



**Department of Consumer and Business Services**

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**Voiding Loans Made by Unlicensed Consumer Lenders**

**Senate Bill 278**

**Background:** Since January 2010, there have been more than 250 complaints against unlicensed, online payday lenders and consumer finance lenders, resulting in 23 enforcement orders. The majority of the complaints and orders are from foreign or tribal-based entities that have issued loans with annual percentage rates (APRs) far exceeding Oregon’s 36 percent APR cap and violating other short-term lending protection laws. The Department of Consumer and Business Services (DCBS) and the Oregon Attorney General have pursued actions against well-advertised businesses such as Western Sky Financial and Cash Call.

Online consumer lenders depend on automated clearing house authorizations (ACH) to receive direct loan payments and fees from consumers. Although an ACH provides a convenient payment method, it’s also utilized for taking advantage of vulnerable consumers through withdrawing large amounts of money, even after the original loan amount and interest has been paid off. For example, based on DCBS complaint files:

| <b>Loan amount (unlicensed lender to consumer)</b> | <b>Amount withdrawn from consumer’s checking/savings account</b> |
|--|--|
| \$150  | \$4,584  |
| \$300  | \$1,295  |
| \$400  | \$2,025  |

Currently, a violation by an unlicensed consumer lender does not automatically render the transaction void. Instead, the lender can show that they were unaware state law required a license; if a license is obtained 90 days after receiving a violation notice, they may collect on the loan. Additionally, the default judgment rate of interest found in statute (9%) may apply while the lender obtains the license within that 90-day period. Beyond creating delays in resolving consumer complaints, the current law restricts the department’s ability to declare the loans entirely void and join in cooperative enforcement efforts with other federal and state governments.

**Concept:** SB 278 mirrors current law in other states (i.e., Arizona, Idaho, and Massachusetts) by clarifying that if an unlicensed lender issues a loan to an Oregon consumer, the loan is entirely void and uncollectible. In doing such, it is clear to unlicensed lenders, collection agencies, and financial institutions that attempts to collect on an unlicensed loan are illegal. The concept does allow DCBS to account for situations where a person made a loan while holding a lapsed license.

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