

A-Engrossed
Senate Bill 1553

Ordered by the Senate March 2
Including Senate Amendments dated March 2

Sponsored by Senator BOQUIST (Pre-session filed.)

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.

[Requires insurers, fraternal benefit societies and certain nonprofit corporations to apply to and obtain from Secretary of State authorization to transact business in this state. Specifies effect of failing to obtain authorization. Requires insurer, fraternal benefit society or nonprofit corporation to maintain registered agent and registered office in this state.]

[Permits plaintiff to recover greater of \$5,000 or actual damages in cause of action that arises out of business or transaction with insurer, fraternal benefit society or nonprofit corporation that has not obtained authorization to transact business in state. Permits Secretary of State to impose civil penalty of not more than \$1,000 for failure to obtain authorization to transact business in this state.]

[Imposes public safety assessment on covered entities. Establishes Public Safety Assessment Fund. Transfers revenues to fund. Applies to calendar years beginning on or after January 1, 2019.]

[Takes effect on 91st day following adjournment sine die.]

Provides that debt collector engages in unlawful collection practice if debt collector is debt buyer, or is acting on debt buyer's behalf, and collects or attempts to collect purchased debt before providing to debtor, within 30 days after date of debtor's request, certain documents that establish nature and amount of debt.

A BILL FOR AN ACT

1
2 Relating to regulation of certain business entities; amending ORS 646.639.

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

4 **SECTION 1.** ORS 646.639 is amended to read:

5 646.639. (1) As used in this section and ORS 646A.670:

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

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

10 (c) "Consumer transaction" means a transaction between a consumer and a person that sells,
11 leases or provides property, services or credit to consumers.

12 (d) "Credit" means a right that a creditor grants to a consumer to defer payment of a debt, to
13 incur a debt and defer payment of the debt, or to purchase or acquire property or services and defer
14 payment for the property or services.

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

17 (f) "Debt" means an obligation or alleged obligation that arises out of a consumer transaction.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

3 (h) "Debt collector" means a person that by direct or indirect action, conduct or practice col-
4 lects or attempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.

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

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

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

12 (L) "Person" means an individual, corporation, trust, partnership, incorporated or
13 unincorporated association or any other legal entity.

14 (2) A debt collector engages in an unlawful collection practice if the debt collector, while col-
15 lecting or attempting to collect a debt, does any of the following:

16 (a) Uses or threatens to use force or violence to cause physical harm to a debtor or to the
17 debtor's family or property.

18 (b) Threatens arrest or criminal prosecution.

19 (c) Threatens to seize, attach or sell a debtor's property if doing so requires a court order and
20 the debt collector does not disclose that seizing, attaching or selling the debtor's property requires
21 prior court proceedings.

22 (d) Uses profane, obscene or abusive language in communicating with a debtor or the debtor's
23 family.

24 (e) Communicates with a debtor or any member of the debtor's family repeatedly or continuously
25 or at times known to be inconvenient to the debtor or any member of the debtor's family and with
26 intent to harass or annoy the debtor or any member of the debtor's family.

27 (f) Communicates or threatens to communicate with a debtor's employer concerning the nature
28 or existence of the debt.

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

32 (A) Write to the debtor at the debtor's place of employment if a home address is not reasonably
33 available and if the envelope does not reveal that the communication is from a debt collector other
34 than the person that provided the goods, services or credit from which 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 that
44 creates or is evidence of the debt and that purports to authorize telephone calls at the debtor's place
45 of employment does not give permission to the debt collector to call the debtor at the debtor's place

1 of employment.

2 (h) Communicates with a debtor in writing without clearly identifying the name of the debt
3 collector, the name of the person, if any, for whom the debt collector is attempting to collect the
4 debt and the debt collector's business address, on all initial communications. In subsequent commu-
5 nications involving multiple accounts, the debt collector may eliminate the name of the person, if
6 any, for whom the debt collector is attempting to collect the debt and substitute the term
7 "various" in place of the person's name.

8 (i) Communicates with a debtor orally without disclosing to the debtor, within 30 seconds after
9 beginning the communication, the name of the individual who is initiating the communication and
10 the true purpose of the communication.

11 (j) Conceals the true purpose of the communication so as to cause any expense to a debtor in
12 the form of long distance telephone calls, telegram fees, additional charges for wireless communi-
13 cation or other charges the debtor might incur by using a medium of communication.

14 (k) Attempts or threatens to enforce a right or remedy while knowing or having reason to know
15 that the right or remedy does not exist, or threatens to take any action that the debt collector in
16 the regular course of business does not take.

17 (L) Uses any form of communication that simulates legal or judicial process or that appears to
18 be authorized, issued or approved by a governmental agency, governmental official or an attorney
19 at law if the corresponding governmental agency, governmental official or attorney at law has not
20 in fact authorized or approved the communication.

21 (m) Represents that an existing debt may be increased by the addition of attorney fees, investi-
22 gation fees or any other fees or charges if the fees or charges may not legally be added to the ex-
23 isting debt.

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

27 (o) Threatens to assign or sell a debtor's account and misrepresents or implies that the debtor
28 would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection
29 tactics.

30 (p) Uses the seal or letterhead of a public official or a public agency, as those terms are defined
31 in ORS 171.725.

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

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

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

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

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

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

6 **(t) Collects or attempts to collect a debt if the debt collector is a debt buyer, or is acting
7 on a debt buyer's behalf, and collects or attempts to collect purchased debt before providing
8 to a debtor, within 30 days after the date of the debtor's request, all of the documents listed
9 in subsection (4)(b) of this section.**

10 (3) A debt collector engages in an unlawful collection practice if the debt collector, by use of
11 any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation
12 made void and unenforceable by the provisions of ORS 759.720 (3) to (5).

13 (4) A debt buyer or debt collector acting on behalf of a debt buyer engages in an unlawful col-
14 lection practice if the debt buyer or debt collector:

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

19 (b) Brings a legal action against a debtor or otherwise brings a legal action to attempt to collect
20 a debt without possessing business records that satisfy the requirements of ORS 40.460 (6) or ORS
21 24.115, if the record is a foreign judgment, that establish the nature and the amount of the debt and
22 that include:

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

25 (B) The name and address of the debtor;

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

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

30 (E) A detailed and itemized statement of:

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

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

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

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

38 (v) The amount and rate of interest, any fees and any charges that the debt buyer or any pre-
39 vious owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or
40 charge;

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

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

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

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

- 1 (H) A copy of the agreement between the original creditor and the debtor that is either:
2 (i) The contract or other writing the debtor signed that created and is evidence of the original
3 debt; or
4 (ii) A copy of the most recent monthly statement that shows a purchase transaction or balance
5 transfer or the debtor's last payment, if the debtor made a payment, if the debt is a credit card debt
6 or other debt for which a contract or other writing that is evidence of the debt does not exist;
7 (c) Fails to provide to a debtor, after the debt buyer or debt collector receives payment in cash
8 or the debtor requests the receipt, a receipt that:
9 (A) Shows the name of the creditor or creditors for whom the debt buyer or debt collector re-
10 ceived the payment and, if the creditor is not the original creditor, the account number that the
11 original creditor assigned; and
12 (B) States clearly whether the debt buyer or debt collector accepts the payment as payment in
13 full or as a full and final compromise of the debt and, if not, the balance remaining on the debt after
14 the payment;
15 (d) Collects or attempts to collect a debt before providing, in response to a debtor's request, the
16 documents required under paragraph (b) of this subsection. A debt buyer or a debt collector that
17 acts on the debt buyer's behalf does not engage in an unlawful collection practice under this para-
18 graph if the debt buyer or debt collector collects or attempts to collect a debt after providing the
19 required documents to the debtor; or
20 (e) Uses any direct or indirect action, conduct or practice to violate a provision of this section
21 or ORS 646A.670.
22 (5) A debt collector is not acting on a debt buyer's behalf, and is not subject to the duties to
23 which a debt buyer is subject under this section and ORS 646A.670, if the debt collector collects or
24 attempts to collect a debt on behalf of an owner that retains a direct interest in the debt or if the
25 debt is not a debt that a debt buyer purchased.

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