

Enrolled House Bill 2089

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to requiring consumers to repay certain outstanding consumer loans before lenders make new consumer loans; creating new provisions; amending ORS 725A.060, 725A.062 and 725A.064; and prescribing an effective date.

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

SECTION 1. ORS 725A.060 is amended to read:

725A.060. (1) A licensee or a person required under ORS 725A.020 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 ORS 725A.090; 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.

(e) **Make a loan to a consumer who has not fully repaid an outstanding payday loan or title loan. This paragraph does not prohibit a licensee or person from renewing an existing payday loan or title loan as provided in ORS 725A.010 to 725A.092 and 725A.990.**

(2) The provisions of ORS 725A.010 to 725A.092 and 725A.990 do not prevent a licensee or a person required under ORS 725A.020 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 2. ORS 725A.062 is amended to read:

725A.062. 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 **that the title loan lender may charge** for [a new] **the** 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 ORS 725A.060 (1)(c) or (d).

(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] **after** the date on which **the consumer fully repays** a previous title loan [expires].

SECTION 3. ORS 725A.064 is amended to read:

725A.064. 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 **that the payday loan lender may charge** for [a new] **the** 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 ORS 725A.060 (1)(c) or (d).

(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] **after** the date on which **the consumer fully repays** a previous payday loan [expires].

SECTION 4. The amendments to ORS 725A.060, 725A.062 and 725A.064 by sections 1 to 3 of this 2019 Act apply to loan contracts, including renewals, that a licensee, or person required under ORS 725A.020 to obtain a license, executes on or after the operative date specified in section 5 of this 2019 Act.

SECTION 5. (1) The amendments to ORS 725A.060, 725A.062 and 725A.064 by sections 1 to 3 of this 2019 Act become operative on January 1, 2020.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the director by the amendments to ORS 725A.060, 725A.062 and 725A.064 by sections 1 to 3 of this 2019 Act.

SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Passed by House March 26, 2019

Received by Governor:

.....M.,....., 2019

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Timothy G. Sekerak, Chief Clerk of House

Approved:

.....M.,....., 2019

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 22, 2019

Filed in Office of Secretary of State:

.....M.,....., 2019

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Peter Courtney, President of Senate

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Bev Clarno, Secretary of State