

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 4, 2010 by the

Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities	441	
Agency and Division	Administrative Rules Chapter Number	
Shelley Greiner	350 Winter St. NE Room 410; Salem, OR 97304	503-947-7484
Rules Coordinator	Address	Telephone

to become effective upon filing. Rulemaking Notice was published in the May 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

Adopt new rules for payday and title loans in compliance with SB 993.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

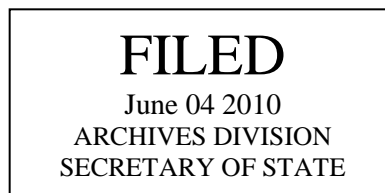
**ADOPT:** OAR 441-735-0000, 441-735-0010, 441-735-0015, 441-735-0025, 441-735-0030, 441-735-0050, 441-735-0060, 441-735-0070, 441-735-0080, 441-735-0100, 441-735-0110, 441-735-0120, 441-735-0130, 441-735-0140, 441-735-0160, 441-735-0165, 441-735-0205, 441-735-0240, 441-735-0250, 441-735-0255, 441-735-0271, 441-735-0272, 441-735-0275, 441-735-0280, 441-735-0310, 441-735-0320

**AMEND:**

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**



Stat. Auth.: **2010 Or Laws ch. 23 §27**

Other Auth.:

Stats. Implemented: **2010 Or Laws ch. 23**

**RULE SUMMARY**

These proposed rules would create a new rule division for payday and title lending. The rules are in response to SB 993 (2010) which moves payday and title loan statutes out of ORS 725, to a different, as yet unassigned, statute. The rules are very similar to the rules that had been in OAR 441-730 that were applicable to payday and title lending.

/s/ David Tatman

David C. Tatman

6/4/10

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES,  
DIVISION OF FINANCE AND CORPORATE SECURITIES**

**441-735-0000**

**Statutory Authority; Purpose**

OAR 441-735-0000 to 441-735-0320 are adopted pursuant to the rulemaking authority granted the director by 2010 Or Laws ch. 23, §27. These rules are considered necessary to assure the proper conduct of the business regulated and to protect the public.

Stat. Auth.: 2010 Or Laws ch. 23 §27

Stats. Implemented: 2010 Or Laws ch. 23

Hist.: New.

**441-735-0010**

**Definitions**

- (1) "Annual percentage rate" or "APR" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.
- (2) "Borrower" means a natural person.
- (3) "Charges" means any one or more of the fees, premiums or other charges described by 2010 Or Laws ch. 23, §§ 27 and 32, and other items charged to a borrower's account; but the term does not include interest or deferral charges.
- (4) "Director" means the Director of the Department of Consumer and Business Services.
- (5) "Extension" has the same meaning as "renewal" as defined in section (9) of this rule.
- (6) "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.
- (7) "License" means a payday loan license or title loan license issued under 2010 Or Laws ch. 23, §5.
- (8) "Legally qualified in this state" means a business is qualified to conduct business in this state, having made the appropriate filings with the Secretary of State.
- (9) "Licensee" means a person licensed to make payday loans or title loans under 2010 Or Laws ch. 23, §5..
- (10) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.
- (11) "Renewal" of a loan means granting a borrower the right to postpone repayment of a payday loan or a title loan.
- (12) "Roll-over" has the same meaning as "renewal" as defined in section (11) of this rule.
- (13) "Same day transaction" means a payday loan or title loan made on the same day that a previous payday loan or title loan is paid-off and will be treated as a "renewal" defined in section (11) of this rule.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23 §§1, 5, 27, and 32

Hist.: New.

**441-735-0015**

**Title Loan Licensee Lending Practices**

A title loan licensee may not:

(1) Retain the title to the vehicle used as security on a loan for more than thirty business days before submitting the application to be recorded as a lien-holder on the title or taking other commercially reasonable steps to be added as a security interest holder of the vehicle;

(2) Unreasonably withhold documents on a loan secured by a borrower's vehicle for more than three business days if the loan is paid by certified or guaranteed funds.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§5 &15

Hist.: New.

#### **441-735-0025**

##### **License Applications**

(1) For purposes of the investigation described in 2010 Or Laws ch. 23, §5 an applicant for a license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant.

(2) An applicant, including a person that currently has a payday loan license or title loan license, must provide the employment history for the proposed manager of the licensed office for the five years immediately preceding the date of the application. A licensee employing a new manager may be required to submit a resume to meet the requirements of this section.

(3) A person that is not currently licensed to make payday loans or title loans must submit:

(a) The employment history for all executive officers, owners, directors, or managing partners. A resume may be required to meet this requirement. At least one-half of the executive officers, owners, directors, or managing partners must have verifiable recent lending experience;

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge, and any other business activities the licensee will engage in at the location; and

(D) Funding sources for the loans, including third-party financial institutions.

(4) For purposes of 2010 Or Laws ch. 23, §5 and this rule, the filing date of an application is the date the application is complete. An application will be deemed complete on the date that:

(a) All required fees have been paid; and

(b) All fully completed documents that are part of an application or required to be submitted by this rule have been received.

(5) An application for licensing is deemed abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(6) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§4 & 5

Hist.: New.

**441-735-0030****Fees, Charges Licensees Pay the Director**

(1) The license fees under 2010 Or Laws ch. 23, §7 are:

(a) \$750 for an initial application for each location to be licensed; and

(b) \$750 for renewal of each licensed location, due and payable on January 1 of each calendar year.

(2) The rate of charge payable by a licensee is \$75 an hour per person payable by the licensee for the director and each examiner and other division employee conducting an examination and for extra services provided to a licensee under 2010 Or Laws ch. 23, §14.

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the director is required to travel out of state to conduct the examination or provide extra services, the rate of charge payable by the licensee is \$75 an hour per person, plus actual cost of travel. Actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination are performed by a consultant hired for the particular service or examination, the licensee will be charged the actual costs to the division of the contract consultant.

(4) As used in this rule, "extra services" means any attention other than an examination.

(5) The director will collect any additional costs directly attributable to extra services to the licensee in addition to the charges in sections (2) and (3) of this rule.

(6) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: 2010 Or Laws ch. 23, §§4, 7, & 27

Stats. Implemented: 2010 Or Laws ch. 23, §7

Hist.: New.

**441-735-0050****Notes and Agreements**

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee must be so worded that they comply with all provisions of 2010 Or Laws ch. 23 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulation, and in compliance with those statutes or regulations are considered in compliance with and authorized by 2010 Or Laws ch. 23.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23

Hist.: New.

**441-735-0060****Loans Not to Be Payable on Demand; Exception**

(1) Except as provided by section (2) of this rule, a loan must not be made payable on demand.

(2) A loan may provide that, if there is a default under the note or collateral security agreement, the loan may become due and payable immediately or on demand.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §19

Hist.: New.

**441-735-0070****Advertising Regulations**

- (1) A licensee or other person must not, in any advertisement printed, displayed, published, distributed, or broadcasted, including on the Internet, by the licensee or on the licensee's behalf include any reference to the supervision of the business of the licensee by this state or any department or official of this state, except the phrase "subject to state regulation."
- (2) A licensee or other person must not, in any advertisement printed, displayed, published, distributed, broadcast, including on the Internet, by the licensee or on the licensee's behalf, use any name other than the name under which the license is issued.
- (3) A licensee must retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or with the prior approval of the director, at another location until an examiner has reviewed the material.
- (4) Notwithstanding the provisions of sections (1) and (2) of this rule:
- (a) A licensee that makes and closes the majority of loans in a licensed location must prominently post their license in a manner conspicuous to the public; or
- (b) If a licensee makes and closes the majority of loans electronically, they must prominently post their license on their website and at their licensed location in a manner conspicuous to the public.
- (5) The posted license must state that the business is licensed and regulated by the Department of Consumer and Business Services, and will include the Department's toll-free telephone number for public inquiries or complaints.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23

Hist.: New.

**441-735-0080****Qualifications of Person in Charge of Licensed Office**

A licensee must not place any person in charge of a licensed office unless the person has a thorough understanding of 2010 Or Laws ch. 23 and these rules.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §5

Hist.: New.

**441-735-0100****Licensee Officers and Directors**

- (1)(a) A licensee may add a new executive officer, owner, director, or managing partner at any time after the licensee has been granted a license if after the addition at least one-half of the executive officers, owners, directors, or managing partners can demonstrate verifiable recent lending as required by 2010 Or Laws ch. 23, § 27.
- (b) If a licensee adds a new executive officer, director, partial owner, or managing partner under this section, the licensee must provide a current resume for such new persons demonstrating verifiable recent lending experience to the director within 30 days of their appointment or selection.
- (2) If an existing or new executive officer, director, partial owner, or managing partner of the licensee gains a controlling interest in the company after the license has been granted, the licensee must notify the director within 30 days.
- (3) An officer or director of a licensee addressed in an order issued by the director under 2010 Or Laws ch. 23, §24 may request a hearing on the order as provided for contested cases by 183.310 to

183.500, and the rules of the director adopted pursuant thereto, within 30 days after the date the order is issued and served.

(4) A person who is suspended or removed under 2010 Or Laws ch. 23, §24 may not conduct any of the business of the licensee or have access to the books, records, or assets of the licensee either as an officer, director, partner, stockholder, or employee without receiving permission from the director:

(a) During the period of the suspension; or

(b) After the effective date of the removal.

(5) A licensee subject to an order of suspension under the provisions of 2010 Or Laws ch. 23, §10 may, within 90 days after the date the order is issued or served, request a hearing on the order as provided for contested cases by 183.310 to 183.500 and the rules of the director adopted pursuant thereto.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§6 & 24

Hist.: New.

#### **441-735-0110**

##### **Accounting Records of Licensee**

(1) The accounting records of a licensee must reflect a complete segregation of the loan transactions from any other business in which the licensee may be engaged.

(2) The licensee must maintain separate control accounts or other acceptable records to reflect such segregation for:

(a) Loans receivable;

(b) Charges; and

(c) Repossessed property and sales of repossessed property.

(3) The licensee must fully account for receipt and disbursement of all charges charged or collected.

(4) Each licensee must maintain a log of:

(a) Loans made, listing each loan in sequence by number or date of loan and showing:

(A) The amount of the loan;

(B) The type of security taken;

(C) The rate of interest charged; and

(D) The types of insurance for which premium charges have been made in connection with the loan and which are payable by the borrower.

(c) Any litigation initiated by the licensee showing for each proceeding:

(A) The borrower's name and account number;

(B) The court where the proceeding is filed;

(C) The date of filing; and

(D) When applicable, the date, and terms of any disposition of the matter.

(d) Information on files sent to a collection agency showing, for each file:

(A) The borrower's name, the account number;

(B) The original date of the loan, the due date of the loan, or last renewal or extension;

(C) The date the loan was sent to the collection agency;

(D) The name of the collection agency; and

(E) The date and amount of monies received from the collection agency.

(F) A separate log of files sent to a collection agency need not be maintained provided the information is available in existing records at the time of examination.

(6) When a judgment is entered in a court proceeding initiated by a licensee on a loan, the licensee forthwith must place in the related loan file either:

- (a) A copy of the judgment entered in the proceeding; or
- (b) A statement verified by a representative of the licensee, detailing the essential provisions of the judgment.

(7) Licensees who make both title and payday loans must maintain separate logs for each type of loan.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §15

Hist.: New.

#### **441-735-0120**

##### **Account Record to Be Maintained for Each Loan**

(1) The licensee must maintain a separate individual account record for each loan made to any borrower showing:

- (a) The loan number;
- (b) The date of the loan;
- (c) The name and address of the borrower;
- (d) A brief description of the security, if any;
- (e) The agreed interest rate or rates and the amount of each charge, if any;
- (f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.
- (g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;
- (h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and
- (i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan must show, for each loan payment received:

- (a) The amount, if any, applied to interest;
- (b) The date to which the interest is paid;
- (c) If payment is insufficient to pay interest to date, the dollar amount short;
- (d) The amount applied to principal, if any; and
- (e) The unpaid principal balance of the loan, if any.

(3) The account record for a payday loan or title loan must show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.

(4) All entries to the account record made by the licensee must be accurate and posted by close of business on the day the transaction occurred. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §15

Hist.: New.

#### **441-735-0130**

##### **Index of Obligor to Be Maintained**

A licensee must maintain an alphabetical index, or other system approved by the director, of every person obligated, directly or contingently, on a loan that is serviced at that office in each of its licensed offices.

Stat. Auth.: 2010 Or Laws ch. 23

Stats. Implemented: 2010 Or Laws ch. 23, §15

Hist.: New.

#### **441-735-0140**

##### **Records and Files Required to Be Kept at Servicing Office; Copies of Loans Transferred; Centralized Accounting Office Exception**

- (1) A licensee must maintain the accounting records and loan files for active loans at the licensed office where the loans are serviced.
- (2) Whenever an active loan is for any reason transferred to another licensed office in this state, the licensee must retain in the transferring office an exact copy of the individual account record and supporting legal documents.
- (3) Whenever an active loan is for any reason transferred to another licensed office, the licensee must retain in the transferring office an exact copy of the account record to which has been added the date of transfer and the name and address of the new location of the account. However, if a bulk sale or similar transfer of loans not in the ordinary course of business is made to another licensed office, the licensee may, with the prior approval of the director, make other provisions for the retention of copies of records and files and for the examination of accounts in the receiving office.
- (4) Whenever the licensee sends an active loan to a collection agency, the licensee must retain in the originating office the original record or an exact copy of the account record.
- (5) Notwithstanding sections (1) through (4) of this rule, a licensee may, with the prior approval of the director, maintain the accounting records and loan files for active loans at a location other than the servicing office if:
  - (a) The other location is established by the licensee to provide centralized accounting for one or more licensed offices;
  - (b) Off-site maintenance of the records and files will not hinder prompt servicing of the loans by the servicing offices;
  - (c) The director, and any duly appointed examiners or agents of the director, have the right of free access to the records and files of the licensee at the other location; and
  - (d) The other location provides adequate security for the licensee's records and files.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §15

Hist.: New.

#### **441-735-0160**

##### **Daily-Interest Computation**

Interest on a loan may be computed on a daily basis using a 365-day factor. In determining the elapsed time to compute interest or a refund of interest, on such a loan, the maximum charge for each day must be 1/365th of the annual rate.

Stat. Auth. 2010 Or Laws ch. 23, §27

Stats. Implemented 2010 Or Laws ch. 23, §32

Hist.: New.

#### **441-735-0165**

##### **Unfair or Deceptive Practices**

A licensee must not disguise the terms or provisions of any loan as a device or subterfuge to evade the requirements and fees and interest authorized by 2010 Or Laws ch. 23. Such conduct will be deemed a violation of 2010 Or Laws ch. 23, §§1 and 32, and dishonest, fraudulent, or illegal practices under 2010 Or Laws ch. 23, §6.

Stat. Auth. 2010 Or Laws ch. 23, §27  
 Stats. Implemented 2010 Or Laws ch. 23, §§1, 6, & 32  
 Hist.: New.

#### **441-735-0205**

##### **Limitation on Charging a Prepayment Penalty**

A licensee may not charge a penalty for prepayment of all or part of the unpaid balance of a loan where:

- (1) The licensee has repossessed any collateral offered for the loan, sold the collateral and applied the proceeds of the sale towards the unpaid balance of the loan;
- (2) The licensee exercises an option contained in the loan agreement to require immediate repayment of all or part of the unpaid balance of the loan; or
- (3) The licensee demands repayment of all or part of the unpaid balance of the loan.

Stat. Auth.: 2010 Or Laws ch. 23, §27  
 Stats. Implemented: 2010 Or Laws ch. 23, §17  
 Hist.: New.

##### **Licensee's Duties to Borrower**

#### **441-735-0240**

##### **Statement of Loan**

- (1) In addition to the statement required by 2010 Or Laws ch. 23, §17, the licensee must deliver the following to the borrower at the time a loan is made:
  - (a) A written statement that payment in any amount may be made in advance at any time and, if the loan contains a prepayment penalty, the statement must comply with the notice required by ORS 82.160(1).
  - (b) A detailed schedule showing the manner in which the proceeds of the loan have been disbursed or are to be disbursed on behalf of the borrower, including:
    - (A) Amounts applied to payment of the balance of an existing loan with the licensee;
    - (B) Amounts paid to others as authorized and designated by the borrower;
    - (C) Amounts paid for other identifiable charges the borrower has approved in writing;
    - (D) Amounts retained for filing, releasing, recording, satisfaction, reconveyance, license, title transfer, and similar fees, itemizing the purpose of each fee; and
    - (E) Amounts remaining that will be paid to the borrower.
  - (c) When requested by the borrower, a copy of the security agreement signed by the borrower, together with any attached schedule of property pledged by the borrower.
- (2) When copies are requested by any other person obligated directly or contingently on the loan, the licensee must also deliver a copy of the statements and other documents required by 2010 Or Laws ch. 23, §17 and section (1) of this rule to such other person. This is required whether the person is obligated as a maker, co-maker guarantor, accommodation maker, endorser, or otherwise.
- (3) The statement required by section (1) of this rule may include disclosures under applicable federal law that a licensee is required to make to the borrower at the time the loan is made.
- (4) The licensee must retain a copy of the statement of loan delivered to the borrower for at least two years after making a final entry on the loan records.

Stat. Auth.: 2010 Or Laws ch. 23, §27  
 Stats. Implemented: 2010 Or Laws ch. 23, §§15 & 17  
 Hist.: New.

**441-735-0250****Receipt to Be Furnished to Borrower Upon Request**

- (1) When the borrower requests a receipt for a payment on a loan for which interest is to be computed on a daily basis, the receipt must specify:
- (a) The amount applied to interest, if any;
  - (b) The date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date;
  - (c) The amount applied to principal, if any; and
  - (d) The unpaid principal of such loan, if any.
- (2) When a borrower requests a receipt for a payment on a loan that is contracted for interest to be precomputed, the receipt must specify:
- (a) The amount of the payment applied to the loan and any default charges; and
  - (b) The amount of the unpaid balance of the loan and charges, if any.
- Stat. Auth.: 2010 Or Laws ch. 23, §27  
 Stats. Implemented: 2010 Or Laws ch. 23, §17  
 Hist.: New.

**441-735-0255****Payoff Information to be Furnished to Borrower Upon Request**

- (1) When a borrower requests the payoff information on a loan and specifies a payoff date, the licensee must promptly, but in no case later than three business days, provide the requested information.
- (2) When a borrower does not specify a payoff date, the licensee must calculate the payoff amount for a date no later than 10 days after the date of the request, and must provide the amount within three business days of the borrower's request. When a licensee provides a payoff amount, it must also advise the borrower, verbally or in writing, that interest will continue to accrue past the payoff date if the loan is not paid in full.
- Stat. Auth.: 2010 Or Laws ch. 23, §27  
 Stats. Implemented: 2010 Or Laws ch. 23, §17  
 Hist.: New.

**441-735-0271****Requirements for Payday Loans and Title Loans**

A license must comply with the following when making payday loans or title loans:

- (1) Interest may not be compounded.
- (2) The loan agreement must have the following information displayed prominently in bold print on the first page of the agreement:
  - (a) The APR;
  - (b) The amount of the loan;
  - (c) The amount of interest or finance charge if paid when the loan is due;
  - (d) The total amount due on the due date; and
  - (e) The due date must comply with the disclosure requirements of Truth In Lending, 15 U.S.C. 1601 et seq., and Regulation Z, 12 C.F.R. Part 226, to satisfy the requirements of this section.
- (3) If a licensee permits a borrower to renew a loan after the due date, the renewal must be effective on the due date of the loan.

(4) If the licensee does not cash the borrower's check, the licensee must return the note marked "Paid" and the requirements of subsection (4) of this rule would not apply. The licensee must also mark the check "Void" and return it to the borrower with the note marked "Paid."

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§17, 20, 21, 22, and 27

Hist.: New.

#### **441-735-0272**

##### **Requirements for Licensees**

(1) A licensee:

(a) Must calculate daily interest based upon a 365/day year.

(b) Must comply with the Equal Credit Opportunity Act, 15 USC 1691 et seq., and must provide the applicant with a written notice of the reason for declining a loan. The licensee may provide the notice to the applicant at the time the loan is declined or the notice may be mailed to the applicant. The licensee must retain a copy of the notice in the borrower's files unless an exception under the Equal Credit Opportunity Act applies.

(c) Must prominently post the APR inside their office where customers can easily see it and the APR must be prominently posted on the licensee's website so that it will be viewed by any Oregon consumer prior to applying for a loan.

(2) After any payment made, in full or in part, on any loan, a licensee must:

(a) Give the person making payment a signed, dated receipt showing the amount paid to principal, the amount paid to interest, and the balance due on the loan; or

(b) An electronic receipt, a canceled check, or other written instrument approved by the director as a substitute for the receipt requirements of subsection (a).

(3) If a licensee does not give a borrower the note marked "Paid or Renewed" in compliance with 2010 Or Laws ch. 23, §17, the loan agreement must state that the borrower's canceled check will be evidence of payment of the loan. The licensee must mark the note "Paid" or "Renewed" and retain the note in the file. If the loan is made using an electronic medium and the consumer has consented to use of electronic transmission, an electronic transmission may fulfill the requirements of this section.

(4) A licensee may not make a loan to an applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee will be presumed to have complied if the licensee:

(a) Requires the applicant to provide evidence of a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which the applicant receives compensation or funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Does not lend more than 25% of the consumer's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of \$60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(e) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(5) When an application is made, a licensee must provide the borrower with a written statement, in a form approved by the director, clearly describing the results of any default or late payment.

(6) In compliance with Or Laws ch. 23, §§21 and 22, a licensee may not renew a loan more than two times and may not make a new loan to a borrower within seven days of the day that a previous payday loan expires.

**Example:** A borrower borrows \$300 for 31 days on July 3 at 36% interest and a \$30 origination fee. Unable to pay off the loan on August 3, the borrower pays the \$30 origination fee and \$9.17 interest ( $\$300 \times 0.36$  divided by  $365 \times 31$ ) and renews the loan with a new due date of September 3. Unable to repay the loan on September 3, the borrower again pays \$9.17 interest and renews the loan with a new due date of October 4. If the borrower is unable to repay the loan on October 4, the lender may not any more renewals and may not make a new loan to the borrower until October 11.

(7) If the licensee has a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the lender may rely on that preexisting relationship to form the good faith belief required under Or Laws ch. 23, §20.

(8) For purposes of the investigation described in 2010 Or Laws ch. 23, §5, an applicant for a payday loan license or title loan license must authorize an investigative consumer report as defined in the Fair Credit Reporting Act, 15 USC 1681 et. seq.

(9) No license will be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the Secretary of State.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§17, 19, 20, 21, 22, and 27

Hist.: New.

#### **441-735-0275**

##### **Conditions Applicable to Loans Made by Title Loan Licensees**

(1) Title loan contracts may not provide for the continuation of interest or other charges after repossession.

(2) For tile loans in default, licensees must send a written notice by first class mail, in a form approved by the director, to the borrower's last known address 10 days prior to repossession.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower's file; and

(c) Repossession may not occur until the 11th day from the date of the notice.

(3) Unless an auctioneer conducts the sale at a public or dealer auction, the licensee must obtain at least three bids on the vehicle prior to the sale of a vehicle. The bids must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(4) Licensees may not sell a vehicle to an agent, affiliate, subsidiary, or employee of the licensee.

(5) If a vehicle is sold, the borrower must receive all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. The licensee must deliver the proceeds no later than three business days after they receive the proceeds of the sale. If the vehicle was paid for by a check, the licensee may deliver the proceeds within three days after the check has cleared.

(6) The licensee may not charge the borrower any storage charge, regardless of how long the vehicle is held prior to sale, if the vehicle is stored on property owned, leased, or otherwise controlled by the licensee.

(7) If more than one person holds title to a vehicle, the vehicle may not be repossessed unless all such persons have signed the necessary loan documents.

Stat. Auth.: 2010 Or Laws ch. 23, §27  
Stats. Implemented: §§17, 20, 21, and 27  
Hist.: New.

**441-735-0280****Prohibited Provisions in Loan Contract Provisions**

A licensee may not use a contract evidencing a loan that contains any of the following provisions:

- (1) A hold harmless clause;
- (2) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in the event of suit or process;
- (3) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course; or
- (4) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: 2010 Or Laws ch. 23, §§19, 20, & 27

Stats. Implemented: 2010 Or Laws ch. 23, §17

Hist.: New.

**441-735-0310****Refund of Unearned Interest and Charges**

- (1) If a borrower pays off a loan prior to the due date, the licensee must refund all unearned interest and charges.
- (2) For purposes of this rule, a licensee must calculate earned interest and charges by multiplying the loan amount by the interest rate and dividing by 365 to find daily interest then multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

**Example:** A borrower gets a loan of \$200 on the 5th day of the month at 36% interest and comes on the 25th of the month to pay off the loan. The interest is calculated as follows:  $\$200 \times 0.36 = \$72$  divided by 365 = \$0.20 per day x 20 days = \$4.00 interest. If the borrower gave a lender a check on the 5th for the full 31-day term (\$206.12), the lender must refund the unearned interest of \$2.12.

There is no minimum interest amount.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §§17 and 27

Hist.: New.

**441-735-0320****Licensee Reporting**

Licensees are required to file an annual report by June 30 for operations during calendar year 2009. Beginning in calendar year 2010 and thereafter, licensees are required to file their annual report by March 31 of each year. Licensees must also provide known information on any felony conviction, or any conviction involving theft or fraud, of any executive officer, director, managing partner, or the manager of any office location that occurred during the reporting period that had not already been reported to the director. This applies to: :

- (1) A new qualified person or office manager;
- (2) A new experienced person;
- (3) Material changes in business plan; or
- (4) Any criminal conviction entered against any person named in the application.

Stat. Auth.: 2010 Or Laws ch. 23, §27

Stats. Implemented: 2010 Or Laws ch. 23, §8

Hist.: New.

