

House Bill 2526

Sponsored by Representative HOLVEY (Pre-session filed.)

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 debt buyer to bring legal action to collect debt. Makes failure to meet requirements unlawful collection practice.

Increases amount of statutory damages available in action for 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. (1) As used in this section:**

6 (a) **"Debt buyer" means:**

7 (A) **A person that engages in the business of purchasing, in order to collect amounts due**
8 **from, delinquent consumer loans, delinquent consumer credit accounts or other delinquent**
9 **consumer debts, whether the person collects the amounts due directly, hires a third party**
10 **to collect the amounts due or hires an attorney to pursue legal action to collect the amounts**
11 **due; or**

12 (B) **A debt collector that acts as a debt buyer.**

13 (b) **"Legal action" means a lawsuit, mediation, arbitration or any other legal proceeding.**

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

15 (a) **Notify the debtor in writing, at least 30 days before beginning the legal action, that**
16 **the debt buyer intends to take legal action. The debt buyer must send the written notice to**
17 **the debtor's last-known address. If the time period during which the debt buyer may take**
18 **legal action to collect the debt under an applicable statute of limitations will end less than**
19 **30 days before the debt buyer intends to take legal action, the time period during which the**
20 **debt buyer may take legal action under the statute of limitations is extended for the number**
21 **of days, not exceeding 30 days, that is necessary for the debt buyer to notify the debtor in**
22 **accordance with this paragraph. The written notice must include, at a minimum:**

23 (A) **The debt buyer's name, address and telephone number;**

24 (B) **The original creditor's name;**

25 (C) **The original account number for the debt;**

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

28 (E) **A clear and conspicuous statement that tells the debtor that:**

29 (i) **A time period during which the debt buyer may take legal action to collect the debt**
30 **under an applicable statute of limitations may apply;**

31 (ii) **The debtor may seek legal advice if the debtor has questions about when the time**

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 period during which the debt buyer may take legal action under the applicable statute of
 2 limitations will end; and

3 (iii) If the debtor pays any amount after the time period during which the debt buyer
 4 may take legal action under the applicable statute of limitations ends, the payment affirms
 5 the existence of the debt and begins a new time period during which the debt buyer may take
 6 legal action to collect the debt, subject to the statute of limitations that specifies the dura-
 7 tion of the new time period.

8 (b) List, in the initial pleading the debt buyer files to begin legal action to collect the
 9 debt:

10 (A) The original creditor's name;

11 (B) The name of the person that now owns the debt;

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

13 (D) The date of default or charge-off and the amount due on the debt on the date of de-
 14 fault or charge-off;

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

17 (F) The relevant terms of the underlying agreement, contract or instrument that created
 18 the debt.

19 (3) Before a court enters judgment against a debtor in a legal action that a debt buyer
 20 brings to collect a debt, the court shall require the debt buyer to submit a written affidavit
 21 under oath or affirmation that states:

22 (a) The balance due on the debt;

23 (b) The basis for attorney fees, if the debt buyer requests attorney fees;

24 (c) That the debt buyer complied with the requirement set forth in subsection (2)(a) of
 25 this section; and

26 (d) That the time period during which the debt buyer may take legal action to collect the
 27 debt under the applicable statute of limitations, or any extension of the time period available
 28 under the statute of limitations, has not ended.

29 (4) A debt buyer's violation of the provisions of this section through any direct or indi-
 30 rect action, conduct or practice is an unlawful collection practice.

31 **SECTION 2.** ORS 646.639 is amended to read:

32 646.639. (1) As used in [subsection (2) of] this section **and section 1 of this 2013 Act:**

33 (a) "Consumer" means a natural person who purchases or acquires property, services or credit
 34 for personal, family or household purposes.

35 (b) "Consumer transaction" means a transaction between a consumer and a person who sells,
 36 leases or provides property, services or credit to consumers.

37 [(c) "Commercial creditor" means a person who in the ordinary course of business engages in
 38 consumer transactions.]

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

42 (d) "Creditor" means a person that, in the ordinary course of business, engages in con-
 43 sumer transactions.

44 (e) "Debt" means [any] an obligation or alleged obligation [arising] **that arises** out of a con-
 45 sumer transaction.

1 (f) “Debtor” means a consumer who owes or allegedly owes [*an obligation arising out of a con-*
 2 *sumer transaction*] **a debt.**

3 (g) “Debt collector” means:

4 (A) [*any*] **A person** [*who*] **that** by [*any*] direct or indirect action, conduct or practice, [*enforces*]
 5 **collects** or attempts to [*enforce an obligation that is owed or due to any commercial creditor, or al-*
 6 *leged to be owed or due to any commercial creditor, by a consumer as a result of a consumer trans-*
 7 *action*] **collect a debt owed, or alleged to be owed, to a creditor; or**

8 **(B) A debt buyer, as defined in section 1 of this 2013 Act.**

9 (h) “Person” means an individual, corporation, trust, partnership, incorporated or
 10 unincorporated association or any other legal entity.

11 (2) It [*shall be*] **is** an unlawful collection practice [*for*] **if** a debt collector, while collecting or
 12 attempting to collect a debt [*to do any of the following*]:

13 (a) [*Use or threaten the use of*] **Uses or threatens to use** force or violence to cause physical
 14 harm to a debtor or to the debtor’s family or property.

15 (b) [*Threaten*] **Threatens** arrest or criminal prosecution.

16 (c) [*Threaten the seizure, attachment or sale of*] **Threatens to seize, attach or sell** a debtor’s
 17 property when [*such action can only be taken pursuant to*] **doing so requires a court order** [*without*
 18 *disclosing*] **and the debt collector does not disclose** that prior court proceedings are required **to**
 19 **seize, attach or sell the debtor’s property.**

20 (d) [*Use*] **Uses** profane, obscene or abusive language in communicating with a debtor or the
 21 debtor’s family.

22 (e) [*Communicate*] **Communicates** with the debtor or any member of the debtor’s family re-
 23 peatedly or continuously or at times known to be inconvenient to [*that person*] **the debtor or any**
 24 **member of the debtor’s family and** with intent to harass or annoy the debtor or any member of
 25 the debtor’s family.

26 (f) [*Communicate or threaten*] **Communicates or threatens** to communicate with a debtor’s
 27 employer concerning the nature or existence of the debt.

28 (g) [*Communicate*] **Communicates**, without the debtor’s permission, or [*threaten*] **threatens** to
 29 communicate with the debtor at the debtor’s place of employment if the place **of employment** is
 30 other than the debtor’s residence, except that the debt collector may:

31 (A) Write to the debtor at the debtor’s place of employment if [*no*] **a home address is not** rea-
 32 sonably available and if the envelope does not reveal that the communication is from a debt col-
 33 lector other than [*a provider of*] **the person that provided** the goods, services or credit from which
 34 the debt arose.

35 (B) Telephone a debtor’s place of employment without informing any other person of the nature
 36 of the call or identifying the caller as a debt collector but only if the debt collector in good faith
 37 has made an unsuccessful attempt to telephone the debtor at the debtor’s residence during the day
 38 or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact
 39 the debtor at the debtor’s place of employment more frequently than once each business week and
 40 may not telephone the debtor at the debtor’s place of employment if the debtor notifies the debt
 41 collector not to telephone at the debtor’s place of employment or if the debt collector knows or has
 42 reason to know that the debtor’s employer prohibits the debtor from receiving such communication.
 43 For the purposes of this subparagraph, any language in any **agreement, contract or** instrument
 44 [*creating*] **that creates or is evidence of** the debt [*which*] **and that** purports to authorize telephone
 45 calls at the debtor’s place of employment [*shall not be considered as giving*] **does not give** permis-

1 sion to the debt collector to call the debtor at the debtor's place of employment.

2 (h) *[Communicate]* **Communicates** with the debtor in writing without clearly identifying the
 3 name of the debt collector, the name of the person, if any, for whom the debt collector is attempting
 4 to collect the debt and the debt collector's business address, on all initial communications. In sub-
 5 sequent communications involving multiple accounts, the debt collector may eliminate the name of
 6 the person, if any, for whom the debt collector is attempting to collect the debt, and the term
 7 "various" may be substituted in *[its]* place **of the person's name**.

8 (i) *[Communicate]* **Communicates** with the debtor orally without disclosing to the debtor within
 9 30 seconds **after beginning the communication** the name of the individual *[making the contact]*
 10 **who is initiating the communication** and the true purpose *[thereof]* **of the communication**.

11 (j) *[Cause]* **Conceals the true purpose of a communication in such a way as to cause** any
 12 expense to the debtor in the form of long distance telephone calls, telegram fees or other charges
 13 *[incurred by a]* **a debtor might incur by using a medium of communication**, *[by concealing the true*
 14 *purpose of the debt collector's communication]*.

15 (k) *[Attempt to or threaten]* **Attempts or threatens** to enforce a right or remedy *[with knowledge*
 16 *or reason to know]* **while knowing or having reason to know** that the right or remedy does not
 17 exist, or *[threaten]* **threatens** to take any action *[which]* **that** the debt collector in the regular
 18 course of business does not take.

19 (L) *[Use any]* **Uses a** form of communication *[which]* **that** simulates legal or judicial process or
 20 *[which]* **that** gives the appearance of being authorized, issued or approved by a governmental
 21 agency, a governmental official or an attorney at law *[when it is not in fact so approved or author-*
 22 *ized]* **if a governmental agency, a governmental official or an attorney at law has not in fact**
 23 **approved or authorized the communication**.

24 (m) *[Represent]* **Represents** that an existing debt may be increased by the addition of attorney
 25 fees, investigation fees or any other fees or charges when *[such]* **the** fees or charges may not legally
 26 be added to the existing debt.

27 (n) *[Collect or attempt]* **Collects or attempts** to collect *[any]* interest or *[any]* other charges or
 28 fees in excess of the actual debt unless *[they are expressly authorized by]* the agreement, **contract**
 29 **or instrument** *[creating]* **that creates** the debt **expressly authorizes** or *[expressly allowed by]* **a**
 30 **law expressly allows the interest or other charges or fees**.

31 (o) *[Threaten]* **Threatens** to assign or sell the debtor's account with an attending misrepresen-
 32 tation or implication that the debtor would lose any defense to the debt or would be subjected to
 33 harsh, vindictive or abusive collection tactics.

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

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

38 646.641. (1) *[Any]* **A person that is** injured as a result of **another person's** willful use or em-
 39 ployment *[by another person]* of an unlawful collection practice may bring an action in an appro-
 40 priate court to enjoin the practice or to recover actual damages or ~~[\$200]~~ **\$500**, whichever is greater.
 41 The court or the jury may award punitive damages, and the court may provide such equitable relief
 42 as *[it]* **the court** deems necessary or proper.

43 (2) In any action *[brought by]* a person **brings** under this section, the court may award reason-
 44 able attorney fees to the prevailing party.

45 (3) *[Actions brought]* **A person that brings an action** under this section *[shall be commenced]*

1 **must bring the action** within one year [*from*] **after** the date of the injury.

2 **SECTION 4. Section 1 of this 2013 Act and the amendments to ORS 646.639 and 646.641**

3 **by sections 2 and 3 of this 2013 Act apply to legal actions that begin on or after the effective**

4 **date of this 2013 Act.**

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