

House Bill 3489

Sponsored by Representative HOLVEY

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**.

Limits escrow agent's exemption from licensing requirements in instances where escrow agent provides debt management services, money transmission services or services to debt management service providers that must be licensed.

Becomes operative 60 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to licensed escrow agents that provide assistance in debt management services; creating
3 new provisions; amending ORS 696.535, 697.005, 697.612 and 717.210; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 696.535 is amended to read:

7 696.535. (1) The Real Estate Commissioner may suspend or revoke the license of an escrow
8 agent, reprimand an escrow agent who is licensed, refuse to issue an escrow agent license to an
9 applicant or refuse to renew the license of an escrow agent, if the escrow agent or applicant:

10 (a) Is insolvent under generally accepted accounting principles;

11 (b) Demonstrated untrustworthiness or incompetence to transact the business of an escrow
12 agent;

13 (c) Failed to conduct business in accordance with law or violated any provision of ORS 696.505
14 to 696.590 or any rule adopted under ORS 696.505 to 696.590;

15 (d) Committed fraud in connection with any transaction governed by ORS 696.505 to 696.590 or
16 the rules adopted under ORS 696.505 to 696.590;

17 (e) Made any misrepresentations or false statement of an essential or material fact to, or con-
18 cealed any essential or material fact from, any person in the course of the escrow business;

19 (f) Knowingly made or caused to be made to the commissioner any false representation of a
20 material fact, or suppressed or withheld from the commissioner any information the applicant or
21 licensee possesses that, if submitted, would have disqualified the applicant or licensee from original
22 or renewed licensing under ORS 696.505 to 696.590 or rules adopted under ORS 696.505 to 696.590;

23 (g) **Failed to account**, in a real estate transaction, [*failed to account*] to the principals or per-
24 sons entitled to an accounting of the funds, property or documents or other things of value received
25 in the transaction;

26 (h) Failed to deliver within a reasonable time to persons entitled to receive funds, property or
27 documents or other things of value held or agreed to be delivered by the licensee, as and when paid
28 for and due to be delivered;

29 (i) Caused uncompensated material loss to principals by engaging in a pattern of failures to act
30 with neutrality between principals in multiple escrows;

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 (j) Refused to permit the commissioner to examine the escrow agent’s books and affairs, or re-
 2 fused or failed, within a reasonable time, to furnish any information, records or files or make any
 3 report that may be required by the commissioner under the provisions of ORS 696.505 to 696.590 or
 4 rules adopted under ORS 696.505 to 696.590;

5 (k) Has been convicted of a crime that is substantially related to the escrow agent’s competency
 6 or trustworthiness to engage in the business of an escrow agent;

7 (L) Committed an act of fraud or engaged in dishonest conduct substantially related to the fit-
 8 ness of the applicant or licensee to conduct the activities of an escrow agent, without regard to
 9 whether the act or conduct occurred in the course of escrow activity; [or]

10 (m) Failed to maintain a surety bond required under ORS 696.525 or other surety required under
 11 ORS 696.527[.];

12 **(n) Engaged in activities described in ORS 697.005 (1)(a), 697.602 (2) or 717.200 (11) that**
 13 **require a license, unless the escrow agent engages in collection escrow activity, as defined**
 14 **in ORS 696.505 (2); or**

15 **(o) Assisted a person who does not have a license to engage in activities described in ORS**
 16 **697.005 (1)(a), 697.602 (2) or 717.200 (11) that require a license.**

17 (2) It is sufficient cause for refusal or revocation of a license in case of a partnership or cor-
 18 poration or any unincorporated association, if any member of a partnership or any officer or director
 19 of the corporation or association has been guilty of any act or omission which would be cause for
 20 refusing or revoking the registration of an individual agent.

21 **SECTION 2.** ORS 697.005 is amended to read:

22 697.005. As used in ORS 697.005 to 697.095:

23 (1)(a) “Collection agency” means:

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

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

31 (C) A person that, in attempting to collect or in collecting the person’s own claim, uses a ficti-
 32 tious name or any name other than the person’s own that indicates to the debtor that a third person
 33 is collecting or attempting to collect the claim;

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

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

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

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

41 (b) “Collection agency” does not include:

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

45 (B) An individual collecting or attempting to collect claims for not more than three employers,

1 if **the individual carries on** all collection efforts [*are carried on*] in the name of the employer and
 2 the individual is an employee of the employer.

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

7 (D) An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.

8 (E) A licensed certified public accountant or public accountant rendering services in the per-
 9 formance of the duties of a licensed certified public accountant or public accountant.

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

12 (G) A real estate licensee or escrow agent licensed under the provisions of ORS chapter 696,
 13 as to any collection or billing activity involving a real estate [*transaction*] **closing escrow, as de-**
 14 **defined in ORS 696.505 (8),** or collection escrow [*transaction*], **as defined in ORS 696.505 (2),** of the
 15 licensee or escrow agent.

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

18 (I) A public officer or a person acting under order of a court.

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

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

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

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

29 (L) A person that is providing factoring services. A person is providing factoring services for
 30 the purposes of this subparagraph if the person engages, directly or indirectly, in the business or
 31 pursuit of:

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

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

36 (I) Allows recourse against the commercial client;

37 (II) Requires the commercial client to provide any form of guarantee of payment of the pur-
 38 chased account; or

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

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

42 (N) A mortgage banker as defined in ORS 86A.100.

43 (O) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS
 44 759.005, a people's utility district, as defined in ORS 261.010, and a cooperative corporation engaged
 45 in furnishing electric or communication service to consumers.

1 (P) A public body or an individual collecting or attempting to collect claims owed, due or as-
 2 serted to be owed or due to a public body, if the individual is an employee of the public body.

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

5 (R) A person for whom the Director of the Department of Consumer and Business Services de-
 6 termines by order or by rule that the protection of the public health, safety and welfare does not
 7 require registration with the department as a collection agency.

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

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

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

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

17 (4) "Client" or "customer" means a person authorizing or employing a collection agency to col-
 18 lect a claim.

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

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

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

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

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

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

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

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

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

41 (8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited li-
 42 ability company or corporation.

43 (9) "Public body" means:

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

45 (b) A city, county, district or other political subdivision or municipal or public corporation or

1 an instrumentality thereof; and

2 (c) An intergovernmental agency, department, council, joint board of control created under ORS
3 190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under
4 the direction and control of any single member government.

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

7 (11) "Statement of account" means a report setting forth amounts billed, invoices, credits al-
8 lowed or aged balance due.

9 **SECTION 3.** ORS 697.612 is amended to read:

10 697.612. (1) A person that has not registered with the Director of the Department of Consumer
11 and Business Services under ORS 697.632 may not engage in business in this state in the course of
12 which the person:

13 (a) Performs a debt management service; or

14 (b) Receives money or other valuable consideration or expects to receive money or other valu-
15 able consideration for:

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

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

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

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

24 (E) Providing advice, assistance, instruction or instructional material concerning a debt man-
25 agement service to a consumer.

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

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

31 (a) An employee of a debt management service provider, if the debt management service pro-
32 vider is registered under ORS 697.632.

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

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

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

37 (e) An escrow agent licensed under ORS 696.505 to 696.590 **that provides only the services**
38 **described in ORS 697.602 (2)(a) to:**

39 **(A) A consumer that receives debt management services from a debt management ser-**
40 **vice provider that is licensed under ORS 697.612 and is affiliated with the escrow agent; or**

41 **(B) A debt management service provider that is licensed under ORS 697.612.**

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

44 (g) A broker-dealer registered with the United States Securities and Exchange Commission or
45 the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and

1 acts in accordance with regulations promulgated by either commission.

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

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

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

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

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

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

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

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

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

20 **SECTION 4.** ORS 717.210 is amended to read:

21 717.210. (1) ORS 717.200 to 717.320, 717.900 and 717.905 do not apply to:

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

24 (b) Credit unions or trust companies.

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

26 (d) The United States Postal Service.

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

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

32 (g) The provision or handling of electronic or other transfer of escrowed moneys by an escrow
33 agent licensed under ORS 696.511 **for the purpose of providing a real estate closing escrow, as**
34 **defined in ORS 696.505 (8), or a collection escrow, as defined in ORS 696.505 (2), of the**
35 **licensee or escrow agent.**

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

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

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

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

45 (3) The director by rule or order may temporarily suspend the application of ORS 717.200 to

1 717.320, 717.900 and 717.905 to any person or group of persons while the director considers whether
2 an exemption should be granted and during the pendency of any rulemaking proceeding proposing
3 to create an exemption.

4 **SECTION 5. (1) The amendments to ORS 696.535, 697.005, 697.612 and 717.210 by sections**
5 **1 to 4 of this 2013 Act become operative 60 days after the effective date of this 2013 Act.**

6 **(2) The Director of the Department of Consumer and Business Services and the Real**
7 **Estate Commissioner may take any action before the operative date specified in subsection**
8 **(1) of this section that is necessary to enable the director or the commissioner to exercise,**
9 **on and after the operative date specified in subsection (1) of this section, all of the duties,**
10 **functions and powers conferred on the director or the commissioner by the amendments to**
11 **ORS 696.535, 697.005, 697.612 and 717.210 by sections 1 to 4 of this 2013 Act.**

12 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
14 **on its passage.**