Chapter 725

2013 EDITION

Consumer Finance

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GENERAL PROVISIONS

725.010 Definitions. As used in this chapter:

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

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

(B) Accepts and delivers to a lender all or most of the proceeds of a payment made in connection with a consumer finance loan; or

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

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

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

(3) "Licensee" means a person licensed under this chapter. [Amended by 1985 c.762 §106; 1987 c.373 §66; 1993 c.744 §26; 2007 c.603 §1; 2009 c.863 §33; 2010 c.23 §§29,30]

725.015 Construction of chapter. Nothing in this chapter shall be construed or held to limit the rights, powers or privileges granted to any person by any law of this state or of the United States whereby the loaning of money or extending of credit is regulated, provided that such person is operating in compliance with the provisions of such law. [Formerly 725.040]

725.020 Short title. This chapter shall be known as the Oregon Consumer Finance Act. [Amended by 1955 c.71 §1]

725.025 [1955 c.71 §14; repealed by 1987 c.650 §21]

725.026 [1955 c.71 §16; repealed by 1999 c.469 §7]

725.027 [1955 c.71 §15; 1985 c.762 §113; repealed by 1999 c.469 §7]

725.030 [Amended by 1955 c.71 §2; 1971 c.450 §1; 1973 c.428 §1; 1975 c.567 §1; repealed by 1981 c.412 §9 (725.031, 725.036 and 725.041 enacted in lieu of 725.030)]

725.031 [1981 c.412 §10 (725.031, 725.036 and 725.041 enacted in lieu of 725.030); repealed by 1987 c.215 §24]

725.036 [1981 c.412 §11 (725.031, 725.036 and 725.041 enacted in lieu of 725.030); repealed by 1987 c.215 §24]

725.040 [Renumbered 725.015]

725.041 [1981 c.412 §12 (725.031, 725.036 and 725.041 enacted in lieu of 725.030); repealed by 1987 c.215 §24]

725.045 Prohibition on making certain consumer finance loans without license; application of license requirement. (1) Except as provided in ORS 82.010, 82.020 and 82.025, 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.

(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. [1989 c.424 §2; 2007 c.603 §2; 2010 c.23 §31]

725.050 Prohibited transactions. No licensee shall take:

(1) Any power of attorney from any borrower, except a power of attorney to effectuate the transfer of the ownership of any motor vehicle at the time of making a loan on a motor vehicle.

(2) Any note or promise to pay which does not accurately disclose the actual amount of the loan, the time for which it is made, the rate of interest charged or the schedule of payments agreed upon, or any instrument in which blanks are left to be filled in after execution. [Amended by 1955 c.71 §3; 1971 c.450 §2; 1979 c.88 §41; 1981 c.412 §13]

725.060 False advertising prohibited. No licensee or other person shall advertise, print, display, publish, distribute or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms or conditions for loans which is false, misleading or deceptive.

725.110 Requirement that licensee be qualified to conduct business in this state. A license shall not be granted to any person under this chapter unless the person is legally qualified to conduct business in this state. [Amended by 1999 c.469 §1]

LICENSING

725.120 Application for license; annual fee. (1) Application for a license required under ORS 725.045 shall be in writing in a form prescribed by the Director of the Department of Consumer and Business Services. The application shall contain the name and both the residence and business addresses of each individual applicant, of each member of a partnership or association that applies for a license and of each officer or director of a corporation that applies for a license. The application shall also contain the county and city with street and number, if any, where the business is to be conducted and any other information the director may require.

(2) An applicant, at the time the applicant applies for a license under this section, shall pay to the director a license fee determined under ORS 725.185 for the period terminating on the last day of the current calendar year. If the director denies the applicant a license for cause or if the applicant withdraws the application after the director investigates the applicant, the director shall refund the license fee paid under this subsection, less an amount that reflects the director's administrative and investigative costs for the application. [Amended by 1955 c.71 §4; 1977 c.135 §49; 1985 c.762 §114; 2009 c.541 §43]

725.125 [1971 c.450 §5; repealed by 1973 c.428 §11]

725.130 [Repealed by 1955 c.71 §17]

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

(a) The financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter;

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

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

(2) A license issued under this section is a continuing license and will remain in full force and effect until the licensee surrenders the license as provided in ORS 725.250 or the director revokes or suspends the license as provided in ORS 725.230. [Amended by 1955 c.71 §5; 1963 c.167 §1; 1977 c.135 §50; 1985 c.762 §115; 1999 c.469 §2; 2009 c.863 §34]

725.145 Disapproval of application for license. The Director of the Department of Consumer and Business Services may disapprove an application for a license if a person named in the application submitted pursuant to ORS 725.120:

(1) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or that the person cannot meet the person's obligations as they mature, or is in such financial condition that the person cannot continue in business with safety to the person's customers;

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession;

(3) Has knowingly or repeatedly violated or failed to comply with any provision of the Oregon Bank Act, the Oregon Credit Union Act, the Oregon Consumer Finance Act or the Pawnbrokers Act, or any administrative rule or order adopted under an Act identified in this subsection;

(4) Has been convicted of a crime, an essential element of which is fraud;

(5) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving an aspect of the consumer finance business;

(6) Is the subject of an order of the director subjecting the person to a civil penalty under the Bank Act or ORS chapter 723 or this chapter, or removing the person from an office in any entity regulated under the Bank Act or ORS chapter 723 or this chapter; or

(7) Is the subject of an order that was issued by the regulatory authority of another state or of the federal government with authority over banking institutions, savings associations, credit unions or consumer finance companies, that was entered within the past five years and that subjects the person to a civil penalty or removes the person from an office in a state banking institution, a national bank, a state or federal savings asso-

ciation, a state or federal credit union or a consumer finance company. [1977 c.135 §48; 1985 c.762 §116; 1987 c.373 §68; 1987 c.650 §11; 2009 c.541 §44; 2011 c.597 §293]

725.150 Notice of disapproval of application. If the Director of the Department of Consumer and Business Services disapproves an application for a license, the director shall notify the applicant immediately, giving the reason for the disapproval. [Amended by 1985 c.762 §117; 1987 c.650 §12]

725.160 Form of license; posting; transferability. The license shall be in a form prescribed by the Director of the Department of Consumer and Business Services and shall state the address at which the business is to be conducted and the full name of the licensee. The license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. [Amended by 1955 c.71 §6; 1985 c.762 §118]

725.170 [Repealed by 1955 c.71 §17]

725.180 [Amended by 1955 c.71 §7; 1977 c.135 §53; repealed by 1985 c.762 §196]

725.185 License fees; fees for extra service. (1) Each licensee shall pay to the Director of the Department of Consumer and Business Services each year the license fee set in a schedule the director adopts by rule. The fee shall be paid by the date set by the director in the rule establishing the schedule.

(2) In addition to any license fee collected under subsection (1) of this section, whenever the director devotes any extra attention to the affairs of a licensee, either upon determination by the director or upon request of the licensee, the fee for the extra service shall be the actual cost of the extra service.

(3) The director shall set or change the fee schedule described in subsection (1) of this section after considering:

(a) The amount of other moneys available for the director to use in performing the director's duties;

(b) The costs the director will incur in performing the director's duties in the year in which the director will collect the fee; and

(c) The amount the director needs to establish and maintain a reasonable emergency fund. [1985 c.762 §119; 1987 c.171 §7; 1987 c.373 §69; 2009 c.541 §45]

725.190 Report of licensee; penalty for failure to report. (1) On or before February 15 of each year, or on such other date established by the Director of the Department of Consumer and Business Services by rule, every licensee shall file a report with the director. The report shall contain relevant information required by the director concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state. The report shall be in the form prescribed by the director.

(2) Every licensee who fails to file any report required under this chapter within the time specified may be subject to a penalty of $10 per day for each day's delay. [Amended by 1955 c.71 §8; 1973 c.428 §2; 1985 c.762 §120; 1999 c.469 §3; 2005 c.21 §13]

725.200 [Repealed by 1971 c.743 §432]

725.210 Additional licenses to same applicant. No licensee shall transact any business within the scope of this chapter except under the name and at the place of business named in the license. The Director of the Department of Consumer and Business Services may issue more than one license to the same licensee if the licensee complies with all the provisions of this chapter governing an original issuance of a license for each such additional license. However, each additional license shall be for a separate and distinct place of business for making and completing loans as provided in this chapter. [Amended by 1985 c.762 §121]

725.220 Change of place of business. (1) When a licensee wishes to change the place of business to another location, the licensee shall submit written notice thereof, together with the license, to the Director of the Department of Consumer and Business Services. The director shall amend the license of the licensee to reflect the new location and shall return the amended license to the licensee.

(2) A change in the place of business of a licensee to a location outside the city named in the original license may be allowed under the same license only if the director determines that the new location will serve substantially the same community as is served at the location named in the original license.

(3) If the director disapproves the proposed new location of the business, the director shall immediately notify the licensee of the disapproval and return the license unchanged to the licensee. [Amended by 1955 c.71 §9; 1985 c.762 §122; 1987 c.650 §13; 1999 c.469 §4]

725.230 Revocation and suspension of licenses. (1) The Director of the Department of Consumer and Business Services may revoke a license under this chapter upon 10 days' notice to the licensee stating the contemplated action and in general the grounds for the action and after giving the licensee reasonable opportunity for a hearing, if the director finds that:

(a) The licensee failed to pay the annual license fee or to comply with a demand, ruling or requirement of the director made pursuant to this chapter or, if the licensee is a

corporation, to comply with provisions of law that require the licensee to keep the corporation in good standing;

(b) The licensee has violated a provision of this chapter or a rule made by the director under the authority of this chapter;

(c) The licensee employs mortgage loan originators licensed under ORS 86A.200 to 86A.239 and failed to:

(A) File with the director and to maintain a corporate surety bond required under ORS 86A.227; or

(B) Certify to the director in a form and manner the director specifies by rule that the licensee has independently verified that every individual the licensee hired or intends to hire as a mortgage loan originator meets the requirements set forth in ORS 86A.186 and 86A.200 to 86A.239;

(d) The licensee, in connection with the activities of a mortgage loan originator:

(A) Failed to maintain a corporate surety bond as provided in ORS 86A.227;

(B) Failed to comply with:

(i) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(ii) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(iii) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on July 30, 2009; or

(iv) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.;

(e) The licensee employed a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(f) The licensee knowingly made an untrue statement of a material fact or omitted from a statement a material fact that would make the statement not misleading in light of the circumstances under which the licensee made the statement;

(g) The licensee made or filed or caused to be made or filed with the director a statement, report or document that the licensee knew was false in a material respect or matter; or

(h) A fact or condition exists that, if the fact or condition had existed at the time the licensee originally applied for the license, clearly would have warranted the director in refusing originally to issue the license.

(2) The director, without notice or hearing, may suspend a license issued under this chapter for a period not exceeding 30 days, pending investigation.

(3) The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if the director finds that the grounds for revocation or suspension are of general application to all or more than one of the licensee's offices, the director may revoke or suspend all the licenses or such number of the licenses issued to the licensee as the grounds for revocation or suspension apply to, as the case may be. [Amended by 1955 c.71 §10; 1985 c.762 §123; 2009 c.863 §35]

725.235 Procedure for license denial, revocation or suspension. (1) If the Director of the Department of Consumer and Business Services denies a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS chapter 183. [1971 c.734 §176; 1985 c.762 §124; 1987 c.650 §14]

725.240 [Repealed by 1971 c.734 §21]

725.250 Surrender of license. (1) Any licensee may surrender any license issued to the licensee by delivering written notice to the Director of the Department of Consumer and Business Services that the licensee thereby surrenders the license.

(2)(a) A licensee shall surrender any license issued to the licensee under which there has been no material loan activity for a period of 12 consecutive months.

(b) For purposes of this subsection, "material loan activity" includes new loans, refinancing of existing loans or formal extensions of existing loan repayment provisions in excess of 30 days.

(3) Surrender of a license under subsection (1) or (2) of this section shall not affect the licensee's civil or criminal liability for acts committed prior to surrender. [Amended by 1985 c.762 §125; 1999 c.469 §5]

725.260 Effect of revocation, suspension or surrender of license. The revocation, suspension or surrender of any license shall not impair or affect the rights or obligations of any preexisting lawful contract between the licensee and any borrower. [Amended by 1955 c.71 §11]

725.270 Reinstatement of revoked license; fee. The Director of the Department of Consumer and Business Services may reinstate any revoked license upon the licensee's compliance with the provisions of law or any demand, ruling or requirement made by the director under this chapter. For such reinstatement of license the licensee

shall pay a fee of $25. [Amended by 1985 c.762 §126]

REGULATION

725.310 Investigation and examination by director. (1) For discovering violations of this chapter and securing information required by the Director of the Department of Consumer and Business Services under this chapter, the director at any time may investigate the loans and business, including the books, accounts, records and files used in the loans and business, of every person licensed or required to be licensed under this chapter.

(2) For purposes of subsection (1) of this section:

(a) A person licensed or required to be licensed under this chapter shall give the director free access to the person's place of business, books, accounts, safes and vaults.

(b) The director may:

(A) Make an investigation without prior notice to the person being investigated.

(B) Compel the attendance of witnesses and examine the witnesses under oath.

(C) Require the production of documents or records.

(3) Each person examined under this section shall pay the actual cost of an investigation to the director. The director may maintain an action for the recovery of the costs in any court of competent jurisdiction. [Amended by 1955 c.71 §12; 1973 c.428 §3; 1981 c.412 §14; 1985 c.762 §127; 1987 c.215 §15; 1999 c.469 §6; 2005 c.338 §24]

725.312 Inspection and examination of licensees. (1) Each licensee is subject to inspection by the Director of the Department of Consumer and Business Services. The director shall conduct an examination of each licensee to determine whether the licensee is complying with the provisions of this chapter and rules adopted thereunder and to secure information required by the director under this chapter. The examinations of a licensee shall be conducted not more than 24 months apart.

(2) In addition to examinations under subsection (1) of this section, the director may conduct examinations of a licensee at other times as the director deems necessary.

(3) For purposes of any examination under this section:

(a) The director shall have free access to the place of business and to the books, accounts, safes and vaults of the licensee.

(b) The director may conduct an examination without prior notice to the licensee.

(c) The director shall have authority to examine under oath all persons whose testimony the director may require in order to conduct the examination. [1987 c.215 §14]

725.315 Removal or suspension of officer of licensee. If the Director of the Department of Consumer and Business Services finds that any officer or director of a licensee is dishonest, reckless or incompetent, or refuses to comply with the law, rules of the director or any written requirements or instructions of the director, the director may issue a written order to the individual removing or suspending the individual from the individual's office or position. [1977 c.135 §52; 1985 c.762 §128]

725.317 Removal of officer of licensee for reasons stated in ORS 725.145. The Director of the Department of Consumer and Business Services by order may direct a licensee to remove an officer or director of the licensee from office for any of the reasons stated in ORS 725.145. [1987 c.650 §16]

725.319 False information in course of investigation or examination prohibited. A person may not knowingly give or cause to be given to the Director of the Department of Consumer and Business Services any document or any oral or written statement or report that is false in any material respect, in the course of any investigation or examination by the director under this chapter. [1987 c.215 §12]

725.320 Rulings of director. The Director of the Department of Consumer and Business Services may make such specific rulings, demands and findings as may be necessary for the proper conduct of the business regulated by this chapter and the enforcement of this chapter in addition to and not inconsistent with this chapter. [Amended by 1985 c.762 §129]

725.330 Books and records of licensee. Subject to the provisions of this chapter, the Director of the Department of Consumer and Business Services may prescribe the form of the books and records to be kept by the licensee. All such books and records shall be preserved and available for at least two years after making the final entry on any loan recorded therein. [Amended by 1985 c.762 §130]

725.340 Interest and other charges. (1) A licensee may:

(a) Charge, contract for and receive in connection with a consumer finance loan made in accordance with this chapter a finance charge that, when expressed as an annual percentage rate, does not exceed the greater of:

(A) 36 percent; or

(B) 30 percentage points in excess of the discount window primary credit rate. The Director of the Department of Consumer and

Business Services on the second Friday of December shall determine by order from published sources available on that date the discount rate upon which the annual percentage rate set forth in this subparagraph will be based as of January 1 of the following calendar year. The annual percentage rate set forth in this subparagraph shall apply to each new loan made during the succeeding calendar year for the entire term of the loan, including all renewals of the loan.

(b) Contract for and receive in connection with a consumer finance loan made in accordance with this chapter, and in addition to the finance charge described in paragraph (a) of this subsection, other reasonable and bona fide fees, expenses or damages, subject to oversight and regulation by the Department of Consumer and Business Services. For purposes of this paragraph, "fees, expenses or damages" includes, but is not limited to:

(A) Items exempted from the computation of the finance charge in accordance with the Truth in Lending Act, 15 U.S.C. 1605(d) and (e), as that Act existed on July 2, 2007, and similar pass-through fees or charges;

(B) Prepayment fees and late fees;

(C) Fees and damages in accordance with ORS 30.701;

(D) Actual expenses the licensee reasonably incurs in collecting a consumer finance loan that the borrower or consumer has failed to repay according to the terms of the consumer finance loan contract; and

(E) Amounts associated with the collection of a defaulted loan that are authorized by statute or awarded by a court of law.

(c) For purposes of this subsection, "finance charge" and "annual percentage rate" have the meanings given those terms in the federal Truth in Lending Act, 15 U.S.C. 1601 et seq.

(2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less and requires repayment in substantially equal or consecutive monthly installments of principal and interest combined, the interest or consideration may be precomputed, contracted for and earned on scheduled unpaid principal balances on the assumption that all scheduled payments will be made when due. In such cases, every payment may be applied to the combined total of principal and precomputed interest until the contract is fully paid, and the acceptance or payment of interest or consideration on any loan made under the provisions of this subsection does not constitute payment, deduction or receipt of the interest or consideration in advance. The precomputed interest or consideration is subject to the following adjustments:

(a) When a default of more than 10 days in the payment of any scheduled installment occurs, the licensee may charge and collect a default charge not exceeding five percent of the unpaid amount of the installment or $5, whichever is less. A default charge may be collected only once on an installment, but may be collected at the time the default charge accrues or at any time thereafter. A default charge may not be assessed with respect to an installment that is paid in full on or within 10 days after a scheduled installment due date when an earlier maturing installment or a default or deferral charge on an earlier maturing installment may not have been paid in full even though all or part of such installment payment is applied to an earlier maturing installment, or a default or deferral charge.

(b) If the payment of all unpaid installments is deferred one or more full months, and if the contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual percentage rate specified in subsection (1)(a) of this section and previously disclosed to the borrower pursuant to the federal Truth in Lending Act applied to the sum of the installments deferred for the length of the deferral period. The deferral period is that period in which no scheduled installment is required to be paid by reason of the deferral. The charge may be collected at the time of deferral or at any time thereafter. A deferral charge may not be made for the deferral of any installment with respect to which a default charge has been collected, unless the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to any other rebate which may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of an unexpired month exceeding 15 days is considered to be a month.

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

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

(B) The interest or consideration earned to the installment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the balances were actually out-

standing. For purposes of rebate computations under this subparagraph, the installment due date preceding the date of prepayment is nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs more than 15 days after the preceding installment due date, the next succeeding installment due date is nearest to the date of prepayment. In determining the simple interest rate, the licensee may apply to the scheduled payments the actuarial method by which each scheduled payment is applied first to accrued and unpaid interest or consideration and any amount remaining is applied to reduction of the principal balance.

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

(4) The loan contract may provide that after default and referral the borrower shall pay the licensee for reasonable attorney fees actually paid by the licensee to an attorney who is not a salaried employee of the licensee. [Amended by 1955 c.71 §13; 1971 c.450 §3; 1973 c.428 §4; 1975 c.567 §2; 1977 c.432 §1; 1979 c.326 §3; 1979 c.879 §7; 1981 c.412 §15; 1981 c.910 §8a; 2006 c.3 §2; 2007 c.473 §3; 2007 c.603 §3a; 2009 c.541 §46; 2010 c.23 §32]

725.342 [1979 c.326 §2; repealed by 1981 c.412 §24]

725.345 Open-end loan plan; interest; security for plan; necessary disclosures. (1) As used in this section and ORS 725.347, "open-end loan plan" means a plan or arrangement, the agreement for which expressly states that it is made pursuant to this section under which loans are made, and under which:

(a) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The unpaid principal balances and interest or consideration are debited to an account;

(c) Interest or consideration is calculated on the unpaid principal balance in the borrower's account from time to time, which balance may include all advances made on behalf of the borrower and all charges authorized under ORS 725.340 and this section; and

(d) The borrower has the privilege of paying the unpaid balance in full or in installments.

(2) A licensee may make loans under an open-end loan plan and may contract for and receive interest or consideration only as provided in ORS 725.340.

(3) A security interest in real or personal property may be taken to secure an open-end loan plan. Any security interest in real or personal property shall be promptly released if there has been no outstanding balance for 12 months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance or if the account is terminated at the borrower's request and paid in full.

(4) ORS 725.050 (2), 725.340 (2) and 725.360 (1), (2) and (4) do not apply to any open-end loan plan.

(5) The open-end loan plan agreement shall contain the name and address of the borrower and of the licensee and shall disclose the date of the agreement, the method of determining the minimum periodic payments which will be required to pay the initial and any subsequent advances, the conditions under which interest or consideration may be imposed, the method of determining the principal balance upon which interest or consideration may be imposed, the method of determining the amount of the interest or consideration, each periodic rate and the range of balances to which each rate is applicable and the corresponding annual percentage rate in accordance with Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), and the nature of the security taken.

(6) Except for an account which the licensee deems to be uncollectible or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver or cause to be delivered to the borrower, for each billing cycle at the end of which there is an unpaid balance of more than $1 in the account or with respect to which interest or consideration is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the nature, date and amount of any subsequent advance during the cycle, the amounts and dates of payments credited to the account during the billing cycle, the amount of any interest or consideration debited to the account during the billing cycle, each periodic rate and the range of balances to which each rate is applicable and the corresponding annual percentage rate in accordance with Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), the balance on which the

interest or consideration was calculated, a statement of how that balance was determined, the closing date of the billing cycle, the outstanding balance on that closing date and the minimum monthly payment required. [1977 c.522 §2; 1981 c.412 §16; 1983 c.37 §36d; 1985 c.370 §2; 2007 c.603 §4]

725.347 Open-end credit card plan authorized. (1) As used in this section, "open-end credit card plan" means an open-end loan plan under which:

(a) The licensee issues one or more cards, checks, letters of credit or other devices to the borrower; and

(b) The borrower may obtain advances from the licensee, either directly or in connection with purchases of goods and services, by using the card, check, letter of credit or other device.

(2) A licensee may transact business and extend credit to borrowers under an open-end credit card plan. A licensee may offer an open-end credit card plan in conjunction with noncredit features or services available to the borrower through use of the card or other device. The noncredit features or services shall not be subject to regulation under this chapter.

(3) The agreement between the licensee and the borrower relating to the open-end credit card plan shall conform to the requirements of ORS 725.345 (5), except that the borrower's name and address and the date of the agreement need not be included in the agreement if the borrower has submitted a signed and dated application to the licensee seeking the issuance of one or more cards or other devices. [1985 c.370 §4; 2007 c.603 §5]

725.349 Application of ORS 725.210 to certain loans and advances. On and after September 20, 1985, ORS 725.210 applies to loans and advances pursuant to ORS 725.345, provided that a licensee that applied for and received a license before September 20, 1985, for a location outside the State of Oregon may receive and hold one or more licenses relating to locations outside the State of Oregon, including one additional license for a location not licensed on or before September 20, 1985, and may transact business at such licensed locations. With respect to such a licensee only, loans and advances under open-end loan plans or open-end credit card plans shall be considered to be business transacted where the applications or agreements in connection with the loan plans or credit card plans are approved by the licensee. [1985 c.370 §1a]

725.350 [Repealed by 1971 c.232 §4]

725.355 Prohibition against assignment of earnings for loan security. (1) As used in this section, "earnings" means salary, wages or other compensation for service.

(2) No licensee shall take an assignment of earnings as payment of or as security for payment of a loan. An assignment in violation of this subsection is unenforceable by the assignee and revocable by the assignor. Nothing in this subsection is intended to prevent an employee from authorizing deductions from the earnings of the employee if the authorization is revocable.

(3) For the purpose of this section, a sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is considered a loan to the seller, secured by an assignment of earnings. [1971 c.232 §3]

725.360 Licensee duty toward borrowers. Every licensee shall:

(1) Deliver to the borrower at the time any loan is made a statement in the English language showing in clear and distinct terms:

(a) The name and address of the borrower and of the licensee.

(b) The amount and the date of the loan and of its maturity or terms of payment.

(c) The rate of interest agreed upon or consideration to be charged therefor.

(d) The nature of the security for the loan, if a lien on personal property has been taken by chattel mortgage, bill of sale, collateral agreement or otherwise.

(2) Make available to the borrower upon request a plain and complete receipt for all payments made on account of any such loan at the time such payments are received by the licensee, specifying the amount applied to interest, if any, the date to which the interest is paid, the amount applied to principal, if any, and the unpaid principal balance of such loan, if any remains.

(3) Permit payment to be made in advance in any amount on any loan at any time.

(4) Upon repayment of the loan in full or upon renewal thereof, mark indelibly such obligation signed by the borrower with the word "Paid" or "Renewed." In the case of repayment in full the licensee also shall do the following:

(a) To the extent and in the manner required by law, release any mortgage or security agreement that no longer secures a loan, and restore any security or collateral.

(b) Release any Uniform Commercial Code filing that no longer secures a loan, to the extent and in the manner required by ORS 79.0513.

(c) Return any assignment given by the borrower.

(d) Return to the borrower the canceled note evidencing the loan or alternatively, acknowledge in writing to the borrower that the loan has been repaid. [Amended by 1971 c.450 §4; 1973 c.428 §5; 1975 c.567 §3; 1987 c.650 §17; 2001 c.445 §182]

725.370 Lawful loans in other jurisdictions not affected by this chapter. This chapter does not affect loans made or payable in other jurisdictions and lawful where made or payable. [Amended by 1979 c.88 §42; 2007 c.472 §1; 2010 c.23 §33]

725.380 [Repealed by 1975 c.544 §62]

725.385 Duty to give notice of defalcation to law enforcement officer, director; audit. (1) A director or officer of a licensee who has reason to believe that a defalcation has occurred at any office of the licensee shall give the information to the appropriate local, state or federal law enforcement officer having jurisdiction of the violation.

(2) A licensee shall notify the Director of the Department of Consumer and Business Services of any defalcation that occurs at any office of the licensee within five days after the discovery of the defalcation. When directed by the director to do so, the licensee shall cause an audit to be made of the business of the licensed office where the defalcation occurred, in accordance with the director's instructions. [1979 c.88 §38; 1987 c.650 §18]

725.390 [1979 c.88 §39; 1985 c.762 §132; repealed by 1987 c.650 §21]

725.395 Director to give notice of suspected defalcation to law enforcement agency; exceptions. If the Director of the Department of Consumer and Business Services has reason to believe that a defalcation has occurred at an office of a licensee, the director may give the information concerning the violation to the appropriate federal, state or local law enforcement agency having jurisdiction of the violation. This section does not apply, however, if the licensee has reported the information to the appropriate law enforcement officer under ORS 725.385. [1979 c.88 §40; 1985 c.762 §133]

725.400 Cease and desist order. (1) The Director of the Department of Consumer and Business Services may issue and serve upon the following persons an order to cease and desist from a violation when the director has reasonable cause to believe that the person to whom the order is directed is violating, has violated or is about to violate any provision of this chapter or a rule or order of the director:

(a) A licensee.

(b) A director, officer, employee or agent of a licensee.

(c) A person acting as a consumer finance lender without a license.

(2) An order under subsection (1) of this section must include the following:

(a) A statement of the facts constituting the violation.

(b) A provision requiring the person named in the order to cease and desist from the violation. The provision may be mandatory or otherwise.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under ORS chapter 183.

(3) An order under this section is effective 30 days after the date of the order unless the person named in the order requests a hearing on the order.

(4) An order under this section remains in effect until it is withdrawn by the director or by a court.

(5) If an individual named in an order under this section fails to comply with the order, the director may issue an order removing or suspending the individual from the office or position held by the individual. The removal or suspension is in addition to any penalty provided by ORS 725.910 for failure to comply with an order issued under this section. [1987 c.215 §13; 2005 c.338 §25]

725.410 Enforcement actions. The Director of the Department of Consumer and Business Services may institute any action or other proceeding that the director considers necessary for enforcing any provision of this chapter or any rule, order or action adopted, issued or taken by the director under this chapter. [1987 c.215 §17]

725.505 Rulemaking authority; notice. (1) In accordance with ORS chapter 183, the Director of the Department of Consumer and Business Services may adopt rules for the purposes of protecting borrowers and consumers, providing clarity to licensees and lenders and otherwise carrying out and enforcing this chapter. The rules may include, but are not limited to, provisions that establish loan forms, terms, charges and fees.

(2) In addition to the notice requirements of ORS chapter 183, before the director adopts a rule, the director shall submit a copy of the rule to each licensee. [1985 c.762 §110; 1987 c.650 §19; 2007 c.603 §6]

725.510 Person not liable for good faith acts or omissions. A person may not be held personally liable for an act done or omitted by the person in good faith and in compliance with a rule or order of the Di-

rector of the Department of Consumer and Business Services under this chapter regardless of whether the rule or order is later amended or rescinded or is later determined by judicial or other authority to be invalid. [1987 c.445 §6]

725.600 [2001 c.445 §197; 2003 c.359 §1; 2007 c.473 §1; repealed by 2010 c.23 §34]

725.602 [2007 c.472 §4; repealed by 2010 c.23 §34]

725.605 [2001 c.445 §198; repealed by 2010 c.23 §34]

725.610 [2001 c.445 §200; 2003 c.359 §2; 2007 c.603 §7; repealed by 2010 c.23 §34]

725.615 [2001 c.445 §199; 2007 c.472 §2a; 2007 c.473 §2; 2007 c.603 §8c; repealed by 2010 c.23 §34]

725.620 [2001 c.445 §201; 2007 c.603 §9; repealed by 2010 c.23 §34]

725.622 [2003 c.359 §4; 2006 c.3 §1; 2007 c.472 §3; 2007 c.603 §10; repealed by 2010 c.23 §34]

725.624 [2003 c.359 §5; repealed by 2010 c.23 §34]

725.625 [2001 c.445 §202; repealed by 2007 c.603 §11]

725.626 [2007 c.472 §6; repealed by 2010 c.23 §34]

725.630 [2007 c.472 §5; repealed by 2010 c.23 §34]

PENALTIES

725.910 Civil penalties. (1) The Director of the Department of Consumer and Business Services may assess against any person who violates any provision of this chapter, or any rule or final order of the director under this chapter, a civil penalty in an amount determined by the director of not more than $2,500. In addition, if a licensee commits such a violation, the director may revoke the license of the licensee.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) Except as provided in subsection (4) of this section, all moneys collected under this section shall be paid to the State Treasurer and credited as provided in ORS 705.145.

(4) In addition to any other penalty provided by law, the director may assess against any person who lends money without the license required under this chapter a civil penalty in an amount equal to the interest received that exceeds nine percent per annum. The director shall pay all moneys collected under this subsection to the Department of State Lands for the benefit of the Common School Fund. [1975 c.544 §59; 1981 c.412 §17; 1985 c.762 §134; 1987 c.215 §16; 1987 c.373 §70; 1991 c.734 §98; 2001 c.445 §203]

725.990 [Amended by 1971 c.743 §424; repealed by 1975 c.544 §62]