

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)

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**.

Prohibits title loan lender and payday loan lender from making loan to consumer until seven days after consumer has fully repaid outstanding title loan or payday loan.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requiring consumers to repay certain outstanding consumer loans before lenders make
3 new consumer loans; creating new provisions; amending ORS 725A.060, 725A.062 and 725A.064;
4 and prescribing an effective date.

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

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

7 725A.060. (1) A licensee or a person required under ORS 725A.020 to obtain a license may not:

8 (a) Take from a consumer:

9 (A) A power of attorney, except a power of attorney to transfer ownership of a motor vehicle
10 at the time the licensee or the person makes a loan secured by a motor vehicle.

11 (B) A note or promise to pay that does not accurately disclose the actual amount or the term
12 of the loan, the rate of interest charged and the schedule of payments for the loan.

13 (C) An instrument in which blank spaces remain to be filled in after execution.

14 (D) An assignment of earnings as payment or as security for a loan. An assignment that violates
15 this subparagraph is unenforceable by the assignee and revocable by the assignor. For purposes of
16 this subparagraph, if the licensee or the person pays money to or on behalf of a consumer in return
17 for a right or claim to all or a portion of the consumer's unpaid earnings, the licensee or the person
18 has made a loan to the consumer that is secured by an assignment of earnings. This subparagraph
19 does not preclude an employee from authorizing deductions from the employee's earnings if the au-
20 thorization is revocable.

21 (b) Conduct business where liquor or lottery tickets are sold or where gambling devices are lo-
22 cated.

23 (c) Charge a consumer:

24 (A) More than the actual amount that the vendor or service provider charges the licensee or
25 the person for access to or use of the system described in ORS 725A.090; or

26 (B) More than one fee per loan transaction for dishonored checks or insufficient funds, regard-
27 less of how many checks or debit agreements the licensee or the person obtains from the consumer
28 for the transaction. The fee may not exceed \$20.

29 (d) Collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory damages
30 or attorney fees from a consumer for a dishonored check under ORS 30.701. The licensee or the

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 person may recover from the consumer a fee that an unaffiliated financial institution charges to the
 2 licensee or the person for each dishonored check. For a dishonored check or insufficient funds, the
 3 fees described in this subsection are the only remedy the licensee or the person may pursue and the
 4 only fees the licensee or the person may charge.

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

8 (2) The provisions of ORS 725A.010 to 725A.092 and 725A.990 do not prevent a licensee or a
 9 person required under ORS 725A.020 to obtain a license from recovering amounts associated with
 10 collecting a defaulted loan that are authorized by statute or awarded by a court of law.

11 **SECTION 2.** ORS 725A.062 is amended to read:

12 725A.062. A title loan lender may not:

13 (1) Make or renew a title loan at a rate of interest that exceeds 36 percent per annum, excluding
 14 a one-time origination fee **that the title loan lender may charge** for [*a new*] **the** loan.

15 (2) Charge during the term of a [*new*] title loan, including all renewals of the loan, more than
 16 one origination fee of \$10 per \$100 of the loan amount or \$30, whichever is less.

17 (3) Make or renew a title loan for a term of less than 31 days.

18 (4) Make or renew a title loan to a consumer without forming a good faith belief that the con-
 19 sumer has the ability to repay the title loan. In forming a good faith belief, the title loan lender shall
 20 consider factors that the Director of the Department of Consumer and Business Services specifies
 21 by rule. A title loan lender complies with this subsection if the title loan lender meets the conditions
 22 the director specifies.

23 (5) Charge a consumer a fee or interest other than a fee or interest described in subsection (1)
 24 or (2) of this section or in ORS 725A.060 (1)(c) or (d).

25 (6) Include in a title loan contract:

26 (a) A hold-harmless clause;

27 (b) A confession of judgment or other waiver of the right to notice and the opportunity to be
 28 heard in an action;

29 (c) A provision in which the consumer agrees not to assert against the lender or a holder in due
 30 course a claim or defense arising out of the contract;

31 (d) An executory waiver or a limitation of exemption from attachment, execution or other pro-
 32 cess on real or personal property the consumer holds, owns or is due, unless the waiver or limitation
 33 applies only to property that is subject to a security interest executed in connection with the loan;
 34 or

35 (e) A clause that permits interest to continue after the consumer's motor vehicle, recreational
 36 vehicle, boat or mobile home has been repossessed.

37 (7) Require or accept from a consumer a set of keys to the motor vehicle, recreational vehicle,
 38 boat or mobile home the title to which secures the title loan.

39 (8) Make more than one outstanding title loan that is secured by one title.

40 (9) Renew an existing title loan that is secured by one title more than two times after the loan
 41 is first made.

42 (10) Make a new title loan to a consumer within seven days [*of*] **after** the date on which **the**
 43 **consumer fully repays** a previous title loan [*expires*].

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

45 725A.064. A payday loan lender may not:

1 (1) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, ex-
2 cluding a one-time origination fee **that the payday loan lender may charge** for [a new] **the** loan.

3 (2) Charge during the term of a [new] payday loan, including all renewals of the loan, more than
4 one origination fee of \$10 per \$100 of the loan amount or \$30, whichever is less.

5 (3) Make or renew a payday loan for a term of less than 31 days.

6 (4) Charge a consumer a fee or interest other than a fee or interest described in subsection (1)
7 or (2) of this section or in ORS 725A.060 (1)(c) or (d).

8 (5) Include in a payday loan contract:

9 (a) A hold-harmless clause;

10 (b) A confession of judgment or other waiver of the right to notice and the opportunity to be
11 heard in an action;

12 (c) A provision in which the consumer agrees not to assert against the lender or a holder in due
13 course a claim or defense arising out of the contract; or

14 (d) An executory waiver or a limitation of exemption from attachment, execution or other pro-
15 cess on real or personal property the consumer holds, owns or is due, unless the waiver or limitation
16 applies only to property that is subject to a security interest executed in connection with the loan.

17 (6) Renew an existing payday loan more than two times.

18 (7) Make a new payday loan to a consumer within seven days [of] **after** the date on which **the**
19 **consumer fully repays** a previous payday loan [expires].

20 **SECTION 4. The amendments to ORS 725A.060, 725A.062 and 725A.064 by sections 1 to 3**
21 **of this 2019 Act apply to loan contracts, including renewals, that a licensee, or person re-**
22 **quired under ORS 725A.020 to obtain a license, executes on or after the operative date spec-**
23 **ified in section 5 of this 2019 Act.**

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

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

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

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