

Enrolled
House Bill 2307

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CHAPTER

AN ACT

Relating to collection agencies; amending ORS 697.005.

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

SECTION 1. ORS 697.005 is amended to read:

697.005. As used in ORS 697.005 to 697.095:

(1)(a) "Collection agency" means:

(A) [Any] **A** person directly or indirectly engaged in soliciting [claims] **a claim** for collection, or collecting or attempting to collect [claims] **a claim that is** owed, due or asserted to be owed or due to another person or to a public body **at the time the person solicits, collects or attempts to collect the claim;**

(B) [Any] **A** person [who] **that** directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms represented to be a collection system even [though] **if** the forms direct the debtor to make payment to the creditor and even [though] **if** the forms may be or are actually used by the creditor in the creditor's own name;

(C) [Any] **A** person [who] **that**, in attempting to collect or in collecting the person's own claim, uses a fictitious name or any name other than the person's own that indicates to the debtor that a third person is collecting or attempting to collect the claim;

(D) [Any] **A** person in the business of engaging in the solicitation of the right to repossess or in the repossession of collateral security due or asserted to be due to another person; or

(E) [Any] **A** person [who] **that**, in the collection of claims from another person:

(i) Uses any name other than the name regularly used in the conduct of the business out of which the claim arose; and

(ii) Engages in any action or conduct that tends to convey the impression that a third party has been employed or engaged to collect the claim.

(b) "Collection agency" does not include:

(A) [Any] **An** individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a registrant under ORS 697.005 to 697.095, if the individual is an employee of the registrant[;].

(B) [Any] **An** individual collecting or attempting to collect claims for not more than three employers, if all collection efforts are carried on in the name of the employer and the individual is an employee of the employer[;].

(C) [Any] **A** person [who] **that** prepares or mails monthly or periodic statements of accounts due on behalf of another person if all payments are made to [that] **the** other person and no other collection efforts are made by the person preparing the statements of accounts[;].

(D) [Any] **An** attorney-at-law rendering services in the performance of the duties of an attorney-at-law[;].

(E) [Any] **A** licensed certified public accountant or public accountant rendering services in the performance of the duties of a licensed certified public accountant or public accountant[;].

(F) [Any] **A** bank, mutual savings bank, consumer finance company, trust company, savings and loan association, credit union or debt consolidation agency[;].

(G) [Any] **A** real estate licensee or escrow agent licensed under the provisions of ORS chapter 696, as to any collection or billing activity involving a real estate transaction or collection escrow transaction of the licensee or escrow agent[;].

(H) [Any] **An** individual regularly employed as a credit person or in a similar capacity by one person, firm or corporation that is not a collection agency as defined in this section[;].

(I) [Any] **A** public officer or [any] **a** person acting under order of [any] **a** court[;].

(J) [Any] **A** person acting as a property manager in collecting or billing for rent, fees, deposits or other sums due landlords of managed units[;].

(K) [Any person while the person is] **A person that is** providing billing services. A person is providing billing services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of collection of claims for [other persons] **another person**, whether in the other person's name or any other name, by any means that:

(i) Is an accounting procedure, preparation of mail billing or any other means intended to accelerate cash flow to the other person's bank account or to any separate trust account; and

(ii) Does not include any personal contact or contact by telephone with the person from whom the claim is sought to be collected[;].

(L) [Any person while the person] **A person that** is providing factoring services. A person is providing factoring services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of:

(i) Lending or advancing money to commercial clients on the security of merchandise or accounts receivable and then enforcing collection actions or procedures on such accounts; or

(ii) Soliciting or collecting on accounts that have been purchased from commercial clients under an agreement whether or not the agreement:

(I) Allows recourse against the commercial client;

(II) Requires the commercial client to provide any form of guarantee of payment of the purchased account; or

(III) Requires the commercial client to establish or maintain a reserve account in any form[;].

(M) [Any] **An** individual employed by another person [who] **that** operates as a collection agency if the person does not operate as a collection agency independent of that employment[;].

(N) [Any] **A** mortgage banker as defined in ORS 59.840[;].

(O) [Any] **A** public utility, as defined in ORS 757.005, [any] **a** telecommunications utility, as defined in ORS 759.005, [any] **a** people's utility district, as defined in ORS 261.010, and [any] **a** cooperative corporation engaged in furnishing electric or communication service to consumers[;].

(P) [Any] **A** public body or [any] **an** individual collecting or attempting to collect claims owed, due or asserted to be owed or due to [any] **a** public body, if the individual is an employee of the public body[; or].

(Q) A person that receives an assignment of debt in any form without an obligation to pay the assignor any of the proceeds resulting from a collection of all or a portion of the debt.

[(Q)] **(R)** [Any] **A** person for whom the Director of the Department of Consumer and Business Services determines by order or by rule that the protection of the public health, safety and welfare does not require registration with the department as a collection agency.

(2) "Collection system" means a scheme intended or calculated to be used to collect claims sent, prepared or delivered by:

(a) A person who in collecting or attempting to collect the person's own claim uses a fictitious name or any name other than the person's own that indicates to the debtor that a third person is collecting or attempting to collect the claim; or

(b) A person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

(3) "Claim" means *[any]* **an** obligation for the payment of money or thing of value arising out of *[any]* **an** agreement or contract, express or implied.

(4) "Client" or "customer" means *[any]* **a** person authorizing or employing a collection agency to collect a claim.

(5) "Debtor" means *[any]* **a** person owing or alleged to owe a claim.

(6) "Debts incurred outside this state" means *[any]* **an** action or proceeding that:

(a) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to perform services outside of this state or to pay for services to be performed outside of this state by the plaintiff;

(b) Arises out of services actually performed for the plaintiff by the defendant outside of this state or services actually performed for the defendant by the plaintiff outside of this state, if the performance outside of this state was authorized or ratified by the defendant;

(c) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to deliver or receive outside of this state or to send from outside of this state goods, documents of title or other things of value;

(d) Relates to goods, documents of title or other things of value sent from outside of this state by the defendant to the plaintiff or a third person on the plaintiff's order or direction;

(e) Relates to goods, documents of title or other things of value actually received outside of this state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where delivery to carrier occurred; or

(f) Where jurisdiction at the time the debt was incurred was outside of this state.

[(7) "*Department*" means the Department of Consumer and Business Services.]

[(8) "*Director*" means the Director of the Department of Consumer and Business Services.]

[(9)] (7) "Out-of-state collection agency" means a collection agency located outside of this state whose activities within this state are limited to collecting debts incurred outside of this state from debtors located in this state. As used in this subsection, "collecting debts" means collecting by means of interstate communications, including telephone, mail or facsimile transmission from the collection agency location in another state on behalf of clients located outside of this state.

[(10)] (8) "Person" *[includes]* **means** an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

[(11)] (9) "Public body" means:

(a) The state and any branch, department, agency, board or commission of the state;

(b) *[Any]* **A** city, county, district or other political subdivision or municipal or public corporation *[and any]* **or an** instrumentality thereof; and

(c) *[Any]* **An** intergovernmental agency, department, council, joint board of control created under ORS 190.125 or other like entity, *[which]* **that** is created under ORS 190.003 to 190.130 and *[which]* **that** does not act under the direction and control of any single member government.

[(12)] (10) "Registered" or "registrant" means *[any]* **a** person registered under ORS 697.005 to 697.095 or registered or licensed as a collection agency under the laws of another state.

[(13)] (11) "Statement of account" means a report setting forth amounts billed, invoices, credits allowed or aged balance due.

Passed by House April 16, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 12, 2009

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President of Senate

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Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State