

CHAPTER 106

AN ACT

HB 2419

Relating to the licensing processes of the Department of Consumer and Business Services; creating new provisions; amending ORS 697.005, 697.031, 697.632, 717.220, 725.010, 725.140, 725A.010 and 725A.024; and prescribing an effective date.

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

SECTION 1. ORS 697.005 is amended to read: 697.005. As used in ORS 697.005 to 697.095:

(1)(a) "Collection agency" means:

(A) A person **that engages** directly or indirectly [*engaged*] in soliciting a claim for collection, or collecting or attempting to collect a claim that is owed, due or asserted to be owed or due to another person or to a public body at the time the person solicits, collects or attempts to collect the claim;

(B) A person that directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms represented to be a collection system even if the forms direct the debtor to [*make payment to*] **pay** the creditor and even if the **creditor may or does use the forms** [*may be or are actually used by the creditor*] in the creditor's own name;

(C) A person that, in attempting to collect or in collecting the person's own claim, uses a fictitious name or any name other than the person's own **name** that indicates to the debtor that a third person is collecting or attempting to collect the claim;

(D) A person [*in the business of engaging in the solicitation of*] **that engages in the business of soliciting** the right to repossess or in repossessing collateral security due or asserted to be due to another person; or

(E) A person that, in [*the collection of*] **collecting** claims from another person:

(i) Uses any name other than the name regularly used in [*the conduct of*] **conducting** the business out of which the claim arose; and

(ii) Engages in any action or conduct that tends to convey the impression that a third party has been employed or engaged to collect the claim.

(b) "Collection agency" does not include:

(A) An individual [*engaged*] **who engages** in soliciting claims for collection, or [*collecting or attempting*] **who collects or attempts** to collect claims on behalf of a registrant under ORS 697.005 to 697.095, if the individual is an employee of the registrant.

(B) An individual [*collecting or attempting*] **who collects or attempts** to collect claims for not more than three employers, if the individual carries on all collection efforts in the name of the employer and the individual is an employee of the employer.

(C) A person that prepares or mails monthly or periodic statements of accounts due on behalf of another person if all payments are made to the other

person and the person that prepares the statements of accounts does not make other collection efforts.

(D) An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.

(E) A licensed certified public accountant or public accountant [*rendering services in the performance of*] **who performs** the duties of a licensed certified public accountant or public accountant.

(F) A bank, mutual savings bank, consumer finance company, trust company, savings and loan association, credit union or debt consolidation agency.

(G) A principal real estate broker **that is** licensed under ORS 696.020, [*as*] **with respect** to any collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

(H) An escrow agent **that is** licensed under ORS 696.511, with respect to the escrow agent's:

(i) Collection or billing activities [*involved in*] **that are related to** closing an escrow, as defined in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

(ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

(I) An individual **who is** regularly employed as a credit person or in a similar capacity by one person, firm or corporation that is not a collection agency [*as defined in this section*].

(J) A public officer or a person [*acting*] **that acts** under order of a court.

(K) A person [*acting*] **that acts** as a property manager in collecting or billing for rent, fees, deposits or other sums due landlords of managed units.

(L) A person that [*is providing*] **provides** billing services. A person [*is providing*] **provides** billing services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of [*collection of*] **collecting** claims for another person, whether in the other person's name or any other name, by any means that:

(i) [*Is*] **Uses** an accounting procedure, preparation of mail billing or any other means intended to accelerate cash flow to the other person's bank account or to any separate trust account; and

(ii) Does not include any personal contact or contact by telephone with the person from whom the claim is sought to be collected.

(M) A person that [*is providing*] **provides** factoring services. A person [*is providing*] **provides** factoring services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of:

(i) Lending or advancing money to commercial clients on the security of merchandise or accounts receivable and then enforcing collection actions or procedures [*on such accounts*] **for the loans or advances**; or

(ii) Soliciting or collecting on accounts that have been purchased from commercial clients under an agreement whether or not the agreement:

(I) Allows recourse against the commercial client;

(II) Requires the commercial client to provide any form of guarantee of payment of the purchased account; or

(III) Requires the commercial client to establish or maintain a reserve account in any form.

(N) An individual employed by another person that operates as a collection agency *[if the person does not operate as a collection agency independent of that employment]* **unless the individual operates as an independent collection agency while a collection agency employs the individual.**

(O) A mortgage banker as defined in ORS 86A.100.

(P) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS 759.005, a people's utility district, as defined in ORS 261.010, and a cooperative corporation *[engaged]* **that engages** in furnishing electric or communication service to consumers.

(Q) A public body or an individual *[collecting or attempting]* **that collects or attempts** to collect claims owed, due or asserted to be owed or due to a public body, if the individual is an employee of the public body.

(R) A person that receives an assignment of debt in any form without an obligation to pay the assignor any of the proceeds resulting from a collection of all or a portion of the debt.

(S) A person for whom the Director of the Department of Consumer and Business Services determines by order or by rule that the protection of the public health, safety and welfare does not require registration with the Department **of Consumer and Business Services** as a collection agency.

(2) "Collection system" means a scheme intended or calculated to be used to collect claims sent, prepared or delivered by:

(a) A person *[who]* **that** in collecting or attempting to collect the person's own claim uses a fictitious name or any name other than the person's own **name** that indicates to the debtor that a third person is collecting or attempting to collect the claim; or

(b) A person **that engages** directly or indirectly *[engaged]* in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

(3) "Claim" means an obligation *[for the payment of]* **to pay** money or *[thing of]* value *[arising]* **if the obligation arises** out of an agreement or contract, express or implied.

(4) "Client" or "customer" means a person *[authorizing or employing]* **that authorizes or employs** a collection agency to collect a claim.

(5) "Debtor" means a person *[owing or]* **that owes or is** alleged to owe a claim.

[(6) "Debts incurred outside this state" means an action or proceeding that:]

[(a) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to perform services outside of this state or to pay for services to be performed outside of this state by the plaintiff;]

[(b) Arises out of services actually performed for the plaintiff by the defendant outside of this state or services actually performed for the defendant by the plaintiff outside of this state, if the performance outside of this state was authorized or ratified by the defendant;]

[(c) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to deliver or receive outside of this state or to send from outside of this state goods, documents of title or other things of value;]

[(d) Relates to goods, documents of title or other things of value sent from outside of this state by the defendant to the plaintiff or a third person on the plaintiff's order or direction;]

[(e) Relates to goods, documents of title or other things of value actually received outside of this state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where delivery to carrier occurred; or]

[(f) Where jurisdiction at the time the debt was incurred was outside of this state.]

(6) "Nationwide Multistate Licensing System" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assignees 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, as defined in ORS 86A.200, and other persons that provide nondepository financial services.

(7)(a) "Out-of-state collection agency" means a collection agency located outside of this state *[whose] the activities of which,* within this state, are limited to collecting *[debts incurred outside of this state from debtors]* **a debt that a debtor** located in this state **incurs outside this state.**

(b) As used in this subsection, "collecting *[debts]* **a debt"** means collecting **a debt on behalf of clients located outside this state** by means of interstate communications, including telephone, mail or facsimile transmission from the collection *[agency]* **agency's** location in another state *[on behalf of clients located outside of this state].*

(8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

(9) "Public body" *[means:]* **has the meaning given that term in ORS 174.109.**

[(a) The state and any branch, department, agency, board or commission of the state;]

[(b) A city, county, district or other political subdivision or municipal or public corporation or an instrumentality thereof; and]

[(c) An intergovernmental agency, department, council, joint board of control created under ORS 190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under the direction and control of any single member government.]

(10) [“Registered” or] “Registrant” means a person **that is** registered under ORS 697.005 to 697.095 or **that is** registered or licensed as a collection agency under the laws of another state.

(11) “Statement of account” means a report setting forth amounts billed, invoices, credits allowed or aged balance due.

SECTION 2. ORS 697.031 is amended to read:

697.031. (1)(a) The Director of the Department of Consumer and Business Services shall establish by rule a program for [registration of] **registering** persons [operating] **that operate** as collection agencies that [are required to] **must** register with the Department of Consumer and Business Services under ORS 697.015. [The program shall include a requirement that persons registering with the department file and] **The department shall require applicants for registration to file and registrants to** maintain with the department current information the department requires by rule.

(b) **The director, consistent with the requirements of ORS 697.005 to 697.095, may issue and renew registrations under this section by means of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform the practices, procedures and information that the department uses to issue or renew a registration to the requirements of the Nationwide Multistate Licensing System.**

(c) The department may require any information necessary to carry out [the] a program **under this subsection**, including but not limited to [the following]:

[(a)] (A) The name and address of the [person operating as a collection agency] **applicant or registrant.**

[(b)] *The name and address of the collection agency.*

[(c)] (B) Any assumed names or business names [used by the collection agency] **the applicant or registrant uses.**

[(d)] (C) Names of persons who perform the solicitation or collection of claims or who perform the solicitation of the right to repossess or the repossession of collateral security for the [collection agency] **applicant or registrant.**

[(e)] (D) Names of persons who are agents of the [collection agency] **applicant or registrant** for purposes of service of legal process.

(E) **Fingerprints for any of the applicant’s executive officers, and officers and managers with supervisory responsibility over the applicant’s activities, with which the director may conduct a criminal records check that the director may process through the Nationwide Multistate Licensing System.**

(2)(a) The director shall require any person who applies for registration as a collection agency, other than an out-of-state collection agency, to file with the director a bond or an irrevocable letter of credit in the sum of \$10,000 executed by the applicant as obligor, together with one or more corporate

sureties or financial institutions authorized to do business in this state. The bond or an irrevocable letter of credit [shall] **must** be executed to the State of Oregon and for the use of the state and of any person who may have a cause of action against the obligor of the bond or an irrevocable letter of credit under ORS 697.005 to 697.095. The bond or [an] irrevocable letter of credit [shall] **must** be conditioned [that] **to require** the [obligor will] **applicant to** faithfully conform to and abide by the provisions of ORS 697.005 to 697.095 and all rules [lawfully made by] the director **adopts** under ORS 697.005 to 697.095, and will pay to the state and to any such person any and all moneys that may become due or owing to the state or to such person from the obligor under and by virtue of the provisions of ORS 697.005 to 697.095.

[(b)] *If any person is aggrieved by the misconduct of a registrant required to file a bond or an irrevocable letter of credit under paragraph (a) of this subsection or by the registrant’s violation of any law or rule lawfully made by the director under ORS 697.005 to 697.095 and recovers judgment therefor, the person may, after the return unsatisfied either in whole or in part of any execution issued upon the judgment, maintain an action for the person’s own use upon the bond or irrevocable letter of credit of the registrant in any court having jurisdiction of the amount claimed.*

(b) **A person that obtains a judgment against a registrant for violating ORS 697.005 to 697.095 or a rule that the director adopts under ORS 697.005 to 697.095, or for other misconduct, may bring in a circuit court of this state an action against the bond or irrevocable letter of credit described in this subsection for any amount the person does not obtain by executing the judgment against the registrant.**

(c) The bond or an irrevocable letter of credit required by this subsection [shall] **must** be continuously maintained in the amount required by this subsection. The aggregate liability of the surety under the bond for claims against the bond [shall] **may** not exceed the penal sum of the bond no matter how many years the bond is in force. [No] **An** extension by continuation certificate, reinstatement, reissue or renewal of the bond [shall] **does not** increase the liability of the surety.

(3) The director may, [include any of the following] in the program for registration established under this section:

(a) [The director may] Require any filings with the department that the director determines [to be] **are** necessary to maintain current the information required for registration. Filings required under this subsection may include renewal of registration at reasonable intervals, filings within a reasonable time after changes in a collection agency or other filings the director determines [to be] **are** necessary. In requiring filings under this subsection, the director shall attempt to minimize burdens the filings might place on persons required to file.

(b) Except as provided in subsection (4) of this section, *[the director may]* establish and require persons filing with the department under this section to pay fees for any registration or filing made with the department. The director *[shall]* **may** not establish fees for more than an amount necessary to cover the administrative costs of the filing or registration.

(c) **Establish** the program *[may be established]* in any division of the department the director determines *[to be]* **is** best able to administer the program.

(d) *[The director may]* Issue, but *[may]* not require, certificates of registration or other indicia of registration that the director determines will *[be of assistance to persons operating as a collection agency in establishing that the persons are]* **assist a registrant to establish that the registrant is** registered with the department.

(4) An out-of-state collection agency is exempt from the registration fee under this section if the out-of-state collection agency is registered in another state and *[that]* **the other** state does not require payment of an initial fee by a person who collects debts in *[that]* **the other** state only by means of interstate communications from the person's location in another state.

[(5) If an out-of-state collection agency is not exempt from payment of a registration fee under this section, the registration fee for the out-of-state collection agency shall be not less than the fee charged by the state in which the out-of-state collection agency is located to a person who collects debts in that state only by means of interstate communications from the person's location in another state.]

[(6) If the director determines that the state where an out-of-state collection agency is located and registered, if required to be registered, exempts a collection agency located and registered in this state from registration requirements in that state, the director shall exempt out-of-state collection agencies located in that state from the registration requirements of ORS 697.005 to 697.095.]

(5) The director shall charge an out-of-state collection agency a fee to register in this state that is not less than the fee the other state would charge a collection agency that collects debts solely by means of interstate communications from a location outside the other state, unless the out-of-state collection agency is exempt from paying a registration fee under this section.

(6) If another state exempts a collection agency that is located and registered in this state from a requirement to register in the other state, the director shall exempt a collection agency that is located and, if necessary, registered in the other state from the requirement to register in this state under ORS 697.005 to 697.095.

(7) The department shall maintain current records of the information required for registration under this section.

SECTION 3. 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 application for registration or renewal must provide to the director on a form and in a format the director specifies:

(A) The applicant's name and address;

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

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

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

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

(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:

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

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

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

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

(H) Fingerprints for any of the applicant's executive officers, and officers and managers with supervisory responsibility over the applicant's activities, with which the director may conduct a criminal records check that the director may process through the Nationwide Multistate Licensing System; and

[(H)] **(I)** Other information the director may require concerning the financial responsibility, train-

ing, 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 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 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 4. ORS 717.220 is amended to read:

717.220. (1)(a) A person shall apply for a license under ORS 717.200 to 717.320, 717.900 and 717.905 in writing on a form and in a format 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 must contain:

(a) The applicant's exact name and principal address, any fictitious name, assumed business name or trade name the applicant uses to conduct 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 before the date of the application;

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

(d) A list of the applicant's proposed authorized delegates in the state, if any, at the time 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 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 the payment instruments will be payable; [and]

(i) A business plan[.]; and

(j) Fingerprints for each individual who has an ownership interest in the applicant and for each individual with supervisory responsibility over the applicant's activities, with which the director may conduct a criminal records check that the director may process through the Nationwide Multistate Licensing System.

(3) If the applicant is a corporation, the application must contain **all of these items**:

(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 histories for the five-year period before the date of the application[.];

(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 before the date of the application[.];

(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 with a principal place of business outside the United States, the applicant may submit similar documentation filed with the

parent corporation's foreign regulator to satisfy the requirements of this paragraph]; *and*].

(h) Copies of all filings, if any, 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 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 that will be in charge of the applicant's money transmission business;

(b) The history of material litigation and criminal convictions in the five-year period before the date of the application for each individual 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 5. ORS 725.010 is amended to read: 725.010. 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.

(4) "**Nationwide Multistate Licensing System**" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assignees 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, as defined in ORS 86A.200, and other persons that provide nondepository financial services.

SECTION 6. ORS 725.140 is amended to read:

725.140. (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 **applicant's** members [*thereof*] if the applicant is a partnership or association, and of the **applicant's** 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*] **remains** 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.

(3) **The director, consistent with the requirements of this chapter, may issue a license under this section 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 a license to the requirements of the Nationwide Multistate Licensing System.**

SECTION 7. ORS 725A.010 is amended to read:

725A.010. As used in ORS 725A.010 to 725A.092 and 725A.990:

(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 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 loan; or

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

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

(2) “Earnings” means salary, wages or other compensation for service.

(3)(a) “Lender” means an individual, corporation, association, firm, partnership, limited liability company or joint stock company that is engaged in the business of making loans.

(b) “Lender” does not include a financial institution or a trust company, as those terms are defined in ORS 706.008.

(4) “Licensee” means a person licensed under ORS 725A.024.

(5) “Nationwide Multistate Licensing System” means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assignees 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, as defined in ORS 86A.200, and other persons that provide nondepository financial services.

[(5)(a)] **(6)(a)** “Payday loan” means a loan of not more than \$50,000, other than a purchase money loan, in which:

(A) The primary purpose is personal, family or household use;

(B) The loan agreement specifies a term of not more than 60 days or specifies that a payday loan lender may demand repayment within 60 days; and

(C) The evidence of the loan is usually a check or electronic repayment agreement provided by or on behalf of the borrower.

(b) “Payday loan” does not include a loan with a term longer than 60 days in which a lender may accelerate repayment if the borrower defaults.

[(6)] **(7)** “Payday loan lender” means a lender that is engaged in the business of making loans, at least 10 percent of which are payday loans.

[(7)] **(8)** “Title loan” means:

(a) A loan of not more than \$50,000, other than a purchase money loan, in which:

(A) The title to a motor vehicle, recreational vehicle, boat or mobile home is security for the loan;

(B) The loan agreement specifies a term of not more than 60 days and requires the borrower to repay the entire amount in a single payment; and

(C) The lender is a title loan lender;

(b) A loan of a type substantially equivalent to a loan described in paragraph (a) of this subsection that the Director of the Department of Consumer and Business Services designates by rule or order as a title loan; or

(c) A sale-leaseback arrangement between a consumer and a purchaser for a motor vehicle, recreational vehicle, boat or mobile home in an amount that does not exceed \$50,000 [when] **if:**

(A) The title and all rights to the motor vehicle, recreational vehicle, boat or mobile home do not transfer from the consumer to the purchaser in a bona fide sale of the motor vehicle, recreational vehicle, boat or mobile home or the consumer retains equity in the motor vehicle, recreational vehicle, boat or mobile home after the consumer’s sale to the purchaser;

(B) The purchaser and the consumer agree within 60 days of the date on which the consumer sells the motor vehicle, recreational vehicle, boat or mobile home to the purchaser that the consumer has an option to or will repurchase the motor vehicle, recreational vehicle, boat or mobile home from the purchaser for a nominal price or a price other than the market value, determined at the time the lease expires, of the motor vehicle, recreational vehicle, boat or mobile home;

(C) During the term in which the consumer leases the motor vehicle, recreational vehicle, boat or mobile home, the purchaser or an agent of the purchaser holds a check, electronic repayment agreement or other evidence of the consumer’s agreement to repurchase the motor vehicle, recreational vehicle, boat or mobile home that was provided by or on behalf of the consumer; or

(D) The director by rule or order designates the sale-leaseback arrangement as a title loan.

[(8)] **(9)** “Title loan lender” means a lender that is engaged in the business of making loans, at least 10 percent of which are title loans.

SECTION 8. ORS 725A.024 is amended to read:

725A.024. (1)(a) Within 90 days after receiving an application under ORS 725A.022, the Director of the Department of Consumer and Business Services shall issue and deliver to the applicant a license to conduct business in accordance with ORS 725A.010 to 725A.092 [and 725A.990] at the location identified in the application if the director finds that:

[(a)] **(A)** The applicant and the applicant’s members, if the applicant is a partnership, limited liability company or other association, or the applicant’s officers and directors, if the applicant is a corporation, have the financial responsibility, experience, character and general fitness necessary to command the confidence of the community and to warrant the belief that the applicant will operate the business honestly, fairly and efficiently and in compliance

with the provisions of ORS 725A.010 to 725A.092 [and 725A.990].

[(b)] **(B)** The applicant has paid the fee required under ORS 725A.022.

[(c)] **(C)** Grounds do not exist under ORS 725A.026 to disapprove the application.

[(d)] **(D)** Other reasons or conditions that would warrant the director's refusal to issue a license do not exist.

(b) The director, consistent with the requirements of ORS 725A.010 to 725A.092, may issue a license under this section 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 a license to the requirements of the Nationwide Multistate Licensing System.

(2) An applicant may not become a licensee under this section unless the applicant is legally qualified to conduct business in this state.

(3)(a) The director shall disapprove an application and deny the applicant a license if the director finds that the applicant does not meet the standard set forth in subsection (1)(a)(A) of this section or has not paid the required application fee or that grounds, reasons or conditions described in subsection [(1)(b), (c) or (d)] **(1)(a)(B), (C) or (D)** of this section exist and warrant the director's disapproval and denial.

(b) If the director disapproves an application or denies the applicant a license under paragraph (a) of this subsection, the director shall notify the applicant immediately and shall state the director's reasons for the disapproval or denial.

(4)(a) The director by rule shall prescribe the form of the license the director issues under this section. At a minimum, the director shall require the license to display the licensee's full name and the address at which the licensee conducts business.

(b) A license the director issues under this section:

(A) Is not transferable or assignable; and

(B) Remains in full force and effect until:

(i) The director revokes or suspends the license in accordance with ORS 725A.034; or

(ii) The licensee surrenders the license in accordance with ORS 725A.038.

(5) The director may issue more than one license to the same licensee if the director finds that for each additional license the licensee meets the qualifications set forth in this section. Each license the director issues must be for a separate and distinct place in which the licensee conducts business in accordance with ORS 725A.010 to 725A.092 [and 725A.990].

SECTION 9. (1) The amendments to ORS 697.005, 697.031, 697.632, 717.220, 725.010, 725.140, 725A.010 and 725A.024 by sections 1 to 8 of this 2019 Act become operative on January 1, 2020.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the director by the amendments to ORS 697.005, 697.031, 697.632, 717.220, 725.010, 725.140, 725A.010 and 725A.024 by sections 1 to 8 of this 2019 Act.

SECTION 10. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Approved by the Governor May 13, 2019

Filed in the office of Secretary of State May 13, 2019

Effective date September 29, 2019