

Chapter 697

2017 EDITION

Collection Agencies; Check-Cashing Businesses; Debt Management Service Providers

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OCCUPATIONS AND PROFESSIONS

COLLECTION AGENCIES

697.005 Definitions for ORS 697.005 to 697.095. As used in ORS 697.005 to 697.095:

(1)(a) “Collection agency” means:

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

(B) A person that directly or indirectly furnishes, attempts to furnish, sells or offers to sell forms represented to be a collection system even if the forms direct the debtor to make payment to the creditor and even if the forms may be or are actually used by the creditor in the creditor’s own name;

(C) A person that, in attempting to collect or in collecting the person’s own claim, uses a fictitious name or any name other than the person’s own that indicates to the debtor that a third person is collecting or attempting to collect the claim;

(D) A person in the business of engaging in the solicitation of the right to repossess or in repossessing collateral security due or asserted to be due to another person; or

(E) A person that, in the collection of claims from another person:

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

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

(b) “Collection agency” does not include:

(A) An individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a registrant under ORS 697.005 to 697.095, if the individual is an employee of the registrant.

(B) An individual collecting or attempting to collect claims for not more than three employers, if the individual carries on all collection efforts in the name of the employer and the individual is an employee of the employer.

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

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

(E) A licensed certified public accountant or public accountant rendering services in the performance of the duties of a licensed certified public accountant or public accountant.

(F) A bank, mutual savings bank, consumer finance company, trust company, savings and loan association, credit union or debt consolidation agency.

(G) A principal real estate broker licensed under ORS 696.020, as to any collection or billing activity that involves a real estate closing escrow, as defined in ORS 696.505.

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

(i) Collection or billing activities involved in closing an escrow, as defined in ORS 696.505, or related to a collection escrow, as defined in ORS 696.505; or

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

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

(J) A public officer or a person acting under order of a court.

(K) A person acting as a property manager in collecting or billing for rent, fees, deposits or other sums due landlords of managed units.

(L) A person that is providing billing services. A person is providing billing services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of collection of claims for another person, whether in the other person’s name or any other name, by any means that:

(i) Is an accounting procedure, preparation of mail billing or any other means intended to accelerate cash flow to the other person’s bank account or to any separate trust account; and

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

(M) A person that is providing factoring services. A person is providing factoring services for the purposes of this subparagraph if the person engages, directly or indirectly, in the business or pursuit of:

(i) Lending or advancing money to commercial clients on the security of merchandise or accounts receivable and then enforcing collection actions or procedures on such accounts; or

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

(I) Allows recourse against the commercial client;

(II) Requires the commercial client to provide any form of guarantee of payment of the purchased account; or

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

(N) An individual employed by another person that operates as a collection agency if the person does not operate as a collection agency independent of that employment.

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

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

(Q) A public body or an individual collecting or attempting to collect claims owed, due or asserted to be owed or due to a public body, if the individual is an employee of the public body.

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

(S) A person for whom the Director of the Department of Consumer and Business Services determines by order or by rule that the protection of the public health, safety and welfare does not require registration with the department as a collection agency.

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

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

(b) A person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

(3) "Claim" means an obligation for the payment of money or thing of value arising out of an agreement or contract, express or implied.

(4) "Client" or "customer" means a person authorizing or employing a collection agency to collect a claim.

(5) "Debtor" means a person owing or alleged to owe a claim.

(6) "Debts incurred outside this state" means an action or proceeding that:

(a) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's benefit, by the defendant to perform services outside of this state or to pay for services to be performed outside of this state by the plaintiff;

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

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

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

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

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

(7) "Out-of-state collection agency" means a collection agency located outside of this state whose activities within this state are limited to collecting debts incurred outside of this state from debtors located in this state. As used in this subsection, "collecting debts" means collecting by means of interstate communications, including telephone, mail or facsimile transmission from the collection agency location in another state on behalf of clients located outside of this state.

(8) "Person" means an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

(9) "Public body" means:

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

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

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

(10) “Registered” or “registrant” means a person registered under ORS 697.005 to 697.095 or registered or licensed as a collection agency under the laws of another state.

(11) “Statement of account” means a report setting forth amounts billed, invoices, credits allowed or aged balance due. [1981 c.85 §2; 1987 c.373 §43; 1993 c.744 §20; 1995 c.622 §1; 1999 c.468 §1; 2001 c.917 §5; 2009 c.134 §1; 2013 c.444 §1]

697.010 [Amended by 1959 c.525 §1; 1963 c.580 §58; 1975 c.364 §1; 1977 c.185 §4; repealed by 1981 c.85 §17]

697.015 Registration requirement. A person shall not operate as a collection agency in this state unless the person registers with the Department of Consumer and Business Services under ORS 697.031 and maintains the registration in accordance with that section. [1981 c.85 §3; 1995 c.622 §2]

697.020 [Amended by 1953 c.519 §2; 1959 c.525 §2; 1963 c.558 §1; 1969 c.373 §5; 1973 c.547 §1; 1975 c.364 §2; repealed by 1977 c.185 §5 (697.021 enacted in lieu of 697.020)]

697.021 [1977 c.185 §6 (enacted in lieu of 697.020); repealed by 1981 c.85 §17]

697.025 [1977 c.185 §3; 1981 c.85 §4; 1991 c.86 §1; 1993 c.205 §1; 1993 c.508 §42; repealed by 1995 c.622 §15]

697.030 [Amended by 1959 c.525 §3; 1975 c.364 §3; 1977 c.185 §7; repealed by 1981 c.85 §17]

697.031 Registration procedure; bond or letter of credit; fees; procedures for out-of-state collection agencies; rules. (1) The Director of the Department of Consumer and Business Services shall establish by rule a program for registration of persons operating as collection agencies that are required to register with the Department of Consumer and Business Services under ORS 697.015. The program shall include a requirement that persons registering with the department file and maintain with the department current information the department requires by rule. The department may require any information necessary to carry out the program, including but not limited to the following:

(a) The name and address of the person operating as a collection agency.

(b) The name and address of the collection agency.

(c) Any assumed names or business names used by the collection agency.

(d) Names of persons who perform the solicitation or collection of claims or who perform the solicitation of the right to repossess or the repossession of collateral security for the collection agency.

(e) Names of persons who are agents of the collection agency for purposes of service of legal process.

(2)(a) The director shall require any person who applies for registration as a collection agency, other than an out-of-state collection agency, to file with the director a bond or an irrevocable letter of credit in the sum of \$10,000 executed by the applicant as obligor, together with one or more corporate sureties or financial institutions authorized to do business in this state. The bond or an irrevocable letter of credit shall be executed to the State of Oregon and for the use of the state and of any person who may have a cause of action against the obligor of the bond or an irrevocable letter of credit under ORS 697.005 to 697.095. The bond or an irrevocable letter of credit shall be conditioned that the obligor will faithfully conform to and abide by the provisions of ORS 697.005 to 697.095 and all rules lawfully made by the director under ORS 697.005 to 697.095, and will pay to the state and to any such person any and all moneys that may become due or owing to the state or to such person from the obligor under and by virtue of the provisions of ORS 697.005 to 697.095.

(b) If any person is aggrieved by the misconduct of a registrant required to file a bond or an irrevocable letter of credit under paragraph (a) of this subsection or by the registrant’s violation of any law or rule lawfully made by the director under ORS 697.005 to 697.095 and recovers judgment therefor, the person may, after the return unsatisfied either in whole or in part of any execution issued upon the judgment, maintain an action for the person’s own use upon the bond or irrevocable letter of credit of the registrant in any court having jurisdiction of the amount claimed.

(c) The bond or an irrevocable letter of credit required by this subsection shall be continuously maintained in the amount required by this subsection. The aggregate liability of the surety under the bond for claims against the bond shall not exceed the penal sum of the bond no matter how many years the bond is in force. No extension by continuation certificate, reinstatement, reissue or renewal of the bond shall increase the liability of the surety.

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

(a) The director may require any filings with the department that the director determines to be necessary to maintain current the information required for registration. Filings required under this subsection may include renewal of registration at reasonable intervals, filings within a reasonable time

after changes in a collection agency or other filings the director determines to be necessary. In requiring filings under this subsection, the director shall attempt to minimize burdens the filings might place on persons required to file.

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

(c) The program may be established in any division of the department the director determines to be best able to administer the program.

(d) The director may issue, but may not require, certificates of registration or other indicia of registration that the director determines will be of assistance to persons operating as a collection agency in establishing that the persons are registered with the department.

(4) An out-of-state collection agency is exempt from the registration fee under this section if the out-of-state collection agency is registered in another state and that state does not require payment of an initial fee by a person who collects debts in that state only by means of interstate communications from the person's location in another state.

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

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

(7) The department shall maintain current records of the information required for registration under this section. [1981 c.85 §5; 1983 c.69 §1; 1991 c.627 §1; 1995 c.622 §3; 1997 c.249 §211]

697.035 [1959 c.525 §10; 1963 c.558 §2; 1971 c.119 §2; 1974 c.25 §2; 1975 c.364 §4; 1977 c.873 §20; repealed by 1981 c.85 §17]

697.038 [1971 c.119 §1; 1973 c.547 §2; 1974 c.25 §3; 1975 c.364 §5; repealed by 1981 c.85 §17]

697.039 Revocation, suspension or refusal to issue or renew registration. (1) The Director of the Department of Consumer and Business Services may refuse to issue or renew or may revoke or suspend any registration under ORS 697.031 if the director determines that:

(a) Any information a person files with the director under ORS 697.031 is false or untruthful;

(b) A person has violated any of the rules of the director for registration under ORS 697.031;

(c) A person has violated the provisions of ORS 697.045 or 697.058;

(d) A person has failed to maintain in effect the bond or an irrevocable letter of credit required under ORS 697.031;

(e) A person has died or become incapacitated;

(f) A person has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession; or

(g) A person has been convicted of a felony or misdemeanor, an essential element of which is fraud.

(2) A revocation or suspension under this section may be for a time certain or upon condition that certain acts be performed.

(3) If the director issued an initial order of revocation of a registration before the expiration of the registration, the director may enter a final order of revocation even though the registration has expired.

(4) Actions of the director under this section are subject to the provisions of ORS chapter 183. [1981 c.85 §6; 1991 c.627 §2; 1995 c.622 §4; 1999 c.413 §1; 2005 c.338 §11]

697.040 [Repealed by 1959 c.525 §36]

697.041 [1959 c.525 §11; 1963 c.558 §3; 1969 c.373 §6; 1973 c.547 §3; 1973 c.827 §79; 1974 c.36 §22; 1975 c.364 §6; repealed by 1981 c.85 §17]

697.045 Status of accounts and claims assigned to agency; rights of assignor; appearance in small claims or justice court; registration as condition of access to courts. (1) A registered collection agency has a property right in any claim or account assigned to the agency in writing for collection. Except as may be otherwise provided in writing between the assignor of the claim or account and the registered collection agency, the registered collection agency as assignee of the claim or account, in its own name, may:

(a) Collect the claim or account;

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

(c) Bring and maintain an action to recover the amount owing from the claim or account; and

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

(2) Except as may be otherwise provided in writing between the assignor of the claim or account and the registered collection agency, the assignor may withdraw the claim or account from the agency at any time without condition or charge.

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

(4) No collection agency is entitled to bring or maintain an action involving the collection of a claim or account on behalf of its customers in any courts of this state without alleging and proving that it is duly registered under ORS 697.015 and 697.031. A registration certificate or a certification of registration by the Director of the Department of Consumer and Business Services for any designated time period shall be received by the court as prima facie evidence of the collection agency's registration for the time period designated. [1981 c.85 §7; 2003 c.78 §1]

697.050 [Repealed by 1959 c.525 §36]

697.051 [1963 c.558 §17; 1977 c.185 §8; repealed by 1981 c.85 §17]

697.053 Registration exclusive regulation; local fees authorized. The provisions of ORS 697.015 and 697.031 are exclusive and no political subdivision or agency of this state may require of a collection agency any registration, license or fee for any collection agency duly registered under ORS 697.015 and 697.031. Nothing in this section limits the authority of any political subdivision to levy and collect a general and nondiscriminatory license or registration fee upon all businesses in the political subdivision or to levy a tax based upon the business conducted by any registered collection agency within the political subdivision. [1981 c.85 §8]

697.055 [1975 c.364 §37; 1977 c.185 §9; repealed by 1981 c.85 §17]

697.058 Agency records; business office; trust accounts; reporting requirements; audit of trust accounts; cost of audit; exemptions. (1) Except as provided in

subsection (9) of this section, every collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all such records and all customers' funds within this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry thereon. Collection agencies shall keep other records for a period of two years from the date of the last entry thereon. Collection agencies, or any employee thereof, shall not intentionally make any false entry in any collection agency record or intentionally mutilate, destroy or otherwise dispose of any such record within the time limits provided in this section. This subsection does not apply to out-of-state collection agencies.

(2) Except as provided in subsection (9) of this section, every collection agency shall establish and maintain a regular, active business office in this state for the purpose of conducting business in this state. The office shall be open to the public during reasonable, stated business hours. This subsection does not apply to out-of-state collection agencies.

(3) A collection agency shall not commingle the money of customers with other moneys.

(4) Except as provided in subsection (9) of this section, a collection agency shall maintain a separate trust account in this state for customers' funds and shall keep funds in such trust account until disbursed to the customer. This subsection does not apply to out-of-state collection agencies.

(5) Except as provided in subsection (9) of this section, every collection agency that requires customers to pay an amount for services prior to the time that the services are rendered shall maintain a separate trust account in this state for prepayments and shall keep prepayment funds in the trust account for 180 days or until the services for which prepayment is made are performed, whichever occurs first.

(6) Every collection agency, within 30 days after the close of each calendar or fiscal month, shall report and pay to its customers the net proceeds due and payable of all collections made during that calendar or fiscal month. When the net proceeds are less than \$5 at the end of any calendar or fiscal month, payments may be deferred for a period not to exceed three months.

(7) Upon the motion of the Director of the Department of Consumer and Business Services or upon receipt of a complaint by a customer of the collection agency, the director may audit the collection agency's trust accounts with respect to any violation by the

collection agency of this section. If the director finds any discrepancy in the trust accounts, the director also may audit the operating account of the collection agency. The collection agency shall pay the reasonable cost of an audit under this section, as determined by the director.

(8) If a collection agency does not pay the cost of the audit determined under subsection (7) of this section, the director may assign the delinquent account to the Department of Revenue for collection in the manner that other debts are collected under ORS 293.250.

(9) The director, by rule or order, may exempt a collection agency from the requirements of subsection (1), (2), (4) or (5) of this section if the collection agency:

(a) Satisfies the director that the books, records and trust accounts of the collection agency may be examined by the director without undue delay or expense;

(b) Provides for timely and convenient remittance of debtor payments and funds owed to the customer; and

(c) Complies with all conditions the director may require relating to additional bonding requirements and to provisions for auditing financial statements of trust accounts, receiving payments from and communicating with debtors, and remitting funds to customers. [1981 c.85 §9; 1983 c.69 §2; 1995 c.622 §9; 1999 c.413 §2; 1999 c.468 §2]

697.060 [Repealed by 1959 c.525 §36]

697.061 [1959 c.525 §5; 1963 c.558 §4; 1963 c.580 §59; 1973 c.547 §4; 1975 c.364 §7; repealed by 1981 c.85 §17]

697.063 Status of business records and bank accounts following revocation of registration; liquidation; expenses and attorney fees. (1) When the Director of the Department of Consumer and Business Services revokes a registration, the director may take possession of all business records and all bank accounts of the registrant and retain possession of them pending the further proceedings specified in this section. The director shall inventory all the business records and all bank accounts of the registrant. The director shall file one copy of the inventory in the office of the director and one copy in the office of the clerk of the circuit court of the county in which the principal place of business of the registrant is located and shall mail one copy to each shareholder or partner of the registrant at the last-known address of the shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and give it a case number. The director by rule may delegate the director's authority under this section relating to the inventory of business records and bank accounts of a registrant.

(2) If any person refuses to permit the director to take possession of business records and bank accounts under subsection (1) of this section, the director may apply to the circuit court of the county in which the principal place of business of the registrant is located for an order appointing a receiver, who may be the director, to take possession.

(3) The business records and bank accounts of the registrant shall be liquidated. If a receiver has not been appointed, the director shall apply for appointment by the court in which the inventory was filed. The liquidation shall proceed as provided by law for liquidation of a private corporation in receivership.

(4) The expenses of the receiver and attorney fees, as well as all expenditures required in the liquidation proceedings, shall be fixed by the director, subject to the approval of the court, and, upon certification by the director, shall be paid out of the funds in the hands of the director as such receiver. [1995 c.622 §6; 2003 c.576 §218]

697.070 [Amended by 1959 c.525 §6; 1961 c.686 §1; 1969 c.373 §7; 1971 c.119 §3; 1973 c.547 §5; 1974 c.25 §4; 1975 c.364 §8; 1977 c.873 §21; repealed by 1981 c.85 §17]

697.075 [1981 c.85 §16; 1991 c.249 §63; repealed by 1995 c.622 §15]

697.080 [Amended by 1959 c.525 §7; 1963 c.558 §5; 1969 c.373 §8; 1975 c.364 §9; repealed by 1981 c.85 §17]

697.085 Rules. The Director of the Department of Consumer and Business Services may adopt rules for the administration and enforcement of ORS 697.005 to 697.095, 697.105 and 697.115. [1983 c.69 §5; 2005 c.338 §12]

697.086 Rules for collection of child support payments. (1) The Director of the Department of Consumer and Business Services shall adopt rules that regulate the practices of a collection agency that enters into an agreement with an obligee to collect child support payments as provided in ORS 25.020.

(2) The rules adopted by the director under this section shall be as consistent as practicable with the provisions of 15 U.S.C. 1692c to 1692f. [2003 c.421 §4]

697.087 Injunction; damages; attorney fees; limitation on actions. (1) Any person injured as a result of the violation of any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085 may bring an action in an appropriate court to enjoin the practice or to recover actual damages or \$200, whichever is greater. The court or the jury may award punitive damages and the court may provide such equitable relief as it deems necessary or proper.

(2) Notwithstanding any other actions provided by law, the Attorney General of the State of Oregon or the prosecuting attorney

of any county may bring an action in the name of the state against any person to restrain and prevent violation of any provision of ORS 697.005 to 697.095.

(3) In any action brought by a person under this section, the court may award, in addition to the relief provided, reasonable attorney fees at trial and on appeal and costs. If the defendant prevails, the court may award reasonable attorney fees at trial and on appeal and costs if it finds the action to be frivolous.

(4) Actions brought under this section shall be commenced within one year from the date the violation occurs. [1995 c.622 §7]

697.090 [Repealed by 1959 c.525 §36]

697.091 Fees or compensation received in violation of law; disposition. (1) A person who violates any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085 shall not charge or receive any fee or compensation on any moneys received or collected while in violation of any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085.

(2) A person shall not charge or receive any fee or compensation on any moneys received or collected while operating in accordance with any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085 but that is received or collected as a result of the person's acts as a collection agency or out-of-state collection agency operating in violation of any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031 or 697.085.

(3) All moneys collected or received in violation of this section shall be immediately returned to the assignors, or their assigns, of the account on which the moneys were paid. [1995 c.622 §8]

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

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

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

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

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

(iii) An order issued under this section;

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

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

(b) Require a person to file a statement in writing, under oath or otherwise, concerning the matter being investigated.

(c) Take evidence from witnesses and compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to an investigation or proceeding.

(d) If the director has reason to believe that a person has:

(A) Violated, is violating or is about to violate ORS 697.015, 697.031, 697.045, 697.058, 697.091, 697.105 or 697.115 or a rule adopted under ORS 697.031, 697.085 or 697.086, issue an order to cease and desist from the violation.

(B) Filed information under ORS 697.031 that is false or untruthful, issue an order to correct the filing.

(C) Failed to maintain in effect the bond or an irrevocable letter of credit required under ORS 697.031, issue an order to remedy the failure.

(2) The authority conferred by this section is in addition to and not in lieu of any other authority conferred on the director. [2005 c.338 §9]

697.094 Orders issued under ORS 697.093. (1) The Director of the Department of Consumer and Business Services shall serve an order under ORS 697.093 on the person named in the order.

(2) An order issued under ORS 697.093 becomes effective upon service on the person named in the order.

(3) ORS 183.413 to 183.470 apply to an order issued under ORS 697.093.

(4) Notwithstanding subsection (3) of this section, a person may not obtain a hearing on the order unless the person requests the hearing in writing within 20 days after service of the order.

(5) A person who does not request a contested case hearing may not obtain judicial review of the order.

(6) The director may vacate or modify an order issued under ORS 697.093. A modified order is effective upon service on the person named in the order. [2005 c.338 §10]

697.095 Civil penalties. (1) In addition to any other penalty provided by law, a person who violates any provision of ORS 697.015 or 697.058 or any rule adopted under ORS 697.031, 697.085 or 697.086 is subject to forfeiture and payment of a civil penalty to

the Department of Consumer and Business Services in an amount of not more than \$1,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered shall be deposited in the Consumer and Business Services Fund created by ORS 705.145. [1983 c.69 §4; 1987 c.373 §44; 1991 c.734 §87; 2005 c.338 §13]

697.098 [1981 c.267 §2; repealed by 1987 c.373 §85]

697.100 [Amended by 1959 c.525 §8; 1969 c.373 §9; 1975 c.364 §10; repealed by 1981 c.85 §17]

697.105 Fee for collection of debt owed public body; notice to debtor; amount. (1) Except as provided in ORS 1.202 and 293.231, if a public body, as defined in ORS 174.109, uses a private collection agency to collect a debt owed to the public body, the public body may add a reasonable fee to the amount of the debt, payable by the debtor, to compensate the public body, in whole or in part, for the collection agency fee incurred or to be incurred.

(2) A fee may not be added under subsection (1) of this section unless the public body has provided notice to the debtor:

(a) Of the existence of the debt;

(b) That the debt may be assigned to a private collection agency for collection; and

(c) Of the amount of the fee that may be added to the debt under subsection (1) of this section.

(3) Except as provided by federal law, the public body may not add a fee under this section that exceeds the collection fee of the private collection agency. [2003 c.66 §1; 2007 c.204 §1]

697.107 Prohibition on use of public agency or public official seal or letterhead. (1) A public agency or public official may not:

(a) Allow a person or entity in the practice of collecting debt, including restitution, to use the seal or letterhead of the public agency or public official; or

(b) Receive or collect a fee from a person or entity in the practice of collecting debt, including restitution, in exchange for the person or entity using the seal or letterhead of the public agency or public official.

(2) As used in this section, “public agency” and “public official” have the meanings given those terms in ORS 171.725. [2013 c.551 §1]

697.110 [Repealed by 1959 c.525 §36]

697.111 [1959 c.525 §12; 1961 c.686 §2; 1963 c.558 §15; 1974 c.25 §5; 1975 c.364 §11; repealed by 1981 c.85 §17]

697.115 Fee for collection of commercial debt; amount; limit. (1) As used in this section, “commercial debt” means any obligation for payment of money or thing of

value arising out of an agreement or contract, express or implied, in which the transaction that is the subject of the agreement or contract is not primarily for personal, family or household purposes.

(2) A person using a private collection agency to collect a commercial debt owed to the person may add a reasonable fee to the amount of the commercial debt, payable by the debtor, to compensate the person, in whole or in part, for the collection agency fee incurred or to be incurred. A person may not add a fee under this section that:

(a) Exceeds the collection fee of the private collection agency; or

(b) Was not authorized in the agreement or contract creating the commercial debt. [2003 c.66 §2; 2007 c.204 §2]

697.120 [Amended by 1953 c.520 §5; 1961 c.686 §3; 1974 c.25 §6; 1975 c.364 §12; repealed by 1981 c.85 §17]

697.130 [Amended by 1953 c.520 §5; repealed by 1959 c.525 §36]

697.140 [Repealed by 1959 c.525 §36]

697.145 [Amended by 1953 c.520 §5; repealed by 1959 c.525 §36]

697.146 [1959 c.525 §13; 1961 c.686 §4; 1963 c.558 §6; 1971 c.119 §4; 1974 c.25 §7; 1975 c.364 §13; repealed by 1981 c.85 §17]

697.150 [Amended by 1953 c.520 §5; repealed by 1959 c.525 §36]

697.160 [Amended by 1953 c.520 §5; repealed by 1959 c.525 §36]

697.165 [Amended by 1959 c.525 §16; 1963 c.558 §16; 1963 c.580 §60; 1969 c.591 §300; 1975 c.364 §14; repealed by 1981 c.85 §17]

697.170 [Amended by 1957 §469 §1; repealed by 1959 c.525 §36]

697.180 [Repealed by 1959 c.525 §36]

697.181 [1959 c.525 §14; 1963 c.580 §61; 1969 c.373 §10; 1975 c.364 §15; repealed by 1981 c.85 §17]

697.190 [Amended by 1959 c.525 §17; 1963 c.558 §7; 1975 c.364 §16; repealed by 1981 c.85 §17]

697.200 [Amended by 1975 c.364 §17; repealed by 1981 c.85 §17]

697.210 [Amended by 1959 c.525 §18; 1963 c.580 §62; 1975 c.364 §18; repealed by 1981 c.85 §17]

697.220 [Amended by 1959 c.525 §19; repealed by 1973 c.794 §34]

697.230 [Amended by 1959 c.525 §20; 1963 c.558 §8; 1963 c.580 §63; 1975 c.364 §19; repealed by 1981 c.85 §17]

697.235 [1959 c.525 §22; 1975 c.364 §20; 1977 c.185 §10; repealed by 1981 c.85 §17]

697.240 [Amended by 1957 c.429 §2; 1959 c.525 §23; 1963 c.558 §9; 1975 c.364 §21; repealed by 1981 c.85 §17]

697.245 [1974 c.25 §9; 1975 c.364 §22; repealed by 1981 c.85 §17]

697.250 [Amended by 1959 c.525 §24; 1975 c.364 §23; 1977 c.185 §11; repealed by 1981 c.85 §17]

697.260 [Repealed by 1959 c.525 §36]

697.261 [1959 c.525 §15; 1963 c.558 §10; 1963 c.580 §64; 1969 c.373 §11; 1973 c.547 §6; 1975 c.364 §24; repealed by 1981 c.85 §17]

697.270 [Amended by 1959 c.525 §25; repealed by 1971 c.734 §21]

697.271 [1975 c.364 §33; repealed by 1981 c.85 §17]

- 697.273** [1975 c.364 §34; repealed by 1981 c.85 §17]
697.275 [1963 c.580 §57; 1975 c.364 §25; repealed by 1981 c.85 §17]
697.280 [Repealed by 1959 c.525 §36]
697.281 [1975 c.364 §36; repealed by 1981 c.85 §17]
697.285 [1963 c.580 §56; repealed by 1975 c.364 §38]
697.290 [Amended by 1959 c.525 §26; 1963 c.558 §11; 1971 c.119 §5; 1975 c.364 §26; repealed by 1981 c.85 §17]
697.295 [1977 c.185 §2; repealed by 1981 c.85 §17]
697.300 [1969 c.373 §2; 1975 c.364 §27; repealed by 1981 c.85 §17]
697.305 [1969 c.373 §3; 1975 c.364 §28; repealed by 1981 c.85 §17]
697.310 [1969 c.373 §4; 1975 c.364 §29; repealed by 1981 c.85 §17]
697.330 [1975 c.364 §35; repealed by 1981 c.85 §17]
697.400 [Repealed by 1959 c.525 §36]
697.401 [1959 c.525 §29; 1963 c.558 §12; repealed by 1963 c.580 §103]
697.402 [1963 c.580 §52; 1969 c.314 §98; 1971 c.753 §39; 1975 c.364 §30; 1977 c.185 §12; repealed by 1981 c.85 §17]
697.410 [Repealed by 1959 c.525 §36]
697.411 [1959 c.525 §30; 1963 c.558 §13; repealed by 1963 c.580 §103]
697.412 [1963 c.580 §54; repealed by 1971 c.753 §74]
697.420 [Repealed by 1959 c.525 §36]
697.421 [1959 c.525 §31; repealed by 1963 c.580 §103]
697.422 [1963 c.580 §55; 1975 c.364 §31; 1977 c.185 §13; repealed by 1981 c.85 §17]
697.430 [Amended by 1953 c.518 §2; 1957 c.469 §3; repealed by 1959 c.525 §36]
697.440 [Amended by 1959 c.525 §32; repealed by 1981 c.85 §17]
697.450 [Amended by 1959 c.525 §33; repealed by 1971 c.753 §74]
697.460 [Amended by 1959 c.525 §34; 1963 c.558 §14; 1967 c.216 §1; repealed by 1971 c.753 §74]
697.470 [Repealed by 1981 c.85 §17]
697.480 [Renumbered as part of 697.992]

CHECK-CASHING BUSINESSES

697.500 Definitions for ORS 697.500 to 697.555. As used in ORS 697.500 to 697.555:

(1)(a) “Check-cashing business” means a person that conducts a business that for a fee, service charge or other consideration provides money, credit or any other thing of value in exchange for payment instruments.

(b) “Check-cashing business” does not include a financial institution as defined in ORS 706.008 or an employee of a licensee.

(2) “Licensee” means a person licensed as a check-cashing business under ORS 697.514.

(3) “Nationwide Multistate Licensing System” means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assigns of the Conference of State Bank Supervisors or the American Association of Residential Mortgage Regulators,

develop and maintain for participating state agencies to use in licensing and registering mortgage loan originators and other persons that provide nondepository financial services.

(4) “Payment instrument” means:

(a) A check, warrant or draft issued by the federal government, a state government, a county or municipal government, or a federal or state agency;

(b) A payroll check; or

(c) A personal check, money order or any other check. [2007 c.358 §1; 2015 c.118 §1]

697.502 Exemptions from licensing and record-keeping requirements. (1) ORS 697.510, 697.512, 697.514 and 697.540 do not apply to a person licensed under ORS 717.200 to 717.320.

(2) ORS 697.510, 697.512, 697.514, 697.528 and 697.540 do not apply to a person engaged in the bona fide retail sale of goods or services and not purporting to be a check-cashing business that, as an incident of or independent of a retail sale or service, from time to time cashes payment instruments for a fee, service charge or other consideration but does not charge more than \$2 or two percent of the face value of the payment instrument, whichever is greater. [2007 c.358 §2]

697.504 Licensing requirement. Except as provided in ORS 697.502, a person may not conduct, purport to conduct or advertise that the person conducts a check-cashing business without first obtaining a license under ORS 697.514. [2007 c.358 §3]

697.510 License application form and contents; waiver; rules. (1)(a) An applicant for a license to conduct a check-cashing business shall apply in writing on a form and in a format that the Director of the Department of Consumer and Business Services prescribes by rule.

(b) The director, consistent with the requirements of ORS 697.500 to 697.555, may administer a program to issue and renew licenses for check-cashing businesses by means of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform the practices, procedures and information that the Department of Consumer and Business Services uses to issue or renew a license to the requirements of the Nationwide Multistate Licensing System.

(2) An application for a license to conduct a check-cashing business must contain all of the following:

(a) The applicant’s name, together with any fictitious name, assumed business name or trade name the applicant uses in conducting the applicant’s business;

(b) The name and address of all of the applicant's members, partners, officers, directors or principals, as appropriate;

(c) The name and address of the applicant's agent for the service of process, notice or demand, or a power of attorney that the applicant has executed and by which the applicant appoints the Director of the Department of Consumer and Business Services as the applicant's agent for service of process, notice or demand;

(d) The applicant's principal business address, the location of the applicant's business records and the addresses for all locations where the applicant conducts or proposes to conduct a check-cashing business; and

(e) Other information that the director may require concerning the applicant's financial responsibility, background experience and business activities and the financial responsibility, background experience and business activities of the applicant's members, partners, officers, directors and principals.

(3) The director, for good cause shown or in order to conform the department's licensing and license renewal program to the requirements of the Nationwide Multistate Licensing System, may waive any requirement of this section with respect to any license application or may allow an applicant to submit substituted information in a license application in lieu of the information required under subsection (2) of this section. [2007 c.358 §4; 2015 c.118 §2]

697.512 Application fee and investigation fee; rules. (1) Each person who submits an application under ORS 697.510 shall at the same time pay a nonrefundable application fee and a nonrefundable investigation fee to the Director of the Department of Consumer and Business Services in amounts the director prescribes by rule. If the director approves the application and issues a license under ORS 697.514, the application fee shall constitute the license fee for the remaining portion of the first calendar year and the subsequent full calendar year in which the applicant conducts a check-cashing business.

(2) The director shall prescribe fee amounts under subsection (1) of this section that in the aggregate are sufficient to pay all expenses of the Department of Consumer and Business Services related to administering ORS 697.500 to 697.555. The director shall pay all moneys received under this section into the Consumer and Business Services Fund as provided in ORS 705.145. [2007 c.358 §5]

697.514 Application review and license issuance; expiration and renewal; grounds for denial; rules. (1) After an applicant has submitted a complete application, the Director of the Department of Consumer and Business Services shall review the application and may investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness to conduct a check-cashing business. The director may also determine if the applicant has complied with applicable provisions of ORS 697.500 to 697.555 and of federal law.

(2) The director shall issue a license to the applicant to conduct a check-cashing business at the locations identified in the application if the director finds that:

(a) The applicant and the applicant's members, officers, directors and principals are financially responsible, have a good character and a good reputation and are experienced and generally fit to conduct a check-cashing business efficiently, in the public interest and in accordance with law;

(b) The applicant has fulfilled the requirements imposed under ORS 697.510; and

(c) The applicant has paid the license and investigation fees required under ORS 697.512.

(3) A license issued under this section expires on December 31 of the calendar year in which the director issues the license. A licensee may not assign or transfer a license issued under this section. A licensee may renew a license after paying a license fee in an amount the director prescribes by rule and only if the licensee meets conditions that the director prescribes by rule, including a condition that the licensee renew a license under the terms of the director's agreement with the Nationwide Multistate Licensing System.

(4) The director shall deny the application if the applicant does not meet the requirements set forth in this section. The director shall issue any denial in writing and shall describe the reasons for the denial.

(5) If the director denies a license under this section, the applicant may request a hearing in accordance with ORS 183.435. After receiving the applicant's request, the director shall grant the applicant a hearing under ORS 183.413 to 183.470. [2007 c.358 §6; 2015 c.118 §3]

697.520 Prohibited practices; effect on charges for dishonored payment instruments. (1) A check-cashing business may not charge or collect, directly or indirectly, an excessive fee, service charge or other consideration for cashing a payment instrument. A fee, service charge or other consideration

is excessive if the total amount charged is more than the following amounts:

(a) For a payment instrument issued by the federal government or an agency of the federal government, by this state or an agency of this state or by the government of the municipality in which a person is cashing the payment instrument:

(A) \$5 or two percent of the face value of the payment instrument, whichever is greater, if the person cashing the payment instrument provides valid and current government-issued photo identification; or

(B) \$5 or 2-1/2 percent of the face value of the payment instrument, whichever is greater, if the person cashing the payment instrument does not provide valid and current government-issued photo identification.

(b) For a payment instrument issued by any other state or political subdivision thereof or for a payment instrument that is a payroll check:

(A) \$5 or three percent of the face value of the payment instrument, whichever is greater, if the person cashing the payment instrument provides valid and current government-issued photo identification; or

(B) \$5 or 3-1/2 percent of the face value of the payment instrument, whichever is greater, if the person cashing the payment instrument does not provide valid and current government-issued photo identification.

(c) For any other payment instrument, \$5 or 10 percent of the face value of the payment instrument, whichever is greater.

(2) Notwithstanding the provisions of subsection (1) of this section, a fee, service charge or other consideration is excessive if the total amount charged is more than \$100.

(3) This section does not affect fees, statutory damages or other charges a person may collect under ORS 30.701 in connection with dishonored payment instruments. [2007 c.358 §7]

697.522 Receipt; contents. A check-cashing business shall provide a receipt to the individual for whom the business cashes a payment instrument. The receipt must display at least:

(1) The name, assumed business name or trade name of the check-cashing business;

(2) The transaction date;

(3) The face amount of the payment instrument; and

(4) The fee charged or collected for cashing the payment instrument. [2007 c.358 §8]

697.524 Endorsement and deposit of payment instruments. A check-cashing business shall:

(1) Endorse in the name of the business all payment instruments for which the business provided money, credit or any other thing of value; and

(2) Deposit or present for payment each such payment instrument not later than one business day following the date of the transaction. [2007 c.358 §9]

697.526 Notice of fees and charges; filing with department. A check-cashing business shall conspicuously post and at all times display in each business location a notice that states the fees, services charges or other consideration that the business charges for cashing payment instruments. A licensee shall also file with the Director of the Department of Consumer and Business Services a copy of the notice posted in each of the licensee's business locations. [2007 c.358 §10]

697.528 Records; retention; examination costs; rules. (1) A check-cashing business shall make, keep and maintain all records used in providing money, credit or any other thing of value in exchange for payment instruments that the Director of the Department of Consumer and Business Services may reasonably require. The check-cashing business shall keep and maintain the records that the director requires under this section separate from records used for any other business that the check-cashing business conducts. The check-cashing business shall retain the records the director requires under this section for three years following the date of the transaction each record describes, or for so long as the director may prescribe by rule.

(2) The director may examine the records required to be kept and maintained under this section to determine whether the check-cashing business is complying with ORS 697.500 to 697.555 and with rules the director has adopted under ORS 697.500 to 697.555. The check-cashing business shall pay the Department of Consumer and Business Services for the actual cost of the examination. The director by rule shall establish rates and charges associated with examinations made under this section. [2007 c.358 §11]

697.530 Prohibited conduct. A check-cashing business may not:

(1) Publish, disseminate or cause to be published or disseminated a communication that contains a false, misleading or deceptive statement or representation.

(2) Conduct business at premises or locations other than locations licensed by the Director of the Department of Consumer and Business Services.

(3) Engage in unfair, deceptive or fraudulent practices. [2007 c.358 §12]

697.540 Suspension or revocation of license; grounds; notice and hearing. (1) The Director of the Department of Consumer and Business Services may by order suspend or revoke any license issued under ORS 697.514 if the director finds that any of the following circumstances are true:

(a) The licensee has violated a provision of ORS 697.500 to 697.555 or of a rule or order the director has adopted or issued under ORS 697.500 to 697.555.

(b) The licensee knowingly made a false or misleading statement on the application for a license under ORS 697.510 or in information the licensee submitted to the director.

(c) The licensee refused to permit the director to make an investigation authorized under ORS 697.528.

(d) The licensee has engaged in, or has a felony or misdemeanor conviction for, fraud, misrepresentation or deceit or has demonstrated untrustworthiness or incompetence in conducting the check-cashing business.

(e) The licensee has not paid a fee required under ORS 697.512 or examination costs under ORS 697.528.

(2) The director may not suspend or revoke any license issued under ORS 697.514 unless the licensee has had notice and an opportunity for a hearing in accordance with ORS 183.413 to 183.470. [2007 c.358 §13]

697.542 Powers of director; cease and desist order. The Director of the Department of Consumer and Business Services may:

(1) Make such investigations as the director deems necessary to determine whether a person has violated, is violating or is preparing to violate ORS 697.500 to 697.555 or a rule or order adopted or issued under ORS 697.500 to 697.555.

(2) Require a person to file a statement in writing, under oath or otherwise as the director determines, concerning a matter under investigation.

(3) Take evidence from witnesses and compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to an investigation or proceeding.

(4) Take any affirmative action necessary to carry out the provisions of this section, including assessing the costs of an investigation.

(5) Order a person to cease and desist from any action that the director has reason to believe was, is or is about to become a violation of ORS 697.500 to 697.555, a rule

adopted to implement ORS 697.500 to 697.555 or an order the director issued to enforce ORS 697.500 to 697.555. [2007 c.358 §14]

697.550 Rules. The Director of the Department of Consumer and Business Services may adopt rules for the purpose of carrying out the provisions of ORS 697.500 to 697.555. [2007 c.358 §16]

697.555 Civil penalties; restitution. (1) If the Director of the Department of Consumer and Business Services finds that a person has violated a provision of ORS 697.500 to 697.555 or any rules adopted under ORS 697.500 to 697.555, the director may impose in the manner provided in ORS 183.745 a civil penalty in an amount not to exceed \$1,000 for each violation or, in the case of a continuing violation, not more than \$1,000 for each day that the violation continues. The total amount of a penalty imposed for a continuing violation may not exceed \$20,000 for each offense. The director shall pay all moneys received under this section into the Consumer and Business Services Fund as provided in ORS 705.145.

(2) The director may order any check-cashing business the director finds in violation of ORS 697.520 to repay any excessive fee, service charge or consideration the check-cashing business has collected. [2007 c.358 §15]

DEBT MANAGEMENT SERVICE PROVIDERS

697.602 Definitions for ORS 697.602 to 697.842. As used in ORS 697.602 to 697.842:

(1) "Consumer" means an individual who is obligated or is allegedly obligated to pay a debt and on whose behalf a debt management service provider performs or agrees to perform a debt management service.

(2) "Debt management service" means an activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration in return for:

(a) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts, whether or not the person holds the consumer's funds;

(b) Improving or offering to improve or preserve a consumer's credit record, credit history or credit rating;

(c) Modifying or offering to modify terms and conditions of an existing loan from or obligation to a third party; or

(d) Obtaining or attempting to obtain as an intermediary on a consumer's behalf a concession from a creditor including, but not

limited to, a reduction in the principal, interest, penalties or fees associated with a debt.

(3) “Debt management service provider” means a person that:

(a) Resides or does business in this state; and

(b) Provides or performs, or represents that the person can or will provide or perform a debt management service in return for or in expectation of money or other valuable consideration.

(4) “Nationwide Multistate Licensing System” means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or assigns of the Conference of State Bank Supervisors or the American Association of Residential Mortgage Regulators, develop and maintain for participating state agencies to use in licensing and registering mortgage loan originators and other persons that provide nondepository financial services.

(5) “Nonprofit entity” means a person, corporation, organization, board, association or other entity described in 26 U.S.C. 501(c)(3), as in effect on June 26, 2009, that is exempt from taxation under 26 U.S.C. 501(a). [1983 c.17 §2; 1987 c.373 §45; 1993 c.744 §21; 2009 c.604 §1; 2015 c.118 §4]

697.610 [1959 c.635 §1; repealed by 1981 c.631 §2]

697.612 Registration requirement; exceptions. (1) A person that has not registered with the Director of the Department of Consumer and Business Services under ORS 697.632 may not engage in business in this state in the course of which the person:

(a) Performs a debt management service; or

(b) Receives money or other valuable consideration or expects to receive money or other valuable consideration for:

(A) Soliciting or receiving an application from a consumer for a debt management service;

(B) Forwarding or providing a completed application for a debt management service to a debt management service provider;

(C) Referring a consumer to another debt management service provider, if the person is a debt management service provider;

(D) Providing a consumer’s name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service; or

(E) Providing advice, assistance, instruction or instructional material concerning a debt management service to a consumer.

(2) A debt management service provider registered under ORS 697.632 may negotiate on a consumer’s behalf for a reasonable alternative repayment schedule or to reduce a claim described in 11 U.S.C. 502 if the debt management service provider is a nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111.

(3) Subsection (1) of this section does not apply to:

(a) An employee of a debt management service provider, if the debt management service provider is registered under ORS 697.632.

(b) An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.

(c) A financial institution or a trust company, both as defined in ORS 706.008.

(d) A consumer finance company licensed under ORS chapter 725.

(e) An escrow agent licensed under ORS 696.505 to 696.590 to the extent that the escrow agent is acting to close an escrow, as defined in ORS 696.505, is engaging in activity related to a collection escrow, as defined in ORS 696.505, or is serving as a trustee of a trust deed in accordance with ORS 86.713. This paragraph does not apply if the escrow agent:

(A) Assists an unregistered debt management service provider that is not exempt from registration under this subsection in performing a debt management service; or

(B) Provides escrow services to a consumer in accordance with a debt management services plan executed by an unregistered debt management services provider that is not exempt from registration under this subsection.

(f) A mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198 or a mortgage loan originator, as defined in ORS 86A.100.

(g) A broker-dealer registered with the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and acts in accordance with regulations promulgated by either commission.

(h) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f).

(i) A public body, as defined in ORS 174.109.

(j) A person that is obeying or acting in accordance with a court order.

(k) An accredited educational institution or program that offers or performs a debt

management service without receiving money or other valuable consideration, if the institution or program performs the debt management service as an incidental part of a class or a duty the institution or program provides regularly.

(L) A nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111 that:

(i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an instructional course concerning personal financial management, as described in 11 U.S.C. 111; and

(ii) Does not receive or offer to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.

(m) A nonprofit entity that provides advice, assistance, instruction or instructional materials to a consumer in return for a fee that is reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available.

(n) An organization or a counselor approved by the United States Department of Housing and Urban Development under 12 U.S.C. 1701x. [1983 c.17 §3; 2009 c.604 §2; 2009 c.863 §41; 2013 c.444 §2]

697.615 [1959 c.635 §2; 1969 c.334 §1; 1975 c.761 §1; repealed by 1981 c.631 §2]

697.620 [1959 c.635 §3; repealed by 1981 c.631 §2]

697.622 [1983 c.17 §4; 1997 c.631 §525; repealed by 2009 c.604 §27]

697.625 [1959 c.635 §4; 1973 c.827 §80; repealed by 1981 c.631 §2]

697.630 [1959 c.635 §5; repealed by 1981 c.631 §2]

697.632 Registration procedure; fees; rules. (1)(a) The Director of the Department of Consumer and Business Services shall maintain a registry of debt management service providers and by rule in accordance with ORS chapter 183 shall require a person that performs a debt management service, unless the person is exempt under ORS 697.612 (3), to apply to the director to register or to renew a registration as a debt management service provider.

(b) The director, consistent with the requirements of ORS 697.602 to 697.842, may administer a program to register debt management service providers, or renew registrations, by means of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform the practices, procedures and information that the Department of Consumer and Business Services uses to register a debt management service provider, or renew a registration, to the requirements of the Nationwide Multistate Licensing System.

(c) An application for registration or renewal must provide to the director on a form and in a format the director specifies:

(A) The applicant's name and address;

(B) Any assumed business names, trade names or other identities under which the applicant performs a debt management service;

(C) A general description of the debt management service business activities the applicant undertakes or proposes to undertake;

(D) The names of any managing members, managing partners, executive officers, directors, principals or agents the applicant has;

(E) The name of the applicant's registered agent or the applicant's agent for the purpose of receiving service of legal process;

(F) A signed statement that identifies and describes in detail any incident in which the applicant or a member, partner, officer, director or principal of the applicant within the five years before the date on which the applicant applied to register or renew a registration as a debt management service provider was subject to:

(i) A judgment in favor of another person in a circuit court of this state or in an equivalent court in another state;

(ii) An arbitration award in favor of another person; or

(iii) An adverse final order from an administrative agency in this state or another state;

(G) A copy of the corporate surety bond the applicant filed with the director under ORS 697.642; and

(H) Other information the director may require concerning the financial responsibility, training, background, experience and business activities of the applicant or a member, partner, officer, director or principal of the applicant.

(2) At the time an applicant submits an application for registration under this section, the applicant shall pay a nonrefundable fee in an amount the director specifies by rule. An applicant who applies to renew a registration shall pay another fee in an amount the director specifies by rule.

(3) The director shall specify amounts for the fees described in subsection (2) of this section that in the aggregate are sufficient to pay the costs of administering ORS 697.602 to 697.842. The director shall pay all moneys received under this section as provided in ORS 697.842.

(4) A registration under this section is valid until December 31 of the calendar year in which the director approves the registra-

tion. In order to continue to provide a debt management service, a debt management service provider must renew the registration at the time the registration expires.

(5)(a) The director may refuse to register the applicant or may refuse to renew a registration for a debt management service provider for any of the reasons set forth in ORS 697.752.

(b) The director, for good cause shown or in order to conform the department's licensing and license renewal program to the requirements of the Nationwide Multistate Licensing System, may waive a requirement of this section with respect to a license application or may allow an applicant to substitute information required in an application in lieu of information required under this section. [1983 c.17 §5; 1989 c.209 §1; 2009 c.604 §3; 2015 c.118 §5]

697.635 [1959 c.635 §6; repealed by 1981 c.631 §2]

697.640 [1959 c.635 §7; 1963 c.470 §7; 1975 c.761 §2; repealed by 1981 c.631 §2]

697.642 Bond requirement. (1) An applicant for registration as a debt management service provider at the time of application shall file with the Director of the Department of Consumer and Business Services a bond issued by one or more corporate sureties authorized to do business in this state. The bond must:

(a) Be in an amount that is:

(A) A minimum of \$10,000; or

(B) An amount the director specifies by rule.

(b) Require the surety company to provide written notice to the director by registered or certified mail:

(A) At least 30 days before the surety company cancels or revokes the bond; or

(B) Whenever the surety company pays for a loss under the bond.

(c) Satisfy the provisions of subsection (2) of this section.

(2) The bond that a debt management service provider must file under subsection (1) of this section, in addition to the requirements set forth under subsection (1) of this section, must be:

(a) Payable to the order of the director; and

(b) Conditioned so that the corporate surety or the debt management service provider upon the director's order or a court order pays all amounts due for a violation of the debt management service provider's duties and obligations to consumers under ORS 697.652 to 697.702.

(3) If a surety cancels, revokes or otherwise terminates a bond required under sub-

section (1) of this section or if the amount of the bond is reduced to less than the amount required under subsection (1) of this section, the debt management service provider shall immediately:

(a) File a replacement bond; or

(b) Surrender the debt management service provider's registration to the director and cease operating as a debt management service provider or providing debt management services.

(4) A person that has a right of action against a debt management service provider under ORS 697.718 has a right of action against the bond required under subsection (1) of this section. [1983 c.17 §6; 1989 c.209 §2; 2009 c.604 §4]

697.645 [1959 c.635 §8; 1963 c.470 §8; repealed by 1981 c.631 §2]

697.650 [1959 c.635 §9; 1963 c.470 §9; 1975 c.761 §3; repealed by 1981 c.631 §2]

697.652 Written agreement and budget analysis requirement; contents and form of agreement; waiver of requirements void. (1) A debt management service provider may not perform a debt management service for a consumer without entering into a written agreement with the consumer that:

(a) Lists the name and telephone number for the debt management service provider and the consumer and, to the extent the information is available, the facsimile number, electronic mail address and website address or other Internet uniform resource locator for the debt management service provider.

(b) Lists every debt for which the debt management service provider will provide a debt management service on the consumer's behalf. The list must disclose the creditor's name and the approximate total of all of the identified debts.

(c) States in precise terms how much the consumer can reasonably pay, if the debt management service provider holds, directly or indirectly, a consumer's funds for distribution to creditors.

(d) Describes in precise terms the debt management services the debt management service provider will perform, itemizes the fees the debt management service provider will charge and explains how the debt management service provider calculated the amount of the fees.

(e) Shows in the form of a schedule the approximate number of installments, the amount of each installment and the ratio or other arrangement that will apply to the consumer's payment or satisfaction of the debts.

(f) Provides that the consumer may:

(A) Examine the consumer's account in the debt management provider's office during office hours; or

(B) Request the debt management service provider to deliver to the consumer a full and complete written statement of the consumer's account:

(i) Within two business days, if the debt management service provider delivers the statement electronically; or

(ii) Within seven business days, if the debt management service provider delivers the statement by mail.

(g) Provides that the debt management service provider may cancel the agreement without the consumer's written authorization if the consumer fails to make scheduled periodic payments under the terms of the agreement for more than 60 days.

(h) Estimates the time period necessary to complete the debt management services identified in the agreement.

(i) Provides that the debt management service provider must deliver to the consumer each calendar quarter a financial statement of the consumer's funds, if any, that the debt management service provider holds, directly or indirectly.

(j) Provides that:

(A) The consumer may cancel the agreement:

(i) At any time before midnight of the third business day after the consumer entered into the agreement with the debt management service provider; or

(ii) At any time during the remaining term of the agreement, for any reason, after giving 10 calendar days' written notice of the cancellation to the debt management service provider;

(B) The consumer's cancellation is effective on the date the consumer mails a notice of cancellation or immediately if the consumer sends the cancellation by electronic mail or facsimile; and

(C) The debt management service provider shall:

(i) Refund all fees the consumer paid before the cancellation if the consumer cancels the agreement under subparagraph (A)(i) of this paragraph; or

(ii) Return to the consumer all of the consumer's funds that the debt management service provider has not expended from among the funds that the debt management service provider holds, directly or indirectly, if the consumer cancels the agreement under subparagraph (A)(ii) of this paragraph.

(k) Provides that the debt management service provider shall notify the consumer's

creditors in writing that the debt management service provider may negotiate with the creditors concerning the consumer's debts on the consumer's behalf.

(2) Before the consumer and the debt management service provider sign the agreement described in subsection (1) of this section, the debt management service provider shall give the consumer an analysis of the consumer's budget that is separate from the agreement and that evaluates whether the debt management services the debt management service provider proposes to perform are advantageous to the consumer.

(3) As soon as is practicable after the consumer and the debt management service provider sign and date the agreement described in subsection (1) of this section, the debt management service provider shall provide the consumer with a legible copy of the signed and dated agreement.

(4)(a) A consumer's waiver or an agreement or contract between a debt management service provider and a consumer that purports to waive or otherwise violate a provision of ORS 697.602 to 697.842 is void and unenforceable as contrary to public policy.

(b) A debt management service provider may not induce or attempt to induce a consumer to waive a provision of ORS 697.602 to 697.842.

(c) A person that claims an exemption from a provision of ORS 697.602 to 697.842 has the burden of proof with respect to the claim in a proceeding under ORS 697.602 to 697.842.

(d) A circuit court of this state has jurisdiction in equity to restrain and enjoin a violation of ORS 697.602 to 697.842.

(e) This subsection does not prohibit a person from enforcing a right provided under ORS 646.608 and 697.602 to 697.842 or other applicable law. [1983 c.17 §7; 2009 c.604 §5]

697.655 [1959 c.635 §10; 1963 c.470 §10; repealed by 1981 c.631 §2]

697.657 [1963 c.470 §11; repealed by 1981 c.631 §2]

697.660 [1959 c.635 §11; repealed by 1981 c.631 §2]

697.662 Prohibited practices. A debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 may not:

(1) Make, or counsel or advise a consumer to make, a statement that is untrue or misleading or that the debt management service provider or the person in the exercise of reasonable care should know is untrue or misleading.

(2) Represent that the debt management service provider or the person is authorized or competent to perform a debt management

service or to furnish advice concerning tax, accounting, bankruptcy or legal matters unless the debt management service provider or the person is actually authorized under the laws of this state to perform the debt management service or furnish the advice or the debt management service provider or the person performs the debt management service or furnishes the advice in compliance with the laws of this state.

(3) Charge or receive money or other valuable consideration solely to refer a consumer to another person who may or will extend credit to the consumer on substantially the same terms that the other person provides to the other person's customers.

(4) Offer to perform a debt management service without evaluating as part of the budget analysis the debt management service provider must perform under ORS 697.652 (2) whether the debt management service is or would be advantageous to the consumer.

(5) Perform a debt management service without having a good faith belief formed after conducting an evaluation described in subsection (4) of this section that the consumer can or will comply with the terms of the agreement described in ORS 697.652.

(6) Solicit, accept or receive an agreement, contract, promise to pay or other instrument that has blank spaces at or after the time the consumer signs the agreement, contract, promise to pay or instrument.

(7) Accept or receive from a consumer:

(a) Payment or security for the debt management service provider's or person's fees or charges other than as provided in ORS 697.692 (2);

(b) A wage assignment, a mortgage on real estate, a purchase money security interest or other security, all or any part of which is in an amount larger than permitted under ORS 697.692, to secure the debt management service provider's or person's fees or charges;

(c) A confession of judgment or a power of attorney to confess judgment against the consumer or to appear for the consumer in a judicial proceeding; or

(d) A release of an obligation that the debt management service provider or person must perform.

(8) Agree or form a contract with a consumer, the terms of which provide for later charges or reserves for liquidated damages.

(9) Commingle any of the consumer's wages, salary, income, credits or other funds or property that the debt management service provider or person holds with the debt management service provider's or person's funds or property.

(10) Cancel an agreement with a consumer without the consumer's written authorization, except as provided in ORS 697.652 (1)(g).

(11) Violate a provision of ORS 697.602 to 697.842.

(12) Publish, distribute or broadcast or cause to be published, distributed or broadcast an advertisement, presentation or other communication or promotional material that:

(a) Contains a false, misleading or deceptive statement or representation, including a statement or representation that the debt management service provider or person can alter or remove factually correct information from a consumer's credit report;

(b) Identifies the debt management service provider or person by a name other than the name that appears on the registration that the Director of the Department of Consumer and Business Services issued or the assumed business name that the debt management service provider or person registered under ORS chapter 648;

(c) Displays an emblem, logo or other sign or device that is similar to an emblem, logo, sign or device that a government agency uses to identify the government agency or a product or service the government agency provides, including but not limited to an eagle, flag or crest; or

(d) Misrepresents, directly or indirectly:

(A) The nature of a service the debt management service provider or person will perform;

(B) The time within which the debt management service provider or person will perform a service;

(C) The debt management service provider's or person's ability to improve a consumer's credit report or credit rating;

(D) The amount, type or quality of credit a consumer may or will receive as a result of a service the debt management service provider or person performs or offers to perform; or

(E) The debt management service provider's or person's qualifications, training or experience or the qualifications, training or experience of the debt management service provider's or the person's employees, agents or affiliates. [1983 c.17 §8; 2005 c.309 §4; 2009 c.604 §6]

697.665 [1959 c.635 §12; 1963 c.546 §3; 1977 c.873 §22; repealed by 1981 c.631 §2]

697.670 [1959 c.635 §13; repealed by 1981 c.631 §2]

697.672 Requirement to make, keep and maintain records; rules. (1) A debt management service provider shall make, keep and maintain accounts, correspondence, memoranda, papers, books and other records

that the Director of the Department of Consumer and Business Services by rule determines are necessary to ensure that the debt management service provider is complying with the provisions of ORS 697.602 to 697.842.

(2) A debt management service provider shall maintain records for each consumer with which the debt management service provider does business in a form and with contents the director specifies by rule. The debt management service provider shall maintain each consumer record for a period of three years after the date of the last entry in the record. The debt management service provider may dispose of the record in accordance with applicable law after the three-year period described in this subsection has expired.

(3) A debt management service provider shall record all disbursements that the debt management service provider makes, if any, to a consumer's creditors.

(4) The director may at any reasonable time examine the debt management service provider, the records described in subsection (1) of this section or the debt management service provider's activities in connection with performing a debt management service. [1983 c.17 §9; 2009 c.604 §7]

697.675 [1959 c.635 §14; 1963 c.470 §12; 1971 c.743 §410; repealed by 1981 c.631 §2]

697.680 [1959 c.635 §17; repealed by 1981 c.631 §2]

697.682 Trust accounts for client funds; statements. (1) A debt management service provider that holds a consumer's funds, directly or indirectly, shall establish a trust account in this state with an insured institution, as defined in ORS 706.008, in which to keep the consumer funds that the debt management service provider holds.

(2) The debt management service provider may establish a separate trust account for each consumer with whom the debt management service provider does business, or may establish a single trust account in which the debt management service provider keeps all consumer funds. If the debt management service provider establishes a single trust account, the debt management service provider shall maintain a separate ledger or other record of receipts and disbursements for each consumer on whose behalf the debt management service provider holds funds in the account. The debt management service provider in the financial statement required under subsection (4) of this section and the agreement described in ORS 697.652 shall disclose the amount of interest earned on the consumer's funds in the separate trust account or the amount attributable to the consumer's share of the single trust account to the extent that the interest earned ex-

ceeds the fees the financial institution charges to maintain the trust account.

(3) The debt management service provider shall deposit into the trust account all wages, salary, income, credits or proceeds from property that the debt management service provider receives from the consumer or the consumer's property and shall disburse from the trust account all payments the debt management service provider makes on the consumer's behalf, including payments of the debt management service provider's fees or charges.

(4) The debt management service provider without charge shall provide to the consumer in accordance with the terms of the agreement described in ORS 697.652, or at the consumer's request for the period of time the consumer specifies, a statement of the funds or property that the debt management service provider received from or on behalf of the consumer and the disbursements that the debt management service provider made from the trust account under the terms of the agreement.

(5) A debt management service provider may not deposit in a trust account on a single consumer's behalf more than \$250,000 in consumer funds. [1983 c.17 §10; 2009 c.604 §8]

697.685 [1959 c.635 §15; repealed by 1981 c.631 §2]

697.690 [1959 c.635 §16; repealed by 1981 c.631 §2]

697.692 Fees; circumstances in which consumer may void contract; prohibition of waiver; rules. (1) Subject to subsection (4) of this section, a debt management service provider may charge a consumer only the following fees:

(a) An initial fee of not more than \$50.

(b) A fee reasonably calculated to recover the costs that the debt management service provider incurs in providing an initial counseling session or education class. The debt management service provider may charge the fee described in this paragraph in advance, but the fee may not exceed \$50.

(c) A monthly fee equivalent to 15 percent of the funds that the debt management service provider receives from a consumer for payment to the consumer's creditors. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider holds a consumer's funds, directly or indirectly, on the consumer's behalf. The fee described in this paragraph may not exceed \$65 per month.

(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or more creditors at the time the consumer signs the agreement described in ORS 697.652 and places funds in a bank account that the consumer establishes or maintains

in the consumer's own name with an insured institution, as defined in ORS 706.008, and designates specifically for making disbursements in connection with a debt management service. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider does not hold a consumer's funds directly or indirectly. The debt management service provider may not charge the fee described in this paragraph in amounts or installments that exceed \$65 per month.

(e) A fee equivalent to 7.5 percent of the difference between the principal amount of the debt the consumer owed to the consumer's creditor at the time the consumer signed the agreement described in ORS 697.652 and the amount the consumer paid to the creditor to settle the debt, exclusive of fees the consumer paid to the debt management service provider under paragraph (a), (b) or (d) of this subsection. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider obtains from the consumer's creditor a reduction in the principal amount of the consumer's debt.

(f) A fee of not more than \$50 per month during the term of an agreement between the consumer and the debt management service provider under which the debt management service provider improves or preserves, or offers to improve or preserve, a consumer's credit record, credit history or credit rating but does not conduct a budget analysis for the consumer, act as a broker for another debt management service provider or otherwise engage in any other activity that constitutes a debt management service. A fee that a debt management service provider charges under paragraph (a) of this subsection is the fee for the first month of service under this paragraph.

(2) A debt management service provider may accept payment for a fee described in subsection (1) of this section by means of:

(a) A check, draft or similar paper instrument; or

(b) A transfer of funds through an electronic terminal, telephonic instrument, computer or magnetic tape that transmits an order, instruction or authorization to a financial institution to debit or credit an account.

(3)(a) A consumer may void a contract for debt management services, and a debt management service provider shall return to the consumer all sums the consumer paid to the debt management service provider and reimburse the consumer for reasonable attorney fees the consumer incurred in any action to enforce rights the consumer has under this subsection, if the debt manage-

ment service provider charges the consumer more than the amounts set forth in this section.

(b) A consumer may not waive any of the rights the consumer has under this subsection, and any provision in any contract or other agreement that purports to waive the consumer's rights is void.

(4) The director by rule may adjust the fees set forth in this section to reflect changes in the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor. In adjusting fees, the director may consider whether changes in fees that other states charge for similar services warrant a change in fees in this state. [1983 c.17 §11; 1999 c.483 §1; 2005 c.309 §1; 2009 c.604 §§9,9a; 2017 c.465 §1]

697.695 [1959 c.635 §18; 1969 c.591 §301; repealed by 1981 c.631 §2]

697.700 [1959 c.635 §19; repealed by 1981 c.631 §2]

697.702 Interference with records of debt management service provider. (1) A person commits the offense of interfering with records of a debt management service provider if, with respect to a record to which ORS 697.672 applies, the person intentionally:

(a) Makes a false entry in the record; or

(b) Mutilates, destroys or otherwise disposes of the record.

(2) Subsection (1)(b) of this section does not apply to a debt management service provider that disposes of a record after the retention period set forth in ORS 697.672 expires. [1983 c.17 §12; 2005 c.338 §16; 2009 c.604 §10]

697.705 [1959 c.635 §20; repealed by 1981 c.631 §2]

697.707 Required disclosures. (1) A debt management service provider may not charge or receive from a consumer a fee described in ORS 697.692 until after the debt management service provider makes the disclosures described in this section.

(2) A debt management service provider shall give to every consumer for whom the debt management service provider offers to perform a debt management service a document that:

(a) States the maximum amount the debt management service provider may charge the consumer for all debt management services that the debt management service provider will perform;

(b) States that the consumer is responsible for paying the debt management service provider's charges;

(c) Warns the consumer that canceled debt may constitute income that is subject to state and federal taxation and advises the consumer to consult with a tax professional;

(d) Describes completely and in detail the debt management services that the debt management service provider will perform for the consumer and states the amount the consumer must pay for each service and for all services; and

(e) States that the consumer may bring an action against the bond required under ORS 697.642 and lists the name and address of the surety that issued the bond.

(3) A debt management service provider that performs a debt management service as defined in ORS 697.602 (2)(b) or described in ORS 697.612 (1)(b)(E), in the document required under subsection (2) of this section, shall:

(a) Describe, accurately and completely, the consumer's right to review consumer credit information about the consumer that a consumer reporting agency, as defined in 15 U.S.C. 1681a, maintains; and

(b) State the approximate price that a consumer reporting agency will charge a consumer to review the consumer credit information described in paragraph (a) of this subsection and that the consumer may review the information at no charge if the consumer makes a request to the consumer reporting agency within 30 days after the consumer was denied credit.

(4) A debt management service provider that does not hold a consumer's funds, directly or indirectly, shall include in the document required under subsection (2) of this section these additional statements:

(a) That the debt management service provider does not predict or guarantee specific results and cannot force or require a creditor to accept a specific settlement;

(b) That the debt management service provider does not make scheduled periodic payments to creditors;

(c) That creditors may continue collection efforts, including lawsuits;

(d) That the consumer's failure to make monthly payments on outstanding debt will likely have a negative impact on the consumer's credit score;

(e) That the consumer must make regular monthly deposits of funds in an account the consumer establishes and maintains in the consumer's name with an insured institution, as defined in ORS 706.008, and designates specifically for making disbursements in connection with a debt management service; and

(f) That the debt management service provider will withdraw fees for debt management services from the account described in paragraph (e) of this subsection only with the consumer's specific authorization and that

the debt management service provider does not have custody, control or separate or additional access to the account.

(5) The document described in this section must provide a space for the consumer to sign the form under a statement that indicates that the consumer has read and understands the disclosures set forth in the document. [2005 c.309 §3; 2009 c.604 §11]

697.710 [1959 c.635 §21; repealed by 1981 c.631 §2]

697.712 [1983 c.17 §13; repealed by 2009 c.604 §27]

697.715 [1959 c.635 §22; repealed by 1981 c.631 §2]

697.718 Liability for consumer's ascertainable loss; limitation on time to commence action. (1) A debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 is liable to a consumer who suffers an ascertainable loss of money or property, real or personal, in connection with the debt management service provider's or person's violation of a provision of ORS 697.652, 697.662, 697.682, 697.692 or 697.707.

(2) Except as provided in this subsection, an action or suit may not be commenced under this section more than three years after the date on which the debt management service provider or person enters into an agreement for a debt management service with the consumer that suffered the ascertainable loss of money or property or more than three years after the debt management service provider or person performs a debt management service that violates ORS 697.652. An action under this section may be commenced within three years after the transaction that is the subject of the action or within two years after the facts on which the action is based were or should have been discovered, but an action may not be commenced more than five years after the transaction. Failure to commence an action on a timely basis is an affirmative defense.

(3) A consumer that has a right of action against a debt management service provider under this section has a right of action against the bond required under ORS 697.642.

(4) A court may award reasonable attorney fees to the prevailing party in an action brought under this section. [2009 c.604 §20]

697.720 [1959 c.635 §23; repealed by 1981 c.631 §2]

697.722 Execution or attachment of trust account funds. Funds in a trust account that a debt management service provider maintains under ORS 697.682 are not subject to execution or attachment on a claim against the debt management service provider. [1983 c.17 §14; 2009 c.604 §12]

697.725 [1959 c.635 §24; repealed by 1973 c.794 §34]

697.730 [1959 c.635 §25; repealed by 1981 c.631 §2]

697.732 Examinations; investigations; costs; access; public disclosure requirements and exemptions. (1) To enforce the provisions of ORS 697.612 and 697.642 to 697.702, the Director of the Department of Consumer and Business Services may:

(a) Examine a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 and the debt management service provider's or the person's accounts for the purpose of investigating a violation of ORS 697.642 to 697.702.

(b) Undertake an investigation, including an investigation outside this state, that the director considers necessary to:

(A) Determine whether a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702 or a rule the director adopted under ORS 697.632; or

(B) Aid in enforcing the provisions of ORS 697.612 and 697.642 to 697.702 and in formulating rules for adoption under ORS 697.632.

(c) Require a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 to file a written statement, under oath or otherwise, that addresses a matter the director is investigating.

(d) Administer oaths and affirmations, subpoena witnesses, compel the witnesses to attend, take evidence and require a person that the director is investigating to produce books, papers, correspondence, memoranda, agreements or other documents or records that the director deems relevant or material to the investigation. A witness who appears before the director under a subpoena shall receive the fees and mileage described in ORS 44.415 (2).

(e) Charge and require a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 to pay for the reasonable cost of an examination or investigation conducted under this section in an amount the director specifies.

(2) If a person does not comply with a subpoena that the director issues under this section, a circuit court in this state upon the director's application shall begin contempt proceedings to compel compliance in the same manner in which the court would compel compliance with a subpoena in a civil action.

(3) A debt management service provider or a person required to obtain a registration

as a debt management service provider under ORS 697.612 shall provide the director for the purpose of investigating a violation of ORS 697.612 or 697.642 to 697.702 with free access to the debt management service provider's or the person's offices, places of business, books, accounts, records, papers, files, safes and vaults.

(4)(a) The director shall maintain for public inspection a record of any order the director issued that:

(A) Suspended, revoked or refused to renew a person's registration as a debt management service provider; or

(B) Imposed a civil penalty under ORS 697.832.

(b) The record that the director maintains of the director's order shall show:

(A) The form of the order that the director issued;

(B) The name of the person that is the subject of the order; and

(C) The grounds for the action that the director took in the order.

(c) The director shall maintain as a public record any notice or other information that indicates that a collection on a deposit or on the bond required under ORS 697.642 has occurred.

(d) Except as provided in this subsection, records, reports and other information that the director receives or compiles as a result of an investigation conducted under this section are exempt from the disclosure required under ORS 192.314. [1983 c.17 §15; 2005 c.338 §17; 2009 c.604 §13]

697.733 [1963 c.470 §4; repealed by 1981 c.631 §2]

697.737 [1963 c.470 §5; repealed by 1981 c.631 §2]

697.740 [1959 c.635 §26; 1963 c.470 §13; repealed by 1981 c.631 §2]

697.742 [1983 c.17 §17; repealed by 2009 c.604 §27]

697.743 [1963 c.470 §§2,3; repealed by 1981 c.631 §2]

697.745 [1959 c.635 §27; 1963 c.470 §14; repealed by 1981 c.631 §2]

697.750 [1959 c.635 §30; 1963 c.470 §15; repealed by 1981 c.631 §2]

697.752 Grounds for denial, revocation or suspension of registration. The Director of the Department of Consumer and Business Services may deny, suspend, condition, revoke or refuse to issue or renew a registration as a debt management service provider if the director determines that an applicant or debt management service provider:

(1) Cannot meet financial obligations as the obligations mature, has liabilities that exceed assets or is in a financial condition that prevents the applicant or debt management service provider from continuing in business with safety to consumers;

(2) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or profession, or unfair or unethical practices or conduct in connection with a debt management service;

(3) Filed, knowingly or negligently, false or untruthful information with the director under ORS 697.632;

(4) Violated a provision of ORS 697.642 to 697.702 or a rule the director adopted under ORS 697.632;

(5) Filed an application for registration that on the date the director issued a registration or on the date the director denied, suspended, conditioned or revoked a registration was incomplete in a material respect or contained a statement that was false or misleading with respect to a material fact in light of the circumstances in which the applicant or debt management service provider made the statement;

(6) Failed to account to interested persons for money or property the applicant or debt management service provider received;

(7) Was temporarily or permanently enjoined from engaging in or continuing a conduct or practice involving a debt management service by a court of competent jurisdiction;

(8) Is subject to a director's order that denied, suspended, conditioned or revoked a registration as a debt management service provider, or a license or registration that the director issued under another provision of law;

(9) Is subject to a cease and desist order that the director entered within the previous five years after giving the applicant or debt management service provider notice and an opportunity for a hearing;

(10) Demonstrated negligence or incompetence in performing a debt management service or an act, the performance of which requires the applicant or debt management service provider to obtain a registration or license;

(11) Failed to supervise diligently and control an employee's or agent's actions related to a debt management service that the applicant or debt management service provider performed;

(12) Was convicted of a felony or of a misdemeanor for which an essential element is fraud, either as an individual that is subject to the requirement to register as a debt management service provider or as a member, partner, officer, director or principal of an applicant or debt management service provider;

(13) Reduced the amount of the bond required under ORS 697.642 or allowed the bond to lapse;

(14) Knowingly made a false entry in a consumer's record; or

(15) Knowingly mutilated, destroyed or otherwise disposed of a consumer's record unless the record concerns a consumer that no longer receives a debt management service from the applicant or debt management service provider or the record is not subject to the retention requirement set forth in ORS 697.672. [1983 c.17 §16; 1989 c.209 §3; 2005 c.338 §18; 2009 c.604 §14]

697.755 [1959 c.635 §28; repealed by 1963 c.470 §17]

697.760 [1959 c.635 §29; repealed by 1971 c.734 §21]

697.762 Enjoining violations; attorney fees; damages. (1) If the Director of the Department of Consumer and Business Services determines that a person has engaged in, is engaging in or is about to engage in an act or practice that the director believes is in violation of ORS 697.612, 697.642 to 697.702 or 697.752, in addition to actions the director may take under ORS 697.752 the director may bring suit in the name of the State of Oregon in a circuit court of this state to enjoin the act or practice. Upon a proper showing, the court shall grant a permanent or temporary injunction or restraining order and may appoint a receiver or conservator for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant if the defendant prevails in an action under this section and the court determines that the director did not have an objectively reasonable basis for asserting the claim or a reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in a suit authorized by subsection (1) of this section a claim for damages on behalf of a person injured by an act or practice against which the director sought an injunction or restraining order. The court may award appropriate relief to the person if the court finds that enforcing the person's right by private civil action or suit, whether by class action or otherwise, would be so burdensome or expensive as to be impracticable. [1983 c.17 §18; 1995 c.696 §46; 2005 c.338 §19; 2009 c.604 §15]

697.765 [1959 c.635 §31; 1963 c.470 §16; repealed by 1981 c.631 §2]

697.770 [1959 c.635 §32; repealed by 1981 c.631 §2]

697.772 [1983 c.17 §19; 1989 c.209 §4; repealed by 2009 c.604 §27]

697.775 [1959 c.635 §33; repealed by 1981 c.631 §2]

697.780 [1959 c.635 §34; 1961 c.309 §7; 1967 c.216 §2; 1977 c.41 §4; repealed by 1981 c.631 §2]

697.782 [1983 c.17 §20; 1989 c.209 §5; repealed by 2009 c.604 §27]

697.783 [1963 c.470 §6; repealed by 1981 c.631 §2]

697.785 [1959 c.635 §35; repealed by 1981 c.631 §2]

697.790 [1965 c.190 §2; repealed by 1981 c.631 §2]

697.792 [1983 c.17 §21; 1995 c.696 §47; repealed by 2009 c.604 §27]

697.802 [1983 c.17 §22; repealed by 2009 c.604 §27]

697.810 [1971 c.734 §163; repealed by 1981 c.631 §2]

697.812 [1983 c.17 §23; 1989 c.209 §6; repealed by 2009 c.604 §27]

697.820 [1973 c.548 §2; 1977 c.185 §14; 1981 c.85 §12; repealed by 1981 c.631 §2]

697.822 Remedy not exclusive. The remedy provided for in ORS 697.718:

(1) Is in addition to and not exclusive of other remedies provided by law.

(2) Does not limit a person's statutory or common-law right to bring an action in any court for an act of a debt management service provider, or the right of the state to punish a person for violating a law. [1983 c.17 §24; 2009 c.604 §16]

697.825 Enforcement; orders. (1) The Director of the Department of Consumer and Business Services may, if the director has reason to believe that a person:

(a) Violated, is violating or is about to violate ORS 697.612, 697.642 to 697.702 or 697.752, a rule adopted under ORS 697.632 or an order issued under ORS 697.652 or 697.732, issue an order to cease and desist from the violation.

(b) Filed information under ORS 697.632 that is false or untruthful, issue an order to correct the filing.

(c) Failed to maintain in effect the bond required under ORS 697.642, issue an order to remedy the failure.

(2)(a) The director shall serve an order under this section on the person named in the order.

(b) An order issued under this section becomes effective upon service on the person named in the order.

(c) ORS 183.413 to 183.470 apply to an order issued under this section.

(d) Notwithstanding paragraph (c) of this subsection, a person may not obtain a hearing on the order unless the person requests the hearing in writing within 20 days after service of the order.

(e) A person who does not request a contested case hearing may not obtain judicial review of the order.

(f) The director may vacate or modify an order issued under this section. A modified

order is effective upon service on the person named in the order.

(3) The authority conferred by this section is in addition to and not in lieu of any other authority conferred on the director. [2005 c.338 §15; 2009 c.604 §17]

697.830 [1977 c.41 §6; 1981 c.85 §13; repealed by 1981 c.631 §2]

697.832 Civil penalties. (1) In addition to any other liability or penalty provided by law, the Director of the Department of Consumer and Business Services may impose a civil penalty on a person in an amount not to exceed \$5,000 for each violation of ORS 697.612 or 697.642 to 697.702, rules adopted under ORS 697.632 or order issued under ORS 697.825.

(2) The director shall impose a civil penalty on a person under this section in the manner provided in ORS 183.745.

(3) Notwithstanding ORS 183.745, the person to whom the notice is addressed has 10 days from the date on which the notice was mailed in which to apply for a hearing before the director.

(4) Paying or tendering payment for a civil penalty imposed under this section does not relieve a person from the obligation to comply with the applicable statute or rule.

(5) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1983 c.17 §24a; 1989 c.706 §25; 1991 c.734 §88; 2005 c.338 §20; 2009 c.604 §18]

697.840 Rules. The Director of the Department of Consumer and Business Services may adopt, amend and repeal rules that are necessary to carry out the provisions of ORS 697.602 to 697.842. [2009 c.604 §21]

697.842 Disposition of moneys received by director. All moneys received by the Director of the Department of Consumer and Business Services or the department under ORS 697.005 to 697.095 or 697.602 to 697.842, excepting any penalties received under ORS 697.832, shall be paid into the State Treasury, deposited in the Consumer and Business Services Fund created by ORS 705.145 and used exclusively for the purposes of ORS 697.005 to 697.095 and 697.602 to 697.842. [1983 c.17 §25; 1987 c.373 §46; 2001 c.319 §§5,6]

PENALTIES

697.990 Penalties. (1) Violation of ORS 697.015 or 697.058 by an individual is a Class A violation.

(2) Violation of ORS 697.015 or 697.058 by a corporation or association is a Class A violation. Any officer or agent of a corporation or association who personally participates in any violation of ORS 697.015 or

697.058 by the corporation or association is subject to the penalty prescribed in subsection (1) of this section.

(3) Violation of ORS 697.612 or 697.642 to 697.702 is punishable, upon conviction, as a Class A misdemeanor. [Amended by 1959 c.525 §35; subsection (1) derived from subsection (1) of 697.990 (1957 Replacement Part) and subsection (1) of 1959 c.635 §37; subsection (2) derived from subsection (2) of 697.990 (1957 Replacement Part) and subsection (2) of 1959 c.635 §37; subsection (3) derived from subsection (3) of 1959

c.635 §37; 1981 c.85 §14; 1983 c.17 §31; subsection (3) enacted as 1983 c.17 §26; 1983 c.69 §6; 1999 c.1051 §219; 2005 c.338 §21]

697.992 Jurisdiction of courts. Justice courts have concurrent jurisdiction with circuit courts in all criminal prosecutions for violation of ORS 697.015, 697.058, 697.612 and 697.642 to 697.702. [Derived from 697.480 (1957 Replacement Part) and 1959 c.635 §36; 1983 c.17 §32; 1995 c.622 §10; 2005 c.338 §22]
