

# Senate Bill 274

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## 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**.

Provides that attorney authorized to practice law in this state is not required to register as collection agency in order to serve, file or convey certain legal documents or to communicate with debtor, as directed by client or court or in deposition or settlement conference, regarding pending or possible legal action to collect debt.

Increases from \$10,000 to \$15,000 amount of bond or irrevocable letter of credit that applicant for registration as collection agency or registrant must provide to and maintain with Department of Consumer and Business Services.

Specifies conditions under which out-of-state collection agency is exempt from registration as collection agency in this state.

Provides that Director of Department of Consumer and Business Services, in addition to issuing cease and desist order for violations of law in connection with collection of claims, may impose civil penalty and seek to compel person to disgorge payments of principal, interest or fees that person obtained in violation of law. Increases amount of civil penalty per violation from \$1,000 to \$5,000.

Provides that Department of Consumer and Business Services and Attorney General may exercise concurrent jurisdiction over unlawful debt collection activity.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to debt collection; creating new provisions; amending ORS 646.639, 697.005, 697.015, 697.031,  
3 697.045, 697.093 and 697.095; and declaring an emergency.

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

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

6 646.639. (1) As used in subsection (2) of this section:

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

9 (b) "Consumer transaction" means a transaction between a consumer and a person *[who]* **that**  
10 sells, leases or provides property, services or credit to consumers.

11 (c) "Commercial creditor" means a person who in the ordinary course of business engages in  
12 consumer transactions.

13 (d) "Credit" means *[the right granted by]* **a right that** a creditor **grants** to a consumer to defer  
14 payment of a debt, to incur a debt and defer *[its]* payment **of the debt**, or to purchase or acquire  
15 property or services and defer payment *[therefor]* **for the property or services**.

16 (e) "Debt" means *[any]* **an** obligation or alleged obligation *[arising]* **that arises** out of a con-  
17 sumer transaction.

18 (f) "Debtor" means a consumer who owes or allegedly owes *[an obligation arising out of a con-*  
19 *sumer transaction]* **a debt**.

20 (g) "Debt collector" means *[any person who by any direct or indirect action, conduct or practice,*  
21 *enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged*  
22 *to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction]*

**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 **a person that by direct or indirect action, conduct or practice collects or attempts to collect**  
 2 **a debt that a consumer owes, or is alleged to owe, to a commercial creditor in connection**  
 3 **with a consumer transaction.**

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

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

8 (a) Use or threaten *[the]* **to** use *[of]* force or violence to cause physical harm to a debtor or to  
 9 the debtor's family or property.

10 (b) Threaten arrest or criminal prosecution.

11 (c) Threaten *[the seizure, attachment or sale of]* **to seize, attach or sell** a debtor's property  
 12 *[when such action can only be taken pursuant to]* **if doing so requires a court order** *[without dis-*  
 13 *closing that prior court proceedings are required]* **and the debt collector does not disclose that**  
 14 **seizing, attaching or selling the debtor's property requires prior court proceedings.**

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

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

20 (f) Communicate or threaten to communicate with a debtor's employer concerning the nature  
 21 or existence of the debt.

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

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

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

41 (h) Communicate with *[the]* **a** debtor in writing without clearly identifying the name of the debt  
 42 collector, the name of the person, if any, for whom the debt collector is attempting to collect the  
 43 debt and the debt collector's business address, on all initial communications. In subsequent commu-  
 44 nications involving multiple accounts, the debt collector may eliminate the name of the person, if  
 45 any, for whom the debt collector is attempting to collect the debt[,] and **substitute** the term "vari-

1 ous” *[may be substituted in its place]* **in place of the person’s name.**

2 (i) Communicate with *[the]* a debtor orally without disclosing to the debtor, within 30 seconds  
3 **after initiating the communication**, the name of the individual *[making the contact]* **who is initi-**  
4 **ating the communication** and the true purpose *[thereof]* **of the communication.**

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

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

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

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

20 (n) Collect or attempt to collect *[any interest or any other charges or fees in excess of the actual*  
21 *debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by*  
22 *law]* **interest or other charges or fees that exceed the actual debt unless the agreement,**  
23 **contract or instrument that creates or is evidence of the debt expressly authorizes, or a law**  
24 **expressly authorizes, the interest or other charges or fees.**

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

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

30 (3) *[It shall be]* **A debt collector engages in** an unlawful collection practice *[for a]* **if the** debt  
31 collector[, *by use of]* **uses** any direct or indirect action, conduct or practice[, ] to enforce or attempt  
32 to enforce an obligation *[made void and unenforceable by]* **that** the provisions of ORS 759.720 (3) to  
33 (5) **make void and unenforceable.**

34 (4) **The Department of Consumer and Business Services and the Attorney General may**  
35 **exercise concurrent jurisdiction over violations of the provisions of this section.**

36 **SECTION 2.** ORS 697.005 is amended to read:

37 697.005. As used in ORS 697.005 to 697.095:

38 (1)(a) “Collection agency” means:

39 (A) A person **that** directly or indirectly *[engaged]* **engages** in soliciting a claim for collection,  
40 or collecting or attempting to collect a claim that is owed, due or asserted to be owed or due to  
41 another person or to a public body at the time the person solicits, collects or attempts to collect the  
42 claim;

43 (B) A person that directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms  
44 represented to be a collection system even if the forms direct the debtor to make payment to the  
45 creditor and even if the **creditor may or does use the** forms *[may be or are actually used by the*

1 creditor] in the creditor's own name;

2 (C) A person that, in attempting to collect or in collecting the person's own claim, uses a ficti-  
3 tious name or any name other than the person's own **name that conveys an impression**  
4 [indicates] to the debtor that a third person is collecting or attempting to collect the claim;

5 (D) A person [in the business of engaging] **that engages** in the [solicitation of] **business of so-**  
6 **liciting** the right to repossess or in repossessing collateral security due or asserted to be due to  
7 another person; or

8 (E) A person that, in [the collection of] **collecting** claims from another person:

9 (i) Uses any name other than the name regularly used in the conduct of the business out of  
10 which the claim arose; and

11 (ii) Engages in any action or conduct that tends to convey the impression that a third party has  
12 been employed or engaged to collect the claim.

13 (b) "Collection agency" does not include:

14 (A) An individual [engaged] **who engages** in soliciting claims for collection, or [collecting or at-  
15 tempting] **who collects or attempts** to collect claims on behalf of a registrant under ORS 697.005  
16 to 697.095, if the individual is an employee of the registrant.

17 (B) An individual [collecting or attempting] **who collects or attempts** to collect claims for not  
18 more than three employers, if the individual carries on all collection efforts in the name of the em-  
19 ployer and the individual is an employee of the employer.

20 (C) A person that prepares or mails monthly or periodic statements of accounts due on behalf  
21 of another person if all payments are made to the other person and the person that prepares the  
22 statements of accounts does not make other collection efforts.

23 (D) [An attorney-at-law rendering services in the performance of the duties of an attorney-at-law.]

24 **An attorney authorized to practice law in this state who:**

25 (i) **Serves, files or conveys formal legal pleadings, discovery requests or other documents**  
26 **in accordance with applicable rules of civil procedure; or**

27 (ii) **At the direction of a client or a court of law or in depositions or settlement confer-**  
28 **ences, communicates with a debtor in connection with a pending or possible legal action to**  
29 **collect a debt.**

30 (E) A licensed certified public accountant or public accountant [rendering services in the per-  
31 formance of] **performing** the duties of a licensed certified public accountant or public accountant.

32 (F) A bank, mutual savings bank, consumer finance company, trust company, savings and loan  
33 association, credit union or debt [consolidation agency] **management service provider, as that**  
34 **term is defined in ORS 697.602.**

35 (G) A principal real estate broker **that is** licensed under ORS 696.020, [as] **with respect** to any  
36 collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

37 (H) An escrow agent licensed under ORS 696.511, with respect to the escrow agent's:

38 (i) Collection or billing activities [involved in] **that are related to** closing an escrow, as defined  
39 in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

40 (ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

41 (I) An individual **who is** regularly employed as a credit person or in a similar capacity by one  
42 person, firm or corporation that is not a collection agency [as defined in this section].

43 (J) A public officer or a person [acting] **that acts** under order of a court.

44 (K) A person [acting] **that acts** as a property manager in collecting or billing for rent, fees,  
45 deposits or other sums due landlords of managed units.

1 (L) A person that [*is providing*] **provides** billing services. A person [*is providing*] **provides** bill-  
 2 ing services for the purposes of this subparagraph if the person engages, directly or indirectly, in  
 3 the business or pursuit of [*collection of*] **collecting** claims for another person, whether in the other  
 4 person's name or any other name, by any means that:

5 (i) [*Is*] **Uses** an accounting procedure, preparation of mail billing or any other means intended  
 6 to accelerate cash flow to the other person's bank account or to any separate trust account; and

7 (ii) Does not include any personal contact or contact by telephone with the person from whom  
 8 the claim is sought to be collected.

9 (M) A person that [*is providing*] **provides** factoring services. A person [*is providing*] **provides**  
 10 factoring services for the purposes of this subparagraph if the person engages, directly or indirectly,  
 11 in the business or pursuit of:

12 (i) Lending or advancing money to commercial clients on the security of merchandise or ac-  
 13 counts receivable and then enforcing collection actions or procedures [*on such accounts*] **for the**  
 14 **loans or advances**; or

15 (ii) Soliciting or collecting on accounts that have been purchased from commercial clients under  
 16 an agreement, whether or not the agreement:

17 (I) Allows recourse against the commercial client;

18 (II) Requires the commercial client to provide any form of guarantee of payment of the pur-  
 19 chased account; or

20 (III) Requires the commercial client to establish or maintain a reserve account in any form.

21 (N) An individual employed by another person that operates as a collection agency [*if the person*  
 22 *does not operate as a collection agency independent of that employment*], **unless the individual op-**  
 23 **erates an independent collection agency while being employed by a collection agency.**

24 (O) A mortgage banker as defined in ORS 86A.100.

25 (P) A public utility, as defined in ORS 757.005, a telecommunications utility, as defined in ORS  
 26 759.005, a people's utility district, as defined in ORS 261.010, [*and*] **or** a cooperative corporation  
 27 engaged in furnishing electric or communication service to consumers.

28 (Q) A public body or an individual [*collecting or attempting*] **that collects or attempts** to collect  
 29 claims owed, due or asserted to be owed or due to a public body, if the individual is an employee  
 30 of the public body.

31 (R) A person that receives an assignment of debt in any form without an obligation to pay the  
 32 assignor any of the proceeds resulting from a collection of all or a portion of the debt.

33 (S) A person for whom the Director of the Department of Consumer and Business Services de-  
 34 termines by order or by rule that the protection of the public health, safety and welfare does not  
 35 require registration with the Department **of Consumer and Business Services** as a collection  
 36 agency.

37 (2) "Collection system" means a scheme intended or calculated to be used to collect claims sent,  
 38 prepared or delivered by:

39 (a) A person [*who*] **that** in collecting or attempting to collect the person's own claim uses a  
 40 fictitious name or any name other than the person's own that indicates to the debtor that a third  
 41 person is collecting or attempting to collect the claim; or

42 (b) A person **that is** directly or indirectly engaged in soliciting claims for collection, or col-  
 43 lecting or attempting to collect claims owed or due or asserted to be owed or due another person.

44 (3) "Claim" means an obligation [*for the payment of*] **to pay** money or [*thing of*] value [*arising*]  
 45 **if the obligation arises** out of an agreement or contract, express or implied.

1 (4) “Client” or “customer” means a person [*authorizing or employing*] **that authorizes or em-**  
 2 **pl**oys a collection agency to collect a claim.

3 (5) “Debtor” means a person [*owing*] **that owes, or is** alleged to owe, a claim.

4 [(6) “*Debts incurred outside this state*” means an action or proceeding that:]

5 [(a) *Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff’s*  
 6 *benefit, by the defendant to perform services outside of this state or to pay for services to be performed*  
 7 *outside of this state by the plaintiff;*]

8 [(b) *Arises out of services actually performed for the plaintiff by the defendant outside of this state*  
 9 *or services actually performed for the defendant by the plaintiff outside of this state, if the performance*  
 10 *outside of this state was authorized or ratified by the defendant;*]

11 [(c) *Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff’s*  
 12 *benefit, by the defendant to deliver or receive outside of this state or to send from outside of this state*  
 13 *goods, documents of title or other things of value;*]

14 [(d) *Relates to goods, documents of title or other things of value sent from outside of this state by*  
 15 *the defendant to the plaintiff or a third person on the plaintiff’s order or direction;*]

16 [(e) *Relates to goods, documents of title or other things of value actually received outside of this*  
 17 *state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where*  
 18 *delivery to carrier occurred; or]*

19 [(f) *Where jurisdiction at the time the debt was incurred was outside of this state.*]

20 [(7) (6)(a) “Out-of-state collection agency” means a collection agency located outside of this  
 21 state [*whose*] **the activities of which**, within this state, are limited to collecting [*debts incurred*  
 22 *outside of this state from debtors*] **a debt that a debtor** located in this state **incurs outside this**  
 23 **state.**

24 (b) As used in this subsection, “collecting [*debts*] **a debt**” means collecting **a debt on behalf**  
 25 **of clients located outside this state** by means of interstate communications, including telephone,  
 26 mail or facsimile transmission, from the collection [*agency*] **agency’s** location in another state [*on*  
 27 *behalf of clients located outside of this state*].

28 [(8) (7) “Person” means an individual, firm, partnership, trust, joint venture, association, limited  
 29 liability company or corporation.

30 [(9) (8) “Public body” **has the meaning given that term in ORS 174.109.** [*means:*]

31 [(a) *The state and any branch, department, agency, board or commission of the state;*]

32 [(b) *A city, county, district or other political subdivision or municipal or public corporation or an*  
 33 *instrumentality thereof; and]*

34 [(c) *An intergovernmental agency, department, council, joint board of control created under ORS*  
 35 *190.125 or other like entity that is created under ORS 190.003 to 190.130 and that does not act under*  
 36 *the direction and control of any single member government.*]

37 [(10) (9) [*Registered*] or] “Registrant” means a person **that is** registered under ORS 697.005 to  
 38 697.095 or **that is** registered or licensed as a collection agency under the laws of another state.

39 [(11) (10) “Statement of account” means a report [*setting*] **that sets** forth amounts billed, in-  
 40 voices, credits allowed or aged balance due.

41 **SECTION 3.** ORS 697.015 is amended to read:

42 697.015. A person [*shall*] **may** not operate as a collection agency in this state unless the person  
 43 registers **and maintains a registration** with the Department of Consumer and Business Services  
 44 under ORS 697.031 [*and maintains the registration in accordance with that section*].

45 **SECTION 4.** ORS 697.031 is amended to read:

1       697.031. (1) The Director of the Department of Consumer and Business Services shall establish  
 2 by rule a program for *[registration of]* **registering** persons *[operating]* **that operate** as collection  
 3 agencies **and** that *[are required to]* **must** register with the Department of Consumer and Business  
 4 Services under ORS 697.015. The *[program shall include a requirement]* **department shall require**  
 5 *[that persons registering with the department file and]* **applicants for registration to file and reg-**  
 6 **istrants to** maintain with the department current information the department requires by rule. The  
 7 department may require any information necessary to carry out the program, including but not  
 8 limited to the following:

9       (a) The name and address of the *[person operating as a collection agency]* **applicant or regis-**  
 10 **trant.**

11       ***[(b) The name and address of the collection agency.]***

12       ***[(c)]*** (b) Any assumed names or business names *[used by the collection agency]* **the applicant or**  
 13 **registrant uses.**

14       ***[(d)]*** (c) Names of *[persons who perform the solicitation or collection of]* **individuals who solicit**  
 15 **or collect** claims or who *[perform the solicitation of]* **solicit** the right to repossess or the repos-  
 16 session of collateral security for the *[collection agency]* **applicant or registrant.**

17       ***[(e)]*** (d) Names of persons *[who]* **that** are agents of the *[collection agency]* **applicant or regis-**  
 18 **trant** for purposes of service of legal process.

19       (2)(a) The director shall require any person *[who]* **that** applies for registration as a collection  
 20 agency, other than an out-of-state collection agency, to file with the director a bond or an irrev-  
 21 ocable letter of credit in the sum of *[\$10,000]* **\$15,000** *[executed by]* **that** the applicant **executes** as  
 22 obligor, together with one or more corporate sureties or financial institutions authorized to do  
 23 business in this state. The bond or *[an]* irrevocable letter of credit *[shall]* **must** be executed to the  
 24 State of Oregon and for the use of the state and of any person who *[may]* **might** have a cause of  
 25 action against the obligor of the bond or *[an]* irrevocable letter of credit under ORS 697.005 to  
 26 697.095. The bond or *[an]* irrevocable letter of credit *[shall]* **must** be conditioned *[that]* **to require**  
 27 the *[obligor will]* **registrant to** faithfully conform to and abide by the provisions of ORS 697.005 to  
 28 697.095 and all rules *[lawfully made by]* the director **adopts** under ORS 697.005 to 697.095. *[and*  
 29 *will]* **The bond must also be conditioned to** pay to the state and to *[any such]* a person **that has**  
 30 **a cause of action against the obligor** *[any and all]* moneys that *[may]* become due or owing to the  
 31 state or to *[such]* **the person** *[from the obligor under and by virtue of]* **as a result of a registrant's**  
 32 **violation of** the provisions of ORS 697.005 to 697.095.

33       (b) *[If any person is aggrieved by the misconduct of a registrant required to file a bond or an*  
 34 *irrevocable letter of credit under paragraph (a) of this subsection or by the registrant's violation of any*  
 35 *law or rule lawfully made by the director under ORS 697.005 to 697.095 and recovers judgment there-*  
 36 *for, the person may, after the return unsatisfied either in whole or in part of any execution issued upon*  
 37 *the judgment, maintain an action for the person's own use upon the bond or irrevocable letter of credit*  
 38 *of the registrant in any court having jurisdiction of the amount claimed.]* **The State of Oregon or a**  
 39 **person that obtains a judgment against a registrant for violating ORS 697.005 to 697.095, a**  
 40 **rule the director adopts under ORS 697.005 to 697.095 or for other misconduct may bring in**  
 41 **a circuit court of this state an action against the bond or irrevocable letter of credit de-**  
 42 **scribed in this subsection for any amount the State of Oregon or the person does not obtain**  
 43 **by executing the judgment against the registrant.**

44       (c) The **registrant must continuously maintain the** bond or *[an]* irrevocable letter of credit  
 45 required by this subsection *[shall be continuously maintained]* in the amount required by this sub-

1 section. The aggregate liability of the surety under the bond for claims against the bond *[shall]* **may**  
 2 not exceed the penal sum of the bond no matter how many years the bond is in force. *[No]* **An** ex-  
 3 tension by continuation certificate, reinstatement, reissue or renewal of the bond *[shall]* **does not**  
 4 increase the liability of the surety.

5 (3) The director may include any of the following in the program for registration established  
 6 under this section:

7 (a) The director may require *[any filings with the department that the director determines to be*  
 8 *necessary to maintain current the information required for registration]* **a registrant to keep current**  
 9 **the information the registrant files with the department.** Filings required under this subsection  
 10 may include renewal of registration at reasonable intervals, filings within a reasonable time after  
 11 changes in a collection agency or other filings **that** the director determines *[to be]* **are** necessary.  
 12 In requiring filings under this subsection, the director shall attempt to minimize burdens the filings  
 13 might place on *[persons required to file]* **applicants for registration or registrants.**

14 (b) Except as provided in subsection (4) of this section, the director may *[establish and require*  
 15 *persons filing with the department under this section]* **require an applicant or registrant** to pay fees  
 16 for any registration or filing *[made with the department]* **under this section.** The director *[shall]*  
 17 **may** not establish fees for more than an amount necessary to cover the administrative costs of the  
 18 filing or registration.

19 (c) The **director may establish the program for registration** *[may be established]* in any divi-  
 20 sion of the department *[the director determines to be best able to administer the program].*

21 (d) The director may issue<sup>1</sup>, *[but may not require,]* certificates of registration or other indicia of  
 22 registration that the director determines will *[be of assistance to persons operating as a collection*  
 23 *agency in establishing that the persons are]* **assist a registrant to establish that the registrant**  
 24 **is** registered with the department, **but the director may not require the registrant to use the**  
 25 **certificate for any other purpose.**

26 (4) An out-of-state collection agency is exempt from *[the]* registration *[fee]* under this section if:

27 (a) The out-of-state collection agency is **licensed or** registered **as a collection agency** in an-  
 28 other state *[and that state does not require payment of an initial fee by a person who collects debts in*  
 29 *that state only by means of interstate communications from the person's location in another state];*

30 (b) **The other state exempts a collection agency located and registered in this state from**  
 31 **the registration requirements of the other state; and**

32 (c) **The out-of-state collection agency agrees to accept service of process from the di-**  
 33 **rector and consents to investigations in response to allegations of unlawful collection prac-**  
 34 **tices under ORS 646.639 or alleged violations of ORS 697.005 to 697.095.**

35 *[(5) If an out-of-state collection agency is not exempt from payment of a registration fee under this*  
 36 *section, the registration fee for the out-of-state collection agency shall be not less than the fee charged*  
 37 *by the state in which the out-of-state collection agency is located to a person who collects debts in that*  
 38 *state only by means of interstate communications from the person's location in another state.]*

39 *[(6) If the director determines that the state where an out-of-state collection agency is located and*  
 40 *registered, if required to be registered, exempts a collection agency located and registered in this state*  
 41 *from registration requirements in that state, the director shall exempt out-of-state collection agencies*  
 42 *located in that state from the registration requirements of ORS 697.005 to 697.095.]*

43 *[(7)]* (5) The department shall maintain current records of the information required for regis-  
 44 tration under this section.

45 **SECTION 5.** ORS 697.045 is amended to read:



1 697.045. (1) A [*registered collection agency*] **registrant** has a property right in any claim or ac-  
 2 count assigned to the [*agency*] **registrant** in writing for collection. Except as [*may be otherwise*  
 3 *provided in writing between*] the assignor of the claim or account and the [*registered collection*  
 4 *agency*] **registrant may otherwise provide in writing**, the [*registered collection agency*] **registrant**  
 5 as assignee of the claim or account, in [*its*] **the registrant's** own name, may:

6 (a) Collect the claim or account;

7 (b) Compromise or accept settlement of the claim or account;

8 (c) Bring and maintain an action to recover the amount owing from the claim or account;  
 9 [*and*] **or**

10 (d) With prior written approval of the assignor, transfer or forward the claim or account to  
 11 another collection agency for collection.

12 (2) Except as [*may be otherwise provided in writing between*] the assignor of the claim or account  
 13 and the [*registered collection agency*] **registrant may otherwise provide in writing**, the assignor  
 14 may withdraw the claim or account from the [*agency*] **registrant** at any time without condition or  
 15 charge.

16 (3) Notwithstanding ORS 9.160 and 9.320, in any action in the small claims department of a  
 17 circuit court or justice court a [*registered collection agency*] **registrant** may appear as a party  
 18 without appearance by attorney for the purpose of recovering the amount owing on a claim or ac-  
 19 count assigned to the [*agency*] **registrant** in writing for collection. The provisions of this subsection  
 20 apply to any supplementary proceeding in aid of execution after entry of a judgment in the small  
 21 claims department.

22 (4) [*No*] **A** collection agency [*is entitled to*] **may not** bring or maintain an action [*involving the*  
 23 *collection of*] **to collect** a claim or account on behalf of [*its*] **the collection agency's** customers in  
 24 any courts of this state without alleging and proving that [*it is duly registered under ORS 697.015*  
 25 *and 697.031.*] **the collection agency is a registrant. The court shall receive as prima facie evi-**  
 26 **dence that the collection agency is a registrant** [*a registration certificate or*] a certification of  
 27 registration [*by*] **that** the Director of the Department of Consumer and Business Services [*for any*  
 28 *designated time period shall be received by the court as prima facie evidence of the collection agency's*  
 29 *registration*] **issues and in which the director states that the collection agency is a registrant**  
 30 for [*the*] **a designated** time period [*designated*].

31 **SECTION 6.** ORS 697.093 is amended to read:

32 697.093. (1) The Director of the Department of Consumer and Business Services may:

33 (a) Undertake [*the*] investigations, including investigations outside this state, that the director  
 34 considers necessary to determine whether a person has:

35 (A) Violated, is violating or is about to violate:

36 (i) ORS **646.639**, 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115;

37 (ii) A rule adopted under ORS 697.031, 697.085 or 697.086; or

38 (iii) An order issued under this section;

39 (B) Filed information under ORS 697.031 that is false or untruthful; or

40 (C) Failed to maintain in effect the bond or [*an*] irrevocable letter of credit required under ORS  
 41 697.031.

42 (b) Require a person to file a statement in writing, under oath or otherwise, concerning the  
 43 matter [*being investigated*] **the director is investigating.**

44 (c) Take evidence from, [*witnesses*] and compel the attendance of, witnesses and the production  
 45 of books, papers, correspondence, memoranda, agreements or other documents or records that the

1 director considers relevant or material to an investigation or proceeding.

2 (d) *[If the director has reason to believe that a person has:] Issue an order:*

3 (A) **To cease and desist, if the director believes that the person** violated, is violating or is  
4 about to violate ORS **646.639**, 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 or a rule  
5 **the director** adopted under ORS 697.031, 697.085 or 697.086~~], issue an order to cease and desist from~~  
6 ~~the violation].~~ **In connection with an order under this subparagraph, the director may impose**  
7 **a civil penalty as provided in ORS 697.095 and may seek to compel a person to disgorge all**  
8 **payments of principal, interest or fees the person obtained in violation of ORS 646.639,**  
9 **697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 or a rule the director adopted un-**  
10 **der ORS 697.031, 697.085 or 697.086.**

11 (B) *[Filed]* **To correct** information **filed** under ORS 697.031 that **the director believes** is false  
12 or untruthful~~], issue an order to correct the filing].~~

13 (C) *[Failed]* **To compel a registrant to** maintain in effect the bond or *[an]* irrevocable letter  
14 of credit required under ORS 697.031~~], issue an order to remedy the failure].~~

15 (2) The authority conferred by this section is in addition to and not in lieu of any other au-  
16 thority conferred on the director.

17 **SECTION 7.** ORS 697.095 is amended to read:

18 697.095. (1) In addition to any other penalty provided by law, a person who violates any pro-  
19 vision of ORS **646.639**, 697.015 or 697.058 or any rule adopted under ORS 697.031, 697.085 or 697.086  
20 is subject to forfeiture and payment of a civil penalty to the Department of Consumer and Business  
21 Services in an amount of not more than ~~[\$1,000]~~ **\$5,000** for each offense.

22 (2) Civil penalties under this section *[shall]* **must** be imposed as provided in ORS 183.745.

23 (3) All penalties recovered *[shall]* **must** be deposited in the Consumer and Business Services  
24 Fund created by ORS 705.145.

25 **SECTION 8.** (1) **The amendments to ORS 697.005, 697.015, 697.031 and 697.045 by sections**  
26 **2 to 5 of this 2015 Act apply on and after the operative date specified in section 9 of this 2015**  
27 **Act to persons required to register as collection agencies under ORS 697.015, to procedures**  
28 **for registering applicants and to bonding requirements for registrants.**

29 (2) **The amendments to ORS 646.639, 697.093 and 697.095 by sections 1, 6 and 7 of this 2015**  
30 **Act apply to debt collection activities and unlawful collection practices that occur on or after**  
31 **the operative date specified in section 9 of this 2015 Act.**

32 **SECTION 9.** (1) **The amendments to ORS 646.639, 697.005, 697.015, 697.031, 697.045, 697.093**  
33 **and 697.095 by sections 1 to 7 of this 2015 Act become operative 91 days after the effective**  
34 **date of this 2015 Act.**

35 (2) **The Director of the Department of Consumer and Business Services and the Attorney**  
36 **General may take any action before the operative date specified in subsection (1) of this**  
37 **section that is necessary to enable the director or the Attorney General to exercise, on and**  
38 **after the operative date specified in subsection (1) of this section, all of the duties, functions**  
39 **and powers conferred on the director and the Attorney General by the amendments to ORS**  
40 **646.639, 697.005, 697.015, 697.031, 697.045, 697.093 and 697.095 by sections 1 to 7 of this 2015 Act.**

41 **SECTION 10.** This 2015 Act being necessary for the immediate preservation of the public  
42 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
43 on its passage.