

CHAPTER 551

AN ACT

SB 525

Relating to debt collection practices; creating new provisions; and amending ORS 135.925 and 646.639.

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

SECTION 1. (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.**

SECTION 2. ORS 135.925 is amended to read:

135.925. (1) As used in this section, “bad check diversion program” means a program established under subsection (2) of this section.

(2) A district attorney may establish a bad check diversion program within the office of the district attorney.

(3) If a district attorney has established a bad check diversion program, upon receipt of a case alleging a violation of ORS 165.065, the district attorney shall determine if the case is appropriate to be referred to the bad check diversion program. In determining whether to refer the case to the bad check diversion program, the district attorney shall consider, in addition to any other factors the district attorney deems appropriate, the following:

(a) The amount of the bad check;

(b) Whether the person alleged to have negotiated the bad check has a prior criminal record or has previously participated in a bad check diversion program;

(c) The number of violations of ORS 165.065 the person is alleged to have committed in the current or prior allegations;

(d) Whether current charges of violating ORS 165.065 are pending against the person; and

(e) The strength of the evidence of intent to defraud the victim.

(4) When a case is referred to the bad check diversion program, the district attorney shall send a notice to the person who is alleged to have violated ORS 165.065. The notice must contain:

(a) The date and amount of the bad check;

(b) The name of the payee;

(c) The date before which the person is required to contact the district attorney, or a person designated by the district attorney, concerning the bad check; and

(d) The penalty for a violation of ORS 165.065.

(5) The district attorney may enter into a written agreement with the person alleged to have violated ORS 165.065 to forgo prosecution of the violation if the person agrees to do the following within a six-month period:

(a) Complete a class conducted by the district attorney, or by a private entity under contract to the district attorney, relating to writing checks;

(b) Make full restitution to the payee; and

(c) Pay any collection fee imposed by the district attorney under subsection (6) of this section.

(6) A district attorney may collect a fee if the district attorney collects and processes a bad check. The amount of the fee may not exceed \$35 for each bad check in addition to the actual amount of any bank charge incurred by the victim as a result of the bad check.

(7) The district attorney may not require a person alleged to have violated ORS 165.065 to make an admission of guilt as a prerequisite to participating in a bad check diversion program.

(8) The following are not admissible in any civil or criminal action against a person arising from negotiating a bad check:

(a) A statement, or any information derived from the statement, made by the person in connection with the determination of the person’s eligibility to participate in a bad check diversion program.

(b) A statement, or any information derived from the statement, made by the person after the person is determined to be eligible to participate in a bad check diversion program.

(c) A statement, or any information derived from the statement, made by the person while participating in a bad check diversion program.

(d) Information about the person’s participation in a bad check diversion program.

(9) A district attorney may not authorize a private entity to use the seal, letterhead or name of the district attorney or district attorney’s office to collect debt, including restitution, pursuant to a bad check diversion program.

SECTION 3. ORS 646.639 is amended to read:

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

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

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

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

(d) “Credit” means the right granted by a creditor to a consumer to defer payment of a debt, to incur a debt and defer its payment, or to purchase or acquire property or services and defer payment therefor.

(e) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

(f) "Debtor" means a consumer who owes or allegedly owes an obligation arising out of a consumer transaction.

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

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

(2) It shall be an unlawful collection practice for a debt collector, while collecting or attempting to collect a debt to do any of the following:

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

(b) Threaten arrest or criminal prosecution.

(c) Threaten the seizure, attachment or sale of a debtor's property when such action can only be taken pursuant to court order without disclosing that prior court proceedings are required.

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

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

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

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

(A) Write to the debtor at the debtor's place of employment if no home address is reasonably available and if the envelope does not reveal that the communication is from a debt collector other than a provider of the goods, services or credit from which the debt arose.

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

graph, any language in any instrument creating the debt which purports to authorize telephone calls at the debtor's place of employment shall not be considered as giving permission to the debt collector to call the debtor at the debtor's place of employment.

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

(i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the name of the individual making the contact and the true purpose thereof.

(j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealing the true purpose of the debt collector's communication.

(k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, or threaten to take any action which the debt collector in the regular course of business does not take.

(L) Use any form of communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a governmental agency, governmental official or an attorney at law when it is not in fact so approved or authorized.

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

(n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by law.

(o) Threaten to assign or sell the debtor's account with an attending misrepresentation or implication that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics.

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

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

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