

House Bill 3184

Sponsored by Representative ALONSO LEON; Senator 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 Department of Consumer and Business Services to establish loan counseling program for residents of this state. Specifies required elements of program. Requires department to issue certificate to resident who completes loan counseling program or passes assessment that determines whether resident understands material covered in loan counseling program.

Requires department to maintain records of loan counseling for at least 10 years. Prohibits department from collecting or retaining financial or personal information.

Prohibits consumer finance lender, payday loan lender or title loan lender from making loan to resident of this state unless resident provides copy of or serial number for certificate.

Becomes operative July 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to consumer loan counseling for residents of this state; creating new provisions; amending
3 ORS 725.045 and 725A.020; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 705.**

6 **SECTION 2. (1) The Department of Consumer and Business Services shall establish a**
7 **consumer loan counseling program for residents of this state. The program must include,**
8 **but is not limited to, all of these elements:**

9 (a) **A curriculum with materials that aid residents in understanding:**

10 (A) **The costs of borrowing, including interest rates and the total cost of credit over the**
11 **term of a loan, compound interest, origination fees, late fees and other costs and expenses**
12 **associated with borrowing money;**

13 (B) **Loan terms and conditions;**

14 (C) **Disclosures that state and federal law require for loans; and**

15 (D) **Repayment obligations and consequences for default or a failure to timely repay ob-**
16 **ligations in accordance with the terms and conditions of a loan.**

17 (b) **A comprehensible structure that:**

18 (A) **Provides an overview of the topics the program will cover and navigational assistance**
19 **that enables residents to anticipate at each stage of the program what the program will**
20 **cover next, that describes anticipated learning outcomes, that estimates the time that a**
21 **resident will need to complete the counseling and that makes use of video materials when-**
22 **ever possible;**

23 (B) **Is tailored as closely as possible to the resident's actual financial circumstances;**

24 (C) **Focuses on practical material with actionable outcomes;**

25 (D) **Avoids long sections of unbroken text and legalistic, overly formal or overly technical**
26 **language if the counseling occurs in writing or online;**

27 (E) **Explains carefully and in an easy to understand manner how to use any calculators**

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 or other tools made available to the resident;

2 (F) Allows the resident to read any materials presented at the resident's own pace and
 3 permits the resident to stop the counseling, save the resident's place and restart the coun-
 4 seling, if the counseling occurs in writing or online;

5 (G) Fills in whenever and wherever possible any forms or tools with information available
 6 to the department, rather than depending on the resident to fill in the forms or tools with
 7 correct information;

8 (H) Provides median income and debt data and a number of hypothetical profiles and
 9 models of borrowers and financial circumstances with which the resident may compare the
 10 resident's own financial circumstances;

11 (I) Provides, if appropriate for the type of loan for which the resident intends to apply,
 12 a chart of repayment options, a recommended repayment plan, an amortization chart and
 13 other information that is tailored as closely as possible to the resident's actual financial
 14 circumstances;

15 (J) Provides the resident with a printable card or similar device that lists appropriate
 16 contact information for the department, the Attorney General and other public officials with
 17 responsibility for enforcing consumer protection laws in this state; and

18 (K) Provides other information or tools that the department deems helpful, useful or
 19 otherwise appropriate after carefully studying the results of previous loan counseling ses-
 20 sions.

21 (c) Program materials in English, Spanish and at least three of the other languages most
 22 commonly spoken in this state.

23 (d) Criteria for assessing whether a resident who completes the counseling understands
 24 and can successfully apply recommended practices in shopping for, evaluating, understanding
 25 the terms and conditions of and choosing an optimal loan for the resident's needs and fi-
 26 nancial circumstances.

27 (2) The department may provide the loan counseling by means of written materials, per-
 28 sonal contact or electronic means or a mixture of any of these or other means, as appro-
 29 priate. The department may identify particular residents of this state who have specialized
 30 needs for counseling and provide a loan counseling program that meets the needs the de-
 31 partment identifies.

32 (3)(a) The department shall issue a certificate to a resident who completes the loan
 33 counseling program described in subsection (1) of this section or passes the assessment de-
 34 scribed in subsection (8) of this section. The department by rule shall specify criteria for
 35 successfully completing the loan counseling program and a qualifying score for passing the
 36 assessment.

37 (b) The department shall number each certificate individually and in series and shall link
 38 the certificate number to the resident's full name. The department shall make copies of the
 39 certificates available both in print and electronically.

40 (4) The department shall advertise and market the loan counseling program established
 41 under this section in a manner that is both cost-effective and calculated to reach the maxi-
 42 mum number of residents of this state.

43 (5) The department may enter into a contract with a public or private entity to provide
 44 counseling under this section, but the department must monitor the efficacy of the coun-
 45 seling and administer the contract to ensure an optimal outcome for residents who attend

1 the counseling.

2 (6) The department shall pay for the loan counseling program described in this section
 3 from moneys in the Consumer and Business Services Fund that are appropriated to the de-
 4 partment for the purposes set forth in this section.

5 (7)(a) The department shall maintain records related to a person’s loan counseling for a
 6 period of not fewer than 10 years after the date the person completed the counseling.

7 (b) In any records the department maintains under paragraph (a) of this subsection, the
 8 department shall ensure that the department does not collect or retain personal information
 9 such as financial information and any personally identifiable information other than a
 10 person’s full name. The department shall also ensure that personal information other than
 11 the person’s full name and the number of the certificate is not available to any individual
 12 or entity other than the person identified in the certificate.

13 (c) The department may provide a method, including an electronic method, by means of
 14 which a lender may verify that a person has a certificate that the department issued under
 15 this section.

16 (8) The department may offer, as an alternative to completing the loan counseling pro-
 17 gram described in this section, an assessment to determine whether a person adequately
 18 understands the material described in subsection (1)(a) of this section.

19 (9) The department shall report to the Legislative Assembly before each legislative ses-
 20 sion that begins in an odd-numbered year concerning the efficacy of the loan counseling
 21 program in reducing loan defaults and other loan repayment difficulties among residents of
 22 this state. In the report, the department shall also recommend any needed improvements to
 23 the loan counseling program or in legislation that governs the loan counseling program.

24 (10) The department shall adopt rules that are necessary to implement the provisions of
 25 this section.

26 **SECTION 3.** ORS 725.045 is amended to read:

27 725.045. (1)(a) Except as provided in ORS 82.010, 82.020 and 82.025 and subject to paragraph (b)
 28 of this subsection, a person may not conduct a business in which the person makes a consumer fi-
 29 nance loan of \$50,000 or less or acts as an agent, broker or facilitator for a person that makes a
 30 consumer finance loan of \$50,000 or less unless the person first obtains a license under this chapter.

31 (b) If at the time a person made a consumer finance loan of \$50,000 or less the person did not
 32 have a license that the Director of the Department of Consumer and Business Services issued under
 33 this chapter, the consumer finance loan is void, and the person, or a successor, assignee or affiliate
 34 of the person, may not deposit a borrower’s or consumer’s check, withdraw moneys from a
 35 borrower’s or consumer’s account or otherwise collect, receive or retain principal, interest, a fee
 36 or a charge related to or in connection with the consumer finance loan.

37 (2) A licensee may not make a consumer finance loan to a resident of this state who does
 38 not provide the licensee, at the time the resident applies for the consumer finance loan, with
 39 a copy of or the serial number for a certificate that the Department of Consumer and Busi-
 40 ness Services issued under section 2 of this 2017 Act.

41 [(2)] (3) This section does not apply to a person that does not collect a fee or consideration in
 42 connection with a consumer finance loan or an application for a consumer finance loan and that:

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

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

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

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

7 [(3)] (4) A person may collect principal, interest, a fee or a charge related to or in connection
8 with a consumer finance loan if the license the director issued under this chapter lapsed inadvert-
9 ently or by mistake.

10 **SECTION 4.** ORS 725A.020 is amended to read:

11 725A.020. (1)(a) Except as provided in ORS 82.010, 82.020 and 82.025 and subject to subsection
12 (2) of this section, a person may not conduct business as a payday loan lender or a title loan lender
13 unless the person obtains a license under ORS 725A.024.

14 (b) A person may not act as an agent, broker or facilitator for making a payday loan or title
15 loan unless the person obtains a license under ORS 725A.024, regardless of whether the principal
16 that makes the payday loan or title loan must obtain a license under paragraph (a) of this sub-
17 section.

18 (2) If at the time a person made a payday loan or title loan the person did not have a license
19 from the Director of the Department of Consumer and Business Services under ORS 725A.024, the
20 payday loan or title loan is void, and the person, or a successor, assignee or affiliate of the person,
21 may not deposit a borrower's or consumer's check, withdraw moneys from a borrower's or
22 consumer's account or otherwise collect, receive or retain principal, interest, a fee or a charge re-
23 lated to or in connection with the payday loan or title loan.

24 **(3) A licensee may not make a payday loan or title loan to a resident of this state who**
25 **does not provide the licensee, at the time the resident applies for the payday loan or title**
26 **loan, with a copy of or the serial number for a certificate that the Department of Consumer**
27 **and Business Services issued under section 2 of this 2017 Act.**

28 [(3)] (4) Subsection (1) of this section does not apply to a person that does not collect a fee or
29 consideration in connection with a payday loan or title loan or an application for a payday loan or
30 title loan and:

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

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

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

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

40 [(4)] (5) The director by order may determine whether and how a person may collect principal,
41 interest, a fee or a charge related to or in connection with a payday loan or title loan if the director
42 determines that a license the director issued under ORS 725A.024 lapsed inadvertently or by mis-
43 take.

44 **SECTION 5. Section 2 of this 2017 Act and the amendments to ORS 725.045 and 725A.020**
45 **by sections 3 and 4 of this 2017 Act apply to loans that a lender makes on and after the ef-**

1 **fective date of this 2017 Act.**

2 **SECTION 6. (1) Section 2 of this 2017 Act and the amendments to ORS 725.045 and**
3 **725A.020 by sections 3 and 4 of this 2017 Act become operative July 1, 2018.**

4 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
5 **and take any other action before the operative date specified in subsection (1) of this section**
6 **that is necessary to enable the director, on and after the operative date specified in sub-**
7 **section (1) of this section, to exercise all of the duties, functions and powers conferred on**
8 **the director by section 2 of this 2017 Act and the amendments to ORS 725.045 and 725A.020**
9 **by sections 3 and 4 of this 2017 Act.**

10 **SECTION 7. This 2017 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
12 **on its passage.**

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