

## Chapter 727

### Motor Vehicle Finance

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### CROSS REFERENCES

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Small loans, Ch. 725

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Administrative orders of state agencies, Ch. 183

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**727.010 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Licensee" means every person, partnership, association or corporation licensed under this chapter.

(2) "Licensing official" means the Superintendent of Banks.

**727.020 Short title.** This chapter shall be known as the Motor Vehicle Finance Act.

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

**727.040 License required for making motor vehicle loans.** No person shall engage or continue in the business of making loans on motor vehicles, including those required by law to be registered with the Secretary of State, for which there is charged, contracted for or directly or indirectly received any sum or value at a rate in excess of 10 percent per annum, except as authorized by this chapter and without first procuring a license in accordance with the provisions of this chapter. The making of a pretended purchase of a motor vehicle, including those required by law to be registered with the Secretary of State, from any person other than a dealer, manufacturer or retailer of such motor vehicle, which permits the owner to retain possession thereof and by such device or pretense charge or otherwise seek to obtain a greater compensation than provided for in this chapter shall be deemed to be a loan on such motor vehicle in the meaning of this chapter.

**727.050 Prohibited transactions.** No licensee shall take:

(1) Any lien upon real estate as security for any loan under this chapter except such lien as is created by law upon the recording of a judgment.

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

(3) Any note, promise to pay or pledge of collateral which does not disclose accurately the actual amount of the loan, the time for which it is made, the rate of interest

charged or the schedule of payments agreed upon, or any instrument in which blanks are left to be filled in after execution.

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

**727.070 to 727.100** [Reserved for expansion]

**727.110 Residence qualifications of licensee.** No license shall be granted to any person, partnership, association or corporation unless the person and all members of any such partnership or association are bona fide residents of this state and unless such corporation is an Oregon corporation in good standing or a foreign corporation legally qualified to do business in this state.

**727.120 Application for license; notice of filing; annual fee.** (1) Application for the license shall be in writing in the form prescribed by the licensing official and shall contain the name and both the residence and business addresses of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof. The application shall also state the county and city or town with street and number, if any, where the business is to be conducted and any other information which the licensing official may require.

(2) Notice of the filing of the application shall be posted in the office of the licensing official for 30 days and no license shall be issued before the expiration of the 30-day period.

(3) The applicant at the time of making application shall pay to the licensing official for the State Banking Fund the sum of \$100 as an annual license fee for a period terminating on the last day of the current calendar year. However, if the application is filed after June 30 in any year the license fee shall be \$50. In case the license is not issued for cause or if the application is withdrawn after the applicant has been investigated by the licensing official there shall be refunded to the applicant all the license fee except \$50, which shall be retained by the licensing

official. Otherwise no part of any license fee shall be refunded. In addition to the annual license fee every licensee shall pay the licensing official the reasonable cost of each examination or the sum of \$10, whichever is larger, as provided for in ORS 727.310.

**727.130 Applicants to furnish bond; actions on bond.** (1) Accompanying the application the applicant shall also file with the licensing official a bond in the sum of \$1,000 executed by the applicant as obligor, together with a surety company authorized to do business in this state as surety. The bond shall 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 under this chapter. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the licensing official under this chapter, and will pay to the state and to any such person all moneys that may become due or owing to the state or to such person from the obligor under and by virtue of this chapter. Before any such bond is finally accepted by the licensing official it shall be approved by the Attorney General.

(2) If any person is aggrieved by the misconduct of a licensee or by his violation of any law and recovers judgment therefor, the person may, after the return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action for his own use upon the bond of the licensee in any court having jurisdiction of the amount claimed. The licensing official shall furnish to anyone applying therefor a certified copy of any such bond filed with him upon the payment of a fee of \$5 and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by each licensee whose name appears thereon.

**727.140 Issuance of license; conditions.**

(1) Conditioned upon the applicant's compliance with this chapter, the payment of the license fee, the filing of a bond and the approval thereof by the Attorney General, the licensing official within 10 days after the expiration of the 30-day period specified in ORS 727.120 shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application, which license shall remain in effect until it is surrendered by the licensee or revoked or suspended as provided in ORS

727.230 and 727.250, provided the licensing official finds upon investigation:

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

(b) That there is no other reason or condition which in his judgment would warrant the refusal to grant a license.

(2) The findings mentioned in paragraphs (a) and (b) of subsection (1) of this section are conditions precedent to issuance of a license under this chapter.

**727.150 Disapproval of application; appeal.** If the application is denied, the licensing official shall endorse thereon with the date the word "Disapproved" and immediately shall advise the applicant by registered mail of the reason therefor. The applicant shall have the right of appeal from the decision to the circuit court in the county of the city or town mentioned in the application, but the appeal must be taken within 30 days after date of mailing the notice of disapproval.

**727.160 Form of license; posting; transferability.** The license shall be in a form prescribed by the licensing official. It shall state the address at which the business is to be conducted, the full name of the licensee and the date of expiration of the license. The license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

**727.170 License number.** The licensing official shall assign a state license number to each licensee at the time the original license is issued. The number shall appear on the letterheads and in all advertising matters distributed, published or displayed by the licensee under the license and on the outer door or window sign, or both, at the place of business of the licensee. The license number shall remain the same as long as the licensee is permitted to use or operate under such license. The license number shall not at any time thereafter be assigned to any other licensee. No person other than the licensee to whom the state license number has been assigned by the licensing official shall use or display any such number.

**727.180 Annual fee and bond.** Every licensee, on or before December 15 of each year, shall pay to the licensing official the annual license fee of \$100 for the next succeeding calendar year and shall at the same time file with the licensing official a bond in the same amount and of the same character as required by ORS 727.130.

**727.190 Annual report of licensee; recapitulation of reports.** Every licensee on or before February 1 of each year shall file a report with the licensing official giving such relevant information as the licensing official reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state. The report shall be made under oath and shall be in the form prescribed by the licensing official, who shall make and publish annually a recapitulation of such reports.

**727.200 False entries and statements prohibited.** No licensee or any agent, member, officer or employee thereof or any other person shall make or cause to be made any false entry or statement in any record or in any report filed with the licensing official calculated to deceive any person.

**727.210 Additional licenses to same applicant.** No licensee shall transact any business within the scope of this chapter except under the name and at the place of business named in his license. The licensing official may issue more than one license to the same licensee upon his compliance with all the provisions of this chapter governing an original issuance of a license for each such additional license. However, the additional license shall be for a separate and distinct place of business for the making and completing of loans as provided in this chapter.

**727.220 Change of place of business.** Whenever a licensee changes his place of business to another location within the same city or town, he shall at once give written notice thereof to the licensing official and shall surrender his license for cancelation, together with the payment of a fee of \$5 for a new license. Thereupon a new license shall be issued by the licensing official for the new location for the unexpired term of the original license. No change in the place of business of a licensee to a location outside of the city or town named in the original license shall be permitted under the same license.

**727.230 Revocation and suspension of licenses.** (1) The licensing official may revoke any license under this chapter upon 10 days' notice to the licensee stating the contemplated action and in general the grounds therefor and upon reasonable opportunity for a hearing in connection therewith, if he finds that:

(a) The licensee failed to pay the annual license fee or to maintain in effect the required bond or to comply with any demand, ruling or requirement of the licensing official lawfully made pursuant to and within the authority of this chapter or to comply with the provisions of law to keep the corporation in good standing if such licensee is a corporation;

(b) The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the licensing official under and within the authority of this chapter; or

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the licensing official in refusing originally to issue the license.

(2) If the licensing official has reasonable cause to believe that there has been a material violation by the licensee of any of the provisions of this chapter, he may, after at least five days' written notice, suspend the license of such licensee for the necessary period required to make a prompt investigation, but such period of suspension shall not exceed 30 days.

(3) The licensing official may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; or, if he finds that such grounds for revocation or suspension are of general application to all offices or to more than one office operated by such licensee, he may revoke or suspend all the licenses or such number of licenses issued to the licensee as the grounds for revocation or suspension apply to, as the case may be.

**727.240 Notice of revocation; appeal.** Whenever the licensing official revokes a license pursuant to ORS 727.230, he shall notify the licensee to that effect by registered mail. The notice shall state the reasons or grounds supporting the revocation of the license. The revocation shall be effective as of the date of mailing the notice and the licensee shall thereupon surrender his license to the licensing official. The licensee shall

have the right of appeal from the decision to the circuit court in and for the county in which his place of business is located, but the appeal must be taken within 30 days from the date of mailing.

**727.250 Surrender of license.** Any licensee may surrender any license issued to him by delivering written notice to the licensing official that he thereby surrenders such license. The surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender.

**727.260 Expiration of license; effect of expiration, revocation or surrender.** Every license issued under this chapter shall remain in effect until it has expired or has been surrendered or revoked in accordance with this chapter. The expiration, revocation or surrender of any such license shall not impair or affect the rights or obligations of any pre-existing lawful contract between the licensee and any borrower.

**727.270 Reinstatement of license; fee.** The licensing official may reinstate any revoked license upon the licensee's compliance with the provisions of law or any demand, ruling or requirement lawfully made by the licensing official, pursuant to and within the authority of this chapter. For such reinstatement of license the licensee shall pay a fee of \$25.

**727.280 to 727.300** [Reserved for expansion]

**727.310 Investigation and examinations by licensing official.** (1) For the purpose of discovering violations of this chapter or securing information lawfully required by him under this chapter, the licensing official may at any time, either personally or by a duly appointed examiner or deputy, investigate the loans and business and examine the books, accounts, records and files used therein of every licensee and of every person who he has reason to believe is making loans at a rate of interest in excess of 10 percent per annum, whether such person acts or claims to act as principal or agent or under or without the authority of this chapter. For such purpose the licensing official or his duly appointed examiner or deputy shall have free access to the place of business, books, accounts, safes and vaults of all such persons.

(2) The licensing official or his duly appointed examiner or deputy may examine

under oath all persons whose testimony he may require relative to such loans or business. The licensing official may cause an examination to be made by a duly appointed examiner or deputy of the loans and business, books, accounts, records and files of each licensee under this chapter without previous notice to the licensee and at such intervals as the licensing official may deem advisable or expedient and not less often than once a year. The reasonable cost of each examination, or the sum of \$10, whichever is larger, shall be paid to the licensing official for the State Banking Fund by every licensee so examined. The licensing official may maintain an action for the recovery of such costs in any court of competent jurisdiction.

**727.320 Rules and regulations.** The licensing official may make such general rules and regulations and such specific rulings, demands and findings as may be necessary for the proper conduct of the business and the enforcement of this chapter, in addition and not inconsistent with this chapter. All general rules and regulations shall be filed by the licensing official with the State Banking Department in an indexed, permanent book, with the effective date thereof suitably indicated, and the book shall be a public record. A copy of every general rule and regulation shall be mailed by the licensing official to all licensees at their respective licensed places of business at least 10 days before the effective date thereof.

**727.330 Books and records.** Subject to the provisions of this chapter the licensing official may prescribe the form of the books and records to be kept by the licensee. All such books and records shall be preserved and available for at least two years after making the final entry on any loan recorded therein.

**727.340 Limitations on interest for loans.** No licensee shall charge, contract for or receive any interest or consideration at a greater rate than 10 percent per annum on loans made to any one person in the aggregate sum of more than \$500, the security for which consists of a chattel mortgage or a title retaining contract upon a motor vehicle, including such as are required by law to be registered with the Secretary of State. On any loan or loans made to any one person in the aggregate sum of \$500 or less, the security for which consists of a chattel mortgage or a title retaining contract upon a motor ve-

hicle, including such as are required by law to be registered with the Secretary of State, no licensee shall charge, contract for or receive any interest or consideration at a greater rate than three percent per month on any loan not in excess of \$300 and two percent per month on any loan in excess of \$300 and not in excess of \$500. Interest shall not be payable, deducted or received in advance or compounded and shall be computed exactly on unpaid balances.

**727.350 Certain additional charges permitted.** No further or other charges or amounts whatsoever in addition to the interest provided for in ORS 727.340 shall be charged, contracted for or received, directly or indirectly, except the following:

(1) Fees actually and necessarily paid out by the licensee to any public officer for filing or recording or releasing in any public office, any instrument securing the loan or in connection therewith, which fees may be collected when the loan is made or at any time thereafter. However, if such fees have not been so paid out within 15 days after charged or received, the licensee shall lose all right thereto and shall return them to the borrower or apply them toward the payment of the borrower's debt to the licensee.

(2) Insurance premiums actually paid out by the licensee to any insurance company or agent duly licensed and authorized to do business in this state for insurance written in connection with any loan for the protection and benefit of the borrower.

**727.360 Repayment of loans by instalments.** The loan contract may provide for payment of the aggregate amount contracted to be paid in substantially equal periodical instalments. However, a uniform schedule of monthly payments may be agreed upon between the licensee and the borrower in the following manner:

(1) Divide the amount of the loan by the number of months for which the loan is made to determine the monthly principal payment agreed upon.

(2) Compute the interest agreed upon, which in no event shall be greater than provided for in ORS 727.340, on a basis of unpaid balances determined under subsection (1) of this section and add the total amount of interest arrived at to the amount of the loans.

(3) Divide the total amount of principal and interest determined under subsection (2)

of this section by the number of months for which the loan is made; and the monthly payments on the loan shall be the amount so determined.

**727.370 Splitting loans prohibited.** No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest or other charge or charges than would otherwise be permitted by ORS 727.340.

**727.380 Effect of conviction of exacting excessive interest, fees or charges.** If any licensee or agent, member, officer or employee thereof or any other person is convicted by a court of competent jurisdiction of having charged, contracted for or received any interest, fees or other charges in excess of those permitted by this chapter, then any such loan shall be void. The licensee shall forfeit the right to collect or receive any principal, interest or charges whatsoever on such loan. He shall, upon order of the court, return to the borrower free from the licensee's lien any collateral security which the borrower may have deposited with the licensee and release any lien taken to secure such loan and shall pay into the county school fund of the county wherein the loan was made all payments of principal and interest and all fees or other charges previously collected under such loan. [Amended by 1953 c.90 §1]

**727.390 Duties of district attorney in relation to Motor Vehicle Finance Act.** The district attorney of the judicial district in which the place of business of the licensee is located, upon receipt of written advice from the licensing official relative to any violations of this chapter which are subject to penalties prescribed in ORS 727.990, shall immediately investigate such violation and institute proceedings to enforce the provisions of the law. The cost of all such investigations and proceedings shall be paid by the county in the same manner as in other criminal procedures. The district attorney shall also represent the licensing official in all cases where an appeal is taken under this chapter.

**727.990 Penalties.** (1) Violation, or participation in the violation, of ORS 727.040, 727.050, 727.060, 727.200 to 727.220 or ORS

727.340 to 727.370 by any licensee or any agent, member, officer or employe thereof or any other person is punishable, upon conviction, by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than one month nor more than one year, or both.

(2) Upon conviction under subsection (1) of this section, no license shall be granted to such person, nor to the husband or wife of such person, nor to any partnership or association of which he is an agent or member until two years after the date of such conviction.

**CHAPTERS 728 TO 730**

**[Reserved for expansion]**