

Enrolled Senate Bill 278

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CHAPTER

AN ACT

Relating to consumer loans made without required licenses; creating new provisions; amending ORS 725.045 and 725A.020; and declaring an emergency.

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

SECTION 1. ORS 725.045 is amended to read:

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

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

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

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

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

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

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

(3) A person may collect principal, interest, a fee or a charge related to or in connection with a consumer finance loan if the license the director issued under this chapter lapsed inadvertently or by mistake.

SECTION 2. ORS 725A.020 is amended to read:

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

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

[(2)(a) Except as provided in paragraph (b) of this subsection, a person subject to the provisions of subsection (1) of this section may not deposit a consumer's check, withdraw funds electronically from a consumer's account or otherwise collect the principal of, interest on, or a fee or charge for a loan subject to ORS 725A.010 to 725A.092 and 725A.990 if at the time the person makes the loan the person is not in compliance with subsection (1) of this section.]

[(b) A person subject to subsection (1) of this section may process a payment for or collect a loan if:]

[(A) The terms and conditions of the loan substantially comply with the provisions of ORS 725A.010 to 725A.092 and 725A.990;]

[(B) The person proves to the Director of the Department of Consumer and Business Services by clear and convincing evidence that the person did not know that the person was required to comply with the provisions of subsection (1) of this section; and]

[(C) The person obtains a license under ORS 725A.024 within 90 days after becoming aware of or receiving actual notice of the requirement for a license.]

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

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

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

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

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

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

(4) The director by order may determine whether and how a person may collect principal, interest, a fee or a charge related to or in connection with a payday loan or title loan if the director determines that a license the director issued under ORS 725A.024 lapsed inadvertently or by mistake.

SECTION 3. The amendments to ORS 725.045 and 725A.020 by sections 1 and 2 of this 2015 Act apply to consumer finance loans, payday loans and title loans that a person makes on and after the operative date specified in section 4 of this 2015 Act.

SECTION 4. (1) The amendments to ORS 725.045 and 725A.020 by sections 1 and 2 of this 2015 Act become operative 91 days after the effective date of this 2015 Act.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date specified in subsection (1)

of this section, all of the duties, functions and powers conferred on the director by the amendments to ORS 725.045 and 725A.020 by sections 1 and 2 of this 2015 Act.

SECTION 5. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate April 2, 2015

Received by Governor:

Repassed by Senate June 8, 2015

.....M.,....., 2015

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2015

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House May 29, 2015

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State