

Senate Bill 684

Sponsored by COMMITTEE ON COMMERCE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases amount of damages recoverable for violations of laws regarding unlawful trade practices and unlawful debt collection.

Extends statutes of limitations.

Expands list of activities prohibited as unlawful debt collection practices.

A BILL FOR AN ACT

1
2 Relating to consumer protection; creating new provisions; and amending ORS 646.638, 646.639 and
3 646.641.

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

5 **SECTION 1.** ORS 646.638 is amended to read:

6 646.638. (1) Except as provided in subsection (8) of this section, any person who suffers any
7 ascertainable loss of money or property, real or personal, as a result of willful use or employment
8 by another person of a method, act or practice declared unlawful by ORS 646.608, may bring an in-
9 dividual action in an appropriate court to recover actual damages or [~~\$200~~] **\$1,000**, whichever is
10 greater. The court or the jury, as the case may be, may award punitive damages and the court may
11 provide the equitable relief the court considers necessary or proper.

12 (2) Upon commencement of any action brought under subsection (1) of this section the party
13 bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney
14 General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the
15 Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but
16 a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof
17 of mailing may be by affidavit or by return receipt of mailing.

18 (3) Except as provided in subsection (4) of this section, the court may award reasonable attorney
19 fees to the prevailing party in an action under this section.

20 (4) The court may not award attorney fees to a prevailing defendant under the provisions of
21 subsection (3) of this section if the action under this section is maintained as a class action pursuant
22 to ORCP 32.

23 (5) Any permanent injunction or final judgment or order of the court made under ORS 646.632
24 or 646.636 is prima facie evidence in an action brought under this section that the respondent used
25 or employed a method, act or practice declared unlawful by ORS 646.608, but an assurance of vol-
26 untary compliance, whether or not approved by the court, shall not be evidence of the violation.

27 (6) Actions brought under this section shall be commenced within [*one year*] **two years** from the
28 discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a
29 prosecuting attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute
30 of limitations with respect to every private right of action under this section and based in whole

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or in part on any matter complained of in said proceeding shall be suspended during the pendency
 2 thereof.

3 (7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor
 4 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert
 5 any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

6 (8) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa).
 7 Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

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

9 646.639. (1) As used in subsection (2) of this section:

10 (a) "Consumer" means a natural person who purchases or acquires property, services or credit
 11 for personal, family or household purposes.

12 (b) "Consumer transaction" means a transaction between a consumer and a person who sells,
 13 leases or provides property, services or credit to consumers.

14 (c) "Commercial creditor" means a person who in the ordinary course of business engages in
 15 consumer transactions.

16 (d) "Credit" means the right granted by a creditor to a consumer to defer payment of a debt,
 17 to incur a debt and defer its payment, or to purchase or acquire property or services and defer
 18 payment therefor.

19 (e) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

20 (f) "Debtor" means a consumer who owes or allegedly owes an obligation arising out of a con-
 21 sumer transaction.

22 (g) "Debt collector" means any person who by any direct or indirect action, conduct or practice,
 23 enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or
 24 alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer
 25 transaction.

26 (h) "Person" means an individual, corporation, trust, partnership, incorporated or
 27 unincorporated association or any other legal entity.

28 (2) It shall be an unlawful collection practice for a debt collector, while collecting or attempting
 29 to collect a debt to do any of the following:

30 (a) Use or threaten the use of force or violence to cause physical harm to a debtor or to the
 31 debtor's family or property.

32 (b) Threaten arrest or criminal prosecution.

33 (c) Threaten the seizure, attachment or sale of a debtor's property when such action can only
 34 be taken pursuant to court order without disclosing that prior court proceedings are required.

35 (d) Use profane, obscene or abusive language in communicating with a debtor or the debtor's
 36 family.

37 (e) Communicate with the debtor or any member of the debtor's family repeatedly or contin-
 38 uously or at times known to be inconvenient to that person with intent to harass or annoy the
 39 debtor or any member of the debtor's family.

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

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

45 (A) Write to the debtor at the debtor's place of employment if no home address is reasonably

1 available and if the envelope does not reveal that the communication is from a debt collector other
2 than a provider of the goods, services or credit from which the debt arose.

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

14 (h) Communicate with the debtor in writing without clearly identifying the name of the debt
15 collector, the name of the person, if any, for whom the debt collector is attempting to collect the
16 debt and the debt collector's business address, on all initial communications. In subsequent commu-
17 nications involving multiple accounts, the debt collector may eliminate the name of the person, if
18 any, for whom the debt collector is attempting to collect the debt, and the term "various" may be
19 substituted in its place.

20 (i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the
21 name of the individual making the contact and the true purpose thereof.

22 (j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees
23 or other charges incurred by a medium of communication, by concealing the true purpose of the debt
24 collector's communication.

25 (k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that
26 the right or remedy does not exist, **institute litigation with knowledge or reason to know that**
27 **the debt does not exist or that the person named in the litigation does not owe the debt**, or
28 threaten to take any action [*which*] **that** the debt collector in the regular course of business does
29 not take.

30 (L) Use any form of communication which simulates legal or judicial process or which gives the
31 appearance of being authorized, issued or approved by a governmental agency, governmental official
32 or an attorney at law when it is not in fact so approved or authorized.

33 (m) Represent that an existing debt may be increased by the addition of attorney fees, investi-
34 gation fees or any other fees or charges when such fees or charges may not legally be added to the
35 existing debt.

36 (n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual
37 debt unless they are expressly authorized by the agreement creating the debt or expressly allowed
38 by law.

39 (o) Threaten to assign or sell the debtor's account with an attending misrepresentation or im-
40 plication that the debtor would lose any defense to the debt or would be subjected to harsh,
41 vindictive or abusive collection tactics.

42 (p) **Communicate with the debtor once the debt collector receives affirmative confirma-**
43 **tion from the attorney for the debtor that the attorney represents the debtor in regard to**
44 **the debt, unless the attorney fails to respond within a reasonable period of time to a com-**
45 **munication from the debt collector.**

1 **(q) Communicate with the debtor once the debtor notifies the debt collector in writing**
 2 **that the debtor refuses to pay the debt or that the debtor wishes the debt collector to cease**
 3 **further communications with the debtor. The debt collector may contact the debtor once to**
 4 **advise the debtor that the debt collector’s further efforts are being terminated or to notify**
 5 **the debtor that the debt collector intends to invoke a specified remedy. For the purposes of**
 6 **this paragraph, the term “debtor” includes the debtor’s spouse, parent, if the debtor is a**
 7 **minor, guardian, executor or administrator.**

8 **(r) Engage in any false, deceptive or misleading practice in collecting or attempting to**
 9 **collect a debt.**

10 (3) It shall be an unlawful collection practice for a debt collector, by use of any direct or indi-
 11 rect action, conduct or practice, to enforce or attempt to enforce an obligation made void and
 12 unenforceable by the provisions of ORS 759.720 (3) to (5).

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

14 646.641. (1) Any person injured as a result of willful use or employment by another person of
 15 an unlawful collection practice may bring an action in an appropriate court to enjoin the practice
 16 or to recover actual damages or [~~\$200~~] **\$1,000**, whichever is greater. The court or the jury may
 17 award punitive damages, and the court may provide such equitable relief as it deems necessary or
 18 proper.

19 (2) In any action brought by a person under this section, the court may award reasonable at-
 20 torney fees to the prevailing party.

21 (3) Actions brought under this section shall be commenced within [~~one year~~] **two years** from the
 22 date of the injury.

23 **SECTION 4.** (1) **The amendments to ORS 646.638 (1) by section 1 of this 2007 Act and ORS**
 24 **646.641 (1) by section 3 of this 2007 Act apply only to causes of action arising on or after the**
 25 **effective date of this 2007 Act. Any causes of action arising before the effective date of this**
 26 **2007 Act shall continue to be governed by ORS 646.038 (1) or 646.641 (1) as in effect imme-**
 27 **diately before the effective date of this 2007 Act.**

28 (2) **The amendments to ORS 646.638 (6) by section 1 of this 2007 Act and ORS 646.641 (3)**
 29 **by section 3 of this 2007 Act apply to all causes of action, whether arising before, on or after**
 30 **the effective date of this 2007 Act, and act to revive any cause of action barred by the op-**
 31 **eration of ORS 646.638 (6) or 646.641 (3) as in effect immediately before the effective date of**
 32 **this 2007 Act.**