

Minority Report
A-Engrossed
Senate Bill 328

Ordered by the Senate February 24
Including Senate Minority Report Amendments dated February 24

Sponsored by nonconcurring members of the Senate Committee on Consumer Protection and Public Affairs: Senators GEORGE, GIROD

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.

[Provides that person engages in unlawful practice when in course of person's business, vocation or occupation person employs unlawful collection practice.]

Authorizes Director of Department of Consumer and Business Services to refuse to issue, renew or revoke registration of debt collector when collector collects debt unlawfully. Authorizes director to investigate unlawful debt collection practices.

Prohibits person who collects debt unlawfully from charging or receiving fee or compensation while committing unlawful debt collection practices.

Subjects person who collects debt unlawfully to forfeiture and civil penalty of not more than \$1,000.

A BILL FOR AN ACT

1
2 Relating to unlawful collection practices; amending ORS 697.039, 697.091, 697.093 and 697.095.

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

4 **SECTION 1.** ORS 697.039 is amended to read:

5 697.039. (1) The Director of the Department of Consumer and Business Services may refuse to
6 issue or renew or may revoke or suspend *[any]* a registration under ORS 697.031 if the director de-
7 termines that **a person that is registered under ORS 697.031:**

8 (a) *[Any information a person]* Files **false or untruthful information** with the director under
9 ORS 697.031 *[is false or untruthful]*;

10 (b) *[A person has]* Violated *[any of the rules]* **a rule** of the director for registration under ORS
11 697.031;

12 (c) *[A person has]* Violated the provisions of ORS 697.045 or 697.058;

13 **(d) Violated a provision of ORS 646.639;**

14 *[(d)] (e) [A person has]* Failed to maintain in effect the bond or *[an]* irrevocable letter of credit
15 required under ORS 697.031;

16 *[(e)] (f) [A person has]* Died or *[become]* **became** incapacitated;

17 *[(f)] (g) [A person has]* Engaged in dishonest, fraudulent or illegal practices or conduct in *[any]*
18 **a business or profession; or**

19 *[(g)] (h) [A person has been]* **Was** convicted of a felony or misdemeanor, an essential element
20 of which is fraud.

21 (2) A revocation or suspension under this section may be for a time certain or upon condition
22 that certain acts be performed.

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 (3) If the director issued an initial order [*of revocation of*] **to revoke** a registration before [*the*
2 *expiration of*] the registration **expired**, the director may enter a final order of revocation even
3 though the registration has expired.

4 (4) **The director's** actions [*of the director*] under this section are subject to the provisions of
5 ORS chapter 183.

6 **SECTION 2.** ORS 697.091 is amended to read:

7 697.091. (1) A person who violates [*any*] **a** provision of ORS **646.639**, 697.015 or 697.058 or [*any*]
8 **a** rule adopted under ORS 697.031 or 697.085 [*shall*] **may** not charge or receive [*any*] **a** fee or com-
9 pensation on [*any*] moneys received or collected while in violation of [*any*] **a** provision of ORS
10 **646.639**, 697.015 or 697.058 or [*any*] **a** rule adopted under ORS 697.031 or 697.085.

11 (2) A person [*shall*] **may** not charge or receive [*any*] **a** fee or compensation on [*any*] moneys
12 received or collected while operating in accordance with [*any*] **a** provision of ORS 697.015 or 697.058
13 or [*any*] **a** rule adopted under ORS 697.031 or 697.085 but that is received or collected as a result
14 of the person's acts as a collection agency or out-of-state collection agency operating in violation
15 of [*any*] **a** provision of ORS **646.639**, 697.015 or 697.058 or [*any*] **a** rule adopted under ORS 697.031
16 or 697.085.

17 (3) [*All*] Moneys collected or received in violation of this section shall be immediately returned
18 to the assignors, or their assigns, of the account on which the moneys were paid.

19 **SECTION 3.** ORS 697.093 is amended to read:

20 697.093. (1) The Director of the Department of Consumer and Business Services may:

21 (a) Undertake [*the*] investigations, including investigations outside this state, that the director
22 considers necessary to determine whether a person has:

23 (A) Violated, is violating or is about to violate:

24 (i) ORS **646.639**, 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115;

25 (ii) A rule adopted under ORS 697.031, 697.085 or 697.086; or

26 (iii) An order issued under this section;

27 (B) Filed information under ORS 697.031 that is false or untruthful; or

28 (C) Failed to maintain in effect the bond or [*an*] irrevocable letter of credit required under ORS
29 697.031.

30 (b) Require a person to file a statement in writing, under oath or otherwise, concerning the
31 matter being investigated.

32 (c) Take evidence from witnesses and compel the attendance of witnesses and the production
33 of books, papers, correspondence, memoranda, agreements or other documents or records that the
34 director considers relevant or material to an investigation or proceeding.

35 (d) If the director has reason to believe that a person has:

36 (A) Violated, is violating or is about to violate ORS **646.639**, 697.015, 697.031, 697.045, 697.058,
37 697.091, 697.105 or 697.115 or a rule adopted under ORS 697.031, 697.085 or 697.086, issue an order
38 to cease and desist from the violation.

39 (B) Filed information under ORS 697.031 that is false or untruthful, issue an order to correct the
40 filing.

41 (C) Failed to maintain in effect the bond or [*an*] irrevocable letter of credit required under ORS
42 697.031, issue an order to remedy the failure.

43 (2) The authority conferred by this section is in addition to and not in lieu of [*any*] other au-
44 thority conferred on the director.

45 **SECTION 4.** ORS 697.095 is amended to read:

1 697.095. (1) In addition to any other penalty provided by law, a person who violates any pro-
2 vision of ORS **646.639**, 697.015 or 697.058 or [any] a rule adopted under ORS 697.031, 697.085 or
3 697.086 is subject to forfeiture and payment of a civil penalty to the Department of Consumer and
4 Business Services in an amount of not more than \$1,000 for each offense.

5 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

6 (3) All penalties recovered shall be deposited in the Consumer and Business Services Fund cre-
7 ated by ORS 705.145.

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