

House Bill 2356

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 **as introduced**.

Establishes requirements under which debt buyer may bring legal action to collect debt. Specifies notice that debt buyer must give to debtor. Makes violation of requirements unlawful collection practice.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; and amending ORS 646.639.

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

4 **SECTION 1. (1) A debt buyer, or debt collector acting on behalf of a debt buyer, that**
5 **brings legal action to collect or attempt to collect a debt shall:**

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

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

10 (B) **The original creditor's name, written as the original creditor used the name in**
11 **dealings with the debtor;**

12 (C) **The original creditor's account number for the debt, as shown in the original**
13 **creditor's records;**

14 (D) **A statement that shows:**

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

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

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

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

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

21 (E) **A statement that tells the debtor clearly and conspicuously that:**

22 (i) **An applicable statute of limitations may bar the debt buyer from bringing legal action**
23 **to collect the debt;**

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

27 (iii) **The alleged debt may be reported to a consumer reporting agency and affect the**
28 **consumer's credit score; and**

29 (iv) **If the debtor pays any amount on the debt, the payment affirms the existence of the**
30 **debt and begins a new time period during which the debt buyer may bring legal action to**

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 collect the debt, subject to the applicable statute of limitations.

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

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

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

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

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

10 (E) A detailed itemization of:

11 (i) The balance due on the debt;

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

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

14 (iv) Attorney fees; and

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

16 (F) A copy of the contract or other writing that the debtor signed and that is evidence
17 of the original debt or, if the debt buyer's claim is based on credit card debt, a copy of the
18 contract or agreement that existed at the time of the debtor's last payment; and

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

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

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

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

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

27 (2)(a) Before a court enters a judgment against a debtor in a legal action that the debt
28 buyer or debt collector acting on behalf of a debt buyer brings to collect a debt, or after ar-
29 bitration, the debt buyer or debt collector shall file with the court:

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

32 (B) An affidavit from the original creditor that:

33 (i) Describes the circumstances that created the debt, when the debtor defaulted, when
34 and to whom the original creditor assigned the debt and the amount due on the debt at the
35 time of the assignment; and

36 (ii) Authenticates the contract of sale or assignment and any related exhibits the debt
37 buyer submits;

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

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

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

45 (F) An affidavit that states that the time period during which the debt buyer may bring

1 legal action to collect the debt under the applicable statute of limitations, or any extension
 2 of the time period available under the applicable statute of limitations, has not ended.

3 (b) A court may not enter judgment for a debt buyer, or debt collector acting on behalf
 4 of a debt buyer, that has not complied with the requirements set forth in this section. The
 5 court may, in the court’s sole discretion, dismiss the legal action with or without prejudice.

6 (c) An alleged debtor, by motion before the court, without waiving the alleged debtor’s
 7 right to offer evidence if the court does not grant the motion, may assert that the amount
 8 that the debt buyer seeks is more than the alleged debtor owes and may ask the court either
 9 to require the debt buyer to amend the pleading to reflect the correct amount or to dismiss
 10 the legal action without prejudice. The court, in considering the motion, shall require the
 11 debt buyer to offer evidence that shows that the alleged debtor owes the amount that the
 12 debt buyer seeks. The court may not award attorney fees to a debt buyer that obtains a
 13 judgment that is less than the amount the debt buyer sought in the original complaint unless
 14 the judgment is the result of a negotiated agreement.

15 (3) If the debt buyer or debt collector acting on behalf of a debt buyer prevails in a legal
 16 action under this section, the debt buyer or debt collector acting on behalf of a debt buyer
 17 may obtain attorney fees only if the contract or other signed writing that created and is
 18 evidence of the debt obligates the debtor to pay attorney fees to a debt buyer or debt col-
 19 lector acting on behalf of a debt buyer that prevails in a legal action to collect the debt.

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

21 646.639. (1) As used in [subsection (2) of] this section **and section 1 of this 2017 Act:**

22 (a) “Consumer” means a natural person who purchases or acquires property, services or credit
 23 for personal, family or household purposes.

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

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

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

31 (d) “Creditor” means a person that, in the ordinary course of the person’s business, en-
 32 gages in consumer transactions that result in debts to consumers.

33 (e) “Debt” means [any] **an** obligation or alleged obligation [arising] **that arises** out of a con-
 34 sumer transaction.

35 (f) “Debtor” means a consumer who owes or allegedly owes [an obligation arising out of a con-
 36 sumer transaction.] **a debt, including a consumer who owes an amount that differs from the**
 37 **amount that a debt collector attempts to collect or that a debt buyer purchased or attempts**
 38 **to collect.**

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

44 [(g)] (h) “Debt collector” means [any person who by any direct or indirect action, conduct or
 45 practice, enforces or attempts to enforce an obligation that is owed or due to any commercial creditor,

1 or alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer
 2 transaction.] **a person that by direct or indirect action, conduct or practice collects or at-**
 3 **tempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.**

4 (i) **“Legal action” means a lawsuit, mediation, arbitration or any other proceeding in any**
 5 **court, including a small claims court.**

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

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

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

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

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

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

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

22 (e) [Communicate] **Communicates** with [the] a debtor or any member of the debtor’s family re-
 23 peatedly or continuously or at times known to be inconvenient to [that person] **the debtor or any**
 24 **member of the debtor’s family and** with intent to harass or annoy the debtor or any member of
 25 the debtor’s family.

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

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

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

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

1 sion to the debt collector to call the debtor at the debtor’s place of employment.

2 (h) *[Communicate]* **Communicates** with *[the]* a debtor in writing without clearly identifying the
 3 name of the debt collector, the name of the person, if any, for whom the debt collector is attempting
 4 to collect the debt and the debt collector’s business address, on all initial communications. In sub-
 5 sequent communications involving multiple accounts, the debt collector may eliminate the name of
 6 the person, if any, for whom the debt collector is attempting to collect the debt[,] and **substitute**
 7 the term “various” *[may be substituted in its place]* **in place of the person’s name.**

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

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

16 (k) **Uses any method, including bringing a legal action, to** attempt to or threaten to enforce
 17 a right or remedy *[with knowledge or reason to know]* **for a debtor’s failure to pay a debt or al-**
 18 **leged debt while knowing or having reason to know** that the right or remedy does not exist, or
 19 *[threaten]* **threatens** to take any action *[which]* **that** the debt collector in the regular course of
 20 business does not take.

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

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

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

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

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

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

40 (q) **Collects or attempts to collect any debt that arises from medical expenses that qualify**
 41 **for reimbursement under the Oregon Health Plan or under Medicaid.**

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

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

3 (a) Brings legal action against a debtor or otherwise attempts to collect a debt if the debt
4 buyer or debt collector knows or reasonably should know that an applicable statute of limi-
5 tations bars the legal action or collection attempt;

6 (b) Brings a legal action against a debtor or otherwise attempts to collect a debt without
7 possessing valid documentation that shows:

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 and address of the debtor;

11 (C) The original creditor's account number for the debt, as shown in the original
12 creditor's records;

13 (D) A copy of the contract or other writing that the debtor signed and that is evidence
14 of the original debt or, if the debt buyer's claim is based on credit card debt, a copy of the
15 contract or agreement that existed at the time of the debtor's last payment;

16 (E) An itemized accounting of the amount the debt buyer claims that the debtor owes,
17 including all fees and charges; and

18 (F) Evidence that the debt buyer owns the specific debt instrument or account that is
19 the subject of the legal action or collection attempt; or

20 (c) Fails to provide a receipt to a debtor after the debt buyer or debt collector receives
21 payment in any form from the debtor. A receipt that the debt buyer or debt collector pro-
22 vides to the debtor under this paragraph must:

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

26 (B) State clearly whether the debt buyer or debt collector accepts the payment as pay-
27 ment in full or as a full and final compromise of the debt and, if not, the balance remaining
28 on the debt after the payment.

29 (5) A debt buyer or debt collector acting on behalf of a debt buyer engages in an unlawful
30 collection practice if the debt buyer or debt collector uses any direct or indirect action,
31 conduct or practice to violate a provision of section 1 of this 2017 Act.

32 SECTION 3. Section 1 of this 2017 Act and the amendments to ORS 646.639 by section 2
33 of this 2017 Act apply to legal actions that a debt buyer or debt collector acting on behalf
34 of a debt buyer brings on or after the effective date of this 2017 Act.

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