

# House Bill 2871

Sponsored by Representatives MERKLEY, DINGFELDER, Senator AVAKIAN; Representatives BONAMICI, GALIZIO, RILEY, ROSENBAUM, 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 **as introduced**.

Sets maximum interest rate at 36 percent per annum for all consumer loans of less than \$50,000. 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. Declares emergency, effective July 1, 2007.

## A BILL FOR AN ACT

1  
2 Relating to consumer loans; creating new provisions; amending ORS 725.340, 725.345, 725.347,  
3 725.505, 725.615, 725.622 and 725.625; repealing section 4, chapter 3, Oregon Laws 2006; and de-  
4 claring an emergency.

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

6 **SECTION 1.** ORS 725.340, as amended by section 2, chapter 3, Oregon Laws 2006, is amended  
7 to read:

8 725.340. *[(1) Except as provided in ORS 725.622, a licensee may charge, contract for and receive*  
9 *any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee and the*  
10 *borrower.]*

11 **(1) A licensee subject to this chapter may charge, contract for and receive interest or**  
12 **consideration for secured or unsecured loans of not more than 36 percent per annum, ex-**  
13 **cluding a one-time origination fee for a new loan. The licensee may charge only one origi-**  
14 **nation fee for a loan during the term of the loan, including all renewals of the loan. The**  
15 **origination fee may not exceed five percent of the loan amount or \$30, whichever is less.**

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

25 (a) When a default of more than 10 days in the payment of any scheduled installment occurs, the  
26 licensee may charge and collect a default charge not exceeding five percent of the unpaid amount  
27 of the installment or \$5, whichever is less. A default charge may be collected only once on an in-

**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 stallment, but may be collected at the time it accrues or at any time thereafter. A default charge  
 2 may not be assessed with respect to an installment which is paid in full on or within 10 days after  
 3 a scheduled installment due date when an earlier maturing installment or a default or deferral  
 4 charge on an earlier maturing installment may not have been paid in full even though all or part  
 5 of such installment payment is applied to an earlier maturing installment, or a default or deferral  
 6 charge.

7 (b) If the payment of all unpaid installments is deferred one or more full months, and if the  
 8 contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual  
 9 percentage rate **specified in subsection (1) of this section and** previously disclosed to the bor-  
 10 rower pursuant to the Federal Consumer Credit Protection (Truth-in-Lending) Act applied to the sum  
 11 of the installments deferred for the length of the deferral period. The deferral period is that period  
 12 in which no scheduled installment is required to be paid by reason of the deferral. The charge may  
 13 be collected at the time of deferral or at any time thereafter. A deferral charge may not be made  
 14 for the deferral of any installment with respect to which a default charge has been collected, unless  
 15 the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs  
 16 during the deferral period, in addition to any other rebate which may be required, the borrower  
 17 shall receive a rebate of the portion of the deferral applicable to the unexpired months in the  
 18 deferral period, for which purpose a fraction of an unexpired month exceeding 15 days is considered  
 19 to be a month.

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

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

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

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

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

41 **SECTION 2.** ORS 725.345 is amended to read:

42 725.345. (1) As used in this section and ORS 725.347, “open-end loan plan” means a plan or ar-  
 43 rangement, the agreement for which expressly states that it is made pursuant to this section under  
 44 which loans are made, and under which:

45 (a) The licensee may permit the borrower to obtain advances of money from the licensee from

1 time to time or the licensee may advance money on behalf of the borrower from time to time as  
 2 directed by the borrower;

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

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

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

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

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

13 *[(4)]* (3) A security interest in real or personal property may be taken to secure an open-end loan  
 14 plan. Any security interest in real or personal property shall be promptly released if there has been  
 15 no outstanding balance for 12 months and the borrower either does not have or surrenders the  
 16 unilateral right to create a new outstanding balance or if the account is terminated at the borrow-  
 17 er’s request and paid in full.

18 *[(5)]* (4) ORS 725.050 (2), 725.340 (2) and 725.360 (1), (2) and (4) do not apply to any open-end loan  
 19 plan.

20 *[(6)]* (5) The open-end loan plan agreement shall contain the name and address of the borrower  
 21 and of the licensee and shall disclose the date of the agreement, the method of determining the  
 22 minimum periodic payments which will be required to pay the initial and any subsequent advances,  
 23 the conditions under which interest or consideration may be imposed, the method of determining the  
 24 principal balance upon which interest or consideration may be imposed, the method of determining  
 25 the amount of the interest or consideration, each periodic rate and the range of balances to which  
 26 each rate is applicable and the corresponding annual percentage rate in accordance with Regulation  
 27 Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the  
 28 Consumer Credit Protection Act (15 U.S.C. 1604), and the nature of the security taken.

29 *[(7)]* (6) Except for an account which the licensee deems to be uncollectible or with respect to  
 30 which delinquency collection procedures have been instituted, the licensee shall deliver or cause to  
 31 be delivered to the borrower, for each billing cycle at the end of which there is an unpaid balance  
 32 of more than \$1 in the account or with respect to which interest or consideration is imposed, a  
 33 statement setting forth the outstanding balance in the account at the beginning of the billing cycle,  
 34 the nature, date and amount of any subsequent advance during the cycle, the amounts and dates of  
 35 payments credited to the account during the billing cycle, the amount of any interest or consider-  
 36 ation debited to the account during the billing cycle, each periodic rate and the range of balances  
 37 to which each rate is applicable and the corresponding annual percentage rate in accordance with  
 38 Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section  
 39 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), the balance on which the interest or  
 40 consideration was calculated, a statement of how that balance was determined, the closing date of  
 41 the billing cycle, the outstanding balance on that closing date and the minimum monthly payment  
 42 required.

43 **SECTION 3.** ORS 725.347 is amended to read:

44 725.347. (1) As used in this section, “open-end credit card plan” means an open-end loan plan  
 45 under which:

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

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

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

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

14 **SECTION 4.** ORS 725.505 is amended to read:

15 725.505. (1) In accordance with ORS chapter 183, the Director of the Department of Consumer  
 16 and Business Services may adopt rules for the [*purpose of carrying out this chapter*] **purposes of**  
 17 **protecting borrowers and consumers, providing clarity to licensees and lenders and otherwise**  
 18 **carrying out and enforcing this chapter. The rules may include, but are not limited to,**  
 19 **provisions that establish contract terms, charges and fees for loans.**

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

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

23 725.615. (1) A lender in the business of making title loans may not:

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

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

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

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

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

32 [(a)] (A) A hold-harmless clause;

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

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

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

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

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

45 [(3)] *Charge the consumer more than one fee under ORS 30.701 for dishonored checks when the*

1 *consumer issues more than one check to the lender. However, the lender may recover from the consumer*  
 2 *any fee charged to the lender by an unaffiliated financial institution for each dishonored check;]*

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

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

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

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

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

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

22 **SECTION 6.** ORS 725.622, as amended by section 1, chapter 3, Oregon Laws 2006, is amended  
 23 to read:

24 725.622. (1) A lender in the business of making payday loans may not:

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

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

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

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

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

34 (e) Include in a payday loan contract:

35 (A) A hold-harmless clause;

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

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

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

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

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

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

4 (2) A lender in the business of making payday loans may not charge the consumer more than  
5 one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many  
6 checks or debit agreements the lender obtains from the consumer for the transaction. The fee may  
7 not exceed \$20. A lender in the business of making payday loans may not collect a fee for a dis-  
8 honored check under ORS 30.701 or seek or recover statutory damages and attorney fees from a  
9 consumer for a dishonored check under ORS 30.701. The lender may recover from the consumer any  
10 fee charged to the lender by an unaffiliated financial institution for each dishonored check. For a  
11 dishonored check or insufficient funds, the fees described in this subsection are the only remedy a  
12 lender may pursue and the only fees a lender may charge.

13 **SECTION 7.** ORS 725.625 is amended to read:

14 725.625. In accordance with ORS chapter 183, the Director of the Department of Consumer and  
15 Business Services may adopt rules for the [*purpose of*] **purposes of protecting borrowers and**  
16 **consumers, providing clarity to licensees and lenders and otherwise** carrying out the provisions  
17 of ORS 725.600 to 725.625[, *including but*]. **The rules may include, but are** not limited to, **pro-**  
18 **visions that establish** [*establishing*] contract terms, charges and fees for title **and payday** loans.

19 **SECTION 8. Section 4, chapter 3, Oregon Laws 2006, is repealed.**

20 **SECTION 9. The amendments to ORS 725.340, 725.345, 725.347, 725.505, 725.615, 725.622 and**  
21 **725.625 by sections 1 to 7 of this 2007 Act apply to loans made or renewed on or after July**  
22 **1, 2007.**

23 **SECTION 10. 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 **July 1, 2007.**