

House Bill 2252

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Efficiency)

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 unlawful collection practice.

Increases amount of damages that may be awarded in action for unlawful collection practice. Permits court to award attorney fees and costs to prevailing plaintiff. Permits award to prevailing defendant only if court finds that plaintiff did not have objectively reasonable basis for bringing action.

Increases time period during which debtor may bring action for unlawful collection practice.

A BILL FOR AN ACT

1
2 Relating to debt collection practices; creating new provisions; amending ORS 646.639 and 646.641;
3 and repealing ORS 646.643.

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

SECTION 1. (1) As used in this section:

5
6 (a) **"Debt buyer" means a person that engages in the business of purchasing, in order to**
7 **collect amounts due from, delinquent consumer loans, delinquent consumer credit accounts**
8 **or other delinquent consumer debts, whether the person collects the amounts due directly,**
9 **hires a third party to collect the amounts due or hires another person to pursue legal action**
10 **to collect the amounts due.**

11 (b) **"Legal action" means a lawsuit, mediation, arbitration or any other legal proceeding**
12 **in any court.**

13 (c) **"Original creditor" means the last entity that extended credit to a consumer to pur-**
14 **chase goods or services, to lease goods or as a loan of moneys.**

(2) A debt buyer that brings legal action to collect or attempt to collect a debt shall:

15
16 (a) **Notify the debtor in writing, at least 30 days before bringing the legal action, that the**
17 **debt buyer intends to bring legal action. The debt buyer must send the written notice to the**
18 **debtor's last-known address. The written notice must include, at a minimum:**

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

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

22 (C) **The original creditor's account number for the debt;**

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

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

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

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

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

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

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

3 (i) An applicable statute of limitations might bar the debt buyer from bringing legal
4 action to collect the debt;

5 (ii) The debtor may seek legal advice if the debtor has questions about when the time
6 period during which the debt buyer may bring legal action under the applicable statute of
7 limitations will end; and

8 (iii) If the debtor pays any amount on the debt, the payment affirms the existence of the
9 debt and begins a new time period during which the debt buyer may bring legal action to
10 collect the debt, subject to the applicable statute of limitations.

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

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

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

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

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

19 (E) A detailed itemization of:

20 (i) The balance due on the debt;

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

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

23 (iv) Attorney fees; and

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

25 (F) A copy of the contract or other writing that the debtor signed and that is evidence
26 of the original debt or, if the debt buyer's claim is based on credit card debt for which a
27 signed writing that is evidence of the debt does not exist, a copy of any documents that the
28 credit card transaction generated; and

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

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

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

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

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

37 (3)(a) Before a court enters judgment against a debtor in a legal action that the debt
38 buyer brings to collect a debt, or after arbitration, the debt buyer shall file with the court:

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

41 (B) An affidavit from the original creditor that describes the circumstances that created
42 the debt, when the debtor defaulted, when and to whom the original creditor assigned the
43 debt and the amount due on the debt at the time of the assignment, and that authenticates
44 the contract of sale or assignment and any related exhibits the debt buyer submits;

45 (C) An affidavit from each seller or assignor that previously owned the debt, in which the

1 seller or assignor authenticates the contract of sale or assignment and any related exhibits
 2 that the debt buyer submits and an affidavit that traces the chain of ownership for the debt;

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

5 (E) An affidavit that states that the debt buyer complied with the requirements set forth
 6 in subsection (2)(a) of this section; and

7 (F) An affidavit that states that the time period during which the debt buyer may bring
 8 legal action to collect the debt under the applicable statute of limitations, or any extension
 9 of the time period available under the applicable statute of limitations, has not ended.

10 (b) A court may not enter judgment for a debt buyer that has not complied with the re-
 11 quirements set forth in this section. The court may, in the court’s sole discretion, dismiss
 12 the legal action with or without prejudice.

13 (c) A debtor by motion before the court, without waiving the debtor’s right to offer evi-
 14 dence if the court does not grant the motion, may assert that the amount that the debt
 15 buyer seeks is more than the debtor owes and ask the court either to require the debt buyer
 16 to amend the pleading to reflect the correct amount or to dismiss the legal action without
 17 prejudice. The court, in considering the motion, shall require the debt buyer to offer evidence
 18 that shows that the debtor owes the amount that the debt buyer seeks. The court may not
 19 award attorney fees to a debt buyer that obtains a judgment that is less than the amount
 20 that the debt buyer sought in the original complaint, unless the judgment is the result of a
 21 negotiated agreement.

22 (4) If the debt buyer prevails in a legal action under this section, the debt buyer may:

23 (a) Collect interest on the judgment in an amount that does not exceed the weekly av-
 24 erage one-year constant maturity Treasury yield that the Board of Governors of the Federal
 25 Reserve System publishes in the calendar week that precedes the date of the judgment.
 26 Notwithstanding any other law or interest rate specified in the contract or other signed
 27 writing that created and is evidence of the debt, the debt buyer may not receive any interest
 28 on the judgment other than the interest specified in this paragraph.

29 (b) Collect attorney fees only if the contract or other signed writing that created and is
 30 evidence of the debt obligates the debtor to pay attorney fees to a debt buyer that prevails
 31 in a legal action to collect the debt.

32 (5) A debt buyer’s violation of the provisions of this section through any direct or indi-
 33 rect action, conduct or practice is an unlawful collection practice under ORS 646.639.

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

35 646.639. (1) As used in [subsection (2) of] this section **and section 1 of this 2015 Act:**

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

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

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

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

45 (d) “Creditor” means a person that engages in consumer transactions.

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

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

5 (g) “Debt collector” means: *[any person who by any direct or indirect action, conduct or practice,*
 6 *enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged*
 7 *to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction.]*

8 **(A) A person that by direct or indirect action, conduct or practice collects or attempts**
 9 **to collect a debt owed, or alleged to be owed, to a creditor; or**

10 **(B) A debt buyer, as defined in section 1 of this 2015 Act.**

11 (h) “Person” means an individual, corporation, trust, partnership, incorporated or
 12 unincorporated association or any other legal entity.

13 (2) It *[shall be]* **is** an unlawful collection practice for a debt collector, while collecting or at-
 14 tempting to collect a debt, to do any of the following:

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

17 (b) Threaten arrest or criminal prosecution.

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

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

24 (e) Communicate with *[the]* **a** debtor or any member of the debtor’s family repeatedly or contin-
 25 uously or at times known to be inconvenient to *[that person]* **the debtor or any member of the**
 26 **debtor’s family and** with intent to harass or annoy the debtor or any member of the debtor’s family.

27 (f) Communicate or threaten to communicate with a debtor’s employer concerning the nature
 28 or existence of the debt.

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

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

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

1 calls at the debtor's place of employment *[shall not be considered as giving]* **does not give** permis-
 2 sion to the debt collector to call the debtor at the debtor's place of employment.

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

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

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

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

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

24 (m) Represent that an existing debt may be increased by the addition of attorney fees, investi-
 25 gation fees or any other fees or charges when *[such]* **the** fees or charges may not legally be added
 26 to the existing debt.

27 (n) Collect or attempt to collect *[any interest or any other charges or fees in excess of the actual*
 28 *debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by*
 29 *law]* **interest or other charges or fees that exceed the actual debt unless the agreement,**
 30 **contract or instrument that creates the debt expressly authorizes, or a law expressly allows,**
 31 **the interest or other charges or fees.**

32 (o) Threaten to assign or sell *[the]* a debtor's account *[with an attending misrepresentation or*
 33 *implication]* **and misrepresent or imply** that the debtor would lose any defense to the debt or would
 34 be subjected to harsh, vindictive or abusive collection tactics.

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

37 **(3)(a) It is an unlawful collection practice for a debt collector that is acting as a debt**
 38 **buyer or on behalf of a debt buyer to:**

39 **(A) Bring an action or initiate an arbitration proceeding against a debtor or otherwise**
 40 **attempt to collect a debt if the debt collector knows or reasonably should know that an ap-**
 41 **licable statute of limitations bars the action, arbitration proceeding or collection attempt;**
 42 **or**

43 **(B) Bring an action or initiate an arbitration proceeding against a debtor or otherwise**
 44 **attempt to collect a debt without valid documentation that shows:**

45 **(i) The name of the original creditor, written as the original creditor used the name in**

1 **dealings with the debtor;**

2 **(ii) The name and address of the debtor;**

3 **(iii) The original creditor’s account number for the debt, as shown in the original**
 4 **creditor’s records;**

5 **(iv) A copy of the contract or other writing that the debtor signed and that is evidence**
 6 **of the original debt;**

7 **(v) An itemized accounting of the amount the debt collector claims that the debtor owes,**
 8 **including all fees and charges; and**

9 **(vi) Evidence that the debt collector owns the specific debt instrument or account that**
 10 **is the subject of the action, arbitration proceeding or collection attempt.**

11 **(b) As used in this subsection, “original creditor” has the meaning given that term in**
 12 **section 1 of this 2015 Act.**

13 ~~[(3)]~~ **(4) It [shall be] is an unlawful collection practice for a debt collector, by use of any direct**
 14 **or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and**
 15 **unenforceable by the provisions of ORS 759.720 (3) to (5).**

16 **(5) It is an unlawful collection practice for a debt collector to use any direct or indirect**
 17 **action, conduct or practice to violate a provision of section 1 of this 2015 Act.**

18 **SECTION 3.** ORS 646.641 is amended to read:

19 646.641. (1) ~~[Any]~~ **A person that is injured as a result of another person’s willful use or em-**
 20 **ployment [by another person] of an unlawful collection practice may bring an action in an appro-**
 21 **priate court to enjoin the practice or to recover actual damages or [\$200] \$1,000, whichever is**
 22 **greater. The court or the jury may award punitive damages, and the court may provide such equi-**
 23 **table relief as [it] the court deems necessary or proper.**

24 (2) ~~[In any action brought by a person under this section, the court may award reasonable attorney~~
 25 ~~fees to the prevailing party.]~~ **The court may award reasonable attorney fees and costs at trial**
 26 **and on appeal to a prevailing plaintiff in an action under this section. The court may award**
 27 **reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the**
 28 **court finds that the plaintiff did not have an objectively reasonable basis for bringing the**
 29 **action or asserting the ground for appeal.**

30 (3) ~~[Actions brought under this section shall be commenced within one year from the date of the~~
 31 ~~injury.]~~ **A person that brings an action under this section must bring the action within two**
 32 **years after the later of the date on which:**

33 **(a) The injury occurred; or**

34 **(b) A court dismissed or entered judgment in an action to collect a debt from the person.**

35 **SECTION 4.** ORS 646.643 is repealed.

36 **SECTION 5.** Section 1 of this 2015 Act and the amendments to ORS 646.639 and 646.641
 37 **by sections 2 and 3 of this 2015 Act and the repeal of ORS 646.643 by section 4 of this 2015**
 38 **Act apply to legal actions that begin on or after the effective date of this 2015 Act.**