

DRAFT

SUMMARY

Establishes requirements under which debt buyer may bring legal action to collect debt. Specifies notice that debt buyer must give to debtor. Makes violation unlawful collection practice.

Increases amount of damages that may be awarded in action for unlawful collection practice. Prohibits court from awarding attorney fees and costs to prevailing debt collector in action for unlawful collection practice unless court finds that debtor did not have objectively reasonable basis for bringing action or asserting ground for appeal.

Increases time period during which debtor may bring action for unlawful collection practice.

A BILL FOR AN ACT

Relating to debt collection practices; creating new provisions; amending ORS 646.639 and 646.641; and repealing ORS 646.643.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “Debt buyer” means a person that engages in the business of purchasing, in order to collect amounts due from, delinquent consumer loans, delinquent consumer credit accounts or other delinquent consumer debts, whether the person collects the amounts due directly, hires a third party to collect the amounts due or hires another person to pursue legal action to collect the amounts due.

(b) “Legal action” means a lawsuit, mediation, arbitration or any other legal proceeding in any court.

(2) A debt buyer that takes legal action to collect or attempt to collect a debt shall:

1 (a) Notify the debtor in writing, at least 30 days before beginning
2 the legal action, that the debt buyer intends to take legal action. The
3 debt buyer must send the written notice to the debtor's last-known
4 address. The written notice must include, at a minimum:

5 (A) The debt buyer's name, address and telephone number;

6 (B) The original creditor's name;

7 (C) The creditor's original account number for the debt;

8 (D) A statement that shows:

9 (i) The amount the debtor last paid on the debt and the date of the
10 payment;

11 (ii) The balance due on the debt on the date on which the debtor
12 last made a payment;

13 (iii) An itemization of the interest, fees and charges that the ori-
14 ginal creditor imposed;

15 (iv) An itemization of the interest, fees and charges that the debt
16 buyer or any other assignee imposed; and

17 (v) All payments made on and credited to the debt after a default
18 or a charge-off; and

19 (E) A statement that tells the debtor clearly and conspicuously
20 that:

21 (i) An applicable statute of limitations may bar the debt buyer from
22 taking legal action to collect the debt;

23 (ii) The debtor may seek legal advice if the debtor has questions
24 about when the time period during which the debt buyer may take
25 legal action under the applicable statute of limitations will end; and

26 (iii) If the debtor pays any amount on the debt, the payment affirms
27 the existence of the debt and begins a new time period during which
28 the debt buyer may take legal action to collect the debt, subject to the
29 applicable statute of limitations.

30 (b) State in or attach to, as appropriate, the initial pleading the
31 debt buyer files to begin legal action to collect the debt:

1 (A) The original creditor's name;

2 (B) The name of the person that now owns the debt;

3 (C) The last four digits of the creditor's original account number
4 for the debt;

5 (D) The amount and date of the debtor's last payment on the debt
6 and the amount and date of the debtor's last payment before the
7 debtor's default or a charge-off;

8 (E) A detailed itemization of:

9 (i) The balance due on the debt;

10 (ii) Interest, fees and charges that the original creditor imposed;

11 (iii) Interest, fees and charges that the debt buyer or any other
12 assignee imposed;

13 (iv) Attorney fees; and

14 (v) Any other fees, costs or charges the debt buyer has imposed or
15 seeks;

16 (F) A copy of the contract or other writing that the debtor signed
17 and that is evidence of the original debt or, if the debt buyer's claim
18 is based on credit card debt for which a signed writing that is evidence
19 of the debt does not exist, a copy of any documents that the credit
20 card transaction generated; and

21 (G) A copy of each assignment, or other writing that is evidence
22 of a transfer of ownership of the debt, which must show:

23 (i) The debtor's name clearly associated with the creditor's original
24 account number for the debt;

25 (ii) The date on which the debt buyer purchased the debt;

26 (iii) That the debt buyer owns the debt; and

27 (iv) That an unbroken chain of ownership exists between assignees
28 of the transferred debt.

29 (3)(a) Before a court enters judgment against a debtor in a legal
30 action that a debt buyer brings to collect a debt, or after arbitration
31 that the court has ordered, the debt buyer shall file with the court:

1 **(A) Business records authenticated in accordance with ORS 40.460**
2 **that establish the nature and amount of the debt;**

3 **(B) An affidavit from the original creditor that describes the cir-**
4 **cumstances that created the debt, when the debtor defaulted, when**
5 **and to whom the creditor assigned the debt and the amount due on**
6 **the debt at the time of the assignment, and that authenticates the**
7 **contract of sale or assignment and any related exhibits the debt buyer**
8 **submits;**

9 **(C) An affidavit from each seller or assignor that previously owned**
10 **the debt, in which the seller or assignor authenticates the contract**
11 **of sale or assignment and any related exhibits that the debt buyer**
12 **submits and traces the chain of ownership for the debt;**

13 **(D) A statement of the basis for any attorney fees the debt buyer**
14 **seeks, along with evidence that shows that the debt buyer is entitled**
15 **to attorney fees;**

16 **(E) An affidavit that states that the debt buyer complied with the**
17 **requirement set forth in subsection (2)(a) of this section; and**

18 **(F) An affidavit that states that the time period during which the**
19 **debt buyer may take legal action to collect the debt under the appli-**
20 **cable statute of limitations, or any extension of the time period**
21 **available under the statute of limitations, has not ended.**

22 **(b) A court may not enter judgment for a debt buyer that has not**
23 **complied with the requirements set forth in this section. The court**
24 **may, in the court's sole discretion, dismiss the legal action with or**
25 **without prejudice.**

26 **(c) A debtor by motion before the court, without waiving the**
27 **debtor's right to offer evidence if the court does not grant the motion,**
28 **may assert that the amount that the debt buyer seeks is more than**
29 **the debtor owes and ask the court either to require the debt buyer to**
30 **amend the pleading to reflect the correct amount or to dismiss the**
31 **legal action without prejudice. The court, in considering the motion,**

1 shall require the debt buyer to offer evidence that shows that the
2 debtor owes the amount that the debt buyer seeks. The court may not
3 award attorney fees to a debt buyer that obtains a judgment that is
4 less than the amount the debt buyer sought in the original complaint,
5 unless the judgment is the result of a negotiated agreement.

6 (4) If the debt buyer prevails in a legal action under this section,
7 the debt buyer may:

8 (a) Collect interest on the judgment in an amount that does not
9 exceed the weekly average one-year constant maturity Treasury yield
10 that the Board of Governors of the Federal Reserve System publishes
11 in the calendar week that precedes the date of the judgment. Not-
12 withstanding any other law or any interest rate specified in the con-
13 tract or other writing that created the debt, the debt buyer may not
14 receive any interest on the judgment other than the interest specified
15 in this paragraph.

16 (b) Collect attorney fees only if the contract or other writing that
17 created and is evidence of the debt obligates the debtor to pay attorney
18 fees if the debt buyer prevails in a legal action to collect the debt.

19 (5) A debt buyer's violation of the provisions of this section through
20 any direct or indirect action, conduct or practice is an unlawful col-
21 lection practice under ORS 646.639.

22 **SECTION 2.** ORS 646.639 is amended to read:

23 646.639. (1) As used in [*subsection (2) of*] this section **and section 1 of**
24 **this 2013 Act:**

25 (a) "Consumer" means a natural person who purchases or acquires prop-
26 erty, services or credit for personal, family or household purposes.

27 (b) "Consumer transaction" means a transaction between a consumer and
28 a person [*who*] **that** sells, leases or provides property, services or credit to
29 consumers.

30 [(c) "Commercial creditor" means a person who in the ordinary course of
31 business engages in consumer transactions.]

1 [(d)] (c) “Credit” means *[the]* a right *[granted by]* **that** a creditor **grants**
2 to a consumer to defer payment of a debt, to incur a debt and defer *[its]*
3 payment **of the debt**, or to purchase or acquire property or services and
4 defer payment *[therefor]* **for the property or services**.

5 (d) “Creditor” means a person that, in the ordinary course of busi-
6 ness, engages in consumer credit transactions.

7 (e) “Debt” means *[any]* an obligation or alleged obligation *[arising]* **that**
8 **arises** out of a consumer transaction.

9 (f) “Debtor” means a consumer who owes or allegedly owes *[an obligation*
10 *arising out of a consumer transaction]* **a debt**.

11 (g) “Debt collector” means:

12 (A) *[any]* A person *[who]* **that** by *[any]* direct or indirect action, conduct
13 or practice, *[enforces]* **collects** or attempts to *[enforce an obligation that is*
14 *owed or due to any commercial creditor, or alleged to be owed or due to any*
15 *commercial creditor, by a consumer as a result of a consumer transaction]*
16 **collect a debt owed, or alleged to be owed, to a creditor; or**

17 (B) A debt buyer, as defined in section 1 of this 2013 Act.

18 (h) “Person” means an individual, corporation, trust, partnership, incor-
19 porated or unincorporated association or any other legal entity.

20 (2) It *[shall be]* **is** an unlawful collection practice for a debt collector,
21 while collecting or attempting to collect a debt to do any of the following:

22 (a) Use or threaten *[the]* **to** use *[of]* force or violence to cause physical
23 harm to a debtor or to the debtor’s family or property.

24 (b) Threaten arrest or criminal prosecution **of a debtor or any member**
25 **of the debtor’s family**.

26 (c) Threaten *[the seizure, attachment or sale of]* **to seize, attach or sell**
27 a debtor’s property when *[such action can only be taken pursuant to]* **doing**
28 **so requires a court order** *[without disclosing]* **and the debt collector does**
29 **not disclose** that prior court proceedings are required **to seize, attach or**
30 **sell the debtor’s property**.

31 (d) Use profane, obscene or abusive language in communicating with a

debtor or the debtor's family.

(e) Communicate with *[the]* a debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to *[that person]* **the debtor or any member of the debtor's family and** with intent to harass or annoy the debtor or any member of the debtor's family.

(f) Communicate or threaten to communicate with a debtor's employer concerning the nature or existence of the debt.

(g) Communicate, without the debtor's permission, or threaten to communicate with *[the]* a debtor at the debtor's place of employment if the place **of employment** is other than the debtor's residence, except that the debt collector may:

(A) Write to *[the]* a debtor at the debtor's place of employment if *[no]* a home address is **not** reasonably available and if the envelope does not reveal that the communication is from a debt collector other than *[a provider of]* **the person that provided** the goods, services or credit from which the debt arose.

(B) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact the debtor at the debtor's place of employment more frequently than once each business week and may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt collector not to telephone at the debtor's place of employment or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication. For the purposes of this subparagraph, any language in any **agreement, contract or** instrument *[creating]* **that creates or is evidence of** the debt *[which]* **and that** purports to authorize telephone calls at the debtor's place of employment *[shall not be considered as giving]* **does not give** permission to the debt collector to

1 call the debtor at the debtor's place of employment.

2 (h) Communicate with *[the]* a debtor in writing without clearly identify-
3 ing the name of the debt collector, the name of the person, if any, for whom
4 the debt collector is attempting to collect the debt and the debt collector's
5 business address, on all initial communications. In subsequent communi-
6 cations involving multiple accounts, the debt collector may eliminate the
7 name of the person, if any, for whom the debt collector is attempting to
8 collect the debt, and the term "various" may be substituted in *[its]* place **of**
9 **the person's name.**

10 (i) Communicate with *[the]* a debtor orally without disclosing to the
11 debtor within 30 seconds **after beginning the communication** the name
12 of the individual *[making the contact]* **who is initiating the communi-**
13 **cation** and the true purpose *[thereof]* **of the communication.**

14 (j) *[Cause]* **Conceal the true purpose of a communication in such a**
15 **way as to cause** any expense to *[the]* a debtor in the form of long distance
16 telephone calls, telegram fees or other charges *[incurred by a]* **the debtor**
17 **might incur by using a** medium of communication[, *by concealing the true*
18 *purpose of the debt collector's communication*].

19 (k) Attempt to or threaten to enforce a right or remedy *[with knowledge*
20 *or reason to know]* **while knowing or having reason to know** that the right
21 or remedy does not exist, or threaten to take any action *[which]* **that** the
22 debt collector in the regular course of business does not take.

23 (L) Use *[any]* a form of communication *[which]* **that** simulates legal or
24 judicial process or *[which]* **that** gives the appearance of being authorized,
25 issued or approved by a governmental agency, a governmental official or an
26 attorney at law *[when it is not in fact so approved or authorized]* **if a gov-**
27 **ernmental agency, a governmental official or an attorney at law has**
28 **not in fact approved or authorized the communication.**

29 (m) Represent that an existing debt may be increased by the addition of
30 attorney fees, investigation fees or any other fees or charges when *[such]* **the**
31 fees or charges may not legally be added to the existing debt.

(n) Collect or attempt to collect *[any]* interest or *[any]* other charges or fees in excess of the actual debt unless *[they are expressly authorized by]* the agreement, **contract or instrument** *[creating]* **that creates** the debt **expressly authorizes** or *[expressly allowed by]* **a law expressly allows the interest or other charges or fees.**

(o) Threaten to assign or sell *[the]* **a** debtor's account with an attending misrepresentation or implication that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics.

(p) Bring an action or initiate an arbitration proceeding against a debtor or otherwise attempt to collect a debt when the debt collector knows or reasonably should know that the applicable statute of limitations bars the action, arbitration proceeding or collection attempt.

(q) Bring an action or initiate an arbitration proceeding against a debtor or otherwise attempt to collect a debt without valid documentation that shows:

(A) The name of the original creditor, the name and address for the debtor and the original creditor's account number for the debt as shown in the original creditor's records, a copy of the contract or other writing that the debtor signed and that is evidence of the original debt and an itemized accounting of the amount the debt collector claims that the debtor owes, including all fees and charges; and

(B) That the debt collector owns the specific debt instrument or account that is the subject of the action, proceeding or collection attempt.

(3) It *[shall be]* **is** an unlawful collection practice for a debt collector, by use of any direct or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5).

(4) It is an unlawful collection practice for a debt collector to use any direct or indirect action, conduct or practice to violate a provision

1 of section 1 of this 2013 Act.

2 **SECTION 3.** ORS 646.641 is amended to read:

3 646.641. (1) *[Any]* A person **that is** injured as a result of **another**
4 **person's** willful use or employment *[by another person]* of an unlawful col-
5 lection practice may bring an action in an appropriate court to enjoin the
6 practice or to recover actual damages or *[\$200]* **\$1,000**, whichever is greater.
7 The court or the jury may award punitive damages, and the court may pro-
8 vide such equitable relief as *[it]* **the court** deems necessary or proper.

9 (2) *[In any action brought by a person under this section, the court may*
10 *award reasonable attorney fees to the prevailing party.]* **A court shall award**
11 **reasonable attorney fees to a plaintiff that, at trial and on appeal,**
12 **prevails in an action under subsection (1) of this section if the court**
13 **finds that the plaintiff demanded payment in writing from the de-**
14 **fendant not less than 30 days before the plaintiff brought the action**
15 **or not more than 30 days after the action was transferred under ORS**
16 **46.461. The court may not award attorney fees to the plaintiff if the**
17 **court finds that, not less than 30 days before the plaintiff commenced**
18 **the action or not later than 30 days after the action was transferred**
19 **under ORS 46.461, the defendant tendered to the plaintiff an amount**
20 **not less than the damages the plaintiff received in the action.**

21 (3) *[Actions brought under this section shall be commenced within one year*
22 *from the date of the injury.]* **A person that brings an action under this**
23 **section must bring the action within two years after the later of the**
24 **date on which:**

25 (a) **The person discovered the unlawful collection practice; or**

26 (b) **A court dismissed or entered judgment in an action to collect a**
27 **debt from the person.**

28 **SECTION 4.** ORS 646.643 is repealed.

29 **SECTION 5.** Section 1 of this 2013 Act, the amendments to ORS
30 646.639 and 646.641 by sections 2 and 3 of this 2013 Act and the repeal
31 of ORS 646.643 by section 4 of this 2013 Act apply to legal actions that

1 **begin on or after the effective date of this 2013 Act.**

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