement of how that balance was determined, the closing date of
12 the billing cycle, the outstanding balance on that closing date and the minimum monthly payment
13 required.

14 **SECTION 5.** ORS 725.347 is amended to read:

15 725.347. (1) As used in this section, "open-end credit card plan" means an open-end loan plan
16 under which:

17 (a) The licensee issues one or more cards, checks, letters of credit or other devices to the bor-
18 rower; and

19 (b) The borrower may obtain advances from the licensee, either directly or in connection with
20 purchases of goods and services, by using the card, check, letter of credit or other device.

21 (2) A licensee may transact business and extend credit to borrowers under an open-end credit
22 card plan. A licensee may offer an open-end credit card plan in conjunction with noncredit features
23 or services available to the borrower through use of the card or other device. The noncredit features
24 or services shall not be subject to regulation under this chapter.

25 (3) The agreement between the licensee and the borrower relating to the open-end credit card
26 plan shall conform to the requirements of ORS 725.345 [(6)] (5), except that the borrower's name and
27 address and the date of the agreement need not be included in the agreement if the borrower has
28 submitted a signed and dated application to the licensee seeking the issuance of one or more cards
29 or other devices.

30 **SECTION 6.** ORS 725.505 is amended to read:

31 725.505. (1) In accordance with ORS chapter 183, the Director of the Department of Consumer
32 and Business Services may adopt rules for the [*purpose of carrying out this chapter.*] **purposes of**
33 **protecting borrowers and consumers, providing clarity to licensees and lenders and otherwise**
34 **carrying out and enforcing this chapter. The rules may include, but are not limited to,**
35 **provisions that establish loan forms, terms, charges and fees.**

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

38 **SECTION 7.** ORS 725.610 is amended to read:

39 725.610. A person may not act as an agent, **broker** or facilitator for the purpose of making a
40 title or payday loan without first obtaining a license under this chapter, regardless of whether the
41 principal making the loan is required to obtain a license.

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

43 725.615. (1) A lender in the business of making title loans may not:

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

1 **(b) Charge during the term of a new title loan, including all renewals of the loan, more**
2 **than one origination fee of \$10 per \$100 of the loan amount or \$30, whichever is less;**

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

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

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

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

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

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

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

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

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

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

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

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

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

28 [(7)] **(j) Make a new loan, secured by a title, to a consumer on the same day that a previous**
29 **loan, secured by the same title, expires if the lender has renewed the previous loan [six] two times.**
30 **The lender shall wait at least [until the next day] seven days after the expiration date of the pre-**
31 **vious loan before making the new loan to the consumer.**

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

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

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

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

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

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

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

15 **SECTION 10.** ORS 725.622, as amended by section 1, chapter 3, Oregon Laws 2006, is amended
16 to read:

17 725.622. (1) A lender in the business of making payday loans may not:

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

20 *[(b) Charge an origination fee for a new payday loan of more than \$10 for each \$100 of the amount*
21 *of the loan;]*

22 **(b) Charge during the term of a new payday loan, including all renewals of the loan, more**
23 **than one origination fee of \$10 per \$100 of the loan amount or \$30, whichever is less;**

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

25 (d) Charge a consumer any fee or interest other than a fee or interest described in paragraph
26 (a) or (b) of this subsection or in subsection (2) of this section;

27 (e) Include in a payday loan contract:

28 (A) A hold-harmless clause;

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

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

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

37 (f) Conduct a payday loan business where liquor or lottery tickets are sold or where gambling
38 devices are located;

39 (g) Renew an existing payday loan more than two times; or

40 (h) Make a new payday loan to a consumer within seven days of the day that a previous payday
41 loan expires.

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

1 **(b)** A lender in the business of making payday loans may not collect a fee for a dishonored
2 check under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer
3 for a dishonored check under ORS 30.701. The lender may recover from the consumer any fee
4 charged to the lender by an unaffiliated financial institution for each dishonored check. For a dis-
5 honored check or insufficient funds, the fees described in this subsection are the only remedy a
6 lender may pursue and the only fees a lender may charge.

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

10 **SECTION 11.** ORS 725.625 and section 4, chapter 3, Oregon Laws 2006, are repealed.

11 **SECTION 12.** The amendments to ORS 725.010, 725.045, 725.340, 725.345, 725.347, 725.505,
12 725.610, 725.615, 725.620 and 725.622 by sections 1 to 10 of this 2007 Act apply to loans made
13 or renewed on or after July 1, 2007.

14 **SECTION 13.** This 2007 Act being necessary for the immediate preservation of the public
15 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
16 July 1, 2007.