Chapter 725

1963 REPLACEMENT PART

Small Loans

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CROSS REFERENCES

Accident and health insurance written in connection with instalment loan, 83.580, 741.410 to 741.465
Administrative procedures and rules of state agencies, Ch. 183
Credit life insurance, 83.580, 739.605 to 739.620
Debt consolidating, 697.615
Pawnbrokers, Ch. 726
Retail instalment contracts, Ch. 83
Taxation, corporate excise, 317.060
725.340
Usurious interest, 82.010

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

(1) "Licensee" means every person licensed under this chapter.

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

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

725.025 Declaration of legislative intent. It is the intent of the legislature in enacting chapter 71, Oregon Laws 1955, to consolidate the Small Loan Act, ORS chapter 725 [1953 edition], and the Motor Vehicle Finance Act, ORS chapter 727 [1953 edition], to provide uniformity in the business of making loans or advancements in the amount or value of $1,500 or less and to eliminate the present duplication of licenses, records, reports and supervision.
[1955 c.71 §14]

725.026 Existing contracts not affected. Nothing contained in chapter 71, Oregon Laws 1955, shall be construed to impair or affect the obligation of any contract lawfully made prior to August 3, 1955, including any lawful contract made by a licensee under ORS chapter 725 [1953 edition] or ORS chapter 727 [1953 edition].
[1955 c.71 §16]

725.027 Licenses of persons licensed under ORS chapter 725 or 727 on August 3, 1955, continued in force. (1) Any person licensed under and subject to ORS chapter 725 on August 3, 1955, is deemed to be licensed under and subject to ORS chapter 725 during the period from August 3, 1955, to and including December 31, 1955. Any person not licensed under and subject to ORS chapter 725, but who holds a license under ORS chapter 727 on August 3, 1955, and who held such license on January 1, 1955, is deemed to be licensed under and subject to ORS chapter 725 during the period from August 3, 1955, to and including December 31, 1955. Only one license shall be issued for each licensed office, irrespective of whether such office is licensed under both ORS chapter 725 and ORS chapter 727 and irrespective of whether the two licenses are held by different persons. The licensing official shall charge no further fees for the continuance of a license as provided in this subsection. The licensing official shall investigate the facts and satisfy himself that this section entitles a person to a continuance of a license.

(2) Any license in effect on December 31, 1955, under subsection (1) of this section, shall be continued in force as long as the standards are maintained under ORS chapter 725, by payment of the required annual license fee, and such license shall be evidenced by a new certificate which shall be a continuing license.
[1955 c.71 §15]

725.030 License required before making certain loans; maximum loan amount. (1) No person shall engage or continue in the business of making loans in amounts of $1,500 or less, secured or unsecured, 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 this chapter.

(2) The making of one loan in the amount of $1,500 or less, by any person, secured or unsecured, on 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, shall constitute engaging in the business, and shall be deemed a violation of this chapter unless such person first procures a license in accordance with this chapter.

(3) The aggregate amount which may be loaned at a rate in excess of 10 percent per annum to any one person by a licensee under this chapter shall not exceed $1,500.
[Amended by 1955 c.71 §2]

725.040 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.

725.050 Prohibited transactions. No licensee shall take:

(1) Any lien upon real estate as security for any loan for which a greater rate of interest or consideration than 10 percent per annum is charged, contracted for or received, except such lien as is created by law upon the recording of a judgment.

(2) Any power of attorney from any borrower, except a power of attorney to effectuate the transfer of the ownership of

any motor vehicle at the time of making a loan on a motor vehicle.

(3) Any note, promise to pay or pledge of collateral which does not accurately disclose the actual amount of the loan, the time for which it is made, the rate of interest charged or the schedule of payments agreed upon, or any instrument in which blanks are left to be filled in after execution.

[Amended by 1955 c.71 §3]

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

725.070 to 725.100 [Reserved for expansion]

725.110 Residence qualifications of licensees. No license shall be granted to any person, partnership, association or corporation unless that 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.

725.120 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 contain 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 such 30-day period. However, the licensing official in his discretion may waive the posting of notice and issue a license without regard to such 30-day period if the application is for a license at a location where a license has been surrendered because of:

(a) The transfer of the business of the licensee, and the applicant is the transferee; or

(b) The death of the licensee, and the applicant is a representative or heir of the licensee; or

(c) The change of the name under which the licensee does business, and the applicant is the same licensee.

(3) Applicants at the time of making application shall pay to the licensing official for the State Banking Fund $150 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 $75. 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.

[Amended by 1955 c.71 §4]

725.130 [Repealed by 1955 c.71 §17]

725.140 Issuance of license; conditions. (1) Conditioned upon the applicant's compliance with this chapter and the payment of the license fee, the licensing official within 90 days after the date of filing the application referred to 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, which license shall be a continuing license and need not be issued annually, to remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in ORS 725.230 and 725.250; 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 allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and in the absence of any 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.
[Amended by 1955 c.71 §5; 1963 c.167 §1]

725.150 Disapproval of applications; appeal. If the application is denied, the licensing official shall indorse thereon with the date the word "Disapproved" and shall immediately 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 for the county of the city or town mentioned in the application. The appeal must be taken within 30 days after date of mailing of the notice of disapproval.

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

725.170 [Repealed by 1955 c.71 §17]

725.180 Annual fee. Every licensee, on or before December 15 of each year, shall pay to the licensing official the annual license fee of $150 for the next succeeding calendar year.
[Amended by 1955 c.71 §7]

725.190 Annual report of licensee; recapitulation by licensing official. Every licensee between February 1 and March 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.
[Amended by 1955 c.71 §8]

725.200 False entries and statements prohibited. No licensee or any agent, member, officer or employe 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.

725.210 Additional licenses to same applicant. No licensee shall transact any business within the scope of this chapter except under the name and at the place of business named in 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, each additional license shall be for a separate and distinct place of business for making and completing loans as provided in this chapter.

725.220 Change of place of business. (1) Whenever a licensee wishes to change his place of business to another location within the same city or town, he shall submit written notice thereof, together with his license, to the licensing official. If the licensing official, upon investigation, finds that allowing the licensee to engage in business at the proposed new location will promote the convenience and advantage of the community in which the proposed new location of the business is situated, he shall amend the license of the licensee to reflect the new location, and shall return the amended license to the licensee. If the licensing official disapproves the proposed new location of the business, he shall indorse on the notice of the licensee the word "Disapproved," immediately advise the licensee by registered mail of such disapproval and return the license unchanged to the licensee. The licensee may appeal from such disapproval in the manner provided in ORS 725.150.

(2) No change in the place of business of a licensee to a location outside the city or town named in the original license shall be permitted under the same license.
[Amended by 1955 c.71 §9]

725.230 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 has failed to pay the annual license fee 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 provisions 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 such license.

(2) The licensing official may, without notice or hearing, suspend any license for a period not exceeding 30 days, pending investigation.

(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 a 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.
[Amended by 1955 c.71 §10]

725.240 Notice of revocation; appeal. Whenever the licensing official revokes a license issued pursuant to this chapter, 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 of 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 for the county in which his place of business is located. However, the appeal must be taken within 30 days from the date of mailing.

725.250 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, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender.

725.260 Expiration of license; effect of expiration, revocation or surrender. The revocation, suspension or surrender of any license shall not impair or affect the rights or obligations of any pre-existing lawful contract between the licensee and any borrower.
[Amended by 1955 c.71 §11]

725.270 Reinstatement of revoked 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.

725.280 to 725.300 [Reserved for expansion]

725.310 Investigation and examination of licensees. (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 in amounts of $1,500 or less, 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. The licensing official or his duly appointed examiner or deputy shall have authority to examine under oath all persons whose testimony he may require relative to such loans or business.

(2) 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 actual cost of each examination, or the sum of $20, 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.
[Amended by 1955 c.71 §12]

725.320 Rules and regulations. (1) 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 regulated by this chapter and the enforcement of this chapter in addition to and not inconsistent with this chapter.

(2) All general rules and regulations shall be filed by the licensing official with the Banking Division in an indexed, permanent book, with the effective date thereof suitably indicated, and such 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.

Note: See note for ORS 706.205.

725.330 Licensee's 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.

725.340 Limitations on interest and other charges. (1) No licensee shall charge, contract for or receive any interest or consideration for loans, secured or unsecured, made to any one person in the aggregate sum of $1,500 or less, at a greater rate than three percent per month on that part of the unpaid principal balance not in excess of $300, two percent per month on that part of the unpaid principal balance in excess of $300 but not in excess of $500, and one percent per month on that part of the unpaid principal balance in excess of $500 but not in excess of $1,500.

(2) No interest or consideration charged, contracted for or received by any licensee shall be compounded and no amount of interest whatsoever shall be deducted or received in advance. In addition to such interest or charge no further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for any examination, appraisal, investigation, service, brokerage, commission, expense, fee or bonus or other thing or otherwise, except:

(a) 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, which fees may be collected when the loan is made or at any time thereafter. However, if such fees are not so paid out within 30 days after being 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.

(b) 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 for the protection and benefit of the borrower written in connection with any loan.

(c) Taxable costs and disbursements to which the licensee may become entitled as provided by law in connection with any action, suit or proceeding to collect a loan or to realize on a security after default.

(3) Any loan made by any licensee for which a greater rate of interest or consideration than is permitted by this section has been charged, contracted for or received shall be void and the licensee shall forfeit the right to collect or receive any principal, interest or charges whatsoever on such loan and shall 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 such lien shall be void.

(4) 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 than would otherwise be permitted by this section.

(5) No licensee shall directly or indirectly charge, contract for or receive any interest or consideration at a greater rate than 10 percent per annum for any part or all of any indebtedness for principal under one or more loan contracts which exceed $1,500 in the aggregate, owed directly or contingently or both by any person as borrower, as indorser, guarantor or surety for any borrower, or otherwise, or by any husband and wife jointly or severally.

[Amended by 1955 c.71 §13]

725.350 Assignment of wages. For the purpose of this chapter, the payment or the advance of money or any other thing of value as consideration for any assignment or order for the payment of any salary,

wages or other compensation for services, whether earned or to be earned, shall be deemed a loan secured by such assignment or order. The amount by which such assigned compensation exceeds the amount of such consideration actually paid shall be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. No assignment of or order for the payment of any such compensation, whether earned or to be earned, given to secure any loan by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution. Under any such assignment or order for the payment of future salary, wages, commissions or other compensation for services given as security for a loan made by any licensee under this chapter, a sum not exceeding 10 percent of the borrower's salary, wages, commissions or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions or other compensation for services from the date that a copy of such assignment, verified by the oath of the licensee, or his agent, together with a similarly verified statement of the amount unpaid upon such loan is served upon the employer.

725.360 Licensee's duty toward borrowers. Every licensee shall:

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

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

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

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

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

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

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

(4) Upon repayment of the loan in full or upon renewal thereof, mark indelibly such obligation signed by the borrower with the word "Paid" or "Renewed"; and in the case of repayment in full shall release any mortgage, restore any security or collateral, return any assignment given by the borrower and return to him the canceled note evidencing the loan.

725.370 Effect of conviction of charging excessive interest. If any licensee or agent, member, officer or employe 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, 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. However, loans made or payable in other jurisdictions and lawful where made or payable, shall not be affected by this chapter.

725.380 Duties of district attorney in relation to Small Loans 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 725.990, 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 represent the licensing official in all cases where an appeal is taken under the provisions of this chapter.

725.390 to 725.980 [Reserved for expansion]

725.990 Penalties. (1) Violation, or participation in the violation, of ORS 725.030, 725.050, 725.060, 725.200 to 725.220, 725.340 or 725.350 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.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel