



**Testimony in Support of HB 2356
House Committee on Business and Labor
March 27, 2017**

Chair Holvey, Vice-Chairs Barreto and Bynum, and Members of the Committee,

On behalf of the Oregon Law Center (OLC), thank you for the opportunity to testify this morning in support of HB 2356, which with amendments will provide important protections for consumers from abusive debt collection practices. I thank Chair Holvey, the Attorney General, and stakeholders for the productive discussions that have brought us to a place of progress on these important issues.

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. Our clients work hard to provide the basic necessities for themselves and their families. With the current escalating housing crisis, Oregonians are now extremely housing cost-burdened. A full quarter of all renters are paying more than 50 % of their incomes rent, two out of every three extremely low-income renters are paying more than 50% of their income towards rent. This means families have little left over to pay for other necessities, and debt is a rising concern.

Creditors have a right to collect on legitimate debts they are owed. Debt collection, whether by collection agencies or debt buyers, is a legitimate business practice. However, certain sidebars are necessary to prevent abuse. Our goal is 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 on expired or invalid debt. These issues have been a rising concern for our clients in recent years, as we have become aware of bad actor practices that have significant impact on vulnerable Oregonians.

Specific concerns that will be addressed by the bill:

Concern: Default judgments obtained by debt buyers based on lawsuits with little verification. Debt buyers purchase charged-off debt in large volumes for pennies on the dollar. Often, the account purchased contain little more than a name and an amount allegedly owed. The vast majority of debt-buyer lawsuits are filed on accounts about which very little information is known or provided to the alleged debtor. Often, the lawsuits are served using old address information, and the alleged debtor may never get notice of the pending lawsuit. If the debtor does get notice of the lawsuit, she may not recognize the name of the new creditor, and dismiss it as a scam. The debtor also may not recognize the debt: there are usually significant fees and costs added to the original amounts charged off by the original creditor, and the amount being sued on bears little resemblance to the amount originally in default.

Solution: The bill as amended will address these concerns in a few ways:

- Require the initial pleading in a lawsuit filed by a debt buyer to include information about the debt, including: the name of the original creditor, a detailed itemization of any fees,

interest, or other amounts added to the debt, and the date the debt buyer purchased the debt.

- Require that before any default judgment is entered by the court, the debt buyer provide an affidavit based on personal knowledge of the debt buyer's business records, swearing that: the debt buyer has evidence of the original debt; evidence of any assignments that show transfers of an unbroken chain of ownership; the statute of limitations on the debt has not expired.
- The court may not enter judgment unless these requirements have been met, and any judgment entered in violation of these requirements is voidable.
- The alleged debtor has a right to request copies of documentation of the debt at any time, and the debt buyer must stop collection attempts until it has provided that documentation within 30 days.
- Failure to comply with these regulations is an unlawful debt collection practice.

Concern: Collection of Medicaid or OHP debt that is prohibited from collection by state and federal law. Legal aid providers have seen increasing numbers of cases in which clients who are covered by OHP or Medicaid for services received, but who nevertheless get billed by their provider. Despite the fact that federal and state Medicaid law prohibits this (42 USC 1396a(25), 42 CFR Section 447.15, and OAR 410-120-1280(1)), OHP clients are unable to stop the billing, which goes quickly to collections. This regularly results in OHP clients being pursued for collections, forced into court, and sometimes having to pay large judgments that are devastating to them. Sometimes, when OHP clients or their attorneys raise this defense, collections efforts do not cease until a counter lawsuit is filed. This results in unfair impact on the lowest-income Oregonians, in violation of the principle of state and federal law.

Solution: Pursuant to the Unlawful Debt Collection Practices Act (UDCPA), prohibit the collection of debts that the collector knew or by exercise of reasonable diligence should have known arises from medical expenses that are covered by OHP or Medicaid.

Concern: Collection of debts that have expired and are beyond the statute of limitations for collection. Under current law, the obligation to raise a statute of limitations defense rests on the consumer. A lawsuit may be filed, and if the consumer fails to raise the defense, the judgment is entered and may be enforced thru garnishment. There is no sanction or violation under current law for filing a lawsuit past the statute of limitations, and trying one's luck.

Solution: Pursuant to the UDCPA, prohibit the filing of a lawsuit if the collector knows or reasonably should know that an applicable statute of limitations bars the legal action.

Concern: Collection of debts that do not exist. Too often, a lawsuit may be filed on a debt that simply does not exist.

Solution: Prohibit the collection of any amount if the collector knew or with reasonable diligence should have known that the debt was not explicitly authorized by an agreement.

Concern: Lack of regulation or oversight of the debt buying industry practicing in Oregon. The debt-buying industry has a huge impact on Oregonians. One of the largest debt buyers in the nation holds debt that is allegedly owed by one in five Americans. This industry should be regulated and licensed in order to practice in Oregon, so that we can be sure of consistent minimum standards designed to allow efficient business operations while assuring fairness for consumers on a daily basis.

Solution: Require debt-buying companies to register with the Department of Consumer and Business Services, and obtain a license that can be retained by meeting basic minimum standards of practice.

In closing, we urge the committee to support this bill that is the work of substantial input by stakeholders from the industry as well as consumer perspectives. The impact of the mere filing of a lawsuit for the collection of a debt has major impact on vulnerable Oregonians. The existence of a lawsuit can impede a job application, a housing application. The obtaining of a judgment can result in immediate garnishment of bank accounts or wages, often throwing vulnerable consumers into chaos. Collectors have filed more than 300,000 cases in Oregon's small claims courts in the last five years. Often these cases are filed against vulnerable consumers with little sophistication, no access to legal assistance, and little understanding of how to defend themselves. The vast majority of these cases are won by default judgment, resulting in prompt garnishment.

It is only right that 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.