



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: June 7, 2017

TO: Honorable Betsy Johnson and David Gomberg, Co-Chairs
Joint Subcommittee on Transportation and Economic Development

FROM: Cheryl Hiemstra, Deputy Legislative Director

SUBJECT: House Bill 2356 – Debt Buying and Debt Collection

This testimony is presented in support of House Bill 2356. The House Bill was passed unanimously out of the House Business and Labor Committee.

BACKGROUND

The Department of Justice has a consumer complaint hotline which receives thousands of complaints a year. Debt collection-related complaints are frequently in the top ten categories of complaints. While we receive complaints about many issues related to debt collection, one of the most alarming is when Oregonians are being threatened with or called into a lawsuit. Even worse is when a consumer has a lawsuit that they lost – without ever knowing that it happened. Some excerpts from consumer complaints submitted to the Department of Justice:

“The Complaint is complete with a case # . . . but has no clerk signature looks very generic/fake, no State or County seal . . . I requested several times verbally that they send me documentation confirming the debt is actually mine and have not received anything. I am very suspicious that they are using fake documents in an effort to scare me into giving them money.”

“[Debt collector] said that [his call] was concerning the default judgment he had won against me in april 2006 . . . I was not aware of any judgment won and he accused me of lying . . . I informed him that I was not going to pay this alleged judgment with out some proof that I owed it . . . so I then mailed my dispute letter, I received from his office only a copy of the court papers showing that he had sued me and won this default against me because in the first place I never knew anything about the suite. I was never served papers, he then next in March 2010 tried to garnish my bank account!”

Thankfully, these consumers were savvy enough to realize what was happening and decided to take action to defend themselves. However, a study of small claims court cases from 2010-2015 revealed that consumer only about 5% of Oregonians show up to defend themselves in small claims court. This was just a study of small claims court – where there are no lawyers, and often

it is a sophisticated collector that brings these claims very frequently against a consumer who is alone. When a person does not show up to defend themselves, courts grant a ruling in favor of the collector 99.7% of the time. From there, the winning party is able to garnish wages, significantly affect a consumer's credit score, which can prevent the person from getting a job, housing, or transportation. The effects of an inaccurate court judgment can take years to correct.

A recent Consumer Financial Protection Bureau study found that 40% of non-white consumers had been contacted about a debt in the last year. More than half contacted said the debt was not owed, the wrong amount, or for a different person. Among Service Members, Debt Collection is the #1 complained about issue (32%). Among Older Oregonians, Debt Collection is amongst the top 3 issues most complained about (17%).

So, debt collection touches a lot of Oregonians. Many Oregonians legitimately do owe debt; they should pay that debt. But we need to make sure that the person getting sued is the person that owes the debt, they are able to defend themselves, and that they and the Courts are presented with accurate information. This can be accomplished by mitigating circumstances which confuse consumers.

A lot of confusion arises from debt buyers, who buy and sell debt for pennies on the dollar. A consumer can easily get confused when they are being sued by a company they do not recognize. Often, debt buyers buy debt with minimal information about the consumer and the debt. This can often lead to confusion and misinformation – sometimes the consumer has settled the debt, the wrong name is associated with the debt, the debt was wrong in the first place. The Federal Trade Commission has also seen issues that debt buyer misrepresented their intent to have documents to back up their lawsuits, that they relied on misleading, robo-signed court filings to churn out lawsuits, that they sued past the statute of limitations, that they made misrepresentations to consumers.¹

CONCEPT

HB2356 would ensure that lawsuits filed against Oregonians by debt buyers, or debt collectors on behalf of debt buyers, are accurate and give certain information. They would have to include the original creditor's name, a way to contact the debt buyer, the last four digits of the original creditor's account, the date and amount of the last payment, an itemization of the charges and fees imposed along the way. This would allow the consumer to better identify the debt. This concept would also require a debt buyer to have on file the documents showing how the transfer of ownership happened from when the original creditor "charged-off" the debt to when the lawsuit was filed. This would assure a consumer that this is accurate. The consumer would have a right to see the documents, and have collection cease until the documents are produced.

¹ <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>. See generally, <https://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html? r=0>

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This bill also addresses debts that are past the statute of limitations. Many consumers know that if a debt is very old, there is a good chance that it's past the statute of limitations. What most consumers do not know is that, technically, a person has to *raise that as a defense in a lawsuit* – that if the consumer is getting sued, even on very old debt – that they must appear and defend themselves. This bill would make it a violation to file a lawsuit knowing that the debt is past the statute of limitations, so that debt collectors are deterred from filing lawsuits past the statute of limitations.

Finally, the bill would allow for the Department of Consumer and Business Services to create a licensing program for debt buyers, so as to better track their business practices and to set some baseline standards for practices.

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