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Senator Chip Shields, Chair
Senate General Government, Small Business and Consumer Protection
Committee Services Office
900 Court St. NE, Room 453
Salem, Oregon 97301

Re: *SB 525 (Unlawful Debt Collection Practices)*

Dear Chair Shields:

I submit this written testimony in support of Senate Bill 525 in its amended form, SB 525-2. This important legislation protects Oregon consumers who are sued by debt buyers which have no relationship with the consumer, by amending the Unlawful Debt Collection Practices Act (UDCPA), ORS 646.639 et seq.

I have been in private practice as a consumer protection attorney since 1999. The majority of my practice focuses on consumer credit cases, including representing victims of identity theft and mistaken identity. In my practice, strong State and Federal consumer statutes are indispensable in protecting Oregonians from abusive businesses, and leveling the playing field for law abiding businesses.

Senate Bill 525 addresses one of the major consumer protection issues of our day: the assignment or sale of massive portfolios of defaulted debt. I receive numerous phone calls from consumers who are engaged in some phase of a lawsuit filed by an out-of-state business that they do not recognize or have any relationship with. In particular, consumer credit card accounts are bought and sold today as commodities on the open market. The underlying documentation and data supporting that debt is often suspect or completely lacking.

The consumers that are sued on these debts are often victims of identity theft, or happen to have similar names or identifying information as the true debtor. Even when the lawsuit is brought against the correct person, the balance, interest rate and fees and charges can be incorrect or indecipherable. Consumers that want to make good on their bills cannot be sure that the company suing them has a right to collect on that debt. Requiring debt buyers to produce information about the original account, and how they are entitled to collect will protect the innocent, and inform debtors on legitimate accounts.

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All too often, consumers contact me after a default judgment has already been entered. This can happen because the consumer has moved to a new address, or in the case of mistaken identity, because the wrong person was served with summons. Having additional information in every case file will assist a consumer in their efforts to vacate the judgment, or determine whether it was properly taken in the first place.

In the most extreme cases, debt buyers have filed lawsuits without evidence entitling them to a judgment. Like the mortgage industry, the credit card industry has been scandalized by illegal practices such as robo-signing. Whistle blowers have exposed what amounts to fraud on the courts committed by large institutions and small. This legislation will protect the dignity of the courts and public confidence in judgments.

Finally, this legislation addresses the “loser pays” attorney fee provision for private claims. Originally, the statute followed the federal Fair Debt Collection Practices Act, and allowed prevailing debt collectors to recover their attorney fees only in cases of frivolous claims. The UDCPA was changed, along with the Unlawful Trade Practices Act (UTPA), in 1995 to allow any prevailing defendant to recover its fees. In the last Legislative Session, the UTPA was changed back to the original framework, but the UDCPA was not. The automatic “loser pays” provision undermines the consumer protection policy of the UDCPA, and punishes a debtor who asserts an objectively reasonable claim, but ultimately cannot convince the jury to rule in his or her favor. This results in a chilling effect on legitimate claims where consumers are unwilling to risk exposure in order to vindicate their rights under the UDCPA.

Sincerely,

/s/ Justin M. Baxter

Justin M. Baxter