

CHAPTER 118

AN ACT

SB 277

Relating to authorizations to engage in certain financial services businesses; creating new provisions; amending ORS 697.500, 697.510, 697.514, 697.602, 697.632, 717.200, 717.205, 717.220, 717.230 and 717.240; and declaring an emergency.

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

SECTION 1. ORS 697.500 is amended to read: 697.500. As used in ORS 697.500 to 697.555:

(1)(a) "Check-cashing business" means [any] a person that conducts a business that for a fee, service charge or other consideration provides money, credit or any other thing of value in exchange for payment instruments.

(b) "Check-cashing business" does not include a financial institution as defined in ORS 706.008 or an employee of a licensee.

(2) "Licensee" means a person licensed as a check-cashing business under ORS 697.514.

(3) **"Nationwide Multistate Licensing System" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assigns of the Conference of State Bank Supervisors or the American Association of Residential Mortgage Regulators, develop and maintain for participating state agencies to use in licensing and registering mortgage loan originators and other persons that provide nondepository financial services.**

(3) (4) "Payment instrument" means:

(a) A check, warrant or draft issued by the federal government, a state government, a county or municipal government, or a federal or state agency;

(b) A payroll check; or

(c) A personal check, money order or any other check.

SECTION 2. ORS 697.510 is amended to read:

697.510. (1)(a) An applicant for a license to conduct a check-cashing business shall apply in writing [and in] on a form and in a format that the Director of the Department of Consumer and Business Services prescribes by rule.

(b) **The director, consistent with the requirements of ORS 697.500 to 697.555, may administer a program to issue and renew licenses for check-cashing businesses by means of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform the practices, procedures and information that the Department of Consumer and Business Services uses to issue or renew a license to the requirements of the Nationwide Multistate Licensing System.**

(2) An application for a license to conduct a check-cashing business must contain all of the following:

(a) The applicant's name, together with any fictitious name, assumed business name or trade name the applicant uses in conducting the applicant's business;

(b) The name and address of all of the applicant's members, partners, officers, directors or principals, as appropriate;

(c) The name and address of the applicant's agent for the service of process, notice or demand, or a power of attorney that the applicant has executed and by which the applicant appoints the Director of the Department of Consumer and Business Services as the applicant's agent for service of process, notice or demand;

(d) The applicant's principal business address, the location of the applicant's business records and the addresses for all locations where the applicant conducts or proposes to conduct a check-cashing business; and

(e) Other information that the director may require concerning the applicant's financial responsibility, background experience and business activities and [those] **the financial responsibility, background experience and business activities** of the applicant's members, partners, officers, directors and principals.

(3) The director, for good cause shown or in order to conform the department's licensing and license renewal program to the requirements of the Nationwide Multistate Licensing System, may waive any requirement of this section with respect to any license application or may allow an applicant to submit substituted information in a license application in lieu of the information required under subsection (2) of this section.

SECTION 3. ORS 697.514 is amended to read:

697.514. (1) After an applicant has submitted a complete application, the Director of the Department of Consumer and Business Services shall review the application and may investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness to conduct a check-cashing business. The director may also determine if the applicant has complied with applicable provisions of ORS 697.500 to 697.555 and of federal law.

(2) The director shall issue a license to the applicant to conduct a check-cashing business at the locations identified in the application if the director finds that:

(a) The applicant and the applicant's members, officers, directors and principals are financially responsible, have a good character and a good reputation and are experienced and generally fit to conduct a check-cashing business efficiently, in the public interest and in accordance with law;

(b) The applicant has fulfilled the requirements imposed under ORS 697.510; and

(c) The applicant has paid the license and investigation fees required under ORS 697.512.

(3) A license issued under this section expires on December 31 of [the first full calendar year following

the year in which the license is issued] **the calendar year in which the director issues the license.** A licensee may not assign or transfer a license issued under this section. A licensee may renew a license *[upon payment of]* **after paying** a license fee in an amount the director prescribes by rule **and only if the licensee meets conditions that the director prescribes by rule, including a condition that the licensee renew a license under the terms of the director's agreement with the Nationwide Multistate Licensing System.**

(4) The director shall deny the application if the applicant does not meet the requirements set forth in this section. The *[director's denial]* **director shall issue any denial** *[be]* in writing and shall describe the reasons for the denial.

(5) If the director denies a license under this section, the applicant may request a hearing in accordance with ORS 183.435. *[Upon]* **After** receiving the applicant's request, the director shall grant the applicant a hearing under ORS 183.413 to 183.470.

SECTION 4. ORS 697.602 is amended to read: 697.602. As used in ORS 697.602 to 697.842:

(1) "Consumer" means an individual who is obligated or is allegedly obligated to pay a debt and on whose behalf a debt management service provider performs or agrees to perform a debt management service.

(2) "Debt management service" means an activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration in return for:

(a) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts, whether or not the person holds the consumer's funds;

(b) Improving or offering to improve or preserve a consumer's credit record, credit history or credit rating;

(c) Modifying or offering to modify terms and conditions of an existing loan **from** or obligation **to a third party**; or

(d) Obtaining or attempting to obtain as an intermediary on a consumer's behalf a concession from a creditor including, but not limited to, a reduction in the principal, interest, penalties or fees associated with a debt.

(3) "Debt management service provider" means a person that:

(a) Resides or does business in this state; and

(b) Provides or performs, or represents that the person can or will provide or perform a debt management service in return for or in expectation of money or other valuable consideration.

(4) **"Nationwide Multistate Licensing System" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assigns of the Conference of State Bank Supervisors or the American Association of Residential Mortgage Regulators, develop and**

maintain for participating state agencies to use in licensing and registering mortgage loan originators and other persons that provide nondepository financial services.

[(4)] (5) "Nonprofit entity" means a person, corporation, organization, board, association or other entity described in 26 U.S.C. 501(c)(3), as in effect on June 26, 2009, that is exempt from taxation under 26 U.S.C. 501(a).

SECTION 5. ORS 697.632 is amended to read:

697.632. (1)(a) The Director of the Department of Consumer and Business Services shall maintain a registry of debt management service providers and by rule in accordance with ORS chapter 183 shall require a person that performs a debt management service, unless the person is exempt under ORS 697.612 (3), to apply to the director to register or to renew a registration as a debt management service provider.

(b) **The director, consistent with the requirements of ORS 697.602 to 697.842, may administer a program to register debt management service providers, or renew registrations, by means of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform the practices, procedures and information that the Department of Consumer and Business Services uses to register a debt management service provider, or renew a registration, to the requirements of the Nationwide Multistate Licensing System.**

(c) An *[applicant]* **application** for registration or renewal *[shall]* **must** provide to the director on a form and in a *[manner]* **format** the director specifies:

[(a)] (A) The applicant's name and address;

[(b)] (B) Any assumed business names, trade names or other identities under which the applicant performs a debt management service;

[(c)] (C) A general description of the debt management service business activities the applicant undertakes or proposes to undertake;

[(d)] (D) The names of any managing members, managing partners, executive officers, directors, principals or agents the applicant has;

[(e)] (E) The name of the applicant's registered agent or the applicant's agent for the purpose of receiving service of legal process;

[(f)] (F) A signed statement that identifies and describes in detail any incident in which the applicant or a member, partner, officer, director or principal of the applicant within the five years before the date on which the applicant applied to register or renew a registration as a debt management service provider was subject to:

[(A)] (i) A judgment in favor of another person in a circuit court of this state or in an equivalent court in another state;

[(B)] (ii) An arbitration award in favor of another person; or

[(C)] (iii) An adverse final order from an administrative agency in this state or another state;

[(g)] **(G)** A copy of the corporate surety bond the applicant filed with the director under ORS 697.642; and

[(h)] **(H)** Other information the director may require concerning the financial responsibility, training, background, experience and business activities of the applicant or a member, partner, officer, director or principal of the applicant.

(2) At the time an applicant submits an application for registration under this section, the applicant shall pay a nonrefundable fee in an amount the director specifies by rule. An applicant who applies to renew a registration shall pay another fee in an amount the director specifies by rule.

(3) The director shall specify amounts for the fees described in subsection (2) of this section that in the aggregate are sufficient to pay the costs of administering ORS 697.602 to 697.842. The director shall pay all moneys received under this section as provided in ORS 697.842.

(4) A registration under this section is valid [for two years] **until December 31 of the calendar year in which the director approves the registration.** In order to continue to provide a debt management service, a debt management service provider must renew the registration [at the end of the two-year period] **at the time the registration expires.**

(5)(a) The director may refuse to register the applicant or may refuse to renew a registration for a debt management service provider for any of the reasons set forth in ORS 697.752.

(b) The director, for good cause shown or in order to conform the department’s licensing and license renewal program to the requirements of the Nationwide Multistate Licensing System, may waive a requirement of this section with respect to a license application or may allow an applicant to substitute information required in an application in lieu of information required under this section.

SECTION 6. ORS 717.200 is amended to read:

717.200. As used in ORS 717.200 to 717.320, 717.900 and 717.905, unless the context requires otherwise:

(1) “Applicant” means a person [filing] **that files** an application for a license under ORS 717.200 to 717.320, 717.900 and 717.905.

(2) “Authorized delegate” means a person [designated by the] **that a licensee designates** under the provisions of ORS 717.200 to 717.320, 717.900 and 717.905 to sell or issue payment instruments or engage in the business of transmitting money on **the licensee’s** behalf [of a licensee].

(3) “Control” means [the possession] **possessing**, directly or indirectly, [of] the power to direct or cause the direction of [the] **a person’s** management and policies [of a person], whether through ownership of voting securities, by contract or otherwise.

(4) “Controlling person” means any person in control of a licensee or applicant for a license.

(5) “Controlling shareholder” means any person, or group of persons acting in concert, that owns 25

percent or more of any voting class of an applicant’s stock.

[(6)] **“Director” means the Director of the Department of Consumer and Business Services.**

[(7)] **(6)(a)** “Electronic instrument” means a card or other tangible object for [the transmission or payment of] **transmitting or paying** money that contains a microprocessor chip, magnetic stripe or other means for [the storage of] **storing** information, that is prefunded and for which the value is decremented upon each use.

(b) “Electronic instrument” does not include a card or other tangible object that [is redeemable by] the issuer **may redeem** in the issuer’s goods or services.

[(8)] **(7)** “Executive officer” means the licensee’s president, chairperson of the executive committee, senior officer responsible for the licensee’s business, chief financial officer and any other person who performs similar functions.

[(9)] **(8)** “Licensee” means a person licensed under ORS 717.200 to 717.320, 717.900 and 717.905.

[(10)] **(9)** “Material litigation” means any litigation that, according to generally accepted accounting principles, is [deemed] significant to an applicant’s or licensee’s financial health and [would be required to be referenced in the applicant’s or] **to which the applicant or licensee must refer in the applicant’s or licensee’s** annual audited financial statements, report to shareholders or similar documents.

(10) “Money” means a medium of exchange that:

(a) The United States or a foreign government authorizes or adopts; or

(b) Represents value that substitutes for currency but that does not benefit from government regulation requiring acceptance of the medium of exchange as legal tender.

(11) “Money transmission” means [the sale or issuance of] selling or issuing payment instruments or engaging in the business of receiving money for transmission, or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile or electronic transfer.

(12) “Nationwide Multistate Licensing System” means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assigns of the Conference of State Bank Supervisors or the American Association of Residential Mortgage Regulators, develop and maintain for participating state agencies to use in licensing and registering mortgage loan originators and other persons that provide nondepository financial services.

[(12)] **(13)(a)** “Payment instrument” means any electronic or written check, draft, money order, traveler’s check or other electronic or written instrument or order for [the transmission or payment of] **transmitting or paying** money, sold or issued

to one or more persons, whether or not the instrument is negotiable.

(b) "Payment instrument" does not include any credit card voucher, any letter of credit or any instrument that is redeemable by the issuer in goods or services.

[(13)] (14) "Outstanding payment instrument" means any payment instrument *[issued by a licensee that has been]* **that a licensee issued and** sold in the United States, *[directly by the licensee or any payment instrument]* **or that a licensee issued [by a licensee that has been] and an authorized delegate of the licensee** sold in the United States *[by an authorized delegate of the licensee]*, **and** that has been reported to the licensee as having been sold *[and]* **but** that has not yet been paid by or for the licensee.

[(14)] (15) "Permissible investments" means:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, that are eligible for purchase by member banks of the Federal Reserve System;

(d) Any investment security bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States Government, *[its]* **or** agencies or instrumentalities **of the United States Government**, or obligations that *[are guaranteed]* **the United States guarantees** fully as to principal and interest *[by the United States]*, or any obligations of any state, municipality or any political subdivision *[thereof]* **of a state or municipality**;

(f) Shares in a money market mutual fund, interest-bearing bills, notes or bonds, debentures or stock traded on any national securities exchange or national market system, mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(g) Any demand borrowing agreement or agreements made *[to]* **with** a corporation or a subsidiary of a corporation *[whose]* **the** capital stock **of which** is listed on a national securities exchange;

(h) Receivables that are due to a licensee from the licensee's authorized delegates under a contract described in ORS 717.270 and that are not past due or doubtful of collection; or

(i) Any other investments or security device approved by the Director of the Department of Consumer and Business Services.

[(15)] (16) "Person" means *[any]* **an** individual, partnership, association, joint stock association, limited liability company, trust or corporation.

[(16)] (17) "Remit" means either to *[make direct payment of the]* **pay** funds **directly** to a licensee or representatives of a licensee authorized to receive *[those]* **the** funds, or to deposit the funds in a bank,

credit union or savings and loan association or other similar financial institution in an account **that the licensee specifies** *[specified by the licensee]*.

[(17)] (18) "Security device" means a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other similar security acceptable to the Director of the Department of Consumer and Business Services.

SECTION 7. ORS 717.205 is amended to read:

717.205. (1) A person, other than a person that is exempt under ORS 717.210, may not conduct a money transmission business without a license *[as provided in]* **that the Director of the Department of Consumer and Business Services issues in accordance with** ORS 717.200 to 717.320, 717.900 and 717.905.

(2) A licensee may conduct business in this state at one or more locations that *[are directly or indirectly owned by]* the licensee **owns directly or indirectly**, *[or]* through one or more authorized delegates, or both. A licensee is required to obtain only one license under ORS 717.200 to 717.320, 717.900 and 717.905.

(3) *[The conduct of]* **Conducting** a money transmission business *[by itself]* does not **alone** constitute banking or branch banking for the purposes of the Bank Act.

(4) The director *[of the Department of Consumer and Business Services]* has jurisdiction over a person *[conducting]* **that conducts** a money transmission business whether or not the person is a licensee or authorized delegate.

(5) **The director, consistent with the requirements of ORS 717.200 to 717.320, 717.900 and 717.905, may administer a program to issue and renew licenses for money-transmission businesses by means of an agreement with the Nationwide Multistate Licensing System.**

SECTION 8. ORS 717.220 is amended to read:

717.220. (1)(a) *[Each application]* **A person shall apply** for a license under ORS 717.200 to 717.320, 717.900 and 717.905 *[shall be made]* in writing *[in]* **on** a form **and in a format** *[prescribed by rule by]* the Director of the Department of Consumer and Business Services **prescribes by rule.**

(b) **The director, by rule, may conform the practices, procedures and information that the Department of Consumer and Business Services uses to issue and renew licenses for conducting a money transmission business to the requirements of the Nationwide Multistate Licensing System.**

(2) For all applicants, the application *[shall]* **must** contain:

(a) The **applicant's** exact name *[of the applicant, the applicant's]* **and** principal address, any fictitious name, assumed business name or trade name *[used by]* the applicant *[in the]* **uses to** conduct *[of its]* business and the location of the applicant's business records;

(b) The history of the applicant's material litigation and criminal convictions for the five-year period [prior to] **before** the date of the application;

(c) A history of operations and a description of the business activities in which the applicant seeks to [be engaged] **engage** in this state;

(d) A list [identifying] **of** the applicant's proposed authorized delegates in the state, if any, at the time [of the filing of] **the applicant files the** license application;

(e) A sample authorized delegate contract, if applicable;

(f) A sample form of payment instrument, if applicable;

(g) The address of each location at which the applicant and [its] **the applicant's** authorized delegates, if any, propose to conduct a money transmission business in this state;

(h) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which [such] **the** payment instruments will be payable; and

(i) A business plan.

(3) If the applicant is a corporation, the application [shall] **must** contain:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(d) The name, business and residence address[,] and employment history for the past five years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's money transmission business;

(e) The name, business and residence address[,] **of the applicant's controlling shareholders and the controlling shareholders'** employment [history] **histories** for the five-year period [prior to] **before** the date of the application [of any controlling shareholder of the applicant];

(f) The history of material litigation and criminal convictions for **all of the applicant's executive officers and controlling shareholders in** the five-year period [prior to] **before** the date of the application [of every executive officer or controlling shareholder of the applicant];

(g) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position and, if available, a copy of the applicant's audited financial statements for the immediately preceding two-year period. If the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period, or the parent

corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years, in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation [having its] **with a principal** place of business outside the United States, **the applicant may submit** similar documentation filed with the parent corporation's foreign regulator [may be submitted] to satisfy the requirements of this paragraph; and

(h) Copies of all filings, if any, [made by] the applicant **made** with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of the application.

(4) If the applicant is not a corporation, the application [shall] **must** contain:

(a) The name, business and residence address, personal financial statement and employment history for the past five years of each principal of the applicant and the name, business and residence address, and employment history for the past five years of any other person [or persons] that will be in charge of the applicant's money transmission business;

(b) The history of material litigation and criminal convictions [for] **in** the five-year period [prior to] **before** the date of the application for each individual [having] **who has** any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(c) Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, a copy of the applicant's audited financial statements for the immediately preceding two-year period.

(5) The director, for good cause shown **or in order to conform the department's licensing and license renewal program to the requirements of the Nationwide Multistate Licensing System**, may waive any requirement of this section with respect to any license application or may allow an applicant to submit substituted information in a license application in lieu of the information required under subsection (2) of this section.

SECTION 9. ORS 717.230 is amended to read:

717.230. [Each application shall be accompanied by a nonrefundable application fee in the amount of \$1,000, payable to the Director of the Department of Consumer and Business Services. The application fee shall also constitute the license fee for the applicant's first year of activities if the license is granted.] **At the time an applicant submits an application, the applicant shall pay to the Director of the Department of Consumer and Business Services a fee of \$1,000 for a license term that expires at the end of the calendar year in which the applicant submitted the application.**

SECTION 10. ORS 717.240 is amended to read:

717.240. (1)(a) **To renew a license**, each licensee shall pay to the Director of the Department of Consumer and Business Services a nonrefundable annual fee of \$500 or *[such other fee as established by the director by rule, not to exceed \$1,000, for renewal of a license.] a fee that the director sets by rule in an amount that does not exceed \$1,000.*

(b) **In addition to paying the fee described in paragraph (a) of this subsection, a licensee shall provide information necessary for the director to evaluate the licensee's renewal application. The director shall prescribe the information required by rule. The director may require a licensee to renew a license under the terms of the director's agreement with the Nationwide Multistate Licensing System.**

(2) At the time the licensee pays the renewal fee, the licensee shall submit an annual *[renewal]* report **on a date and in a form and format** *[prescribed by]* the director **prescribes by rule.** The annual *[renewal]* report *[shall]* **must describe the condition and operations of the money transmission business during the preceding calendar year and must include:**

(a) A copy of the licensee's most recent audited consolidated annual financial statement, including a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. In the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement[;].

(b) For the most recent quarter for which data are available *[prior to]* **before** the date of the renewal application, but not more than 120 days *[prior to]* **before** the renewal date, a description of the number of payment instruments *[sold by]* the licensee **sold** in this state, the dollar amount of *[those]* **the payment** instruments and the dollar amount of *[those]* **payment** instruments currently outstanding[;].

(c) A description of any material changes to any of the information *[submitted by]* the licensee **submitted** on the licensee's original application that *[have]* **the licensee has** not previously *[been]* reported to the director on any other report required to be filed with the director[;].

(d) A list of the licensee's permissible investments[; *and*].

(e) A list of the locations within this state at which **the licensee or an authorized delegate of the licensee is conducting** business regulated by ORS 717.200 to 717.320, 717.900 and 717.905 *[is being conducted by either the licensee or its authorized delegate].*

[(3) If a licensee has not filed a renewal report or paid the renewal fee before the license expires, and has not been granted an extension of time to do so by the director, the director shall hold a hearing at which the licensee may show cause as to why the license should not be suspended pending compliance with the requirements of this section. The director shall notify the licensee in writing of the licensee's rights under this subsection. The licensee may waive the hearing.]

SECTION 11. The amendments to ORS 697.500, 697.510, 697.514, 697.602, 697.632, 717.200, 717.205, 717.220, 717.230 and 717.240 by sections 1 to 10 of this 2015 Act apply to licenses and registrations, or renewals of licenses or registrations, that the Director of the Department of Consumer and Business Services issues on or after the operative date specified in section 12 of this 2015 Act.

SECTION 12. (1) The amendments to ORS 697.500, 697.510, 697.514, 697.602, 697.632, 717.200, 717.205, 717.220, 717.230 and 717.240 by sections 1 to 10 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 697.500, 697.510, 697.514, 697.602, 697.632, 717.200, 717.205, 717.220, 717.230 and 717.240 by sections 1 to 10 of this 2015 Act.

SECTION 13. 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.

Approved by the Governor May 20, 2015

Filed in the office of Secretary of State May 20, 2015

Effective date May 20, 2015