

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR

**PROPOSED AMENDMENTS TO
HOUSE BILL 2356**

1 On page 1 of the printed bill, line 2, delete “and” and after “646.639” in-
2 sert “; and declaring an emergency.”.

3 Delete lines 4 through 30 and delete pages 2 through 6 and insert:

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

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

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

13 **“(c) The last four digits of the original creditor’s account number**
14 **for the debt;**

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

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

18 **“(B) The amount and date of the debtor’s last payment on the debt**
19 **before the debtor defaulted or before the debt became charged-off debt;**

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

1 **“(D) The interest, fees and charges that the original creditor im-**
2 **posed, if the debt buyer or debt collector knows the amounts;**

3 **“(E) The interest, fees and charges that the debt buyer or any pre-**
4 **vious owner of the debt imposed, if the debt buyer or debt collector**
5 **knows the amounts;**

6 **“(F) The attorney fees the debt buyer or debt collector expects to**
7 **recover; and**

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

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

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

14 **“(A) States that the affiant has personal knowledge of the debt**
15 **buyer’s business records, which show that the debt buyer has:**

16 **“(i) A copy of the agreement between the original creditor and the**
17 **debtor; and**

18 **“(ii) A writing or collection of writings that shows an unbroken**
19 **chain of ownership for the debt, beginning with any assignment or**
20 **transfer from the original creditor at the time the debt became**
21 **charged-off debt and continuing through an assignment or transfer to**
22 **the current owner.**

23 **“(B) States the basis for any attorney fees the debt buyer or debt**
24 **collector seeks and provides evidence that the debt buyer or debt col-**
25 **lector is entitled to the attorney fees.**

26 **“(C) States that the time period during which the debt buyer may**
27 **bring legal action to collect the debt under the applicable statute of**
28 **limitations, or any extension of the time period available under the**
29 **applicable statute of limitations, has not ended.**

30 **“(b) The agreement described in paragraph (a)(A)(i) of this sub-**

1 section must be either:

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

4 “(B) A copy of the most recent monthly statement that shows a
5 purchase transaction or balance transfer or the debtor’s last payment,
6 if the debtor made a payment, if the debt is a credit card debt or other
7 debt for which a contract or other writing that is evidence of the debt
8 does not exist.

9 “(c) To meet the requirements of this subsection, a debt buyer’s
10 business records must satisfy the requirements of ORS 40.460 (6).

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

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

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

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

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

28 “(5) A debt buyer or a debt collector that acts on the debt buyer’s
29 behalf shall provide to a debtor all of the documents described in
30 subsection (2) of this section within 30 days after receiving a request

1 **for information about the debt from the debtor. A debt buyer or debt**
2 **collector engages in an unlawful collection practice under ORS 646.639**
3 **if the debt buyer or debt collector collects or attempts to collect a debt**
4 **before providing the documents in response to the debtor’s request.**

5 **“SECTION 2.** ORS 646.639 is amended to read:

6 **“646.639. (1) As used in [subsection (2) of] this section and section 1 of**
7 **this 2017 Act:**

8 **“(a) ‘Charged-off debt’ means a debt that a creditor treats as a loss**
9 **or expense and not as an asset.**

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

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

15 **“[(c)] ‘Commercial creditor’ means a person who in the ordinary course of**
16 **business engages in consumer transactions.]**

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

21 **“(e) ‘Creditor’ means a person that, in the ordinary course of the**
22 **person’s business, engages in consumer transactions that result in a**
23 **consumer owing a debt to the person.**

24 **“[(e)] (f) ‘Debt’ means [any] an obligation or alleged obligation [arising]**
25 **that arises out of a consumer transaction.**

26 **“[(f)] ‘Debtor’ means a consumer who owes or allegedly owes an obligation**
27 **arising out of a consumer transaction.]**

28 **“(g)(A) ‘Debt buyer’ means a person that regularly engages in the**
29 **business of purchasing charged-off debt for the purpose of collecting**
30 **the charged-off debt or hiring another person to collect or bring legal**

1 **action to collect the charged-off debt.**

2 **“(B) ‘Debt buyer’ does not include a person that acquires charged-**
3 **off debt as an incidental part of acquiring a portfolio of debt that is**
4 **predominantly not charged-off debt.**

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

12 **“(i) ‘Debtor’ means a consumer who owes or allegedly owes a debt,**
13 **including a consumer who owes an amount that differs from the**
14 **amount that a debt collector attempts to collect or that a debt buyer**
15 **purchased or attempts to collect.**

16 **“(j) ‘Legal action’ means a lawsuit, mediation, arbitration or any**
17 **other proceeding in any court, including a small claims court.**

18 **“(k) ‘Original creditor’ means the last entity that extended credit**
19 **to a consumer to purchase goods or services, to lease goods or as a**
20 **loan of moneys.**

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

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

26 **“(a) [Use or threaten the use of] Uses or threatens to use force or vi-**
27 **olence to cause physical harm to a debtor or to the debtor’s family or prop-**
28 **erty.**

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

30 **“(c) [Threaten the seizure, attachment or sale of] Threatens to seize, at-**

1 **tach or sell** a debtor's property [*when such action can only be taken pursuant*
2 *to*] **if doing so requires a court order** [*without disclosing that*] **and the debt**
3 **collector does not disclose that seizing, attaching or selling the**
4 **debtor's property requires** prior court proceedings [*are required*].

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

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

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

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

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

24 “(B) Telephone a debtor's place of employment without informing any
25 other person of the nature of the call or identifying the caller as a debt
26 collector but only if the debt collector in good faith has made an unsuc-
27 cessful attempt to telephone the debtor at the debtor's residence during the
28 day or during the evening between the hours of 6 p.m. and 9 p.m. The debt
29 collector may not contact the debtor at the debtor's place of employment
30 more frequently than once each business week and may not telephone the

1 debtor at the debtor's place of employment if the debtor notifies the debt
2 collector not to telephone at the debtor's place of employment or if the debt
3 collector knows or has reason to know that the debtor's employer prohibits
4 the debtor from receiving such communication. For the purposes of this
5 subparagraph, any language in any **agreement, contract or** instrument
6 *[creating]* **that creates or is evidence of** the debt *[which]* **and that** purports
7 to authorize telephone calls at the debtor's place of employment *[shall not*
8 *be considered as giving]* **does not give** permission to the debt collector to
9 call the debtor at the debtor's place of employment.

10 “(h) *[Communicate]* **Communicates** with *[the]* **a** debtor in writing without
11 clearly identifying the name of the debt collector, the name of the person,
12 if any, for whom the debt collector is attempting to collect the debt and the
13 debt collector's business address, on all initial communications. In subse-
14 quent communications involving multiple accounts, the debt collector may
15 eliminate the name of the person, if any, for whom the debt collector is at-
16 tempting to collect the debt[,] and **substitute** the term ‘various’ *[may be*
17 *substituted in its place]* **in place of the person's name.**

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

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

29 “(k) *[Attempt to or threaten]* **Attempts or threatens** to enforce a right
30 or remedy *[with knowledge or reason to know]* **while knowing or having**

1 **reason to know** that the right or remedy does not exist, or [*threaten*]
2 **threatens** to take any action [*which*] **that** the debt collector in the regular
3 course of business does not take.

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

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

15 “[*n*] *Collect or attempt to collect any interest or any other charges or fees*
16 *in excess of the actual debt unless they are expressly authorized by the agree-*
17 *ment creating the debt or expressly allowed by law.*]

18 “(n) **Collects or attempts to collect interest or other charges or fees**
19 **that exceed the actual debt unless the agreement, contract or instru-**
20 **ment that creates the debt expressly authorizes, or a law expressly**
21 **allows, the interest or other charges or fees.**

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

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

28 “(q) **Collects or attempts to collect any debt that the debt collector**
29 **knows, or after exercising reasonable diligence would know, arises**
30 **from medical expenses that qualify for reimbursement under the**

1 **Oregon Health Plan or under Medicaid, except that:**

2 **“(A) The debt collector does not engage in an unlawful collection**
3 **practice if the debt collector can produce an affidavit or certificate**
4 **from the original creditor that shows that the original creditor com-**
5 **plied with Oregon Health Authority rules barring payments for ser-**
6 **vices that Medicaid fee-for-service plans or contracted health care**
7 **plans cover; and**

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

13 **“(r) Brings a legal action to collect or attempt to collect a debt if**
14 **the debt collector knows, or after exercising reasonable diligence**
15 **would know, that an applicable statute of limitations bars the col-**
16 **lection or the collection attempt.**

17 **“(s) Collects or attempts to collect a debt or a fee, charge or ex-**
18 **penditure related to the debt unless the debt collector knows or after ex-**
19 **ercising reasonable diligence would know that the agreement that**
20 **created and is evidence of the debt, or applicable law, expressly au-**
21 **thorizes the debt or the fee, charge or expense.**

22 **“(t) Collects or attempts to collect a debt before providing the**
23 **debtor with the documents described in section 1 (2) of this 2017 Act**
24 **in response to the debtor’s request.**

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

30 **“(4) A debt buyer or debt collector acting on behalf of a debt buyer**

1 engages in an unlawful collection practice if the debt buyer or debt
2 collector:

3 “(a) Brings legal action against a debtor or otherwise attempts to
4 collect a debt if the debt buyer or debt collector knows or after exer-
5 cising reasonable diligence would know that an applicable statute of
6 limitations bars the legal action or collection attempt;

7 “(b) Brings a legal action against a debtor or otherwise attempts
8 to collect a debt without possessing business records that satisfy the
9 requirements of ORS 40.460 (6), that establish the nature and the
10 amount of the debt and that include:

11 “(A) The original creditor’s name, written as the original creditor
12 used the name in dealings with the debtor;

13 “(B) The name and address of the debtor;

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

17 “(D) The last four digits of the original creditor’s account number
18 for the debt;

19 “(E) A detailed and itemized statement of:

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

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

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

26 “(iv) The interest, fees and charges that the original creditor im-
27 posed, if the debt buyer or debt collector knows the amounts;

28 “(v) The interest, fees and charges that the debt buyer or any pre-
29 vious owner of the debt imposed, if the debt buyer or debt collector
30 knows the amounts;

1 “(vi) The attorney fees the debt buyer or debt collector expects to
2 recover; and

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

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

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

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

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

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

16 “(c) Fails to provide to a debtor, after the debt buyer or debt col-
17 lector receives payment in cash or the debtor requests the receipt, a
18 receipt that:

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

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

27 “(d) Uses any direct or indirect action, conduct or practice to vio-
28 late a provision of this section or section 1 of this 2017 Act.

29 “(5) A debt collector is not acting on a debt buyer’s behalf, and is
30 not subject to the duties to which a debt buyer is subject under this

1 section and section 1 of this 2017 Act, if the debt collector collects or
2 attempts to collect a debt on behalf of the owner of the debt that:

3 “(a) Retains a direct interest in the debt; and

4 “(b) Does not engage in business as a debt buyer.

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

6 “(1) ‘Applicant’ means a person that applies for a license to engage
7 in business as a debt buyer in this state.

8 “(2) ‘Controller’ means:

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

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

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

15 “(d) A person that has contributed 10 percent or more to a
16 partnership’s capital or has the right to receive a distribution of 10
17 percent or more of a partnership’s capital or assets upon dissolution;
18 or

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

23 “(3) ‘Debt buyer’ has the meaning given that term in ORS 646.639.

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

27 “(5) ‘Debtor’ has the meaning given that term in ORS 646.639.

28 “(6) ‘Legal action’ has the meaning given that term in ORS 646.639.

29 “(7) ‘Licensee’ means a person that has applied for and obtained a
30 license from the Department of Consumer and Business Services to

1 engage in business as a debt buyer in this state.

2 “(8) ‘Nationwide Multistate Licensing System’ has the meaning
3 given that term in ORS 697.500.

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

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

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

10 **“(B) A mortgage banker or a mortgage broker, both terms as de-
11 fined in ORS 86A.100;**

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

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

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

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

20 **“(G) A person that the director exempts from the requirement by
21 rule or order after determining that the public interest does not re-
22 quire the person to obtain a license.**

23 **“(b) This subsection does not exempt a person from the requirement
24 set forth in subsection (1) of this section if the person engages in
25 business or conducts an activity outside the scope of the person’s li-
26 cense, registration or authorization to transact business in this state
27 that constitutes:**

28 **“(A) Operating a collection agency, as defined in ORS 697.005; or**

29 **“(B) Engaging in debt buying.**

30 **“SECTION 5. (1)(a) A person that is subject to the requirement to**

1 obtain or renew a license under section 4 (1) of this 2017 Act shall
2 submit an application to the Director of the Department of Consumer
3 and Business Services in the manner the director specifies by rule. The
4 director by rule shall specify the format and contents of the applica-
5 tion form. At a minimum, the rules must require an applicant or
6 licensee to:

7 “(A) List the applicant’s or licensee’s name and address and all as-
8 sumed business names or other names the applicant or licensee has
9 used in the course of engaging in debt buying or otherwise purchasing
10 debt.

11 “(B) List the name and address of the applicant’s or licensee’s reg-
12 istered agent in this state or another person that serves as the
13 applicant’s or licensee’s agent for accepting service of process in this
14 state.

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

17 “(D) Provide a history of all enforcement actions or administrative,
18 civil or criminal proceedings that involved a failure by the applicant
19 or licensee or a director, member, officer, manager, partner or con-
20 troller of the applicant or licensee to comply with federal or state law,
21 regulations or rules.

22 “(E) List all instances in which the applicant or licensee had a li-
23 cense, registration or other equivalent authorization to engage in debt
24 buying denied, suspended, conditioned or revoked, unless the revoca-
25 tion was later rescinded, in this or another state.

26 “(F) Disclose for the applicant or licensee and each of the
27 applicant’s or licensee’s directors, members, officers, managers, part-
28 ners and controllers all violations and arrests and all no contest pleas,
29 guilty pleas and convictions, other than convictions that were later
30 pardoned, in a federal, state, military or foreign court that involved

1 a felony or a misdemeanor, if an element of the misdemeanor was a
2 false statement or dishonesty, and that occurred:

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

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

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

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

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

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

26 “(b) Establish and maintain a reasonable emergency fund.

27 “(3) In addition to the requirements set forth in subsections (1) and
28 (2) of this section, an applicant or licensee shall file with the director
29 proof that the applicant or licensee maintains an errors and omissions
30 insurance policy from an insurer that the department has authorized

1 to transact insurance in this state with limits of not less than:

2 “(a) \$2 million per occurrence if the applicant or licensee partic-
3 ipates in the consumer debt collection market as a debt collector, as
4 described in 12 C.F.R. 1090.105; or

5 “(b) Not less than \$1 million if the applicant or licensee does not
6 participate in the consumer debt collection market as a debt collector,
7 as described in 12 C.F.R. 1090.105.

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

10 “(A) The application is complete and accurate;

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

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

15 “(D) The applicant or licensee has not filed for bankruptcy;

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

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

25 “(G) The applicant or licensee, or a director, member, officer,
26 manager, partner or controller of the applicant or licensee, has not
27 been subject to or has cooperated or complied with:

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

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

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

7 “(b) In addition to reviewing an applicant’s or licensee’s application
8 under this section, the director may conduct an investigation to de-
9 termine whether the applicant or licensee, and any of the applicant’s
10 or licensee’s directors, members, officers, managers, partners or con-
11 trollers have the financial responsibility, experience, character and
12 general fitness necessary to command the confidence of the commu-
13 nity and warrant a belief that the applicant or licensee will engage in
14 debt buying honestly, fairly, efficiently and in compliance with ORS
15 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

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

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

19 “(B) Expires on December 31 of the calendar year in which the di-
20 rector issues the license. If a licensee intends to engage in debt buying
21 on or after January 1 of the succeeding calendar year, the licensee
22 shall renew the license before the expiration date.

23 “(b) A licensee’s directors, members, officers, managers, partners,
24 controllers, employees and agents have authority to engage in debt
25 buying solely under the terms of a license the director issues under
26 this section, and, for the purposes of ORS 646.639 (4) and sections 1 and
27 3 to 13 of this 2017 Act, an action of a licensee’s director, member,
28 officer, manager, partner, controller, employee or agent while engag-
29 ing in debt buying is an action of the licensee.

30 “(6) The director may suspend or revoke a license issued under this

1 section if the director finds after a hearing in accordance with ORS
2 chapter 183 that:

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

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

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

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

14 **“(2)(a) If a licensee does not maintain a principal place of business
15 in this state, the licensee shall nevertheless designate a registered
16 agent in this state. The registered agent must be available to receive
17 on the licensee’s behalf any notice, demand or service of process per-
18 mitted by law to be given, made or delivered to, or served upon, the
19 licensee.**

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

24 **“(3) A licensee may not use or operate under an assumed business
25 name unless the licensee first registers the assumed business name
26 under ORS chapter 648 and lists the name on an application under
27 section 5 of this 2017 Act or in a notice to the director under section
28 7 of this 2017 Act.**

29 **“(4)(a) A licensee shall clearly display the unique identifying num-
30 ber or designation described in section 5 (5) of this 2017 Act in each**

1 **business location the licensee maintains in accordance with subsection**
2 **(1) of this section and in any solicitation, advertisement, promotional**
3 **material, website or other communication the licensee uses in the**
4 **licensee’s business.**

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

7 **“(A) A text size or range of text sizes;**

8 **“(B) A location;**

9 **“(C) Materials on which the display must appear; or**

10 **“(D) Other characteristics of the display.**

11 **“SECTION 7. (1)(a) A licensee shall notify the Director of the De-**
12 **partment of Consumer and Business Services in writing at least 30**
13 **days before the licensee relocates or closes the licensee’s principal**
14 **place of business in this state.**

15 **“(b) In a notice under paragraph (a) of this subsection the licensee**
16 **shall list the new address to which the licensee relocates the licensee’s**
17 **principal place of business.**

18 **“(2)(a) A licensee shall notify the director in writing not later than**
19 **30 days after:**

20 **“(A) Any appointment, resignation or other change occurs in the**
21 **licensee’s directors, members, officers, managers, partners or con-**
22 **trollers; or**

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

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

28 **“(3)(a) A licensee shall notify the director in writing not later than**
29 **10 days after:**

30 **“(A) Filing for bankruptcy or reorganization;**

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

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

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

7 **“(ii) Suspends or revokes a license or registration; or**

8 **“(iii) Constitutes any other formal or informal regulatory action**
9 **against the licensee in this or another state in which the governing**
10 **body found that the licensee or a director, member, officer, manager,**
11 **partner or controller of the licensee violated an applicable law, regu-**
12 **lation, rule or order;**

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

15 **“(E) Another change in the licensee’s operations or governance oc-**
16 **curs in a manner or with an effect that the director determines by rule**
17 **is significant enough to warrant the licensee notifying the director.**

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

21 **“(4) A licensee shall notify the director immediately if the licensee**
22 **changes registered agents or if the name or address for the licensee’s**
23 **registered agent in this state changes. In the notice, the licensee shall**
24 **update the name and address for the registered agent.**

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

29 **“(1) Establish appropriate training programs that instruct employ-**
30 **ees or agents of the licensee or the person in fair debt collection**

1 practices and compliance with ORS 646.639, section 1 of this 2017 Act
2 and applicable provisions of sections 3 to 13 of this 2017 Act.

3 “(2) Establish and maintain adequate processes to receive and re-
4 spond to complaints from debtors and other persons and resolve dis-
5 putes. A process for responding to complaints and resolving disputes
6 is not adequate if the debt buyer or person merely closes a debtor’s
7 account after receiving an inquiry concerning the debt buyer’s or
8 person’s activities from a federal or state regulatory or law enforce-
9 ment agency.

10 “(3) Store personal information, as defined in ORS 646A.602,
11 securely and in compliance with the requirements of ORS 646A.600 to
12 646A.628 and promptly provide notice of all breaches of security as
13 provided in ORS 646A.604.

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

19 “(5) Establish and maintain procedures for withdrawing or dismiss-
20 ing any legal action the debt buyer or person brings to collect a debt
21 if ORS 12.080 or another applicable statute of limitations bars the legal
22 action.

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

25 “(7) Maintain adequate policies and procedures for acquiring suffi-
26 cient information about a debt or debtor to enable the debt buyer or
27 person to establish a continuous chain of title for a debt from the or-
28 iginal creditor to the current owner and to otherwise comply with ORS
29 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

30 **SECTION 9.** (1) A licensee or a person that engages in debt buying

1 **may not:**

2 **“(a) Perform any act, undertake any practice or employ any device,**
3 **scheme or artifice in the course of the licensee’s or the person’s**
4 **business that the Director of the Department of Consumer and Busi-**
5 **ness Services defines by rule as dishonest, unethical or illegal or that**
6 **would operate as a deceit or fraud upon any person.**

7 **“(b) Allow an errors and omissions insurance policy required under**
8 **section 5 (3) of this 2017 Act to lapse or otherwise fail to maintain the**
9 **insurance policy.**

10 **“(c) Fail to comply with standards the director adopts under section**
11 **8 of this 2017 Act.**

12 **“(d) Knowingly make, in an application to obtain or renew a license**
13 **under section 5 of this 2017 Act or otherwise, an untrue statement of**
14 **a material fact or omit to state a material fact that is necessary in**
15 **order to make a statement true or not misleading in light of the cir-**
16 **cumstances under which the licensee or person makes the statement.**

17 **“(e) Engage in debt buying if:**

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

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

24 **“(f) Violate any of the following laws or regulations as the laws or**
25 **regulations apply to the licensee’s or person’s debt buying activities:**

26 **“(A) The Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;**

27 **“(B) Federal regulations promulgated as 16 C.F.R. part 310 under**
28 **the Privacy Act, 5 U.S.C. 552a;**

29 **“(C) Federal regulations promulgated as 16 C.F.R. part 681 under**
30 **sections 114 and 315 of the Fair and Accurate Credit Transactions Act**

1 of 2003, P.L. 108-159; and

2 “(D) ORS 646A.600 to 646A.628.

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

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

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

9 **“(2)(a) The authority described in subsection (1) of this section in-**
10 **cludes the authority to examine a licensee or another person described**
11 **in subsection (1) of this section at any time.**

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

15 **“(3) Books, accounts, papers, records, files, correspondence, con-**
16 **tracts and agreements, memoranda, disclosures, documents and other**
17 **information, material or evidence the director obtains in an examina-**
18 **tion under this section that concerns a debtor’s personal debt history**
19 **or identifying information is confidential and subject to the provisions**
20 **of ORS 705.137.**

21 **“(4) The director may investigate, in this state or another state, or**
22 **initiate an administrative proceeding concerning the business activ-**
23 **ities of a licensee or person that engages in debt buying to determine**
24 **whether the licensee or person has violated, is violating or is about to**
25 **violate ORS 646.639 (4) or sections 1 and 3 to 13 of this 2017 Act or a**
26 **rule the director adopted or an order the director issued under ORS**
27 **646.639 (4) or sections 1 and 3 to 13 of this 2017 Act. In the course of**
28 **the investigation, the director may:**

29 **“(a) Require the licensee or person to submit a statement concern-**
30 **ing the subject of the investigation to the director in writing, under**

1 oath or otherwise;

2 “(b) Compel witnesses to attend an investigation or proceeding,
3 take evidence and require the licensee or person to produce books,
4 accounts, papers, records, files, correspondence, contracts and agree-
5 ments, memoranda, documents and other information, material or
6 evidence the director deems relevant or material to the investigation
7 or proceeding; and

8 “(c) Interview and preserve testimony from a licensee’s or person’s
9 directors, members, officers, managers, partners, controllers, employ-
10 ees, agents and customers, and any independent contractors associated
11 with the licensee or person, concerning the licensee’s or person’s
12 business practices and operations.

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

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

23 “(c) The Attorney General shall inform the director if the Depart-
24 ment of Justice elects to enforce ORS 646.639.

25 “(d) This subsection does not preclude:

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

28 “(B) The Attorney General and the director from sharing informa-
29 tion, coordinating efforts or otherwise cooperating or collaborating in
30 actions to enforce ORS 646.639.

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

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

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

16 “(b) Suspend, condition or revoke a licensee’s license or deny or de-
17 cline to renew an application to obtain or renew a license under sec-
18 tion 5 of this 2017 Act.

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

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

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

29 “(3) Each instance in which the director determines a violation has
30 occurred is a separate violation, and each day in which a person en-

1 gages in a continuous violation is a separate violation. The director
2 may not impose a penalty that exceeds \$20,000 for a continuous vio-
3 lation.

4 “(4) If the Department of Justice and the Department of Consumer
5 and Business Services cooperate in an enforcement action under sec-
6 tion 10 of this 2017 Act that results in a civil penalty, the Attorney
7 General and the director shall agree as to which of the two depart-
8 ments will impose the civil penalty.

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

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

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

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

24 “(b) Levy a tax on the revenue, property or operations of the busi-
25 ness within the local government’s jurisdiction.

26 “SECTION 13. The Director of the Department of Consumer and
27 Business Services may adopt rules to implement the provisions of ORS
28 646.639 (4) and sections 1 and 3 to 13 of this 2017 Act.

29 “SECTION 14. Sections 1 and 3 to 13 of this 2017 Act and the
30 amendments to ORS 646.639 by section 2 of this 2017 Act apply to debts

1 that are sold or resold and the actions of licensees or persons that
2 engage in debt buying that occur on or after the operative date speci-
3 fied in section 15 of this 2017 Act.

4 **“SECTION 15. (1) Sections 1 and 3 to 13 of this 2017 Act and the**
5 **amendments to ORS 646.639 by section 2 of this 2017 Act become op-**
6 **erative on January 1, 2018.**

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

15 **“SECTION 16. This 2017 Act being necessary for the immediate**
16 **preservation of the public peace, health and safety, an emergency is**
17 **declared to exist, and this 2017 Act takes effect on its passage.”.**

18
