

**SENATE AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2871
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON COMMERCE

June 4

1 On page 2 of the printed A-engrossed bill, delete lines 30 through 34 and insert:

2 “(a) Charge, contract for and receive in connection with a consumer finance loan made in ac-
3 cordance with this chapter a finance charge that, when expressed as an annual percentage rate,
4 does not exceed the greater of:

5 “(A) 36 percent; or

6 “(B) 30 percentage points in excess of the discount rate on 90-day commercial paper in effect
7 at the Federal Reserve Bank of San Francisco. The Director of the Department of Consumer and
8 Business Services on the first business day of each calendar year shall determine by order from
9 published sources the discount rate upon which the annual percentage rate set forth in this sub-
10 paragraph will be based. The annual percentage rate set forth in this subparagraph shall apply to
11 each new loan made during the succeeding 12 months for the entire term of the loan, including all
12 renewals of the loan.”.

13 On page 3, after line 4, insert:

14 “(c) For purposes of this subsection, ‘finance charge’ and ‘annual percentage rate’ have the
15 meanings given those terms in the federal Truth in Lending Act, 15 U.S.C. 1601 et seq.”.

16 On page 4, after line 11, insert:

17 **“SECTION 3a. If House Bill 2204 becomes law, section 3 of this 2007 Act (amending ORS
18 725.340) is repealed and ORS 725.340, as amended by section 2, chapter 3, Oregon Laws 2006,
19 and section 3, chapter __, Oregon Laws 2007 (Enrolled House Bill 2204), is amended to read:**

20 *“725.340. [(1) Except as provided in ORS 725.615 and 725.622, a licensee may charge, contract for
21 and receive any interest or consideration for loans, secured or unsecured, as agreed upon by the
22 licensee and the borrower.]*

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

24 **“(a) Charge, contract for and receive in connection with a consumer finance loan made
25 in accordance with this chapter a finance charge that, when expressed as an annual per-
26 centage rate, does not exceed the greater of:**

27 **“(A) 36 percent; or**

28 **“(B) 30 percentage points in excess of the discount rate on 90-day commercial paper in
29 effect at the Federal Reserve Bank of San Francisco. The Director of the Department of
30 Consumer and Business Services on the first business day of each calendar year shall de-
31 termine by order from published sources the discount rate upon which the annual percentage
32 rate set forth in this subparagraph will be based. The annual percentage rate set forth in this
33 subparagraph shall apply to each new loan made during the succeeding 12 months for the
34 entire term of the loan, including all renewals of the loan.**

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

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

9 “(B) Prepayment fees and late fees;

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

11 “(D) Actual expenses the licensee reasonably incurs in collecting a consumer finance loan
12 that the borrower or consumer has failed to repay according to the terms of the consumer
13 finance loan contract; and

14 “(E) Amounts associated with the collection of a defaulted loan that are authorized by
15 statute or awarded by a court of law.

16 “(c) For purposes of this subsection, ‘finance charge’ and ‘annual percentage rate’ have
17 the meanings given those terms in the federal Truth in Lending Act, 15 U.S.C. 1601 et seq.

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

27 “(a) When a default of more than 10 days in the payment of any scheduled installment occurs,
28 the licensee may charge and collect a default charge not exceeding five percent of the unpaid
29 amount of the installment or \$5, whichever is less. A default charge may be collected only once on
30 an installment, but may be collected at the time it accrues or at any time thereafter. A default
31 charge may not be assessed with respect to an installment which is paid in full on or within 10 days
32 after a scheduled installment due date when an earlier maturing installment or a default or deferral
33 charge on an earlier maturing installment may not have been paid in full even though all or part
34 of such installment payment is applied to an earlier maturing installment, or a default or deferral
35 charge.

36 “(b) If the payment of all unpaid installments is deferred one or more full months, and if the
37 contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual
38 percentage rate **specified in subsection (1)(a) of this section and** previously disclosed to the
39 borrower pursuant to the [*Federal Consumer Credit Protection (Truth-in-Lending) Act*] **federal Truth**
40 **in Lending Act** applied to the sum of the installments deferred for the length of the deferral period.
41 The deferral period is that period in which no scheduled installment is required to be paid by reason
42 of the deferral. The charge may be collected at the time of deferral or at any time thereafter. A
43 deferral charge may not be made for the deferral of any installment with respect to which a default
44 charge has been collected, unless the default charge is deducted from the deferral charge. If pre-
45 payment of the loan in full occurs during the deferral period, in addition to any other rebate which

1 may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the
2 unexpired months in the deferral period, for which purpose a fraction of an unexpired month ex-
3 ceeding 15 days is considered to be a month.

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

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

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

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

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

25 On page 5, after line 37, insert:

26 “**SECTION 6a. If House Bill 2205 becomes law, section 6 of this 2007 Act (amending ORS**
27 **725.505) is repealed and ORS 725.505, as amended by section 8, chapter __, Oregon Laws 2007**
28 **(Enrolled House Bill 2205), is amended to read:**

29 “725.505. (1) In accordance with ORS chapter 183, the Director of the Department of Consumer
30 and Business Services may adopt rules [*to implement, administer and enforce this chapter and to*
31 *regulate lending terms and practices, consistent with this chapter, for the protection of the public*] **for**
32 **the purposes of protecting borrowers and consumers, providing clarity to licensees and**
33 **lenders and otherwise carrying out and enforcing this chapter. The rules may include, but**
34 **are not limited to, provisions that establish loan forms, terms, charges and fees.**

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

37 On page 6, delete lines 28 through 31 and insert:

38 “(j) Make a new title loan to a consumer within seven days of the date on which a previous title
39 loan expires.”.

40 After line 44, insert:

41 “**SECTION 8a. If House Bill 2203 becomes law and House Bill 2204 does not become law,**
42 **section 8 of this 2007 Act (amending ORS 725.615) is repealed and ORS 725.615, as amended**
43 **by section 2, chapter __, Oregon Laws 2007 (Enrolled House Bill 2203), is amended to read:**

44 “725.615. (1) A lender in the business of making title loans may not:

45 “(a) **Make or renew a title loan at a rate of interest that exceeds 36 percent per annum,**

1 **excluding a one-time origination fee for a new loan;**

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

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

5 **“(d) Charge a consumer any fee or interest other than a fee or interest described in**
6 **paragraph (a), (b) or (e) of this subsection or in subsection (2) of this section;**

7 **“(e) Charge the consumer more than the actual amount that the vendor or service pro-**
8 **vider charges the lender for access to or use of the system described in section 5, chapter**
9 **___, Oregon Laws 2007 (Enrolled House Bill 2203);**

10 **“[(a)] (f) Include any of the following provisions in a title loan contract:**

11 **“(A) A hold-harmless clause;**

12 **“(B) A confession of judgment or other waiver of the right to notice and the opportunity to be**
13 **heard in an action;**

14 **“(C) An agreement by the consumer not to assert any claim or defense arising out of the con-**
15 **tract against the lender or any holder in due course;**

16 **“(D) An executory waiver or a limitation of exemption from attachment, execution or other**
17 **process on real or personal property held by, owned by or due to the consumer, unless the waiver**
18 **or limitation applies only to property subject to a security interest executed in connection with the**
19 **loan; or**

20 **“(E) A clause permitting the continuation of interest after repossession of the consumer’s motor**
21 **vehicle, recreational vehicle, boat or mobile home;**

22 **“[(b)] (g) Conduct a title loan business where liquor or lottery tickets are sold or where gam-**
23 **bling devices are located;**

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

27 **“[(d) Charge the consumer more than the actual amount that the vendor or service provider charges**
28 **the lender for access to or use of the system described in section 5 of this 2007 Act;]**

29 **“[(e)] (h) Require or accept from a consumer a set of keys to the motor vehicle, recreational**
30 **vehicle, boat or mobile home whose title secures the title loan;**

31 **“[(f)] (i) Make more than one outstanding loan that is secured by one title;**

32 **“[(g)] (j) Renew [a] **an existing** loan that is secured by one title more than [six] **two** times after**
33 **the loan is first made; or**

34 **“[(h) Make a new loan, secured by a title, to a consumer on the same day that a previous loan,**
35 **secured by the same title, expires if the lender has renewed the previous loan six times. The lender**
36 **shall wait at least until the next day after the expiration date of the previous loan before making the**
37 **new loan to the consumer.]**

38 **“(k) Make a new title loan to a consumer within seven days of the date on which a pre-**
39 **vious title loan expires.**

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

44 **“(b) A lender in the business of making title loans may not collect a fee for a dishonored**
45 **check under ORS 30.701 or seek or recover statutory damages and attorney fees from a**

1 consumer for a dishonored check under ORS 30.701. The lender may recover from the con-
2 sumer any fee charged to the lender by an unaffiliated financial institution for each dishon-
3 ored check. For a dishonored check or insufficient funds, the fees described in this
4 subsection are the only remedy a lender may pursue and the only fees a lender may charge.

5 “[2] (3) The provisions of ORS 725.600 to 725.625 do not prevent a lender from recovering
6 amounts associated with the collection of a defaulted loan that are authorized by statute or awarded
7 by a court of law.

8 **“SECTION 8b. If House Bill 2204 becomes law and House Bill 2203 does not become law,
9 section 8 of this 2007 Act (amending ORS 725.615) is repealed and ORS 725.615, as amended
10 by section 2, chapter __, Oregon Laws 2007 (Enrolled House Bill 2204), is amended to read:**

11 **“725.615. (1) A lender in the business of making title loans may not:**

12 **“(a) Make or renew a title loan at a rate of interest that exceeds 36 percent per annum, ex-
13 cluding a one-time origination fee for a new loan;**

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

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

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

19 **“(d) Charge a consumer any fee or interest other than a fee or interest described in paragraph
20 (a) or (b) of this subsection or in subsection (2) of this section;**

21 **“(e) Include any of the following provisions in a title loan contract:**

22 **“(A) A hold-harmless clause;**

23 **“(B) A confession of judgment or other waiver of the right to notice and the opportunity to be
24 heard in an action;**

25 **“(C) An agreement by the consumer not to assert any claim or defense arising out of the con-
26 tract against the lender or any holder in due course;**

27 **“(D) An executory waiver or a limitation of exemption from attachment, execution or other
28 process on real or personal property held by, owned by or due to the consumer, unless the waiver
29 or limitation applies only to property subject to a security interest executed in connection with the
30 loan; or**

31 **“(E) A clause permitting the continuation of interest after repossession of the consumer’s motor
32 vehicle, recreational vehicle, boat or mobile home;**

33 **“(f) Conduct a title loan business where liquor or lottery tickets are sold or where gambling
34 devices are located;**

35 **“(g) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle,
36 boat or mobile home whose title secures the title loan;**

37 **“(h) Make more than one outstanding loan that is secured by one title;**

38 **“(i) Renew an existing loan that is secured by one title more than two times after the loan is
39 first made; or**

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

42 **“(2)(a) A lender in the business of making title 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 title loans may not collect a fee for a dishonored check
2 under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer for a
3 dishonored check under ORS 30.701. The lender may recover from the consumer any fee charged to
4 the lender by an unaffiliated financial institution for each dishonored check. For a dishonored check
5 or insufficient funds, the fees described in this subsection are the only remedy a lender may pursue
6 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 8c. If both House Bill 2203 and House Bill 2204 become law, section 8 of this**
11 **2007 Act (amending ORS 725.615) is repealed and ORS 725.615, as amended by section 2,**
12 **chapter __, Oregon Laws 2007 (Enrolled House Bill 2204), and section 2a, chapter __, Oregon**
13 **Laws 2007 (Enrolled House Bill 2203), is amended to read:**

14 “725.615. (1) A lender in the business of making title loans may not:

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

17 “[(b) Charge an origination fee for a new title loan of more than \$10 for each \$100 of the amount
18 of the loan;]

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

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

22 “(d) Charge a consumer any fee or interest other than a fee or interest described in paragraph
23 (a), (b) or (e) of this subsection or in subsection (2) of this section;

24 “(e) Charge the consumer more than the actual amount that the vendor or service provider
25 charges the lender for access to or use of the system described in section 5, **chapter _____,**
26 **Oregon Laws 2007 (Enrolled House Bill 2203) [of this 2007 Act];**

27 “(f) Include any of the following provisions in a title 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 con-
32 tract against the lender or any holder in due course;

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

37 “(E) A clause permitting the continuation of interest after repossession of the consumer’s motor
38 vehicle, recreational vehicle, boat or mobile home;

39 “(g) Conduct a title loan business where liquor or lottery tickets are sold or where gambling
40 devices are located;

41 “(h) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle,
42 boat or mobile home whose title secures the title loan;

43 “(i) Make more than one outstanding loan that is secured by one title;

44 “(j) Renew an existing loan that is secured by one title more than two times after the loan is
45 first made; or

1 “(k) Make a new title loan to a consumer within seven days of the date on which a previous title
2 loan expires.

3 “(2)(a) A lender in the business of making title loans may not charge the consumer more than
4 one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many
5 checks or debit agreements the lender obtains from the consumer for the transaction. The fee may
6 not exceed \$20.

7 “(b) A lender in the business of making title loans may not collect a fee for a dishonored check
8 under ORS 30.701 or seek or recover statutory damages and attorney fees from a consumer for a
9 dishonored check under ORS 30.701. The lender may recover from the consumer any fee charged to
10 the lender by an unaffiliated financial institution for each dishonored check. For a dishonored check
11 or insufficient funds, the fees described in this subsection are the only remedy a lender may pursue
12 and the only fees a lender may charge.

13 “(3) The provisions of ORS 725.600 to 725.625 do not prevent a lender from recovering amounts
14 associated with the collection of a defaulted loan that are authorized by statute or awarded by a
15 court of law.”.

16 On page 8, after line 13, insert:

17 **“SECTION 13. (1) The Director of the Department of Consumer and Business Services**
18 **on the first business day after the effective date of this 2007 Act shall determine by order**
19 **from published sources the discount rate upon which the annual percentage rate set forth**
20 **in ORS 725.340 (1)(a)(B) will be based. The annual percentage rate shall apply to each new**
21 **loan made during the remainder of the 2007 calendar year, including all renewals of the loan.**

22 **“(2) The discount rate determined under subsection (1) of this section shall remain in**
23 **effect until the director determines a new discount rate in accordance with ORS 725.340**
24 **(1)(a)(B).”.**

25 In line 14, delete “13” and insert “14”.