

## 2013 ORS § 646.639<sup>1</sup>

### Unlawful 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 debtors family or property.
  - (b) Threaten arrest or criminal prosecution.
  - (c) Threaten the seizure, attachment or sale of a debtors 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 debtors family.

- (e) Communicate with the debtor or any member of the debtors 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 debtors family.
- (f) Communicate or threaten to communicate with a debtors employer concerning the nature or existence of the debt.
- (g) Communicate without the debtors permission or threaten to communicate with the debtor at the debtors place of employment if the place is other than the debtors residence, except that the debt collector may:

  - (A) Write to the debtor at the debtors 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 debtors 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 debtors 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 debtors place of employment more frequently than once each business week and may not telephone the debtor at the debtors place of employment if the debtor notifies the debt collector not to telephone at the debtors place of employment or if the debt collector knows or has reason to know that the debtors 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 debtors place of employment shall not be considered as giving permission to the debt collector to call the debtor at the debtors 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 collectors 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 collectors communication.

- Attempt to or threaten to enforce a right or remedy with knowledge or
- (k)** 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.
- Use any form of communication which simulates legal or judicial
- (L)** 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 debtors 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 (Definitions for ORS 171.725 to 171.785).
- (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 (Action against information provider for failure to comply with law) (3) to (5). [1977 c.184 §2; 1985 c.799 §1; 1991 c.672 §9; 1991 c.906 §1; 1995 c.696 §50; 2013 c.551 §3]

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## Notes of Decisions

Enforcement provision of Unlawful Collection Law allows aggrieved debtor to recover at least statutorily specified \$200 damages on proving some type of injury including emotional upset and, in action arising from debt collection through use of telephone, allegations by plaintiff of being bothered, upset and scared were sufficient to entitle recovery of actual damages or a minimum of \$200 under ORS 646.641 (Civil action for unlawful collection practice). Creditors Protective Assn. v. Britt, 58 Or App 230, 648 P2d 414 (1982)

Loan was not consumer transaction where proceeds were used to pay off debts for meat purchased for plaintiffs commercial meat business and for cooler cases for

that business even though meat was traded to contractors in exchange for goods and services provided in construction of plaintiffs home. *Rowe v. Bank of the Cascades*, 68 Or App 490, 683 P2d 93 (1984)

If defendant bank froze plaintiffs account in order to force plaintiffs to pay consumer debt to another bank, conduct would come within provisions of Unlawful Debt Collection Practices Act and it was error to grant defendants motion for summary judgment. *Rowe v. Bank of the Cascades*, 68 Or App 490, 683 P2d 93 (1984)

Where debtor brought action against debt collector alleging violations of Fair Debt Collection Practices Act and Oregon Unlawful Debt Collection Practices Act, district court must consider pendant state claims. *Swanson v. Southern Oregon Credit Service, Inc.*, 869 F2d 1222 (9th Cir. 1988)

As used in this section, right does not mean debt. *Porter v. Hill*, 314 Or 86, 838 P2d 45 (1992); *Manifold Business and Investment, Inc. v. Wroten*, 116 Or App 573, 843 P2d 950 (1992), *affd* 316 Or 338, 851 P2d 580 (1993)

Lawyer did not attempt to enforce right or remedy by filing civil action to collect alleged debt from client even though part of debt did not exist. *Porter v. Hill*, 314 Or 86, 838 P2d 45 (1992); *Manifold Business and Investment, Inc. v. Wroten*, 116 Or App 573, 843 P2d 950 (1992), *affd* 316 Or 338, 851 P2d 580 (1993)

Filing of legal action seeking to recover allegedly unauthorized charges does not constitute collection or attempt to collect interest or charges in excess of actual debt. *Hedrick v. Spear*, 138 Or App 53, 907 P2d 1123 (1995)

State law is preempted with regard to third-party prelitigation efforts to collect federally guaranteed student loans. *Brannan v. United Student Aid Funds, Inc.*, 94 F3d 1260 (9th Cir. 1996)

§§ 646.639 (Unlawful collection practices) to 646.641 (Civil action for unlawful collection practice)

## Notes of Decisions

Demand letter sent by attorneys to persons using satellite dishes to pirate television programming broadcasts, which demanded \$300 to avoid being sued for damages, does not come under the unlawful Debt Collection Practices Act, because there was no consumer transaction between dish users and broadcaster of programming. *Tipton v. Willamette Subscription Television*, 85 Or App 79, 735 P2d 1250 (1987), Sup Ct review denied

§§ 646.605 (Definitions for ORS 646.605 to 646.652) to 646.656 (Remedies supplementary to existing statutory or common law remedies)

## Notes of Decisions

A complaint which alleges in one count that defendants advertised automobile for sale with intent not to sell it as advertised, in a second count that there was a failure to disclose advertised price coupled with sale at greater amount sufficiently pleads action under Act. *Sanders v. Francis*, 277 Or 593, 561 P2d 1003 (1977)

Plaintiffs purchase of truck to carry on business of hauling freight in order to provide family investment and employment for family member did not fall within provisions of Act. *Searle v. Exley Express, Inc.*, 278 Or 535, 564 P2d 1054 (1977)

Amendment of definition of trade and commerce to include advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services does not indicate legislative intent to extend application of Unfair Trade Practices Act to loans and extensions of credit. *Lamm v. Amfac Mortgage Corp.*, 44 Or App 203, 605 P2d 730 (1980)

There is no requirement that consumer prove all elements of common law fraud in order to recover damages under Unlawful Trade Practices Act. *Raudebaugh v. Action Pest Control*, 59 Or App 166, 650 P2d 1006 (1982)

Plaintiffs allegations that defendant escrow company represented that plaintiff would receive security interests on notes from sale of their business did not constitute misrepresentations actionable under Unlawful Trade Practices Act. *Samuels v. Key Title Co.*, 63 Or App 627, 665 P2d 362 (1983), Sup Ct review denied

## Law Review Citations

56 OLR 490 (1977); 13 WLJ 455 (1977)

§§ 646.605 (Definitions for ORS 646.605 to 646.652) to 646.652 (District attorneys reports to Attorney General)

## Notes of Decisions

Where users of IUDs brought suit against manufacturer on variety of grounds, claiming damages for infertility, private enforcement provision of Oregon Unlawful Trade Practices Act (UTPA) does not provide remedy for personal injuries. *Allen v. G.D. Searle and Co.*, 708 F Supp 1142 (D. Or. 1989)

For purposes of applying Oregon Unlawful Trade Practices Act, real estate, goods or services are obtained primarily for personal, family or household purposes if (1) real estate, good or service is customarily purchased by substantial number of people for personal, family or household use and (2) person actually purchases real estate, good or service for personal, family or household use. *Fowler v. Cooley*, 239 Or App 338, 245 P3d 155 (2010)

## Law Review Citations

51 OLR 335, 346, 408 (1972); 53 OLR 473-475 (1974)

Chapter 646

## Notes of Decisions

Subject matter regulated by this chapter is not preempted by Federal Robinson-Patman Act so as to render this chapter invalid. *W. J. Seufert v. Nat. Restaurant Supply Co.*, 266 Or 92, 511 P2d 363 (1973)

Whether an injunction should issue when a court finds a violation of the Act is a matter of discretion. *State ex rel Johnson v. International Harvester Co.*, 25 Or App 9, 548 P2d 176 (1976)

This chapter imposes no affirmative duty to inform customers of rates in absence of request, but prohibits making information about prices available to some customers and not others. *Wildish Sand & Gravel v. Northwest Natural Gas Co.*, 103 Or App 215, 796 P2d 1237 (1990), Sup Ct review denied

## Related Statutes<sup>3</sup>

- 166.090  
Telephonic harassment
- 646A.602  
Definitions for ORS 646A.600 to 646A.628
- 646.607  
Unlawful business, trade practices
- 646.643  
Applicability of ORS 646.639
- 759.720  
Action against information provider for failure to comply with law

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 646—Trade Practices and Antitrust Regulation*, [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors646.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors646.html) (2013) (last accessed Apr. 27, 2014).

<sup>2</sup> Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 646*, [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ano646.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano646.html) (2013) (last accessed Apr. 27, 2014).

<sup>3</sup> OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item

refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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