

**PROPOSED AMENDMENTS TO
SENATE BILL 525**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and delete line 3 and insert “and amending ORS 135.925 and
3 646.639.”.

4 Delete lines 5 through 28 and delete pages 2 through 6 and insert:

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

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

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

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

14 135.925. (1) As used in this section, “bad check diversion program” means
15 a program established under subsection (2) of this section.

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

18 (3) If a district attorney has established a bad check diversion program,
19 upon receipt of a case alleging a violation of ORS 165.065, the district at-
20 torney shall determine if the case is appropriate to be referred to the bad
21 check diversion program. In determining whether to refer the case to the bad
22 check diversion program, the district attorney shall consider, in addition to

1 any other factors the district attorney deems appropriate, the following:

2 (a) The amount of the bad check;

3 (b) Whether the person alleged to have negotiated the bad check has a
4 prior criminal record or has previously participated in a bad check diversion
5 program;

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

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

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

11 (4) When a case is referred to the bad check diversion program, the dis-
12 trict attorney shall send a notice to the person who is alleged to have vio-
13 lated ORS 165.065. The notice must contain:

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

15 (b) The name of the payee;

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

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

20 (5) The district attorney may enter into a written agreement with the
21 person alleged to have violated ORS 165.065 to forgo prosecution of the vio-
22 lation if the person agrees to do the following within a six-month period:

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

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

26 (c) Pay any collection fee imposed by the district attorney under sub-
27 section (6) of this section.

28 (6) A district attorney may collect a fee if the district attorney collects
29 and processes a bad check. The amount of the fee may not exceed \$35 for
30 each bad check in addition to the actual amount of any bank charge incurred

1 by the victim as a result of the bad check.

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

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

7 (a) A statement, or any information derived from the statement, made by
8 the person in connection with the determination of the person's eligibility
9 to participate in a bad check diversion program.

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

13 (c) A statement, or any information derived from the statement, made by
14 the person while participating in a bad check diversion program.

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

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

20 **(b) A private entity under contract to the district attorney for the
21 purposes of this subsection may provide only the address of the district
22 attorney as the location to which a payment must be remitted.**

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

24 646.639. (1) As used in subsection (2) of this section:

25 (a) "Consumer" means a natural person who purchases or acquires prop-
26 erty, services or credit for personal, family or household purposes.

27 (b) "Consumer transaction" means a transaction between a consumer and
28 a person who sells, leases or provides property, services or credit to con-
29 sumers.

30 (c) "Commercial creditor" means a person who in the ordinary course of

1 business engages in consumer transactions.

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

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

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

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

14 (h) "Person" means an individual, corporation, trust, partnership, incor-
15 porated or unincorporated association or any other legal entity.

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

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

20 (b) Threaten arrest or criminal prosecution.

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

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

26 (e) Communicate with the debtor or any member of the debtor's family
27 repeatedly or continuously or at times known to be inconvenient to that
28 person with intent to harass or annoy the debtor or any member of the
29 debtor's family.

30 (f) Communicate or threaten to communicate with a debtor's employer

1 concerning the nature or existence of the debt.

2 (g) Communicate without the debtor's permission or threaten to commu-
3 nicate with the debtor at the debtor's place of employment if the place is
4 other than the debtor's residence, except that the debt collector may:

5 (A) Write to the debtor at the debtor's place of employment if no home
6 address is reasonably available and if the envelope does not reveal that the
7 communication is from a debt collector other than a provider of the goods,
8 services or credit from which the debt arose.

9 (B) Telephone a debtor's place of employment without informing any
10 other person of the nature of the call or identifying the caller as a debt
11 collector but only if the debt collector in good faith has made an unsuc-
12 cessful attempt to telephone the debtor at the debtor's residence during the
13 day or during the evening between the hours of 6 p.m. and 9 p.m. The debt
14 collector may not contact the debtor at the debtor's place of employment
15 more frequently than once each business week and may not telephone the
16 debtor at the debtor's place of employment if the debtor notifies the debt
17 collector not to telephone at the debtor's place of employment or if the debt
18 collector knows or has reason to know that the debtor's employer prohibits
19 the debtor from receiving such communication. For the purposes of this
20 subparagraph, any language in any instrument creating the debt which pur-
21 ports to authorize telephone calls at the debtor's place of employment shall
22 not be considered as giving permission to the debt collector to call the debtor
23 at the debtor's place of employment.

24 (h) Communicate with the debtor in writing without clearly identifying
25 the name of the debt collector, the name of the person, if any, for whom the
26 debt collector is attempting to collect the debt and the debt collector's
27 business address, on all initial communications. In subsequent communi-
28 cations involving multiple accounts, the debt collector may eliminate the
29 name of the person, if any, for whom the debt collector is attempting to
30 collect the debt, and the term "various" may be substituted in its place.

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

4 (j) Cause any expense to the debtor in the form of long distance telephone
5 calls, telegram fees or other charges incurred by a medium of communi-
6 cation, by concealing the true purpose of the debt collector's communication.

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

11 (L) Use any form of communication which simulates legal or judicial
12 process or which gives the appearance of being authorized, issued or ap-
13 proved by a governmental agency, governmental official or an attorney at
14 law when it is not in fact so approved or authorized.

15 (m) Represent that an existing debt may be increased by the addition of
16 attorney fees, investigation fees or any other fees or charges when such fees
17 or charges may not legally be added to the existing debt.

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

21 (o) Threaten to assign or sell the debtor's account with an attending
22 misrepresentation or implication that the debtor would lose any defense to
23 the debt or would be subjected to harsh, vindictive or abusive collection
24 tactics.

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

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

