

House Bill 2166

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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 debt buyer to register with Department of Consumer and Business Services to engage in business as debt buyer in this state. Requires debt buyer to give notice to debtor if debt buyer brings legal action to collect debt and to submit certain filings to court. Specifies content of notice and filings.

Requires debt buyer to establish and maintain certain practices to ensure that debt buyer complies with applicable law.

Requires debt buyer to maintain errors and omissions insurance policy.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to debt collection practices; creating new provisions; amending ORS 697.005, 697.015, 697.031, 697.039, 697.053, 697.085, 697.091, 697.093 and 697.095; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 697.005 to 697.095.

SECTION 2. (1) A debt buyer that brings legal action to collect or attempt to collect a debt shall:

(a) Notify the debtor in writing, at least 30 days before bringing the legal action, that the debt buyer intends to bring legal action. The debt buyer must send the written notice to the debtor's last-known address. The written notice must include, at a minimum:

(A) The debt buyer's name, address and telephone number;

(B) Proof that the debt buyer has registered with the Department of Consumer and Business Services;

(C) The original creditor's name, written as the original creditor used the name in dealings with the debtor;

(D) The original creditor's account number for the debt;

(E) A statement that shows:

(i) The amount the debtor last paid on the debt and the date of the payment;

(ii) The balance due on the debt on the date on which the debtor last made a payment;

(iii) An itemization of the interest, fees and charges that the original creditor imposed;

(iv) An itemization of the interest, fees and charges that the debt buyer or any other assignee imposed; and

(v) All payments made on and credited to the debt after a default or a charge-off; and

(F) A statement that tells the debtor clearly and conspicuously that:

(i) An applicable statute of limitations might bar the debt buyer from bringing legal action to collect the debt;

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 (ii) The debtor may seek legal advice if the debtor has questions about when the time
2 period during which the debt buyer may bring legal action under the applicable statute of
3 limitations will end; and

4 (iii) If the debtor pays any amount on the debt, the payment affirms the existence of the
5 debt and begins a new time period during which the debt buyer may bring legal action to
6 collect the debt, subject to the applicable statute of limitations.

7 (b) State in or attach to, as appropriate, the initial pleading that the debt buyer files to
8 bring legal action to collect the debt:

9 (A) The original creditor's name, written as the original creditor used the name in
10 dealings with the debtor;

11 (B) The name of the person that now owns the debt;

12 (C) The last four digits of the original creditor's account number for the debt;

13 (D) The amount and date of the debtor's last payment on the debt and the amount and
14 date of the debtor's last payment before the debtor's default or a charge-off;

15 (E) A detailed itemization of:

16 (i) The balance due on the debt;

17 (ii) Interest, fees and charges that the original creditor imposed;

18 (iii) Interest, fees and charges that the debt buyer or any other assignee imposed;

19 (iv) Attorney fees; and

20 (v) Any other fees, costs or charges that the debt buyer imposed or seeks;

21 (F) A copy of the contract or other writing that the debtor signed and that is evidence
22 of the original debt or, if the debt buyer's claim is based on a credit card debt for which a
23 signed writing that is evidence of the debt does not exist, a copy of any documents that the
24 credit card transaction generated; and

25 (G) A copy of each assignment or other writing that is evidence of a transfer of owner-
26 ship of the debt, which must show:

27 (i) The debtor's name clearly associated with the original creditor's account number for
28 the debt;

29 (ii) The date on which the debt buyer purchased the debt;

30 (iii) That the debt buyer owns the debt; and

31 (iv) That an unbroken chain of ownership exists among the assignees of the transferred
32 debt.

33 (2) A debt buyer may not bring or maintain an action that involves collecting a debt in
34 a court of this state without alleging and proving that the debt buyer is registered under
35 ORS 697.031. A court may receive as prima facie evidence of the debt buyer's registration
36 an original or true copy of a registration certificate from the Director of the Department
37 of Consumer and Business Services or a verified unique identifier from the Nationwide
38 Multistate Licensing System. The court shall deem the certificate or the unique identifier
39 valid for the period indicated on the certificate or as verified for the unique identifier.

40 (3)(a) Before a court enters judgment against a debtor in a legal action that the debt
41 buyer brings to collect a debt, or after arbitration, the debt buyer shall file with the court:

42 (A) Business records authenticated in accordance with ORS 40.460 that establish the na-
43 ture and amount of the debt;

44 (B) An affidavit from the original creditor that describes the circumstances that created
45 the debt, when the debtor defaulted, when and to whom the original creditor assigned the

1 debt and the amount due on the debt at the time of the assignment, and that authenticates
 2 the contract of sale or assignment and any related exhibits the debt buyer submits;

3 (C) An affidavit from each seller or assignor that previously owned the debt, in which the
 4 seller or assignor authenticates the contract of sale or assignment and any related exhibits
 5 that the debt buyer submits and an affidavit that traces the chain of ownership for the debt;

6 (D) A statement of the basis for any attorney fees the debt buyer seeks, along with evi-
 7 dence that shows that the debt buyer is entitled to attorney fees;

8 (E) An affidavit that states that the debt buyer complied with the requirements set forth
 9 in subsection (1)(a) of this section; and

10 (F) An affidavit that states that the time period during which the debt buyer may bring
 11 legal action to collect the debt under the applicable statute of limitations, or any extension
 12 of the time period available under the applicable statute of limitations, has not ended.

13 (b) A court may not enter judgment for a debt buyer that has not complied with the re-
 14 quirements set forth in this section. The court may, in the court's sole discretion, dismiss
 15 the legal action with or without prejudice.

16 (c) A debtor by motion before the court, without waiving the debtor's right to offer evi-
 17 dence if the court does not grant the motion, may assert that the amount that the debt
 18 buyer seeks is more than the debtor owes and ask the court either to require the debt buyer
 19 to amend the pleading to reflect the correct amount or to dismiss the legal action without
 20 prejudice. The court, in considering the motion, shall require the debt buyer to offer evidence
 21 that shows that the debtor owes the amount that the debt buyer seeks. The court may not
 22 award attorney fees to a debt buyer that obtains a judgment that is less than the amount
 23 the debt buyer sought in the original complaint unless the judgment is the result of a nego-
 24 tiated agreement.

25 (4) If the debt buyer prevails in a legal action under this section, the debt buyer may:

26 (a) Collect interest on the judgment in an amount that does not exceed the weekly av-
 27 erage one-year constant maturity Treasury yield that the Board of Governors of the Federal
 28 Reserve System publishes in the calendar week that precedes the date of the judgment.
 29 Notwithstanding any other law or interest rate specified in the contract or other signed
 30 writing that created and is evidence of the debt, the debt buyer may not receive any interest
 31 on the judgment other than the interest specified in this paragraph.

32 (b) Collect attorney fees only if the contract or other signed writing that created and is
 33 evidence of the debt obligates the debtor to pay attorney fees to a debt buyer that prevails
 34 in a legal action to collect the debt.

35 **SECTION 3.** A debt buyer, in the course of engaging in business as a debt buyer in this
 36 state, shall:

37 (1) Comply with the provisions of 15 U.S.C. 1692 et seq., as in effect on the operative date
 38 specified in section 14 of this 2017 Act, and with ORS 646.639.

39 (2) Establish and maintain for the debt buyer's employees a training program concerning
 40 compliance with fair debt collection practices and with the provisions of section 2 of this 2017
 41 Act.

42 (3) Establish adequate processes for receiving and resolving consumer complaints and
 43 disputes. A process for receiving and resolving consumer complaints and disputes is not ad-
 44 equate if the process permits the debt buyer to close a consumer's account immediately after
 45 receiving an inquiry from a state or federal law enforcement agency or a state or federal

1 regulatory agency with jurisdiction over the debt buyer’s activities as a debt buyer.

2 (4) Develop and maintain reasonable safeguards to protect the security, confidentiality
 3 and integrity of personal data as provided in ORS 646A.622, provide notice of a breach of se-
 4 curity that involves personal data as provided in ORS 646A.604 and otherwise comply with
 5 the provisions of the Oregon Consumer Identity Theft Protection Act and federal law that
 6 governs identity theft protection and personal information security, confidentiality and in-
 7 tegrity.

8 (5) Establish and maintain procedures for:

9 (a) Ensuring the accuracy and privacy of consumer information and ensuring that the
 10 debt buyer interprets and uses the consumer information fairly in accordance with the fed-
 11 eral Fair Credit Reporting Act, 15 U.S.C. 1681, and Regulation V, 12 C.F.R. part 1022, both
 12 as in effect on the operative date specified in section 14 of this 2017 Act;

13 (b) Withdrawing a legal action to collect a debt that the debt buyer brings more than six
 14 years after the debt became due for payment;

15 (c) Filing accurate and truthful affidavits;

16 (d) Acquiring, before or as part of a debt purchase transaction, documents and other data
 17 concerning the debt that are necessary to comply with the requirements set forth in ORS
 18 697.005 to 697.095 including, but not limited to, information that shows the chain of title for
 19 the debt from the original creditor to the debt buyer; and

20 (e) Preventing the debt buyer from reselling a debt or information about a debt to an
 21 individual or entity that is not registered with the Department of Consumer and Business
 22 Services under ORS 697.031, if under ORS 697.015 the individual or entity must register.

23 **SECTION 4.** ORS 697.005 is amended to read:

24 697.005. As used in ORS 697.005 to 697.095:

25 (1)(a) “Collection agency” means:

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

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

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

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

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

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

43 (ii) Engages in any action or conduct that tends to convey the impression that a third party has
 44 been employed or engaged to collect the claim.

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

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

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

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

10 (D) [*An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.*]
 11 **An attorney authorized to practice law in this state, if the attorney engages in conduct that**
 12 **is subject to ORS 697.005 to 697.095 only as an incidental part of the attorney's practice of**
 13 **law.**

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

16 (F) [*A bank, mutual savings bank, consumer finance company, trust company, savings and loan*
 17 *association, credit union or debt consolidation agency.*] **A financial institution, as defined in ORS**
 18 **706.008, a licensee under ORS chapter 725, a company that the Director of the Department**
 19 **of Consumer and Business Services has authorized to transact trust business under ORS**
 20 **709.005 or a debt management service provider, as defined in ORS 697.602, that conducts ac-**
 21 **tivities within the scope of the financial institution's, licensee's, company's or service**
 22 **provider's charter, license, registration or other authorization to conduct business in this**
 23 **state and that does not operate a collection agency or engage in business as a debt buyer.**

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

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

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

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

30 (I) An individual **who is** regularly employed as a credit person or in a similar capacity by one
 31 person, firm or corporation that is not a collection agency [*as defined in this section*].

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

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

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

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

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

43 (M) A person that [*is providing*] **provides** factoring services. A person [*is providing*] **provides**
 44 factoring services for the purposes of this subparagraph if the person engages, directly or indirectly,
 45 in the business or pursuit of:

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

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

6 (I) Allows recourse against the commercial client;

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

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

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

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

14 (P) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS
 15 759.005, a people’s utility district, as defined in ORS 261.010, and a cooperative corporation engaged
 16 in furnishing electric or communication service to consumers.

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

20 *[(R) A person that receives an assignment of debt in any form without an obligation to pay the*
 21 *assignor any of the proceeds resulting from a collection of all or a portion of the debt.]*

22 *[(S)]* **(R)** A person for whom the Director of the Department of Consumer and Business Services
 23 determines by order or by rule that the protection of the public health, safety and welfare does not
 24 require registration with the Department **of Consumer and Business Services** as a collection
 25 agency.

26 (2) “Collection system” means a scheme intended or calculated to be used to collect claims sent,
 27 prepared or delivered by:

28 (a) A person *[who]* **that** in collecting or attempting to collect the person’s own claim uses a
 29 fictitious name or any name other than the person’s own **name** that *[indicates]* **conveys an im-**
 30 **pression** to the debtor that a third person is collecting or attempting to collect the claim; or

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

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

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

37 (5) “Debt buyer” means a person that engages in the business of purchasing, in order to
 38 collect amounts due from, delinquent consumer loans, delinquent consumer credit accounts
 39 or other delinquent consumer debts, whether the person collects the amounts due directly,
 40 hires a third party to collect the amounts due or hires another person to pursue legal action
 41 to collect the amounts due.

42 *[(5)]* (6) “Debtor” means a person *[owing]* **that owes**, or **is** alleged to owe, a claim.

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

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

1 *outside of this state by the plaintiff;]*

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

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

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

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

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

14 **(7) "Legal action" means a lawsuit, mediation, arbitration or any other legal proceeding**
15 **in any court.**

16 **(8) "Nationwide Multistate Licensing System" means a system that the Conference of**
17 **State Bank Supervisors and the American Association of Residential Mortgage Regulators,**
18 **or assignees of the Conference of State Bank Supervisors or the American Association of**
19 **Residential Mortgage Regulators, develop and maintain for participating state agencies to**
20 **use in licensing and registering mortgage loan originators, as defined in ORS 86A.200, and**
21 **other persons that provide nondepository financial services.**

22 **(9) "Original creditor" means the last entity that extended credit to a consumer to pur-**
23 **chase goods or services, to lease goods or as a loan of money.**

24 *[(7)] (10)(a) "Out-of-state collection agency" means a collection agency located outside of this*
25 *state [whose] the activities of which, within this state, are limited to collecting [debts incurred*
26 *outside of this state from debtors] a debt that a debtor located in this state incurs outside this*
27 *state.*

28 **(b) As used in this subsection, "collecting [debts] a debt" means collecting a debt on behalf**
29 **of clients located outside this state** by means of interstate communications, including telephone,
30 mail or facsimile transmission, from the collection [agency] **agency's** location in another state [on
31 *behalf of clients located outside of this state].*

32 *[(8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited li-*
33 *ability company or corporation.]*

34 *[(9)] (11) "Public body" [means:] has the meaning given that term in ORS 174.109.*

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

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

38 *[(c) An intergovernmental agency, department, council, joint board of control created under ORS*
39 *190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under*
40 *the direction and control of any single member government.]*

41 *[(10)] (12) ["Registered" or] "Registrant" means a person that is registered under ORS 697.005*
42 *to 697.095 or that is registered or licensed as a collection agency under the laws of another state.*

43 *[(11)] (13) "Statement of account" means a report [setting] that sets forth amounts billed, in-*
44 *voices, credits allowed or aged balance due.*

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

1 697.015. A person *[shall]* **may** not operate as a collection agency **or as a debt buyer** in this
 2 state unless the person registers **and maintains a registration** with the Department of Consumer
 3 and Business Services under ORS 697.031 *[and maintains the registration in accordance with that*
 4 *section]*.

5 **SECTION 6.** ORS 697.031 is amended to read:

6 697.031. (1)(a) The Director of the Department of Consumer and Business Services shall estab-
 7 lish by rule a program for *[registration of]* **registering** persons *[operating]* **that operate** as collection
 8 agencies **or as debt buyers and** that *[are required to]* **must** register with the Department of Con-
 9 sumer and Business Services under ORS 697.015. *[The program shall include a requirement that per-*
 10 *sons registering with the department file and]* **The department shall require applicants for**
 11 **registration to file and registrants to** maintain with the department current information the de-
 12 partment requires by rule.

13 **(b) The director, consistent with the requirements of ORS 697.005 to 697.095, may issue**
 14 **and renew registrations under this section by means of an agreement with the Nationwide**
 15 **Multistate Licensing System and may, by rule, conform the practices, procedures and infor-**
 16 **mation that the department uses to issue or renew a license to the requirements of the**
 17 **Nationwide Multistate Licensing System.**

18 **(c) The department may require any information necessary to carry out *[the]* a program under**
 19 **this subsection, including but not limited to *[the following]*:**

20 *[(a)]* **(A) The name and address of the *[person operating as a collection agency.] applicant or***
 21 **registrant;**

22 *[(b)]* **The name and address of the collection agency.]**

23 *[(c)]* **(B) Any assumed names or business names *[used by the collection agency.] the applicant***
 24 **or registrant uses; and**

25 **(C) Names of persons that are agents of the applicant or registrant for purposes of**
 26 **servicing legal process.**

27 **(d) If an applicant or registrant seeks to register or renew a registration to operate as**
 28 **a collection agency, the director may require the applicant or registrant to provide, in addi-**
 29 **tion to the information described in paragraph (c) of this subsection, the names of *[persons***
 30 ***who perform the solicitation or collection of]* individuals who solicit or collect claims or who *[per-***
 31 ***form the solicitation of]* **repossess or solicit** the right to repossess *[or the repossession of]* collateral
 32 security for the *[collection agency]* **applicant or registrant.****

33 *[(e)]* **Names of persons who are agents of the collection agency for purposes of service of legal pro-**
 34 **cess.]**

35 **(e) If an applicant or registrant seeks to register or renew a registration to operate as**
 36 **a debt buyer in this state, the director, in addition to requiring the information described in**
 37 **paragraph (c) of this subsection, may:**

38 **(A) Investigate the applicant or registrant to determine if the applicant or registrant and**
 39 **the applicant's or registrant's members, partners, directors, officers and principals have the**
 40 **financial responsibility, experience, character and general fitness necessary to command the**
 41 **confidence of the community and warrant a belief that the applicant or registrant will oper-**
 42 **ate as a debt buyer honestly, fairly and efficiently under ORS 697.005 to 697.095; and**

43 **(B) Require additional information, including but not limited to:**

44 **(i) The names of the applicant's or registrant's members, partners, directors, officers and**
 45 **principals;**

1 (ii) A history of criminal, civil or administrative proceedings, enforcement actions, ar-
 2 rests or other violations that are related to a failure by the applicant or registrant or the
 3 applicant's or registrant's members, partners, directors, officers or principals to comply with
 4 state and federal law, rules or regulations; and

5 (iii) The personal histories and experiences of the applicant or registrant and the
 6 applicant's or registrant's members, partners, directors, officers and principals, including
 7 but not limited to information from a credit report from a consumer reporting agency, as
 8 defined in 15 U.S.C. 1681a(f), or from a consumer reporting agency that compiles and main-
 9 tains files on consumers on a nationwide basis, as defined in 15 U.S.C. 1681a(p).

10 (2)(a) *[The director shall require any person who applies for registration]* If an applicant or
 11 registrant seeks to register or renew a registration to operate as a collection agency, other
 12 than an out-of-state collection agency, or as a debt buyer, the director shall require the appli-
 13 cant or registrant to file and maintain with the director a bond or an irrevocable letter of credit
 14 in the sum of [*\$10,000*] **\$15,000** [*executed by*] that the applicant or registrant executes as obligor,
 15 together with one or more corporate sureties or financial institutions authorized to do business in
 16 this state. The bond or [*an*] irrevocable letter of credit [*shall*] **must** be executed to the State of
 17 Oregon and for the use of the state and of any person who [*may*] **might** have a cause of action
 18 against the obligor of the bond or [*an*] irrevocable letter of credit under ORS 697.005 to 697.095. The
 19 bond or [*an*] irrevocable letter of credit [*shall*] **must** be conditioned [*that*] **to require** the [*obligor*
 20 *will*] **applicant or registrant to** faithfully conform to and abide by the provisions of ORS 697.005
 21 to 697.095 and all rules [*lawfully made by*] the director **adopts** under ORS 697.005 to 697.095, [*and*
 22 *will*]. **The bond must also be conditioned to** pay to the state and to [*any such*] a person [*any and*
 23 *all*] **that has a cause of action against the obligor** moneys that [*may*] become due or owing to the
 24 state or to [*such*] the person [*from the obligor under and by virtue of*] **as a result of the**
 25 **registrant's violation of** the provisions of ORS 697.005 to 697.095.

26 (b) *[If any person is aggrieved by the misconduct of a registrant required to file a bond or an*
 27 *irrevocable letter of credit under paragraph (a) of this subsection or by the registrant's violation of any*
 28 *law or rule lawfully made by the director under ORS 697.005 to 697.095 and recovers judgment there-*
 29 *for, the person may, after the return unsatisfied either in whole or in part of any execution issued upon*
 30 *the judgment, maintain an action for the person's own use upon the bond or irrevocable letter of credit*
 31 *of the registrant in any court having jurisdiction of the amount claimed.]* **The State of Oregon or a**
 32 **person that obtains a judgment against a registrant for violating ORS 697.005 to 697.095 or**
 33 **a rule that the director adopts under ORS 697.005 to 697.095, or for other misconduct, may**
 34 **bring in a circuit court of this state an action against the bond or irrevocable letter of credit**
 35 **described in this subsection for any amount the State of Oregon or the person does not ob-**
 36 **tain by executing the judgment against the registrant.**

37 (c) The bond or an irrevocable letter of credit required by this subsection [*shall*] **must** be con-
 38 tinuously maintained in the amount required by this subsection. The aggregate liability of the surety
 39 under the bond for claims against the bond [*shall*] **may** not exceed the penal sum of the bond no
 40 matter how many years the bond is in force. [*No*] **An** extension by continuation certificate, rein-
 41 statement, reissue or renewal of the bond [*shall*] **does not** increase the liability of the surety.

42 (3) **If an applicant or registrant seeks to register or renew a registration to operate as**
 43 **a debt buyer, in addition to requiring a bond or irrevocable letter of credit under subsection**
 44 **(2) of this section, the director shall require the applicant or registrant to provide proof of**
 45 **coverage under an errors and omissions insurance policy in an amount:**

1 (a) Of not less than \$2 million if the applicant or registrant is a larger participant in the
 2 consumer debt collection market, as described in 12 C.F.R. 1090.105, as in effect on the op-
 3 erative date specified in section 14 of this 2017 Act; or

4 (b) Of not less than \$1 million if the applicant or registrant is not a larger participant in
 5 the consumer debt collection market.

6 [(3)] (4) The director may, *[include any of the following]* in the program for registration estab-
 7 lished under this section:

8 (a) *[The director may require any filings with the department that the director determines to be*
 9 *necessary to maintain current the information required for registration]* **Require a registrant to keep**
 10 **current the information the registrant files with the department or with the Nationwide**
 11 **Multistate Licensing System.** Filings required under this subsection may include renewal of reg-
 12 istration at reasonable intervals, filings within a reasonable time after changes in a collection
 13 agency **or debt buyer** or other filings **that** the director determines *[to be]* **are** necessary. In re-
 14 quiring filings under this subsection, the director shall attempt to minimize burdens the filings might
 15 place on *[persons required to file]* **applicants and registrants.**

16 (b) Except as provided in subsection [(4)] (5) of this section, *[the director may establish and re-*
 17 *quire persons filing with the department under this section]* **require an applicant or registrant** to
 18 pay fees for any registration or filing *[made with the department]* **under this section directly to**
 19 **the department or through the Nationwide Multistate Licensing System.** The director *[shall]*
 20 **may** not establish fees for more than an amount necessary to cover the administrative costs of the
 21 filing or registration.

22 (c) **Establish** the program *[may be established]* **for registration** in any division of the depart-
 23 ment *[the director determines to be best able to administer the program].*

24 (d) *[The director may]* Issue, but *[may]* not require, certificates of registration or other indicia
 25 of registration that the director determines will *[be of assistance to persons operating as a collection*
 26 *agency in establishing that the persons are]* **assist a registrant to establish that the registrant**
 27 **is** registered with the department.

28 [(4)] (5) An out-of-state collection agency is exempt from *[the]* registration *[fee]* **requirements**
 29 under this section if:

30 (a) The out-of-state collection agency is **licensed or registered as a collection agency** in an-
 31 other state *[and that state does not require payment of an initial fee by a person who collects debts in*
 32 *that state only by means of interstate communications from the person's location in another state.];*

33 (b) **The other state exempts a collection agency located and registered in this state from**
 34 **the registration requirements of the other state; and**

35 (c) **The out-of-state collection agency agrees to accept service of process from the di-**
 36 **rector and consents to investigations in response to allegations of unlawful collection prac-**
 37 **tices under ORS 646.639 or alleged violations of ORS 697.005 to 697.095.**

38 [(5)] (6) If an out-of-state collection agency is not exempt from *[payment of a]* registration re-
 39 **quirements or paying a fee** under this section, the **director shall charge a** registration fee for the
 40 out-of-state collection agency *[shall be]* **that is** not less than the fee *[charged by]* **that** the state in
 41 which the out-of-state collection agency is located **charges** to a person *[who]* **that** collects debts in
 42 that state only by means of interstate communications from the person's location in another state.

43 [(6) *If the director determines that the state where an out-of-state collection agency is located and*
 44 *registered, if required to be registered, exempts a collection agency located and registered in this state*
 45 *from registration requirements in that state, the director shall exempt out-of-state collection agencies*

1 *located in that state from the registration requirements of ORS 697.005 to 697.095.]*

2 (7) The department shall maintain current records of the information required for registration
3 under this section.

4 **SECTION 7.** ORS 697.039 is amended to read:

5 697.039. (1) The Director of the Department of Consumer and Business Services may refuse to
6 issue or renew or may revoke or suspend any registration under ORS 697.031 if the director deter-
7 mines that:

8 (a) Any information [*a person files with the director*] **an applicant or registrant files** under ORS
9 697.031 is false or untruthful;

10 (b) [*A person has*] **An applicant or registrant** violated any of the rules [*of*] the director [*for*]
11 **adopted with respect to** registration under ORS 697.031;

12 (c) A [*person has*] **registrant** violated the provisions of ORS 697.045 or 697.058;

13 (d) A [*person has*] **registrant** failed to maintain in effect the bond or an irrevocable letter of
14 credit required under ORS 697.031;

15 (e) **A registrant failed to maintain coverage under an errors and omissions insurance**
16 **policy as required under, and in the amounts specified in, ORS 697.031;**

17 (f) **A person who must register or who is registered to operate as a debt buyer violated**
18 **a provision of section 2 or 3 of this 2017 Act;**

19 [*e*] (g) [*A person has*] **An applicant or registrant** died or [*become*] **became** incapacitated;

20 [*f*] (h) [*A person has*] **An applicant or registrant** engaged in dishonest, fraudulent or illegal
21 practices or conduct in any business or profession; or

22 [*g*] (i) [*A person has been*] **An applicant or registrant was** convicted of a felony or
23 misdemeanor, an essential element of which is fraud.

24 [(2) *A revocation or suspension under this section may be for a time certain or upon condition that*
25 *certain acts be performed.*]

26 [(3)] (2) If the director issued an initial order of revocation of a registration before the [*expira-*
27 *tion of the*] registration **expired**, the director may enter a final order of revocation even though the
28 registration has expired.

29 [(4)] (3) Actions of the director under this section are subject to the provisions of ORS chapter
30 183.

31 **SECTION 8.** ORS 697.053 is amended to read:

32 697.053. The provisions of ORS 697.015 and 697.031 are exclusive. [*and no*] **Except as provided**
33 **in this section, a** political subdivision or agency of this state may **not** require of a collection
34 agency **or a debt buyer** any registration, license or fee [*for any collection agency duly registered*]
35 **in addition to the registration, license or fee required** under ORS 697.015 and 697.031. [*Nothing*
36 *in*] This section [*limits*] **does not limit** the authority of any political subdivision to levy and collect
37 a general and nondiscriminatory license or registration fee upon all businesses [*in*] **that operate**
38 **within the jurisdiction of** the political subdivision or to levy a tax based upon the business [*con-*
39 *ducted by any*] **that a** registered collection agency **or debt buyer conducts** within the **jurisdiction**
40 **of the** political subdivision.

41 **SECTION 9.** ORS 697.085 is amended to read:

42 697.085. The Director of the Department of Consumer and Business Services may adopt rules
43 for:

44 (1) **Registering persons that are subject to ORS 697.005 to 697.095.**

45 (2) **Maintaining a registry or cooperating with the Nationwide Multistate Licensing Sys-**

1 **tem to maintain a registry.**

2 **(3) Defining, with specificity, dishonest, unethical or illegal practices that are subject to**
3 **penalties under ORS 697.005 to 697.095.**

4 **(4) [the administration and enforcement of] Administering and enforcing** ORS 697.005 to
5 697.095, 697.105 and 697.115.

6 **SECTION 10.** ORS 697.091 is amended to read:

7 697.091. (1) A person *[who]* **that** violates any provision of ORS 697.015 or 697.058 **or section 2**
8 **or 3 of this 2017 Act** or any rule **the Director of the Department of Consumer and Business**
9 **Services** adopted under ORS 697.031 or 697.085 *[shall]* **may** not charge or receive any fee or com-
10 pensation on any moneys received or collected while *[in violation of]* **violating** any provision of ORS
11 697.015 or 697.058 **or section 2 or 3 of this 2017 Act** or any rule **the director** adopted under ORS
12 697.031 or 697.085.

13 (2) A person *[shall]* **may** not charge or receive any fee or compensation on any moneys *[received*
14 *or collected]* **the person receives or collects** while operating in accordance with any provision of
15 ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085 *[but that is received or*
16 *collected]* **if the person receives or collects the fee or compensation** as a result of *[the person's*
17 *acts as a collection agency or out-of-state collection agency operating in violation of]* **an act that vio-**
18 **lates** any provision of ORS 697.015 or 697.058 **or section 2 or 3 of this 2017 Act** or any rule **the**
19 **director** adopted under ORS 697.031 or 697.085.

20 (3) **A person shall return** all moneys **the person** collected or received in violation of this
21 section *[shall be immediately returned]* to the assignors, or *[their assigns]* **the assignees of the**
22 **assignors**, of the account on which the moneys were paid.

23 **SECTION 11.** ORS 697.093 is amended to read:

24 697.093. (1) The Director of the Department of Consumer and Business Services may:

25 (a) Undertake *[the]* investigations, including investigations outside this state, that the director
26 considers necessary to determine whether a person has:

27 (A) Violated, is violating or is about to violate:

28 (i) ORS 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 **or section 2 or 3 of this**
29 **2017 Act;**

30 (ii) A rule adopted under ORS 697.031, 697.085 or 697.086; or

31 (iii) An order **the director** issued under this section;

32 (B) Filed information under ORS 697.031 that is false or untruthful; or

33 (C) Failed to maintain in effect the bond or an irrevocable letter of credit **or coverage under**
34 **an errors and omissions insurance policy** required under ORS 697.031.

35 (b) Require a person to file a statement in writing, under oath or otherwise, concerning the
36 matter *[being investigated]* **the director is investigating.**

37 (c) Take evidence from witnesses and compel *[the attendance of]* witnesses **to attend and require**
38 the production of books, papers, correspondence, memoranda, agreements or other documents or
39 records that the director considers relevant or material to an investigation or proceeding.

40 (d)(A) *[If the director has reason to believe that a person has]* **Issue an order to cease and**
41 **desist if the director believes a person:**

42 *[(A)]* (i) Violated, is violating or is about to violate ORS 697.015, 697.031, 697.045, 697.058,
43 697.091, 697.105 or 697.115 **or section 2 or 3 of this 2017 Act** or a rule adopted under ORS 697.031,
44 697.085 or 697.086, *issue an order to cease and desist from the violation].*

45 (ii) Violated a provision of 15 U.S.C. 1692 et seq., as in effect on the operative date spec-

1 **ified in section 14 of this 2017 Act, or ORS 646.639.**

2 **(B) Impose a civil penalty as provided in ORS 697.095 in connection with an order the**
 3 **director issues under this paragraph and seek an order from a court to compel the person**
 4 **to disgorge all payments of principal, interest or fees that the person obtained as a result**
 5 **of a violation of ORS 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 or section 2**
 6 **or 3 of this 2017 Act or a rule the director adopted under ORS 697.031, 697.085 or 697.086.**

7 **[(B)] (e) Issue an order to correct a filing, if a person** filed information under ORS 697.031
 8 that is false or untruthful[, *issue an order to correct the filing*].

9 **[(C)] (f) [Failed to] Issue an order to remedy a person's failure to maintain in effect the bond**
 10 **or an irrevocable letter of credit required under ORS 697.031[, *issue an order to remedy the***
 11 ***failure*].**

12 **(g) Deny, suspend, condition or revoke a license to engage in business as a debt buyer,**
 13 **issue an order to direct a debt buyer to cease or desist from a dishonest, an unethical or an**
 14 **illegal practice or request the Department of Justice to undertake an investigation or**
 15 **enforcement action if the director determines that a debt buyer has engaged in a dishonest,**
 16 **an unethical or an illegal practice in the course of collecting a debt.**

17 (2) The authority conferred by this section is in addition to and not in lieu of any other au-
 18 thority conferred on the director.

19 **SECTION 12.** ORS 697.095 is amended to read:

20 697.095. (1) In addition to any other penalty provided by law, a person who violates any pro-
 21 vision of ORS 697.015 or 697.058 **or section 2 or 3 of this 2017 Act** or any rule adopted under ORS
 22 697.031, 697.085 or 697.086 is subject to forfeiture and payment of a civil penalty to the Department
 23 of Consumer and Business Services in an amount of not more than [*\$1,000*] **\$5,000** for each offense.

24 (2) **The department shall impose** civil penalties under this section [*shall be imposed*] as pro-
 25 vided in ORS 183.745.

26 (3) [*All penalties recovered shall be deposited*] **The department shall deposit** in the Consumer
 27 and Business Services Fund created by ORS 705.145 **all penalties the department recovers under**
 28 **this section.**

29 **SECTION 13.** Sections 2 and 3 of this 2017 Act and the amendments to ORS 697.005,
 30 697.015, 697.031, 697.039, 697.053, 697.085, 697.091, 697.093 and 697.095 by sections 4 to 12 of this
 31 2017 Act apply to actions that a person takes while operating or engaging in business as a
 32 collection agency or debt buyer in this state on or after the operative date specified in sec-
 33 tion 14 of this 2017 Act.

34 **SECTION 14.** (1) Sections 2 and 3 of this 2017 Act and the amendments to ORS 697.005,
 35 697.015, 697.031, 697.039, 697.053, 697.085, 697.091, 697.093 and 697.095 by sections 4 to 12 of this
 36 2017 Act become operative January 1, 2018.

37 (2) **The Director of the Department of Consumer and Business Services may adopt rules**
 38 **and take any other action before the operative date specified in subsection (1) of this section**
 39 **that is necessary to enable the director, on and after the operative date specified in sub-**
 40 **section (1) of this section, to exercise all of the duties, functions and powers conferred on**
 41 **the director by sections 2 and 3 of this 2017 Act and the amendments to ORS 697.005, 697.015,**
 42 **697.031, 697.039, 697.053, 697.085, 697.091, 697.093 and 697.095 by sections 4 to 12 of this 2017**
 43 **Act.**

44 **SECTION 15.** This 2017 Act being necessary for the immediate preservation of the public
 45 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect

1 **on its passage.**

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