

House Bill 3234

Sponsored by Representative KENNEMER (at the request of Brenda Hiatt)

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**.

Requires collection agency to enter into or attempt to enter into mediation with debtor before bringing action to collect claim or account. Specifies content of written request that collection agency must mail to debtor. Provides that collection agency's presenting evidence that debtor failed to respond to request within 60 days after date of request shows collection agency's good faith attempt to enter into mediation. Provides that collection agency's presenting evidence that mediation occurred and parties could not settle claim or account shows collection agency's good faith attempt to mediate claim or account.

Requires collection agency to report claim or account as paid and to request credit reporting agencies to remove claim or account from credit reports for debtor if debtor pays claim or account after settlement or action to collect claim or account or if court determines that collection agency may not collect claim or account.

Punishes violation of requirements as unlawful collection practice.

A BILL FOR AN ACT

1
2 Relating to a requirement to enter into mediation with a debtor before bringing an action to collect
3 a debt; creating new provisions; and amending ORS 697.045.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 697.005 to**
6 **697.095.**

7 **SECTION 2. (1) Before a collection agency brings an action to collect a claim or account,**
8 **the collection agency shall in good faith enter or attempt to enter into mediation with a**
9 **debtor concerning the claim or account as provided in subsection (2) of this section.**

10 **(2) A collection agency shall request to enter into mediation with a debtor by sending a**
11 **written request to the debtor at the last residential address that the collection agency has**
12 **for the debtor in the collection agency's records. The collection agency shall send the request**
13 **by certified mail with return receipt requested. The written request must:**

14 **(a) Offer to pay the expenses of the mediation;**

15 **(b) Specify a location at which and a range of dates and times during which the collection**
16 **agency will make a representative available to meet with the debtor; and**

17 **(c) Provide, at a minimum, the following information:**

18 **(A) The name and address of the original creditor;**

19 **(B) The original account number that the original creditor used to identify the debt;**

20 **(C) The amount of the original debt;**

21 **(D) An itemized list of fees and charges that the collection agency or any previous**
22 **assignor or owner of the claim or account charged in connection with the claim or account;**

23 **(E) The account number by which the collection agency identifies the claim or account;**

24 **(F) The amount at which and terms and conditions under which the collection agency**
25 **offers to settle the claim or account;**

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 (G) Evidence that the collection agency has an undisputed property interest in the claim
 2 or account including, but not limited to, copies of any previous assignments of the claim or
 3 account or a summary of previous assignments that includes the name, address and contact
 4 information for all previous assignors; and

5 (H) A description of the steps that the collection agency intends to take if the debtor
 6 does not mediate, settle or pay the claim or account.

7 (3) If a debtor does not respond to a written request the collection agency sends under
 8 subsection (2) of this section within 60 days after the date of the written request, the col-
 9 lection agency may bring an action to collect the claim or account and may provide to the
 10 court as evidence of the collection agency's good faith attempt to enter into mediation with
 11 the debtor:

12 (a) A copy of the written request the collection agency mailed and a copy of the return
 13 receipt the collection agency received from the mailing; and

14 (b) A signed affidavit that states under penalty of perjury that the collection agency did
 15 not receive a response to the written request.

16 (4)(a) If the collection agency enters into mediation with the debtor but does not reach
 17 a settlement, the collection agency, 30 days after the date of the last mediation session, may
 18 bring an action to collect the claim or account and may provide to the court as evidence of
 19 the collection agency's good faith attempt to settle the claim or account:

20 (A) Copies of notes, settlement offers and other documentation that establishes that a
 21 mediation occurred and that the collection agency and debtor did not reach a settlement; and

22 (B) A signed affidavit that states under penalty of perjury that the collection agency
 23 made a good faith attempt to settle the claim or account with the debtor but did not reach
 24 a settlement.

25 (b) Before permitting a collection agency to proceed with an action to collect a claim or
 26 account, a court shall determine whether the evidence the collection agency submitted to the
 27 court under subsection (3) of this section and paragraph (a) of this subsection adequately
 28 establishes that the collection agency met the requirements of subsections (1) and (2) of this
 29 section.

30 (5) If a debtor pays a claim or account at the conclusion of an action to collect the claim
 31 or account or after settling the claim or account with the collection agency, or if a court
 32 at the conclusion of the action determines that the collection agency may not collect the
 33 claim or account, the collection agency shall report the claim or account as paid to all credit
 34 reporting agencies to which the collection agency and all of the previous assignors of the
 35 claim or account reported any delinquency, charge off or other failure to pay and shall re-
 36 quest that the credit reporting agency remove the claim or account from the credit reporting
 37 agency's credit report for the debtor.

38 (6) A collection agency's violation of a provision of this section is an unlawful collection
 39 practice that is subject to an action under ORS 646.641.

40 **SECTION 3.** ORS 697.045 is amended to read:

41 697.045. (1) A [*registered collection agency*] **registrant** has a property right in any claim or ac-
 42 count assigned to the [*agency*] **registrant** in writing for collection. Except as [*may be otherwise*
 43 *provided in writing between*] the assignor of the claim or account and the [*registered collection*
 44 *agency*] **registrant may otherwise provide in writing**, the [*registered collection agency*] **registrant**
 45 as assignee of the claim or account, in [*its*] **the registrant's** own name, may:

- 1 (a) Collect the claim or account;
- 2 (b) Compromise or accept settlement of the claim or account;
- 3 (c) Bring and maintain an action to recover the amount owing from the claim or account, **sub-**
- 4 **ject to subsection (4) of this section; [and] or**
- 5 (d) [*With prior written approval of the assignor,*] Transfer or forward the claim or account to
- 6 another collection agency for collection **after obtaining the assignor's approval.**
- 7 (2) Except as [*may be otherwise provided in writing between*] the assignor of the claim or account
- 8 and the [*registered collection agency*] **registrant may otherwise provide in writing,** the assignor
- 9 may withdraw the claim or account from the [*agency*] **registrant** at any time without condition or
- 10 charge.
- 11 (3) Notwithstanding ORS 9.160 and 9.320, in any action in the small claims department of a
- 12 circuit court or justice court a [*registered collection agency*] **registrant** may appear as a party
- 13 without appearance by attorney for the purpose of recovering the amount owing on a claim or ac-
- 14 count assigned to the [*agency*] **registrant** in writing for collection. The provisions of this subsection
- 15 apply to any supplementary proceeding in aid of execution after entry of a judgment in the small
- 16 claims department.
- 17 (4) [*No*] **A** collection agency [*is entitled to*] **may not** bring or maintain an action [*involving the*
- 18 *collection of*] **to collect** a claim or account on behalf of [*its*] **the collection agency's** customers in
- 19 any courts of this state without:
- 20 (a) Alleging and proving that [*it is duly registered under ORS 697.015 and 697.031*] **the col-**
- 21 **lection agency is a registrant. The court shall receive as prima facie evidence that the col-**
- 22 **lection agency is a registrant** [*a registration certificate or*] a certification of registration [*by*] **that**
- 23 the Director of the Department of Consumer and Business Services [*for any designated time period*
- 24 *shall be received by the court as prima facie evidence of the collection agency's registration for the time*
- 25 *period designated*] **issues and in which the director states that the collection agency is a reg-**
- 26 **istrant for a designated time period.**
- 27 (b) **Providing adequate evidence that the collection agency in good faith and in accord-**
- 28 **ance with section 2 of this 2015 Act entered into, or attempted to enter into, mediation with**
- 29 **the debtor to settle the claim or account before bringing the action.**

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