

**646.639 Unlawful debt collection practices.** (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 subparagraph, 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.

(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). [1977 c.184 §2; 1985 c.799 §1; 1991 c.672 §9; 1991 c.906 §1; 1995 c.696 §50]

#### **646.641 Civil action for unlawful debt collection practice; damages; attorney fees; time for commencing action.**

(1) Any person injured as a result of willful use or employment by another person of an unlawful collection practice 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) In any action brought by a person under this section, the court may award reasonable attorney fees to the prevailing party.

(3) Actions brought under this section shall be commenced within one year from the date of the injury.

#### **646.642 Civil penalties.**

(1) Any person who willfully violates the terms of an injunction issued under ORS 646.632 shall forfeit and pay to the state a civil penalty to be set by the court of not more than \$25,000 per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued, and in such cases the prosecuting attorney acting in the name of the state may petition for recovery of civil penalties.

(2) Any person who willfully violates any provision of an assurance of voluntary compliance approved and filed with an appropriate court under ORS 646.632 shall forfeit and pay to the state a civil penalty to be set by the court of not more than \$25,000 per violation. Any prosecuting attorney may apply to an appropriate court for recovery of such civil penalty. In any action brought by a prosecuting attorney under this section, and in any contempt action brought by a prosecuting attorney pursuant to ORS 646.632 (4), the court may award to the prevailing party, in addition to any other relief provided by law, reasonable attorney fees and costs at trial and on appeal.

(3) In any suit brought under ORS 646.632, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by ORS 646.607 or 646.608, the prosecuting attorney, upon petition to the court, may recover, on behalf of the state, a civil penalty to be set by the court of not exceeding \$25,000 per violation. [1971 c.744 §17; 1975 c.437 §5; 1977 c.195 §10; 1989 c.745 §2; 1995 c.618 §100]

**646.643 Applicability of ORS 646.639.** A debt collector who is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of ORS 646.639. [1991 c.906 §3]

646.645 [1965 c.490 §6; repealed by 1971 c.744 §27]

646.646 **Loss of license or franchise by person violating injunction.** Upon petition by the prosecuting attorney, the court may, in its discretion, order the dissolution or suspension or forfeiture of the license or franchise of any person who violates the terms of any injunction issued under ORS 646.632. [1971 c.744 §18]

**646.648 Unlawful practice by manufactured dwelling dealer.** (1) As used in this section:

(a) "Buyer" means a person who buys or agrees to buy a manufactured dwelling from a manufactured dwelling dealer. (b) "Cash sale price" means the price for which a manufactured dwelling dealer would sell to a buyer, and the buyer would buy from a dealer, a manufactured dwelling that is covered by a purchase agreement, if the sale were a sale for cash instead of a retail installment sale.

(c) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

(d) "Manufactured dwelling dealer" means a person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure dealer licensee under ORS 446.701. (e) "Retail installment sale" has the meaning given that term in ORS 83.510.

(2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manufactured dwelling, the dealer does any of the following: (a) Misrepresents to a buyer that, as a condition of financing, the buyer must purchase: (A) Credit life insurance; (B) Credit disability insurance; (C) Credit unemployment insurance; (D) Credit property insurance; (E) Health insurance; (F) Life insurance; or (G) An extended warranty. (b) In close connection with the sale, misrepresents

to a lender: (A) The cash sale price; (B) The amount of the buyer's down payment; or (C) The buyer's credit or employment history. [2001 c.917 §1; 2003 c.655 §82]

Note: Sections 2 and 14, chapter 658, Oregon Laws 2003, provide:

Sec. 2. (1) As used in this section, "facility," "floating home," "landlord," "manufactured dwelling" and "tenant" have the meanings given those terms in ORS 90.100. (2) A facility landlord engages in an unlawful trade practice when the landlord violates ORS 90.680 (6) in a sale of a manufactured dwelling or floating home by a tenant to a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant. (3) Notwithstanding ORS 646.638, only a prosecuting attorney may bring an action under ORS 646.605 to 646.652 for a violation described in this section. [2003 c.658 §2]

Sec. 14. Section 2, chapter 658, Oregon Laws 2003, is repealed January 2, 2012. [2003 c.658 §14; 2007 c.906 §42]

**646.649 Late fees on delinquent cable service accounts; amount; disclosure; notice.**

(1) As used in this section: (a) "Cable service" means: (A) One-way transmission to subscribers of a video programming service; (B) Two-way interactive service delivered over a cable system; or (C) Any communication with subscribers necessary for the selection and use of video programming or interactive services. (b) "Cable system" means a facility consisting of closed transmission paths and associated signal operation, reception and control equipment that is designed to provide cable service.

(2)(a) A seller of cable service may assess a late fee on delinquent subscriber accounts held by the seller that have an unpaid balance of \$10 or more. (b) A late fee assessed under subsections (2), (3) and (4) of this section shall not exceed five percent of the unpaid balance or \$6, whichever is greater.

(3) The seller of cable service shall conspicuously disclose on each statement or invoice the terms under which a late fee may be assessed, including the amount of the fee.

(4) Prior to assessing a late fee under subsections (2), (3) and (4) of this section, the seller shall give written notice to the subscriber. The notice shall conspicuously indicate the amount of the unpaid balance, an address where payment may be made, the date on which the late fee will be imposed and the amount of the late fee. The notice shall be mailed to the subscriber's last-known billing address as shown in the seller's records. The notice shall be mailed at least 10 days prior to the date on which the late fee will be assessed. The late fee may not be assessed earlier than 27 days after the due date for the unpaid balance. [1999 c.400 §§2,3]

646.651 Contest and sweepstakes solicitations; required disclosures; prohibited representations. (1) As used in this section:

(a) "Contest" means a procedure for awarding a prize in which the outcome depends at least in part on the skill of the contestant. "Contest" includes any competition in which a person is required to purchase anything, pay anything of value or make a donation in order to participate. "Contest" also includes a competition that is advertised in a way that creates a reasonable impression that a

payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or competing for or obtaining information about a prize.

(b) "Sweepstakes" means a procedure for awarding a prize that is based on chance. "Sweepstakes" includes any such procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize. "Sweepstakes" also includes any such procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.

(c) "Clearly and conspicuously" means the message is conveyed in a manner that is reasonably apparent to the audience to whom it is directed. In order for a message to be considered clear and conspicuous, it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise relate to; and

(B) In the case of printed solicitations: (i) Be in close proximity to the terms it purports to clarify, explain or otherwise relate to; and (ii) Be of sufficient prominence in terms of placement, font or color contrast as compared with the remainder of the solicitation so as to be reasonably apparent to the audience to whom it is directed.

(2) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a contest and the person does not clearly and conspicuously disclose in the solicitation:

(a) The maximum number of rounds or levels, if the contest has more than one round or level;

(b) The date the final winner will be determined;

(c) The maximum total cost the final winner will have paid to the sponsor to participate in the contest;

(d) Whether the final winner must purchase or pay anything of value to a person other than the sponsor if purchasing or paying is a condition of eligibility;

(e) If the contest involves multiple rounds of increasing difficulty, an example illustrative of the last determinative round or a statement that subsequent rounds will be more difficult;

(f) If the contest is judged by someone other than the sponsor, the identity of or description of the qualifications of the judges;

(g) The method used in judging; and

(h) The name and address of the sponsor or the sponsor's agent.

(3) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a sweepstakes and does not clearly and conspicuously disclose in the solicitation:

- (a) The odds of winning in Arabic numerals, except that if the odds of winning depend on the number of entries received, a statement to that effect will be deemed sufficient;
- (b) The name and address of the sponsor or the sponsor's agent, consistently stated wherever it is used; and
- (c) The procedure for entry without purchase.

(4) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person solicits participation in a contest or sweepstakes:

- (a) By using the United States mail to represent that a person has been selected to receive or has won a particular prize, when that is not the case; or
- (b) By using the United States mail to represent that a person is a winner, is a finalist, is in first place or is otherwise in a limited group of persons with an enhanced likelihood of winning or receiving a prize, when more than 25 percent of the persons receiving the solicitation have the same chance of winning. [1999 c.875 §2]

Note: See note under 646.649.

646.652 District attorney's reports to Attorney General; filing of voluntary compliances.

A district attorney shall make a full report to the Attorney General of any action, suit, or proceeding prosecuted by such district attorney under ORS 646.605 to 646.652, including the final disposition of the matter, and shall file with the Attorney General copies of all assurances of voluntary compliance accepted under ORS 646.632. [1971 c.744 §19]

646.656 Remedies supplementary to existing statutory or common law remedies.

The remedies provided in ORS 646.605 to 646.652 are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state. [1971 c.744 §21a]

## **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;

(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; or

(Q) Any 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 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 190.130 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 §2; 1987 c.373 §43; 1993 c.744 §20; 1995 c.622 §1; 1999 c.468 §1; 2001 c.917 §5]

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]

#### **697.115 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]

## **CHECK-CASHING BUSINESSES**

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

- (1) “Check-cashing business” means any 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. “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) “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]

### **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) An applicant for a license to conduct a check-cashing business shall apply in writing and in a form that the Director of the Department of Consumer and Business Services prescribes by rule.
- (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 those of the applicant's members, partners, officers, directors and principals.

(3) The director, for good cause shown, 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]

#### **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 first full calendar year following the year in which the license is issued. A licensee may not assign or transfer a license issued under this section. A licensee may renew a license upon payment of a license fee in an amount the director prescribes by rule.

- (4) The director shall deny the application if the applicant does not meet the requirements set forth in this section. The director's denial shall be 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. Upon receiving the applicant's request, the director shall grant the applicant a hearing under ORS 183.413 to 183.470. [2007 c.358 §6]

**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 first full calendar year following the year in which the license is issued. A licensee may not assign or transfer a license issued under this section. A licensee may renew a license upon payment of a license fee in an amount the director prescribes by rule.
- (4) The director shall deny the application if the applicant does not meet the requirements set forth in this section. The director's denial shall be 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. Upon receiving the applicant's request, the director shall grant the applicant a hearing under ORS 183.413 to 183.470. [2007 c.358 §6]

**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 checkcashing 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 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 §2; 1987 c.373 §45; 1993 c.744 §21]

**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 §3]

**697.622 Exemptions from requirements 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 §4; 1997 c.631 §525]

### **697.632 Registration procedure; certificates; fees; rules.**

(1) Subject to ORS chapter 183, 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 §5; 1989 c.209 §1]

### **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 §6; 1989 c.209 §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 §7]

### **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. (i) Violates ORS 697.707.

(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 §8; 2005 c.309 §4]

#### **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 threeyear period provided in subsection (1) of this section has expired. [1983 c.17 §9]

#### **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 §10]

### **697.692 Fees.**

(1) A debt consolidating agency:

- (a) May charge a client an initial set-up fee of not more than \$25.
- (b) 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. A debt consolidating agency may not receive an amount from the client under this paragraph until the first installment under the contract or agreement with the client is paid to any creditor of the client.
- (c) May 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.
- (d) Notwithstanding paragraph (c) of this subsection, 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.

(2) Notwithstanding subsection (1)(c) of this section, a debt consolidating agency that is a nonprofit organization may charge a fee in an amount set by the director by rule to cover the expenses of credit counseling if:

(a) The debt consolidating agency demonstrates to the director the need for the fee or the credit counseling is 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 credit counseling; and (b) A request to charge the fee has been approved in writing by the director.

(3) 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).

(4) As used in this section, "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code. [1983 c.17 §11; 1999 c.483 §1; 2005 c.309 §1]

### **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)(b) of this section does not apply to the disposal of records by a debt consolidating agency that occurs after the expiration of the retention period in ORS 697.672. [1983 c.17 §12; 2005 c.338 §16]

### **697.707 Disclosure of fees; effect.**

- (1) A debt consolidating agency may not charge or receive from a client a fee authorized under ORS 697.692 for any services provided by the agency to the client before the agency provides the disclosure required under this section.
- (2) A debt consolidating agency shall disclose in writing to each client on a separate form:
  - (a) The maximum amount the debt consolidating agency may charge for services performed for the client; and
  - (b) That the client is responsible for payment of the amount charged.
- (3) The form described in subsection (2) of this section must contain a space for the client to sign the form, indicating that the client has read and understands the information disclosed on the form. [2005 c.309 §3]

**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 §13]

**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 §14]

**697.732 Audits; investigations; access; public disclosure requirements and exemptions.**

- (1) To enforce ORS 697.612 and 697.642 to 697.702, the Director of the Department of Consumer and Business Services may:
  - (a) Upon the director's own motion or upon receipt of a complaint by a client of a debt consolidating agency or of a person acting as a debt consolidating agency without registration, audit the trust accounts of the agency or person for the purpose of investigating any violation of ORS 697.642 to 697.702. The debt consolidating agency or person acting as a debt consolidating agency without registration shall pay the reasonable cost of the audit, as determined by the director.
  - (b) Undertake investigations, including investigations outside of this state, that the director considers necessary to: (A) Determine whether a person has violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702 or any rule of the director adopted under ORS 697.632; or (B) Aid in the enforcement of ORS 697.612 and 697.642 to 697.702 and in the formulation of rules and forms under ORS 697.632.
  - (c) Require a person to file a statement in writing, under oath or otherwise, concerning the matter being investigated.
- (2) All debt consolidating agencies and persons acting as debt consolidating agencies without registration shall provide the director with free access during all reasonable hours to offices and places of business, books, accounts, records, papers, files, safes and vaults for the purpose of investigating violations of ORS 697.612 or 697.642 to 697.702.

(3) 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 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.

(4) Except as provided in subsection (3) of this section, records, reports and other information received or compiled by the director as a result of investigations under this section are exempt from the public disclosure required by ORS 192.420. [1983 c.17 §15; 2005 c.338 §17]

#### **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 §17]

#### **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 697.642 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 chapter 183. [1983 c.17 §16; 1989 c.209 §3; 2005 c.338 §18]

#### **697.762 Enjoining violations; attorney fees; damages.**

(1) If 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 that the director believes is in violation of ORS 697.612 or 697.642 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 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 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 §18; 1995 c.696 §46; 2005 c.338 §19]

#### **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 chapter 183. The director shall determine and pay the amount of the judgment recoverable under the bond, subject to ORS 697.812. [1983 c.17 §19; 1989 c.209 §4]

#### **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 chapter 183.

(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 chapter 183, 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 §20; 1989 c.209 §5]

#### **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 §21; 1995 c.696 §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 §22]

**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 §23; 1989 c.209 §6]

**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 §24]

**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 has:

(a) Violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702, a rule adopted under ORS 697.632 or an order issued under ORS 697.732 or 697.742, 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]

### **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 \$1,000 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 by ORS 183.745.
- (3) Notwithstanding ORS 183.745, 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 §24a; 1989 c.706 §25; 1991 c.734 §88; 2005 c.338 §20]

**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]

### **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.

**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]

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