

A-Engrossed
House Bill 2356

Ordered by the House April 18
Including House Amendments dated April 18

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

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.

Establishes requirements under which debt buyer or debt collector that acts on a debt buyer's behalf may bring legal action to collect debt. Specifies notice that debt buyer must give to debtor and documents that debt buyer must give to debtor at debtor's request. Makes violation of requirements unlawful collection practice.

Requires person that engages in debt buying in this state to obtain or renew license from Director of Department of Consumer and Business Services. Specifies requirements for applying for, issuing and renewing license and conditions under which director may deny, suspend, revoke or decline to renew license.

Specifies duties and prohibited conduct for licensee. Permits director to order licensee or person that engages in debt buying to cease and desist from violating Act, impose civil penalty for violation or take other action to remedy violation.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; amending ORS 646.639; and prescrib-
3 ing an effective date.

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

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

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

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

12 (c) **The last four digits of the original creditor's account number for the debt, if the ori-**
13 **ginal creditor's account number for the debt had four or more digits;**

14 (d) **A detailed and itemized statement that shows:**

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

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

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

20 (D) **The interest, fees and charges that the original creditor imposed, if the debt buyer**
21 **or debt collector knows the amounts;**

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 (E) The interest, fees and charges that the debt buyer or any previous owner of the debt
2 imposed, if the debt buyer or debt collector knows the amounts;

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

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

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

7 (2)(a) A debt buyer or debt collector that moves for an order of default or summary
8 judgment in a legal action described in subsection (1) of this section shall include with the
9 motion an affidavit that:

10 (A) States that the affiant has personal knowledge of the debt buyer's business records,
11 which show that the debt buyer has:

12 (i) A copy of the agreement between the original creditor and the debtor; and

13 (ii) A writing or collection of writings that shows an unbroken chain of ownership for the
14 debt, beginning with any assignment or transfer from the original creditor at the time the
15 debt became charged-off debt and continuing through an assignment or transfer to the cur-
16 rent owner.

17 (B) States the basis for any attorney fees the debt buyer or debt collector seeks and
18 provides evidence that the debt buyer or debt collector is entitled to the attorney fees.

19 (C) States that the time period during which the debt buyer may bring legal action to
20 collect the debt under the applicable statute of limitations, or any extension of the time pe-
21 riod available under the applicable statute of limitations, has not ended.

22 (b) The agreement described in paragraph (a)(A)(i) of this subsection must be either:

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

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

29 (c) To meet the requirements of this subsection, a debt buyer's business records must
30 satisfy the requirements of ORS 40.460 (6) or ORS 24.115, if the record is a foreign judgment.

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

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

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

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

40 (b) The contract or writing described in subsection (2)(b) of this section provides that the
41 creditor may obtain attorney fees from the debtor in a legal action to collect or attempt to
42 collect the debt or another provision of law allows an award of attorney fees to the debt
43 buyer or debt collector.

44 (5) A debt buyer or a debt collector that acts on the debt buyer's behalf shall provide to
45 a debtor all of the documents described in subsection (2) of this section, other than the af-

1 **fidavit that describes the affiant’s personal knowledge of the debt buyer’s business records,**
2 **within 30 days after receiving a request for information about the debt from the debtor.**

3 **SECTION 2.** ORS 646.639 is amended to read:

4 646.639. (1) As used in [subsection (2) of] this section **and section 1 of this 2017 Act:**

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

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

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

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

13 [(d)] **(d) “Credit” means [the right granted by] a right that a creditor grants to a consumer to**
14 **defer payment of a debt, to incur a debt and defer [its] payment of the debt, or to purchase or ac-**
15 **quire property or services and defer payment [therefor] for the property or services.**

16 **(e) “Creditor” means a person that, in the ordinary course of the person’s business, en-**
17 **gages in consumer transactions that result in a consumer owing a debt to the person.**

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

20 [(f)] *“Debtor” means a consumer who owes or allegedly owes an obligation arising out of a con-*
21 *sumer transaction.]*

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

25 **(B) “Debt buyer” does not include a person that acquires charged-off debt as an inci-**
26 **dental part of acquiring a portfolio of debt that is predominantly not charged-off debt.**

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

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

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

37 **(k) “Original creditor” means the last entity that extended credit to a consumer to pur-**
38 **chase goods or services, to lease goods or as a loan of moneys.**

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

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

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

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

2 (c) [*Threaten the seizure, attachment or sale of*] **Threatens to seize, attach or sell** a debtor's
3 property [*when such action can only be taken pursuant to*] **if doing so requires a court order** [*with-*
4 *out disclosing that*] **and the debt collector does not disclose that seizing, attaching or selling**
5 **the debtor's property requires** prior court proceedings [*are required*].

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

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

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

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

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

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

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

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

43 (j) [*Cause*] **Conceals the true purpose of the communication so as to cause** any expense to
44 [*the*] a debtor in the form of long distance telephone calls, telegram fees, **additional charges for**
45 **wireless communication** or other charges [*incurred by*] **the debtor might incur by using** a me-

1 dium of communication[, *by concealing the true purpose of the debt collector's communication*].

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

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

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

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

17 (n) **Collects or attempts to collect interest or other charges or fees that exceed the ac-**
18 **tual debt unless the agreement, contract or instrument that creates the debt expressly au-**
19 **thorizes, or a law expressly allows, the interest or other charges or fees.**

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

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

25 (q) **Collects or attempts to collect any debt that the debt collector knows, or after exer-**
26 **cising reasonable diligence would know, arises from medical expenses that qualify for re-**
27 **imbursement under the Oregon Health Plan or under Medicaid, except that:**

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

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

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

39 (s) **Knowingly collects any amount, including any interest fee, charge or expense inci-**
40 **idental to the principal obligation, unless the amount is expressly authorized by the agree-**
41 **ment creating the debt or permitted by law.**

42 (t) **Collects or attempts to collect a debt before complying with section 1 (5) of this 2017**
43 **Act.**

44 (3) [*It shall be an unlawful collection practice for*] A debt collector **engages in an unlawful**
45 **collection practice if the debt collector, by use of any direct or indirect action, conduct or prac-**

1 tice, [*to enforce or attempt*] **enforces or attempts** to enforce an obligation made void and
2 unenforceable by the provisions of ORS 759.720 (3) to (5).

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

5 **(a) Brings legal action against a debtor or brings legal action to attempt to collect a debt**
6 **if the debt buyer or debt collector knows or after exercising reasonable diligence would know**
7 **that an applicable statute of limitations bars the legal action to collect or the legal action**
8 **to attempt to collect the debt;**

9 **(b) Brings a legal action against a debtor or otherwise attempts to collect a debt without**
10 **possessing business records that satisfy the requirements of ORS 40.460 (6) or ORS 24.115,**
11 **if the record is a foreign judgment, that establish the nature and the amount of the debt and**
12 **that include:**

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

15 **(B) The name and address of the debtor;**

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

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

20 **(E) A detailed and itemized statement of:**

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

23 **(ii) The amount and date of the debtor's last payment on the debt before the debtor de-**
24 **faulted or before the debt became charged-off debt;**

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

26 **(iv) The interest, fees and charges that the original creditor imposed, if the debt buyer**
27 **or debt collector knows the amounts;**

28 **(v) The interest, fees and charges that the debt buyer or any previous owner of the debt**
29 **imposed, if the debt buyer or debt collector knows the amounts;**

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

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

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

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

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

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

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

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

44 **(A) Shows the name of the creditor or creditors for whom the debt buyer or debt col-**
45 **lector received the payment and, if the creditor is not the original creditor, the account**

1 number that the original creditor assigned; and

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

5 (d) Collects or attempts to collect a debt before providing, in response to a debtor's re-
6 quest, the documents required under section 1 (5) of this 2017 Act. A debt buyer or a debt
7 collector that acts on the debt buyer's behalf does not engage in an unlawful collection
8 practice under this paragraph if the debt buyer or debt collector collects or attempts to
9 collect a debt after providing the required documents to the debtor.

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

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

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

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

19 (2) "Controller" means:

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

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

22 (c) A person that has a direct or indirect right to vote 10 percent or more of the secu-
23 rities of a business entity that have voting rights or the power to sell or cause the sale of
24 10 percent or more of any class of a business entity's securities;

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

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

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

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

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

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

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

40 (8) "Nationwide Multistate Licensing System" has the meaning given that term in ORS
41 697.500.

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

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

1 the person is:

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

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

4 (C) A person that has a license the Director of the Department of Consumer and Busi-
5 ness Services issued under ORS 725.140;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or laundering a monetary instrument.

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

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

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

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

16 (b) Establish and maintain a reasonable emergency fund.

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

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

23 (A) The application is complete and accurate;

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

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

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

29 (E) The applicant or licensee, or a director, member, officer, manager, partner or con-
30 troller of the applicant or licensee, has not been indicted for or convicted of a criminal of-
31 fense and otherwise satisfies the director's standard for passing a criminal background
32 check;

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

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

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

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

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

1 **(b) In addition to reviewing an applicant’s or licensee’s application under this section, the**
2 **director may conduct an investigation to determine whether the applicant or licensee, and**
3 **any of the applicant’s or licensee’s directors, members, officers, managers, partners or con-**
4 **trollers have the financial responsibility, experience, character and general fitness necessary**
5 **to command the confidence of the community and warrant a belief that the applicant or**
6 **licensee will engage in debt buying honestly, fairly, efficiently and in compliance with ORS**
7 **646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.**

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

9 **(A) Must display a unique identifying number or other designation that specifically iden-**
10 **tifies the licensee in the director’s records; and**

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

14 **(b) A licensee’s directors, members, officers, managers, partners, controllers, employees**
15 **and agents have authority to engage in debt buying solely under the terms of a license the**
16 **director issues under this section, and, for the purposes of ORS 646.639 (4) and sections 1 and**
17 **3 to 13 of this 2017 Act, an action of a licensee’s director, member, officer, manager, partner,**
18 **controller, employee or agent while engaging in debt buying is an action of the licensee.**

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

21 **(a) The licensee failed or refused to comply with the director’s written request to respond**
22 **to a complaint that the licensee violated a provision of ORS 646.639 (4) or of sections 1 and**
23 **3 to 13 of this 2017 Act;**

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

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

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

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

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

37 **(3) A licensee may not use or operate under an assumed business name unless the**
38 **licensee first registers the assumed business name under ORS chapter 648 and lists the name**
39 **on an application under section 5 of this 2017 Act or in a notice to the director under section**
40 **7 of this 2017 Act.**

41 **(4)(a) A licensee shall clearly display the unique identifying number or designation de-**
42 **scribed in section 5 (5) of this 2017 Act in each business location the licensee maintains in**
43 **accordance with subsection (1) of this section and in any solicitation, advertisement, pro-**
44 **promotional material, website or other communication the licensee uses in the licensee’s busi-**
45 **ness.**

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

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

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

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

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

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

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

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

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

21 (A) Filing for bankruptcy or reorganization;

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (4) Ensure the accuracy, fairness and privacy of information the debt buyer or person
10 possesses in accordance with the requirements of the Fair Credit Reporting Act, 15 U.S.C.
11 1681 et seq., and Regulation V, 12 C.F.R. part 1022, both as in effect on the operative date
12 specified in section 15 of this 2017 Act.

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

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

18 (7) Maintain adequate policies and procedures for acquiring sufficient information about
19 a debt or debtor to enable the debt buyer or person to establish a continuous chain of title
20 for a debt from the original creditor to the current owner and to otherwise comply with ORS
21 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

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

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

27 (2) Allow an errors and omissions insurance policy required under section 5 (3) of this
28 2017 Act to lapse or otherwise fail to maintain the insurance policy.

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

30 (4) Knowingly make, in an application to obtain or renew a license under section 5 of this
31 2017 Act or otherwise, an untrue statement of a material fact or omit to state a material fact
32 that is necessary in order to make a statement true or not misleading in light of the cir-
33 cumstances under which the licensee or person makes the statement.

34 (5) Engage in debt buying if:

35 (a) A court has enjoined the licensee or person, temporarily or permanently, from en-
36 gaging in debt buying or performing an act or undertaking a practice in the course of debt
37 buying; or

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) The director may investigate, in this state or another state, or initiate an adminis-
16 trative proceeding concerning the business activities of a licensee or person that engages in
17 debt buying to determine whether the licensee or person has violated, is violating or is about
18 to violate ORS 646.639 (4) or sections 1 and 3 to 13 of this 2017 Act or a rule the director
19 adopted or an order the director issued under ORS 646.639 (4) or sections 1 and 3 to 13 of this
20 2017 Act. In the course of the investigation, the director may:

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

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

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

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

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

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

41 (d) This subsection does not preclude:

42 (A) The Attorney General from representing the director in any action to enforce ORS
43 646.639; or

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

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

5 (7)(a) The director may consult and cooperate with a national nonprofit trade association
6 that certifies debt buyers according to an industry-recognized standard for properly manag-
7 ing purchased debt. The director may consult and cooperate with the trade association in
8 areas of mutual interest including, but not limited to, determining industry standards and
9 recognizing violations with which the trade association is familiar.

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

13 **SECTION 11.** (1) If after conducting an investigation, initiating or conducting a proceed-
14 ing or taking an enforcement action under section 10 of this 2017 Act the Director of the
15 Department of Consumer and Business Services determines that a licensee or a person that
16 engages in debt buying in this state has violated ORS 646.639 or sections 1 and 3 to 13 of this
17 2017 Act, a rule the director adopted or an order the director issued under ORS 646.639 or
18 sections 1 and 3 to 13 of this 2017 Act or another applicable law, the director may:

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

21 (b) Suspend, condition or revoke a licensee's license or deny or decline to renew an ap-
22 plication to obtain or renew a license under section 5 of this 2017 Act.

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

26 (d) Order the licensee or the person to disgorge and return all payments the licensee or
27 person obtained from a debtor or another person in the course of or as a result of the vio-
28 lation.

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

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

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

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

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

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

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

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

8 **SECTION 13. The Director of the Department of Consumer and Business Services may**
9 **adopt rules to implement the provisions of ORS 646.639 (4) and sections 1 and 3 to 13 of this**
10 **2017 Act.**

11 **SECTION 14. (1) Except as provided in subsection (2) of this section, sections 1 and 3 to**
12 **13 of this 2017 Act and the amendments to ORS 646.639 by section 2 of this 2017 Act apply**
13 **to debts that are sold or resold before, on or after the operative date specified in section 15**
14 **of this 2017 Act.**

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

18 **SECTION 15. (1) Sections 1 and 3 to 13 of this 2017 Act and the amendments to ORS**
19 **646.639 by section 2 of this 2017 Act become operative on January 1, 2018.**

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

27 **SECTION 16. This 2017 Act takes effect on the 91st day after the date on which the 2017**
28 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

29