

Senate Bill 276

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Applies licensing requirements and other obligations on buy-here-pay-here lenders that are similar to requirements to which payday lenders and title lenders are subject.

Enables Director of Consumer and Business Services to enforce requirements with cease and desist order or by imposing civil penalty.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to certain consumer loans; creating new provisions; amending ORS 725A.010, 725A.012,
3 725A.020, 725A.022, 725A.024, 725A.026, 725A.032, 725A.050, 725A.052, 725A.054, 725A.056,
4 725A.058, 725A.060, 725A.064, 725A.080, 725A.082, 725A.084, 725A.092 and 725A.990; repealing
5 ORS 725A.036; and declaring an emergency.

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

7 **SECTION 1.** ORS 725A.010 is amended to read:

8 725A.010. As used in ORS 725A.010 to 725A.092 and 725A.990:

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

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

13 (B) Accepts and delivers to a lender all or most of the proceeds of a payment made in con-
14 nection with a loan; or

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

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

18 (2) **"Buy-here-pay-here lender" means a vehicle dealer that engages in the business of**
19 **making loans, at least 10 percent of which are buy-here-pay-here vehicle loans.**

20 (3) **"Buy-here-pay-here vehicle loan" means:**

21 (a) **A loan of not more than \$50,000 in which:**

22 (A) **The borrower uses the proceeds of the loan to purchase a motor vehicle, recreational**
23 **vehicle, boat or mobile home;**

24 (B) **The vehicle dealer originates the loan;**

25 (C) **The vehicle dealer that originates the loan is an independent dealer who sells used**
26 **motor vehicles and is not a dealer or franchisee, as defined in ORS 650.120;**

27 (D) **The loan is structured as a retail installment contract, as defined in ORS 83.510; and**

28 (E) **The vehicle dealer does not assign the loan to an unaffiliated third party within 45**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **days after the borrower purchases the motor vehicle; or**

2 **(b) A loan of not more than \$50,000 that the Director of the Department of Consumer**
 3 **and Business Services determines is substantially equivalent to a loan defined in paragraph**
 4 **(a) of this subsection and designates by rule or order as a buy-here-pay-here vehicle loan.**

5 [(2)] (4) "Earnings" means salary, wages or other compensation for service.

6 (5) **"Financial institution" has the meaning given that term in ORS 706.008.**

7 [(3)(a)] (6)(a) "Lender" means an individual, corporation, association, firm, partnership, limited
 8 liability company or joint stock company that [*is engaged*] **engages** in the business of making loans.

9 (b) "Lender" does not include a financial institution or a trust company, as those terms are de-
 10 fined in ORS 706.008.

11 [(4)] (7) "Licensee" means a person licensed under ORS 725A.024.

12 [(5)(a)] (8)(a) "Payday loan" means a loan of not more than \$50,000, other than a purchase
 13 money loan, in which:

14 (A) The primary purpose **for the proceeds of the loan** is personal, family or household use;

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

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

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

21 [(6)] (9) "Payday loan lender" means a lender that [*is engaged*] **engages** in the business of
 22 making loans, at least 10 percent of which are payday loans.

23 (10) **"Subject lender" means a payday loan lender, a title loan lender or a buy-here-pay-**
 24 **here lender.**

25 (11) **"Subject loan" means a payday loan, a title loan, a buy-here-pay-here vehicle loan**
 26 **or another loan that is otherwise subject to the provisions of ORS 725A.010 to 725A.092 and**
 27 **725A.990.**

28 [(7)] (12) "Title loan" means:

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

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

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

34 (C) The lender is a title loan lender;

35 (b) A loan of a type **that the director determines is** substantially equivalent to a loan de-
 36 scribed in paragraph (a) of this subsection [*that the Director of the Department of Consumer and*
 37 *Business Services*] **and** designates by rule or order as a title loan; or

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

40 (A) The title and all rights to the motor vehicle, recreational vehicle, boat or mobile home do
 41 not transfer from the consumer to the purchaser in a bona fide sale of the motor vehicle, recre-
 42 ational vehicle, boat or mobile home or the consumer retains equity in the motor vehicle, recre-
 43 ational vehicle, boat or mobile home after the consumer's sale to the purchaser;

44 (B) The purchaser and the consumer agree within 60 days of the date on which the consumer
 45 sells the motor vehicle, recreational vehicle, boat or mobile home to the purchaser that the con-

1 sumer has an option to or will repurchase the motor vehicle, recreational vehicle, boat or mobile
 2 home from the purchaser for a nominal price or a price other than the market value, determined
 3 at the time the lease expires, of the motor vehicle, recreational vehicle, boat or mobile home;

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

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

9 [(8)] (13) "Title loan lender" means a lender that [*is engaged*] **engages** in the business of making
 10 loans, at least 10 percent of which are title loans.

11 (14) "**Vehicle dealer**" means a person that is subject under ORS 822.005 to a requirement
 12 to obtain a certificate under ORS 822.020.

13 **SECTION 2.** ORS 725A.012 is amended to read:

14 725A.012. (1) ORS 725A.010 to 725A.092 and 725A.990 do not limit a person's rights, powers or
 15 privileges under a law of this state or of the United States that regulates the person's lending money
 16 or extending credit, provided that the person complies with the provisions of the law.

17 (2) Except as otherwise provided in subsection (3) of this section, ORS 725A.010 to 725A.092 and
 18 725A.990 do not affect a loan made or payable in another jurisdiction and lawful where made or
 19 payable.

20 (3)(a) A person is subject to ORS 725A.010 to 725A.092 and 725A.990 if in the person's capacity
 21 as a lender the person makes a [*payday loan or title*] **subject** loan to a consumer who resides in or
 22 maintains a domicile in this state and the consumer:

23 (A) Negotiates or agrees to the terms of the [*payday loan or title*] **subject** loan in person, by
 24 mail, by telephone or via the Internet while the consumer is physically present in this state;

25 (B) Enters into or executes a contract with the person for a [*payday loan or title*] **subject** loan
 26 in person, by mail, by telephone or via the Internet while the consumer is physically present in this
 27 state; or

28 (C) Makes a payment on the [*payday loan or title*] **subject** loan in this state.

29 (b) For purposes of this subsection, a consumer makes a payment on a [*payday loan or title*]
 30 **subject** loan in this state if:

31 (A) **The consumer makes a payment in person at, or by mail from, a location in this**
 32 **state;**

33 [(A)] (B) A person, for purposes of receiving or processing a payment on the [*payday loan or*
 34 *title*] **subject** loan, debits an account that the consumer holds in a branch of a financial institution
 35 that is located in this state; or

36 [(B)] (C) The consumer makes a payment on the [*payday loan or title*] **subject** loan with a ne-
 37 gotiable instrument that is drawn on a financial institution that is, or a branch of which is, located
 38 in this state.

39 **SECTION 3.** ORS 725A.020 is amended to read:

40 725A.020. (1)(a) Except as provided in ORS 82.010, 82.020 and 82.025, a person may not conduct
 41 business as a [*payday loan lender or a title loan*] **subject** lender unless the person obtains a license
 42 under ORS 725A.024.

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

1 (a) of this subsection.

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

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

9 (A) The terms and conditions of the loan substantially comply with the provisions of ORS
10 725A.010 to 725A.092 [*and 725A.990*];

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

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

16 (3) Subsection (1) of this section does not apply to a person that does not collect a fee or con-
17 sideration in connection with a [*payday loan or title*] **subject** loan or an application for a [*payday*
18 *loan or title*] **subject** loan and:

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

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

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

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

28 **SECTION 4.** ORS 725A.022 is amended to read:

29 725A.022. (1) An applicant for a license as a [*payday loan lender or a title loan*] **subject** lender
30 shall apply to the Director of the Department of Consumer and Business Services in writing on a
31 form and in a manner that the director prescribes by rule. An application for a license as a [*payday*
32 *loan lender or a title loan*] **subject** lender must:

33 (a) List the applicant's name, residence address and business address;

34 (b) Name and list the residence address and business address for the applicant's officers and
35 directors, if the applicant is a corporation, or for the applicant's members, if the applicant is a
36 partnership, limited liability company or other [*association*] **business entity**;

37 (c) Identify the county and city in which, and the street address, if any, at which the applicant
38 will conduct business; and

39 (d) Provide other information the director requires.

40 (2)(a) At the time the applicant submits an application under this section, the applicant shall
41 pay to the director a license fee in an amount the director sets under ORS 725A.028. Except as
42 provided in paragraph (b) of this subsection, the license fee is not refundable.

43 (b) If the director for cause does not issue a license or if the applicant withdraws the application
44 after the director has investigated the applicant, the director shall refund the license fee, less an
45 amount the director retains to pay the administrative and investigative costs the director incurred

1 in connection with the application.

2 **(3) The director may use, may require an applicant to use or may coordinate licensing**
 3 **under this section with the Nationwide Mortgage Licensing System and Registry.**

4 **SECTION 5.** ORS 725A.024 is amended to read:

5 725A.024. (1) Within 90 days after receiving [*an*] a **complete** application under ORS 725A.022,
 6 the Director of the Department of Consumer and Business Services shall issue and deliver to the
 7 applicant a license to conduct business in accordance with ORS 725A.010 to 725A.092 [*and*
 8 725A.990] at the location identified in the application if the director finds that:

9 (a) The applicant and the applicant’s members, if the applicant is a partnership, limited liability
 10 company or other [*association*] **business entity**, or the applicant’s officers and directors, if the ap-
 11 plicant is a corporation, have the financial responsibility, experience, character and general fitness
 12 necessary to command the confidence of the community and to warrant the belief that the applicant
 13 will operate the business honestly, fairly and efficiently and in compliance with the provisions of
 14 ORS 725A.010 to 725A.092 [*and 725A.990*].

15 (b) The applicant has paid the fee required under ORS 725A.022.

16 (c) Grounds do not exist under ORS 725A.026 to disapprove the application.

17 (d) Other reasons or conditions that would warrant the director’s refusal to issue a license do
 18 not exist.

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

21 (3)(a) The director shall disapprove an application and deny the applicant a license if the di-
 22 rector finds that the applicant does not meet the standard set forth in subsection (1)(a) of this sec-
 23 tion or has not paid the required application fee or that grounds, reasons or conditions described
 24 in subsection (1)(b), (c) or (d) of this section exist and warrant the director’s disapproval and denial.

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

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

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

32 (A) Is not transferable or assignable; and

33 (B) Remains in full force and effect until:

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

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

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

40 **SECTION 6.** ORS 725A.026 is amended to read:

41 725A.026. (1) The Director of the Department of Consumer and Business Services may disap-
 42 prove an application submitted under ORS 725A.022 and deny a license to the applicant if a person
 43 named in the application:

44 (a) Cannot meet financial obligations as the obligations mature, has liabilities that exceed assets
 45 or is in a financial condition that prevents the person from conducting business with safety to con-

1 sumers;

2 (b) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or profession;

3 (c) Failed to comply with or knowingly or repeatedly violated a provision of or a rule adopted
4 under the Bank Act, ORS chapter 723, 725 or 726 or ORS 725A.010 to 725A.092 and 725A.990;

5 (d) Was convicted of a crime, an *[essential]* element of which *[is]* **involved** fraud;

6 (e) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging
7 in or continuing a practice or conduct in connection with making *[payday loans, title loans or]*
8 **subject loans or other** consumer loans; or

9 (f) Is subject to an order in which:

10 (A) The director imposed a fine or other civil penalty on the person under the Bank Act, ORS
11 chapter 723, 725 or 726 or ORS 725A.010 to 725A.092 and 725A.990;

12 (B) The director removed the person from an office in an entity regulated under the Bank Act,
13 ORS chapter 723 or 725 or ORS 725A.010 to 725A.092 and 725A.990; or

14 (C) A state or federal agency with authority over *[banking institutions, savings associations,*
15 *credit unions or]* **financial institutions**, consumer finance companies[,] **or persons that are subject**
16 **to a licensing requirement under ORS 725A.020**, within a five-year period before the applicant
17 submitted an application under ORS 725A.022:

18 (i) Imposed a fine or other civil penalty on the person; or

19 (ii) Removed the person from an office in a *[state banking institution, a national bank, a state or*
20 *federal savings association, a state or federal credit union or]* **financial institution**, a consumer fi-
21 nance company **or a subject lender**.

22 (2) If the director denies a license to an applicant under this section, the director shall provide
23 the applicant with a reasonable opportunity for a hearing under ORS chapter 183.

24 **SECTION 7.** ORS 725A.032 is amended to read:

25 725A.032. (1) A licensee may not conduct a business that is subject to ORS 725A.010 to 725A.092
26 and 725A.990 except under the name and at the place of business named in the license. The licensee
27 at all times shall display the license conspicuously in the licensee's place of business.

28 (2) A licensee that changes the location at which the licensee conducts business as a *[payday*
29 *loan lender or title loan]* **subject** lender shall notify the Director of the Department of Consumer and
30 Business Services in writing and return the licensee's license. The director shall amend the license
31 to reflect the new location and return the amended license to the licensee.

32 (3) The director may allow the licensee to change the location in which the licensee conducts
33 business as a *[payday loan lender or title loan]* **subject** lender to a location outside the city named
34 in the original license only if the director determines that the new location will serve substantially
35 the same community that the location named in the original license served.

36 (4) If the director disapproves the proposed new location, the director shall immediately notify
37 the licensee of the disapproval and return the license unchanged to the licensee.

38 **SECTION 8.** ORS 725A.050 is amended to read:

39 725A.050. (1) The Director of the Department of Consumer and Business Services, to secure in-
40 formation the director requires and to ensure compliance with ORS 725A.010 to 725A.092 and
41 725A.990 and rules the director adopts under ORS 725A.010 to 725A.092 and 725A.990:

42 (a) May at any time investigate a licensee or a person required under ORS 725A.020 to obtain
43 a license.

44 (b) Shall examine a licensee not less than once every two years and may inspect and examine
45 the licensee at other times that the director determines are necessary.

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

2 (a) A licensee or a person required to obtain a license as a [*payday loan lender or title loan*]
3 **subject** lender is subject to inspection and shall give the director free access to the licensee's or
4 person's place of business, books, accounts, records, files, safes and vaults.

5 (b) The director may:

6 (A) Conduct an investigation or examination without prior notice to the person the director in-
7 vestigates or examines.

8 (B) Compel the attendance of a witness or other person from whom the director requires testi-
9 mony necessary to conduct an investigation or examination and examine the witness or person un-
10 der oath.

11 (C) Require a licensee or a person required to obtain a license as a [*payday loan lender or title*
12 *loan*] **subject** lender to produce books, accounts, records, files or other documents.

13 (c) A person may not knowingly give or cause to be given to the director a document or an oral
14 or written statement or report that is false in any material respect.

15 (3) If the director investigates or examines under this section a licensee or a person required
16 to obtain a license as a [*payday loan lender or title loan*] **subject** lender, the licensee or person shall
17 pay the director for the actual cost of the investigation or examination. The director may maintain
18 an action to recover the cost in a court of competent jurisdiction.

19 **SECTION 9.** ORS 725A.052 is amended to read:

20 725A.052. (1) The Director of the Department of Consumer and Business Services may specify
21 the form and content of the books and records the licensee must keep in accordance with the pro-
22 visions of ORS 725A.010 to 725A.092 [*and 725A.990*]. **Except as provided in subsection (2) of this**
23 **section**, the licensee shall preserve and make available the books and records for a period of at
24 least two years after the licensee makes the final entry in connection with a loan or account re-
25 corded in the book or record.

26 **(2) A buy-here-pay-here lender shall preserve and make available the buy-here-pay-here**
27 **lender's books and records for a period of at least five years after the buy-here-pay-here**
28 **lender makes the final entry in connection with a buy-here-pay-here vehicle loan or account**
29 **recorded in the books or records.**

30 **SECTION 10.** ORS 725A.054 is amended to read:

31 725A.054. (1) A director or officer of a licensee who has reason to believe that [*a defalcation*]
32 **an embezzlement** has occurred at an office of the licensee shall report the [*defalcation*]
33 **embezzlement** to the local, state or federal law enforcement officer with jurisdiction.

34 (2) A licensee, within five days after the discovery of [*a defalcation*] **an embezzlement** that oc-
35 curs at an office of the licensee, shall notify the Director of the Department of Consumer and
36 Business Services. If the director instructs the licensee to do so, the licensee shall cause an audit
37 to be made of the business of the licensed office where the [*defalcation*] **embezzlement** occurred, in
38 accordance with the director's instructions.

39 (3) The Director of the Department of Consumer and Business Services may report [*a*
40 *defalcation*] **an embezzlement** to a federal, state or local law enforcement agency with jurisdiction
41 if the licensee has not reported the [*defalcation*] **embezzlement** in accordance with subsection (1)
42 of this section.

43 **SECTION 11.** ORS 725A.056 is amended to read:

44 725A.056. A licensee shall:

45 (1) Deliver to the borrower at the time the licensee makes a **subject** loan a **written** statement

1 [in the English language] that shows in clear and distinct terms:

2 (a) The borrower's and the licensee's names and addresses.

3 (b) The amount of the **subject** loan, the date on which the licensee made the **subject** loan and
4 the maturity of or payment terms for the **subject** loan.

5 (c) The interest rate to which the licensee and borrower agreed and the consideration the
6 licensee will charge for the **subject** loan.

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

9 (2) Make available to the borrower upon request a plain and complete receipt for all payments
10 the borrower made on a **subject** loan at the time the licensee receives the payments. The receipt
11 must:

12 (a) Specify the amount, if any, that the licensee applied toward interest;

13 (b) Identify the date to which **the borrower paid** the interest [*is paid*];

14 (c) Specify the amount, if any, the licensee applied toward principal; and

15 (d) State the unpaid principal balance for the **subject** loan, if a principal balance remains.

16 (3) Permit a borrower at any time to pay any amount in advance on any **subject** loan.

17 (4) Mark the word "Paid" or "Renewed" indelibly on the note, or on other evidence of the debt
18 or obligation that bears the borrower's signature, whenever the borrower pays the **subject** loan in
19 full or renews the **subject** loan. If the borrower repays the **subject** loan in full, the licensee shall
20 also:

21 (a) Release a mortgage or security agreement that no longer secures the **subject** loan and re-
22 store any security or collateral, to the extent and in the manner required by law.

23 (b) Release a Uniform Commercial Code filing that no longer secures the **subject** loan, to the
24 extent and in the manner required under ORS 79.0513.

25 (c) Return any assignment the borrower gave.

26 (d) Return to the borrower the canceled note or other evidence of the **subject** loan or, alterna-
27 tively, acknowledge to the borrower in writing that the borrower has repaid the **subject** loan.

28 **(5) The licensee shall provide the written statement and the receipt described in sub-**
29 **sections (1) and (2) of this section in the language the licensee and borrower used to nego-**
30 **tiate or discuss the subject loan.**

31 **SECTION 12.** ORS 725A.058 is amended to read:

32 725A.058. A licensee or other person may not advertise, print, display, publish, distribute or
33 broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcast
34 in any manner whatsoever a statement or representation that is false, misleading or deceptive with
35 respect to a rate, term or condition for a [*payday loan or title*] **subject** loan.

36 **SECTION 13.** ORS 725A.060 is amended to read:

37 725A.060. (1) A licensee or a person required under ORS 725A.020 to obtain a license may not:

38 (a) Take from a consumer:

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

41 (B) A note or promise to pay that does not accurately disclose the actual amount or the term
42 of [*the*] a **subject** loan, the rate of interest charged and the schedule of payments for the **subject**
43 loan.

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

45 (D) An assignment of earnings as payment or as security for a **subject** loan. An assignment that

1 violates this subparagraph is unenforceable by the assignee and revocable by the assignor. For
2 purposes of this subparagraph, if the licensee or the person pays money to or on behalf of a con-
3 sumer in return for a right or claim to all or a portion of the consumer's unpaid earnings, the
4 licensee or the person has made a loan to the consumer that is secured by an assignment of
5 earnings. This subparagraph does not preclude an employee from authorizing deductions from the
6 employee's earnings if the authorization is revocable.

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

9 (c) Charge a consumer:

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

12 (B) More than one fee per **subject** loan transaction for dishonored checks or insufficient funds,
13 regardless of how many checks or debit agreements the licensee or the person obtains from the
14 consumer for the transaction. The fee may not exceed \$20.

15 (d) Collect a fee for a dishonored check under ORS 30.701 or seek or recover statutory damages
16 or attorney fees from a consumer for a dishonored check under ORS 30.701. The licensee or the
17 person may recover from the consumer a fee that an unaffiliated financial institution charges to the
18 licensee or the person for each dishonored check. For a dishonored check or insufficient funds, the
19 fees described in this subsection are the only remedy the licensee or the person may pursue and the
20 only fees the licensee or the person may charge.

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

24 **SECTION 14.** ORS 725A.064 is amended to read:

25 725A.064. A payday loan lender may not:

26 (1) Make or renew a payday loan at a rate of interest that exceeds 36 percent per annum, ex-
27 cluding a one-time origination fee for a new **payday** loan.

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

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

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

33 (5) Include in a payday loan contract:

34 (a) A hold-harmless clause;

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

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

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

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

44 (7) Make a new payday loan to a consumer within seven days of the date on which a previous
45 payday loan expires.

1 (8) Make more than one payday loan to a consumer or a member of the consumer's im-
 2 mediate family within 24 hours after making a previous payday loan, unless the total of all
 3 the origination fees for all payday loans the payday loan lender makes to the consumer or a
 4 member of the consumer's immediate family does not exceed \$30.

5 **SECTION 15.** Section 16 of this 2015 Act is added to and made a part of ORS 725A.010 to
 6 725A.092.

7 **SECTION 16.** (1) A buy-here-pay-here lender may not:

8 (a) Make a buy-here-pay-here vehicle loan at a rate of interest that exceeds the federal
 9 funds rate in effect at the time the borrower executes the buy-here-pay-here vehicle loan
 10 contract, plus an additional 17 percent, except that the interest rate for the buy-here-pay-
 11 here vehicle loan may not exceed 20 percent.

12 (b) Make a buy-here-pay-here vehicle loan to a consumer without forming a good faith
 13 belief that the consumer has the ability to repay the buy-here-pay-here vehicle loan. In
 14 forming a good faith belief under this paragraph, a buy-here-pay-here lender shall consider
 15 guidelines that the Director of the Department of Consumer and Business Services specifies
 16 by rule. A buy-here-pay-here lender presumptively has formed a good faith belief under this
 17 paragraph if the buy-here-pay-here lender complies with the guidelines that the director
 18 specifies.

19 (c) Include in a contract for a buy-here-pay-here vehicle loan:

20 (A) A hold-harmless clause;

21 (B) A confession of judgment or other waiver of the right to notice and the opportunity
 22 to be heard in an action;

23 (C) A provision in which the consumer agrees not to assert against the buy-here-pay-here
 24 lender or a holder in due course a claim or defense that arises out of the contract;

25 (D) An executory waiver or a limitation of exemption from attachment, execution or
 26 other process on real or personal property the consumer holds, owns or is due, unless the
 27 waiver or limitation applies only to property that is subject to a security interest the con-
 28 sumer executed in connection with the buy-here-pay-here vehicle loan; or

29 (E) A clause that permits interest to continue after the security for the buy-here-pay-
 30 here vehicle loan has been repossessed.

31 (d) Require or accept from a consumer a set of keys to a motor vehicle, recreational
 32 vehicle, boat or mobile home, the title to which secures the buy-here-pay-here vehicle loan.

33 (e) Make more than one buy-here-pay-here vehicle loan secured by one title, if the first
 34 buy-here-pay-here vehicle loan remains unpaid.

35 (f) Make a buy-here-pay-here vehicle loan without providing the consumer with a state-
 36 ment that reads, in English and in the language that the buy-here-pay-here lender and the
 37 borrower used to negotiate the buy-here-pay-here vehicle loan:

38 _____
 39 _____

40
 41 If you have a complaint concerning this vehicle dealer or your contract with this vehicle
 42 dealer for a loan, you should first try to resolve your complaint with the vehicle dealer. If
 43 you believe the vehicle dealer has used unfair or deceptive practices or methods in con-
 44 nection with a loan, you may contact Oregon's Department of Consumer and Business Ser-
 45 vices at _____.

1 **After you sign this contract, the vehicle dealer may not change the financing or payment**
 2 **terms unless you agree in writing to the change. You do not have to agree to any change.**
 3 **If the vehicle dealer makes a change to the contract without your written agreement, that**
 4 **is an unfair or deceptive practice and you should contact the Department of Consumer and**
 5 **Business Services.**

6
 7 **I have read and understood the contents of this notice.**

8 _____ (borrower's signature)
 9
 10 _____
 11
 12

13 **(g) Begin repossession of a motor vehicle, recreational vehicle, boat or motor home that**
 14 **is security for a buy-here-pay-here vehicle loan within 10 days after the consumer fails to**
 15 **make a scheduled payment for the buy-here-pay-here vehicle loan.**

16 **(h) Refuse to accept a payment from a borrower for a delinquency charge, penalty in-**
 17 **terest or fee related to a repossession if the borrower offers to pay the amount due in full.**

18 **(i) Charge a consumer more than 7.5 percent of the purchase price for the motor vehicle,**
 19 **recreational vehicle, boat or motor home that secures the buy-here-pay-here vehicle loan as**
 20 **a fee, penalty or other charge related to repossessing the motor vehicle, recreational vehicle,**
 21 **boat or motor home.**

22 **(2) The provisions of subsection (1) of this section are in addition to and not in lieu of**
 23 **the provisions of ORS 83.510 to 83.680.**

24 **SECTION 17.** ORS 725A.080 is amended to read:

25 725A.080. (1) A person [*who*] **that** claims to be aggrieved by a practice that violates a provision
 26 of ORS 725A.020, 725A.060, 725A.062 or 725A.064 **or section 16 of this 2015 Act** or a rule adopted
 27 under ORS 725A.092 that regulates a licensee or a person required under ORS 725A.020 to obtain
 28 a license may, not later than one year after the date of the alleged violation, file with the Director
 29 of the Department of Consumer and Business Services a verified written complaint. The complaint
 30 must state the name and address of the licensee or the person alleged to have committed the un-
 31 lawful practice and the particulars of the alleged unlawful practice. The director may require the
 32 complaint to set forth other information that the director considers pertinent.

33 (2) A title loan lender **or a buy-here-pay-here lender** shall state in every contract for a title
 34 loan **or a buy-here-pay-here vehicle loan**, in a type size equal to at least 12-point type, that the
 35 consumer or the consumer's [*attorney*] **representative** may file a complaint with the director as
 36 provided in this section.

37 (3) After [*receiving*] **the director receives** a complaint under this section[,] **or conducts an**
 38 **examination, or after a state agency refers a complaint**, the director may, under ORS 725A.050,
 39 investigate the unlawful practice and the licensee or the person alleged in the complaint to have
 40 committed the unlawful practice.

41 **SECTION 18.** ORS 725A.082 is amended to read:

42 725A.082. (1) If the Director of the Department of Consumer and Business Services has reason-
 43 able cause to believe that a person violated, is violating or is about to violate a provision of ORS
 44 725A.010 to 725A.092 [*and 725A.990*] or a rule the director adopted or an order the director issued
 45 under ORS 725A.010 to 725A.092 [*and 725A.990*], the director may order the person to cease and

1 desist from the violation. **As part of the cease and desist order, the director may require**
 2 **restitution to an aggrieved consumer and disgorgement of any interest or fees the person**
 3 **obtained in violation of ORS 725A.010 to 725A.092.**

4 (2) The director, in an order the director issues under subsection (1) of this section, shall:

5 (a) State the facts constituting the violation;

6 (b) Require the person named in the order to cease and desist from the violation or to meet
 7 specific conditions;

8 (c) State the effective date of the order; and

9 (d) Advise the person named in the order that the person has a right to a contested case hearing
 10 under ORS chapter 183. **The order must state that to have a right to a contested case hearing,**
 11 **the person must notify the director in writing within 20 days after the date of the order that**
 12 **the person demands a contested case hearing.**

13 (3) An order under this section is effective 30 days after the date of the order, unless the person
 14 named in the order requests a hearing on the order, and remains in effect until the director or a
 15 court withdraws the order.

16 (4) If an individual named in an order under this section fails to comply with the order, in ad-
 17 dition to imposing a penalty under ORS 725A.990, the director may issue an order to remove or
 18 suspend the individual from the individual's office or position.

19 **SECTION 19.** ORS 725A.084 is amended to read:

20 725A.084. *[(1) If]* The Director of the Department of Consumer and Business Services **may order**
 21 **a licensee to suspend or remove an officer or director of the licensee from the director's or**
 22 **officer's office or position for any of the reasons set forth in ORS 725A.026 or if the director**
 23 **finds that [an] the officer or director [of a licensee] is dishonest, reckless or incompetent or refuses**
 24 **to comply with the law, with a rule the Department of Consumer and Business Services adopted or**
 25 **with a written requirement or instruction the department imposed or issued[,** *the Director of the*
 26 *Department of Consumer and Business Services may order the licensee to suspend the licensee's officer*
 27 *or director from the officer or director's office or position].*

28 *[(2) The Director of the Department of Consumer and Business Services, for any of the reasons set*
 29 *forth in ORS 725A.026, may order a licensee to remove an officer or director of the licensee from*
 30 *office.]*

31 **SECTION 20.** ORS 725A.092 is amended to read:

32 725A.092. (1) The Director of the Department of Consumer and Business Services, in accordance
 33 with ORS chapter 183, may adopt rules for the purposes of protecting borrowers and consumers,
 34 providing clarity to licensees and otherwise carrying out and enforcing the provisions of ORS
 35 725A.010 to 725A.092 and 725A.990. The rules may include, but are not limited to, provisions that
 36 establish loan forms, terms, charges and fees.

37 (2) Before the director adopts a rule under subsection (1) of this section, the director shall
 38 submit a copy of the rule to each licensee **either by mail or electronically.**

39 (3) The director may institute an action or proceeding and make a specific ruling, demand or
 40 finding that the director considers necessary to carry out or enforce a provision of ORS 725A.010
 41 to 725A.092 and 725A.990 or a rule the director adopted, an order the director issued or an action
 42 the director took to carry out or enforce the provisions of ORS 725A.010 to 725A.092 and 725A.990.

43 **SECTION 21.** ORS 725A.990 is amended to read:

44 725A.990. (1) The Director of the Department of Consumer and Business Services may assess a
 45 civil penalty of not more than \$2,500 against a person who violates a provision of ORS 725A.010 to

1 725A.092 [and 725A.990] or a rule the director adopted or final order the director issued under ORS
 2 725A.010 to 725A.092 and 725A.990. The director, in addition to imposing a penalty under this sub-
 3 section for the violation, may revoke the licensee's license.

4 (2) **The director may impose** a civil penalty under this section [*must be imposed*] **only** as pro-
 5 vided in ORS 183.745.

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

8 (4) In addition to any other penalty provided by law, the director may assess against a person
 9 who makes a [*payday loan or title*] **subject** loan in violation of ORS 725A.020 a civil penalty in an
 10 amount equal to the interest the person receives that exceeds nine percent per annum. The director
 11 shall pay all moneys collected under this subsection to the Department of State Lands for the benefit
 12 of the Common School Fund.

13 **SECTION 22. ORS 725A.036 is repealed.**

14 **SECTION 23. Section 16 of this 2015 Act, the amendments to ORS 725A.010, 725A.012,**
 15 **725A.020, 725A.022, 725A.024, 725A.026, 725A.032, 725A.050, 725A.052, 725A.054, 725A.056,**
 16 **725A.058, 725A.060, 725A.064, 725A.080, 725A.082, 725A.084, 725A.092 and 725A.990 by sections**
 17 **1 to 14 and 17 to 21 of this 2015 Act and the repeal of ORS 725A.036 by section 22 of this 2015**
 18 **Act apply to buy-here-pay-here vehicle loan transactions that occur on and after the opera-**
 19 **tive date specified in section 24 of this 2015 Act.**

20 **SECTION 24. (1) Section 16 of this 2015 Act, the amendments to ORS 725A.010, 725A.012,**
 21 **725A.020, 725A.022, 725A.024, 725A.026, 725A.032, 725A.050, 725A.052, 725A.054, 725A.056,**
 22 **725A.058, 725A.060, 725A.064, 725A.080, 725A.082, 725A.084, 725A.092 and 725A.990 by sections**
 23 **1 to 14 and 17 to 21 of this 2015 Act and the repeal of ORS 725A.036 by section 22 of this 2015**
 24 **Act become operative on January 1, 2016.**

25 (2) **The Director of the Department of Consumer and Business Services may take any**
 26 **action before the operative date specified in subsection (1) of this section that is necessary**
 27 **to enable the director to exercise, on and after the operative date specified in subsection (1)**
 28 **of this section, all of the duties, functions and powers conferred on the director by section**
 29 **16 of this 2015 Act and the amendments to ORS 725A.010, 725A.012, 725A.020, 725A.022,**
 30 **725A.024, 725A.026, 725A.032, 725A.050, 725A.052, 725A.054, 725A.056, 725A.058, 725A.060,**
 31 **725A.064, 725A.080, 725A.082, 725A.084, 725A.092 and 725A.990 by sections 1 to 14 and 17 to 21**
 32 **of this 2015 Act.**

33 **SECTION 25. This 2015 Act being necessary for the immediate preservation of the public**
 34 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 35 **on its passage.**

36