



**DEPARTMENT OF JUSTICE**

DATE: February 5, 2009

TO: Senator Bonamici, Chair  
Senate Consumer Protection and Public Affairs Committee

FROM: John R. Kroger, Attorney General

SUBJECT: SB 328 – Debt Collection

**THE PROBLEM**

- Since 2001, the number of complaints about debt collection practices has repeatedly placed the industry on the Department of Justice's Top 10 Consumer Complaint List.<sup>1</sup>
  - In 2008, the Department of Justice (DOJ) received 834 written consumer complaints about debt collection agencies and 254 about first party debt collectors.<sup>2</sup> We get many additional calls to the Attorney General's Consumer Hotline. Many of these complaints are about companies registered with DCBS.
  - Of these 834 complaints, 159 are about Oregon debt collection agencies and 636 are about out of state debt collection agencies. (We do not have sufficient information to identify the remaining 39.)<sup>3</sup>
- Some examples of complaints received by DOJ in 2008 include:
  - Repeatedly calling the parents of a debtor after being told the debtor is an adult child who no longer resides with the parents;
  - Verbal abuse, including threats and profanity, by a debt collector calling a debtor; and
  - Calling a debtor at work after being told not to do so.

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<sup>1</sup> In 2001 and 2002, debt collection agencies ranked tenth on the Top 10 list. In 2003, debt collection agencies ranked sixth on the Top 10 list. In 2004 and 2005, debt collection agencies ranked fifth on the Top 10 list. In 2006 and 2007, debt collection agencies ranked fourth on the Top 10 list. The 2008 list will be announced during "Consumer Protection Week" at the beginning of March.

<sup>2</sup> This number does not include notices of private lawsuits or written contacts that request only information.

<sup>3</sup> DOJ does not use the location of a business to determine whether to open an investigation; the primary criteria used for all industries are the number of written complaints we receive about a named business, the alleged egregiousness of the business practices, and the alleged monetary losses suffered by consumers.

- With a worsening economy, it is likely that more Oregonians will fall behind on their bills. The Unlawful Debt Collection Practices Act is only intended to prohibit unfair debt collection practices; it is not intended to allow people to avoid their debts.
- Consumer complaints about debt collection practices ranked #1 in 2007 according to the National Association of Attorneys General. <http://www.naag.org/naag-issues-national-top-10-list-of-consumer-complaints.php> (retrieved February 2, 2009)
- Unfortunately, at the present time there is no government agency in Oregon that has the authority to address conduct that violates Oregon's Unlawful Debt Collection Practices Act.<sup>4</sup> This has allowed debt collectors to be nearly unregulated in their collection practices against Oregon consumers.
  - The Oregon Department of Consumer and Business Services (DCBS) registers third party debt collectors and requires them to obtain either a \$10,000 surety bond or irrevocable letter of credit.<sup>5</sup> Although DCBS has terminated registrations, refused to renew registrations, issued fines and/or issued cease and desist orders, it has not taken any such actions based upon violations of debt collection practices laws. This is because the regulatory role of DCBS is focused on the collector's duties to creditors in collecting debts rather than the collector's duties to consumers. DCBS refers consumer complaints to DOJ and/or the FTC.
  - The DOJ lacks jurisdiction to take action against debt collectors that violate state debt collection laws. As a result, DOJ is unable to provide assistance to individual debtors who complain that a debt collector has violated state debt collection provisions or to halt ongoing practices that violate the law.
  - Although consumers may file a complaint with the Federal Trade Commission (FTC),<sup>6</sup> the FTC does not provide individual consumer assistance. The FTC may take action against debt collectors that violate federal debt collection laws, but those actions typically involve collectors that operate interstate and are the subject of national, as opposed to Oregon-specific or regional complaints.
- The FTC concluded its 2008 Annual Report regarding the Fair Debt Collection Practices Act, by stating that

**“Vigorous federal and state law enforcement in this area is essential** to stop those debt collectors who fail to follow the FDCPA [federal Fair Debt Collection Practices Act].”

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<sup>4</sup> ORS 646.639

<sup>5</sup> ORS 697.005 et seq.

<sup>6</sup> 15 USC 1601 et seq.

Federal Trade Commission Annual Report 2008: Fair Debt Collection Practices Act  
p. 15.”

## **WHY WE NEED AUTHORITY**

- Individuals who are victims of unlawful debt collection practices frequently cannot afford to pursue a private lawsuit either because the debt is too small or because the debtor cannot afford to retain private counsel. As a consequence, private enforcement of Oregon’s debt collection laws has not been effective in curbing unlawful practices, as evidenced by the steady number of consumer complaints filed with DOJ over the last several years.
- Currently, there is no state consumer protection agency with authority to handle individual consumer complaints or to take action to halt unlawful debt collection practices.
- While DCBS has regulatory authority over third party debt collectors, there are certain kinds of first party debt collectors and debt buyers that are completely unregulated. So unless SB 328 is adopted these businesses will remain unregulated.

## **HOW SB 328 WILL HELP COMBAT UNLAWFUL DEBT COLLECTION PRACTICES**

- SB 328 would make a violation of the Unlawful Debt Collection Practices Act a violation of ORS 646.607 (the Unlawful Trade Practices Act). This would allow DOJ to assist consumers through the complaint handling process and bring enforcement actions when appropriate to stop patterns of unlawful debt collection practices.
  - The UTPA provides a mechanism for resolving alleged unlawful conduct short of filing a lawsuit, by entry into an Assurance of Voluntary Compliance. This mechanism benefits businesses as well as consumers, as it does not require a finding of liability, is more cost effective than litigation, provides restitution for consumers, and allows injunctive relief to help prevent future violations.
- SB 328 will protect some of Oregon’s most vulnerable citizens by closing a loophole that allows debt collection agencies to be unregulated by Oregon’s primary consumer protection law. It is wrong to allow debt collectors to violate the law simply because no state agency has the authority to enforce that law.

### **SB 328 LEVELS THE PLAYING FIELD**

- Given that many of the complaints DOJ receives relate to out-of-state companies, allowing the DOJ to enforce the Unlawful Debt Collection Practices Act through the tools contained in the UTPA will protect Oregon businesses that are compliant with Oregon law and will prevent non-compliant businesses from ignoring Oregon law.
- By making debt collectors subject to UTPA enforcement, we are simply leveling the playing field and making debt collectors subject to the same law that 99% of Oregon businesses are subject to.

### **THERE IS NO KNOWN FISCAL IMPACT**