Chapter 697

1999 EDITION

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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) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed, due or asserted to be owed or due to another person or to a public body;

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

(C) Any person who 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) Any person in the business of engaging in the solicitation of the right to repossess or in the repossession of collateral security due or asserted to be due to another person; or

(E) Any person who 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) Any 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) Any individual collecting or attempting to collect claims for not more than three employers, if all collection efforts are carried on in the name of the employer and the individual is an employee of the employer;

(C) Any person who prepares or mails monthly or periodic statements of accounts due on behalf of another person if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of accounts;

(D) Any attorney-at-law rendering services in the performance of the duties of an attorney-at-law;

(E) Any 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) Any bank, mutual savings bank, consumer finance company, trust company, savings and loan association, credit union or debt consolidation agency;

(G) Any real estate licensee or escrow agent licensed under the provisions of ORS chapter 696, as to any collection or billing activity involving a real estate transaction or collection escrow transaction of the licensee or escrow agent;

(H) Any 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;

(I) Any public officer or any person acting under order of any court;

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

(K) Any person while the person 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 other persons, 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;

(L) Any person while the person 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;

(M) Any individual employed by another person who operates as a collection agency if the person does not operate as a collection agency independent of that employment;

(N) Any mortgage banker as defined in ORS 59.840;

(O) Any public utility, as defined in ORS 757.005, any telecommunications utility, as defined in ORS 759.005, any people's utility district, as defined in ORS 261.010, and any cooperative corporation engaged in furnishing electric or communication service to consumers; or

(P) Any public body or any individual collecting or attempting to collect claims owed, due or asserted to be owed or due to any public body, if the individual is an employee of the public body.

(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 any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

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

(5) “Debtor” means any person owing or alleged to owe a claim.

(6) “Debts incurred outside this state” means any 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) “Department” means the Department of Consumer and Business Services.

(8) “Director” means the Director of the Department of Consumer and Business Services.

(9) “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.

(10) “Person” includes an individual, firm, partnership, trust, joint venture, association, limited liability company or corporation.

(11) “Public body” means:

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

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

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

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

(13) “Statement of account” means a report setting forth amounts billed, invoices, credits allowed or aged balance due. [1981 c.85 s.2; 1987 c.373 s.43; 1993 c.744 s.20; 1995 c.622 s.1; 1999 c.468 s.1]

Note: Section 3 (1) and (2), chapter 468, Oregon Laws 1999, provides:

Sec. 3. (1) Except as provided in subsection (2) of this section, the amendments to ORS 697.005 by section 1 of this 1999 Act apply to collection agencies operating in this state on and after the effective date of this 1999 Act [October 23, 1999].

(2) The amendments to ORS 697.005 by section 1 of this 1999 Act do not apply to any collection agency operating under a contract with a public body on the effective date of this 1999 Act. In the case of a collection agency operating under a contract with a public body on the effective date of this 1999 Act, the amendments to ORS 697.005 by section 1 of this 1999 Act shall apply to the collection agency on the date the contract expires or one year following the effective date of this 1999 Act, whichever is sooner. [1999 c.468 s.3(1), (2)]

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

697.015 Registration to operate as collection agency required. 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 s.3; 1995 c.622 s.2]

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

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

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

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

697.031 Registration procedure; bond or letter of credit; fees; procedures for out-of-state collection agencies. (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 s.5; 1983 c.69 s.1; 1991 c.627 s.1; 1995 c.622 s.3; 1997 c.249 s.211]

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

697.038 [1971 c.119 s.1; 1973 c.547 s.2; 1974 s.s. c.25 s.3; 1975 c.364 s.5; repealed by 1981 c.85 s.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) Actions of the director under this section are subject to the provisions of ORS 183.310 to 183.550. [1981 c.85 s.6; 1991 c.627 s.2; 1995 c.622 s.4; 1999 c.413 s.1]

697.040 [Repealed by 1959 c.525 s.36]

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

697.045 Status of accounts and claims assigned to agency; rights of assignor; access to courts requires agency be registered. (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 a civil suit or 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) No collection agency is entitled to bring or maintain any civil suit or 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 s.7]

697.050 [Repealed by 1959 c.525 s.36]

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

697.055 [1975 c.364 s.37; 1977 c.185 s.9; repealed by 1981 c.85 s.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 s.9; 1983 c.69 s.2; 1995 c.622 s.9; 1999 c.413 s.2; 1999 c.468 s.2]

697.060 [Repealed by 1959 c.525 s.36]

697.061 [1959 c.525 s.5; 1963 c.558 s.4; 1963 c.580 s.59; 1973 c.547 s.4; 1975 c.364 s.7; repealed by 1981 c.85 s.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 docket 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 s.6]

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

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

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

697.085 Rulemaking. In accordance with applicable provisions of ORS 183.310 to 183.550, 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. [1983 c.69 s.5]

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 s.7]

697.090 [Repealed by 1959 c.525 s.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 s.8]

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 or 697.085 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 183.090.

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

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

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

697.110 [Repealed by 1959 c.525 s.36]

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

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

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

697.140 [Repealed by 1959 c.525 s.36]

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

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

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

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

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

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

697.180 [Repealed by 1959 c.525 s.36]

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

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

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

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

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

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

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

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

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

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

697.260 [Repealed by 1959 c.525 s.36]

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

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

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

697.273 [1975 c.364 s.34; repealed by 1981 c.85 s.17]

697.275 [1963 c.580 s.57; 1975 c.364 s.25; repealed by 1981 c.85 s.17]

697.280 [Repealed by 1959 c.525 s.36]

697.281 [1975 c.364 s.36; repealed by 1981 c.85 s.17]

697.285 [1963 c.580 s.56; repealed by 1975 c.364 s.38]

697.290 [Amended by 1959 c.525 s.26; 1963 c.558 s.11; 1971 c.119 s.5; 1975 c.364 s.26; repealed by 1981 c.85 s.17]

697.295 [1977 c.185 s.2; repealed by 1981 c.85 s.17]

697.300 [1969 c.373 s.2; 1975 c.364 s.27; repealed by 1981 c.85 s.17]

697.305 [1969 c.373 s.3; 1975 c.364 s.28; repealed by 1981 c.85 s.17]

697.310 [1969 c.373 s.4; 1975 c.364 s.29; repealed by 1981 c.85 s.17]

697.330 [1975 c.364 s.35; repealed by 1981 c.85 s.17]

697.400 [Repealed by 1959 c.525 s.36]

697.401 [1959 c.525 s.29; 1963 c.558 s.12; repealed by 1963 c.580 s.103]

697.402 [1963 c.580 s.52; 1969 c.314 s.98; 1971 c.753 s.39; 1975 c.364 s.30; 1977 c.185 s.12; repealed by 1981 c.85 s.17]

697.410 [Repealed by 1959 c.525 s.36]

697.411 [1959 c.525 s.30; 1963 c.558 s.13; repealed by 1963 c.580 s.103]

697.412 [1963 c.580 s.54; repealed by 1971 c.753 s.74]

697.420 [Repealed by 1959 c.525 s.36]

697.421 [1959 c.525 s.31; repealed by 1963 c.580 s.103]

697.422 [1963 c.580 s.55; 1975 c.364 s.31; 1977 c.185 s.13; repealed by 1981 c.85 s.17]

697.430 [Amended by 1953 c.518 s.2; 1957 c.469 s.3; repealed by 1959 c.525 s.36]

697.440 [Amended by 1959 c.525 s.32; repealed by 1981 c.85 s.17]

697.450 [Amended by 1959 c.525 s.33; repealed by 1971 c.753 s.74]

697.460 [Amended by 1959 c.525 s.34; 1963 c.558 s.14; 1967 c.216 s.1; repealed by 1971 c.753 s.74]

697.470 [Repealed by 1981 c.85 s.17]

697.480 [Renumbered as part of 697.992]

DEBT CONSOLIDATING AGENCIES

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

(1) "Client" means a debtor on whose behalf a debt consolidating agency is performing the services of a debt consolidating agency as described in ORS 697.612.

(2) "Director" means the Director of the Department of Consumer and Business Services. [1983 c.17 s.2; 1987 c.373 s.45; 1993 c.744 s.21]

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

697.612 Registration required to operate as debt consolidating agency. (1) A person shall not operate as a debt consolidating agency or in any way purport to be a debt consolidating agency unless the person is first registered with the Director of the Department of Consumer and Business Services under ORS 697.632. For purposes of this section, a person operates as a debt consolidating agency and is subject to ORS 697.602 to 697.842 if the person in the regular course of the person's business directly or indirectly solicits, offers to take or takes anything of value belonging to the debtor or an assignment of the wages, salary, income, credits or any other thing of value of a debtor for the purpose of paying to any creditor of the debtor the debtor's wages, salary, income, credits or things of value, or the proceeds from the sale of the things of value.

(2) An employee of a debt consolidating agency is not required to register with the director under subsection (1) of this section if the debt consolidating agency is registered under ORS 697.632.

(3) Subsection (1) of this section is subject to the exemptions in ORS 697.622.

(4) A person who violates subsection (1) of this section is subject to ORS 697.762, 697.832 and 697.990 (3). [1983 c.17 s.3]

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

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

697.622 Exemptions from registration requirement under ORS 697.602 to 697.842. The following are not required to comply with ORS 697.602 to 697.842:

(1) Attorneys-at-law rendering services in the performance of duties as attorneys.

(2) Financial institutions and trust companies, as those terms are defined in ORS 706.008.

(3) Savings and loan associations, credit unions and mutual savings banks.

(4) Consumer finance companies licensed under ORS chapter 725.

(5) Escrow agents licensed under ORS 696.505 to 696.590.

(6) Any public officer or any person acting under an order of court. [1983 c.17 s.4; 1997 c.631 s.525]

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

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

697.632 Registration procedure; certificates; fees. (1) Subject to ORS 183.310 to 183.550, the Director of the Department of Consumer and Business Services shall establish by rule a program for registration of persons required to register with the director by ORS 697.612. The program shall include a requirement that a person who registers with the director must file and maintain with the director current information that the director requires by rule. The director shall require the following information for registration under this section:

(a) The name and address of the person engaging in business as a debt consolidating agency.

(b) The name and address of the debt consolidating agency.

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

(d) The names of persons who act as agents in the business of the debt consolidating agency.

(e) The names of persons who are agents of the debt consolidating agency for purposes of service of legal process, or an appointment of the director as agent for the debt consolidating agency for the service of process.

(f) If a person has been convicted for a criminal offense, an essential element of which is fraud, information relating to the circumstances of the conviction as required by the director.

(g) Any other information required by rules adopted by the director.

(h) That a bond has been obtained and that the bond satisfies the applicable requirements of ORS 697.642.

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

(a) The director may require any filings with the director that the director determines to be necessary to maintain current 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 debt consolidating agency business and 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) The director may issue certificates of registration or other indicia of registration that the director determines will be of assistance to persons engaged in a debt consolidating agency business in establishing that the persons are registered under this section.

(3) The director shall collect a biennial registration fee of $200.

(4) The director shall maintain current records of the information required for registration under this section. [1983 c.17 s.5; 1989 c.209 s.1]

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

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

697.642 Bond required. (1) A person who applies for registration as a debt consolidating agency shall file with the Director of the Department of Consumer and Business Services a bond with one or more corporate sureties authorized to do business in this state. The bond:

(a) Must be in the amount of $10,000.

(b) Must require the surety company to provide written notice to the director by registered or certified mail of any cancellation or revocation of the bond:

(A) At least 30 days in advance of the cancellation or revocation; or

(B) Upon any payment made for a loss under the bond.

(c) Must satisfy the provisions of subsection (2) or (3) of this section, whichever is applicable to the debt consolidating agency.

(2) If the debt consolidating agency for which registration is sought is not incorporated under subsection (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April 1, 1983), the bond required under subsection (1) of this section shall be a surety bond payable to the order of the director and be conditioned that the applicant shall pay all amounts, upon order of a court or order of the director, resulting from any violation by the debt consolidating agency of its statutory duties and obligations to its clients under ORS 697.652 to 697.702.

(3) If the debt consolidating agency for which registration is sought is incorporated under subsection (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April 1, 1983), the bond required under subsection (1) of this section shall be a fidelity bond, and shall be payable to the applicant.

(4) If the director has cause to believe that the proceeds of the fidelity bond required under subsection (3) of this section are not being used to pay damages to a client, then either upon order of a court or order of the director upon the holder of the proceeds of the bond, the proceeds shall be paid to the director to pay the damages for the purpose of satisfying the requirements of ORS 697.772 to 697.812.

(5) The bond required by this section shall be continuously on file with the director in the amount required by this section. Upon termination or cancellation of the bond or reduction of the bond to less than the required amount, the debt consolidating agency immediately:

(a) Shall file a replacement bond; or

(b) Shall surrender its registration to the director and cease operating as a debt consolidating agency. [1983 c.17 s.6; 1989 c.209 s.2]

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

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

697.652 Content and effective date of debt consolidating contract or agreement; client's copy. (1) A debt consolidating agency improperly makes a contract or an agreement with a client if the debt consolidating agency does not comply with the requirements of subsection (2) or (3) of this section.

(2) A debt consolidating agency shall include the following items in each debt consolidating contract or agreement with a client:

(a) The name and address of the debt consolidating agency and of the client.

(b) A listing of every debt to be consolidated. The listing must disclose the creditor's name and address and the approximate total of all such debts.

(c) A statement, in precise terms, of payments reasonably within the ability of the client to pay.

(d) A statement, in precise terms, of the rate to be charged by the debt consolidating agency.

(e) A statement of the approximate number of installments and the amount of each installment, in the form of a schedule showing the ratio or other arrangement made to pay the debts in full.

(f) A provision allowing the client to examine the client's account in the office of the debt consolidating agency during office hours.

(g) A provision that the debt consolidating agency may cancel a debt consolidating contract or agreement without the client's written authorization while the client is employed and the client's salary is subject to any wage assignment made to the debt consolidating agency, if the client fails or refuses to make all of the client's debts subject to the contract or agreement, if the client knowingly enters into new credit obligations while subject to a debt consolidating contract or agreement without the prior approval of the debt consolidating agency or if the client by any means knowingly withholds from the debt consolidating agency any wages that are subject to wage assignment.

(3) A debt consolidating agency shall deliver a legible copy of a contract or agreement between the debt consolidating agency and the client to the client immediately after the client executes it. The client's copy shall be executed by the debt consolidating agency.

(4) A debt consolidating agency which improperly makes a contract or agreement with a client is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).

(5) A contract or agreement is not effective until a client has made a payment or a payment has been made under a wage assignment to the debt consolidating agency for distribution to the client's creditors. [1983 c.17 s.7]

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

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

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

697.662 Prohibited practices. (1) A debt consolidating agency commits an improper debt consolidating practice when the debt consolidating agency does any of the following:

(a) Takes a contract, promise to pay or other instrument that has any blank spaces when it is signed by a client.

(b) Takes a negotiable instrument, other than a check or draft, as payment or security for the charges of the debt consolidating agency.

(c) Takes a wage assignment, real estate mortgage, purchase money security interest or other security, all or any part of which is an amount greater than that provided in ORS 697.692, to secure the charges of the debt consolidating agency.

(d) Takes a confession of judgment or a power of attorney to confess judgment against the client or to appear for

the client in a judicial proceeding.

(e) Takes a release from a client of an obligation to be performed on the part of the debt consolidating agency.

(f) Makes any contract or agreement with a client that provides for later charges or reserves for liquidated damages.

(g) Commingles a client's wages, salaries, income, credits or property held by the debt consolidating agency with the property or funds of the debt consolidating agency.

(h) Except as authorized in ORS 697.712, cancels a debt consolidating contract or agreement without a client's written authorization.

(2) A person commits an improper debt consolidating practice if the person advertises, prints, displays, publishes, distributes or broadcasts, or causes to be advertised, printed, displayed, published, distributed or broadcasted, any false or misleading statement or representation with regard to the rates, terms or services of a debt consolidating agency.

(3) A debt consolidating agency that commits an improper debt consolidating practice under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).

(4) A person other than a debt consolidating agency that commits an improper debt consolidating practice under subsection (2) of this section is subject to ORS 697.762, 697.832 and 697.990 (3). [1983 c.17 s.8]

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

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

697.672 Record maintenance requirements. (1) A debt consolidating agency improperly maintains records when the debt consolidating agency does not comply with the following requirements:

(a) A debt consolidating agency shall maintain a record of all wages, salaries, income, credits and property of a client that are received by the debt consolidating agency, and a record of all property of the client sold by the debt consolidating agency, for the purpose of remitting the proceeds to creditors of the client.

(b) A debt consolidating agency shall maintain a record of all disbursements that the debt consolidating agency has made to creditors of the client.

(c) A debt consolidating agency shall maintain records described in paragraphs (a) and (b) of this subsection for a period of three years from the date of the last entry on the records.

(d) The debt consolidating agency shall allow the Director of the Department of Consumer and Business Services or any authorized agent of the director to inspect all records described in paragraphs (a) and (b) of this subsection.

(e) The debt consolidating agency shall allow a client to inspect records of the client during the business hours of the debt consolidating agency.

(2) A debt consolidating agency that improperly maintains records under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).

(3) A debt consolidating agency may dispose of records to which this section applies after the three-year period provided in subsection (1) of this section has expired. [1983 c.17 s.9]

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

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

697.682 Management of client funds. (1) A debt consolidating agency improperly handles funds when the debt consolidating agency does not comply with the following requirements:

(a) The debt consolidating agency shall keep either a separate trust account for each client or a single account for all clients. If a single account is kept for all clients, the debt consolidating agency shall keep a separate ledger or other record on receipts and disbursements for each client. The debt consolidating agency shall maintain the trust account or accounts in this state.

(b) The debt consolidating agency shall deposit in the trust account all wages, salaries, income, credits or property received from the client and all proceeds received from property of the client.

(c) The debt consolidating agency shall make all disbursements to the client or on behalf of the client, including any fees charged by the debt consolidating agency, from the client's trust account.

(d) Upon request of a client, a debt consolidating agency shall provide to the client without charge a statement of the money or property received from or on behalf of the client and the disbursements made by the debt consolidating agency under the debt consolidating agreement or contract for the period of time requested.

(2) A debt consolidating agency that improperly handles funds under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3). [1983 c.17 s.10]

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

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

697.692 Fees. (1) This section specifies fees that a debt consolidating agency may charge.

(2) A debt consolidating agency may charge a client an initial set-up fee of not more than $25.

(3) A debt consolidating agency may charge for services performed for the client in an amount of not more than 15 percent of the amount actually received by the debt consolidating agency on behalf of a client for payment to creditors.

(4) Except as provided in subsection (5) of this section, a debt consolidating agency shall not charge a person for any discussion with that person that may or may not result in an agreement for services of a debt consolidating agency.

(5) A debt consolidating agency may charge a fee to cover the expenses for education classes if:

(a) The classes are approved by the Director of the Department of Consumer and Business Services, or the classes are required by rule or order of a federal or state agency and the debt consolidating agency is certified by the federal or state agency to provide the education; and

(b) A request to charge the fee has been approved in writing by the director.

(6) A debt consolidating agency that charges a fee not authorized under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3). [1983 c.17 s.11; 1999 c.483 s.1]

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

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

697.702 Interference with records of debt consolidating agency. (1) A person commits the offense of interfering with records of a debt consolidating agency if the person does either of the following to a record to which ORS 697.672 applies:

(a) Intentionally makes a false entry in the record.

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

(2) Subsection (1) of this section does not apply when a debt consolidating agency disposes of records as authorized in ORS 697.672 (3).

(3) A debt consolidating agency which commits the offense described in this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).

(4) A person other than a debt consolidating agency who commits the offense described in this section is subject to ORS 697.762, 697.832 and 697.990 (3). [1983 c.17 s.12]

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

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

697.712 Agency cancellation of contract or agreement without client authorization. A debt consolidating agency may cancel a debt consolidating contract or agreement without the authorization of a client if the client does any of the following:

(1) The client does not make all of the client debts subject to the contract or agreement as provided in the contract or agreement;

(2) The client knowingly withholds from the debt consolidating agency any wages or other funds that the client has agreed to pay to the debt consolidating agency; or

(3) The client knowingly enters into new credit obligations while subject to a debt consolidating contract or agreement without the prior approval of the debt consolidating agency. [1983 c.17 s.13]

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

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

697.722 Execution or attachment of trust account funds. Funds in a trust account maintained by a debt consolidating agency under ORS 697.682 are not subject to execution or attachment on any claim against the debt consolidating agency. [1983 c.17 s.14]

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

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

697.732 Investigation of alleged violations; public disclosure requirements and exemptions. (1) The Director of the Department of Consumer and Business Services has the following investigatory powers for the purpose of enforcing ORS 697.612, 697.652 to 697.702:

(a) The director, upon the director's own motion or upon receipt of a complaint by a client of a debt consolidating agency, may audit the trust accounts of the agency for the purpose of investigating any violation of ORS 697.652 to 697.702. The debt consolidating agency shall pay the reasonable cost of the audit, as determined by the director.

(b) For the purpose of investigating violations of ORS 697.652 to 697.702, the director shall have free access during all reasonable hours to the offices and places of business, books, accounts, records, papers, files, safes and vaults of all debt consolidating agencies.

(c) The director may make such public or private investigations within or outside of this state that the director considers necessary to:

(A) Determine whether a person has violated or is about to violate ORS 697.612 or any provision of ORS 697.652 to 697.702 or any rule of the director; or

(B) Aid in the enforcement of ORS 697.612, 697.652 to 697.702 and in the formulation of rules and forms under ORS 697.632.

(d) The director may require a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) The director shall maintain for public inspection records of any civil penalty imposed under ORS 697.832, any suspension, revocation or refusal to renew the registration of a debt consolidating agency and any collection on the bond or deposit of a debt consolidating agency. The record of each such action shall show:

(a) The order of the director or the court relating to the action.

(b) The debt consolidating agency against whom the action was taken.

(c) The grounds for the action.

(3) Except as provided in subsection (2) of this section, any records, reports or other information received or compiled by the director as a result of investigations under this section shall be exempt from public disclosure as provided in ORS 192.501 to 192.505. [1983 c.17 s.15]

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

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

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

697.742 Investigatory powers; subpoenas. (1) For the purpose of any investigation or proceeding under ORS 697.732, the Director of the Department of Consumer and Business Services or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements and other documents or records which the director considers relevant or material to the investigation or proceeding.

(2) Any person who is served with a subpoena or is subject to an order to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or other documents or records under this section may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C.

(3) Except to the extent judicial relief is granted under subsection (2) of this section, if any person disobeys a subpoena issued under subsection (1) of this section, or if any witness refuses to testify or produce evidence before the director on any matter on which the witness may be lawfully interrogated, the circuit court of any county, upon application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the

requirements of a subpoena issued from that court or a refusal to testify in that court. [1983 c.17 s.17]

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

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

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

697.752 Grounds for denial, revocation or suspension of registration; conditions; procedures. (1) The Director of the Department of Consumer and Business Services may refuse to issue or renew or may revoke or suspend the registration of a debt consolidating agency if the director determines any of the following facts:

(a) The debt consolidating agency has filed false or untruthful information with the director under ORS 697.632.

(b) The debt consolidating agency has violated any of the rules of the director adopted under ORS 697.632.

(c) The debt consolidating agency has violated any provision of ORS 697.652 to 697.702.

(d) Any person required to register to engage in the business of debt consolidating has been convicted of a felony or a misdemeanor, an essential element of which is fraud.

(e) There has been any lapse in or any reduction of the amount of any bond filed under ORS 697.642.

(2) A revocation or suspension under this section may be for a time certain or upon condition that the debt consolidating agency meets conditions specified by the director.

(3) The conduct of hearings, issuance of orders and judicial review of orders are governed by ORS 183.310 to 183.550. [1983 c.17 s.16; 1989 c.209 s.3]

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

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

697.762 Enjoining violations; attorney fees; damages. (1) When the Director of the Department of Consumer and Business Services determines that any person has engaged in, is engaging in or is about to engage in any act or practice which the director believes is in violation of ORS 697.612 or any provision of ORS 697.652 to 697.702, the director may bring suit in the name of the State of Oregon in any circuit court of this state to enjoin the acts or practices. 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 shall 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 who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in any suit authorized by subsection (1) of this section a claim for damages on behalf of any other person injured by any act or practice against which an injunction or restraining order is sought. The court may award appropriate relief to the person if the court finds that enforcement of the right of the person 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 s.18; 1995 c.696 s.46]

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

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

697.772 Judgment against agency; recovery under bond. (1) If a client has obtained a judgment from a court on a claim against a debt consolidating agency registered under ORS 697.632 and the claim is one for which the client may seek recovery under the debt consolidating agency's bond filed under ORS 697.642, the client may file the judgment with the Director of the Department of Consumer and Business Services for the purpose of recovering under the bond.

(2) Except as may be limited under ORS 697.812, the director shall pay the amount specified in the order of a court as recoverable by the client under the conditions of the bond of the debt consolidating agency. If the judgment does not specify the amount recoverable under the bond, the director shall initiate a hearing to determine that amount.

The claimant, the debt consolidating agency and the corporate surety from which the bond was obtained shall have the right to appear and be heard at the hearing. A hearing under this section is subject to ORS 183.310 to 183.550. The director shall determine and pay the amount of the judgment recoverable under the bond, subject to ORS 697.812. [1983 c.17 s.19; 1989 c.209 s.4]

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

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

697.782 Filing claim against agency with director; hearing; limitation on claims. (1) If a client has a claim against a debt consolidating agency registered under ORS 697.632, and the claim is one for which the client may seek recovery under the bond of the debt consolidating agency, the client may file the claim and a request for hearing with the Director of the Department of Consumer and Business Services if the claim:

(a) Has not been determined by proceedings in any court or is not the subject of proceedings pending in any court; and

(b) Has not been removed from the director under ORS 697.792.

(2) Upon receipt of a claim and request for hearing that qualifies under this section, the director shall initiate a hearing on the claim. The parties involved in the claim shall have the right to appear and be heard at the hearing. A hearing under this section is subject to ORS 183.310 to 183.550.

(3) If the director determines that any of the conditions for payment under the bond of the debt consolidating agency exist and that the existence of any of the conditions for payment is a basis of the client's claim, the director, after final resolution of any appeals permitted under ORS 183.310 to 183.550, shall order the debt consolidating agency to pay within 20 days the claim determined by the director. If the debt consolidating agency does not pay the claim as required by this subsection, the director shall order the claim paid out of the bond filed under ORS 697.642.

(4) The director shall not:

(a) Determine damages under this section in excess of the amount of the bond filed under ORS 697.642.

(b) Accept for filing or hold hearings under this section on any claim that does not meet the qualifications under subsection (1) of this section.

(c) Hold hearings under this section on any claim if the amount of the bond is not sufficient to pay the claim after payment of other claims under ORS 697.812. [1983 c.17 s.20; 1989 c.209 s.5]

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

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

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

697.792 Removing claim to court; attorney fees; notice; claim priorities. (1) If any claim in an amount of more than $200 is filed with the Director of the Department of Consumer and Business Services against a debt consolidating agency under ORS 697.782, the debt consolidating agency may remove the claim from the director's determination by filing within 20 days of the debt consolidating agency's receipt of notice of the claim, a request with the director to remove the claim.

(2) Upon receipt of a request to remove a claim under subsection (1) of this section, the director shall:

(a) Discontinue hearings procedures under ORS 697.782; and

(b) Notify the person filing the claim that the director cannot determine the claim but that the person may file the claim in an appropriate court of this state.

(3) Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action on a claim removed from the director under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action removed from the director under this section is maintained as a class action pursuant to ORCP 32.

(5) The director shall provide a debt consolidating agency with notice of rights and liabilities under this section when the director gives the debt consolidating agency notice of a claim filed against the debt consolidating agency under ORS 697.782.

(6) A person whose claim is removed from the director under this section does not have a claim filed with the

director for purposes of establishing priority under ORS 697.812. [1983 c.17 s.21; 1995 c.696 s.47]

697.802 Effect of final determination by director. A final determination on a claim under ORS 697.782 shall have the effect of a final determination given by a court of this state in any subsequent proceeding or action. [1983 c.17 s.22]

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

697.812 Priorities for satisfaction of claims from bond; limitation on filing claims. (1) Claims shall be satisfied from the bond filed under ORS 697.642 in the order the claims are filed with the Director of the Department of Consumer and Business Services. For purposes of priority under this section:

(a) A claim determined by the director under ORS 697.782 is filed when the claim is first filed with and accepted by the director.

(b) A claim based on a determination by a court is filed when evidence of liability under a final determination by a court is filed with the director.

(2) If a claim filed with the director is made part of an action filed in a court before final determination of the claim by the director:

(a) The director shall dismiss the claim and discontinue any hearing on the claim; and

(b) The claim shall have priority under this section based on the time the final determination of the court is filed with the director.

(3) The bond shall not be used to satisfy claims upon a violation which was alleged to have occurred more than two years prior to the filing of the claim. [1983 c.17 s.23; 1989 c.209 s.6]

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

697.822 Remedy not exclusive. The remedy provided for in ORS 697.782:

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

(2) Does not limit any statutory or common-law rights of a person to bring an action in any court for an act of a debt consolidating agency, or the right of the state to punish a person for violation of any law. [1983 c.17 s.24]

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

697.832 Civil penalties. (1) As provided in this section, 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 $1,000 for each violation of ORS 697.612 or any provision of ORS 697.652 to 697.702 or violation of any rules required to be adopted under ORS 697.632.

(2) The director shall impose a civil penalty on a person under this section in the manner provided by ORS 183.090.

(3) Notwithstanding ORS 183.090, the person to whom the notice is addressed shall have 10 days from the date of mailing of the notice in which to apply for a hearing before the director.

(4) The payment or tendering of payment of a civil penalty imposed under this section shall not relieve the obligation of a person 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 s.24a; 1989 c.706 s.25; 1991 c.734 s.88]

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 s.25; 1987 c.373 s.46]

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

(3) Violation of ORS 697.612 or any provision of ORS 697.652 to 697.702 is punishable, upon conviction, as a Class A misdemeanor. [Amended by 1959 c.525 s.35; subsection (1) derived from subsection (1) of 697.990 (1957 Replacement Part) and subsection (1) of 1959 c.635 s.37; subsection (2) derived from subsection (2) of 697.990 (1957 Replacement Part) and subsection (2) of 1959 c.635 s.37; subsection (3) derived from subsection (3) of 1959 c.635 s.37; 1981 c.85 s.14; 1983 c.17 s.31; subsection (3) enacted as 1983 c.17 s.26; 1983 c.69 s.6; 1999 c.1051 s.219]

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 697.652 to 697.702. [Derived from 697.480 (1957 Replacement Part) and 1959 c.635 s.36; 1983 c.17 s.32; 1995 c.622 s.10]