TO: House Business and Labor Committee

FROM: Franci Wayland, Vice-President, Public Policy and Government Relations, PRA Group

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RE: HB 2008 Concerns

As a publicly-traded company that, through its subsidiaries, purchases portfolios of consumer receivables from major banks, PRA partners with individuals as they repay their obligations, working toward financial recovery. We are a leader in the nonperforming loan industry and take our leadership obligations within our industry seriously. We work with consumers to resolve their obligations and typically offer a discount on the face value of the debt. In addition, we typically charge no interest or fees on debt we purchase domestically. PRA is also a willing participant to any action that combats unethical behavior and those actions in harming both consumers and legitimate businesses. PRA is a global corporation with more than 4,000 employees in 12 countries worldwide.

Punitive Damages and Class Action Provision:

One of PRA's primary concerns with Oregon HB 2008 centers around a provision that adds to state law **both** a new class action provision **and** also includes the possibility of an award of punitive damages without caps on liability. We feel that either the class action provision should be struck entirely, or class action damages should be limited under the class action provision as they are under the Fair Debt Collection Practices Act (" FDCPA"), the federal law that was designed to eliminate abusive, deceptive and unfair debt collection practices.

- Respectfully, the addition of neither is necessary, as they both are already available to injured consumers in Oregon.
- In Oregon punitive damages are already available to individuals under current state law. Thus, the purpose of punitive damages, to punish misconduct and deter future misconduct, is already fulfilled under Oregon law.
- There is also already a class provision under the applicable federal law, the Fair Debt Collection Practices Act.
- We submit that punitive damages are not appropriate in the class context because, where punitive damages are warranted in an individual claim, they are likely based on widespread violations that are better addressed in a class action where individual consumers will be compensated, for example under the existing provisions of the FDCPA.
- Adding both a new class action provision under state law, and a provision for punitive damages in the class context, are completely unnecessary and will, in the long run, ultimately harm all consumers.
- These additions will significantly increase litigation costs for financial services companies, thus increasing the cost of doing business in Oregon. Those cost increases will be passed on to all Oregon consumers in the form of increased cost of financial products and services.

Caps on Damages in the Class Context:

- If the legislature proceeds with the addition of a state class action provision, the award of damages must be capped and the punitive damages should not be allowed.
- While it is true that punitive damages have been available to individuals under the OR statute for decades, they have not existed in the class context.
- In Oregon, if punitive damages are warranted in an individual claim, they are likely based on widespread violations that are better addressed in a class action where individual consumers will be compensated.
- The FDCPA already allows for class actions, but damages are capped at the lesser of 1% of the debt collector's net worth or $500,000.
- The legislative history of the FDCPA reflects an interest by Congress "to protect consumers from a host of unfair, harassing and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors," including "nuisance suits."

- The FDCPA does not include a punitive damages provision but rather states that "in the case of any action by an individual, [the plaintiff may recover] such additional damages as the court may allow, but not exceeding $1,000." 15 U.S.C. §1692k(a)(2)(A). Courts have essentially looked at this and said that punitive-type damages are limited by the $1,000 cap). This is not true under the OR law.
- Punitive damages without caps are subject to constitutional due process challenges. The due process clauses of the 5th and 14th amendments to the U.S. Constitution prohibit Congress and the state from imposing civil penalties that are disproportionate to the underlying offense. Large punitive damages awards may implicate federal constitutional standards. Defendants frequently challenge these damage awards in appellate courts.

Statute of Limitations Period is Excessive:

Another of PRA's primary concerns with the bill centers around the excessively long statute of limitations ("SOL") provision in the bill as well as the provision defining the date that starts the statute of limitations period. SOLs promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost and to protect parties from defending stale claims.

- The bill proposes increasing the one-year statute of limitations to a six-year statute of limitations. Respectfully, six years is excessive for this type of statue. For example, the FDCPA only provides for a one-year statute of limitations.
- Appropriate and finite statues of limitations periods allow businesses to reduce the out-of-pocket costs associated with the uncertainty of protracted litigation and legal exposure. They allow those resources to be allocated to more beneficial uses, such as offering more affordable credit products and services.
- An increase in the statute of limitations will force companies to keep more and more documentation for a longer period to defend against lawsuits. Those increases in costs will be passed along to Oregon consumers, translating to higher interest rates, and unavailability of credit to underbanked consumers.

SOL Should Begin at the Date of Injury Not Discovery:

The provisions of the bill will essentially require that businesses keep records indefinitely because the SOL runs from the date of discovery of the injury instead of from a date certain.

- The "from the date of discovery" concept of the discovery rule is not appropriate given that this is a garnishment statute, because injury is apparent to the debtor immediately.
- Thus, the limitations period should be based on the date of the injury, not the "discovery of the unlawful method, act or practice."
- The date of discovery of the injury, conceptually, could be 10, 15, 20 or more years into the future.
- Thus, the costs associated with litigation will drastically increase due to the need to retain business records and other evidence to defend against these types of claims in perpetuity.
- Applying the discovery rule to these types of lawsuits opens up protracted litigation and subjects law abiding companies such as PRA to endless discovery requests, driving up attorney's fees for plaintiff's counsel.

Longer SOL Periods Create Data Privacy and Security Concerns:

SOL certainty equates to increased data privacy and security for consumers because it allows companies to delete business records once the SOL expires. Unfortunately, the provisions of the bill that apply the SOL from the date of discovery will require companies to keep business records in perpetuity to allow for defense of potentially baseless lawsuits.

- Companies will be forced to retain consumers' sensitive financial documentation forever.
- Increased retention periods for financial records presents increased opportunity for data security breaches and data privacy violations.
- Data security breaches drive up business costs for companies, subject consumers to privacy risks and increase the likelihood consumers will become the victims of criminal financial fraud.
- As a matter of public policy, legislation should not increase the threat of data privacy and security concerns.