House Consumer Protection and Government Efficiency
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Testimony in Support of HB 2826
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We are writing in support of HB 2826, a bill dealing with a fairly new industry - debt buyers. The "debt buyer" industry is a relatively new and quickly growing industry.

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 based on insufficient evidence is part of the business model for the industry. In 2009 Encore Capitol, one of the largest debt buying firms, grossed $487 million from legal actions – half of its total collections. Oregon courts have seen similar trends in increased litigation-related collection. Last year in Oregon debt buyers initiated more than 7,200 lawsuits against Oregon consumers. In the vast majority of these cases the consumer will not show up to contest the lawsuit because they did not receive proper notice, did not recognize the plaintiff as a company they have ever done business with or could not afford legal advice necessary to understand their rights. The result is an automatic win for the debt buyer.

The problems and abuses connected with collection efforts by debt buyers has been well documented in two reports authored by the Federal Trade Commission. My testimony 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 pulled from those articles:

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

- In 2009 and 2010 Bank of America sold hundreds of millions of dollars of defaulted accounts to CACH LLC under a contract that stated that **the bank 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.[2] 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.

- A 2009 agreement written by U.S. Bank to sell accounts to debt buyers stated that they "may have failed to credit borrowers for some payments and only guarantees the accuracy of account balances within a 10% margin of error."[3]

- 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."[4]

HB 2826, including the -1 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 writing evidencing the original debt
  - A copy of other documents showing that the plaintiff is the owner of the debt.

- **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.

[2] 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
[3] Ibid
[4] Ibid

In addition, HB 2826-1 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.

- Accumulation of post judgment interest on consumer debt lawsuit brought by a debt buyer not to exceed one-year Treasury yield.

Again, all of the above changes would only apply to debt buyers or debt collectors acting on their behalf. HB 2826 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. 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 imbalance was corrected under the Unlawful Trade Practices Act. I urge you to make the same change under the UDCPA.

Summary of 2013 FTC Study on the Debt Buying Industry: "The Structures and Practices of the Debt Buying Industry" [5]

- **This was the most extensive empirical study of the debt buying industry.** The FTC examined 90 million consumer accounts purchased by nine of the largest debt buyers. The accounts had a face value of $143 billion and the debt buyers spent nearly $6.5 billion to acquire them.

- **The purpose of the report was straightforward and simple** – To provide a better understanding of the debt buying industry, the process of buying and selling debt, and to determine the relationship between debt buying practices and problems the FTC sees in debt collection.

- This most recent report on the debt buying industry offers even more reason to be concerned by highlighting the lack of information and documentation that debt buyers receive when they purchase accounts – information that is often necessary in debt collection litigation.

- For example, the FTC found that **debt buyers typically did not have the information needed to break down the outstanding balances on accounts into principal, interest, and other fees**. Of the accounts studied, only 11% included the principal amount, and 37% listed the charges and fees.

- **Debt buyers received documentation for accounts purchased for a small percentage of the debts.** Only 12% of the sample accounts studied by the FTC of accounts purchased by debt buyers came with any account documents. When considering all of the accounts purchased during the study period, **an estimated 6% of accounts debt buyers purchased came with any sort of documentation**.

- **Debt buyers rarely obtained information about collection history or dispute history for the accounts they purchase** – information that the FTC concluded is very relevant to debt buyers in assisting them in determining whether consumers actually owe the debts, whether they are attempting to collect from the right person, and whether the amounts are accurate.

- **Debt buyers have some information about the account but fail to share it with the consumer.** Information that would help the consumer understand the origins of the debt, including the name of the original creditor, account number and date of last payment is available to the debt buyer but generally not included in validation letters.

[5] Leibowitz, Jon, et al. 2013. "The Structure and Practices of the Debt Buying Industry. Federal Trade Commission. http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf.

- **Debt buyers verified disputed debts aged 6 years or more only 36% of the time compared with a 58% verification rate for debts 3 or fewer years old.** It makes sense that for older accounts, debt buyers did not verify disputed debt as frequently – the information necessary to verify a debt is less likely to be available, particularly if the debt has been sold and resold many times. In Oregon, the statute of limitations for cases like ones brought by debt buyers is 6 years.

- The Commission reiterated its concern over the risk of default judgments on debt beyond the statute of limitations – "As the Commission has noted, **because 90% or more of consumers sued in these actions do not appear in court to defend, filing these actions creates a risk that consumers will be subject to a default judgment on a time-barred debt**."

- The **FTC report cited instances of debt buyers suing or pursuing consumers for time-barred debt**. These cases include a 2009 case where a consumer was wrongfully sued by one of the nation's largest debt buyers for a time-barred debt. *Basile v. Blatt, Hasenmiller, Leibsker & Moore, LLC*, 632 F.Supp.2d 842 (N.D. Ill. 2009). The report also highlighted the Commission's own enforcement action brought against Asset Acceptance in 2012 in which the FTC alleged the debt buyer pursued consumers for payment on time-barred debt without informing them of the consequences of doing so and trained its collection employees how to collect on time-barred debt.

- The FTC rejected debt buyer and collector claims that it is difficult to determine whether or not a debt is time-barred because the statute of limitations has run. **The Commission concluded that debt buyers receive sufficient information to allow them to determine whether or not the debt is beyond the statute of limitations**, and even if it is unclear, the report questioned why the debt buyer cannot just seek that information from the original creditor.

- These findings raise serious concerns about lawsuits brought by debt buyers to collect on the accounts they purchase. Debt buyers are bringing suits and obtaining default judgments in state court at an alarmingly high rate. However, based on some of the findings from this 2013 report, there are valid questions as to whether debt buyers can prove ownership of the debt, the alleged debtor, and the accuracy of the amount claimed to be owed.

- The FTC reiterated its finding from its 2010 report that "**debt collection complaints often do not contain sufficient information to allow consumers to admit or deny the allegations and assert affirmative defenses**." This finding, among others, led the FTC to conclude in 2010 that "**the system for resolving consumer debt disputes through litigation is seriously flawed**." In its most recent report, the FTC did not let debt buyers off the hook, as they claim – "**the sufficiency and accuracy of the information used in the collection of debts remains a significant consumer protection concern**."

Summary of 2010 FTC Study "Repairing a Broken System" [6] on Debt Collection Litigation & Arbitration

- The 2010 Federal Trade Commission (FTC) report stems from a February 2009 FTC workshop report, where **the Commission concluded that the "debt collection system is in serious need of reform…"** but needed more information before proposing specific solutions.

- The 2009 FTC workshop report noted a number of concerns including: 1) filing of suits based on insufficient evidence; 2) failing to properly notify alleged debtors;[7] 3) a "high prevalence" of default judgments; 4) improper garnishment of exempt funds (e.g. Social Security income) from bank accounts; and 5) suing or threatening to sue on time-barred debts.

- In order to remedy the current failures of the debt collection system the FTC proposes a series of reforms that states should adopt**. The FTC also focuses on the importance of state reforms as "[d]ebt collection lawsuits [are] almost invariably filed in state courts, where state law is the main source of…applicable…standards."**

- Some of the reforms the FTC recommends for states include: 1) taking steps to ensure consumers receive proper notification of collection lawsuits; 2) requiring more and specific information on debts before filing a complaint; 3) developing clear and uniform statute of limitations; and 4**) placing the burden on collectors to prove that their debts are not time-barred.**[8]

- **Importantly, the FTC found that many debt collection complaints do not contain sufficient information to allow consumers to reasonably respond to allegations and assert defensives**. This leads to overwhelming numbers of default judgments. Consequently, the FTC states that states should consider that complaints include: 1) the name of the **original** creditor and the last four digits of the **original** account number; 2) the date of default and the amount due at that time; 3) any applicable statute of limitations; 4) the total amount currently owed broken down by principal, interest and fees and 5) the relevant terms of the underlying contract or a copy of the contract itself attached to the complaint.

- In case of a potential default judgment, and in addition to the need for overall reforms, **the FTC recommends that states adopt specific checklists judges must follow before entering a default judgment in order to "promote the application of proper and uniform requirement…"**

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[6] Leibowitz, Jon, et al., 2010. "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration. Federal Trade Commission. ftc.gov/os/2010/07/debtcollectionreport.pdf.

[7] The FTC cited a New York Attorney General suit against a process founder that alleged **over 100,000** instances of faulty service that **resulted** in default judgments.

[8] The FTC: "….most consumers do not know or understand their legal rights with respect to the collection of time-barred debt."

Law Enforcement Actions Against Debt Buyers

State and federal law enforcement agency actions against debt buyers indicate widespread problems in the market that must be addressed. The Federal Trade Commission in its 2010 and 2013 reports recommends that states adopt reform efforts to address these market problems.

- The Minnesota and West Virginia Attorneys General both filed suits in 2012 against one of the largest debt buyers, Midland Funding, for **filing unreliable, "robo-signed" affidavits in support of its collection lawsuits in Minnesota and West Virginia state courts**.

- The Federal Trade Commission filed a complaint against Asset Acceptance in 2012 alleging, among other things, that the debt buyer claimed consumers owed debts when it could not substantiate those representations and **had reason to know the account portfolios contained inaccurate information**, failed to disclose that **debts were too old to be legally enforceable**, and **pursuing individuals who did not owe the debt**. Asset Acceptance paid a $2.5 million penalty to settle those charges.

- The Maryland Office of the Commissioner of Financial Regulation filed a complaint in 2011 against debt buyers LVNV Funding and Resurgent Capital Services **for filing false and misleading complaints and supporting affidavits and misrepresenting the amounts of their claims in the state court collection lawsuits**. The Commissioner and the debt buyers settled in 2012, with LVNV Funding and Resurgent Capital paying the state a $1 million penalty and the two companies dismissing more than 3,500 cases filed against Maryland residents.

- IN 2011, the Texas Attorney General sued Encore Capital Group and two of its subsidiaries, Midland Funding and Midland Credit Management, for **robo-signing** of affidavits in support of collection lawsuits, **filing cases against the wrong individuals**, attempting to **collect debts that had been fully or partially paid**, and using incomplete or **inaccurate information as the basis of its lawsuits**.

- In 2004, the FTC filed a complaint and obtained a permanent injunction and penalty against debt buyer Capital Acquisitions & Management Corporation (CAMCO) for attempting **collect debts from people who never owed the debts**, attempting to **collect and report to credit reporting agencies debts that are beyond the statute of limitations** or too old to report to credit agencies, among other abusive debt collection practices. As a result of the injunction and penalty, a court-appointed receiver was appointed to shut down CAMCO.