

Testimony in Opposition to HB 2008

Presented by: Matt Markee

Representing: Oregon Collectors Association

HB 2008 not only changes the “do’s and don’ts “ of how to collect debt in Oregon but is also changes many of the exemptions levels on what is allowed to be collected by a creditor when trying to collect money owed to them. It is important to know that this bill effects anyone collecting a debt, not just third party collection agencies. This would include a small business owner, a medical provider, a large retail business, and some state and local government agencies to name a few. While we can all argue what the level of exemptions on some of these items should be, we feel most in this bill are being raised too high – that is not to say we don’t believe some of them should be raised.

When it comes to how someone is allowed to collect a debt in Oregon – it is very important to look at these items very carefully. Unfortunately when businesses in Oregon believe they are doing the right thing often times there is an attorney looking very closely over their shoulder waiting for an opportunity to sue the business on a simple mistake. This happens regularly and often results in the client recovering very little, but the attorney recovering their attorney fees, which doesn’t really help anyone other than that attorney.

Below are only some of the items that we feel could use some additional work and/or compromise on before the bill passes:

- Wage exemptions – currently the wage exemption on a wage garnishment is \$254 a week. This bill would take the wage exemption to \$1,000 a week. Meaning the first \$2,000 earned by someone, after taxes are deducted, is completely exempt from garnishment. So this would mean someone earning around \$70,000 a year would not be subject to a wage garnishment. This wage exemption was last raised by the legislature in 2019 and went into effect in 2020. Perhaps we should be looking at a cost of living from 2019, not a five times multiplier to the current figure.
- Homestead exemption – currently the homestead exemption for a couple is at \$50,000. It is easy to say that this figure is too low and hasn’t been raised for a considerable amount of time. However, the bill takes it to the median home price of a region – in Portland that is about \$475,000. That means if someone bought a home for \$1,000,000 and put 20% down – owing \$800,000 at the time of purchase – and never made a payment on the house or to any other creditor they might owe money to, they could walk away in a year (after being foreclosed on) with more money than they put down on the house (assuming some appreciation on the home).
- The bill allows for one piece of jewelry to be exempt no matter what the price. Meaning someone wanting to hide some money, could buy a million-dollar piece of jewelry that creditors could not touch if they were owed money.
- Currently there is a \$400 wild card exemption that allows a debtor to protect an item of their choosing up to \$400 that is otherwise exempt. It can’t be added to any other

exemption. Under the bill, this goes to \$1,500 and can be added to any other exemption. This means that the \$1,000 wage exemption proposed under the bill could be \$2,500 a week and be used multiple times. Taking the \$70,000 annual amount to double that amount.

- The bill changes the way attorney fees are handled when suing under the consumer protection statute. Currently either side has the ability to seek attorney fees in a case if they win. Under this bill the plaintiff (debtor) could get attorney fees, but the defendant could only get attorney fees if they could prove a frivolous lawsuit. We believe this standard is much too low and should remain the same to make sure a plaintiff has to look at the merit of the case before simply suing creditors.
- There is a change in the legislation that would take away the ability of the court to rule on how much money should be owed to a creditor. This bill makes a change to the consumer protection statute to say that if a creditor sues a debtor for amount they reasonably thought was owed, say \$1,000, and the court rules that the creditor is only owed \$950, the creditor has now violated the act and is subject to a lawsuit for attempting to collect something that was not owed. We believe the courts exist to resolve legitimate disputes between parties. However, this provision seeks to penalize the creditor where a defendant might fail to respond to any collection efforts throughout the process and raise a dispute for the first time in response to the lawsuit. Additional damages are not awarded against a consumer that defends and loses a lawsuit. However, this bill seeks to penalize creditors for using the judicial system the very way that it was intended to be used.
- The bill would allow for class actions against creditors with absolutely no cap on statutory damages. Under federal law if a collection agency is sued in a class action the statutory damages are capped at 1% of net worth. This is because Congress recognized that these amounts can rapidly add up to exorbitant numbers in a class action for very minor, technical violations and Congress did not want these types of cases driving businesses into bankruptcy.

There are a lot of other examples within the bill on extremely large increases to current exemptions and changes to the consumer protection statute that will result in many more lawsuits filed against business for simple mistakes. Our current statute has a negligence standard meaning any simple mistake made is subject to a lawsuit. Under the federal consumer protection statute, the creditor has a chance to show through a bona fide error defense that the violation was, in fact, a mistake and there are general business practices in place to try and avoid them. There is no such defense in Oregon.

We appreciate the willingness to work with the proponents of the bill and the Speaker's office in trying to find a compromise to this legislation. Please know we will work hard to try and find one – if not, we respectfully ask you to vote no.