

March 27, 2015

Members of the House Consumer Protection Committee,

DBA International would again like to thank Chair Fagan and the committee for convening a public hearing yesterday regarding the value and benefit of enhancing consumer protections within the collection industry.

It was exciting to introduce the key elements of the concept amendment reflecting the culmination of nearly a month of intensive working group meetings convened by Chair Fagan. These meetings consisted of a broad cross-section of consumer and industry stakeholders who were able to find a balanced approach designed to address the concerns of both communities. **Attached, please find the latest draft of the working group's concept amendment.**

We empathize with the consumers who shared their stories, frustrations and grievances about the broader collection industry and collection process. While not diminishing DBA's support for the draft concept amendment enhancing consumer protections as related to the debt buying community, it should be noted that the majority of examples provided at the hearing yesterday were attributed to non-debt buying entities.

We believe our testimony conveyed DBA International's long term commitment to partner with the State of Oregon to help root out bad actors and protect Oregon consumers, and reinforced our broader mission to identify best practices and set industry-leading standards in the area of consumer protection.

Please feel free to contact me if you have any further questions about my testimony, the concept amendment or other issues related to debt buying companies or the collection industry.

Sincerely,



David Reid
Director of Government Affairs
DBA International

PROPOSED BILL TEXT

OREGON UNFAIR COLLECTION PRACTICES LANGUAGE (existing law)

646.639 Unlawful collection practices. (1) As used in ~~subsection (2) of~~ this section:

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

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

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

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

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

(f) “Debtor” means a consumer who owes or allegedly owes an obligation arising out of a consumer transaction.

(g) “Debt collector” means:

~~(A) Any person who by any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction; or~~

~~(B) Any person that is engaged in the business of purchasing delinquent or charged-off debt for the purpose of collecting the debt, whether the person collects the debt, employs or contracts with another person to collect the debt or retains an attorney to bring an action to collect the debt.~~

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

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

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

Commented [DR1]: Clarifies that debt buying companies are included within the definition of “debt collector” and subject to private rights of action.

(b) Threaten arrest or criminal prosecution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Use the seal or letterhead of a public official or a public agency, as those terms are defined in ORS 171.725.

(q) Commence a lawsuit to collect a debt when there is no reasonable basis warranted by existing law to claim that the debt is within the applicable statute of limitations.

Commented [DR2]: Prohibits the bringing of suit when beyond the statute of limitations.

(r) Collect or attempt to collect on a fraudulent debt created by the debt collector for purposes of perpetrating a fraud on another person.

Commented [DR3]: Allows the AG's office to prosecute fraudulent activity designed to collect on "phantom debt" under the provisions of the Unlawful Collection Practices Act.

(s) Fail to comply with paragraphs (a) through (r) of this subsection when communicating with a person reasonably believed to be the debtor.

Commented [DR4]: Allows the AG's office to prosecute violations of the Unlawful Collection Practices Act in a scenario where the person turns out to not be the debtor in question.

(t) For a debt collector that is engaged in the business of purchasing delinquent or charged-off debt for the purpose of collecting the debt to fail to either:

Commented [DR5]: Allows for Director of the Department of Consumer and Business Services to require debt buying companies to comply with national certification requirements.

(A) Obtain certification from a national nonprofit trade association that the Director of the Department of Consumer and Business Services by rule identifies as maintaining industry-recognized standards for properly managing purchased debt, or

(B) If not certified, meet or exceed the standards adopted by a national nonprofit trade association that the Director of the Department of Consumer and Business Services by rule identifies as maintaining industry-recognized standards for properly managing purchased debt.

The provisions of this paragraph shall not be effective until such time that the director identifies by rule a qualifying certification. The director may establish a fee for the purpose of administering a state registry of debt collectors that are in compliance with this paragraph, provided that the fee shall not be more than an amount necessary to cover the administrative costs of the registry.

(u) Fail to comply with the following requirements when collecting on a delinquent or charged-off debt purchased by a debt collector registered with the Department of Consumer and Business Services pursuant to the provisions of ORS 646.639(2)(t):

Commented [DR6]: Paragraph (u) applies only to debt collectors collecting on purchased debt.

(A) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice to the consumer's last known address containing:

Commented [DR7]: Subparagraphs (A) through (E) of paragraph (u) requires the FDCPA 1692g notice be provided under the Oregon Unlawful Collection Practices Act (with some Oregon specific enhancements in paragraph (A) and (B)).

(i) The amount of the debt;

(ii) The date of last payment, if applicable, or the charge-off date;

(iii) The charge-off amount on open-end credit accounts;

(iv) The name and address to whom the debt is currently owed;

(v) The name of the original creditor in sufficient form so as to reasonably identify the creditor;

Commented [DR8]: Banks can have "LLC", "NA" or different iterations at the end of their name. For example, if the name provided to the consumer is "HSBC" it should be considered sufficient to identify "HSBC, NA".

(vi) A statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(vii) A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(viii) A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor.

(B) If the consumer notifies the debt collector in writing within the thirty-day period described in ORS 646.639(2)(u)(A) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this section may continue during the 30-day period referenced to in ORS 646.639(2)(u)(A) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer

requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer’s right to dispute the debt or request the name and address of the original creditor. A debt collector shall not sell any accounts where an outstanding non-duplicative written consumer request for verification of the debt pursuant to this paragraph has not been responded to in writing.

(C) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(D) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of ORS 646.639(2)(u)(A).

(E) The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(F) A debt collector shall send the following written notice in its initial communication to the debtor when the debt is beyond the statute of limitations:

(i) Instruction: When collecting on debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681c-i:

“The law limits how long you can be sued on a debt. Because of the age of your debt, [Owner Name] will not sue you for it. If you do not pay the debt, [Owner Name] may report or continue to report it to the credit reporting agencies as unpaid.”

(ii) Instruction: When collecting on debt where the debt is passed the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681c:

“The law limits how long you can be sued on a debt. Because of the age of your debt, [Owner Name] will not sue you for it, and [Owner Name] will not report it to any credit reporting agency.”

(G) On open-end credit accounts charged-off on or after January 1, 2016, a debt collector shall cease collection upon receipt of a debtor’s first written request for the following information and may not restart collection activity until such time that the information has been provided:

(i) A copy of the contract or other writing between the debtor and the original creditor that is evidence of the original account. This may be satisfied by a copy of any documents that the account

Commented [DR9]: Requires the 2012 FTC Asset Decree language be provided to the consumer when debt is beyond the statute of limitations. The language has been statutorily codified in three states (CA, CT and WV).

Commented [DR10]: Requires certain information to be provided the debtor upon written request. Requested by Chair Fagan.

generated, including the charge-off statement or other periodic billing statement delivered to the debtor prior to default;

(ii) The total amount of any interest accrued on the account after the charge-off date;

(iii) The total amount of any fees, including attorney fees, accrued on the account after the charge-off date; and

(iv) A statement describing the complete chain of title from the original creditor to the present owner, including the names and dates of ownership.

(3) It shall be an unlawful collection practice for a debt collector, by use of any direct or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5). [1977 c.184 §2; 1985 c.799 §1; 1991 c.672 §9; 1991 c.906 §1; 1995 c.696 §50; 2013 c.551 §3]

Add new paragraphs (4) and (5) to ORS 646.641 that read:

(4) A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

Commented [DR11]: Adds the FDCA "bona fide error" language so that minor clerical errors are not subject to the strict liability provisions contained in the act.

(5) Recovery in an action brought under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same acts in an action brought under this title.

Commented [DR12]: Prevents double recovery for the same injury by seeking recovery under both the federal and state act.

OREGON COLLECTION AGENCY REGISTRATION ACT (existing law)

697.005 Definitions for ORS 697.005 to 697.095. As used in ORS 697.005 to 697.095:

(1)(a) "Collection agency" means:

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

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

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

(D) A person in the business of engaging in the solicitation of the right to repossess or in repossessing collateral security due or asserted to be due to another person; or

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

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

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

(b) "Collection agency" does not include:

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

(B) An individual collecting or attempting to collect claims for not more than three employers, if the individual carries on all collection efforts in the name of the employer and the individual is an employee of the employer.

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

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

(E) A licensed certified public accountant or public accountant rendering services in the performance of the duties of a licensed certified public accountant or public accountant.

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

(G) A principal real estate broker licensed under ORS 696.020, as to any collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

(H) An escrow agent licensed under ORS 696.511, with respect to the escrow agent's:

(i) Collection or billing activities involved in closing an escrow, as defined in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

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

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

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

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

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

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

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

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

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

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

(I) Allows recourse against the commercial client;

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

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

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

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

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

(Q) A public body or an individual collecting or attempting to collect claims owed, due or asserted to be owed or due to a public body, if the individual is an employee of the public body.

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

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

(T) A person that is engaged in the business of purchasing delinquent or charged-off debt for the purpose of collecting the debt.

Commented [DR13]: Exempts debt buying companies from the registration requirement in the Collection Agency Act since the act was designed for the protection of creditors who retained third party collection agencies.

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

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

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

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

(4) “Client” or “customer” means a person authorizing or employing a collection agency to collect a claim.

(5) “Debtor” means a person owing or alleged to owe a claim.

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

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

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

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

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

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

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

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

(8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

(9) "Public body" means:

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

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

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

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

(11) "Statement of account" means a report setting forth amounts billed, invoices, credits allowed or aged balance due. [1981 c.85 §2; 1987 c.373 §43; 1993 c.744 §20; 1995 c.622 §1; 1999 c.468 §1; 2001 c.917 §5; 2009 c.134 §1; 2013 c.444 §1]

Effective Date: This act shall take effect on January 1, 2016.