

REVENUE:

FISCAL:

SUBSEQUENT REFERRAL TO:

Action:

Vote:

Yeas:

Nays:

Exc.:

Prepared By: James LaBar, Administrator

Meeting Dates: 2/4, 2/9, 3/18

WHAT THE MEASURE DOES: Voids loans of \$50,000 or less issued by unlicensed lenders to Oregon consumers. Prohibits unlicensed lenders, collection agencies, and financial institutions from collecting on unlicensed loans. Allows the Department of Consumer and Business Services to account for persons who made loans while holding a lapsed license. Declares emergency, effective on passage; becomes operative 91 days after effective date of measure.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT:

(-1 amendment) Clarifies that if license lapses the loan is voidable, but not voided.

(-2 amendment) Enables state courts to rescind consumer finance loan of \$50,000 or less, payday loan and title loan as well as restore unlicensed lender and the consumer to respective economic positions prior to transaction if the court finds that the lender's license inadvertently or mistakenly lapsed.

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. 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 nine-percent default judgment rate of interest found in statute 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.