

Enrolled
House Bill 2356

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CHAPTER

AN ACT

Relating to debt collection practices; creating new provisions; amending ORS 646.639; and prescribing an effective date.

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

SECTION 1. (1) A debt buyer that brings legal action to collect or brings legal action to attempt to collect purchased debt, or a debt collector that brings legal action on the debt buyer's behalf, shall include in an initial pleading that begins the legal action:

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

(b) The name, address and telephone number of the person that owns the debt and a statement as to whether the person is a debt buyer;

(c) The last four digits of the original creditor's account number for the debt, if the original creditor's account number for the debt had four or more digits;

(d) A detailed and itemized statement that shows:

(A) The amount the debtor last paid on the debt, if the debtor made a payment, and the date of the payment;

(B) The amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt, if the debtor made a payment;

(C) The balance due on the debt on the date on which the debt became charged-off debt;

(D) The amount and rate of interest, any fees and any charges that the original creditor imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(E) The amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(F) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector expects to recover attorney fees; and

(G) Any other fee, cost or charge the debt buyer seeks to recover; and

(e) The date on which the debt buyer purchased the debt.

(2)(a) A court may not enter a judgment for a debt buyer or debt collector that has not complied with the requirements set forth in this section.

(b) If a court grants a judgment for a debt buyer or debt collector that does not comply with the requirements set forth in this section, the debtor in a motion under ORCP 71 may petition the court for relief from the judgment or the court may grant relief on the court's own motion.

(3) A debt buyer or debt collector may obtain attorney fees in a legal action to collect or attempt to collect a debt only if:

(a) The debt buyer or debt collector prevails in the legal action; and

(b) The contract or writing described in ORS 646.639 (4)(b) provides that the creditor may obtain attorney fees from the debtor in a legal action to collect or attempt to collect the debt or another provision of law allows an award of attorney fees to the debt buyer or debt collector.

(4) A debt buyer or a debt collector that acts on the debt buyer's behalf shall provide to a debtor all of the documents described in ORS 646.639 (4)(b) within 30 days after receiving a request for information about the debt from the debtor.

SECTION 2. ORS 646.639 is amended to read:

646.639. (1) As used in [subsection (2) of] this section and section 1 of this 2017 Act:

(a) **"Charged-off debt" means a debt that a creditor treats as a loss or expense and not as an asset.**

[(a)] (b) **"Consumer"** means a natural person who purchases or acquires property, services or credit for personal, family or household purposes.

[(b)] (c) **"Consumer transaction"** means a transaction between a consumer and a person [who] that sells, leases or provides property, services or credit to consumers.

[(c)] **"Commercial creditor" means a person who in the ordinary course of business engages in consumer transactions.**

[(d)] (d) **"Credit" means [the right granted by] a right that a creditor grants to a consumer to defer payment of a debt, to incur a debt and defer [its] payment of the debt, or to purchase or acquire property or services and defer payment [therefor] for the property or services.**

(e) **"Creditor" means a person that, in the ordinary course of the person's business, engages in consumer transactions that result in a consumer owing a debt to the person.**

[(e)] (f) **"Debt" means [any] an obligation or alleged obligation [arising] that arises out of a consumer transaction.**

[(f)] **"Debtor" means a consumer who owes or allegedly owes an obligation arising out of a consumer transaction.**

(g)(A) **"Debt buyer" means a person that regularly engages in the business of purchasing charged-off debt for the purpose of collecting the charged-off debt or hiring another person to collect or bring legal action to collect the charged-off debt.**

(B) **"Debt buyer" does not include a person that acquires charged-off debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged-off debt.**

[(g)] (h) **"Debt collector" means [any person who by any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction.] a person that by direct or indirect action, conduct or practice collects or attempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.**

(i) **"Debtor" means a consumer who owes or allegedly owes a debt, including a consumer who owes an amount that differs from the amount that a debt collector attempts to collect or that a debt buyer purchased or attempts to collect.**

(j) **"Legal action" means a lawsuit, mediation, arbitration or any other proceeding in any court, including a small claims court.**

(k) **"Original creditor" means the last entity that extended credit to a consumer to purchase goods or services, to lease goods or as a loan of moneys.**

[(h)] (L) **"Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.**

(2) [It shall be an unlawful collection practice for] A debt collector **engages in an unlawful collection practice if the debt collector**, while collecting or attempting to collect a debt, **does [to do] any of the following:**

(a) [Use or threaten the use of] **Uses or threatens to use** force or violence to cause physical harm to a debtor or to the debtor's family or property.

(b) [Threaten] **Threatens** arrest or criminal prosecution.

(c) [Threaten the seizure, attachment or sale of] **Threatens to seize, attach or sell** a debtor's property [when such action can only be taken pursuant to] **if doing so requires a court order** [without disclosing that] **and the debt collector does not disclose that seizing, attaching or selling the debtor's property requires** prior court proceedings [are required].

(d) [Use] **Uses** profane, obscene or abusive language in communicating with a debtor or the debtor's family.

(e) [Communicate] **Communicates** with [the] a debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to [that person] **the debtor or any member of the debtor's family and** with intent to harass or annoy the debtor or any member of the debtor's family.

(f) [Communicate or threaten] **Communicates or threatens** to communicate with a debtor's employer concerning the nature or existence of the debt.

(g) [Communicate] **Communicates** without [the] a debtor's permission or [threaten] **threatens** to communicate with the debtor at the debtor's place of employment if the place of employment is other than the debtor's residence, except that the debt collector may:

(A) Write to the debtor at the debtor's place of employment if [no] a home address is **not** reasonably available and if the envelope does not reveal that the communication is from a debt collector other than [a provider of] **the person that provided** the goods, services or credit from which the debt arose.

(B) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact the debtor at the debtor's place of employment more frequently than once each business week and may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt collector not to telephone at the debtor's place of employment or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication. For the purposes of this subparagraph, any language in any **agreement, contract or instrument** [creating] **that creates or is evidence of** the debt [which] **and that** purports to authorize telephone calls at the debtor's place of employment [shall not be considered as giving] **does not give** permission to the debt collector to call the debtor at the debtor's place of employment.

(h) [Communicate] **Communicates** with [the] a debtor in writing without clearly identifying the name of the debt collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address, on all initial communications. In subsequent communications involving multiple accounts, the debt collector may eliminate the name of the person, if any, for whom the debt collector is attempting to collect the debt[,] and **substitute** the term "various" [may be substituted in its place] **in place of the person's name**.

(i) [Communicate] **Communicates** with [the] a debtor orally without disclosing to the debtor, within 30 seconds **after beginning the communication**, the name of the individual [making the contact] **who is initiating the communication** and the true purpose [thereof] **of the communication**.

(j) [Cause] **Conceals the true purpose of the communication so as to cause** any expense to [the] a debtor in the form of long distance telephone calls, telegram fees, **additional charges for wireless communication** or other charges [incurred by] **the debtor might incur by using** a medium of communication[, by concealing the true purpose of the debt collector's communication].

(k) [Attempt to or threaten] **Attempts or threatens** to enforce a right or remedy [with knowledge or reason to know] **while knowing or having reason to know** that the right or remedy does not exist, or [threaten] **threatens** to take any action [which] **that** the debt collector in the regular course of business does not take.

(L) [Use] **Uses** any form of communication [which] **that** simulates legal or judicial process or [which gives the appearance of being] **that appears to be** authorized, issued or approved by a governmental agency, governmental official or an attorney at law [when it is not in fact so approved or authorized] **if the corresponding governmental agency, governmental official or attorney at law has not in fact authorized or approved the communication.**

(m) [Represent] **Represents** that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges [when such] **if the fees or charges may not legally be added to the existing debt.**

[*(n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by law.*]

(n) Collects or attempts to collect interest or other charges or fees that exceed the actual debt unless the agreement, contract or instrument that creates the debt expressly authorizes, or a law expressly allows, the interest or other charges or fees.

(o) [Threaten] **Threatens** to assign or sell [the] a debtor's account [with an attending misrepresentation or implication] **and misrepresents or implies** that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics.

(p) [Use] **Uses** the seal or letterhead of a public official or a public agency, as those terms are defined in ORS 171.725.

(q) Collects or attempts to collect any debt that the debt collector knows, or after exercising reasonable diligence would know, arises from medical expenses that qualify for reimbursement under the Oregon Health Plan or under Medicaid, except that:

(A) The debt collector does not engage in an unlawful collection practice if the debt collector can produce an affidavit or certificate from the original creditor that shows that the original creditor complied with Oregon Health Authority rules barring payments for services that Medicaid fee-for-service plans or contracted health care plans cover; and

(B) For purposes of this paragraph, a prepaid managed care health services organization, a coordinated care organization or a public body, as defined in ORS 174.109, or an agent or assignee of the organization or public body, is not a debt collector if the organization or public body seeks to collect a debt that arises under ORS 416.540.

(r) Files a legal action to collect or files a legal action to attempt to collect a debt if the debt collector knows, or after exercising reasonable diligence would know, that an applicable statute of limitations bars the collection or the collection attempt.

(s) Knowingly collects any amount, including any interest fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law.

(t) Collects or attempts to collect a debt before providing to a debtor, within 30 days after the date of the debtor's request, all of the documents listed in subsection (4)(b) of this section.

(3) [*It shall be an unlawful collection practice for*] A debt collector **engages in an unlawful collection practice if the debt collector**, by use of any direct or indirect action, conduct or practice, [*to enforce or attempt*] **enforces or attempts** to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5).

(4) A debt buyer or debt collector acting on behalf of a debt buyer engages in an unlawful collection practice if the debt buyer or debt collector:

(a) Files legal action against a debtor or files legal action to attempt to collect a debt if the debt buyer or debt collector knows or after exercising reasonable diligence would know that an applicable statute of limitations bars the legal action to collect or the legal action to attempt to collect the debt;

(b) Brings a legal action against a debtor or otherwise brings a legal action to attempt to collect a debt without possessing business records that satisfy the requirements of ORS

40.460 (6) or ORS 24.115, if the record is a foreign judgment, that establish the nature and the amount of the debt and that include:

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

(B) The name and address of the debtor;

(C) The name, address and telephone number of the person that owns the debt and a statement as to whether the person is a debt buyer;

(D) The last four digits of the original creditor's account number for the debt, if the original creditor's account number for the debt had four or more digits;

(E) A detailed and itemized statement of:

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

(ii) The amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt;

(iii) The balance due on the debt on the date on which the debt became charged-off debt;

(iv) The amount and rate of interest, any fees and any charges that the original creditor imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(v) The amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(vi) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector expects to recover attorney fees; and

(vii) Any other fee, cost or charge the debt buyer seeks to recover;

(F) Evidence that the debt buyer and only the debt buyer owns the debt;

(G) The date on which the debt buyer purchased the debt; and

(H) A copy of the agreement between the original creditor and the debtor that is either:

(i) The contract or other writing the debtor signed that created and is evidence of the original debt; or

(ii) A copy of the most recent monthly statement that shows a purchase transaction or balance transfer or the debtor's last payment, if the debtor made a payment, if the debt is a credit card debt or other debt for which a contract or other writing that is evidence of the debt does not exist;

(c) Fails to provide to a debtor, after the debt buyer or debt collector receives payment in cash or the debtor requests the receipt, a receipt that:

(A) Shows the name of the creditor or creditors for whom the debt buyer or debt collector received the payment and, if the creditor is not the original creditor, the account number that the original creditor assigned; and

(B) States clearly whether the debt buyer or debt collector accepts the payment as payment in full or as a full and final compromise of the debt and, if not, the balance remaining on the debt after the payment;

(d) Collects or attempts to collect a debt before providing, in response to a debtor's request, the documents required under paragraph (b) of this subsection. A debt buyer or a debt collector that acts on the debt buyer's behalf does not engage in an unlawful collection practice under this paragraph if the debt buyer or debt collector collects or attempts to collect a debt after providing the required documents to the debtor; or

(e) Uses any direct or indirect action, conduct or practice to violate a provision of this section or section 1 of this 2017 Act.

(5) A debt collector is not acting on a debt buyer's behalf, and is not subject to the duties to which a debt buyer is subject under this section and section 1 of this 2017 Act, if the debt collector collects or attempts to collect a debt on behalf of an owner that retains a direct interest in the debt or if the debt is not a debt that a debt buyer purchased.

SECTION 3. As used in sections 3 to 13 of this 2017 Act:

(1) "Applicant" means a person that applies for a license to engage in business as a debt buyer in this state.

(2) "Controller" means:

(a) A director, officer or general partner of a business entity;

(b) A managing member of a limited liability company;

(c) A person that has a direct or indirect right to vote 10 percent or more of the securities of a business entity that have voting rights or the power to sell or cause the sale of 10 percent or more of any class of a business entity's securities;

(d) A person that has contributed 10 percent or more to a partnership's capital or has the right to receive a distribution of 10 percent or more of a partnership's capital or assets upon dissolution; or

(e) A person that, under the terms of a contract or because the person has an ownership interest in another person, has the power to manage or set policies for the other person, or otherwise direct the other person's operations or affairs.

(3) "Debt buyer" has the meaning given that term in ORS 646.639.

(4) "Debt buying" means conducting business as a debt buyer or conducting business activities that are subject to regulation under ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

(5) "Debtor" has the meaning given that term in ORS 646.639.

(6) "Legal action" has the meaning given that term in ORS 646.639.

(7) "Licensee" means a person that has applied for and obtained a license from the Department of Consumer and Business Services to engage in business as a debt buyer in this state.

(8) "Nationwide Multistate Licensing System" has the meaning given that term in ORS 697.500.

SECTION 4. (1) Except as provided in subsection (2) of this section, a person may not engage in debt buying in this state unless the person obtains or renews a license under section 5 of this 2017 Act.

(2)(a) A person need not obtain or renew a license under subsection (1) of this section if the person is:

(A) A financial institution, as defined in ORS 706.008;

(B) A mortgage banker or a mortgage broker, both terms as defined in ORS 86A.100;

(C) A person that has a license the Director of the Department of Consumer and Business Services issued under ORS 725.140;

(D) A company that the director has authorized to transact trust business in this state under ORS 709.005;

(E) A debt management service provider, as defined in ORS 697.602;

(F) An attorney who is authorized to practice law in this state, if the attorney engages in debt buying only incidentally in the practice of law; or

(G) A person that the director exempts from the requirement by rule or order after determining that the public interest does not require the person to obtain a license.

(b) This subsection does not exempt a person from the requirement set forth in subsection (1) of this section if the person engages in business or conducts an activity outside the scope of the person's license, registration or authorization to transact business in this state.

SECTION 5. (1)(a) A person that is subject to the requirement to obtain or renew a license under section 4 (1) of this 2017 Act shall submit an application to the Director of the Department of Consumer and Business Services in the manner the director specifies by rule. The director by rule shall specify the format and contents of the application form. At a minimum, the rules must require an applicant or licensee to:

(A) List the applicant's or licensee's name and address and all assumed business names or other names the applicant or licensee has used in the course of engaging in debt buying or otherwise purchasing debt.

(B) List the name and address of the applicant's or licensee's registered agent in this state or another person that serves as the applicant's or licensee's agent for accepting service of process in this state.

(C) List the names and addresses of the applicant's or licensee's directors, members, officers, managers, partners and controllers.

(D) Provide a history of all enforcement actions or administrative, civil or criminal proceedings that involved a failure by the applicant or licensee or a director, member, officer, manager, partner or controller of the applicant or licensee to comply with federal or state law, regulations or rules.

(E) List all instances in which the applicant or licensee had a license, registration or other equivalent authorization to engage in debt buying denied, suspended, conditioned or revoked, unless the revocation was later rescinded, in this or another state.

(F) Disclose for the applicant or licensee and each of the applicant's or licensee's directors, members, officers, managers, partners and controllers all violations and arrests and all no contest pleas, guilty pleas and convictions, other than convictions that were later pardoned, in a federal, state, military or foreign court that involved a felony or a misdemeanor, if an element of the misdemeanor was a false statement or dishonesty, and that occurred:

(i) In the seven years before the date of an application under this section; or

(ii) At any time before the date of an application under this section if the conviction or plea involved a felony, an element of which was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument.

(b) The director by rule may require an applicant to apply for a license through the Nationwide Multistate Licensing System and may conform the practices, procedures and information the Department of Consumer and Business Services uses to issue or renew a license under this section with the practices, procedures and information the Nationwide Multistate Licensing System requires.

(c) The director by rule may require an applicant or licensee to submit fingerprints for any of the applicant's directors, members, officers, managers, partners or controllers and to undergo a criminal records check as part of an application under this section.

(2) An applicant or licensee shall pay, when applying to obtain or renew a license, a nonrefundable fee in an amount that the director specifies by rule. The director shall specify an amount for the fee that is sufficient, when aggregated with all other fees collected under this section, to:

(a) Pay the expenses of administering and enforcing ORS 646.639 and sections 1 and 3 to 13 of this 2017 Act; and

(b) Establish and maintain a reasonable emergency fund.

(3) In addition to the requirements set forth in subsections (1) and (2) of this section, an applicant or licensee shall file with the director proof that the applicant or licensee maintains an errors and omissions insurance policy from an insurer that the department has authorized to transact insurance in this state with limits that the director determines by rule.

(4)(a) The director shall issue or renew a license under this section if the director finds that:

(A) The application is complete and accurate;

(B) The applicant or licensee paid any fees required under this section;

(C) The applicant or licensee filed and maintains an errors and omissions insurance policy as provided in subsection (3) of this section;

(D) The applicant or licensee has not filed for bankruptcy within the seven years before the date of the application;

(E) The applicant or licensee, or a director, member, officer, manager, partner or controller of the applicant or licensee, has not been indicted for or convicted of a criminal offense and otherwise satisfies the director's standard for passing a criminal background check;

(F) A licensee that seeks to renew a license has complied with any orders the director issued and paid any penalties the director assessed against the licensee under ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act; and

(G) The applicant or licensee, or a director, member, officer, manager, partner or controller of the applicant or licensee, has not, within the seven years before the date of the application, been subject to or has cooperated or complied with:

(i) A final order to cease and desist from a violation of any law, regulation, rule or order that governs a debt buyer or debt buying in this or another state;

(ii) A suspension or revocation of a license, registration or other authorization to engage in debt buying in this or another state; or

(iii) Any other formal or informal enforcement action in this state or another state in which the governing body found that the applicant or licensee or the director, member, officer, manager, partner or controller violated an applicable law, regulation, rule or order.

(b) In addition to reviewing an applicant's or licensee's application under this section, the director may conduct an investigation to determine whether the applicant or licensee, and any of the applicant's or licensee's directors, members, officers, managers, partners or controllers have the financial responsibility, experience, character and general fitness necessary to command the confidence of the community and warrant a belief that the applicant or licensee will engage in debt buying honestly, fairly, efficiently and in compliance with ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

(5)(a) A license the director issues or renews under this section:

(A) Must display a unique identifying number or other designation that specifically identifies the licensee in the director's records; and

(B) Expires on December 31 of the calendar year in which the director issues the license. If a licensee intends to engage in debt buying on or after January 1 of the succeeding calendar year, the licensee shall renew the license before the expiration date.

(b) A licensee's directors, members, officers, managers, partners, controllers, employees and agents have authority to engage in debt buying solely under the terms of a license the director issues under this section, and, for the purposes of ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act, an action of a licensee's director, member, officer, manager, partner, controller, employee or agent while engaging in debt buying is an action of the licensee.

(6) The director may suspend or revoke a license issued under this section if the director finds after a hearing in accordance with ORS chapter 183 that:

(a) The licensee failed or refused to comply with the director's written request to respond to a complaint that the licensee violated a provision of ORS 646.639 (4) or of sections 1 and 3 to 13 of this 2017 Act;

(b) The licensee engaged in an intentional course of conduct to violate state or federal law or a course of conduct that constitutes fraudulent, deceptive or dishonest dealings; or

(c) The licensee failed or refused to comply with a final order the director issued.

SECTION 6. (1) A licensee shall designate and maintain a principal place of business at or from which the licensee engages in debt buying in this state and a registered agent in this state.

(2)(a) If a licensee does not maintain a principal place of business in this state, the licensee shall nevertheless designate a registered agent in this state. The registered agent must be available to receive on the licensee's behalf any notice, demand or service of process permitted by law to be given, made or delivered to, or served upon, the licensee.

(b) If the licensee does not designate a registered agent in this state, or if the licensee's registered agent cannot with reasonable diligence be located, the Director of the Department of Consumer and Business Services is the licensee's registered agent.

(3) A licensee may not use or operate under an assumed business name unless the licensee first registers the assumed business name under ORS chapter 648 and lists the name on an application under section 5 of this 2017 Act or in a notice to the director under section 7 of this 2017 Act.

(4)(a) A licensee shall clearly display the unique identifying number or designation described in section 5 (5) of this 2017 Act in each business location the licensee maintains in accordance with subsection (1) of this section and in any solicitation, advertisement, promotional material, website or other communication the licensee uses in the licensee's business.

(b) The director by rule may specify for the display required under paragraph (a) of this subsection:

- (A) A text size or range of text sizes;
- (B) A location;
- (C) Materials on which the display must appear; or
- (D) Other characteristics of the display.

SECTION 7. (1)(a) A licensee shall notify the Director of the Department of Consumer and Business Services in writing at least 30 days before the licensee relocates or closes the licensee's principal place of business in this state.

(b) In a notice under paragraph (a) of this subsection the licensee shall list the new address to which the licensee relocates the licensee's principal place of business.

(2)(a) A licensee shall notify the director in writing not later than 30 days after:

(A) Any appointment, resignation or other change occurs in the licensee's directors, members, officers, managers, partners or controllers; or

(B) Any material change occurs in the information that the licensee submitted in an application under section 5 of this 2017 Act.

(b) The licensee shall provide in a notice under paragraph (a)(A) of this subsection the name, address and title of any new director, member, officer, manager, partner or controller the licensee appoints.

(3)(a) A licensee shall notify the director in writing not later than 10 days after:

(A) Filing for bankruptcy or reorganization;

(B) A director, member, officer, manager, partner, controller or registered agent of the licensee becomes subject to an indictment that is related in any manner to the licensee's activities;

(C) The licensee receives notice of a final order issued in this or another state that:

(i) Demands that the licensee cease and desist from any act;

(ii) Suspends or revokes a license or registration; or

(iii) Constitutes any other formal or informal regulatory action against the licensee in this or another state in which the governing body found that the licensee or a director, member, officer, manager, partner or controller of the licensee violated an applicable law, regulation, rule or order;

(D) The licensee registers or changes and uses or operates under an assumed business name; or

(E) Another change in the licensee's operations or governance occurs in a manner or with an effect that the director determines by rule is significant enough to warrant the licensee notifying the director.

(b) A licensee shall specify in a notice under paragraph (a)(C) of this subsection the reasons for taking a regulatory action against the licensee that are set forth in any final order.

(4) A licensee shall notify the director immediately if the licensee changes registered agents or if the name or address for the licensee's registered agent in this state changes. In the notice, the licensee shall update the name and address for the registered agent.

SECTION 8. A licensee or a person that engages in debt buying shall comply with standards that the Director of the Department of Consumer and Business Services adopts by rule. The standards, at a minimum, must require the licensee or the person to:

(1) Establish appropriate training programs that instruct employees or agents of the licensee or the person in fair debt collection practices and compliance with ORS 646.639, section 1 of this 2017 Act and applicable provisions of sections 3 to 13 of this 2017 Act.

(2) Establish and maintain adequate processes to receive and respond to complaints from debtors and other persons and resolve disputes.

(3) Store personal information, as defined in ORS 646A.602, securely and in compliance with the requirements of ORS 646A.600 to 646A.628 and promptly provide notice of all breaches of security as provided in ORS 646A.604.

(4) Ensure the accuracy, fairness and privacy of information the debt buyer or person possesses in accordance with the requirements of the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., and Regulation V, 12 C.F.R. part 1022, both as in effect on the operative date specified in section 15 of this 2017 Act.

(5) Establish and maintain procedures for withdrawing or dismissing any legal action the debt buyer or person brings to collect a debt if ORS 12.080 or another applicable statute of limitations bars the legal action.

(6) Maintain adequate policies and procedures for producing and filing accurate and truthful affidavits.

(7) Maintain adequate policies and procedures for acquiring sufficient information about a debt or debtor to enable the debt buyer or person to establish a continuous chain of title for a debt from the original creditor to the current owner and to otherwise comply with ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

SECTION 9. A licensee or a person that engages in debt buying may not:

(1) Perform any act, undertake any practice or employ any device, scheme or artifice in the course of the licensee's or the person's business that the Director of the Department of Consumer and Business Services defines by rule as dishonest, unethical or illegal or that would operate as a deceit or fraud upon any person.

(2) Allow an errors and omissions insurance policy required under section 5 (3) of this 2017 Act to lapse or otherwise fail to maintain the insurance policy.

(3) Fail to comply with standards the director adopts under section 8 of this 2017 Act.

(4) Knowingly make, in an application to obtain or renew a license under section 5 of this 2017 Act or otherwise, an untrue statement of a material fact or omit to state a material fact that is necessary in order to make a statement true or not misleading in light of the circumstances under which the licensee or person makes the statement.

(5) Engage in debt buying if:

(a) A court has enjoined the licensee or person, temporarily or permanently, from engaging in debt buying or performing an act or undertaking a practice in the course of debt buying; or

(b) The licensee or person is subject to a United States Postal Service fraud order that was issued within the previous five years and that remains in effect.

(6) Violate any of the following laws or regulations as the laws or regulations apply to the licensee's or person's debt buying activities:

(a) The Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;

(b) Federal regulations promulgated as 16 C.F.R. part 310 under 15 U.S.C. 6101 et seq.;

(c) Federal regulations promulgated as 16 C.F.R. part 681 under sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003, P.L. 108-159; and

(d) ORS 646A.600 to 646A.628.

SECTION 10. (1) The Director of the Department of Consumer and Business Services has general supervisory authority and control over:

(a) Any person that engages in debt buying in this state; and

(b) Any person that had a license that the director withdrew, canceled, suspended, conditioned or revoked, if the person continues to engage in debt buying in this state.

(2)(a) The authority described in subsection (1) of this section includes the authority to examine a licensee or another person described in subsection (1) of this section at any time.

(b) The director may charge and collect from a licensee or a person the director examines under this section the costs the director incurs in conducting the examination.

(3) Books, accounts, papers, records, files, correspondence, contracts and agreements, memoranda, disclosures, documents and other information, material or evidence the director obtains in an examination under this section that concerns a debtor's personal debt history or identifying information is confidential and subject to the provisions of ORS 705.137.

(4) The director may investigate, in this state or another state, or initiate an administrative proceeding concerning the business activities of a licensee or person that engages in debt buying to determine whether the licensee or person has violated, is violating or is about to violate ORS 646.639 (4) or sections 1 and 3 to 13 of this 2017 Act or a rule the director adopted or an order the director issued under ORS 646.639 (4) or sections 1 and 3 to 13 of this 2017 Act. In the course of the investigation, the director may:

(a) Require the licensee or person to submit a statement concerning the subject of the investigation to the director in writing, under oath or otherwise;

(b) Compel witnesses to attend an investigation or proceeding, take evidence and require the licensee or person to produce books, accounts, papers, records, files, correspondence, contracts and agreements, memoranda, documents and other information, material or evidence the director deems relevant or material to the investigation or proceeding; and

(c) Interview and preserve testimony from a licensee's or person's directors, members, officers, managers, partners, controllers, employees, agents and customers, and any independent contractors associated with the licensee or person, concerning the licensee's or person's business practices and operations.

(5)(a) If the director has reasonable cause to believe, or determines after an investigation under subsection (4) of this section or after receiving a complaint from a debtor or another person, that a licensee or person that engages in debt buying may have violated ORS 646.639, the director shall notify the Attorney General and may refer all of the information the director gathered to the Department of Justice.

(b) If the Attorney General or the Department of Justice do not respond within 45 days after the date of a notice under paragraph (a) of this subsection or decline to undertake an enforcement action, the director may enforce the provisions of ORS 646.639.

(c) The Attorney General shall inform the director if the Department of Justice elects to enforce ORS 646.639.

(d) This subsection does not preclude:

(A) The Attorney General from representing the director in any action to enforce ORS 646.639; or

(B) The Attorney General and the director from sharing information, coordinating efforts or otherwise cooperating or collaborating in actions to enforce ORS 646.639.

(6) The director may charge and collect from a licensee or a person the director investigates under this section reasonable costs the director incurs in conducting the investigation, initiating or conducting a proceeding or otherwise enforcing the provisions of ORS 646.639 or sections 1 and 3 to 13 of this 2017 Act.

(7)(a) The director may consult and cooperate with a national nonprofit trade association that certifies debt buyers according to an industry-recognized standard for properly managing purchased debt. The director may consult and cooperate with the trade association in

areas of mutual interest including, but not limited to, determining industry standards and recognizing violations with which the trade association is familiar.

(b) In addition to consulting and cooperating with a trade association as provided in paragraph (a) of this subsection, the director may consult and cooperate with members of the public.

SECTION 11. (1) If after conducting an investigation, initiating or conducting a proceeding or taking an enforcement action under section 10 of this 2017 Act the Director of the Department of Consumer and Business Services determines that a licensee or a person that engages in debt buying in this state has violated ORS 646.639 or sections 1 and 3 to 13 of this 2017 Act, a rule the director adopted or an order the director issued under ORS 646.639 or sections 1 and 3 to 13 of this 2017 Act or another applicable law, the director may:

(a) Order the licensee or the person to cease and desist from any act that constitutes the violation.

(b) Suspend, condition or revoke a licensee's license or deny an application to obtain or renew a license under section 5 of this 2017 Act.

(c) Impose a civil penalty of not more than \$5,000 for each violation after considering the severity of the violation, the intent of the licensee or person and any efforts the licensee or person made to remedy or mitigate the effects of the violation.

(d) Order the licensee or the person to disgorge and return all payments the licensee or person obtained from a debtor or another person in the course of or as a result of the violation.

(2) The director shall undertake an action described in this section in accordance with ORS chapter 183 and shall impose any civil penalty in accordance with ORS 183.745.

(3) Each instance in which the director determines a violation has occurred is a separate violation, and each day in which a person engages in a continuous violation is a separate violation. The director may not impose a penalty that exceeds \$20,000 for a continuous violation.

(4) If the Department of Justice and the Department of Consumer and Business Services cooperate in an enforcement action under section 10 of this 2017 Act that results in a civil penalty, the Attorney General and the director shall agree as to which of the two departments will impose the civil penalty.

(5) The director shall deposit any amount the director receives under this section to the Consumer and Business Services Fund as provided in ORS 705.145.

SECTION 12. (1) Except as provided in subsection (2) of this section, the provisions of sections 1 and 3 to 13 of this 2017 Act preempt all charter and statutory authority of local governments in this state to require a debt buyer or a person that engages in debt buying to obtain a license, registration or other authority to engage in debt buying or to charge a fee for a license, registration or other authority to engage in debt buying.

(2) Subsection (1) of this section does not affect the authority of a local government in this state to:

(a) Charge and collect from all businesses that operate within the local government's jurisdiction a general and nondiscriminatory fee for a license, registration or other authority to conduct business; or

(b) Levy a tax on the revenue, property or operations of the business within the local government's jurisdiction.

SECTION 13. The Director of the Department of Consumer and Business Services may adopt rules to implement the provisions of ORS 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

SECTION 14. (1) Except as provided in subsection (2) of this section, sections 1 and 3 to 13 of this 2017 Act and the amendments to ORS 646.639 by section 2 of this 2017 Act apply to debts that are sold or resold before, on or after the operative date specified in section 15 of this 2017 Act.

(2) The requirements to provide information and documents under section 1 of this 2017 Act and ORS 646.639 (4)(b) and (d) apply to debts that are sold or resold on or after the operative date of this 2017 Act.

SECTION 15. (1) Sections 1 and 3 to 13 of this 2017 Act and the amendments to ORS 646.639 by section 2 of this 2017 Act become operative on January 1, 2018.

(2) The Attorney General and the Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General and the director to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General and the director by sections 1 and 3 to 13 of this 2017 Act and the amendments to ORS 646.639 by section 2 of this 2017 Act.

SECTION 16. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (5), chapter 372, Oregon Laws 2017 (Enrolled Senate Bill 5512), for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Consumer and Business Services for the Division of Financial Regulation, is increased by \$165,351 for the purpose of carrying out the provisions of sections 1 and 3 to 13 of this 2017 Act and the amendments to ORS 646.639 by section 2 of this 2017 Act.

SECTION 17. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House June 30, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 5, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State