

House Bill 2919

Sponsored by Representative RILEY

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 amounts paid that exceed amount due in consumer loan installment and additional payments made in installment period to be first applied to reduce principal of loan.

A BILL FOR AN ACT

1
2 Relating to payments made on consumer loans; creating new provisions; and amending ORS 725.340.

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

4 **SECTION 1.** ORS 725.340 is amended to read:

5 725.340. (1) Except as provided in ORS 725.615 and 725.622, a licensee may:

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

9 (A) 36 percent; or

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

17 (b) Contract for and receive in connection with a consumer finance loan made in accordance
18 with this chapter, and in addition to the finance charge described in paragraph (a) of this subsection,
19 other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the
20 Department of Consumer and Business Services. For purposes of this paragraph, "fees, expenses or
21 damages" includes, but is not limited to:

22 (A) Items exempted from the computation of the finance charge in accordance with the Truth
23 in Lending Act, 15 U.S.C. 1605(d) and (e), as that Act existed on July 2, 2007, and similar pass-
24 through fees or charges;

25 (B) Prepayment fees and late fees;

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

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

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

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

3 (2) **Except as provided in subsection (3) of this section**, when a precomputed loan contract
4 is originally scheduled to be repaid in 62 months or less and requires repayment in substantially
5 equal or consecutive monthly installments of principal and interest combined, the interest or con-
6 sideration may be precomputed, contracted for and earned on scheduled unpaid principal balances
7 on the assumption that all scheduled payments will be made when due. In such cases, **the licensee**
8 **may apply** every **scheduled** payment *[may be applied]* to the combined total of principal and pre-
9 computed interest until the contract is fully paid, *and the*. **If a scheduled payment is made in**
10 **an amount that is more than the scheduled installment, or an additional payment is made**
11 **during an installment period in which the full amount of a scheduled installment has been**
12 **paid, the licensee shall apply the additional amount or the additional payment as provided in**
13 **subsection (3) of this section. The licensee’s** acceptance or payment of interest or consideration
14 on *[any]* a loan made under the provisions of this subsection *[is]* **does** not *[considered to]* constitute
15 payment, deduction or receipt *[thereof]* **of interest or consideration** in advance. The precomputed
16 interest or consideration is subject to the following adjustments:

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

27 (b) *[If the payment of all unpaid installments is deferred one or more full months, and if the con-*
28 *tract so provides, the licensee may charge and collect a deferral charge not exceeding the annual per-*
29 *centage rate specified in subsection (1)(a) of this section and previously disclosed to the borrower*
30 *pursuant to the federal Truth in Lending Act applied to the sum of the installments deferred for the*
31 *length of the deferral period.]* **A licensee may charge and collect a deferral charge for all unpaid**
32 **installments that are deferred one or more months if the loan contract permits the licensee**
33 **to do so. The deferral charge may not exceed the annual percentage rate that is specified in**
34 **subsection (1)(a) of this section, which must be the rate that the licensee previously disclosed**
35 **to the borrower under the federal Truth in Lending Act. The licensee may apply the deferral**
36 **charge to the sum of the installments that were deferred for the length of the deferral pe-**
37 **riod.** The deferral period is *[that]* **a specified** period in which no scheduled installment is required
38 to be paid *[by reason of the deferral]*. **The licensee may collect the deferral** charge *[may be col-*
39 *lected]* at the time of deferral or at any time thereafter. **The licensee may not charge or collect**
40 a deferral charge *[may not be made]* for the deferral of *[any]* **an** installment with respect to which
41 **the licensee collected** a default charge *[has been collected]*, unless the **licensee deducts the** default
42 charge *[is deducted]* from the deferral charge. If prepayment of the loan in full occurs during the
43 deferral period, in addition to any other rebate *[which]* **that** may be required, the borrower shall
44 receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral
45 period[,]. For *[which purpose]* **purposes of computing the rebate**, a fraction of an unexpired month

1 *[exceeding]* **that exceeds** 15 days is *[considered to be]* a month.

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

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

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

19 **(3)(a) Except as provided in paragraph (b) of this subsection, if in an installment period**
 20 **a borrower pays more than the full amount of a scheduled installment, the licensee shall**
 21 **apply the amount of the payment that exceeds the amount of the scheduled installment ex-**
 22 **clusively to reduce the principal of the loan.**

23 **(b) If a licensee previously charged but did not collect a default or deferral charge in**
 24 **accordance with this section, the licensee may apply the amount of the payment that exceeds**
 25 **the amount of the scheduled installment first to pay the charge and then as provided in**
 26 **paragraph (a) of this subsection.**

27 *[(3)]* (4) If the borrower agrees to perform certain duties to insure or preserve the collateral and
 28 fails to perform *[those]* **the** duties, the licensee may pay for the performance of *[those]* **the** duties
 29 and add the amounts paid to the unpaid principal balance. *[A charge may be made for sums]* **The**
 30 **licensee may charge the borrower for sums the licensee** advanced, at the rate provided for in
 31 the loan agreement.

32 *[(4)]* (5) The loan contract may provide that after default and referral the borrower shall pay the
 33 licensee for reasonable attorney fees **the licensee** actually paid *[by the licensee]* to an attorney **who**
 34 is not *[a]* **the licensee's** salaried employee *[of the licensee]*.

35 **SECTION 2. The amendments to ORS 725.340 by section 1 of this 2009 Act apply to loan**
 36 **contracts entered into on or after the effective date of this 2009 Act.**