

A-Engrossed
House Bill 2826

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

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.

Establishes requirements under which debt buyer may bring legal action to collect debt. Specifies notice that debt buyer must give to debtor. Makes violation unlawful collection practice.

Increases amount of damages that may be awarded in action for unlawful collection practice. [*Prohibits court from awarding attorney fees and costs to prevailing debt collector in action for unlawful collection practice unless court finds that debtor did not have objectively reasonable basis for bringing action or asserting ground for appeal.*] **Permits court to award attorney fees and costs to prevailing plaintiff. Permits award to prevailing defendant only if court finds that plaintiff did not have objectively reasonable basis for bringing action.**

Increases time period during which debtor may bring action for unlawful collection practice.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; amending ORS 646.639 and 646.641;
3 and repealing ORS 646.643.

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

11 (b) **"Legal action" means a lawsuit, mediation, arbitration or any other legal proceeding**
12 **in any court.**

13 (c) **"Original creditor" means the last entity that extended credit to a consumer to pur-**
14 **chase goods or services, to lease goods or as a loan of money.**

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

16 (a) **Notify the debtor in writing, at least 30 days before beginning the legal action, that**
17 **the debt buyer intends to take legal action. The debt buyer must send the written notice to**
18 **the debtor's last-known address. The written notice must include, at a minimum:**

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

20 **(B) The original creditor's name, written as the original creditor used the name in**
21 **dealings with the debtor;**

22 **(C) The original creditor's account number for the debt;**

23 **(D) A statement that shows:**

24 **(i) The amount the debtor last paid on the debt and the date of the payment;**

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 (ii) The balance due on the debt on the date on which the debtor last made a payment;
2 (iii) An itemization of the interest, fees and charges that the original creditor imposed;
3 (iv) An itemization of the interest, fees and charges that the debt buyer or any other
4 assignee imposed; and
5 (v) All payments made on and credited to the debt after a default or a charge-off; and
6 (E) A statement that tells the debtor clearly and conspicuously that:
7 (i) An applicable statute of limitations may bar the debt buyer from taking legal action
8 to collect the debt;
9 (ii) The debtor may seek legal advice if the debtor has questions about when the time
10 period during which the debt buyer may take legal action under the applicable statute of
11 limitations will end; and
12 (iii) If the debtor pays any amount on the debt, the payment affirms the existence of the
13 debt and begins a new time period during which the debt buyer may take legal action to
14 collect the debt, subject to the applicable statute of limitations.
15 (b) State in or attach to, as appropriate, the initial pleading the debt buyer files to begin
16 legal action to collect the debt:
17 (A) The original creditor's name, written as the original creditor used the name in
18 dealings with the debtor;
19 (B) The name of the person that now owns the debt;
20 (C) The last four digits of the original creditor's account number for the debt;
21 (D) The amount and date of the debtor's last payment on the debt and the amount and
22 date of the debtor's last payment before the debtor's default or a charge-off;
23 (E) A detailed itemization of:
24 (i) The balance due on the debt;
25 (ii) Interest, fees and charges that the original creditor imposed;
26 (iii) Interest, fees and charges that the debt buyer or any other assignee imposed;
27 (iv) Attorney fees; and
28 (v) Any other fees, costs or charges the debt buyer has imposed or seeks;
29 (F) A copy of the contract or other writing that the debtor signed and that is evidence
30 of the original debt or, if the debt buyer's claim is based on credit card debt for which a
31 signed writing that is evidence of the debt does not exist, a copy of any documents that the
32 credit card transaction generated; and
33 (G) A copy of each assignment, or other writing that is evidence of a transfer of owner-
34 ship of the debt, which must show:
35 (i) The debtor's name clearly associated with the original creditor's account number for
36 the debt;
37 (ii) The date on which the debt buyer purchased the debt;
38 (iii) That the debt buyer owns the debt; and
39 (iv) That an unbroken chain of ownership exists between assignees of the transferred
40 debt.
41 (3)(a) Before a court enters judgment against a debtor in a legal action that a debt buyer
42 brings to collect a debt, or after arbitration, the debt buyer shall file with the court:
43 (A) Business records authenticated in accordance with ORS 40.460 that establish the na-
44 ture and amount of the debt;
45 (B) An affidavit from the original creditor that describes the circumstances that created

1 the debt, when the debtor defaulted, when and to whom the original creditor assigned the
2 debt and the amount due on the debt at the time of the assignment, and that authenticates
3 the contract of sale or assignment and any related exhibits the debt buyer submits;

4 (C) An affidavit from each seller or assignor that previously owned the debt, in which the
5 seller or assignor authenticates the contract of sale or assignment and any related exhibits
6 that the debt buyer submits and traces the chain of ownership for the debt;

7 (D) A statement of the basis for any attorney fees the debt buyer seeks, along with evi-
8 dence that shows that the debt buyer is entitled to attorney fees;

9 (E) An affidavit that states that the debt buyer complied with the requirement set forth
10 in subsection (2)(a) of this section; and

11 (F) An affidavit that states that the time period during which the debt buyer may take
12 legal action to collect the debt under the applicable statute of limitations, or any extension
13 of the time period available under the statute of limitations, has not ended.

14 (b) A court may not enter judgment for a debt buyer that has not complied with the re-
15 quirements set forth in this section. The court may, in the court's sole discretion, dismiss
16 the legal action with or without prejudice.

17 (c) A debtor by motion before the court, without waiving the debtor's right to offer evi-
18 dence if the court does not grant the motion, may assert that the amount that the debt
19 buyer seeks is more than the debtor owes and ask the court either to require the debt buyer
20 to amend the pleading to reflect the correct amount or to dismiss the legal action without
21 prejudice. The court, in considering the motion, shall require the debt buyer to offer evidence
22 that shows that the debtor owes the amount that the debt buyer seeks. The court may not
23 award attorney fees to a debt buyer that obtains a judgment that is less than the amount
24 the debt buyer sought in the original complaint, unless the judgment is the result of a ne-
25 gotiated agreement.

26 (4) If the debt buyer prevails in a legal action under this section, the debt buyer may:

27 (a) Collect interest on the judgment in an amount that does not exceed the weekly av-
28 erage one-year constant maturity Treasury yield that the Board of Governors of the Federal
29 Reserve System publishes in the calendar week that precedes the date of the judgment.
30 Notwithstanding any other law or any interest rate specified in the contract or other writing
31 that created the debt, the debt buyer may not receive any interest on the judgment other
32 than the interest specified in this paragraph.

33 (b) Collect attorney fees only if the contract or other writing that created and is evidence
34 of the debt obligates the debtor to pay attorney fees if the debt buyer prevails in a legal
35 action to collect the debt.

36 (5) A debt buyer's violation of the provisions of this section through any direct or indi-
37 rect action, conduct or practice is an unlawful collection practice under ORS 646.639.

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

39 646.639. (1) As used in [subsection (2) of] this section and section 1 of this 2013 Act:

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

42 (b) "Consumer transaction" means a transaction between a consumer and a person [who] that
43 sells, leases or provides property, services or credit to consumers.

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

1 [(d)] (c) “Credit” means [the] a right [granted by] **that** a creditor **grants** to a consumer to defer
2 payment of a debt, to incur a debt and defer [its] payment **of the debt**, or to purchase or acquire
3 property or services and defer payment [therefor] **for the property or services**.

4 (d) “**Creditor**” means a person that engages in consumer credit transactions.

5 (e) “Debt” means [any] **an** obligation or alleged obligation [arising] **that arises** out of a con-
6 sumer transaction.

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

9 (g) “Debt collector” means:

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

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

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

17 (2) It [shall be] **is** an unlawful collection practice for a debt collector, while collecting or at-
18 tempting to collect a debt to do any of the following:

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

21 (b) Threaten arrest or criminal prosecution.

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

26 (d) Use profane, obscene or abusive language in communicating with a debtor or the debtor’s
27 family.

28 (e) Communicate with [the] **a** debtor or any member of the debtor’s family repeatedly or contin-
29 uously or at times known to be inconvenient to [that person] **the debtor or any member of the**
30 **debtor’s family and** with intent to harass or annoy the debtor or any member of the debtor’s family.

31 (f) Communicate or threaten to communicate with a debtor’s employer concerning the nature
32 or existence of the debt.

33 (g) Communicate, without the debtor’s permission, or threaten to communicate with [the] **a**
34 debtor at the debtor’s place of employment if the place **of employment** is other than the debtor’s
35 residence, except that the debt collector may:

36 (A) Write to [the] **a** debtor at the debtor’s place of employment if [no] **a** home address is **not**
37 reasonably available and if the envelope does not reveal that the communication is from a debt
38 collector other than [a provider of] **the person that provided** the goods, services or credit from
39 which the debt arose.

40 (B) Telephone a debtor’s place of employment without informing any other person of the nature
41 of the call or identifying the caller as a debt collector but only if the debt collector in good faith
42 has made an unsuccessful attempt to telephone the debtor at the debtor’s residence during the day
43 or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact
44 the debtor at the debtor’s place of employment more frequently than once each business week and
45 may not telephone the debtor at the debtor’s place of employment if the debtor notifies the debt

1 collector not to telephone at the debtor's place of employment or if the debt collector knows or has
 2 reason to know that the debtor's employer prohibits the debtor from receiving such communication.
 3 For the purposes of this subparagraph, any language in any **agreement, contract or instrument**
 4 *[creating]* **that creates or is evidence of** the debt *[which]* **and that** purports to authorize telephone
 5 calls at the debtor's place of employment *[shall not be considered as giving]* **does not give** permis-
 6 sion to the debt collector to call the debtor at the debtor's place of employment.

7 (h) Communicate with *[the]* **a** debtor in writing without clearly identifying the name of the debt
 8 collector, the name of the person, if any, for whom the debt collector is attempting to collect the
 9 debt and the debt collector's business address, on all initial communications. In subsequent commu-
 10 nications involving multiple accounts, the debt collector may eliminate the name of the person, if
 11 any, for whom the debt collector is attempting to collect the debt, and the term "various" may be
 12 substituted in *[its]* place **of the person's name**.

13 (i) Communicate with *[the]* **a** debtor orally without disclosing to the debtor within 30 seconds
 14 **after beginning the communication** the name of the individual *[making the contact]* **who is initi-**
 15 **ating the communication** and the true purpose *[thereof]* **of the communication**.

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

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

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

28 (m) Represent that an existing debt may be increased by the addition of attorney fees, investi-
 29 gation fees or any other fees or charges when *[such]* **the** fees or charges may not legally be added
 30 to the existing debt.

31 (n) Collect or attempt to collect *[any]* interest or *[any]* other charges or fees in excess of the
 32 actual debt unless *[they are expressly authorized by]* the **agreement, contract or instrument** *[cre-*
 33 *ating]* **that creates** the debt **expressly authorizes** or *[expressly allowed by]* **a law expressly allows**
 34 **the interest or other charges or fees**.

35 (o) Threaten to assign or sell *[the]* **a** debtor's account with an attending misrepresentation or
 36 implication that the debtor would lose any defense to the debt or would be subjected to harsh,
 37 vindictive or abusive collection tactics.

38 **(3)(a) It is an unlawful collection practice for a debt collector that is acting as a debt**
 39 **buyer or on behalf of a debt buyer to:**

40 **(A) Bring an action or initiate an arbitration proceeding against a debtor or otherwise**
 41 **attempt to collect a debt if the debt collector knows or reasonably should know that an ap-**
 42 **licable statute of limitations bars the action, arbitration proceeding or collection attempt;**
 43 **or**

44 **(B) Bring an action or initiate an arbitration proceeding against a debtor or otherwise**
 45 **attempt to collect a debt without valid documentation that shows:**

1 (i) The name of the original creditor, written as the original creditor used the name in
2 dealings with the debtor;

3 (ii) The name and address of the debtor;

4 (iii) The original creditor's account number for the debt, as shown in the original
5 creditor's records;

6 (iv) A copy of the contract or other writing that the debtor signed and that is evidence
7 of the original debt;

8 (v) An itemized accounting of the amount the debt collector claims that the debtor owes,
9 including all fees and charges; and

10 (vi) Evidence that the debt collector owns the specific debt instrument or account that
11 is the subject of the action, proceeding or collection attempt.

12 (b) As used in this subsection, "original creditor" has the meaning given that term in
13 section 1 of this 2013 Act.

14 [(3)] (4) It [shall be] is an unlawful collection practice for a debt collector, by use of any direct
15 or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and
16 unenforceable by the provisions of ORS 759.720 (3) to (5).

17 (5) It is an unlawful collection practice for a debt collector to use any direct or indirect
18 action, conduct or practice to violate a provision of section 1 of this 2013 Act.

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

20 646.641. (1) [Any] A person that is injured as a result of another person's willful use or em-
21 ployment [by another person] of an unlawful collection practice may bring an action in an appro-
22 priate court to enjoin the practice or to recover actual damages or [\$200] \$1,000, whichever is
23 greater. The court or the jury may award punitive damages, and the court may provide such equi-
24 table relief as [it] the court deems necessary or proper.

25 (2) [In any action brought by a person under this section, the court may award reasonable attorney
26 fees to the prevailing party.] The court may award reasonable attorney fees and costs at trial
27 and on appeal to a prevailing plaintiff in an action under this section. The court may award
28 reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the
29 court finds that the plaintiff did not have an objectively reasonable basis for bringing the
30 action or asserting the ground for appeal.

31 (3) [Actions brought under this section shall be commenced within one year from the date of the
32 injury.] A person that brings an action under this section must bring the action within two
33 years after the later of the date on which:

34 (a) The injury occurred; or

35 (b) A court dismissed or entered judgment in an action to collect a debt from the person.

36 **SECTION 4.** ORS 646.643 is repealed.

37 **SECTION 5.** Section 1 of this 2013 Act, the amendments to ORS 646.639 and 646.641 by
38 sections 2 and 3 of this 2013 Act and the repeal of ORS 646.643 by section 4 of this 2013 Act
39 apply to legal actions that begin on or after the effective date of this 2013 Act.

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