

A-Engrossed
Senate Bill 525

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by Senator ROSENBAUM; Senators BEYER, DINGFELDER, MONNES ANDERSON, PROZANSKI, STEINER HAYWARD

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.]

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

Prohibits district attorney from allowing debt collection entity to use name, seal or letterhead of district attorney. Allows district attorney to contract with private entity to collect debt pursuant to bad check diversion program.

Makes use of name, seal or letterhead of public official by debt collector unlawful collection practice.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; and amending ORS 135.925 and
3 646.639.

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

5 **SECTION 1. A district attorney may not:**

6 (1) **Allow a person or entity in the practice of collecting debt to use the seal, letterhead**
7 **or name of the district attorney or the district attorney's office; or**

8 (2) **Receive or collect a fee from a person or entity in the practice of collecting debt in**
9 **exchange for the person or entity using the seal, letterhead or name of the district attorney**
10 **or the district attorney's office.**

11 **SECTION 2. ORS 135.925 is amended to read:**

12 135.925. (1) As used in this section, "bad check diversion program" means a program established
13 under subsection (2) of this section.

14 (2) A district attorney may establish a bad check diversion program within the office of the
15 district attorney.

16 (3) If a district attorney has established a bad check diversion program, upon receipt of a case
17 alleging a violation of ORS 165.065, the district attorney shall determine if the case is appropriate
18 to be referred to the bad check diversion program. In determining whether to refer the case to the
19 bad check diversion program, the district attorney shall consider, in addition to any other factors
20 the district attorney deems appropriate, the following:

21 (a) The amount of the bad check;

22 (b) Whether the person alleged to have negotiated the bad check has a prior criminal record

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 or has previously participated in a bad check diversion program;

2 (c) The number of violations of ORS 165.065 the person is alleged to have committed in the
3 current or prior allegations;

4 (d) Whether current charges of violating ORS 165.065 are pending against the person; and

5 (e) The strength of the evidence of intent to defraud the victim.

6 (4) When a case is referred to the bad check diversion program, the district attorney shall send
7 a notice to the person who is alleged to have violated ORS 165.065. The notice must contain:

8 (a) The date and amount of the bad check;

9 (b) The name of the payee;

10 (c) The date before which the person is required to contact the district attorney, or a person
11 designated by the district attorney, concerning the bad check; and

12 (d) The penalty for a violation of ORS 165.065.

13 (5) The district attorney may enter into a written agreement with the person alleged to have
14 violated ORS 165.065 to forgo prosecution of the violation if the person agrees to do the following
15 within a six-month period:

16 (a) Complete a class conducted by the district attorney, or by a private entity under contract
17 to the district attorney, relating to writing checks;

18 (b) Make full restitution to the payee; and

19 (c) Pay any collection fee imposed by the district attorney under subsection (6) of this section.

20 (6) A district attorney may collect a fee if the district attorney collects and processes a bad
21 check. The amount of the fee may not exceed \$35 for each bad check in addition to the actual
22 amount of any bank charge incurred by the victim as a result of the bad check.

23 (7) The district attorney may not require a person alleged to have violated ORS 165.065 to make
24 an admission of guilt as a prerequisite to participating in a bad check diversion program.

25 (8) The following are not admissible in any civil or criminal action against a person arising from
26 negotiating a bad check:

27 (a) A statement, or any information derived from the statement, made by the person in con-
28 nection with the determination of the person's eligibility to participate in a bad check diversion
29 program.

30 (b) A statement, or any information derived from the statement, made by the person after the
31 person is determined to be eligible to participate in a bad check diversion program.

32 (c) A statement, or any information derived from the statement, made by the person while par-
33 ticipating in a bad check diversion program.

34 (d) Information about the person's participation in a bad check diversion program.

35 **(9)(a) A district attorney may authorize a private entity under contract to the district
36 attorney to collect debt pursuant to a bad check diversion program.**

37 **(b) A private entity under contract to the district attorney for the purposes of this sub-
38 section may provide only the address of the district attorney as the location to which a
39 payment must be remitted.**

40 **SECTION 3.** ORS 646.639 is amended to read:

41 646.639. (1) As used in subsection (2) of this section:

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

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

1 (c) "Commercial creditor" means a person who in the ordinary course of business engages in
2 consumer transactions.

3 (d) "Credit" means the right granted by a creditor to a consumer to defer payment of a debt,
4 to incur a debt and defer its payment, or to purchase or acquire property or services and defer
5 payment therefor.

6 (e) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

7 (f) "Debtor" means a consumer who owes or allegedly owes an obligation arising out of a con-
8 sumer transaction.

9 (g) "Debt collector" means any person who by any direct or indirect action, conduct or practice,
10 enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or
11 alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer
12 transaction.

13 (h) "Person" means an individual, corporation, trust, partnership, incorporated or
14 unincorporated association or any other legal entity.

15 (2) It shall be an unlawful collection practice for a debt collector, while collecting or attempting
16 to collect a debt to do any of the following:

17 (a) Use or threaten the use of force or violence to cause physical harm to a debtor or to the
18 debtor's family or property.

19 (b) Threaten arrest or criminal prosecution.

20 (c) Threaten the seizure, attachment or sale of a debtor's property when such action can only
21 be taken pursuant to court order without disclosing that prior court proceedings are required.

22 (d) Use profane, obscene or abusive language in communicating with a debtor or the debtor's
23 family.

24 (e) Communicate with the debtor or any member of the debtor's family repeatedly or contin-
25 uously or at times known to be inconvenient to that person with intent to harass or annoy the
26 debtor or any member of the debtor's family.

27 (f) Communicate or threaten to communicate with a debtor's employer concerning the nature
28 or existence of the debt.

29 (g) Communicate without the debtor's permission or threaten to communicate with the debtor
30 at the debtor's place of employment if the place is other than the debtor's residence, except that the
31 debt collector may:

32 (A) Write to the debtor at the debtor's place of employment if no home address is reasonably
33 available and if the envelope does not reveal that the communication is from a debt collector other
34 than a provider of the goods, services or credit from which 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 instrument creating the debt which
44 purports to authorize telephone calls at the debtor's place of employment shall not be considered
45 as giving permission to the debt collector to call the debtor at the debtor's place of employment.

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

7 (i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the
8 name of the individual making the contact and the true purpose thereof.

9 (j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees
10 or other charges incurred by a medium of communication, by concealing the true purpose of the debt
11 collector's communication.

12 (k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that
13 the right or remedy does not exist, or threaten to take any action which the debt collector in the
14 regular course of business does not take.

15 (L) Use any form of communication which simulates legal or judicial process or which gives the
16 appearance of being authorized, issued or approved by a governmental agency, governmental official
17 or an attorney at law when it is not in fact so approved or authorized.

18 (m) Represent that an existing debt may be increased by the addition of attorney fees, investi-
19 gation fees or any other fees or charges when such fees or charges may not legally be added to the
20 existing debt.

21 (n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual
22 debt unless they are expressly authorized by the agreement creating the debt or expressly allowed
23 by law.

24 (o) Threaten to assign or sell the debtor's account with an attending misrepresentation or im-
25 plication that the debtor would lose any defense to the debt or would be subjected to harsh,
26 vindictive or abusive collection tactics.

27 **(p) Use the name, seal or letterhead of a public official or a public official's office.**

28 (3) It shall be an unlawful collection practice for a debt collector, by use of any direct or indi-
29 rect action, conduct or practice, to enforce or attempt to enforce an obligation made void and
30 unenforceable by the provisions of ORS 759.720 (3) to (5).

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