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AARP Oregon Testimony – HB 2356 – Debt Buyers

February 27, 2017

TO: House Committee on Business and Labor
Representative Holvey, Chair

FROM: Jon Bartholomew, Government Relations Director, AARP Oregon

AARP Oregon strongly supports HB 2356 regarding debt buyers' collection practices. According to the Oregon Department of Justice, debt collection is among the top three issues that older Oregonians¹ submit complaints about. According to the Consumer Financial Protection Bureau (CFPB), a federal consumer protection agency, "continued attempts to collect debts not owed" is the most frequent reason for a complaint about debt collection – over half of all complaints. This legislation aims to ensure Oregonians are not falsely targeted for debt collection.

AARP strongly supports adding additional protection to prevent abuse of the court system and consumers by debt buyers who routinely seek to obtain default judgments without proving that they are suing the right person for the right amount and that the statute of limitations has not passed. Numerous other states have implemented similar protections to prevent widespread abuses of consumers by debt buyers.

Debt buyers should not be permitted to assert that a debt is owed without having any reliable data, a contract, or evidence to prove they own the debt they are seeking to collect. Alleged debtors should not be held responsible for a debt until the debt buyer proves that they owe the debt in the amount claimed, and that they agreed to repay it pursuant to terms that allow the collector to charge interest and attorney's fees. Most importantly, in an American judicial system, they should not be required to disprove that they owe a debt that a debt buyer cannot prove they owe.

Debt with a face value worth hundreds of billions of dollars has been sold on the secondary market to debt buyers. They pay only pennies—or less—on the dollar for information about the debts in the form of an unprotected Excel spreadsheet that lists minimal information about the debt. They typically do not purchase any supporting information, such as the signed application, the terms of the contract, or any transaction history that would allow anyone to verify that the debt being collected is theirs and is for the correct amount. In fact, such information is typically unavailable from any source, including the original creditor.

The low price of the debt portfolios compared to their face value is a reflection of the poor quality of the accounts, which may have been paid, disputed, the result of identity theft, discharged in bankruptcy, or can no longer be collected through court process because the statute of limitations has passed. In fact, when banks and other creditors sell debt portfolios, they usually disclaim any warranties about the accuracy of the data and advise the buyers that they should not rely on the data to file a lawsuit.

Nevertheless, millions of judgments are entered in courts across the country every year for debts that have been sold, and sometimes resold multiple times. Debt buyers pursue collection actions without supporting documentation because they know it is rare for an alleged debtor to defend against the lawsuits. When a debt buyer seeks to obtain judgment, and the debtor does not appear, the judgment is entered by default with very little, if any, supporting evidence. Debt buyers are known to dismiss cases routinely if the alleged debtor does appear to defend against the lawsuit, because they don't have any evidence that they can use to prove the debt is actually owed by the person they sued, or is in the right amount. They may also be seeking fees and interest that are not permitted by the contract, which they also do not have and cannot produce.

The protections afforded by this bill are of the type that already applies inherently to most other lawsuits, in which the burden is on the plaintiff to prove they are entitled to a judgment. Because the amounts of the debts are typically small, they are often filed in small claims courts where the rules regarding evidence is more relaxed in order to assist people who do not have lawyers. Debt buyers have been able to abuse this process, making it essential to explicitly require debt buyers to prove their cases before they obtain a judgment by default.

Older people are particularly vulnerable to abuses by debt buyers. The most common complaint that older people lodge with federal agencies is about debt collection, and of those who complain about it, approximately one third of them claim they do not even owe the debt being collected because they never owed it, it was the debt of a deceased person, or they paid it long ago. When debt buyers pursue debts well past the statute of limitations, it is unlikely that any individual will still have records to prove they paid the debt (particularly where the debt buyer and the original creditor do not have any records to prove that they do owe a debt).

Older people frequently misunderstand and fear the court process, believing that they will have to go to jail if they are sued. They may agree to pay money they do not owe to avoid as a result. In addition to threatening their financial security, unfair and abusive debt collections may impact an older person's emotional well-being and their physical health.

AARP Oregon urges you to vote in favor of HB 2356.

ⁱ Complaints where the submitter reports the age of the consumer as 62 years or older are tagged, 'Older American,' by the CFPB.