

Senate Bill 577

Sponsored by Senator BONAMICI

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**.

Establishes requirements for legal action brought by debt buyer to collect debt. Makes violation unlawful collection practice.

Increases amount of damages in action for unlawful collection practice. Prohibits award of attorney fees and costs to prevailing debt collector in action for unlawful collection practice unless court finds that debtor had no objectively reasonable basis for bringing action or asserting ground for appeal.

Increases time period during which debtor must commence action for unlawful collection practice and provides that time period begins upon discovery of unlawful collection practice.

A BILL FOR AN ACT

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

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

16 (d) "Creditor" means a person who in the ordinary course of business engages in con-
17 sumer transactions.

18 (e) "Debt" means [*any*] **an** obligation or alleged obligation arising out of a consumer transaction.

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

21 (g) "Debt collector" means [*any*] **a** person who, by [*any*] direct or indirect action, conduct or
22 practice, [*enforces*] **collects** or attempts to [*enforce an obligation that is owed or due to any com-*
23 *mercial creditor, or alleged to be owed or due to any commercial creditor, by a consumer as a result*
24 *of a consumer transaction.*] **collect a debt owed, or alleged to be owed, to a creditor. "Debt col-**
25 **lector" includes a debt buyer as defined in section 2 of this 2011 Act.**

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

28 (2) It [*shall be*] **is** an unlawful collection practice for a debt collector, while collecting or at-

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 tempting to collect a debt, to do any of the following:

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

4 (b) Threaten arrest or criminal prosecution.

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

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

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

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

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

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

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

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

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

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

43 (k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that
44 the right or remedy does not exist, or threaten to take any action [*which*] **that** the debt collector
45 in the regular course of business does not take.

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

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

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

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

14 (3) It *[shall be]* **is** an unlawful collection practice for a debt collector, by use of any direct or
 15 indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and
 16 unenforceable by the provisions of ORS 759.720 (3) to (5).

17 (4) **It is an unlawful collection practice for a debt buyer, as defined in section 2 of this**
 18 **2011 Act, by use of any direct or indirect action, conduct or practice, to violate a provision**
 19 **of section 2 of this 2011 Act.**

20 **SECTION 2. (1)(a) The definitions in ORS 646.639 apply to this section.**

21 **(b) As used in this section:**

22 **(A) "Debt buyer" means:**

23 **(i) A person engaged in the business of purchasing delinquent consumer loans, delinquent**
 24 **consumer credit accounts or other delinquent consumer debts for collection purposes, re-**
 25 **gardless of whether the debt buyer collects the debt, hires a third party to collect the debt**
 26 **or hires an attorney to pursue legal action to collect the debt; and**

27 **(ii) A debt collector acting as a debt buyer.**

28 **(B) "Legal action" means any lawsuit or legal proceeding, including but not limited to**
 29 **mediation or arbitration.**

30 **(2) A debt buyer that takes legal action to collect a debt, or to attempt to collect a debt,**
 31 **shall:**

32 **(a) Give the debtor written notice of the intent to take legal action, sent to the debtor's**
 33 **last known address at least 30 days in advance of commencing the legal action. If the running**
 34 **of the applicable statute of limitations for collecting the debt ends less than 30 days before**
 35 **the debt buyer intends to take legal action, the time period during which legal action must**
 36 **be brought under the applicable statute of limitations is extended by the number of days, not**
 37 **to exceed 30 days, required to provide 30 days' notice before commencing legal action. The**
 38 **written notice must include, at a minimum:**

39 **(A) The name, address and telephone number of the debt buyer;**

40 **(B) The name of the original creditor;**

41 **(C) The original account number of the debt;**

42 **(D) The balance due on the debt and whether the amount of the balance due includes**
 43 **interest and fees; and**

44 **(E) A clear and conspicuous statement informing the debtor that:**

45 **(i) A statute of limitations for collecting the debt may apply;**

1 (ii) The debtor should obtain legal advice as to when the running of the applicable statute
 2 of limitations ends; and

3 (iii) The debtor's payment of any amount after the date on which the running of the
 4 statute of limitations ends reaffirms the debt and restarts the running of the statute of
 5 limitations for collecting the debt.

6 (b) In the initial pleading filed to commence a legal action to collect a debt, include the
 7 following:

8 (A) The name of the original creditor;

9 (B) The name of the current owner of the debt;

10 (C) The last four digits of the original account number of the debt;

11 (D) The date of default or charge-off and the amount due at that time;

12 (E) The balance due on the debt and whether the amount of the balance due includes
 13 interest and fees; and

14 (F) The relevant terms of the underlying agreement, contract or instrument creating the
 15 debt if not attached to the pleading.

16 (3) Prior to entry of a default judgment against a debtor in a legal action brought by a
 17 debt buyer to collect a debt, the court shall require the debt buyer to submit a written
 18 statement made under oath or affirmation stating:

19 (a) That a written notice of intent to take legal action as required under subsection (2)(a)
 20 of this section was sent to the debtor at the debtor's last known address;

21 (b) The balance due on the debt;

22 (c) The basis for attorney fees, if requested; and

23 (d) That the applicable statute of limitations for collecting the debt has not run or, if
 24 extended under subsection (2)(a) of this section, the date on which the running of the ex-
 25 tended statute of limitations ends.

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

27 646.641. (1) *[Any]* A person injured as a result of willful use or employment by another person
 28 of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice
 29 or to recover actual damages *[or \$200]* **or an amount up to \$1,000**, whichever is greater. The court
 30 or the jury may award punitive damages, and the court may provide such equitable relief as *[it]* **the**
 31 **court** deems necessary or proper.

32 (2) In *[any]* **an** action brought by a person under this section, the court may award **a prevailing**
 33 **debtor** reasonable attorney fees and costs *[to the prevailing party]*. **The court may award rea-**
 34 **sonable attorney fees and costs at trial and on appeal to a prevailing debt collector only if**
 35 **the court finds there was no objectively reasonable basis for bringing the action or asserting**
 36 **the ground for appeal.**

37 (3) Actions brought under this section shall be commenced within *[one year]* **two years** from the
 38 date of the *[injury]* **discovery of the unlawful collection practice.**

39 **SECTION 4.** Section 2 of this 2011 Act and the amendments to ORS 646.639 and 646.641
 40 by sections 1 and 3 of this 2011 Act apply to legal actions commenced on or after the effective
 41 date of this 2011 Act.