

Enrolled
House Bill 3489

Sponsored by Representative HOLVEY

CHAPTER

AN ACT

Relating to licensed escrow agents that provide assistance in debt management services; creating new provisions; amending ORS 697.005, 697.612 and 717.210; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 697.005 is amended to read:

697.005. As used in ORS 697.005 to 697.095:

(1)(a) "Collection agency" means:

(A) A person directly or indirectly engaged in soliciting a claim for collection, or collecting or attempting to collect a claim that is owed, due or asserted to be owed or due to another person or to a public body at the time the person solicits, collects or attempts to collect the claim;

(B) A person that directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms represented to be a collection system even if the forms direct the debtor to make payment to the creditor and even if the forms may be or are actually used by the creditor in the creditor's own name;

(C) A person that, in attempting to collect or in collecting the person's own claim, uses a fictitious name or any name other than the person's own that indicates to the debtor that a third person is collecting or attempting to collect the claim;

(D) A person in the business of engaging in the solicitation of the right to repossess or in *[the repossession of]* **repossessing** collateral security due or asserted to be due to another person; or

(E) A person that, in the collection of claims from another person:

(i) Uses any name other than the name regularly used in the conduct of the business out of which the claim arose; and

(ii) Engages in any action or conduct that tends to convey the impression that a third party has been employed or engaged to collect the claim.

(b) "Collection agency" does not include:

(A) An individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a registrant under ORS 697.005 to 697.095, if the individual is an employee of the registrant.

(B) An individual collecting or attempting to collect claims for not more than three employers, if **the individual carries on** all collection efforts *[are carried on]* in the name of the employer and the individual is an employee of the employer.

(C) A person that prepares or mails monthly or periodic statements of accounts due on behalf of another person if all payments are made to the other person and *[no other collection efforts are made by the person preparing]* **the person that prepares** the statements of accounts **does not make other collection efforts.**

(D) An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.
(E) A licensed certified public accountant or public accountant rendering services in the performance of the duties of a licensed certified public accountant or public accountant.

(F) A bank, mutual savings bank, consumer finance company, trust company, savings and loan association, credit union or debt consolidation agency.

[(G) A real estate licensee or escrow agent licensed under the provisions of ORS chapter 696, as to any collection or billing activity involving a real estate transaction or collection escrow transaction of the licensee or escrow agent.]

(G) A principal real estate broker licensed under ORS 696.020, as to any collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

(H) An escrow agent licensed under ORS 696.511, with respect to the escrow agent's:

(i) Collection or billing activities involved in closing an escrow, as defined in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

(ii) Service as a trustee of a trust deed in accordance with ORS 86.790.

[(H)] **(I)** An individual regularly employed as a credit person or in a similar capacity by one person, firm or corporation that is not a collection agency as defined in this section.

[(I)] **(J)** A public officer or a person acting under order of a court.

[(J)] **(K)** A person acting as a property manager in collecting or billing for rent, fees, deposits or other sums due landlords of managed units.

[(K)] **(L)** A person that is providing billing services. A person is providing billing services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of collection of claims for another person, whether in the other person's name or any other name, by any means that:

(i) Is an accounting procedure, preparation of mail billing or any other means intended to accelerate cash flow to the other person's bank account or to any separate trust account; and

(ii) Does not include any personal contact or contact by telephone with the person from whom the claim is sought to be collected.

[(L)] **(M)** A person that is providing factoring services. A person is providing factoring services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of:

(i) Lending or advancing money to commercial clients on the security of merchandise or accounts receivable and then enforcing collection actions or procedures on such accounts; or

(ii) Soliciting or collecting on accounts that have been purchased from commercial clients under an agreement whether or not the agreement:

(I) Allows recourse against the commercial client;

(II) Requires the commercial client to provide any form of guarantee of payment of the purchased account; or

(III) Requires the commercial client to establish or maintain a reserve account in any form.

[(M)] **(N)** An individual employed by another person that operates as a collection agency if the person does not operate as a collection agency independent of that employment.

[(N)] **(O)** A mortgage banker as defined in ORS 86A.100.

[(O)] **(P)** A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS 759.005, a people's utility district, as defined in ORS 261.010, and a cooperative corporation engaged in furnishing electric or communication service to consumers.

[(P)] **(Q)** A public body or an individual collecting or attempting to collect claims owed, due or asserted to be owed or due to a public body, if the individual is an employee of the public body.

[(Q)] **(R)** A person that receives an assignment of debt in any form without an obligation to pay the assignor any of the proceeds resulting from a collection of all or a portion of the debt.

[(R)] **(S)** A person for whom the Director of the Department of Consumer and Business Services determines by order or by rule that the protection of the public health, safety and welfare does not require registration with the department as a collection agency.

(2) "Collection system" means a scheme intended or calculated to be used to collect claims sent, prepared or delivered by:

(a) A person who in collecting or attempting to collect the person's own claim uses a fictitious name or any name other than the person's own that indicates to the debtor that a third person is collecting or attempting to collect the claim; or

(b) A person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

(3) "Claim" means an obligation for the payment of money or thing of value arising out of an agreement or contract, express or implied.

(4) "Client" or "customer" means a person authorizing or employing a collection agency to collect a claim.

(5) "Debtor" means a person owing or alleged to owe a claim.

(6) "Debts incurred outside this state" means an action or proceeding that:

(a) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to perform services outside of this state or to pay for services to be performed outside of this state by the plaintiff;

(b) Arises out of services actually performed for the plaintiff by the defendant outside of this state or services actually performed for the defendant by the plaintiff outside of this state, if the performance outside of this state was authorized or ratified by the defendant;

(c) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to deliver or receive outside of this state or to send from outside of this state goods, documents of title or other things of value;

(d) Relates to goods, documents of title or other things of value sent from outside of this state by the defendant to the plaintiff or a third person on the plaintiff's order or direction;

(e) Relates to goods, documents of title or other things of value actually received outside of this state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where delivery to carrier occurred; or

(f) Where jurisdiction at the time the debt was incurred was outside of this state.

(7) "Out-of-state collection agency" means a collection agency located outside of this state whose activities within this state are limited to collecting debts incurred outside of this state from debtors located in this state. As used in this subsection, "collecting debts" means collecting by means of interstate communications, including telephone, mail or facsimile transmission from the collection agency location in another state on behalf of clients located outside of this state.

(8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

(9) "Public body" means:

(a) The state and any branch, department, agency, board or commission of the state;

(b) A city, county, district or other political subdivision or municipal or public corporation or an instrumentality thereof; and

(c) An intergovernmental agency, department, council, joint board of control created under ORS 190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under the direction and control of any single member government.

(10) "Registered" or "registrant" means a person registered under ORS 697.005 to 697.095 or registered or licensed as a collection agency under the laws of another state.

(11) "Statement of account" means a report setting forth amounts billed, invoices, credits allowed or aged balance due.

SECTION 2. ORS 697.612 is amended to read:

697.612. (1) A person that has not registered with the Director of the Department of Consumer and Business Services under ORS 697.632 may not engage in business in this state in the course of which the person:

(a) Performs a debt management service; or

(b) Receives money or other valuable consideration or expects to receive money or other valuable consideration for:

(A) Soliciting or receiving an application from a consumer for a debt management service;

(B) Forwarding or providing a completed application for a debt management service to a debt management service provider;

(C) Referring a consumer to another debt management service provider, if the person is a debt management service provider;

(D) Providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service; or

(E) Providing advice, assistance, instruction or instructional material concerning a debt management service to a consumer.

(2) A debt management service provider registered under ORS 697.632 may negotiate on a consumer's behalf for a reasonable alternative repayment schedule or to reduce a claim described in 11 U.S.C. 502 if the debt management service provider is a nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111.

(3) Subsection (1) of this section does not apply to:

(a) An employee of a debt management service provider, if the debt management service provider is registered under ORS 697.632.

(b) An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.

(c) A financial institution or a trust company, both as defined in ORS 706.008.

(d) A consumer finance company licensed under ORS chapter 725.

[(e) An escrow agent licensed under ORS 696.505 to 696.590.]

(e) An escrow agent licensed under ORS 696.505 to 696.590 to the extent that the escrow agent is acting to close an escrow, as defined in ORS 696.505, is engaging in activity related to a collection escrow, as defined in ORS 696.505, or is serving as a trustee of a trust deed in accordance with ORS 86.790. This paragraph does not apply if the escrow agent:

(A) Assists an unregistered debt management service provider that is not exempt from registration under this subsection in performing a debt management service; or

(B) Provides escrow services to a consumer in accordance with a debt management services plan executed by an unregistered debt management services provider that is not exempt from registration under this subsection.

(f) A mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198 or a mortgage loan originator, as defined in ORS 86A.100.

(g) A broker-dealer registered with the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and acts in accordance with regulations promulgated by either commission.

(h) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f).

(i) A public body, as defined in ORS 174.109.

(j) A person that is obeying or acting in accordance with a court order.

(k) An accredited educational institution or program that offers or performs a debt management service without receiving money or other valuable consideration, if the institution or program performs the debt management service as an incidental part of a class or a duty the institution or program provides regularly.

(L) A nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111 that:

(i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an instructional course concerning personal financial management, as described in 11 U.S.C. 111; and

(ii) Does not receive or offer to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.

(m) A nonprofit entity that provides advice, assistance, instruction or instructional materials to a consumer in return for a fee that is reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available.

(n) An organization or a counselor approved by the United States Department of Housing and Urban Development under 12 U.S.C. 1701x.

SECTION 3. ORS 717.210 is amended to read:

717.210. (1) ORS 717.200 to 717.320, 717.900 and 717.905 do not apply to:

(a) Any company that accepts deposits in this state and that is insured under the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., as amended.

(b) Credit unions or trust companies.

(c) The United States Government or any department, agency or instrumentality thereof.

(d) The United States Postal Service.

(e) Any state or political subdivision of a state.

(f) The provision or electronic transfer of government benefits for any federal, state or county government or other agency as defined in the Federal Reserve Board Regulation E (12 C.F.R. part 205), by a contractor for and on behalf of the United States Government or any department, agency or instrumentality of the United States, or any state or any political subdivision of a state.

[(g) The provision or handling of electronic or other transfer of escrowed moneys by an escrow agent licensed under ORS 696.511.]

(g) The provision or handling of electronic or other transfer of escrowed moneys by an escrow agent licensed under ORS 696.511 to the extent that the escrow agent is:

(A) Closing an escrow, as defined in ORS 696.505;

(B) Engaging in activity related to a collection escrow, as defined in ORS 696.505; or

(C) Serving as a trustee of a trust deed in accordance with ORS 86.790.

(h) Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in ORS 717.270.

(i) Any bank holding company as defined in the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended, or any financial holding company as defined in ORS 706.008.

(j) Any savings and loan holding company as defined in 12 U.S.C. 1467a (a)(1)(D), as amended.

(2) The Director of the Department of Consumer and Business Services by rule or order may modify or waive the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons if the director determines that adequate regulation of the person or group of persons is provided by law or by another agency of this state.

(3) The director by rule or order may temporarily suspend the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons while the director considers whether an exemption should be granted and during the pendency of any rulemaking proceeding proposing to create an exemption.

SECTION 4. (1) **The amendments to ORS 697.005, 697.612 and 717.210 by sections 1 to 3 of this 2013 Act become operative 60 days after the effective date of this 2013 Act.**

(2) **The Director of the Department of Consumer and Business Services and the Real Estate Commissioner may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director or the commissioner to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director or the commissioner by the amendments to ORS 697.005, 697.612 and 717.210 by sections 1 to 3 of this 2013 Act.**

SECTION 5. **This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

Passed by House April 23, 2013

Repassed by House June 11, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 5, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State