

OREGON LAW CENTER

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Testimony in Support of House Bill 2252 and Regarding Debt Collection Practices Before the House Consumer Protection and Government Effectiveness Committee March 26th, 2015

Chair Fagan, Vice-Chairs Rayfield and Buehler, and members of the Committee,

On behalf of the Oregon Law Center (OLC), thank you for the opportunity to provide testimony in support of House Bill 2252, which would provide important protections for consumers from abusive debt collection practices. I will also speak to concerns regarding debt collection practices more generally.

OLC is a non-profit law firm whose mission is to achieve justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. The vast majority of our clients have incomes below the federal poverty level, and work hard to provide the basic necessities for themselves and their family. During recent years of escalating economic crisis, we have seen a marked increase in the number of people eligible for our services. As people struggle to manage this economic crisis, more and more low-income Oregonians face lawsuits related to debt.

Creditors have a right to collect on legitimate debts they are owed, and debt collection, whether by collection agencies or debt buyers, is a legitimate business practice. However, certain sidebars are necessary to allow legitimate businesses to thrive while ensuring that bad actors do not prey on vulnerable populations. There ought to be reasonable regulations protecting consumers from inaccurate or inappropriate lawsuits.

Many of the concerns we have seen relate to communications received from debt buyers prior to a lawsuit on old debt, that fail to inform consumers about the applicable statute of limitations. Consumers sometimes receive collection communications that contain only a single line of text listing the amount allegedly owed. Often, the name of the original creditor or the transaction which gave rise to the original debt is not even listed. A consumer has difficulty determining from such little information if the debt is in fact legitimate. Sometimes consumers who are sued on these debts are victims of identity theft, or have names similar to those of the true debtor. Consumers should be able to easily determine whether the debt is owed by them, and whether the company suing them has a right to collect on the debt. Documentation should be provided for consumers as a matter of course prior to the initiation of a lawsuit in order to ensure that consumers can effectively evaluate the allegation.

One significant gap in current protection is the lack of specific prohibition on attempts to collect debt that the collector (whether by a creditor, a third party debt buyer, or a collection agency) knows or has reason to know is not valid, or is beyond the statute of limitations. We have had several clients who were sued on a debt that was past the statute of limitations, or was invalid.

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Consumers who want to fight inappropriate or invalid collection efforts face steep barriers. The cost of fighting the case in court and hiring an attorney makes it unrealistic for most consumers. The assumption that most consumers will not be able to respond to a lawsuit or hire an attorney appears to be fundamental to the business practice of some bad actor collectors, who often drop a lawsuit right away in the event a response is filed, only to sell the debt to another buyer who makes the same attempt.

Specific priority concerns:

- **Documentation:** without adequate information, it is difficult or impossible for consumers to assess whether or not an alleged debt is theirs, is valid, and whether added fees/costs are appropriate.
- **Notice** must be provided prior to the initiation of a lawsuit, so as to allow the consumer to evaluate the claim, and to dispute or to negotiate without having to incur court costs.
- **Information** must be provided to consumers about applicable statutes of limitations.
- **Default judgment concern:** It is important to make sure any court pleadings contain sufficient evidence of the existence of the debt, the itemization of debt vs fees and interest, validity of ownership (proof of assignments), adequate service on the correct debtor, and information indicating that the SOL has not run. Lack of this showing should justify a motion to set aside default.
- **Roll-over prohibition:** It should be impermissible to sell disputed debt to another collector or buyer after failing to respond to a consumer's objection.
- **Lack of access to assistance:** The prevailing party fee is a big barrier to low-income consumers' access to assistance. This is a barrier to pursuit of remedy in legitimate cases. If the amounts owed or illegally collected are small, the risk benefit analysis for any low-income consumer does not support a decision to contest. This dynamic contributes to the success of a default motion business model. The prevailing plaintiff fee is an important way to allow access and to balance this risk.
- **Efforts to collect invalid or uncollectible debt:** The current law does not adequately protect against attempts to collect a debt while knowing or having reason to know that the debt is invalid, time barred, or uncollectible. Language should be added to the Act, to specifically address this issue.

In closing, debt buyers and collection agencies must operate according to sound and transparent business practices. There are many practicing debt buyers and collectors who already adhere to these standards. We hope for your help in raising the bar, so that all collectors are satisfying adequate minimum standards.

Thank you for the opportunity to testify today.