

Senate Bill 1105

Sponsored by JOINT SPECIAL SESSION COMMITTEE

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**.

Limits maximum rate of interest on payday loans. Limits amount of loan origination fee. Sets minimum 31-day loan term for payday loans. Prohibits charges other than interest, origination fee and fee for dishonored check or insufficient funds. Prohibits renewal of payday loan more than two times. Prohibits lender from making new payday loan to consumer within seven days of expiration of previous payday loan. Limits amount of fee for dishonored check or insufficient funds. Prohibits recovery of statutory damages and attorney fees from consumer for dishonored check. Grants rulemaking authority to Director of Department of Consumer and Business Services.

A BILL FOR AN ACT

1
2 Relating to payday loans; creating new provisions; and amending ORS 725.340 and 725.622.

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

4 **SECTION 1.** ORS 725.622 is amended to read:

5 725.622. **(1)** A lender in the business of making payday loans may not:

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

8 **(b) Charge an origination fee for a new payday loan of more than \$10 for each \$100 of the**
9 **amount of the loan;**

10 **(c) Make or renew a payday loan for a term of less than 31 days;**

11 **(d) Charge a consumer any fee or interest other than a fee or interest described in par-**
12 **agraph (a) or (b) of this subsection or in subsection (2) of this section;**

13 *[(1)] (e) Include in a payday loan contract:*

14 *[(a)] (A) A hold-harmless clause;*

15 *[(b)] (B) A confession of judgment or other waiver of the right to notice and the opportunity to*
16 *be heard in an action;*

17 *[(c)] (C) An agreement by the consumer not to assert any claim or defense arising out of the*
18 *contract against the lender or any holder in due course; or*

19 *[(d)] (D) An executory waiver or a limitation of exemption from attachment, execution or other*
20 *process on real or personal property held by, owned by or due to the consumer, unless the waiver*
21 *or limitation applies only to property subject to a security interest executed in connection with the*
22 *loan;*

23 *[(2)] (f) Conduct a payday loan business where liquor or lottery tickets are sold or where gam-*
24 *bling devices are located;*

25 *[(3) Charge the consumer more than one fee under ORS 30.701 per loan transaction for dishonored*
26 *checks when the consumer issues more than one check to the lender. However, the lender may recover*
27 *from the consumer any fee charged to the lender by an unaffiliated financial institution for each dis-*
28 *honored check;]*

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 [(4)] (g) Renew [a] **an existing** payday loan more than [three] **two** times; or

2 [(5)] (h) Make a new payday loan to a consumer [on the same day that a previous payday loan
3 expires if the lender has renewed the previous payday loan three times. The lender shall wait at least
4 until the next day after the expiration date of the previous loan before making the new loan to the
5 consumer] **within seven days of the day that a previous payday loan expires.**

6 (2) **A lender in the business of making payday loans may not charge the consumer more
7 than one fee per loan transaction for dishonored checks or insufficient funds, regardless of
8 how many checks or debit agreements the lender obtains from the consumer for the trans-
9 action. The fee may not exceed \$20. A lender in the business of making payday loans may
10 not collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory
11 damages and attorney fees from a consumer for a dishonored check under ORS 30.701. The
12 lender may recover from the consumer any fee charged to the lender by an unaffiliated fi-
13 nancial institution for each dishonored check. For a dishonored check or insufficient funds,
14 the fees described in this subsection are the only remedy a lender may pursue and the only
15 fees a lender may charge.**

16 **SECTION 2.** ORS 725.340 is amended to read:

17 725.340. (1) **Except as provided in ORS 725.622**, a licensee may charge, contract for and re-
18 ceive any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee
19 and the borrower.

20 (2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less
21 and requires repayment in substantially equal or consecutive monthly installments of principal and
22 interest combined, the interest or consideration may be precomputed, contracted for and earned on
23 scheduled unpaid principal balances on the assumption that all scheduled payments will be made
24 when due. In such cases, every payment may be applied to the combined total of principal and pre-
25 computed interest until the contract is fully paid, and the acceptance or payment of interest or
26 consideration on any loan made under the provisions of this subsection [*shall not be deemed*] **is not**
27 **considered** to constitute payment, deduction or receipt thereof in advance. [*Such*] **The** precomputed
28 interest or consideration [*shall be*] **is** subject to the following adjustments:

29 (a) When a default of more than 10 days in the payment of any scheduled installment occurs, the
30 licensee may charge and collect a default charge not exceeding five percent of the unpaid amount
31 of the installment or \$5, whichever is less. A default charge may be collected only once on an in-
32 stallment, but may be collected at the time it accrues or at any time thereafter. [*No*] **A** default
33 charge may **not** be assessed with respect to an installment which is paid in full on or within 10 days
34 after a scheduled installment due date when an earlier maturing installment or a default or deferral
35 charge on an earlier maturing installment may not have been paid in full even though all or part
36 of such installment payment is applied to an earlier maturing installment, or a default or deferral
37 charge.

38 (b) If the payment of all unpaid installments is deferred one or more full months, and if the
39 contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual
40 percentage rate previously disclosed to the borrower pursuant to the Federal Consumer Credit
41 Protection (Truth-in-Lending) Act applied to the sum of the installments deferred for the length of
42 the deferral period. The deferral period is that period in which no scheduled installment is required
43 to be paid by reason of the deferral. [*Such*] **The** charge may be collected at the time of deferral or
44 at any time thereafter. A deferral charge may not be made for the deferral of any installment with
45 respect to which a default charge has been collected, unless the default charge is deducted from the

1 deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to
 2 any other rebate which may be required, the borrower shall receive a rebate of the portion of the
 3 deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of
 4 an unexpired month exceeding 15 days [*shall be deemed*] **is considered** to be a month.

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

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

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

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

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

26 **SECTION 3. Section 4 of this 2006 Act is added to and made a part of ORS 725.600 to**
 27 **725.625.**

28 **SECTION 4. The Director of the Department of Consumer and Business Services may**
 29 **adopt rules for the purposes of carrying out and enforcing the provisions of ORS 725.622, as**
 30 **amended by section 1 of this 2006 Act, and ORS 725.340, as amended by section 2 of this 2006**
 31 **Act.**

32 **SECTION 5. The amendments to ORS 725.340 and 725.622 by sections 1 and 2 of this 2006**
 33 **Act apply to payday loans made or renewed on or after July 1, 2007.**

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