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CIVIL ENFORCEMENT DIVISION

MEMORANDUM

DATE: March 28, 2013

TO: Representative Paul Holvey, Chair
House Committee on Consumer Affairs and Government Efficiency, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 2826 – Debt Buyers

RECOMMENDED ACTION

This testimony is presented in support of HB 2826. We recommend that the Committee approve HB 2826 with a do pass recommendation.

BACKGROUND ON DEBT BUYING

- Debt buyers purchase charged-off debt from creditors or other debt buyers and then attempt to collect or resell the debt.
    - Some debt buyers are also debt collectors; they attempt to collect the debt they purchased. Other debt buyers hire collection agencies to collect the debt on their behalf.
    - Debt buyers purchase debt for pennies on the dollar.
    - Debt buyers rarely receive underlying documents about the debts. Instead, they purchase spreadsheets of information with basic information about the alleged debt and debtor. Usually, debt buyers can purchase, at additional cost, supporting documentation for a period of time after the sale. They usually do so, however, only if a debt is disputed (an alleged debtor claims he either does not owe the debt or does not owe that amount).
    - Most debts are sold "as is." This means that the seller disclaims liability about the accuracy of the information provided about the debts.
- In January 2013, the Federal Trade Commission (FTC) released a report titled *The Structure and Practices of the Debt Buying Industry.*

- The FTC analyzed data from nine of the ten largest debt buyers in the United States. Those debt buyers bought 76.1% of the debt sold in 2008.

- The FTC analyzed data on 5,000 portfolios, which contained approximately 90 million consumer accounts. The accounts had a face value of $143 billion. The debt buyers spent $6.5 billion to purchase the accounts.

- The FTC found that while debt buyers usually had information about the original creditor and account, they did not disclose that information to the alleged debtors.

- The FTC found that debt buyers rarely received information from sellers about disputed debts or whether a disputed debt had been verified (checked for accuracy). Additionally, some debt buyers resold disputed debts.

- Currently, some debtors are unaware they actually owe a debt to a debt buyer.

  - The alleged debtors are contacted by a company who they have never done business with before and told that they owe a debt. The alleged debtors are not provided with sufficient information to identify the debt or the original amount owed. (For example, the consumer may know he owes $150 to ABC, Corp., but receives a collection notice stating he owes $547 to XYZ, Inc.)

  - When alleged debtors receive a collection notice or are served with a complaint from an unfamiliar company, many ignore it, thinking that the correspondence is a scam or was sent to the wrong individual.

- Allegations have been made against debt buyers that they submit "robo signed" affidavits to courts. These affidavits are drafted based on the "as is" information provided by the seller. Courts often sign default judgments that have no substantiation, other than the debt buyer's affidavit, of the amount of the debt or that the person sued was the actual debtor.

DOJ ENFORCEMENT EFFORTS

- Since 2001, the volume of complaints about debt collection practices has been substantial enough to place the industry on DOJ's Top 10 Consumer Complaint List.

- Since DOJ gained the ability to enforce Oregon's Unlawful Debt Collection Practices Act (UDCPA) on January 1, 2010, DOJ has opened 18 investigations on collection agencies, including three on debt buyers.

HOW HB 2826 WILL PROTECT DEBTORS

- The Unlawful Debt Collection Practices Act and the federal Fair Debt Collection Practices Act (FDCPA) are only intended to prohibit unfair debt collection practices; they are not intended to allow people to avoid their debts.

- HB 2826 provides alleged debtors with basic information about the debt so they can identify the source of the debt and verify the accuracy of the debt.

- HB 2826 provides alleged debtors with basic information about their legal rights – for example, when collection of the debt cannot be enforced in court or that if they pay a portion of the debt, it may revive the statute of limitations.

- Before obtaining a judgment, debt buyers need to be able to prove the amount of the debt, that they own the debt and that they are entitled to additional charges and attorney's fees.

- HB 2826 can be enforced by the Attorney General under ORS 646.607 or a debtor can bring a private right of action under ORS 646.641.

DOJ CONTACT

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