

Enrolled
Senate Bill 993

Sponsored by Senator MORSE (at the request of Oregon Financial Services Association) (Pre-session filed.)

CHAPTER

AN ACT

Relating to consumer lending; creating new provisions; amending ORS 725.010, 725.045, 725.340 and 725.370; repealing ORS 725.600, 725.602, 725.605, 725.610, 725.615, 725.620, 725.622, 725.624, 725.626 and 725.630; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 28 of this 2010 Act:

(1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or consideration, the person:

(A) Processes, receives or accepts for delivery to a lender an application for a loan, individually or in conjunction or cooperation with another person;

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

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

(b) "Broker or facilitator" does not include a mortgage broker, as defined in ORS 86A.100, a mortgage loan originator, as defined in ORS 86A.200, or an employee of a licensee.

(2) "Earnings" means salary, wages or other compensation for service.

(3)(a) "Lender" means an individual, corporation, association, firm, partnership, limited liability company or joint stock company that is engaged in the business of making loans.

(b) "Lender" does not include a financial institution or a trust company, as those terms are defined in ORS 706.008.

(4) "Licensee" means a person licensed under section 5 of this 2010 Act.

(5)(a) "Payday loan" means a loan of not more than \$50,000, other than a purchase money loan, in which:

(A) The primary purpose is personal, family or household use;

(B) The loan agreement specifies a term of not more than 60 days or specifies that a payday loan lender may demand repayment within 60 days; and

(C) The evidence of the loan is usually a check or electronic repayment agreement provided by or on behalf of the borrower.

(b) "Payday loan" does not include a loan with a term longer than 60 days in which a lender may accelerate repayment if the borrower defaults.

(6) "Payday loan lender" means a lender that is engaged in the business of making loans, at least 10 percent of which are payday loans.

(7) "Title loan" means:

(a) A loan of not more than \$50,000, other than a purchase money loan, in which:

(A) The title to a motor vehicle, recreational vehicle, boat or mobile home is security for the loan;

(B) The loan agreement specifies a term of not more than 60 days and requires the borrower to repay the entire amount in a single payment; and

(C) The lender is a title loan lender;

(b) A loan of a type substantially equivalent to a loan described in paragraph (a) of this subsection that the Director of the Department of Consumer and Business Services designates by rule or order as a title loan; or

(c) A sale-leaseback arrangement between a consumer and a purchaser for a motor vehicle, recreational vehicle, boat or mobile home in an amount that does not exceed \$50,000 when:

(A) The title and all rights to the motor vehicle, recreational vehicle, boat or mobile home do not transfer from the consumer to the purchaser in a bona fide sale of the motor vehicle, recreational vehicle, boat or mobile home or the consumer retains equity in the motor vehicle, recreational vehicle, boat or mobile home after the consumer's sale to the purchaser;

(B) The purchaser and the consumer agree within 60 days of the date on which the consumer sells the motor vehicle, recreational vehicle, boat or mobile home to the purchaser that the consumer has an option to or will repurchase the motor vehicle, recreational vehicle, boat or mobile home from the purchaser for a nominal price or a price other than the market value, determined at the time the lease expires, of the motor vehicle, recreational vehicle, boat or mobile home;

(C) During the term in which the consumer leases the motor vehicle, recreational vehicle, boat or mobile home, the purchaser or an agent of the purchaser holds a check, electronic repayment agreement or other evidence of the consumer's agreement to repurchase the motor vehicle, recreational vehicle, boat or mobile home that was provided by or on behalf of the consumer; or

(D) The director by rule or order designates the sale-leaseback arrangement as a title loan.

(8) "Title loan lender" means a lender that is engaged in the business of making loans, at least 10 percent of which are title loans.

SECTION 2. (1) Sections 1 to 28 of this 2010 Act do not limit a person's rights, powers or privileges under a law of this state or of the United States that regulates the person's lending money or extending credit, provided that the person complies with the provisions of the law.

(2) Except as otherwise provided in subsection (3) of this section, sections 1 to 28 of this 2010 Act do not affect a loan made or payable in another jurisdiction and lawful where made or payable.

(3)(a) A person is subject to sections 1 to 28 of this 2010 Act if in the person's capacity as a lender the person makes a payday loan or title loan to a consumer who resides in or maintains a domicile in this state and the consumer:

(A) Negotiates or agrees to the terms of the payday loan or title loan in person, by mail, by telephone or via the Internet while the consumer is physically present in this state;

(B) Enters into or executes a contract with the person for a payday loan or title loan in person, by mail, by telephone or via the Internet while the consumer is physically present in this state; or

(C) Makes a payment on the payday loan or title loan in this state.

(b) For purposes of this subsection, a consumer makes a payment on a payday loan or title loan in this state if:

(A) A person, for purposes of receiving or processing a payment on the payday loan or title loan, debits an account that the consumer holds in a branch of a financial institution that is located in this state; or

(B) The consumer makes a payment on the payday loan or title loan with a negotiable instrument that is drawn on a financial institution that is, or a branch of which is, located in this state.

SECTION 3. (1)(a) Except as provided in ORS 82.010, 82.020 and 82.025, a person may not conduct business as a payday loan lender or a title loan lender unless the person obtains a license under section 5 of this 2010 Act.

(b) A person may not act as an agent, broker or facilitator for making a payday loan or title loan unless the person obtains a license under section 5 of this 2010 Act, regardless of whether the principal that makes the payday loan or title loan must obtain a license under paragraph (a) of this subsection.

(2)(a) Except as provided in paragraph (b) of this subsection, a person subject to the provisions of subsection (1) of this section may not deposit a consumer's check, withdraw funds electronically from a consumer's account or otherwise collect the principal of, interest on, or a fee or charge for a loan subject to sections 1 to 28 of this 2010 Act if at the time the person makes the loan the person is not in compliance with subsection (1) of this section.

(b) A person subject to subsection (1) of this section may process a payment for or collect a loan if:

(A) The terms and conditions of the loan substantially comply with the provisions of sections 1 to 28 of this 2010 Act;

(B) The person proves to the Director of the Department of Consumer and Business Services by clear and convincing evidence that the person did not know that the person was required to comply with the provisions of subsection (1) of this section; and

(C) The person obtains a license under section 5 of this 2010 Act within 90 days after becoming aware of or receiving actual notice of the requirement for a license.

(3) Subsection (1) of this section does not apply to a person that does not collect a fee or consideration in connection with a payday loan or title loan or an application for a payday loan or title loan and:

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

(b) Acts solely as an intermediary between the borrower or consumer and a lender or a person that conducts business as a broker or facilitator for a payday loan or title loan;

(c) Transmits information, electronically or otherwise, concerning the borrower or consumer to a lender or a person that conducts business as a broker or facilitator for a payday loan or title loan; or

(d) Prepares, issues or delivers a negotiable instrument to a lender or a person that conducts business as a broker or facilitator for a payday loan or title loan, for subsequent delivery to a borrower or consumer.

SECTION 4. (1) An applicant for a license as a payday loan lender or a title loan lender shall apply to the Director of the Department of Consumer and Business Services in writing on a form and in a manner that the director prescribes by rule. An application for a license as a payday loan lender or a title loan lender must:

(a) List the applicant's name, residence address and business address;

(b) Name and list the residence address and business address for the applicant's officers and directors, if the applicant is a corporation, or for the applicant's members, if the applicant is a partnership, limited liability company or other association;

(c) Identify the county and city in which, and the street address, if any, at which the applicant will conduct business; and

(d) Provide other information the director requires.

(2)(a) At the time the applicant submits an application under this section, the applicant shall pay to the director a license fee in an amount the director sets under section 7 of this 2010 Act. Except as provided in paragraph (b) of this subsection, the license fee is not refundable.

(b) If the director for cause does not issue a license or if the applicant withdraws the application after the director has investigated the applicant, the director shall refund the license fee, less an amount the director retains to pay the administrative and investigative costs the director incurred in connection with the application.

SECTION 5. (1) Within 90 days after receiving an application under section 4 of this 2010 Act, the Director of the Department of Consumer and Business Services shall issue and deliver to the applicant a license to conduct business in accordance with sections 1 to 28 of this 2010 Act at the location identified in the application if the director finds that:

(a) The applicant and the applicant's members, if the applicant is a partnership, limited liability company or other association, or the applicant's officers and directors, if the applicant is a corporation, have the financial responsibility, experience, character and general fitness necessary to command the confidence of the community and to warrant the belief that the applicant will operate the business honestly, fairly and efficiently and in compliance with the provisions of sections 1 to 28 of this 2010 Act.

(b) The applicant has paid the fee required under section 4 of this 2010 Act.

(c) Grounds do not exist under section 6 of this 2010 Act to disapprove the application.

(d) Other reasons or conditions that would warrant the director's refusal to issue a license do not exist.

(2) An applicant may not become a licensee under this section unless the applicant is legally qualified to conduct business in this state.

(3)(a) The director shall disapprove an application and deny the applicant a license if the director finds that the applicant does not meet the standard set forth in subsection (1)(a) of this section or has not paid the required application fee or that grounds, reasons or conditions described in subsection (1)(b), (c) or (d) of this section exist and warrant the director's disapproval and denial.

(b) If the director disapproves an application or denies the applicant a license under paragraph (a) of this subsection, the director shall notify the applicant immediately and shall state the director's reasons for the disapproval or denial.

(4)(a) The director by rule shall prescribe the form of the license the director issues under this section. At a minimum, the director shall require the license to display the licensee's full name and the address at which the licensee conducts business.

(b) A license the director issues under this section:

(A) Is not transferable or assignable; and

(B) Remains in full force and effect until:

(i) The director revokes or suspends the license in accordance with section 10 of this 2010 Act; or

(ii) The licensee surrenders the license in accordance with section 12 of this 2010 Act.

(5) The director may issue more than one license to the same licensee if the director finds that for each additional license the licensee meets the qualifications set forth in this section. Each license the director issues must be for a separate and distinct place in which the licensee conducts business in accordance with sections 1 to 28 of this 2010 Act.

SECTION 6. (1) The Director of the Department of Consumer and Business Services may disapprove an application submitted under section 4 of this 2010 Act and deny a license to the applicant if a person named in the application:

(a) Cannot meet financial obligations as the obligations mature, has liabilities that exceed assets or is in a financial condition that prevents the person from conducting business with safety to consumers;

(b) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or profession;

(c) Failed to comply with or knowingly or repeatedly violated a provision of or a rule adopted under the Bank Act, ORS chapter 723, 725 or 726 or sections 1 to 28 of this 2010 Act;

(d) Was convicted of a crime, an essential element of which is fraud;

(e) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a practice or conduct in connection with making payday loans, title loans or consumer loans; or

(f) Is subject to an order in which:

(A) The director imposed a fine or other civil penalty on the person under the Bank Act, ORS chapter 723, 725 or 726 or sections 1 to 28 of this 2010 Act;

(B) The director removed the person from an office in an entity regulated under the Bank Act, ORS chapter 723 or 725 or sections 1 to 28 of this 2010 Act; or

(C) A state or federal agency with authority over banking institutions, savings associations, credit unions or consumer finance companies, within a five-year period before the applicant submitted an application under section 4 of this 2010 Act:

(i) Imposed a fine or other civil penalty on the person; or

(ii) Removed the person from an office in a state banking institution, a national bank, a state or federal savings association, a state or federal credit union or a consumer finance company.

(2) If the director denies a license to an applicant under this section, the director shall provide the applicant with a reasonable opportunity for a hearing under ORS chapter 183.

SECTION 7. (1) A licensee each year shall pay to the Director of the Department of Consumer and Business Services a license fee in an amount the director specifies by rule. The licensee shall pay the fee not later than the date the director sets in the rule.

(2) The director shall specify the amount of the fee described in subsection (1) of this section after considering:

(a) The amount of other moneys available for the director to use in performing the director's duties;

(b) The costs the director will incur in performing the director's duties in the year in which the director will collect the fee; and

(c) The amount the director needs to establish and maintain a reasonable emergency fund.

(3) In addition to any license fee the director collects under subsection (1) of this section, whenever the director devotes extra attention to a licensee's affairs, either when the licensee requests the attention or the director determines that the extra attention is necessary, the director shall charge as a fee for the extra attention the actual cost the director incurs.

SECTION 8. (1) On or before February 15 of each year, or on a date the Director of the Department of Consumer and Business Services establishes by rule, a licensee shall file a report with the director in a form and with the content the director prescribes by rule. The report must contain information the director requires concerning the licensee's business and the operations at each place of business in which the licensee conducts business in this state during the preceding calendar year under the terms of a license issued under section 5 of this 2010 Act.

(2) The director may assess against a licensee a penalty of \$10 for each day after February 15, or after the date the director specifies in subsection (1) of this section, during which the licensee fails to file a report required under this section.

SECTION 9. (1) A licensee may not conduct a business that is subject to sections 1 to 28 of this 2010 Act except under the name and at the place of business named in the license. The licensee at all times shall display the license conspicuously in the licensee's place of business.

(2) A licensee that changes the location at which the licensee conducts business as a payday loan lender or title loan lender shall notify the Director of the Department of Consumer and Business Services in writing and return the licensee's license. The director shall amend the license to reflect the new location and return the amended license to the licensee.

(3) The director may allow the licensee to change the location in which the licensee conducts business as a payday loan lender or title loan lender to a location outside the city

named in the original license only if the director determines that the new location will serve substantially the same community that the location named in the original license served.

(4) If the director disapproves the proposed new location, the director shall immediately notify the licensee of the disapproval and return the license unchanged to the licensee.

SECTION 10. (1) The Director of the Department of Consumer and Business Services may revoke a license issued under section 5 of this 2010 Act if the director:

(a) Gives the licensee 10 days' written notice in which the director specifies the action the director will take and the general grounds for the action;

(b) Provides the licensee with reasonable opportunity for a hearing under ORS chapter 183 in connection with the action; and

(c) Finds that:

(A) The licensee failed to pay the annual license fee;

(B) The licensee failed to comply with a demand, ruling or requirement the director made under sections 1 to 28 of this 2010 Act;

(C) The licensee, if the licensee is a corporation, failed to keep the corporation in good standing under applicable provisions of law;

(D) The licensee violated a provision of sections 1 to 28 of this 2010 Act or a rule the director adopted under sections 1 to 28 of this 2010 Act; or

(E) A fact or condition exists that clearly would have warranted the director's refusing to issue the license had the fact or condition existed at the time the licensee submitted an application under section 4 of this 2010 Act.

(2) The director, without notice or hearing, may suspend a license for a period not exceeding 30 days, pending investigation. The director shall provide the licensee with a reasonable opportunity for a hearing under ORS chapter 183 if the director proposes to suspend a license for a period longer than 30 days.

(3) The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension exist. If the director finds that grounds for revoking or suspending a license exist with respect to more than one of the locations in which a licensee operates, the director may revoke or suspend the license issued to the licensee for each location with respect to which grounds for revocation or suspension exist.

SECTION 11. The Director of the Department of Consumer and Business Services may reinstate a license the director revoked if the licensee:

(1) Complies with applicable provisions of law;

(2) Complies with a demand, ruling or requirement the director issues or imposes; and

(3) Pays a fee of \$25.

SECTION 12. (1) A licensee may deliver a written notice to the Director of the Department of Consumer and Business Services to surrender a license the director issued to the licensee under section 5 of this 2010 Act.

(2)(a) A licensee shall surrender a license under which no material loan activity has occurred for a period of 12 consecutive months.

(b) For purposes of this subsection, "material loan activity" includes a new loan, a loan that refinances an existing loan or a formal extension of existing loan repayment provisions for more than 30 days.

(3) A licensee's surrendering a license under subsection (1) or (2) of this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

SECTION 13. Revocation, suspension or surrender of a license issued under section 5 of this 2010 Act does not impair or affect the rights or obligations specified in a lawful contract between the licensee and a borrower that existed before the revocation, suspension or surrender.

SECTION 14. (1) The Director of the Department of Consumer and Business Services, to secure information the director requires and to ensure compliance with sections 1 to 28 of this 2010 Act and rules the director adopts under sections 1 to 28 of this 2010 Act:

(a) May at any time investigate a licensee or a person required under section 3 of this 2010 Act to obtain a license.

(b) Shall examine a licensee not less than once every two years and may inspect and examine the licensee at other times that the director determines are necessary.

(2) For purposes of subsection (1) of this section:

(a) A licensee or a person required to obtain a license as a payday loan lender or title loan lender is subject to inspection and shall give the director free access to the licensee's or person's place of business, books, accounts, records, files, safes and vaults.

(b) The director may:

(A) Conduct an investigation or examination without prior notice to the person the director investigates or examines.

(B) Compel the attendance of a witness or other person from whom the director requires testimony necessary to conduct an investigation or examination and examine the witness or person under oath.

(C) Require a licensee or a person required to obtain a license as a payday loan lender or title loan lender to produce books, accounts, records, files or other documents.

(c) A person may not knowingly give or cause to be given to the director a document or an oral or written statement or report that is false in any material respect.

(3) If the director investigates or examines under this section a licensee or a person required to obtain a license as a payday loan lender or title loan lender, the licensee or person shall pay the director for the actual cost of the investigation or examination. The director may maintain an action to recover the cost in a court of competent jurisdiction.

SECTION 15. The Director of the Department of Consumer and Business Services may specify the form and content of the books and records the licensee must keep in accordance with the provisions of sections 1 to 28 of this 2010 Act. The licensee shall preserve and make available the books and records for a period of at least two years after the licensee makes the final entry in connection with a loan or account recorded in the book or record.

SECTION 16. (1) A director or officer of a licensee who has reason to believe that a defalcation has occurred at an office of the licensee shall report the defalcation to the local, state or federal law enforcement officer with jurisdiction.

(2) A licensee, within five days after the discovery of a defalcation that occurs at an office of the licensee, shall notify the Director of the Department of Consumer and Business Services. If the director instructs the licensee to do so, the licensee shall cause an audit to be made of the business of the licensed office where the defalcation occurred, in accordance with the director's instructions.

(3) The Director of the Department of Consumer and Business Services may report a defalcation to a federal, state or local law enforcement agency with jurisdiction if the licensee has not reported the defalcation in accordance with subsection (1) of this section.

SECTION 17. A licensee shall:

(1) Deliver to the borrower at the time the licensee makes a loan a statement in the English language that shows in clear and distinct terms:

(a) The borrower's and the licensee's names and addresses.

(b) The amount of the loan, the date on which the licensee made the loan and the maturity of or payment terms for the loan.

(c) The interest rate to which the licensee and borrower agreed and the consideration the licensee will charge for the loan.

(d) The nature of the security for the loan, if the licensee has taken a lien on personal property by chattel mortgage, bill of sale, collateral agreement or otherwise.

(2) Make available to the borrower upon request a plain and complete receipt for all payments the borrower made on a loan at the time the licensee receives the payments. The receipt must:

- (a) Specify the amount, if any, that the licensee applied toward interest;
 - (b) Identify the date to which the interest is paid;
 - (c) Specify the amount, if any, the licensee applied toward principal; and
 - (d) State the unpaid principal balance for the loan, if a principal balance remains.
- (3) Permit a borrower at any time to pay any amount in advance on any loan.

(4) Mark the word "Paid" or "Renewed" indelibly on the note, or on other evidence of the debt or obligation that bears the borrower's signature, whenever the borrower pays the loan in full or renews the loan. If the borrower repays the loan in full, the licensee shall also:

(a) Release a mortgage or security agreement that no longer secures the loan and restore any security or collateral, to the extent and in the manner required by law.

(b) Release a Uniform Commercial Code filing that no longer secures the loan, to the extent and in the manner required under ORS 79.0513.

(c) Return any assignment the borrower gave.

(d) Return to the borrower the canceled note or other evidence of the loan or, alternatively, acknowledge to the borrower in writing that the borrower has repaid the loan.

SECTION 18. A licensee or other person may not advertise, print, display, publish, distribute or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcast in any manner whatsoever a statement or representation that is false, misleading or deceptive with respect to a rate, term or condition for a payday loan or title loan.

SECTION 19. (1) A licensee or a person required under section 3 of this 2010 Act to obtain a license may not:

(a) Take from a consumer:

(A) A power of attorney, except a power of attorney to transfer ownership of a motor vehicle at the time the licensee or the person makes a loan secured by a motor vehicle.

(B) A note or promise to pay that does not accurately disclose the actual amount or the term of the loan, the rate of interest charged and the schedule of payments for the loan.

(C) An instrument in which blank spaces remain to be filled in after execution.

(D) An assignment of earnings as payment or as security for a loan. An assignment that violates this subparagraph is unenforceable by the assignee and revocable by the assignor. For purposes of this subparagraph, if the licensee or the person pays money to or on behalf of a consumer in return for a right or claim to all or a portion of the consumer's unpaid earnings, the licensee or the person has made a loan to the consumer that is secured by an assignment of earnings. This subparagraph does not preclude an employee from authorizing deductions from the employee's earnings if the authorization is revocable.

(b) Conduct business where liquor or lottery tickets are sold or where gambling devices are located.

(c) Charge a consumer:

(A) More than the actual amount that the vendor or service provider charges the licensee or the person for access to or use of the system described in section 26 of this 2010 Act; or

(B) More than one fee per loan transaction for dishonored checks or insufficient funds, regardless of how many checks or debit agreements the licensee or the person obtains from the consumer for the transaction. The fee may not exceed \$20.

(d) Collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory damages or attorney fees from a consumer for a dishonored check under ORS 30.701. The licensee or the person may recover from the consumer a fee that an unaffiliated financial institution charges to the licensee or the person for each dishonored check. For a dishonored

check or insufficient funds, the fees described in this subsection are the only remedy the licensee or the person may pursue and the only fees the licensee or the person may charge.

(2) The provisions of sections 1 to 28 of this 2010 Act do not prevent a licensee or a person required under section 3 of this 2010 Act to obtain a license from recovering amounts associated with collecting a defaulted loan that are authorized by statute or awarded by a court of law.

SECTION 20. A title loan lender may not:

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

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

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

(4) Make or renew a title loan to a consumer without forming a good faith belief that the consumer has the ability to repay the title loan. In forming a good faith belief, the title loan lender shall consider factors that the Director of the Department of Consumer and Business Services specifies by rule. A title loan lender complies with this subsection if the title loan lender meets the conditions the director specifies.

(5) Charge a consumer a fee or interest other than a fee or interest described in subsection (1) or (2) of this section or in section 19 (1)(c) or (d) of this 2010 Act.

(6) Include in a title loan contract:

(a) A hold-harmless clause;

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

(c) A provision in which the consumer agrees not to assert against the lender or a holder in due course a claim or defense arising out of the contract;

(d) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property the consumer holds, owns or is due, unless the waiver or limitation applies only to property that is subject to a security interest executed in connection with the loan; or

(e) A clause that permits interest to continue after the consumer's motor vehicle, recreational vehicle, boat or mobile home has been repossessed.

(7) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle, boat or mobile home the title to which secures the title loan.

(8) Make more than one outstanding title loan that is secured by one title.

(9) Renew an existing title loan that is secured by one title more than two times after the loan is first made.

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

SECTION 21. A payday loan lender may not:

(1) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, excluding a one-time origination fee for a new loan.

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

(3) Make or renew a payday loan for a term of less than 31 days.

(4) Charge a consumer a fee or interest other than a fee or interest described in subsection (1) or (2) of this section or in section 19 (1)(c) or (d) of this 2010 Act.

(5) Include in a payday loan contract:

(a) A hold-harmless clause;

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

(c) A provision in which the consumer agrees not to assert against the lender or a holder in due course a claim or defense arising out of the contract; or

(d) An executory waiver or a limitation of exemption from attachment, execution or other process on real or personal property the consumer holds, owns or is due, unless the waiver or limitation applies only to property that is subject to a security interest executed in connection with the loan.

(6) Renew an existing payday loan more than two times.

(7) Make a new payday loan to a consumer within seven days of the date on which a previous payday loan expires.

SECTION 22. (1) A person who claims to be aggrieved by a practice that violates a provision of section 3, 19, 20 or 21 of this 2010 Act or a rule adopted under section 27 of this 2010 Act that regulates a licensee or a person required under section 3 of this 2010 Act to obtain a license may, not later than one year after the date of the alleged violation, file with the Director of the Department of Consumer and Business Services a verified written complaint. The complaint must state the name and address of the licensee or the person alleged to have committed the unlawful practice and the particulars of the alleged unlawful practice. The director may require the complaint to set forth other information that the director considers pertinent.

(2) A title loan lender shall state in every contract for a title loan, in a type size equal to at least 12-point type, that the consumer or the consumer's attorney may file a complaint with the director as provided in this section.

(3) After receiving a complaint under this section, the director may, under section 14 of this 2010 Act, investigate the unlawful practice and the licensee or the person alleged in the complaint to have committed the unlawful practice.

SECTION 23. (1) If the Director of the Department of Consumer and Business Services has reasonable cause to believe that a person violated, is violating or is about to violate a provision of sections 1 to 28 of this 2010 Act or a rule the director adopted or an order the director issued under sections 1 to 28 of this 2010 Act, the director may order the person to cease and desist from the violation.

(2) The director, in an order the director issues under subsection (1) of this section, shall:

(a) State the facts constituting the violation;

(b) Require the person named in the order to cease and desist from the violation or to meet specific conditions;

(c) State the effective date of the order; and

(d) Advise the person named in the order that the person has a right to a contested case hearing under ORS chapter 183.

(3) An order under this section is effective 30 days after the date of the order, unless the person named in the order requests a hearing on the order, and remains in effect until the director or a court withdraws the order.

(4) If an individual named in an order under this section fails to comply with the order, in addition to imposing a penalty under section 28 of this 2010 Act, the director may issue an order to remove or suspend the individual from the individual's office or position.

SECTION 24. (1) If the Director of the Department of Consumer and Business Services finds that an officer or director of a licensee is dishonest, reckless or incompetent or refuses to comply with the law, with a rule the Department of Consumer and Business Services adopted or with a written requirement or instruction the department imposed or issued, the Director of the Department of Consumer and Business Services may order the licensee to suspend the licensee's officer or director from the officer or director's office or position.

(2) The Director of the Department of Consumer and Business Services, for any of the reasons set forth in section 6 of this 2010 Act, may order a licensee to remove an officer or director of the licensee from office.

SECTION 25. A person is not personally liable for an act the person does or fails to do in good faith and in compliance with a rule or order the Director of the Department of Consumer and Business Services adopted or issued under sections 1 to 28 of this 2010 Act,

even if the director amends or rescinds the rule or order or a judicial or other authority determines that the rule or order is invalid.

SECTION 26. (1) The Director of the Department of Consumer and Business Services, by contract with a vendor or service provider or otherwise, may develop and implement a system by means of which a licensee may determine whether a consumer has an outstanding loan, the number of loans the consumer has outstanding, the dates on which the consumer entered into or renewed a loan contract subject to sections 1 to 28 of this 2010 Act and other information necessary to comply with the provisions of sections 1 to 28 of this 2010 Act. The director by rule may specify the form and content of the system, but shall ensure at a minimum that the information entered into or stored by the system is:

(a) Accessible to and usable by licensees and the director from any location in this state; and

(b) Secured against public disclosure, tampering, theft or unauthorized acquisition or use.

(2) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure and is not subject to discovery, subpoena or other compulsory process except in an action brought under sections 1 to 28 of this 2010 Act.

(3) A vendor or service provider that operates or administers the system described in subsection (1) of this section may charge a licensee a fee or fees for access to or use of the system in amounts that the director approves by rule.

(4)(a) If the system described in subsection (1) of this section is developed and implemented, licensees subject to sections 1 to 28 of this 2010 Act, within one business day after conducting a loan transaction that generates information that the system described in subsection (1) of this section requires, shall enter or update the information.

(b) A licensee, after the date on which the licensee ceases to make loans subject to sections 1 to 28 of this 2010 Act, shall continue to enter and update information for loans that are outstanding or that have not yet expired.

(c) Within 10 business days after ceasing to make loans subject to sections 1 to 28 of this 2010 Act, a licensee shall submit to the director for approval a plan for continuing compliance with this subsection. The director shall promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this subsection.

(5) The director by rule shall establish requirements for retaining, archiving and deleting information entered into or stored by the system described in subsection (1) of this section.

SECTION 27. (1) The Director of the Department of Consumer and Business Services, in accordance with ORS chapter 183, may adopt rules for the purposes of protecting borrowers and consumers, providing clarity to licensees and otherwise carrying out and enforcing the provisions of sections 1 to 28 of this 2010 Act. The rules may include, but are not limited to, provisions that establish loan forms, terms, charges and fees.

(2) Before the director adopts a rule under subsection (1) of this section, the director shall submit a copy of the rule to each licensee.

(3) The director may institute an action or proceeding and make a specific ruling, demand or finding that the director considers necessary to carry out or enforce a provision of sections 1 to 28 of this 2010 Act or a rule the director adopted, an order the director issued or an action the director took to carry out or enforce the provisions of sections 1 to 28 of this 2010 Act.

SECTION 28. (1) The Director of the Department of Consumer and Business Services may assess a civil penalty of not more than \$2,500 against a person who violates a provision of sections 1 to 28 of this 2010 Act or a rule the director adopted or final order the director issued under sections 1 to 28 of this 2010 Act. The director, in addition to imposing a penalty under this subsection for the violation, may revoke the licensee's license.

(2) A civil penalty under this section must be imposed as provided in ORS 183.745.

(3) Except as provided in subsection (4) of this section, moneys collected under this section must be paid to the State Treasurer and credited as provided in ORS 705.145.

(4) In addition to any other penalty provided by law, the director may assess against a person who makes a payday loan or title loan in violation of section 3 of this 2010 Act a civil penalty in an amount equal to the interest the person receives that exceeds nine percent per annum. The director shall pay all moneys collected under this subsection to the Department of State Lands for the benefit of the Common School Fund.

SECTION 29. ORS 725.010, as operative until July 30, 2010, is amended to read:

725.010. As used in this chapter:

(1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or consideration, the person:

(A) Processes, receives or accepts for delivery to a lender an application for a **consumer finance** loan, individually or in conjunction or cooperation with another person;

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

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

(b) "Broker or facilitator" does not include a mortgage broker or loan originator, as those terms are defined in ORS 86A.100, or an employee of a licensee.

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

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

SECTION 30. ORS 725.010, as amended by section 33, chapter 863, Oregon Laws 2009, is amended to read:

725.010. As used in this chapter:

(1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or consideration, the person:

(A) Processes, receives or accepts for delivery to a lender an application for a **consumer finance** loan, individually or in conjunction or cooperation with another person;

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

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

(b) "Broker or facilitator" does not include a mortgage broker, as that term is defined in ORS 86A.100, a mortgage loan originator, as that term is defined in ORS 86A.200, or an employee of a licensee.

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

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

SECTION 31. ORS 725.045 is amended to read:

725.045. (1) *[Without first obtaining a license under this chapter,]* **Except as provided in ORS 82.010, 82.020 and 82.025,** a person may not conduct a business in which the person makes a *[loan described in subsection (2) of this section]* **consumer finance loan of \$50,000 or less** or acts as an agent, broker or facilitator for a person that makes a *[loan described in subsection (2) of this section, except as provided under ORS 82.010, 82.020 and 82.025.]* **consumer finance loan of \$50,000 or less unless the person first obtains a license under this chapter.**

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

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

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

[(c) Consumer finance loans.]

[(3)] (2) This section does not apply to a person that does not collect a fee or consideration in connection with a **consumer finance** loan *[described in subsection (2) of this section]* or an application for a **consumer finance** loan *[described in subsection (2) of this section]* and that:

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

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

(c) Transmits information, electronically or otherwise, concerning the borrower or consumer to a lender or a person that conducts business as a broker or facilitator for a **consumer finance** loan [described in subsection (2) of this section]; or

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

SECTION 32. ORS 725.340 is amended to read:

725.340. (1) [Except as provided in ORS 725.615 and 725.622,] A licensee may:

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

(A) 36 percent; or

(B) 30 percentage points in excess of the discount window primary credit rate. The Director of the Department of Consumer and Business Services on the second Friday of December shall determine by order from published sources available on that date the discount rate upon which the annual percentage rate set forth in this subparagraph will be based as of January 1 of the following calendar year. The annual percentage rate set forth in this subparagraph shall apply to each new loan made during the succeeding calendar year for the entire term of the loan, including all renewals of the loan.

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

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

(B) Prepayment fees and late fees;

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

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

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

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

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

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

after. A default charge may not be assessed with respect to an installment that is paid in full on or within 10 days after a scheduled installment due date when an earlier maturing installment or a default or deferral charge on an earlier maturing installment may not have been paid in full even though all or part of such installment payment is applied to an earlier maturing installment, or a default or deferral charge.

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

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

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

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

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

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

SECTION 33. ORS 725.370 is amended to read:

725.370. [*Except as otherwise provided in ORS 725.602,*] **This chapter does not affect** loans made or payable in other jurisdictions and lawful where made or payable[, *are not affected by this chapter*].

SECTION 34. ORS 725.600, 725.602, 725.605, 725.610, 725.615, 725.620, 725.622, 725.624, 725.626 and 725.630 are repealed.

SECTION 35. (1) Sections 1 to 28 of this 2010 Act, the amendments to ORS 725.010, 725.045, 725.340 and 725.370 by sections 29, 31, 32 and 33 of this 2010 Act and the repeal of ORS 725.600, 725.602, 725.605, 725.610, 725.615, 725.620, 725.622, 725.624, 725.626 and 725.630 by section 34 of this 2010 Act become operative 90 days after the effective date of this 2010 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date set forth in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date, all the duties, functions and powers conferred on the director by sections 1 to 28 of this 2010 Act, the amendments

to ORS 725.010, 725.045, 725.340 and 725.370 by sections 29 to 33 of this 2010 Act and the repeal of ORS 725.600, 725.602, 725.605, 725.610, 725.615, 725.620, 725.622, 725.624, 725.626 and 725.630 by section 34 of this 2010 Act.

SECTION 36. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 5, 2010

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Secretary of Senate

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President of Senate

Passed by House February 22, 2010

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Speaker of House

Received by Governor:

.....M.,....., 2010

Approved:

.....M.,....., 2010

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2010

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Secretary of State