

Senate Bill 386

Sponsored by Senator BONAMICI; Representative HOLVEY

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**.

Provides that attempt or threat to enforce right or remedy or collect debt that person knows or has reason to know does not exist is unlawful collection practice.

Allows court to award attorney fees, costs and expenses to prevailing debtor in action for unlawful collection practice. Provides that court may award reasonable attorney fees to defendant if court finds that debtor brought action in bad faith or solely for purposes of harassment.

Provides that period within which debtor must commence action for unlawful collection practice begins upon discovery of unlawful collection practice or of injury that results from unlawful collection practice.

Permits debtor, notwithstanding period for commencement of action, to assert counterclaim for unlawful collection practice in action brought against debtor.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; amending ORS 646.639 and 646.641;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 646.639 is amended to read:

6 646.639. (1) As used in subsection (2) of this section:

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

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

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

13 (d) "Credit" means the right granted by a creditor to a consumer to defer payment of a debt,
14 to incur a debt and defer *[its]* payment **of the debt**, or to purchase or acquire property or services
15 and defer payment *[therefor]* **for the property or services**.

16 (e) "Debt" means **an obligation or an alleged obligation to pay money or a thing of value**
17 **evidenced by an agreement or contract, express or implied, that is formed in the course of**
18 **or as a result of a consumer transaction.** *[any obligation or alleged obligation arising out of a*
19 *consumer transaction.]*

20 (f) "Debtor" means a consumer who owes **a debt.** *[or allegedly owes an obligation arising out of*
21 *a consumer transaction.]*

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

26 (h) "Person" means an individual, corporation, trust, partnership, incorporated or

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 unincorporated association or *[any]* other legal entity.

2 (2) *[It shall be an unlawful collection practice for]* A debt collector, while collecting or attempting
3 to collect a debt, **may not** *[to]* do any of the following:

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

6 (b) Threaten arrest or criminal prosecution.

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

9 (d) Use profane, obscene or abusive language **or make false or misleading statements** in
10 communicating with a debtor or **a member of** the debtor's family.

11 (e) Communicate with the debtor or any member of the debtor's family repeatedly or contin-
12 uously or at times known to be inconvenient to *[that person]* **the debtor or a member of the**
13 **debtor's family** with intent to harass or annoy the debtor or *[any]* **a member of** the debtor's family.

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

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

19 (A) Write to the debtor at the debtor's place of employment if no home address is reasonably
20 available and if the envelope does not reveal that the communication is from a debt collector other
21 than a provider of the goods, services or credit from which the debt arose.

22 (B) Telephone a debtor's place of employment without informing any other person of the nature
23 of the call or identifying the caller as a debt collector but only if the debt collector in good faith
24 has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day
25 or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact
26 the debtor at the debtor's place of employment more frequently than once each business week and
27 may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt
28 collector not to telephone at the debtor's place of employment or if the debt collector knows or has
29 reason to know that the debtor's employer prohibits the debtor from receiving such communication.
30 For the purposes of this subparagraph, *[any]* language in *[any]* **an agreement, contract or** instru-
31 ment creating the debt *[which]* **that** purports to authorize telephone calls at the debtor's place of
32 employment *[shall]* **does** not *[be considered as giving]* **give** permission to the debt collector to call
33 the debtor at the debtor's place of employment.

34 (h) Communicate with the debtor in writing without clearly identifying the name of the debt
35 collector, the name of the person, if any, for whom the debt collector is attempting to collect the
36 debt and the debt collector's business address, on all initial communications. In subsequent commu-
37 nications involving multiple accounts, the debt collector may eliminate the name of the person, if
38 any, for whom the debt collector is attempting to collect the debt, and the term "various" may be
39 substituted in *[its]* place **of the name**.

40 (i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the
41 name of the individual making the contact and the true purpose *[thereof]* **of the contact**.

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

45 (k) Attempt *[to]* or threaten to **take an action to collect a debt or** enforce a right or remedy

1 with knowledge or reason to know that the **debt**, right or remedy does not exist, or threaten to take
2 any action [*which*] **that** the debt collector in the regular course of business does not take.

3 (L) Use [*any*] **a** form of communication [*which*] **that** simulates legal or judicial process or
4 [*which*] **that** gives the appearance of being authorized, issued or approved by a governmental
5 agency, **a** governmental official or an attorney at law when [*it*] **the communication** is not in fact
6 so approved or authorized.

7 (m) Represent that an existing debt may be increased by the addition of attorney fees, investi-
8 gation fees or any other fees or charges when [*such*] **the** fees or charges may not legally be added
9 to the existing debt.

10 (n) Collect or attempt to collect [*any*] interest or [*any*] other charges or fees in excess of the
11 actual debt unless [*they*] **the interest, charges or fees** are expressly authorized by the
12 agreement, **contract or instrument** creating the debt or expressly allowed by law.

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

16 (p) **Take or threaten to take an action against, make a representation to, communicate**
17 **with, collect or attempt to collect a debt from or cause an expense to a debtor that is pro-**
18 **hibited under the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq., P.L. 95-109.**

19 (3) [*It shall be an unlawful collection practice for*] A debt collector, by use of any direct or indi-
20 rect action, conduct or practice, [*to*] **may not** enforce or attempt to enforce an obligation made void
21 and unenforceable by the provisions of ORS 759.720 (3) to (5).

22 (4) **Violation of a provision of subsection (2) or (3) of this section is an unlawful collection**
23 **practice.**

24 **SECTION 2.** ORS 646.641 is amended to read:

25 646.641. (1) [*Any*] **A** person injured as a result of willful use or employment by another person
26 of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice
27 or to recover actual damages or \$200, whichever is greater. The court or the jury may award pu-
28 nitive damages, and the court may provide such equitable relief as [*it*] **the court** deems necessary
29 or proper.

30 (2) In [*any*] **an** action brought by a person under this section, the court may award **a prevailing**
31 **debtor, as defined in ORS 646.639**, reasonable attorney fees, **costs and expenses**. [*to the prevailing*
32 *party.*] **If a court finds that a debtor brought an action under this section in bad faith or**
33 **solely for the purposes of harassment, the court may award a prevailing debt collector rea-**
34 **sonable attorney fees.**

35 (3) Actions brought under this section shall be commenced within one year from the date of the
36 [*injury.*] **discovery of the unlawful collection practice or the discovery of an injury resulting**
37 **from the unlawful collection practice, whichever is later.**

38 (4) **Notwithstanding the period set forth in subsection (3) of this section for the com-**
39 **mencement of an action, a debtor may assert any counterclaim the debtor has under ORS**
40 **646.639 in an action a debt collector brings against the debtor.**

41 **SECTION 3.** The amendments to ORS 646.639 and 646.641 by sections 1 and 2 of this 2009
42 Act apply to debts and actions to collect or enforce a debt that arise or occur on or after the
43 effective date of this 2009 Act.

44 **SECTION 4.** This 2009 Act being necessary for the immediate preservation of the public
45 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect

1 **on its passage.**

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