

Requested Additional Modifications to HB 2008 -1 Amendment

The undersigned organizations respectfully provide the following responses and request the following additional changes to the -1 amendments to HB 2008, and agree that these reasonable changes will allow for the bill to appropriately balance consumer protections with access to credit, the stability of credit markets, and the needs of creditors and the business community in this state.



KEY (unless otherwise noted in document)

-1 amend in lightface * (current ORS in green) * **Response/Proposed changes in Red**

Section 1 – Personal Property Exemptions

- (1)(a)(A) Household goods \$3,000 (various) – **Agree**
- (1)(a)(B)(i)(V) “Electronically stored data” – **Do not know meaning and is new to the -1 amendment – delete**
- (1)(a)(B)(ii) Work items \$15,000 (\$3,000) and Farm tools \$30,000 – **Agree**
- (1)(a)(C) Motor vehicle \$10,000 (\$3,000) – **Agree**
- (1)(a)(L) – Wildcard Exemption \$1500 (\$400) – **Agree, as long as clarified that it cannot be added to wage or bank account exemption in any case**

Section 2 – Funds Exemptions Indexed Annually – **Agree**

Section 3 – Wage Exemption *Note: Wage exemptions were recently increased in 2019, See SB 519.*

- Maintains existing 75% minimum – **Agree**
- (2) Portland minimum wage x 40 for one week (\$254 wk) – **\$400 per one week**
- (3) Includes new provisions suggesting that less than \$1,000 week may not be garnished regardless of section (2) and sets % garnishment limits for wages earned above \$1,000 (\$254 for period of less than one week) – **Delete all boldface text. Amend existing “\$254” to align with amount in subsection (2)(a), i.e. \$400 per week.**

Section 4 – Homestead Exemption (\$40,000)

- (1)(a)(A) Thirty-three percent of the real market value of the homestead – **change to a flat number of \$150,000**
- (1)(a)(B) One hundred percent of the real market value of the homestead, as determined by the county assessor in the year in which the owner claims the exemption, if the owner is 65 years or age or older – **ok with keeping 65 years of age for cutoff, change the exemption for 65+ to a flat number of \$300,000.**

Section 5 – Limitation on Homestead Exemptions – **Agree**

Section 6 – Judgement Liens – **Agree**

Section 7 – Financial Institution Deposits

- (1)(a)(A) and (B) \$2500 exempt out of total balance of all of the debtor’s accounts (no base # exemption now) – **Agree with \$2500 across all accounts at institution, as long as:**
 - **It is made clear that the \$2500 exemption is not stackable with the wildcard in any case;**
 - **Necessary technical amendments are made throughout the section to ensure it is clear that the \$2,500 exemption applies as the total exemption across “all account balances”;** and
 - **It is made clear that the financial institution only needs to look at ORS 18.784 required exemptions if the amount across all accounts equals more than \$2,500. In other words, if total amount across all account balances is less than \$2,500, then nothing may be garnished and the financial institution does not need to do further research. If total amount is over \$2,500, then institution needs to do the lookback on the other exemptions.**
- (1)(b) New CPI language – **Agree**
- (1)(c) – **Agree, subject to necessary technical amendments regarding “all account balances”**

Sections 8 and 9 – Forms – **Update based on changes requested above**

Section 10 – Conforming amendment – **Agree**

Section 11 – Unlawful Collection Practices

-1 Amendment:

Modifies ORS 646.639 (2)(s) to read (existing text in lightface and new language in **bold**):

(2)(s) “Knowingly collects **or attempts to collect** any amount, including any interest fee, charge or expense incidental to the principal obligation, **whether the principal obligation exists or does not exist, by any means, including through threatening to bring or bringing any legal action,** unless the amount is expressly authorized by the agreement creating the debt or permitted by law.”

Recommended change:

Delete all boldface text in ORS 646.639 (2)(s). Add to ORS 646.639 (2) a new paragraph (L) that reads:

(L) Collects, attempts to collect, or threatens to collect a debt while knowing or having reason to know that the debt does not exist, or is not owed by the debtor. It is not a violation of this paragraph for a debt collector to: collect, attempt to collect, or threaten to collect a debt, the existence or amount of which the debtor disputes, if the debt collector has a good faith belief that the debt exists. The fact that the debt collector obtains a judgment for less than the amount sought in the complaint (or fails to obtain a judgment at all) does not by itself establish a violation of this section.

Background and rationale for recommended change:

In *Porter v. Hill*, 314 Or. 86, 838 P.2d 45 (1992), an attorney sued a client to recover attorney fees on an hourly basis for a matter the attorney handled. The client produced an engagement agreement that provided for a contingency fee arrangement. Because the client did not prevail in the matter, the attorney was not entitled to any fees. The client initiated a counterclaim against the attorney for violating the UDCPA, specifically ORS 646.639(2)(k), which prohibits a debt collector from attempting or threatening to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist. The court held that a “debt” is not the same thing as a right or remedy, and thus the plaintiff had no claim under the UDCPA. The proponents of HB 2008 desire (not unreasonably) to change this outcome and make it a violation of the UDCPA to threaten to collect or attempt to collect a debt that does not exist. Unfortunately, the proposed language is unclear and could expose creditors and collectors to UDCPA claims for minor good faith errors. Moreover, the proposed language does not even appear to address the *Porter v. Hill* issue that the proponents are concerned with. This language needs to be clarified and it needs to include a safe harbor so that good faith errors or disputes are not converted into UDCPA violations.

Section 12 – Civil Action For Unlawful Collection Practices

- (1) Damages at \$1,000 (**\$200**) – **Agree, as long as existing attorney fees in statute maintained**
- (2) Allows for attorney fees for prevailing plaintiff in all cases, for prevailing defendant *only* if court determines no objectively reasonable basis for claim exists (**reasonable attorney fees to prevailing parties**) – **Delete boldface and restore existing ORS**
- (3) Extends SOL so actions must be commenced within three years after discovery of the unlawful method, act or practice or six years after the date of injury. (**SOL is one year from date of injury**) – **Statute of Limitations should be capped at three years total**

Section 13 – Repeals ORS 646.643 – **Agree**

Section 14 – Court to Index exemptions – **Agree**

Section 15 – applies to judgements issued on or after effective date – **Agree**

Section 16 – e91 effective date – **Agree**