



MEMORANDUM

March 16, 2015

To: Members of the Senate Committee on Business and Transportation
From: Richard Y. Blackwell, Senior Policy Analyst, Division of Finance and Corporate Securities
Subject: Section-by-Section Analysis of SB 276-1

Section 1. Section 1 amends existing law to add three new definitions:

- Under the printed bill, a “buy-here-pay-here lender” is a person who is in the business of making loans, at least 10% of which are buy-here-pay-here loans. The -1 amendment substitutes the term “loan” for “vehicle finance contract.” While finance contracts are a specific type of loan, lenders frequently use retail installment contracts to make buy-here-pay-here transactions.
- Under the printed bill, a “buy-here-pay-here loan” is a multi-part definition:
 - The loan is under \$50,000.
 - The borrower uses the loan to purchase a motor vehicle, recreational vehicle, or mobile home.
 - The loan is originated by the vehicle dealer, and not a third party.
 - The loan is originated by a vehicle dealer that is independent, and not part of a franchise network.
 - The loan is not sold or transferred by the vehicle dealer within 45 days to an unaffiliated third party after the vehicle purchase.
 - The definition of buy-here-pay-here loan includes those loans under \$50,000 that the director determines by rule are substantially equivalent to a buy-here-pay-here loan. This is meant to give the director flexibility if lending practices change, though any covered loans would appear similar to the statutory definition.
 - The -1 amendment clarifies that the loan must not be sold or transferred for 14 days, instead of 45 days. This matches up with the “bushing” statute, which makes parties unwind an vehicle transaction. (*See* ORS 646A.090).
 - The -1 amendment also clarifies that the term loan”
- A “vehicle finance contract” mirrors the definition of retail installment contract in ORS chapter 83, because these contracts are the predominant form of financing buy-here-pay-here sales. In essence, it is an agreement where the borrower agrees to pay a sum of money, together with a finance charge, for the purchase of a motor vehicle. The lender takes title, a lien, or some other security interest under the contract to ensure that the borrower performs his or her’s obligation to repay the sums borrowed. The finance

contract can take multiple forms, including contracts where possession changes hands but title remains (a bill of sale).

Finally, because ORS chapter 725A already contains regulation of both payday lenders and title lenders, the bill adds a definition of “subject lender” when a section applies to all three entities.

Section 2. Current law requires a license as a payday lender or a title lender if the person makes a loan to an Oregon resident, no matter how the loan is negotiated (e.g., over the Internet, by person or by mail). This amendment essentially adds buy-here-pay-here finance contracts to this requirement.

Section 3. Current law treats loans made by an unlicensed payday loan lender or a unlicensed title loan lender as voidable (*but see, e.g., 2015 SB 278*). This section amends current law to include buy-here-pay-here vehicle contracts among the loans potentially voidable if made by an unlicensed lender.

Section 4. This amendment adds buy-here-pay-here lenders to the existing registration requirements for payday loan and title lenders. Clarifies that the director may license all three entities through the Nationwide Multiple License System, a concept that this committee approved in SB 277 earlier this session.

Section 5. The amendments to existing law appear to only make technical changes to the law.

Section 6. This section amends existing law primarily to ensure the director may deny a buy-here-pay-here lender a license for various reasons. The bill does amend existing law to clarify that a felony involving fraud is one ground for denying a license. Felonies may involve deception or dishonesty, but if the legal element does not contain fraud then the director may not deny a license application. This change broadens the list of felonies that disqualify a person from obtaining a license.

Section 7. Amends existing requirement that a licensee give notice to the director of where the licensee does business to include buy-here-pay-here vehicle dealers.

Section 8. Amends existing provisions authorizing investigations of licensees to include buy-here-pay-here lenders.

Section 9. Amends existing law to preserve the books and records of a buy-here-pay-here lender.

- Payday and title loan lenders must keep books and records for two years after their final entry in connection with a loan or account.
- Because buy-here-pay-here lenders may receive payments for much longer than a payday lender (under 60 days as opposed to five or more years), this amendment extends the recordkeeping requirements to five years from the last entry on a loan or account.

Section 10. Replaces the term “defalcation” with its commonly used synonym “embezzlement” for clarity and readability.

Section 11. Adds buy-here-pay-here lenders to the notice requirements and written receipt requirements already applicable to payday loan and title loan lenders.

- Existing law requires payday loan and title loan lenders to give borrowers a statement that clearly sets out the names and addresses of both parties, the amount of the loan, when the loan was made and the loan's payment terms, the interest rate on the loan, and the way the note is secured – liens, chattel mortgage, bills of sale, etc.
- Existing law also requires a lender to give a borrower an account statement. The statement must include amounts paid toward interest and principal, and when they are paid.
- Licensees are also required to allow borrowers to pay any amount in advance, release security agreements that are no longer securing the loan, and return to the borrower assignments or cancelled notes.
- The new provision of section 11 requires the disclosures and the account statements to appear in the language the licensee and the borrower used to negotiate the transaction.

Section 12. This provision amends existing law to prohibit buy-here-pay-here lenders from publishing advertisements in a way that is false, misleading or deceptive about a loan's rate, term or condition.

Section 13. This amendment applies existing prohibitions to buy-here-pay-here lenders. These prohibitions include provisions against leaving blank spaces in a contract, taking powers of attorney from consumers, and inaccurate terms and conditions on notes.

Section 14. This section does not make any changes applicable to buy-here-pay-here lenders, but it does clarify a provision with respect to payday loan lenders. A new subsection (8) prohibits payday loan lenders from lending to a consumer or members of their immediate family more than once in a 24 hour period. If the origination fees are low, however (less than \$30), the lender can make the loan. This provision is primarily aimed at stemming loans in quick succession the same borrower before the first loan expired.

Section 16. Section 16 is a new section that adds prohibited practices specific to buy-here-pay-here lenders. They do not apply to payday loan or title loan lenders. The printed bill also clarifies that any protections for borrowers in the retail installment provisions of ORS chapter 83 continue to apply to these transactions. The specific prohibitions in this bill include:

- Limiting the interest rate on a buy-here-pay-here vehicle contract to 20%. The -1 amendment proposes that if a borrower makes a substantial down-payment, that payment toward equity should count toward lowering the rate of interest.
- Making a buy-here-pay-here vehicle finance contract without determining that the consumer can repay the loan. The bill directs the department to develop criteria to figure out what an "ability to repay" standard would look like for buy-here-pay-here vehicle finance contracts. The -1 amendment requires the director to consider borrowers' net

income and expenses when setting guidelines. The bill provides a safe harbor if the buy-here-pay-here lender follows the department's guidelines.

- Requiring, in the -1 amendment, a buy-here-pay-here lender to disclose the vehicle's purchase price before the lender determines the creditworthiness of the borrower. This is meant to discourage changing the price of the vehicle depending on the borrower's credit score only.
- Placing certain contract clauses into an vehicle finance contract:
 - Hold-harmless clauses (which work to release a party from any responsibility for damage or liability under the transaction).
 - Confessions of judgment (where a person agrees to enter a judgment against themselves for some specified event) or waivers of rights to take a matter to court.
 - Agreements not to assert defenses related to a negotiable instrument (i.e., a note).
 - Clauses that waive or limit a consumer's defenses against seizing a borrower's personal property to satisfy an obligation, except for the motor vehicle.
 - Ability for the lender to accrue interest on the obligation after the motor vehicle is seized.
- Requiring the consumer provide a set of keys to the motor vehicle that secures the obligation under the vehicle finance contract. The -1 amendment also proposes that a buy-here-pay-here lender may not install devices that remotely monitor and disable vital systems on a motor vehicle. Advances in vehicle telematics means that a set of keys are almost unnecessary; a buy-here-pay-here lender can immobilize a motor vehicle with a text message.
- Prohibiting more than one buy-here-pay-here finance contract secured by one motor vehicle. This section was intended to stem making several loans to a borrower at on the vehicle they drive off the lot.
- Requiring a buy-here-pay-here lender to disclose that the consumer can resolve problems with the dealer or contact the Department of Consumer and Business Services. The printed bill also requires the disclosure to state that the dealer may not change financing or payment terms without the borrower agreeing to the change. The -1 amendment removed language that directs the borrower back to the buy-here-pay-here lender, in order to stem so-called "yo-yo" sales.
- Prohibiting repossession of a motor vehicle within 10 days after the consumer fails to make a regularly scheduled payment. Most regulatory authorities that have dealt with the issue usually provide a 30-day window before repossession, so the -1 extends the time period by 20 days for the benefit of consumers.
- Prohibits the buy-here-pay-here lender from refusing to accept a regularly-scheduled payment from a borrower, or refuse a payment to make a loan current and pay the full amount due. This addresses concerns that buy-here-pay-here lenders will purposely refuse payments in order to repossess the motor vehicle for subsequent sale.

- Limits fees for repossession to 7.5% of the purchase price of the vehicle, not including any finance charges.

Section 17. This section amends existing law to clarify that a borrower harmed by the practices of a buy-here-pay-here lender may submit a written complaint to the director. The section also requires buy-here-pay-here lenders to disclose the ability of a consumer to file a written complaint to the director.

Section 18. This section amends existing law to include buy-here-pay-here lenders under the ability for the director to order a license to cease conduct that violates the law. The bill grants the director authority to order restitution or require a lender to give up illegally earned interest or fees. The bill also clarifies the director's duty to inform a person that they have a right to a contested case hearing.

Section 19. This section only makes technical changes to existing law. The effect of the section, however, would be to allow the director to remove or suspend the officers and directors of a buy-here-pay-here lender for dishonesty, reckless behavior, incompetence, or refusal to comply with the law.

Section 20. This section only amends existing law to allow the director to send copies of proposed rules to licensees electronically or by mail.

Section 21. This section amends the existing civil penalty authority to include buy-here-pay-here lenders.

Section 22. Section 22 repeals ORS 725A.036, which allows the director to reinstate revoked licenses if the license holder complies with the law and pays a fee of \$25.
