

Chapter 725

1981 REPLACEMENT PART

Consumer Finance

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CROSS REFERENCES

Administrative procedures and rules of state agencies, 183 310 to 183 550
Credit life and credit health insurance, 83 580, 743 561 to 743 588
Debt consolidating, 697 615
Pawnbrokers, Ch 726
Retail instalment contracts, Ch 83

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.

725.015 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.

[Formerly 725 040]

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 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 [Amended by 1955 c 71 §2, 1971 c 450 §1; 1973 c 428 §1, 1975 c 567 §1, repealed by 1981 c 412 §9 (725 031, 725 036 and 725 041 enacted in lieu of 725 030)]

725.031 License required before making certain loans; penalty. (1) Except as provided in ORS 725.041, no person, without first obtaining a license under this chapter, shall:

(a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made; or

(b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made.

(2) In addition to any civil penalty which may be imposed under ORS 725.910, any person who violates subsection (1) of this section shall forfeit the right to collect or receive any interest upon any loan for which a greater rate of interest or consideration than is permitted by subsection (1) of this section has been charged, contracted for or received. The borrower upon such loan shall be required to repay only the principal amount borrowed.

[1981 c 412 §10 (725 031, 725 036 and 725 041 enacted in lieu of 725 030)]

725.036 Computation of interest; charges not included. (1) If, pursuant to any arrangement, understanding or agreement, with the knowledge of the lender, either as a part of the contract of borrowing or collateral thereto, regardless of when made and whether it is made as a special arrangement or in conformity to a regular rule, regulation or practice, there is paid by or at the expense of the borrower to the lender, or the lender's broker, officer, director or agent, with respect to or in connection with any loan to which ORS 725.031 applies, any commission, bonus, fee, premium, penalty or other charge, compensation or gratuity, whether in money, credit or other thing of value, as a consideration, compensation or inducement for obtaining any such loan, or any renewal, extension or forbearance thereof, the same shall be deemed a part of the interest charged on such loan.

(2) In computing interest for the purposes of ORS 725.031, any bona fide commission paid or sustained by the borrower shall be computed for the contract term and not for any accelerated period or prepayment.

(3) Notwithstanding subsection (1) of this section, the following charges shall not be deemed a part of the interest charged on a loan:

(a) Reasonable amounts actually applied in payment of the expense of inspecting any security offered in connection with the loan, investigating the responsibility of the applicant or procuring or extending any abstract of title or certificate of title insurance covering such security;

(b) The amount actually paid for the examination of any such abstract or title insurance certificate; or

(c) The cost of the preparation, execution and recording of any papers necessary in consummating such loan. [1981 c 412 §11 (725 031, 725 036 and 725 041 enacted in lieu of 725 030)]

725.040 [Renumbered 725 015]

725.041 Exceptions to application of ORS 725.031 and 725.036. ORS 725.031 and 725.036 do not apply to:

(1) Any bank, national bank, state or federally chartered mutual savings bank, state or federally chartered savings and loan association, state or federally chartered credit

union or pawnbroker licensed under ORS chapter 726.

(2) Any lender approved by the Secretary of Housing and Urban Development of the United States for participation in any mortgage insurance program under the National Housing Act (12 U.S.C. 1701 et seq.).

(3) Any loan secured by a first lien on real property or made to finance the acquisition of real property and secured by any lien on that property.

(4) Any loan which is secured by real property, which is scheduled under the loan agreement to be repaid in substantially equal payments and which is made by a lender described in this subsection. A lender under this subsection is one who makes, invests in or arranges real property loans, including loans secured by first liens on residential manufactured homes, aggregating more than \$1 million per year. Under this subsection, payments shall be "substantially equal" if, under the terms of the loan agreement, no single scheduled payment is more than twice the amount of any other scheduled payment.

(5) Any loan wholly or partially secured or covered by guarantees or insurance by the Federal Housing Administration, the Veterans Administration or the Farmers Home Administration of the United States, any department, bureau, board, commission or agency of the United States, or any corporation wholly owned, directly or indirectly by the United States.

(6) Any loan permitted under applicable federal law and regulations from a tax qualified retirement plan to a person then a participant under the plan.

(7) Any bona fide sale or resale of securities or commercial paper

(8) Any interest charge by broker-dealers registered under the Securities Exchange Act of 1934 for carrying a debit balance in an account for a customer if the debit balance is payable on demand and secured by stocks or bonds. [1981 c 412 §12 (725 031, 725 036 and 725 041 enacted in lieu of 725 030)]

725.050 Prohibited transactions. No licensee shall take:

(1) 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.

(2) Any note or promise to pay 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; 1971 c 450 §2, 1979 c 88 §41, 1981 c 412 §13]

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.

725.110 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) An applicant at the time of making application shall pay to the licensing official for the State Banking Fund an annual license fee set under ORS 725.180 for the period terminating on the last day of the current calendar year. However, if the application is filed after June 30 in any year the amount paid shall be one-half of the annual license fee. 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, 1977 c 135 §49]

725.125 [1971 c 450 §5, repealed by 1973 c 428 §11]

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; and

(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 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, 1977 c 135 §50]

725.145 Disapproval of application for license. (1) The licensing official may disapprove an application for a license if any person named in the application submitted pursuant to ORS 725.120:

(a) Is insolvent, either in the sense that his liabilities exceed his assets or that he cannot meet his obligations as they mature, or is in such financial condition that he cannot continue in business with safety to his customers;

(b) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession;

(c) Has wilfully or repeatedly violated or failed to comply with any provision of the Oregon Bank Act, the Savings Association Act, the Oregon Credit Union Act, the Oregon Consumer Finance Act or the Pawnbrokers Act, or any administrative rule or order adopted pursuant to any such Act;

(d) Has been convicted of a felony or of a misdemeanor, an essential element of either of which is fraud;

(e) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the consumer finance business;

(f) Is the subject of an order of the licensing official or of any other regulatory authority of this state subjecting him to a fine or other civil penalty, or removing him from an office in a financial institution, credit union, consumer finance company or savings association; or

(g) Is the subject of an order entered within the past five years, subjecting him to a fine or other civil penalty, or removing him from an office in a financial institution, issued by the regulatory authority of another state or of the Federal Government with authority over financial institutions.

(2) The licensing official may issue an order removing any officer or director of a licensee from his office for any of the reasons stated by subsection (1) of this section. [1977 c 135 §48]

725.150 Appeal of disapproval of application. 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 \$250 for the next succeeding calendar year.

[Amended by 1955 c 71 §7, 1977 c 135 §53]

725.190 Annual report of licensee; report of licensing official; penalty for failure to report by licensee. (1) On or before February 15 of each year every licensee 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.

(2) Every licensee who fails to file any report required under this chapter within the time specified may be subject to a penalty of \$10 per day for each day's delay. [Amended by 1955 c 71 §8, 1973 c 428 §2]

725.200 [Repealed by 1971 c 743 §432]

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]

725.235 License denial procedure; promulgation, review of rules and orders.

(1) Where the superintendent proposes to refuse to issue a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS 183.310 to 183.550. [1971 c 734 §176]

725.240 [Repealed by 1971 c 734 §21]

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 preexisting 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.

725.310 Investigation and examination of licensees. (1) For the purpose of discovering violations of this chapter or securing information lawfully required by the licensing official 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 the licensing official has reason to believe is making loans in violation of ORS 725.031, 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 a 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 a duly appointed examiner or deputy shall have authority to examine under oath all persons whose testimony the licensing official 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, 1973 c 428 §3, 1981 c 412 §14]

725.315 Removal or suspension of officer of licensee. If the licensing official finds that any officer or director of a licensee is dishonest, reckless or incompetent, or refuses to comply with the law, rules of the licensing official or any written requirements or instructions of the licensing official, the licensing official may issue a written order to the individual removing or suspending him from his office or position [1977 c 135 §52]

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.

725.330 Books and records of licensee. 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 Interest and other charges. (1) A licensee may charge, contract for and receive any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee and the borrower.

(2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less and requires repayment in substantially equal or consecutive monthly instalments of principal and interest combined, the interest or consideration may be precomputed, contracted for and earned on scheduled unpaid principal balances on the assumption that all scheduled payments will be made when due. In such cases, every payment may be applied to the combined total of principal and precomputed interest until the contract is fully paid, and the acceptance or payment of interest or consideration on any loan made under the provisions of this subsection shall not be deemed to constitute payment, deduction or receipt thereof in advance. Such precomputed interest or consideration shall be subject to the following adjustments:

(a) When a default of more than 10 days in the payment of any scheduled instalment occurs, the licensee may charge and collect a default charge not exceeding five percent of the unpaid amount of the instalment or \$5, whichever is less. A default charge may be collected only once on an instalment, but may be collected at the time it accrues or at any time thereafter. No default charge may be assessed with respect to an instalment which

is paid in full on or within 10 days after a scheduled instalment due date when an earlier maturing instalment or a default or deferral charge on an earlier maturing instalment may not have been paid in full even though all or part of such instalment payment is applied to an earlier maturing instalment, or a default or deferral charge.

(b) If the payment of all unpaid instalments is deferred one or more full months, and if the contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual percentage rate previously disclosed to the borrower pursuant to the Federal Consumer Credit Protection (Truth-in-Lending) Act applied to the sum of the instalments deferred for the length of the deferral period. The deferral period is that period in which no scheduled instalment is required to be paid by reason of the deferral. Such charge may be collected at the time of deferral or at any time thereafter. A deferral charge may not be made for the deferral of any instalment with respect to which a default charge has been collected, unless the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to any other rebate which may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of an unexpired month exceeding 15 days shall be deemed to be a month.

(c) Upon prepayment in full of the unpaid balance of a precomputed loan, a rebate of unearned interest or consideration shall be made as provided in this paragraph. The amount of the rebate shall be not less than the total interest contracted for to maturity, less the greater of:

(A) Ten percent of the amount financed or \$75, whichever is less; or

(B) The interest or consideration earned to the instalment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate computations, under this subparagraph, the instalment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that instalment date. If prepayment occurs more than 15 days after the preceding instalment due date, the next succeeding instalment due date shall be con-

sidered to be nearest to the date of prepayment. In determining the simple interest rate, the licensee may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to accrued and unpaid interest or consideration, and any amount remaining is applied to reduction of the principal balance.

(3) If the borrower agrees to perform certain duties to insure or preserve the collateral and fails to perform those duties, the licensee may pay for the performance of those duties and add the amounts paid to the unpaid principal balance. A charge may be made for sums advanced, at the rate provided for in the loan agreement

(4) The loan contract may provide that after default and referral the borrower shall pay the licensee for reasonable attorney fees actually paid by the licensee to an attorney not a salaried employe of the licensee.

[Amended by 1955 c 71 §13, 1971 c 450 §3; 1973 c 428 §4, 1975 c 567 §2, 1977 c 432 §1, 1979 c 326 §3, 1979 c 879 §7, 1981 c 412 §15, 1981 c 910 §8a]

Note: The amendments to 725.340 by section 8a, chapter 910, Oregon Laws 1981, take effect October 1, 1982. See section 9, chapter 910, Oregon Laws 1981 725.340, as amended by section 15, chapter 412, Oregon Laws 1981, is set forth for the users' convenience

Sec. 15. (1) A licensee may charge, contract for and receive any interest or consideration for loans, secured or unsecured, as agreed upon by the licensee and the borrower

(2) When a precomputed loan contract is originally scheduled to be repaid in 62 months or less and requires repayment in substantially equal or consecutive monthly instalments of principal and interest combined, the interest or consideration may be precomputed, contracted for and earned on scheduled unpaid principal balances on the assumption that all scheduled payments will be made when due. In such cases, every payment may be applied to the combined total of principal and precomputed interest until the contract is fully paid, and the acceptance or payment of interest or consideration on any loan made under the provisions of this subsection shall not be deemed to constitute payment, deduction or receipt thereof in advance. Such precomputed interest or consideration shall be subject to the following adjustments

(a) When a default of more than 10 days in the payment of any scheduled instalment occurs, the licensee may charge and collect a default charge not exceeding five percent of the unpaid amount of the instalment or \$5, whichever is less. A default charge may be collected only once on an instalment, but may be collected at the time it accrues or at any time thereafter. No default charge may be assessed with respect to an instalment which is paid in full on or within 10 days after a scheduled instalment due date when an earlier maturing instalment or a default or deferral charge on an earlier maturing instalment may not have been paid in full even though all or part of such

instalment payment is applied to an earlier maturing instalment, or a default or deferral charge

(b) If the payment of all unpaid instalments is deferred one or more full months, and if the contract so provides, the licensee may charge and collect a deferral charge not exceeding the annual percentage rate previously disclosed to the borrower pursuant to the Federal Consumer Credit Protection (Truth-in-Lending) Act applied to the sum of the instalments deferred for the length of the deferral period. The deferral period is that period in which no scheduled instalment is required to be paid by reason of the deferral. Such charge may be collected at the time of deferral or at any time thereafter. A deferral charge may not be made for the deferral of any instalment with respect to which a default charge has been collected, unless the default charge is deducted from the deferral charge. If prepayment of the loan in full occurs during the deferral period, in addition to any other rebate which may be required, the borrower shall receive a rebate of the portion of the deferral applicable to the unexpired months in the deferral period, for which purpose a fraction of an unexpired month exceeding 15 days shall be deemed to be a month.

(c) Upon prepayment in full of the unpaid balance of a precomputed loan, a rebate of unearned interest or consideration shall be made, computed by the "rule of seventy-eighths" or "sum of the digits" method as defined by rule issued under ORS 725.320, for that portion of the precomputed interest or consideration applicable to the instalment periods scheduled to follow the instalment due date nearest the date of prepayment in full. The instalment periods scheduled to follow such instalment due date shall be as determined by the original contract, or, if applicable, as deferred. For purposes of rebate computations, the instalment due date preceding the date of prepayment in full shall be deemed to be the nearest if prepayment in full occurs 15 days or less after that instalment due date. If prepayment in full occurs more than 15 days after the preceding instalment due date, then the next succeeding instalment due date shall be deemed to be nearest for this purpose.

(3) If the borrower agrees to perform certain duties to insure or preserve the collateral and fails to perform those duties, the licensee may pay for the performance of those duties and add the amounts paid to the unpaid principal balance. A charge may be made for sums advanced, at the rate provided for in the loan agreement.

(4) The loan contract may provide that after default and referral the borrower shall pay the licensee for reasonable attorney fees actually paid by the licensee to an attorney not a salaried employe of the licensee.

725.342 [1979 c 326 §2, repealed by 1981 c 412 §24]

725.345 Open-end loan plan; interest; additional charges; security for plan; necessary disclosures. (1) As used in this section, "open-end loan plan" means a plan or arrangement, the agreement for which expressly states that it is made pursuant to this section under which loans are made, and under which:

(a) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance

money on behalf of the borrower from time to time as directed by the borrower;

(b) The unpaid principal balances and interest or consideration are debited to an account;

(c) Interest or consideration is calculated on the unpaid principal balance in the borrower's account from time to time, which balance may include all advances made on behalf of the borrower and all charges authorized under ORS 725.340 (2) and (3); and

(d) The borrower has the privilege of paying the unpaid balance in full or in instalments.

(2) A licensee may make loans under an open-end loan plan and may contract for and receive interest or consideration as provided in ORS 725.340.

(3) In addition to the interest or consideration permitted under subsection (2) of this section, a licensee may contract for and receive on an open-end loan plan the additional charges set forth in ORS 725.340 (2) and (3), subject to the following variations:

(a) An additional single premium charge in connection with an open-end loan plan for insurance covering tangible personal property or real property offered as security for a term not exceeding three years, and title insurance on any real property security, if provided at the time of any advance, in an amount not exceeding the unpaid balance, including any advance then made; and

(b) An additional charge may be made in connection with an open-end loan plan for insurance on the life of one or more borrowers or for credit disability insurance to provide indemnity for payments becoming due on the indebtedness.

(4) A security interest in real or personal property may be taken to secure an open-end loan plan. Any security interest in real or personal property shall be promptly released if there has been no outstanding balance for 12 months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance or if the account is terminated at the borrower's request and paid in full.

(5) ORS 725.050 (2), 725.340 (2) and 725.360 (1), (2) and (4) do not apply to any open-end loan plan.

(6) The open-end loan plan agreement shall contain the name and address of the borrower and of the licensee and shall disclose

the date of the agreement, the method of determining the minimum periodic payments which will be required to pay the initial and any subsequent advances, the conditions under which interest or consideration may be imposed, the method of determining the principal balance upon which interest or consideration may be imposed, the method of determining the amount of the interest or consideration, each periodic rate and the range of balances to which each rate is applicable and the corresponding annual percentage rate in accordance with Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), and the nature of the security taken.

(7) Except for an account which the licensee deems to be uncollectible or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver or cause to be delivered to the borrower, for each billing cycle at the end of which there is an unpaid balance of more than \$1 in the account or with respect to which interest or consideration is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the nature, date and amount of any subsequent advance during the cycle, the amounts and dates of payments credited to the account during the billing cycle, the amount of any interest or consideration debited to the account during the billing cycle, each periodic rate and the range of balances to which each rate is applicable and the corresponding annual percentage rate in accordance with Regulation Z promulgated by the Board of Governors of the Federal Reserve System under section 105 of the Consumer Credit Protection Act (15 U.S.C. 1604), the balance on which the interest or consideration was calculated, a statement of how that balance was determined, the closing date of the billing cycle, the outstanding balance on that closing date and the minimum monthly payment required. [1977 c 522 §2; 1981 c 412 §16]

725.350 [Repealed by 1971 c 232 §4]

725.355 Prohibition against assignment of earnings for loan security. (1) As used in this section, "earnings" means salary, wages or other compensation for service.

(2) No licensee shall take an assignment of earnings as payment of or as security for payment of a loan. An assignment in violation of this subsection is unenforceable by the assignee and revocable by the assignor. Noth-

ing in this subsection is intended to prevent an employe from authorizing deductions from his earnings if the authorization is revocable.

(3) For the purpose of this section, a sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is considered a loan to him, secured by an assignment of earnings. [1971 c 232 §3]

725.360 Licensee 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, collateral agreement or otherwise.

(2) Make available to the borrower upon request 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, security agreement or UCC filing which no longer secures a loan, restore any security or collateral, return any assignment given by the borrower and return to him the canceled note evidencing the loan. [Amended by 1971 c 450 §4, 1973 c 428 §5; 1975 c 567 §3]

725.370 Lawful loans in other jurisdictions not affected by this chapter. Loans made or payable in other jurisdictions and lawful where made or payable, are not affected by this chapter [Amended by 1979 c 88 §42]

725.380 [Repealed by 1975 c 544 §62]

725.385 Duty to give notice of suspected defalcation to law enforcement officers; investigations; costs. (1) If a director or officer of a licensee has reason to believe that a defalcation has occurred at any office of the licensee, such official shall give the information to the appropriate local, state or federal law enforcement officer having jurisdiction of the violation.

(2) If the matter is referred to the Attorney General or a district attorney, such officer promptly shall investigate the violation and institute such action against the person as the information and investigation requires or justifies. The cost of the investigation and action shall be paid by the county or state in the manner in which other criminal actions are paid. [1979 c 88 §38]

725.390 Notice to licensing official of suspected defalcation; audit. A licensee shall notify the licensing official of any defalcation that occurs at any office of the licensee within five days after the discovery of the defalcation. When directed by the licensing official to do so, the licensee shall, in accordance with the licensing official's instructions, cause an audit to be made of the business of the licensed office where the defalcation occurred. [1979 c 88 §39]

725.395 Licensing official to give notice of suspected defalcation to law enforcement officer; exceptions. If the licensing official has reason to believe that a defalcation has occurred at an office of a licensee, he may give the information relative to the violation to the appropriate federal, state or local law enforcement agency having jurisdiction of the violation. This section does not

apply, however, if the licensee has reported the information to the appropriate law enforcement officer under ORS 725.385. [1979 c 88 §40]

725.910 Civil penalties. (1) Any person who violates:

(a) ORS 725.031 shall forfeit a civil penalty in an amount determined by the licensing official of not more than \$5,000.

(b) ORS 725.050, 725.060, 725.210, 725.220, 725.340 or 725.355 shall forfeit a civil penalty in an amount determined by the licensing official of not more than \$1,000. In addition, the licensing official may revoke the license of any licensee who commits such violation.

(c) Any rule adopted under ORS 725.320 shall forfeit a civil penalty in an amount determined by the licensing official of not more than \$2,500.

(2) All money forfeited under subsection (1) of this section shall be paid to the State Treasurer to be deposited in the State Banking Fund.

(3) The civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(4) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount. [1975 c 544 §59, 1981 c 412 §17]

725.990 [Amended by 1971 c 743 §424, repealed by 1975 c 544 §62]