

D R A F T

SUMMARY

Includes person that engages in business of purchasing delinquent or charged-off debt for collection purposes in definitions of “debt collector,” “collection agency” and “out-of-state collection agency” for purposes of collections laws.

Permits Director of Department of Consumer and Business Services to require collection agency that engages in business of purchasing delinquent or charged-off debt for collection to obtain certificate from national nonprofit trade association that director identifies as maintaining industry-recognized standards for properly managing purchased debt. Permits director by rule or order to exempt collection agency from certain record-keeping requirements if collection agency shows that collection agency engages in business of purchasing delinquent or charged-off debt for collection and does not collect debt on behalf of customer.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to persons that engage in the business of purchasing certain debt
3 for collection; creating new provisions; amending ORS 646.639, 697.005,
4 697.015, 697.045 and 697.058; and declaring an emergency.

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

6 **SECTION 1.** ORS 646.639 is amended to read:

7 646.639. (1) As used in subsection (2) of this section:

8 (a) “Consumer” means a natural person who purchases or acquires prop-
9 erty, services or credit for personal, family or household purposes.

10 (b) “Consumer transaction” means a transaction between a consumer and
11 a person who sells, leases or provides property, services or credit to con-
12 sumers.

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

3 (d) “Credit” means [*the right granted by a creditor*] **a right that a cred-**
4 **itor grants** to a consumer to defer payment of a debt, to incur a debt and
5 defer [*its*] payment **of the debt**, or to purchase or acquire property or ser-
6 vices and defer payment [*therefor*] **for the property or services**.

7 (e) “Debt” means [*any*] **an** obligation or alleged obligation [*arising*] **that**
8 **arises** out of a consumer transaction.

9 (f) “Debtor” means a consumer who owes or allegedly owes [*an obligation*
10 *arising out of a consumer transaction*] **a debt**.

11 [(g) “Debt collector” means any person who by any direct or indirect action,
12 conduct or practice, enforces or attempts to enforce an obligation that is owed
13 or due to any commercial creditor, or alleged to be owed or due to any com-
14 mercial creditor, by a consumer as a result of a consumer transaction.]

15 (g) “Debt collector” means:

16 (A) **A person that by direct or indirect action, conduct or practice**
17 **collects or attempts to collect a debt that a consumer owes, or is al-**
18 **leged to owe, to a commercial creditor in connection with a consumer**
19 **transaction; or**

20 (B) **A person that is engaged in the business of purchasing delin-**
21 **quent or charged-off debt for the purpose of collecting the debt,**
22 **whether the person collects the debt, employs or contracts with an-**
23 **other person to collect the debt or retains an attorney to bring an**
24 **action to collect the debt.**

25 (h) “Person” means an individual, corporation, trust, partnership, incor-
26 porated or unincorporated association or any other legal entity.

27 (2) [*It shall be an unlawful collection practice for*] A debt collector **en-**
28 **gages in an unlawful collection practice if**, while collecting or attempting
29 to collect a debt [*to do any of the following*], **the debt collector:**

30 (a) [*Use or threaten the use of*] **Uses or threatens to use** force or vi-
31 **olence to cause physical harm to a debtor or to the debtor’s family or prop-**

1 erty.

2 (b) [*Threaten*] **Threatens** arrest or criminal prosecution.

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

6 (c) **Threatens to seize, attach or sell a debtor's property if the debt**
7 **collector requires a court order to do so and the debt collector does**
8 **not disclose that seizing, attaching or selling the debtor's property**
9 **requires prior court proceedings.**

10 (d) [*Use*] **Uses** profane, obscene or abusive language in communicating
11 with a debtor or the debtor's family.

12 (e) [*Communicate with the*] **Communicates with a** debtor or any member
13 of the debtor's family repeatedly or continuously or at times known to be
14 inconvenient to [*that person*] **the debtor or any member of the debtor's**
15 **family and** with intent to harass or annoy the debtor or any member of the
16 debtor's family.

17 (f) [*Communicate or threaten*] **Communicates or threatens** to communi-
18 cate with a debtor's employer concerning the nature or existence of the debt.

19 (g) [*Communicate without the*] **Communicates without a** debtor's per-
20 mission or [*threaten*] **threatens** to communicate with the debtor at the
21 debtor's place of employment if the place **of employment** is other than the
22 debtor's residence, except that the debt collector may:

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

28 (B) Telephone a debtor's place of employment without informing any
29 other person of the nature of the call or identifying the caller as a debt
30 collector but only if the debt collector in good faith has made an unsuc-
31 cessful attempt to telephone the debtor at the debtor's residence during the

1 day or during the evening between the hours of 6 p.m. and 9 p.m. The debt
2 collector may not contact the debtor at the debtor's place of employment
3 more frequently than once each business week and may not telephone the
4 debtor at the debtor's place of employment if the debtor notifies the debt
5 collector not to telephone at the debtor's place of employment or if the debt
6 collector knows or has reason to know that the debtor's employer prohibits
7 the debtor from receiving such communication. For the purposes of this
8 subparagraph, any language in any instrument [*creating*] **that creates or is**
9 **evidence of** the debt [*which*] **and that** purports to authorize telephone calls
10 at the debtor's place of employment [*shall not be considered as giving*] **does**
11 **not give** permission to the debt collector to call the debtor at the debtor's
12 place of employment.

13 (h) [*Communicate with the*] **Communicates with a** debtor in writing
14 without clearly identifying the name of the debt collector, the name of the
15 person, if any, for whom the debt collector is attempting to collect the debt
16 and the debt collector's business address, on all initial communications. In
17 subsequent communications involving multiple accounts, the debt collector
18 may eliminate the name of the person, if any, for whom the debt collector
19 is attempting to collect the debt[,] and **substitute** the term "various" [*may*
20 *be substituted in its place*] **in place of the person's name.**

21 (i) [*Communicate with the*] **Communicates with a** debtor orally without
22 disclosing to the debtor, within 30 seconds **after initiating the communi-**
23 **cation,** the name of the individual [*making the contact*] **who is initiating**
24 **the communication** and the true purpose [*thereof*] **of the**
25 **communication.**

26 (j) [*Cause*] **Conceals the true purpose of a communication so as to**
27 **cause** any expense to [*the*] **a** debtor in the form of long distance telephone
28 calls[, *telegram fees*] or other charges [*incurred by*] **the debtor might incur**
29 **by using** a medium of communication[, *by concealing the true purpose of the*
30 *debt collector's communication*].

31 (k) [*Attempt to or threaten*] **Attempts to or threatens** to enforce a right

1 or remedy [*with knowledge or*] **while knowing or having** reason to know
 2 that the right or remedy does not exist, or [*threaten*] **threatens** to take any
 3 action [*which*] **that** the debt collector in the regular course of business does
 4 not take.

5 (L) [*Use any*] **Uses a** form of communication [*which*] **that** simulates legal
 6 or judicial process or [*which gives the appearance of being*] **that appears to**
 7 **be** authorized, issued or approved by a governmental agency, [*governmental*]
 8 **government** official or an attorney at law [*when it is not in fact so approved*
 9 *or authorized*] **if a governmental agency, government official or attor-**
 10 **ney at a law has not in fact authorized or approved the**
 11 **communication.**

12 (m) [*Represent*] **Represents** that an existing debt may [*be increased by*
 13 *the*] **increase with an** addition of attorney fees, investigation fees or any
 14 other fees or charges [*when such*] **if the** fees or charges may not legally be
 15 added to the existing debt.

16 [*(n) Collect or attempt to collect any interest or any other charges or fees*
 17 *in excess of the actual debt unless they are expressly authorized by the agree-*
 18 *ment creating the debt or expressly allowed by law.*]

19 (n) **Collects or attempts to collect interest or other charges or fees**
 20 **that exceed the actual debt unless the agreement that creates or is**
 21 **evidence of the debt expressly authorizes, or a law expressly author-**
 22 **izes, the interest or other charges or fees.**

23 (o) [*Threaten*] **Threatens** to assign or sell [*the*] **a** debtor's account [*with*
 24 *an attending misrepresentation or implication*] **and misrepresents or implies**
 25 that the debtor would lose any defense to the debt or would be subjected to
 26 harsh, vindictive or abusive collection tactics.

27 (p) [*Use*] **Uses** the seal or letterhead of a public official or a public
 28 agency, as those terms are defined in ORS 171.725.

29 (3) [*It shall be*] **A debt collector engages in** an unlawful collection
 30 practice [*for a*] **if the** debt collector[, *by use of*] **uses** any direct or indirect
 31 action, conduct or practice[,] to enforce or attempt to enforce an obligation

1 *[made void and unenforceable by]* **that** the provisions of ORS 759.720 (3) to
2 (5) **make void and unenforceable.**

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

4 697.005. As used in ORS 697.005 to 697.095:

5 (1)(a) “Collection agency” means:

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

10 (B) A person that directly or indirectly furnishes, attempts to furnish,
11 sells or offers to sell forms represented to be a collection system even if the
12 forms direct the debtor to *[make payment to]* **pay** the creditor and even if the
13 **creditor may or does use the** forms *[may be or are actually used by the*
14 *creditor]* in the creditor’s own name;

15 (C) A person that, in attempting to collect or in collecting the person’s
16 own claim, uses a fictitious name or any name other than the person’s own
17 **name** that *[indicates]* **conveys an impression** to the debtor that a third
18 person is collecting or attempting to collect the claim;

19 (D) A person **that engages** in the business of *[engaging in the solicitation*
20 *of]* **soliciting** the right to repossess or in repossessing collateral security due
21 or asserted to be due to another person; *[or]*

22 (E) A person that, in *[the collection of]* **collecting** claims from another
23 person:

24 (i) Uses any name other than the name regularly used in *[the conduct of]*
25 **conducting** the business out of which the claim arose; and

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

28 (F) **A person that is engaged in the business of purchasing delin-**
29 **quent or charged-off debt for the purpose of collecting the debt,**
30 **whether the person collects the debt, employs or contracts with an-**
31 **other person to collect the debt or retains an attorney to bring an**

1 **action to collect the debt.**

2 (b) "Collection agency" does not include:

3 (A) An individual [*engaged*] **who engages** in soliciting claims for col-
4 lection, or [*collecting or attempting*] **who collects or attempts** to collect
5 claims on behalf of a registrant under ORS 697.005 to 697.095, if the indi-
6 vidual is an employee of the registrant.

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

11 (C) A person that prepares or mails monthly or periodic statements of
12 accounts due on behalf of another person if all payments are made to the
13 other person and the person that prepares the statements of accounts does
14 not make other collection efforts.

15 (D) An attorney-at-law [*rendering*] **who renders** services in [*the perform-*
16 *ance of*] **performing** the duties of an attorney-at-law.

17 (E) A licensed certified public accountant or public accountant [*rendering*
18 *services in the performance of*] **who performs** the duties of a licensed certi-
19 fied public accountant or public accountant.

20 (F) A bank, mutual savings bank, consumer finance company, trust com-
21 pany, savings and loan association, credit union or debt consolidation
22 agency.

23 (G) A principal real estate broker **that is** licensed under ORS 696.020,
24 [*as*] **with respect** to any collection or billing activity that involves a real
25 estate closing escrow, as defined in ORS 696.505.

26 (H) An escrow agent **that is** licensed under ORS 696.511, with respect to
27 the escrow agent's:

28 (i) Collection or billing activities [*involved in*] **that are related to** clos-
29 ing an escrow, as defined in ORS 696.505, or related to a collection escrow,
30 as defined in ORS 696.505; or

31 (ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

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

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

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

7 (L) A person that [*is providing*] **provides** billing services. A person [*is*
8 *providing*] **provides** billing services for the purposes of this subparagraph if
9 the person engages, directly or indirectly, in the business or pursuit of [*col-*
10 *lection of*] **collecting** claims for another person, whether in the other
11 person's name or any other name, by any means that:

12 (i) [*Is*] **Uses** an accounting procedure, preparation of mail billing or any
13 other means intended to accelerate cash flow to the other person's bank ac-
14 count or to any separate trust account; and

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

17 (M) A person **other than a collection agency** that [*is providing*] **pro-**
18 **vides** factoring services. A person [*is providing*] **provides** factoring services
19 for the purposes of this subparagraph if the person engages, directly or in-
20 directly, in the business or pursuit of:

21 (i) Lending or advancing money to commercial clients on the security of
22 merchandise or accounts receivable and then enforcing collection actions or
23 procedures [*on such accounts*] **for the loans or advances**; or

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

26 (I) Allows recourse against the commercial client;

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

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

31 (N) An individual employed by another person that operates as a col-

1 lection agency [*if the person does not operate as a collection agency inde-*
2 *pendent of that employment*], **unless the individual operates an**
3 **independent collection agency while a collection agency employs the**
4 **individual.**

5 (O) A mortgage banker as defined in ORS 86A.100.

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

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

13 (R) A person **other than a collection agency** that receives an assign-
14 ment of debt in any form without an obligation to pay the assignor any of
15 the proceeds [*resulting from a collection of*] **that result from collecting** all
16 or a portion of the debt.

17 (S) A person for whom the Director of the Department of Consumer and
18 Business Services determines by order or by rule that the protection of the
19 public health, safety and welfare does not require registration with the de-
20 partment as a collection agency.

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

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

27 (b) A person **that is** directly or indirectly engaged in soliciting claims for
28 collection, or collecting or attempting to collect claims owed or due or as-
29 serted to be owed or due another person.

30 (3) "Claim" means an obligation [*for the payment of money or thing of*
31 *value arising*] **to pay money or value if the obligation arises** out of an

1 agreement or contract, express or implied.

2 (4) “Client” or “customer” means a person [*authorizing or employing*] **that**
3 **authorizes or employs** a collection agency to collect a claim.

4 (5) “Debtor” means a person [*owing or*] **that owes or is** alleged to owe
5 a claim.

6 [(6) “*Debts incurred outside this state*” means an action or proceeding
7 *that:*]

8 [(a) *Arises out of a promise, made anywhere to the plaintiff or a third party*
9 *for the plaintiff’s benefit, by the defendant to perform services outside of this*
10 *state or to pay for services to be performed outside of this state by the*
11 *plaintiff;*]

12 [(b) *Arises out of services actually performed for the plaintiff by the de-*
13 *fendant outside of this state or services actually performed for the defendant*
14 *by the plaintiff outside of this state, if the performance outside of this state*
15 *was authorized or ratified by the defendant;*]

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

20 [(d) *Relates to goods, documents of title or other things of value sent from*
21 *outside of this state by the defendant to the plaintiff or a third person on the*
22 *plaintiff’s order or direction;*]

23 [(e) *Relates to goods, documents of title or other things of value actually*
24 *received outside of this state by the plaintiff from the defendant or by the de-*
25 *fendant from the plaintiff, without regard to where delivery to carrier oc-*
26 *curred; or*]

27 [(f) *Where jurisdiction at the time the debt was incurred was outside of this*
28 *state.*]

29 [(7)] **(6)(a)** “Out-of-state collection agency” means:

30 **(A)** A collection agency located outside of this state [*whose*] **the** activities
31 **of which**, within this state, are limited to collecting [*debts incurred outside*

1 *of this state from debtors]* **a debt that a debtor** located in this state **incurs**
2 **outside this state; or**

3 **(B) A collection agency with a principal office outside this state**
4 **that is engaged in the business of purchasing delinquent or charged-off**
5 **debt for the purpose of collecting the debt, whether the collection**
6 **agency collects the debt, employs or contracts with another person to**
7 **collect the debt or retains an attorney to bring an action to collect the**
8 **debt.**

9 **(b)** As used in this subsection, “collecting [*debts*] **a debt**” means collect-
10 ing **a debt on behalf of clients located outside this state** by means of
11 interstate communications, including telephone, mail or facsimile trans-
12 mission from the collection [*agency*] **agency’s** location in another state [*on*
13 *behalf of clients located outside of this state*].

14 [(8)] **(7)** “Person” means an individual, firm, partnership, trust, joint
15 venture, association, limited liability company or corporation.

16 [(9) “Public body” means:]

17 [(a) *The state and any branch, department, agency, board or commission*
18 *of the state;*]

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

21 [(c) *An intergovernmental agency, department, council, joint board of con-*
22 *trol created under ORS 190.125 or other like entity that is created under ORS*
23 *190.003 to 190.130 and that does not act under the direction and control of any*
24 *single member government.*]

25 **(8) “Public body” has the meaning given that term in ORS 174.109.**

26 [(10)] **(9)** “Registered” or “Registrant” means a person **that is** registered
27 under ORS 697.005 to 697.095 or **that is** registered or licensed as a collection
28 agency under the laws of another state.

29 [(11)] **(10)** “Statement of account” means a report [*setting*] **that sets** forth
30 amounts billed, invoices, credits allowed or aged balance due.

31 **SECTION 3.** ORS 697.015 is amended to read:

1 697.015. (1) A person [*shall*] **may** not operate as a collection agency in
 2 this state unless the person registers **and maintains a registration** with
 3 the Department of Consumer and Business Services under ORS 697.031 [*and*
 4 *maintains the registration in accordance with that section*].

5 **(2) The Director of the Department of Consumer and Business Ser-**
 6 **vices by rule may require a collection agency that operates in this**
 7 **state, whether or not the collection agency has an office in this state,**
 8 **to obtain a certification from a national nonprofit trade association**
 9 **that the director identifies as maintaining industry-recognized stan-**
 10 **dards for properly managing purchased debt.**

11 **SECTION 4.** ORS 697.045 is amended to read:

12 697.045. (1) A [*registered collection agency*] **registrant** has a property right
 13 in any claim or account **sold or** assigned to the [*agency*] **registrant** in
 14 writing for collection. Except as [*may be otherwise provided in writing be-*
 15 *tween*] the assignor of the claim or account and the [*registered collection*
 16 *agency*] **registrant may otherwise provide in writing**, the [*registered col-*
 17 *lection agency*] **registrant** as assignee of the claim or account, in [*its*] **the**
 18 **registrant's** own name, may:

- 19 (a) Collect the claim or account;
- 20 (b) Compromise or accept settlement of the claim or account;
- 21 (c) Bring and maintain an action to recover the amount owing from the
 22 claim or account; [*and*] **or**
- 23 (d) [*With prior written approval of the assignor,*] **Sell**, transfer or forward
 24 the claim or account to another collection agency for collection[.], **except**
 25 **that the assignor must first approve a sale or transfer to any col-**
 26 **lection agency that did not purchase the claim or account.**

27 (2)(a) Except as [*may be otherwise provided in writing between*] the
 28 assignor of the claim or account and the [*registered collection agency*] **reg-**
 29 **istrant may provide in writing**, the assignor may withdraw the claim or
 30 account from the [*agency*] **registrant** at any time without condition or
 31 charge.

1 **(b) Paragraph (a) of this subsection does not apply to a claim or**
 2 **account that a collection agency purchased.**

3 (3) Notwithstanding ORS 9.160 and 9.320, in any action in the small
 4 claims department of a circuit court or justice court a [*registered collection*
 5 *agency*] **registrant** may appear as a party without appearance by attorney
 6 for the purpose of recovering the amount owing on a claim or account **sold**
 7 **or** assigned to the [*agency*] **registrant** in writing for collection. The pro-
 8 visions of this subsection apply to any supplementary proceeding in aid of
 9 execution after entry of a judgment in the small claims department.

10 (4) [*No*] **A** collection agency [*is entitled to*] **may not** bring or maintain
 11 an action [*involving the collection of*] **to collect** a claim or account [*on behalf*
 12 *of its customers*] in any courts of this state without alleging and proving that
 13 [*it is duly registered under ORS 697.015 and 697.031*] **the collection agency**
 14 **is a registrant. The court shall receive as prima facie evidence that the**
 15 **collection agency is a registrant** a [*registration certificate or a*] certifica-
 16 tion of registration [*by*] **that** the Director of the Department of Consumer
 17 and Business Services [*for any designated time period shall be received by the*
 18 *court as prima facie evidence of the collection agency's registration for the time*
 19 *period designated*] **issues and in which the director states that the col-**
 20 **lection agency is a registrant for a designated time period.**

21 **SECTION 5.** ORS 697.058 is amended to read:

22 697.058. (1) Except as provided in subsection (9) of this section, every
 23 collection agency shall keep a record of all sums [*collected by it, and of all*
 24 *disbursements made by it,*] **the collection agency collects and disburses**
 25 and shall maintain and keep [*all such records*] **the record** and all customers'
 26 funds within this state. **A** collection [*agencies*] **agency** shall maintain ac-
 27 counting records of collections for and payments to customers for a period
 28 of six years [*from*] **after** the date of the last entry [*thereon*] **in the ac-**
 29 **counting record.** Collection agencies shall keep other records for a period
 30 of two years [*from*] **after** the date of the last entry [*thereon*] **in the record.**
 31 [*Collection agencies, or any employee thereof, shall*] **A collection agency, or**

1 **an employee of a collection agency, may** not intentionally make any false
2 entry in any collection agency record or intentionally mutilate, destroy or
3 otherwise dispose of any *[such]* **collection agency** record within the time
4 limits provided in this section. This subsection does not apply to out-of-state
5 collection agencies.

6 (2) Except as provided in subsection (9) of this section, every collection
7 agency shall establish and maintain a regular, active business office in this
8 state for the purpose of conducting business in this state. The office *[shall]*
9 **must** be open to the public during reasonable, stated business hours. This
10 subsection does not apply to out-of-state collection agencies.

11 (3) A collection agency *[shall]* **may** not commingle the money of custom-
12 ers with other moneys.

13 (4) Except as provided in subsection (9) of this section, a collection
14 agency shall maintain a separate trust account in this state for customers'
15 funds and shall keep funds in *[such]* **the** trust account until *[disbursed]* **the**
16 **collection agency disburses the funds** to the customer. This subsection
17 does not apply to out-of-state collection agencies.

18 (5) Except as provided in subsection (9) of this section, every collection
19 agency that requires customers to pay an amount for services *[prior to the*
20 *time that]* **before receiving** the services *[are rendered]* shall maintain a
21 separate trust account in this state for prepayments and shall keep prepay-
22 ment funds in the trust account for 180 days or until the services for which
23 *[prepayment is made]* **the customer prepaid** are performed, whichever oc-
24 curs first.

25 (6) Every collection agency, within 30 days after the close of each calen-
26 dar or fiscal month, shall report and pay to *[its]* **the collection agency's**
27 customers the net proceeds due and payable *[of]* **from** all collections **the**
28 **collection agency** made during that calendar or fiscal month. **A collection**
29 **agency may defer payments for not more than three months if** *[When*
30 *the]* net proceeds are less than \$5 at the end of any calendar or fiscal
31 month*[, payments may be deferred for a period not to exceed three months].*

1 (7) *[Upon the motion of the Director of the Department of Consumer and*
2 *Business Services or upon receipt of a complaint by a customer of the collection*
3 *agency, the director may audit the collection agency's trust accounts with re-*
4 *spect to any violation by the collection agency of this section.]* **The Director**
5 **of the Department of Consumer and Business Services may audit a**
6 **collection agency's trust accounts if the director believes that a col-**
7 **lection agency has violated this section or if the director receives a**
8 **complaint from a customer of the collection agency.** If the director finds
9 any discrepancy in the **collection agency's** trust accounts, the director also
10 may audit the **collection agency's** operating account *[of the collection*
11 *agency]*. The collection agency shall pay the reasonable cost of an audit un-
12 der this section, as determined by the director.

13 (8) If a collection agency does not pay the cost **that the director de-**
14 **termined for** *[of]* the audit *[determined]* under subsection (7) of this section,
15 the director may assign the delinquent account to the Department of Reve-
16 nue for collection in the manner that **the Department of Revenue collects**
17 other debts *[are collected]* under ORS 293.250.

18 (9)(a) The director, by rule or order, may exempt a collection agency from
19 the requirements of subsection (1), (2), (4) or (5) of this section if the col-
20 lection agency:

21 *[(a)]* **(A)** Satisfies the director that the **director may examine the col-**
22 **lection agency's** books, records and trust accounts *[of the collection agency*
23 *may be examined by the director]* without undue delay or expense;

24 *[(b)]* **(B)** Provides for timely and convenient remittance of debtor pay-
25 ments and funds *[owed]* **the collection agency owes** to the customer; and

26 *[(c)]* **(C)** Complies with all conditions the director may require relating
27 to additional bonding requirements and to provisions for auditing financial
28 statements of trust accounts, receiving payments from and communicating
29 with debtors, and remitting funds to customers.

30 **(b) The director, by rule or order, may exempt a collection agency**
31 **from the requirements of all or part of this section if the collection**

1 **agency demonstrates that the collection agency is engaged in the**
2 **business of purchasing delinquent or charged-off claims or accounts**
3 **and does not collect claims or accounts on behalf of a customer.**

4 **SECTION 6. (1) The amendments to ORS 646.639, 697.005, 697.015,**
5 **697.045 and 697.058 by sections 1 to 5 of this 2015 Act become operative**
6 **January 1, 2016.**

7 **(2) The Director of the Department of Consumer and Business Ser-**
8 **vices and the Director of the Department of Revenue may adopt rules**
9 **and take any other action before the operative date specified in sub-**
10 **section (1) of this section that is necessary to enable the director, on**
11 **and after the operative date specified in subsection (1) of this section,**
12 **to exercise all of the duties, functions and powers conferred on the**
13 **director by the amendments to ORS 646.639, 697.005, 697.015, 697.045 and**
14 **697.058 by sections 1 to 5 of this 2015 Act.**

15 **SECTION 7. This 2015 Act being necessary for the immediate pres-**
16 **ervation of the public peace, health and safety, an emergency is de-**
17 **clared to exist, and this 2015 Act takes effect on its passage.**

18