

Enrolled
Senate Bill 1553

Sponsored by Senator BOQUIST (Pre-session filed.)

CHAPTER

AN ACT

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

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

SECTION 1. ORS 646.639 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Threatens arrest or criminal prosecution.

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

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

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

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

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

(A) Write to the debtor at the debtor's place of employment if a home address is not reasonably available and if the envelope does not reveal that the communication is from a debt collector other than the person that provided the goods, services or credit from which the debt arose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The name and address of the debtor;

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

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

(E) A detailed and itemized statement of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Uses any direct or indirect action, conduct or practice to violate a provision of this section or ORS 646A.670.

(5) A debt collector is not acting on a debt buyer's behalf, and is not subject to the duties to which a debt buyer is subject under this section and ORS 646A.670, if the debt collector collects or attempts to collect a debt on behalf of an owner that retains a direct interest in the debt or if the debt is not a debt that a debt buyer purchased.

Passed by Senate March 2, 2018

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 3, 2018

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2018

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Dennis Richardson, Secretary of State