

# House Bill 3057

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

## 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 **as introduced**.

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 for collection; creating  
3 new provisions; amending ORS 646.639, 697.005, 697.015, 697.045 and 697.058; and declaring an  
4 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 property, services or credit  
9 for personal, family or household purposes.

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

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

14 (d) "Credit" means [*the right granted by a creditor*] **a right that a creditor grants** to a con-  
15 sumer to defer payment of a debt, to incur a debt and defer [*its*] payment **of the debt**, or to purchase  
16 or acquire property or services and defer payment [*therefor*] **for the property or services**.

17 (e) "Debt" means [*any*] **an** obligation or alleged obligation [*arising*] **that arises** out of a con-  
18 sumer transaction.

19 (f) "Debtor" means a consumer who owes or allegedly owes [*an obligation arising out of a con-*  
20 *sumer transaction*] **a debt**.

21 [*(g) "Debt collector" means any person who by any direct or indirect action, conduct or practice,*  
22 *enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged*  
23 *to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction.*]

24 **(g) "Debt collector" means:**

25 **(A) A person that by direct or indirect action, conduct or practice collects or attempts**

**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 to collect a debt that a consumer owes, or is alleged to owe, to a commercial creditor in  
 2 connection with a consumer transaction; or

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

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

9 (2) *[It shall be an unlawful collection practice for]* A debt collector **engages in an unlawful**  
 10 **collection practice if**, while collecting or attempting to collect a debt *[to do any of the following]*,  
 11 **the debt collector:**

12 (a) *[Use or threaten the use of]* **Uses or threatens to use** force or violence to cause physical  
 13 harm to a debtor or to the debtor's family or property.

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

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

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

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

22 (e) *[Communicate with the]* **Communicates with a** debtor or any member of the debtor's family  
 23 repeatedly or continuously or at times known to be inconvenient to *[that person]* **the debtor or any**  
 24 **member of the debtor's family and** with intent to harass or annoy the debtor or any member of  
 25 the debtor's family.

26 (f) *[Communicate or threaten]* **Communicates or threatens** to communicate with a debtor's  
 27 employer concerning the nature or existence of the debt.

28 (g) *[Communicate without the]* **Communicates without a** debtor's permission or *[threaten]*  
 29 **threatens** to communicate with the debtor at the debtor's place of employment if the place of **em-**  
 30 **ployment** is other than the debtor's residence, except that the debt collector may:

31 (A) Write to the debtor at the debtor's place of employment if *[no]* a home address is **not** rea-  
 32 sonably available and if the envelope does not reveal that the communication is from a debt col-  
 33 lector other than *[a provider of]* **the person that provided** the goods, services or credit from which  
 34 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]* **that creates or**  
 44 **is evidence of** the debt *[which]* **and that** purports to authorize telephone calls at the debtor's place  
 45 of employment *[shall not be considered as giving]* **does not give** permission to the debt collector to

1 call the debtor at the debtor's place of employment.

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

8 (i) *[Communicate with the]* **Communicates with a** debtor orally without disclosing to the  
 9 debtor, within 30 seconds **after initiating the communication**, the name of the individual *[making*  
 10 *the contact]* **who is initiating the communication** and the true purpose *[thereof]* **of the commu-**  
 11 **nication.**

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

16 (k) *[Attempt to or threaten]* **Attempts to or threatens** to enforce a right or remedy *[with*  
 17 *knowledge or]* **while knowing or having** reason to know that the right or remedy does not exist,  
 18 or *[threaten]* **threatens** to take any action *[which]* **that** the debt collector in the regular course of  
 19 business does not take.

20 (L) *[Use any]* **Uses a** form of communication *[which]* **that** simulates legal or judicial process or  
 21 *[which gives the appearance of being]* **that appears to be** authorized, issued or approved by a gov-  
 22 ernmental agency, *[governmental]* **government** official or an attorney at law *[when it is not in fact*  
 23 *so approved or authorized]* **if a governmental agency, government official or attorney at a law**  
 24 **has not in fact authorized or approved the communication.**

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

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

31 **(n) Collects or attempts to collect interest or other charges or fees that exceed the ac-**  
 32 **tual debt unless the agreement that creates or is evidence of the debt expressly authorizes,**  
 33 **or a law expressly authorizes, the interest or other charges or fees.**

34 (o) *[Threaten]* **Threatens** to assign or sell *[the]* **a** debtor's account *[with an attending misrepre-*  
 35 *sentation or implication]* **and misrepresents or implies** that the debtor would lose any defense to  
 36 the debt or would be subjected to harsh, vindictive or abusive collection tactics.

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

39 (3) *[It shall be]* **A debt collector engages in** an unlawful collection practice *[for a]* **if the** debt  
 40 collector[, *by use of*] **uses** any direct or indirect action, conduct or practice[,] to enforce or attempt  
 41 to enforce an obligation *[made void and unenforceable by]* **that** the provisions of ORS 759.720 (3) to  
 42 (5) **make void and unenforceable.**

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

44 697.005. As used in ORS 697.005 to 697.095:

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

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

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

9 (C) A person that, in attempting to collect or in collecting the person’s own claim, uses a ficti-  
 10 tious name or any name other than the person’s own **name** that [*indicates*] **conveys an impression**  
 11 to the debtor that a third person is collecting or attempting to collect the claim;

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

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

15 (i) Uses any name other than the name regularly used in [*the conduct of*] **conducting** the busi-  
 16 ness out of which the claim arose; and

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

19 **(F) A person that is engaged in the business of purchasing delinquent or charged-off debt**  
 20 **for the purpose of collecting the debt, whether the person collects the debt, employs or**  
 21 **contracts with another person to collect the debt or retains an attorney to bring an action**  
 22 **to collect the debt.**

23 (b) “Collection agency” does not include:

24 (A) An individual [*engaged*] **who engages** in soliciting claims for collection, or [*collecting or at-*  
 25 *tempting*] **who collects or attempts** to collect claims on behalf of a registrant under ORS 697.005  
 26 to 697.095, if the individual is an employee of the registrant.

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

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

33 (D) An attorney-at-law [*rendering*] **who renders** services in [*the performance of*] **performing** the  
 34 duties of an attorney-at-law.

35 (E) A licensed certified public accountant or public accountant [*rendering services in the per-*  
 36 *formance of*] **who performs** the duties of a licensed certified public accountant or public accountant.

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

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

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

42 (i) Collection or billing activities [*involved in*] **that are related to** closing an escrow, as defined  
 43 in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

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

45 (I) An individual **who is** regularly employed as a credit person or in a similar capacity by one

1 person, firm or corporation that is not a collection agency [*as defined in this section*].

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

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

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

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

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

13 (M) A person **other than a collection agency** that [*is providing*] **provides** factoring services.  
14 A person [*is providing*] **provides** factoring services for the purposes of this subparagraph if the  
15 person engages, directly or indirectly, in the business or pursuit of:

16 (i) Lending or advancing money to commercial clients on the security of merchandise or ac-  
17 counts receivable and then enforcing collection actions or procedures [*on such accounts*] **for the**  
18 **loans or advances**; or

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

21 (I) Allows recourse against the commercial client;

22 (II) Requires the commercial client to provide any form of guarantee of payment of the pur-  
23 chased account; or

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

25 (N) An individual employed by another person that operates as a collection agency [*if the person*  
26 *does not operate as a collection agency independent of that employment*], **unless the individual op-**  
27 **erates an independent collection agency while a collection agency employs the individual.**

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

29 (P) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS  
30 759.005, a people's utility district, as defined in ORS 261.010, and a cooperative corporation engaged  
31 in furnishing electric or communication service to consumers.

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

35 (R) A person **other than a collection agency** that receives an assignment of debt in any form  
36 without an obligation to pay the assignor any of the proceeds [*resulting from a collection of*] **that**  
37 **result from collecting** all or a portion of the debt.

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

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

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

1 (b) A person **that is** directly or indirectly engaged in soliciting claims for collection, or col-  
 2 lecting or attempting to collect claims owed or due or asserted to be owed or due another person.

3 (3) “Claim” means an obligation [*for the payment of money or thing of value arising*] **to pay**  
 4 **money or value if the obligation arises** out of an agreement or contract, express or implied.

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

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

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

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

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

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

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

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

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

24 [(7)] (6)(a) “Out-of-state collection agency” means:

25 (A) A collection agency located outside of this state [*whose*] **the activities of which**, within this  
 26 state, are limited to collecting [*debts incurred outside of this state from debtors*] **a debt that a debtor**  
 27 located in this state **incurs outside this state; or**

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

32 (b) As used in this subsection, “collecting [*debts*] **a debt**” means collecting **a debt on behalf**  
 33 **of clients located outside this state** by means of interstate communications, including telephone,  
 34 mail or facsimile transmission from the collection [*agency*] **agency’s** location in another state [*on*  
 35 *behalf of clients located outside of this state*].

36 [(8)] (7) “Person” means an individual, firm, partnership, trust, joint venture, association, limited  
 37 liability company or corporation.

38 [(9) “Public body” means:]

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

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

42 [(c) *An intergovernmental agency, department, council, joint board of control created under ORS*  
 43 *190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under*  
 44 *the direction and control of any single member government.*]

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

1 [(10)] (9) “Registered” or “Registrant” means a person **that is** registered under ORS 697.005 to  
 2 697.095 or **that is** registered or licensed as a collection agency under the laws of another state.

3 [(11)] (10) “Statement of account” means a report [setting] **that sets** forth amounts billed, in-  
 4 voices, credits allowed or aged balance due.

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

6 697.015. (1) A person [shall] **may** not operate as a collection agency in this state unless the  
 7 person registers **and maintains a registration** with the Department of Consumer and Business  
 8 Services under ORS 697.031 [and maintains the registration in accordance with that section].

9 **(2) The Director of the Department of Consumer and Business Services by rule may re-**  
 10 **quire a collection agency that operates in this state, whether or not the collection agency**  
 11 **has an office in this state, to obtain a certification from a national nonprofit trade associ-**  
 12 **ation that the director identifies as maintaining industry-recognized standards for properly**  
 13 **managing purchased debt.**

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

15 697.045. (1) A [registered collection agency] **registrant** has a property right in any claim or ac-  
 16 count **sold or** assigned to the [agency] **registrant** in writing for collection. Except as [may be oth-  
 17 erwise provided in writing between] the assignor of the claim or account and the [registered collection  
 18 agency] **registrant may otherwise provide in writing**, the [registered collection agency] **registrant**  
 19 as assignee of the claim or account, in [its] **the registrant’s** own name, may:

- 20 (a) Collect the claim or account;
- 21 (b) Compromise or accept settlement of the claim or account;
- 22 (c) Bring and maintain an action to recover the amount owing from the claim or account;

23 [and] **or**

24 (d) [With prior written approval of the assignor,] **Sell**, transfer or forward the claim or account  
 25 to another collection agency for collection[.], **except that the assignor must first approve a sale**  
 26 **or transfer to any collection agency that did not purchase the claim or account.**

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

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

33 (3) Notwithstanding ORS 9.160 and 9.320, in any action in the small claims department of a  
 34 circuit court or justice court a [registered collection agency] **registrant** may appear as a party  
 35 without appearance by attorney for the purpose of recovering the amount owing on a claim or ac-  
 36 count **sold or** assigned to the [agency] **registrant** in writing for collection. The provisions of this  
 37 subsection apply to any supplementary proceeding in aid of execution after entry of a judgment in  
 38 the small claims department.

39 (4) [No] **A** collection agency [is entitled to] **may not** bring or maintain an action [involving the  
 40 collection of] **to collect** a claim or account [on behalf of its customers] in any courts of this state  
 41 without alleging and proving that [it is duly registered under ORS 697.015 and 697.031] **the col-**  
 42 **lection agency is a registrant. The court shall receive as prima facie evidence that the col-**  
 43 **lection agency is a registrant** a [registration certificate or a] certification of registration [by] **that**  
 44 the Director of the Department of Consumer and Business Services [for any designated time period  
 45 shall be received by the court as prima facie evidence of the collection agency’s registration for the time

1 *period designated*] **issues and in which the director states that the collection agency is a reg-**  
 2 **istrant for a designated time period.**

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

4 697.058. (1) Except as provided in subsection (9) of this section, every collection agency shall  
 5 keep a record of all sums *[collected by it, and of all disbursements made by it,]* **the collection agency**  
 6 **collects and disburses** and shall maintain and keep *[all such records]* **the record** and all customers'  
 7 funds within this state. **A** collection *[agencies]* **agency** shall maintain accounting records of col-  
 8 lections for and payments to customers for a period of six years *[from]* **after** the date of the last  
 9 entry *[thereon]* **in the accounting record**. Collection agencies shall keep other records for a period  
 10 of two years *[from]* **after** the date of the last entry *[thereon]* **in the record**. *[Collection agencies, or*  
 11 *any employee thereof, shall]* **A collection agency, or an employee of a collection agency, may** not  
 12 intentionally make any false entry in any collection agency record or intentionally mutilate, destroy  
 13 or otherwise dispose of any *[such]* **collection agency** record within the time limits provided in this  
 14 section. This subsection does not apply to out-of-state collection agencies.

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

19 (3) A collection agency *[shall]* **may** not commingle the money of customers with other moneys.

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

24 (5) Except as provided in subsection (9) of this section, every collection agency that requires  
 25 customers to pay an amount for services *[prior to the time that]* **before receiving** the services *[are*  
 26 *rendered]* shall maintain a separate trust account in this state for prepayments and shall keep pre-  
 27 payment funds in the trust account for 180 days or until the services for which *[prepayment is*  
 28 *made]* **the customer prepaid** are performed, whichever occurs first.

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

35 (7) *[Upon the motion of the Director of the Department of Consumer and Business Services or upon*  
 36 *receipt of a complaint by a customer of the collection agency, the director may audit the collection*  
 37 *agency's trust accounts with respect to any violation by the collection agency of this section.]* **The Di-**  
 38 **rector of the Department of Consumer and Business Services may audit a collection agency's**  
 39 **trust accounts if the director believes that a collection agency has violated this section or**  
 40 **if the director receives a complaint from a customer of the collection agency.** If the director  
 41 finds any discrepancy in the **collection agency's** trust accounts, the director also may audit the  
 42 **collection agency's** operating account *[of the collection agency]*. The collection agency shall pay the  
 43 reasonable cost of an audit under this section, as determined by the director.

44 (8) If a collection agency does not pay the cost **that the director determined for** *[of]* the audit  
 45 *[determined]* under subsection (7) of this section, the director may assign the delinquent account to



1 the Department of Revenue for collection in the manner that **the Department of Revenue collects**  
 2 other debts [*are collected*] under ORS 293.250.

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

5 [(a)] (A) Satisfies the director that the **director may examine the collection agency's** books,  
 6 records and trust accounts [*of the collection agency may be examined by the director*] without undue  
 7 delay or expense;

8 [(b)] (B) Provides for timely and convenient remittance of debtor payments and funds [*owed*] **the**  
 9 **collection agency owes** to the customer; and

10 [(c)] (C) Complies with all conditions the director may require relating to additional bonding  
 11 requirements and to provisions for auditing financial statements of trust accounts, receiving pay-  
 12 ments from and communicating with debtors, and remitting funds to customers.

13 **(b) The director, by rule or order, may exempt a collection agency from the requirements**  
 14 **of all or part of this section if the collection agency demonstrates that the collection agency**  
 15 **is engaged in the business of purchasing delinquent or charged-off claims or accounts and**  
 16 **does not collect claims or accounts on behalf of a customer.**

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

19 **(2) The Director of the Department of Consumer and Business Services and the Director**  
 20 **of the Department of Revenue may adopt rules and take any other action before the opera-**  
 21 **tive date specified in subsection (1) of this section that is necessary to enable the director,**  
 22 **on and after the operative date specified in subsection (1) of this section, to exercise all of**  
 23 **the duties, functions and powers conferred on the director by the amendments to ORS**  
 24 **646.639, 697.005, 697.015, 697.045 and 697.058 by sections 1 to 5 of this 2015 Act.**

25 **SECTION 7. This 2015 Act being necessary for the immediate preservation of the public**  
 26 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
 27 **on its passage.**

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