

House Bill 2419

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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**.

Permits Department of Consumer and Business Services to issue licenses and conduct criminal records checks through Nationwide Multistate Licensing System. Requires certain applicants for licenses department issues to submit fingerprints for individuals with ownership interests in applicant and for individuals with supervisory authority over applicant's operations.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the licensing processes of the Department of Consumer and Business Services; creating
3 new provisions; amending ORS 697.005, 697.031, 697.632, 717.220, 725.010, 725.120, 725.140,
4 725A.010, 725A.022 and 725A.024; and prescribing an effective date.

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

6 **SECTION 1.** ORS 697.005 is amended to read:

7 697.005. As used in ORS 697.005 to 697.095:

8 (1)(a) "Collection agency" means:

9 (A) A person **that engages** directly or indirectly [*engaged*] in soliciting a claim for collection,
10 or collecting or attempting to collect a claim that is owed, due or asserted to be owed or due to
11 another person or to a public body at the time the person solicits, collects or attempts to collect the
12 claim;

13 (B) A person that directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms
14 represented to be a collection system even if the forms direct the debtor to [*make payment to*] **pay**
15 the creditor and even if the **creditor may or does use the** forms [*may be or are actually used by*
16 *the creditor*] in the creditor's own name;

17 (C) A person that, in attempting to collect or in collecting the person's own claim, uses a ficti-
18 tious name or any name other than the person's own **name** that indicates to the debtor that a third
19 person is collecting or attempting to collect the claim;

20 (D) A person [*in the business of engaging in the solicitation of*] **that engages in the business**
21 **of soliciting** the right to repossess or in repossessing collateral security due or asserted to be due
22 to another person; or

23 (E) A person that, in [*the collection of*] **collecting** claims from another person:

24 (i) Uses any name other than the name regularly used in [*the conduct of*] **conducting** the busi-
25 ness out of which the claim arose; and

26 (ii) Engages in any action or conduct that tends to convey the impression that a third party has
27 been employed or engaged to collect the claim.

28 (b) "Collection agency" does not include:

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 (A) An individual [*engaged*] **who engages** in soliciting claims for collection, or [*collecting or at-*
 2 *tempting*] **who collects or attempts** to collect claims on behalf of a registrant under ORS 697.005
 3 to 697.095, if the individual is an employee of the registrant.

4 (B) An individual [*collecting or attempting*] **who collects or attempts** to collect claims for not
 5 more than three employers, if the individual carries on all collection efforts in the name of the em-
 6 ployer and the individual is an employee of the employer.

7 (C) A person that prepares or mails monthly or periodic statements of accounts due on behalf
 8 of another person if all payments are made to the other person and the person that prepares the
 9 statements of accounts does not make other collection efforts.

10 (D) An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.

11 (E) A licensed certified public accountant or public accountant [*rendering services in the per-*
 12 *formance of*] **who performs** the duties of a licensed certified public accountant or public accountant.

13 (F) A bank, mutual savings bank, consumer finance company, trust company, savings and loan
 14 association, credit union or debt consolidation agency.

15 (G) A principal real estate broker **that is** licensed under ORS 696.020, [*as*] **with respect** to any
 16 collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

17 (H) An escrow agent **that is** licensed under ORS 696.511, with respect to the escrow agent's:

18 (i) Collection or billing activities [*involved in*] **that are related to** closing an escrow, as defined
 19 in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

20 (ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

21 (I) An individual **who is** regularly employed as a credit person or in a similar capacity by one
 22 person, firm or corporation that is not a collection agency [*as defined in this section*].

23 (J) A public officer or a person [*acting*] **that acts** under order of a court.

24 (K) A person [*acting*] **that acts** as a property manager in collecting or billing for rent, fees,
 25 deposits or other sums due landlords of managed units.

26 (L) A person that [*is providing*] **provides** billing services. A person [*is providing*] **provides** bill-
 27 ing services for the purposes of this subparagraph if the person engages, directly or indirectly, in
 28 the business or pursuit of [*collection of*] **collecting** claims for another person, whether in the other
 29 person's name or any other name, by any means that:

30 (i) [*Is*] **Uses** an accounting procedure, preparation of mail billing or any other means intended
 31 to accelerate cash flow to the other person's bank account or to any separate trust account; and

32 (ii) Does not include any personal contact or contact by telephone with the person from whom
 33 the claim is sought to be collected.

34 (M) A person that [*is providing*] **provides** factoring services. A person [*is providing*] **provides**
 35 factoring services for the purposes of this subparagraph if the person engages, directly or indirectly,
 36 in the business or pursuit of:

37 (i) Lending or advancing money to commercial clients on the security of merchandise or ac-
 38 counts receivable and then enforcing collection actions or procedures [*on such accounts*] **for the**
 39 **loans or advances**; or

40 (ii) Soliciting or collecting on accounts that have been purchased from commercial clients under
 41 an agreement whether or not the agreement:

42 (I) Allows recourse against the commercial client;

43 (II) Requires the commercial client to provide any form of guarantee of payment of the pur-
 44 chased account; or

45 (III) Requires the commercial client to establish or maintain a reserve account in any form.

1 (N) An individual employed by another person that operates as a collection agency [*if the person*
 2 *does not operate as a collection agency independent of that employment*] **unless the individual oper-**
 3 **ates as an independent collection agency while a collection agency employs the individual.**

4 (O) A mortgage banker as defined in ORS 86A.100.

5 (P) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS
 6 759.005, a people's utility district, as defined in ORS 261.010, and a cooperative corporation
 7 [*engaged*] **that engages** in furnishing electric or communication service to consumers.

8 (Q) A public body or an individual [*collecting or attempting*] **that collects or attempts** to collect
 9 claims owed, due or asserted to be owed or due to a public body, if the individual is an employee
 10 of the public body.

11 (R) A person that receives an assignment of debt in any form without an obligation to pay the
 12 assignor any of the proceeds resulting from a collection of all or a portion of the debt.

13 (S) A person for whom the Director of the Department of Consumer and Business Services de-
 14 termines by order or by rule that the protection of the public health, safety and welfare does not
 15 require registration with the Department **of Consumer and Business Services** as a collection
 16 agency.

17 (2) "Collection system" means a scheme intended or calculated to be used to collect claims sent,
 18 prepared or delivered by:

19 (a) A person [*who*] **that** in collecting or attempting to collect the person's own claim uses a
 20 fictitious name or any name other than the person's own **name** that indicates to the debtor that a
 21 third person is collecting or attempting to collect the claim; or

22 (b) A person **that engages** directly or indirectly [*engaged*] in soliciting claims for collection, or
 23 collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

24 (3) "Claim" means an obligation [*for the payment of*] **to pay** money or [*thing of*] value [*arising*]
 25 **if the obligation arises** out of an agreement or contract, express or implied.

26 (4) "Client" or "customer" means a person [*authorizing or employing*] **that authorizes or em-**
 27 **loys** a collection agency to collect a claim.

28 (5) "Debtor" means a person [*owing or*] **that owes or is** alleged to owe a claim.

29 [(6) "*Debts incurred outside this state*" means an action or proceeding that:]

30 [(a) *Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's*
 31 *benefit, by the defendant to perform services outside of this state or to pay for services to be performed*
 32 *outside of this state by the plaintiff;*]

33 [(b) *Arises out of services actually performed for the plaintiff by the defendant outside of this state*
 34 *or services actually performed for the defendant by the plaintiff outside of this state, if the performance*
 35 *outside of this state was authorized or ratified by the defendant;*]

36 [(c) *Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's*
 37 *benefit, by the defendant to deliver or receive outside of this state or to send from outside of this state*
 38 *goods, documents of title or other things of value;*]

39 [(d) *Relates to goods, documents of title or other things of value sent from outside of this state by*
 40 *the defendant to the plaintiff or a third person on the plaintiff's order or direction;*]

41 [(e) *Relates to goods, documents of title or other things of value actually received outside of this*
 42 *state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where*
 43 *delivery to carrier occurred;* or]

44 [(f) *Where jurisdiction at the time the debt was incurred was outside of this state.*]

45 (6) "**Nationwide Multistate Licensing System**" means a system that the Conference of

1 **State Bank Supervisors and the American Association of Residential Mortgage Regulators,**
 2 **or assignees of the Conference of State Bank Supervisors or the American Association of**
 3 **Residential Mortgage Regulators, develop and maintain for participating state agencies to**
 4 **use in licensing and registering mortgage loan originators, as defined in ORS 86A.200, and**
 5 **other persons that provide nondepository financial services.**

6 (7)(a) “Out-of-state collection agency” means a collection agency located outside of this state
 7 [whose] **the activities of which**, within this state, are limited to collecting [debts incurred outside
 8 of this state from debtors] **a debt that a debtor** located in this state **incurs outside this state.**

9 (b) As used in this subsection, “collecting [debts] **a debt**” means collecting **a debt on behalf**
 10 **of clients located outside this state** by means of interstate communications, including telephone,
 11 mail or facsimile transmission from the collection [agency] **agency’s** location in another state [on
 12 behalf of clients located outside of this state].

13 (8) “Person” means an individual, firm, partnership, trust, joint venture, association, limited li-
 14 ability company or corporation.

15 (9) “Public body” [means:] **has the meaning given that term in ORS 174.109.**

16 [(a) The state and any branch, department, agency, board or commission of the state;]

17 [(b) A city, county, district or other political subdivision or municipal or public corporation or an
 18 instrumentality thereof; and]

19 [(c) An intergovernmental agency, department, council, joint board of control created under ORS
 20 190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under
 21 the direction and control of any single member government.]

22 (10) [“Registered” or] “Registrant” means a person **that is** registered under ORS 697.005 to
 23 697.095 or **that is** registered or licensed as a collection agency under the laws of another state.

24 (11) “Statement of account” means a report setting forth amounts billed, invoices, credits al-
 25 lowed or aged balance due.

26 **SECTION 2.** ORS 697.031 is amended to read:

27 697.031. (1)(a) The Director of the Department of Consumer and Business Services shall estab-
 28 lish by rule a program for [registration of] **registering** persons [operating] **that operate** as collection
 29 agencies that [are required to] **must** register with the Department of Consumer and Business Ser-
 30 vices under ORS 697.015. [The program shall include a requirement that persons registering with the
 31 department file and] **The department shall require applicants for registration to file and regis-**
 32 **trants to** maintain with the department current information the department requires by rule.

33 (b) **The director, consistent with the requirements of ORS 697.005 to 697.095, may issue**
 34 **and renew registrations under this section by means of an agreement with the Nationwide**
 35 **Multistate Licensing System and may, by rule, conform the practices, procedures and infor-**
 36 **mation that the department uses to issue or renew a registration to the requirements of the**
 37 **Nationwide Multistate Licensing System.**

38 (c) The department may require any information necessary to carry out [the] **a program under**
 39 **this subsection**, including but not limited to [the following]:

40 [(a)] (A) The name and address of the [person operating as a collection agency] **applicant or**
 41 **registrant.**

42 [(b) The name and address of the collection agency.]

43 [(c)] (B) Any assumed names or business names [used by the collection agency] **the applicant or**
 44 **registrant uses.**

45 [(d)] (C) Names of persons who perform the solicitation or collection of claims or who perform

1 the solicitation of the right to repossess or the repossession of collateral security for the [collection
2 agency] **applicant or registrant.**

3 [(e)] **(D)** Names of persons who are agents of the [collection agency] **applicant or registrant** for
4 purposes of service of legal process.

5 **(E) Fingerprints for any of the applicant’s executive officers, and officers and managers
6 with supervisory responsibility over the applicant’s activities, with which the director may
7 conduct a criminal records check that the director may process through the Nationwide
8 Multistate Licensing System.**

9 (2)(a) The director shall require any person who applies for registration as a collection agency,
10 other than an out-of-state collection agency, to file with the director a bond or an irrevocable letter
11 of credit in the sum of \$10,000 executed by the applicant as obligor, together with one or more
12 corporate sureties or financial institutions authorized to do business in this state. The bond or an
13 irrevocable letter of credit [shall] **must** be executed to the State of Oregon and for the use of the
14 state and of any person who may have a cause of action against the obligor of the bond or an
15 irrevocable letter of credit under ORS 697.005 to 697.095. The bond or [an] irrevocable letter of
16 credit [shall] **must** be conditioned [that] **to require** the [obligor will] **applicant to** faithfully conform
17 to and abide by the provisions of ORS 697.005 to 697.095 and all rules [lawfully made by] the director
18 **adopts** under ORS 697.005 to 697.095, and will pay to the state and to any such person any and all
19 moneys that may become due or owing to the state or to such person from the obligor under and
20 by virtue of the provisions of ORS 697.005 to 697.095.

21 [(b) If any person is aggrieved by the misconduct of a registrant required to file a bond or an
22 irrevocable letter of credit under paragraph (a) of this subsection or by the registrant’s violation of any
23 law or rule lawfully made by the director under ORS 697.005 to 697.095 and recovers judgment there-
24 for, the person may, after the return unsatisfied either in whole or in part of any execution issued upon
25 the judgment, maintain an action for the person’s own use upon the bond or irrevocable letter of credit
26 of the registrant in any court having jurisdiction of the amount claimed.]

27 **(b) A person that obtains a judgment against a registrant for violating ORS 697.005 to
28 697.095 or a rule that the director adopts under ORS 697.005 to 697.095, or for other miscon-
29 duct, may bring in a circuit court of this state an action against the bond or irrevocable
30 letter of credit described in this subsection for any amount the person does not obtain by
31 executing the judgment against the registrant.**

32 (c) The bond or an irrevocable letter of credit required by this subsection [shall] **must** be con-
33 tinuously maintained in the amount required by this subsection. The aggregate liability of the surety
34 under the bond for claims against the bond [shall] **may** not exceed the penal sum of the bond no
35 matter how many years the bond is in force. [No] **An** extension by continuation certificate, rein-
36 statement, reissue or renewal of the bond [shall] **does not** increase the liability of the surety.

37 (3) The director may, [include any of the following] in the program for registration established
38 under this section:

39 (a) [The director may] Require any filings with the department that the director determines [to
40 be] **are** necessary to maintain current the information required for registration. Filings required
41 under this subsection may include renewal of registration at reasonable intervals, filings within a
42 reasonable time after changes in a collection agency or other filings the director determines [to
43 be] **are** necessary. In requiring filings under this subsection, the director shall attempt to minimize
44 burdens the filings might place on persons required to file.

45 (b) Except as provided in subsection (4) of this section, [the director may] establish and require

1 persons filing with the department under this section to pay fees for any registration or filing made
2 with the department. The director *[shall]* **may** not establish fees for more than an amount necessary
3 to cover the administrative costs of the filing or registration.

4 (c) **Establish** the program *[may be established]* in any division of the department the director
5 determines *[to be]* **is** best able to administer the program.

6 (d) *[The director may]* Issue, but *[may]* not require, certificates of registration or other indicia
7 of registration that the director determines will *[be of assistance to persons operating as a collection*
8 *agency in establishing that the persons are]* **assist a registrant to establish that the registrant**
9 **is** registered with the department.

10 (4) An out-of-state collection agency is exempt from the registration fee under this section if the
11 out-of-state collection agency is registered in another state and *[that]* **the other** state does not re-
12 quire payment of an initial fee by a person who collects debts in *[that]* **the other** state only by
13 means of interstate communications from the person's location in another state.

14 *[(5) If an out-of-state collection agency is not exempt from payment of a registration fee under this*
15 *section, the registration fee for the out-of-state collection agency shall be not less than the fee charged*
16 *by the state in which the out-of-state collection agency is located to a person who collects debts in that*
17 *state only by means of interstate communications from the person's location in another state.]*

18 *[(6) If the director determines that the state where an out-of-state collection agency is located and*
19 *registered, if required to be registered, exempts a collection agency located and registered in this state*
20 *from registration requirements in that state, the director shall exempt out-of-state collection agencies*
21 *located in that state from the registration requirements of ORS 697.005 to 697.095.]*

22 (5) **The director shall charge an out-of-state collection agency a fee to register in this**
23 **state that is not less than the fee the other state would charge a collection agency that**
24 **collects debts solely by means of interstate communications from a location outside the**
25 **other state, unless the out-of-state collection agency is exempt from paying a registration**
26 **fee under this section.**

27 (6) **If another state exempts a collection agency that is located and registered in this**
28 **state from a requirement to register in the other state, the director shall exempt a collection**
29 **agency that is located and, if necessary, registered in the other state from the requirement**
30 **to register in this state under ORS 697.005 to 697.095.**

31 (7) The department shall maintain current records of the information required for registration
32 under this section.

33 **SECTION 3.** ORS 697.632 is amended to read:

34 697.632. (1)(a) The Director of the Department of Consumer and Business Services shall maintain
35 a registry of debt management service providers and by rule in accordance with ORS chapter 183
36 shall require a person that performs a debt management service, unless the person is exempt under
37 ORS 697.612 (3), to apply to the director to register or to renew a registration as a debt management
38 service provider.

39 (b) The director, consistent with the requirements of ORS 697.602 to 697.842, may administer a
40 program to register debt management service providers, or renew registrations, by means of an
41 agreement with the Nationwide Multistate Licensing System and may, by rule, conform the prac-
42 tices, procedures and information that the Department of Consumer and Business Services uses to
43 register a debt management service provider, or renew a registration, to the requirements of the
44 Nationwide Multistate Licensing System.

45 (c) An application for registration or renewal must provide to the director on a form and in a

1 format the director specifies:

2 (A) The applicant's name and address;

3 (B) Any assumed business names, trade names or other identities under which the applicant
4 performs a debt management service;

5 (C) A general description of the debt management service business activities the applicant
6 undertakes or proposes to undertake;

7 (D) The names of any managing members, managing partners, executive officers, directors,
8 principals or agents the applicant has;

9 (E) The name of the applicant's registered agent or the applicant's agent for the purpose of re-
10 ceiving service of legal process;

11 (F) A signed statement that identifies and describes in detail any incident in which the applicant
12 or a member, partner, officer, director or principal of the applicant within the five years before the
13 date on which the applicant applied to register or renew a registration as a debt management ser-
14 vice provider was subject to:

15 (i) A judgment in favor of another person in a circuit court of this state or in an equivalent
16 court in another state;

17 (ii) An arbitration award in favor of another person; or

18 (iii) An adverse final order from an administrative agency in this state or another state;

19 (G) A copy of the corporate surety bond the applicant filed with the director under ORS 697.642;
20 [and]

21 **(H) Fingerprints for any of the applicant's executive officers, and officers and managers**
22 **with supervisory responsibility over the applicant's activities, with which the director may**
23 **conduct a criminal records check that the director may process through the Nationwide**
24 **Multistate Licensing System; and**

25 [(H)] (I) Other information the director may require concerning the financial responsibility,
26 training, background, experience and business activities of the applicant or a member, partner, offi-
27 cer, director or principal of the applicant.

28 (2) At the time an applicant submits an application for registration under this section, the ap-
29 plicant shall pay a nonrefundable fee in an amount the director specifies by rule. An applicant who
30 applies to renew a registration shall pay another fee in an amount the director specifies by rule.

31 (3) The director shall specify amounts for the fees described in subsection (2) of this section that
32 in the aggregate are sufficient to pay the costs of administering ORS 697.602 to 697.842. The director
33 shall pay all moneys received under this section as provided in ORS 697.842.

34 (4) A registration under this section is valid until December 31 of the calendar year in which
35 the director approves the registration. In order to continue to provide a debt management service,
36 a debt management service provider must renew the registration at the time the registration expires.

37 (5)(a) The director may refuse to register the applicant or may refuse to renew a registration
38 for a debt management service provider for any of the reasons set forth in ORS 697.752.

39 (b) The director, for good cause shown or in order to conform the department's licensing and
40 license renewal program to the requirements of the Nationwide Multistate Licensing System, may
41 waive a requirement of this section with respect to a license application or may allow an applicant
42 to substitute information required in an application in lieu of information required under this sec-
43 tion.

44 **SECTION 4.** ORS 717.220 is amended to read:

45 717.220. (1)(a) A person shall apply for a license under ORS 717.200 to 717.320, 717.900 and

1 717.905 in writing on a form and in a format the Director of the Department of Consumer and
 2 Business Services prescribes by rule.

3 (b) The director, by rule, may conform the practices, procedures and information that the De-
 4 partment of Consumer and Business Services uses to issue and renew licenses for conducting a
 5 money transmission business to the requirements of the Nationwide Multistate Licensing System.

6 (2) For all applicants, the application must contain:

7 (a) The applicant's exact name and principal address, any fictitious name, assumed business
 8 name or trade name the applicant uses to conduct business and the location of the applicant's
 9 business records;

10 (b) The history of the applicant's material litigation and criminal convictions for the five-year
 11 period before the date of the application;

12 (c) A history of operations and a description of the business activities in which the applicant
 13 seeks to engage in this state;

14 (d) A list of the applicant's proposed authorized delegates in the state, if any, at the time the
 15 applicant files the license application;

16 (e) A sample authorized delegate contract, if applicable;

17 (f) A sample form of payment instrument, if applicable;

18 (g) The address of each location at which the applicant and the applicant's authorized delegates,
 19 if any, propose to conduct a money transmission business in this state;

20 (h) The name and address of the clearing bank or banks on which the applicant's payment in-
 21 struments will be drawn or through which the payment instruments will be payable; *[and]*

22 (i) A business plan[.]; **and**

23 **(j) Fingerprints for each individual who has an ownership interest in the applicant and**
 24 **for each individual with supervisory responsibility over the applicant's activities, with which**
 25 **the director may conduct a criminal records check that the director may process through**
 26 **the Nationwide Multistate Licensing System.**

27 (3) If the applicant is a corporation, the application must contain **all of these items**:

28 (a) The date of the applicant's incorporation and state of incorporation[;].

29 (b) A certificate of good standing from the state in which the applicant was incorporated[;].

30 (c) A description of the corporate structure of the applicant, including the identity of any parent
 31 or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly
 32 traded on any stock exchange[;].

33 (d) The name, business and residence address and employment history for the past five years of
 34 the applicant's executive officers and the officers or managers who will be in charge of the
 35 applicant's money transmission business[;].

36 (e) The name, business and residence address of the applicant's controlling shareholders and the
 37 controlling shareholders' employment histories for the five-year period before the date of the
 38 application[;].

39 (f) The history of material litigation and criminal convictions for all of the applicant's executive
 40 officers and controlling shareholders in the five-year period before the date of the application[;].

41 (g) A copy of the applicant's most recent audited financial statement, including balance sheet,
 42 statement of income or loss, statement of changes in shareholder equity and statement of changes
 43 in financial position and, if available, a copy of the applicant's audited financial statements for the
 44 immediately preceding two-year period. If the applicant is a wholly owned subsidiary of another
 45 corporation, the applicant may submit either the parent corporation's consolidated audited financial

1 statements for the current year and for the immediately preceding two-year period, or the parent
 2 corporation's Form 10K reports filed with the United States Securities and Exchange Commission
 3 for the prior three years, in lieu of the applicant's financial statements. If the applicant is a wholly
 4 owned subsidiary of a corporation with a principal place of business outside the United States, the
 5 applicant may submit similar documentation filed with the parent corporation's foreign regulator to
 6 satisfy the requirements of this paragraph[; *and*].

7 (h) Copies of all filings, if any, the applicant made with the United States Securities and Ex-
 8 change Commission, or with a similar regulator in a country other than the United States, within
 9 the year preceding the date of the application.

10 (4) If the applicant is not a corporation, the application must contain:

11 (a) The name, business and residence address, personal financial statement and employment
 12 history for the past five years of each principal of the applicant and the name, business and resi-
 13 dence address, and employment history for the past five years of any other person that will be in
 14 charge of the applicant's money transmission business;

15 (b) The history of material litigation and criminal convictions in the five-year period before the
 16 date of the application for each individual who has any ownership interest in the applicant and each
 17 individual who exercises supervisory responsibility with respect to the applicant's activities; and

18 (c) Copies of the applicant's audited financial statements, including balance sheet, statement of
 19 income or loss, and statement of changes in financial position, for the current year and, if available,
 20 a copy of the applicant's audited financial statements for the immediately preceding two-year period.

21 (5) The director, for good cause shown or in order to conform the department's licensing and
 22 license renewal program to the requirements of the Nationwide Multistate Licensing System, may
 23 waive any requirement of this section with respect to any license application or may allow an ap-
 24 plicant to submit substituted information in a license application in lieu of the information required
 25 under subsection (2) of this section.

26 **SECTION 5.** ORS 725.010 is amended to read:

27 725.010. As used in this chapter:

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

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

32 (B) Accepts and delivers to a lender all or most of the proceeds of a payment made in con-
 33 nection with a consumer finance loan; or

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

35 (b) "Broker or facilitator" does not include a mortgage broker, as that term is defined in ORS
 36 86A.100, a mortgage loan originator, as that term is defined in ORS 86A.200, or an employee of a
 37 licensee.

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

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

41 (4) **"Nationwide Multistate Licensing System" means a system that the Conference of**
 42 **State Bank Supervisors and the American Association of Residential Mortgage Regulators,**
 43 **or assignees of the Conference of State Bank Supervisors or the American Association of**
 44 **Residential Mortgage Regulators, develop and maintain for participating state agencies to**
 45 **use in licensing and registering mortgage loan originators, as defined in ORS 86A.200, and**

1 **other persons that provide nondepository financial services.**

2 **SECTION 6.** ORS 725.120 is amended to read:

3 725.120. (1) **An** application for a license required under ORS 725.045 [*shall*] **must** be in writing
 4 in a form prescribed by the Director of the Department of Consumer and Business Services. The
 5 application [*shall*] **must** contain the name and both the residence and business addresses of each
 6 individual applicant, of each member of a partnership or association that applies for a license and
 7 of each officer or director of a corporation that applies for a license. The application [*shall*] **must**
 8 also contain the county and city with street and number, if any, where the business is to be con-
 9 ducted and any other information the director may require.

10 (2)(a) An applicant, at the time the applicant applies for a license under this section, shall:

11 (A) Pay to the director a license fee determined under ORS 725.185 for the period terminating
 12 on the last day of the current calendar year[.]; **and**

13 (B) **Submit fingerprints for each individual who has an ownership interest in the appli-**
 14 **cant and for each individual with supervisory authority over the applicant's activities, with**
 15 **which the director may conduct a criminal records check that the director may process**
 16 **through the Nationwide Multistate Licensing System.**

17 (b) If the director denies the applicant a license for cause or if the applicant withdraws the
 18 application after the director investigates the applicant, the director shall refund the license fee paid
 19 under this subsection, less an amount that reflects the director's administrative and investigative
 20 costs for the application.

21 **SECTION 7.** ORS 725.140 is amended to read:

22 725.140. (1) Conditioned upon an applicant's compliance with this chapter and the payment of
 23 the license fee, the Director of the Department of Consumer and Business Services, within 90 days
 24 after the date the applicant filed the application described in ORS 725.120, shall disapprove the ap-
 25 plication or shall issue and deliver a license to the applicant to make loans in accordance with this
 26 chapter at the location specified in the application. However, before issuing a license, the director
 27 must first find upon investigation that:

28 (a) The financial responsibility, experience, character and general fitness of the applicant, and
 29 of the **applicant's** members [*thereof*] if the applicant is a partnership or association, and of the
 30 **applicant's** officers and directors [*thereof*] if the applicant is a corporation, are such as to command
 31 the confidence of the community and to warrant the belief that the business will be operated hon-
 32 estly, fairly and efficiently within the purposes of this chapter;

33 (b) Grounds to disapprove an application described in ORS 725.145 do not exist and that, in the
 34 judgment of the director, no other reasons or conditions warrant the refusal to grant a license; and

35 (c) The applicant obtained a corporate surety bond that meets the requirements specified in ORS
 36 86A.227 if the applicant employs or intends to employ a mortgage loan originator, as defined in ORS
 37 86A.200, or is otherwise subject to ORS 86A.200 to 86A.239.

38 (2) A license issued under this section is a continuing license and [*will remain*] **remains** in full
 39 force and effect until the licensee surrenders the license as provided in ORS 725.250 or the director
 40 revokes or suspends the license as provided in ORS 725.230.

41 (3) **The director, consistent with the requirements of this chapter, may issue a license**
 42 **under this section by means of an agreement with the Nationwide Multistate Licensing Sys-**
 43 **tem and may, by rule, conform the practices, procedures and information that the Depart-**
 44 **ment of Consumer and Business Services uses to issue a license to the requirements of the**
 45 **Nationwide Multistate Licensing System.**

1 **SECTION 8.** ORS 725A.010 is amended to read:

2 725A.010. As used in ORS 725A.010 to 725A.092 and 725A.990:

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

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

7 (B) Accepts and delivers to a lender all or most of the proceeds of a payment made in con-
8 nection with a loan; or

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

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

12 (2) “Earnings” means salary, wages or other compensation for service.

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

15 (b) “Lender” does not include a financial institution or a trust company, as those terms are de-
16 fined in ORS 706.008.

17 (4) “Licensee” means a person licensed under ORS 725A.024.

18 (5) **“Nationwide Multistate Licensing System” means a system that the Conference of**
19 **State Bank Supervisors and the American Association of Residential Mortgage Regulators,**
20 **or assignees of the Conference of State Bank Supervisors or the American Association of**
21 **Residential Mortgage Regulators, develop and maintain for participating state agencies to**
22 **use in licensing and registering mortgage loan originators, as defined in ORS 86A.200, and**
23 **other persons that provide nondepository financial services.**

24 ~~[(5)(a)]~~ (6)(a) “Payday loan” means a loan of not more than \$50,000, other than a purchase
25 money loan, in which:

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

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

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

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

33 ~~[(6)]~~ (7) “Payday loan lender” means a lender that is engaged in the business of making loans,
34 at least 10 percent of which are payday loans.

35 ~~[(7)]~~ (8) “Title loan” means:

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

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

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

41 (C) The lender is a title loan lender;

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

45 (c) A sale-leaseback arrangement between a consumer and a purchaser for a motor vehicle,

1 recreational vehicle, boat or mobile home in an amount that does not exceed \$50,000 *[when]* **if:**

2 (A) The title and all rights to the motor vehicle, recreational vehicle, boat or mobile home do
 3 not transfer from the consumer to the purchaser in a bona fide sale of the motor vehicle, recre-
 4 ational vehicle, boat or mobile home or the consumer retains equity in the motor vehicle, recre-
 5 ational vehicle, boat or mobile home after the consumer’s sale to the purchaser;

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

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

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

16 ~~[(8)]~~ (9) “Title loan lender” means a lender that is engaged in the business of making loans, at
 17 least 10 percent of which are title loans.

18 **SECTION 9.** ORS 725A.022 is amended to read:

19 725A.022. (1) An applicant for a license as a payday loan lender or a title loan lender shall apply
 20 to the Director of the Department of Consumer and Business Services in writing on a form and in
 21 a manner that the director prescribes by rule. An application for a license as a payday loan lender
 22 or a title loan lender must:

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

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

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

29 **(d) Include fingerprints for each individual who has an ownership interest in the appli-**
 30 **cant and for each individual with supervisory authority over the applicant’s activities, with**
 31 **which the director may conduct a criminal records check that the director may process**
 32 **through the Nationwide Multistate Licensing System; and**

33 ~~[(d)]~~ (e) Provide other information the director requires.

34 (2)(a) At the time the applicant submits an application under this section, the applicant shall
 35 pay to the director a license fee in an amount the director sets under ORS 725A.028. Except as
 36 provided in paragraph (b) of this subsection, the license fee is not refundable.

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

41 **SECTION 10.** ORS 725A.024 is amended to read:

42 725A.024. (1)(a) Within 90 days after receiving an application under ORS 725A.022, the Director
 43 of the Department of Consumer and Business Services shall issue and deliver to the applicant a li-
 44 cense to conduct business in accordance with ORS 725A.010 to 725A.092 *[and 725A.990]* at the lo-
 45 cation identified in the application if the director finds that:

1 [(a)] (A) The applicant and the applicant's members, if the applicant is a partnership, limited
 2 liability company or other association, or the applicant's officers and directors, if the applicant is
 3 a corporation, have the financial responsibility, experience, character and general fitness necessary
 4 to command the confidence of the community and to warrant the belief that the applicant will op-
 5 erate the business honestly, fairly and efficiently and in compliance with the provisions of ORS
 6 725A.010 to 725A.092 [and 725A.990].

7 [(b)] (B) The applicant has paid the fee required under ORS 725A.022.

8 [(c)] (C) Grounds do not exist under ORS 725A.026 to disapprove the application.

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

11 **(b) The director, consistent with the requirements of ORS 725A.010 to 725A.092, may is-**
 12 **sue a license under this section by means of an agreement with the Nationwide Multistate**
 13 **Licensing System and may, by rule, conform the practices, procedures and information that**
 14 **the Department of Consumer and Business Services uses to issue a license to the require-**
 15 **ments of the Nationwide Multistate Licensing System.**

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

18 (3)(a) The director shall disapprove an application and deny the applicant a license if the di-
 19 rector finds that the applicant does not meet the standard set forth in subsection (1)(a)(A) of this
 20 section or has not paid the required application fee or that grounds, reasons or conditions described
 21 in subsection [(1)(b), (c) or (d)] (1)(a)(B), (C) or (D) of this section exist and warrant the director's
 22 disapproval and denial.

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

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

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

30 (A) Is not transferable or assignable; and

31 (B) Remains in full force and effect until:

32 (i) The director revokes or suspends the license in accordance with ORS 725A.034; or

33 (ii) The licensee surrenders the license in accordance with ORS 725A.038.

34 (5) The director may issue more than one license to the same licensee if the director finds that
 35 for each additional license the licensee meets the qualifications set forth in this section. Each li-
 36 cense the director issues must be for a separate and distinct place in which the licensee conducts
 37 business in accordance with ORS 725A.010 to 725A.092 [and 725A.990].

38 **SECTION 11. (1) The amendments to ORS 697.005, 697.031, 697.632, 717.220, 725.010,**
 39 **725.120, 725.140, 725A.010, 725A.022 and 725A.024 by sections 1 to 10 of this 2019 Act become**
 40 **operative on January 1, 2020.**

41 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
 42 **and take any other action before the operative date specified in subsection (1) of this section**
 43 **that is necessary to enable the director, on and after the operative date specified in sub-**
 44 **section (1) of this section, to exercise all of the duties, functions and powers conferred on**
 45 **the director by the amendments to ORS 697.005, 697.031, 697.632, 717.220, 725.010, 725.120,**

1 725.140, 725A.010, 725A.022 and 725A.024 by sections 1 to 10 of this 2019 Act.

2 SECTION 12. This 2019 Act takes effect on the 91st day after the date on which the 2019
3 regular session of the Eightieth Legislative Assembly adjourns sine die.

4
