



**Senate General Government, Consumer and Small Business Protection
March 20, 2013
Testimony in Support of SB 525
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Good morning and thank you Chair Shields, Vice-Chair George and members of the committee. My name is Angela Martin and I'm here testifying today in support of SB 525, a bill dealing with the relatively new and quickly growing industry of debt buying

Debt buyers purchase large portfolios of consumer debt from the original creditor or secondary debt buyers for pennies on the dollar. The industry barely existed in the early 1990s. By 2005, the industry purchased accounts with a face value worth an estimated \$110 billion.¹ The rapid growth in the debt buying industry has led to a host of problems. Debt collection issues now top the list of consumer complaints logged with the Federal Trade Commission and the Oregon Department of Justice and our court system is carrying the burden of an explosion in debt collection lawsuits.

Filing cookie cutter lawsuits without sufficient evidence is core to the business model for many in the industry. In 2009 Encore Capitol, one of the largest debt buying firms, grossed \$487 million from legal actions – half of its total collections. Last year debt buyers initiated more than 7,200 lawsuits against Oregon consumers. In the vast majority of these cases the consumer did not show up to contest the lawsuit for reasons including that they did not receive proper notice, did not recognize the plaintiff as a company they had ever done business with or could not afford legal advice necessary to understand their rights. The result of such circumstances is an automatic win for the debt buyer.

The problems and abuses connected with collection efforts by debt buyers have been well documented in two recent reports authored by the Federal Trade Commission². My testimony

¹ National Consumer Law Center (2010) *The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts*.

² *The Structure and Practices of the Debt Buying Industry* (2013), *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (2010)

includes a summary of those reports. In addition I have included three articles authored by Jeff Horowitz, a reporter for American Banker who wrote a series on documentation and quality control problems in the credit card collections industry. Here are a few highlights from those articles:

- In 2009 and 2010, Bank of America sold hundreds of millions of dollars worth of defaulted accounts to CACH LLC under a contract that stated that Bank of America could not vouch for the accuracy of its own records. The contract cautioned that the balances were approximate, might have already been paid off or had been discharged in bankruptcy.³ CACH LLC took these “as is” accounts and filed thousands of lawsuits against consumers. Between 2009-2012 CACH LLC filed more than 750 lawsuits against Oregon consumers.
- In a 2009 agreement to sell accounts to debt buyers, U.S. Bank stated that it “may have failed to credit borrowers for some payments and only guarantees the accuracy of account balances within a 10% margin of error.”⁴
- A 2008 sales agreement between JP Morgan Chase and debt buyer Palisades Collection stated that, “documentation is available for no less than 50% of the Charged-off Accounts.”⁵

SB 525, including the -2 amendments, would address these issues by requiring debt buyers to provide basic information to the consumer and the court before filing a lawsuit and obtaining a judgment. Specifically, the bill would require the following information:

- **30-Day written *notice to consumer*** before taking legal action to collect a debt. The notice would include the following information:
 - The debt buyer’s name, address and telephone number
 - The original creditor’s name and account number
 - Date of last payment or default and amount owed at that time
 - An accounting of the amount owed including fees and charges imposed by debt buyer
 - Copy of the contract or evidence of the original debt
 - Evidence, through proper chain of title, that the plaintiff is the owner of the debt
- **Provide certain *documentation with the initial pleading*** including:
 - An itemized accounting of the amount sought including charges imposed by debt buyer
 - A copy of the contract or other evidence of the original debt
 - A copy of other documents showing that the plaintiff is the owner of the debt.

³ Horwitz, Jeff, (2012 March 29). Bank of America Sold Card Debts to Collectors Despite Faulty Records. *American Banker*. Retrieved from www.americanbanker.com/issues/177_62

⁴ Ibid

⁵ Ibid

- **Before the court enters a judgment the debt buyer must provide certain *evidence*** including:
 - Business records establishing the amount and nature of the debt
 - An affidavit by the original creditor authenticating the facts regarding the debt
 - An affidavit authenticating the contract assigning the debt
 - An affidavit stating that the debt is valid including the fact that the time period for pursuing legal action has not expired.

In addition, SB 525 would prohibit debt buyers from the following actions:

- Pursuing legal action when the debt buyer knows, or should have known, that such collection is barred by the applicable statute of limitations or that the debt is otherwise invalid or defensible.
- Initiating legal action without valid documentation that the debt buyer is the owner of the debt instrument and/or without reasonable verification of the debt allegedly owed.
- Accumulating post judgment interest on consumer debt lawsuit brought by a debt buyer exceeding one-year Treasury yield.

Again, the above changes would only apply to debt buyers or debt collectors acting on their behalf. (and first party creditors or debt collectors acting on their behalf. SB 525 proposes long overdue changes to enforcement under the Unlawful Debt Collection Practices Act. These changes would apply to all debt collectors subject to Oregon’s consumer protection statute for debtors. The intent of the changes is to provide an injured consumer with a reasonable opportunity to collect appropriate damages including:

- Actual damages or \$1,000 whichever is greater
- Reasonable attorney fees for a prevailing debtor
- Reasonable attorney fees for a prevailing debt collector if debtor files a frivolous lawsuit
- And increase in the statute of limitations from one year to two years.

Effective enforcement is the heart of any consumer protection issue. Without it the consumer must depend on voluntary compliance by everyone in the industry. A consumer’s ability to raise valid claims before a judge depends on a simple analysis of whether they can afford to obtain legal counsel and the financial risk of losing. Under current law, a consumer with a valid claim that a debt collector willfully violated Oregon law bears an unreasonable risk under the “loser pays” attorney fee provision. As a result, consumers who have legitimate claims are effectively barred from raising those claims before a judge due to the potential risk of paying thousands in attorney fees. This change will ensure that debt collectors who violate the law are appropriately penalized.