Chapter 697

1973 REPLACEMENT PART

Collection Agencies; Debt Consolidating Agencies

COLLECTION AGENCIES

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COLLECTION AGENCIES

697.010 "Board," "commissioner" and "division" defined. As used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, unless the context requires otherwise:

(1) "Board" means the Collection Agencies Board.

(2) "Commissioner" means the Real Estate Commissioner.

(3) "Division" means the Real Estate Division of the Department of Commerce.

[Amended by 1959 c.525 §1; 1963 c.580 §58]

697.020 "Collection agency," "collection agency business," "operator" and "solicitor" defined. (1) Except as provided in subsection (4) of this section, as used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, the term "collection agency business" means the business of engaging directly or indirectly and as a primary or secondary object, business or pursuit in the solicitation of claims for collection or repossession of collateral security or in the collection of claims owed or due or asserted to be owed or due to another or in the repossession of collateral security.

(2) Any house agency, firm, person, corporation or voluntary association using any name other than its own in collecting its own claims with the intention of conveying, or which tends to convey, the impression that a third party has been employed, is conducting a collection agency business within the meaning of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

(3) Any person who sells, attempts to sell, gives away or attempts to give away to another person, other than a licensee under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, any system of collection letters, demand forms or other printed matter where the name of any person, other than a creditor, shall appear in such manner as to indicate that a request or demand is being made by another person, other than the creditor, for the payment of any sum due, or asserted to be due, or who solicits or accepts accounts for collection on a contingent or percentage basis or by a fee or outright purchase for collection purposes, is considered to be in the collection agency business within the meaning of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470. A collection agency using a business name or names not to exceed one additional name other than the business name appearing on the application for its license shall secure a separate license and bond as provided in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 for each such business name so used.

(4) As used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, the term "collection agency business" does not include attorneys at law who do not specialize in collections, licensed real estate brokers residing in this state when engaged in the regular practice of their respective professions, nor banks, trust companies, building and loan associations, savings and loan associations, consumer finance companies, industrial loan companies, abstract companies doing an escrow business, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity upon the staff of employes of only one person, one firm or one corporation not engaged in the business of a collection agency, express companies and telegraph companies doing business subject to public supervision and regulation, any public officer or any person acting under an order of court.

(5) As used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, "collection agency" means any person licensed and authorized to engage in the collection agency business.

(6) As used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, "operator" means a person having managerial control of a collection agency.

(7) As used in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, "solicitor" means a person whose primary function as an employe of a collection agency is the solicitation or collection of accounts.

[Amended by 1953 c.519 §2; 1959 c.525 §2; 1963 c.558 §1; 1969 c.373 §5; 1973 c.547 §1]

697.030 Collection agency license required to collect claims. No person other than a collection agency licensed and authorized under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 shall:

(1) Conduct within this state a collection agency business.

(2) Within this state collect claims for others.

(3) Solicit the right to collect or receive payment of any claim for another.

(4) Advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment of any claim for another.

(5) Seek to make collection or obtain payment of any claim on behalf of another.
[Amended by 1959 c.525 §3]

697.035 Licensed operator required for management of collection agency business; exceptions; fee. (1) Notwithstanding any other provision of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, no licensee shall engage in the collection agency business unless and until the collection agency, and each branch office thereof, is under the management and control of a licensed operator for each office. However, the commissioner may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

(2) The annual operator's license shall be renewable on or before July 1 of each year and the fee therefor shall be $25.
[1959 c.525 §10; 1963 c.558 §2; 1971 c.119 §2]

697.038 Additional fees. The following additional fees shall be charged by and paid to the Real Estate Division:

(1) For each transfer of an operator's license, $5;

(2) For each transfer of a solicitor's certificate, $5;

(3) For each change of name or address of a collection agency on the records of the division, $10; and

(4) For each operator's license, solicitor's certificate or branch office license issued on change of name or address of employing agency, $5.
[1971 c.119 §1; 1973 c.547 §2]

Note: 697.038 was not added to and made a part of ORS chapter 697 or any series therein by legislative action.

697.040 [Repealed by 1959 c.525 §36]

697.041 Qualifications for operator's license. (1) To qualify for an operator's license the applicant shall:

(a) Have been a resident of this state continuously for at least one year prior to the time of application; and

(b) Be a high school graduate, or have the equivalent education of a high school graduate; and

(c) Have at least two years' experience in the collection business, or have other experience, evidenced by a detailed explanatory affidavit, that in the judgment of the Real Estate Division is equivalent to two years' experience in the collection business; and

(d) Be of good moral character; and

(e) Not have been convicted of violating this chapter, nor have any unsettled complaints filed under ORS 697.230 against him; and

(f) Have passed an examination as provided in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470. A grade of 80 percent is passing on such examination; and

(g) Be 18 years of age or older at the time of making application.

(2) The Real Estate Division may waive or modify the requirements specified in paragraph (e) of subsection (1) of this section.
[1959 c.525 §11; 1963 c.558 §3; 1969 c.373 §6; 1973 c.547 §3; 1973 c.827 §79]

697.050 [Repealed by 1959 c.525 §36]

697.051 Rights of present and past licensees. Any person holding, or who has held, a collection agency operator's license on or before September 2, 1963, shall be conclusively presumed to be a qualified operator, and upon application for a license and tender of the annual license fee, the commissioner shall issue an operator's license to him.
[1963 c.558 §17]

697.060 [Repealed by 1959 c.525 §36]

697.061 Application for collection agency license; notice to other licensees. (1) Every application for a collection agency license, or for a renewal thereof, shall be made upon blanks furnished by the Real Estate Division and shall contain the following information:

(a) The full name and proposed business name of the applicant.

(b) The address of the applicant's principal place of business and branch offices.

(c) The names and addresses of the applicant and those associated with him. If the applicant is a corporation the application shall contain the names of the officers of the corporation.

(d) The names and residential addresses of the applicant's operators.

(e) The names and addresses of the applicant's solicitors.

(f) Such additional information which the division, by rule or regulation, shall require.

(2) Within 10 days after the filing of an

application the division shall notify all collection agency licensees of the receipt thereof. This notification requirement may be satisfied by notifying the members of the Collection Agencies Board. Each notice shall contain the name of the applicant and if a corporation, the names of all its stockholders, the applicant's prospective business location and such further information as the division by rule or regulation shall require.

(3) Every natural person or persons applying for a collection agency license must be 18 years of age or older at the time of making application.

[1959 c.525 §5; 1963 c.558 §4; 1963 c.580 §59; 1973 c.547 §4]

697.070 Fee, bond and other material to accompany application. (1) The application shall be accompanied by:

(a) If an original application, an application fee of $50.

(b) The annual license fee for a collection agency license, which is fixed at $125 for the principal place of business, and $125 for each branch office.

(c) Complete forms of all contracts and assignments designed for execution by persons placing any claim with the applicant for collection.

(2) A bond shall accompany the application and be maintained by a collection agency licensee. The bond shall run to the State of Oregon with a surety or sureties to the satisfaction of the commissioner in the amount specified by ORS 697.080, and be conditioned that the licensee shall, within 30 days after the close of each calendar or fiscal month, report and pay to his customers the net proceeds due and payable of all collections made during the calendar or fiscal month.

[Amended by 1959 c.525 §6; 1961 c.686 §1; 1969 c.373 §7; 1971 c.119 §3; 1973 c.547 §5]

697.080 Collection agency bond. The bond provided for in subsection (2) of ORS 697.070 shall be in the sum of $10,000 for one business location of the applicant or collection agency licensee and $10,000 for each additional location and executed by the applicant or collection agency licensee, as principal, and by a corporation, which is licensed by the Insurance Commissioner to transact the business of fidelity and surety insurance, as surety; or by two or more persons owning unencumbered real estate within the State of Oregon, the value of which in the aggregate is at least twice the amount of the penalty of the bond, exclusive of real property exempt from execution, as sureties, in which case the applicant or collection agency licensee must furnish to the commissioner a legal description of the property owned by each of the sureties together with a certificate from the county assessor showing the assessed value thereof. If any such surety shall, during the life of such bond, sell, mortgage or otherwise dispose of any of the property so listed, he shall immediately notify the commissioner, and thereupon the commissioner shall give notice to the licensee by registered or certified letter, return receipt demanded, that his bond will be canceled and his license revoked unless a new bond with proper sureties is filed within 30 days thereafter. Any licensee may, at any time, file with the commissioner a new bond. Any surety may file with the commissioner notice of his withdrawal as surety on the bond of any licensee. Upon filing of such new bond, or upon the revocation of the collection agency license, or upon expiration of 60 days after the filing of notice of withdrawal, as surety, by the surety, the liability of the former surety for all future acts of the licensee shall terminate. The commissioner shall forthwith cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the Insurance Commissioner. Upon the filing with the commissioner of notice by a surety of his withdrawal as the surety on the bond of any licensee, or upon the cancellation by the commissioner of the bond of any surety company as provided in this section, the commissioner shall forthwith give notice to the licensee of such withdrawal or cancellation, which notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at his main office, as shown by the records of the commissioner. At the expiration of 30 days from the date of mailing the notice, the license of such licensee shall be forthwith terminated, unless the licensee has filed a new bond with a surety, or sureties, satisfactory to the commissioner. All bonds given under the provisions of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 shall be filed and held in the office of the commissioner.

[Amended by 1959 c. 525 §7; 1963 c.558 §5; 1969 c.373 §8]

697.090 [Repealed by 1959 c.525 §36]

697.100 Form of bond. The bond required by subsection (2) of ORS 697.070 shall be in the form substantially as follows:

Know All Men by These Presents that we, ——, as principal, and ——, as suret—, are held and firmly bound unto the State of Oregon, in the penal sum of ——, ($——), lawful money of the United States, for the payment of which well and truly to be made we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas, the above bounden principal has applied to the Real Estate Commissioner of the State of Oregon for a collection agency license under the provisions of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, and is required by the provisions of that law to furnish a bond conditioned as herein set forth.

Now, therefore, if the said —— shall, within 30 days after the close of each fiscal or calendar month, report and pay to customers the net proceeds due and payable of all collections made during said calendar or fiscal month, and shall strictly, honestly and faithfully comply with the provisions of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, and all amendments thereof and supplemental thereto, now or hereafter enacted, then this obligation shall be void, otherwise to remain in full force and effect.

This bond shall become effective on the —— day of ——, 19—. The suret— may be relieved of future liability hereunder by giving 60 days' written notice to the principal and to the Real Estate Commissioner of the State of Oregon.

This bond shall be one continuing obligation and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In Witness Whereof we have hereunto set our hands and seals at —— in the State of Oregon, this —— day of ——, 19—.

——————(SEAL)
Principal

——————(SEAL)
——————(SEAL)
Suret—

[Amended by 1959 c.525 §8; 1969 c.373 §9]

697.110 [Repealed by 1959 c.525 §36]

697.111 Examinations for operators' licenses. Examinations for operators' licenses shall be conducted by the board or the commissioner and may be held in any month in which there is pending one or more applications filed in a previous month. The commissioner shall designate dates of such examinations at least 30 days prior to the date on which the examination is to be given. Applications for examination shall be filed at least 15 days prior to the examination date and shall be accompanied by an application fee of $10. The chairman of the board shall designate a board member to be in attendance at the time of examination and to assist in the giving of the examination. The examination may be written or oral or a combination of both and shall be practical in nature. The examination may include questions on:

(1) Bookkeeping, credit adjusting, business law, collection procedure, business ethics, agency, debtor and creditor relationships, trust funds, fiduciary relationships and the provisions of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470; and

(2) Such further subject matter as the board, by rule or regulation, may specify. [1959 c.525 §12; 1961 c.686 §2; 1963 c.558 §15]

697.120 Fee for license; return of fee and bond if license not issued. The fee for all licenses issued shall, at all periods of the year, be the same as prescribed in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470. No other license or fee shall be required of such licensee by any city, county, town or other political subdivision thereof. If the commissioner does not issue the license applied for, the fee and bond shall be returned to the applicant. Each collection agency must procure a license and pay a license fee of $100 for each of its offices in the State of Oregon. [Amended by 1953 c.520 §5; 1961 c.686 §3]

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

697.140 [Repealed by 1959 c.525 §36]

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

697.146 Solicitors; solicitors' certificates. (1) Except for a licensed operator, no person shall act as a solicitor until he has received a certificate from the commissioner permitting such activity. The commissioner shall issue a certificate to a solicitor upon application therefor by a collection agency and shall be conditioned upon exclusive employment of the solicitor with such agency.

All certificates shall be issued upon conditions which the Real Estate Division, by rule or regulation, may specify.

(2) The certificate shall be in such form and size as prescribed by the commissioner. The certificate shall contain the date of its issuance, the name and address of the solicitor and the name of the collection agency by which he is employed, and such other information as the division, by rule or regulation, may require. Each certificate shall have imprinted thereon the seal of the Real Estate Division. The certificate of each solicitor shall be mailed or delivered to the collection agency by which such solicitor is employed and shall be kept in the custody of such agency.

(3) The commissioner shall prepare and deliver to each certified solicitor a pocket card containing an imprint of the seal of the Real Estate Division, the date of issuance, and the name and address of the solicitor's employer and shall certify that the person whose name appears thereon is a certified collection agency solicitor. A solicitor shall show his pocket card on the request of any person from whom he is soliciting business for a collection agency.

(4) The application and annual renewal fee for a certificate shall be $10. If the employment of a solicitor is terminated, the collection agency shall notify the commissioner within 10 days after the date of such termination and upon receipt of such notification the commissioner shall cancel the solicitor's certificate. All cancellations shall be matters of public record.

[1959 c.525 §13; 1961 c.686 §4; 1963 c.558 §6; 1971 c.119 §4]

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

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

697.165 License or certificate not assignable; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any certificate or license granted under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 to 697.440 to 697.470 shall be a personal privilege and shall not be assignable.

(2) Upon the death of any collection agency licensee, the Real Estate Division shall have the right to transfer the license of the decedent to the personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such personal representative to continue the collection agency business of the decedent pursuant to the provisions of ORS 114.445, and upon such other terms and conditions as the court may prescribe.

(3) The death of the operator of a corporate licensee shall in no way interfere with the continuation of the licensed business providing another licensed operator is placed in management control of the corporate licensee.

[Amended by 1959 c.525 §16; 1963 c.558 §16; 1963 c.580 §60; 1969 c.591 §300]

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

697.180 [Repealed by 1959 c.525 §36]

697.181 Expiration and renewal of licenses and certificates. (1) All licenses and certificates required by ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, including those issued before August 5, 1959, shall expire on June 30 of each year and shall be renewed as of July 1 following upon payment of required annual fees.

(2) When a licensee or certificate holder has been delinquent in renewing his license or certificate, the division shall charge an additional fee of $25 for the renewal of such license or certificate. The division may waive the additional fee for good cause shown.

[1959 c.525 §14; 1963 c.580 §61; 1969 c.373 §10]

697.190 Annual statement of collections. Each collection agency licensee shall, not later than January 31 of each calendar year, file with the commissioner a duly verified annual statement for the preceding calendar year, showing the respective amounts of all customers' money collected by the licensee during the preceding calendar year, which will not previously be remitted to the customers entitled thereto or properly accounted for, and showing also the amounts of money which the licensee has on deposit in any bank or in the licensee's possession for the purpose of liquidating any and all amounts due to customers. The statement shall contain the name and address of any such bank. Such annual statement shall be made substantially in the following form:

ANNUAL STATEMENT TO REAL ESTATE COMMISSIONER

Pursuant to ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, the undersigned, ..., duly licensed under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 to conduct a collection agency business hereby does declare that the amount of money collected during the preceding calendar year by the undersigned, as a licensee under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, which has not been remitted to any customer or properly accounted for is $.....; and that the amount on deposit with all banks for the purpose of liquidating all amounts due to customers is $.....

The attached schedule contains a true statement of the name and address of each customer of the undersigned to whom there was due or owing at the end of the preceding calendar year on account of collections made during the preceding calendar year the aggregate sum of $5 or more.

IN WITNESS WHEREOF, the undersigned has executed this statement on this .....day of....., 19.....

(name of licensee).....
(signature) .....
(capacity) .....

VERIFICATION

STATE OF OREGON }
County of ..... } ss.

I, the undersigned, being first duly sworn, do on oath depose and say: That I executed the within annual statement as the licensee therein named or on behalf of the licensee therein named as the operator, director or officer of the licensee therein named, as indicated therein; that I have read the statement and know the contents thereof; and that the statement is true.

.....

Subscribed and sworn to before me this .....day of....., 19.....

.....
Notary Public for Oregon
My commission expires:.....

[Amended by 1959 c.525 §17; 1963 c.558 §7]

697.200 False declarations in annual statement prohibited. The wilful making of any false declaration in the annual statement shall constitute a violation of this section and shall constitute sufficient grounds for revocation of the license of the licensee after hearing and determination as provided in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

697.210 Failure to file annual statement. If the annual statement is not filed as required under ORS 697.190, the failure to file it shall constitute grounds for the immediate suspension of the collection agency license of the licensee so failing to file the statement and the division shall notify the licensee by registered or certified mail that the license of the licensee will be suspended upon the expiration of the period of 15 days after the date on which such notice was mailed unless the licensee complies with the provisions of ORS 697.190. However, for good cause shown and upon satisfactory proof furnished by the licensee that the failure to file the statement was due to a condition not within the control, or was due to excusable neglect, of the licensee, the division may permit the filing of the statement after the time limited and excuse the failure to file the statement within the time limited. If the statement required by ORS 697.190 is not filed as required in this section or ORS 697.190 the division shall revoke the license.

[Amended by 1959 c.525 §18; 1963 c.580 §62]

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

697.230 Investigation of suspected or alleged violations. The Real Estate Division may upon its own motion, and shall, upon the sworn complaint in writing of any customer of a collection agency, investigate the actions of any licensee or certificate holder claimed to have violated ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, and for that purpose the division shall have free access to the offices and places of business, and, if the complaint involves customer accounts, to all pertinent books, accounts, records, papers, files, safes and vaults of such licensee or certificate holder. No complaint shall be held to be sufficient basis for the denial, revocation or suspension of a license or certificate unless it specifies in detail the charges made against the licensee or certificate holder. If the complaint involves the owing of money, or any other thing of value, by a licensee to the complainant, when the licensee raises the issue of an offset or counterclaim, the

division may require the complainant to submit all records and data in his possession pertaining to such offset or counterclaim.
[Amended by 1959 c.525 §20; 1963 c.558 §8; 1963 c.580 §63]

697.235 Property right of agency in account assigned. A collection agency shall have a property right in any account assigned to it for collection. Such property right is a matter which the Real Estate Division shall consider in any determination under ORS 697.230.
[1959 c.525 §22]

697.240 Accounting records required of collection agency. (1) Every collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all such records and all customers' funds within this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry thereon. Collection agencies shall keep other records for a period of two years from the date of the last entry thereon. No collection agency, or any employe thereof, shall intentionally make any false entry in any such collection agency record or intentionally mutilate, destroy or otherwise dispose of any such record within the time limits provided in this section. Such records shall at all reasonable times be open for inspection by the commissioner, the board or their authorized agent.

(2) No licensee or certificate holder under ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470 shall commingle the money of collection agency customers with other moneys, but shall maintain a separate trust account for customers' funds and shall keep such funds in a trust account until disbursed to the customer.
[Amended by 1957 c.429 §2; 1959 c.525 §23; 1963 c.558 §9]

697.250 Reports and payments by agency and customer. Every collection agency shall, within 30 days after the close of each calendar or fiscal month, report and pay to its customers the net proceeds due and payable of all collections made during that calendar or fiscal month. When the net proceeds are less than $5 at the end of any calendar or fiscal month, payments may be deferred for a period not to exceed three months. Every customer of a collection agency shall, within 30 days after the close of each calendar month, report and pay to his collection agency all sums owing to it for payments received by the customer during that calendar month on collection items in the hands of the collection agency.
[Amended by 1959 c.525 §24]

697.260 [Repealed by 1959 c.525 §36]

697.261 Grounds for suspension, revocation or refusal to renew or grant a license or certificate. The Real Estate Division may suspend, revoke or refuse to renew or grant any license or certificate issued or applied for under ORS 697.010 to 697.041, 697.061, 697.290 and 697.440 to 697.470 if the licensee, certificate holder or applicant submits as part of any application for a collection agency or collection agency operator's license an untruthful or fraudulent statement, or has been disbarred from the practice of law or been convicted of fraud, embezzlement, obtaining money under false pretenses, a crime involving moral turpitude, extortion, conspiracy to defraud, violating ORS 697.010 to 697.041, 697.061, 697.290 and 697.440 to 697.470 or violating any rule and regulation of the division. The division may take any action permitted in this section when any partner, associate or major stockholder of a collection agency has ever been convicted of such acts.
[1959 c.525 §15; 1963 c.558 §10; 1963 c.580 §64; 1969 c.373 §11; 1973 c.547 §6]

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

697.275 Authority of Real Estate Division. In so far as consistent with other provisions of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470, the Real Estate Division shall have the power to:

(1) Institute legal and equity proceedings necessary for the enforcement of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

(2) Establish codes of ethical conduct for licensees and certificate holders.

(3) Employ necessary personnel and fix their rates of compensation, subject to the applicable provisions of the State Merit System Law.

(4) Call upon appropriate law enforcement officers for prosecution of violations of ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

(5) Adopt any and all rules and regulations necessary to carry out ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

(6) Make all necessary expenditures to carry out ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470.

(7) Publish an annual directory containing such information as the division deems necessary.
[1963 c.580 §57]

697.280 [Repealed by 1959 c.525 §36]

697.285 Appeal procedure. (1) Notwithstanding the provisions of ORS 183.310 to 183.500, any person adversely affected by a decision of the Real Estate Division relating to collection agency activities, rendered pursuant to an administrative hearing may apply for a review of decision within 30 days after being notified of the decision. The application shall be filed with the Real Estate Division and it shall be denied if it is not filed within the time prescribed by this section.

(2) The Real Estate Division shall refer all applications for review filed under subsection (1) of this section, with the related administrative record, to the Collection Agencies Board. The board shall review the record and shall affirm, modify or set aside the decision of the division, in whole or in part, or it may order further proceedings by the division. The ruling of the board shall be filed with the division and a copy shall be sent by certified mail to the person who applied for review. The ruling of the board shall be binding on the Real Estate Division and the division shall adopt such ruling as its final decision. Only the final decision of the Real Estate Division is subject to judicial review pursuant to ORS 183.310 to 183.500.
[1963 c.580 §56]

697.290 License and bond prerequisite to action or suit. No collection agency is entitled to maintain any suit or action involving the collection of money on behalf of its customers in any of the courts of this state without alleging and proving that it is duly licensed and has procured a bond, as provided in ORS 697.010 to 697.041, 697.061 to 697.270, 697.290 and 697.440 to 697.470. A certificate bearing the seal of the Real Estate Division and the signature of the commissioner certifying the status of an agency for any designated time period shall be prima facie evidence of the licensing and bonding of such collection agency for the term expressed in the certificate.
[Amended by 1959 c.525 §26; 1963 c.558 §11; 1971 c.119 §5]

697.300 Prohibited conduct for agencies with expired or revoked licenses. After any license of a collection agency has been revoked or has expired, the licensee shall not:

(1) Sell or assign any claim or account in its possession for collection other than to return or assign such noncollected accounts to the assignor; or

(2) Charge or receive any fee or compensation for the return or assignment of any such claims or accounts; or

(3) Charge or receive any fee or commission on any moneys received or collected subsequent to the revocation or expiration of its license, and all such money shall be forthwith submitted to the owners of such accounts on which the moneys were paid.
[1969 c.373 §2]

697.305 Customer's right to withdraw accounts where license suspended; solicitation, receipt of new accounts prohibited. (1) In the event a license is suspended, the customers of such licensee shall have the right to withdraw any accounts of the licensee without condition or charge, but uncollected accounts may, with the consent of the owners, be assigned to other licensed collection agencies during the period of the suspension.

(2) No new accounts may be solicited or received by the licensee during the period of the suspension.
[1969 c.373 §3]

697.310 Commission of prohibited acts constitutes collection agency business; bulk sale of business not prohibited. (1) The commission of any of the prohibited acts mentioned in ORS 697.300 and 697.305 shall be deemed to constitute carrying on the business of a collection agency as defined by ORS 697.020 and 697.030.

(2) ORS 697.020, 697.041, 697.070, 697.080, 697.100, 697.181, 697.261 and 697.300 to 697.310 shall not be construed to prohibit a bulk sale of all of the business, assets and good will of the licensee as a unit, including uncollected accounts after termination of a license. However, the customers of such licensee have the unqualified right to withdraw any accounts without condition or charge.
[1969 c.373 §4]

697.400 [Repealed by 1959 c.525 §36]

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

697.402 Collection Agencies Board; qualifications. The Collection Agencies Board is established within the Department of

Commerce. The board shall consist of six members, one of whom shall be the Real Estate Commissioner. Members shall be appointed by the Director of Commerce with the approval of the Governor. Each member of the board other than the Real Estate Commissioner must be, and continue to be, a collection agency licensee.
[1963 c.580 §52; 1969 c.314 §98; 1971 c.753 §39]

697.410 [Repealed by 1959 c.525 §36]

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

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

697.420 [Repealed by 1959 c.525 §36]

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

697.422 Powers of board. (1) The Collection Agencies Board is authorized to inquire into the needs of the Oregon collection agency licensees and solicitors and the functions of the Real Estate Division with respect to the matter of the business policy thereof, to confer and advise with the Director of Commerce as to how the division may best serve the state and the licensees, and to make recommendations and suggestions of policy to the Real Estate Division as the board shall deem beneficial and proper for the welfare and progress of the licensees, solicitors, and of the public and of the collection agency business in Oregon.

(2) The board shall conduct all examinations for applicants for collection agency operator licenses, prepare the questions to be asked in the examinations and grade the papers of each applicant after the completion of the examination and file a written report with the Real Estate Division as to applicants taking the examination who have passed and who have failed to pass the examination. The board shall provide the manner and methods for conducting examinations.

(3) The board shall review the decisions of the Real Estate Division relating to collection agency activities that are referred to the board in accordance with ORS 697.285. The review of decision shall consist of a review of the administrative record under rules prescribed by the board.

(4) The expenses of the Collection Agencies Board shall be paid from moneys available to the Real Estate Division for payment of administrative expenses relating to collection agency activities of the division.
[1963 c.580 §55]

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

697.440 Records of commissioner as evidence. Copies of all records and papers in the office of the commissioner, certified by him to be true copies, shall be received in evidence in all cases equally and with like effect as the originals.
[Amended by 1959 c.525 §32]

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

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

697.470 Remedies not exclusive. The remedies provided for in ORS 697.010 to 697.041, 697.061 to 697.270, 679.290 and 697.440 to 697.470 are in addition to and not exclusive of any other remedies provided by law.

697.480 [Renumbered as part of 697.992]

DEBT CONSOLIDATING AGENCIES

697.610 Definitions for ORS 697.610 to 697.655 and 697.660 to 697.785. As used in ORS 697.610 to 697.655 and 697.660 to 697.785, unless the context requires otherwise:

(1) "Commissioner" means the Real Estate Commissioner.

(2) "Debt consolidating agency" means any person engaging in the business of debt consolidating.
[1959 c.635 §1]

697.615 "Business of debt consolidating" and "debt consolidating agency" defined. (1) Any person who directly or indirectly and as a primary or secondary business or pursuit solicits, offers to take or takes an assignment of the wages, salary, income or credits of a debtor or who offers to take, takes or solicits any real or personal property from a debtor for the purpose of paying such wages, salary, income, credits or property, or the proceeds from the sale thereof, to the creditors of such debtor is engaging in "the business of debt consolidating," as the term is used in ORS 697.610 to 697.655 and 697.660 to 697.785.

(2) The term "debt consolidating agency" does not include attorneys at law who do not specialize in the business of debt consolidating, licensed real estate brokers residing in this state when engaged in the regular practice of their respective professions, nor banks, trust companies, building and

loan associations, savings and loan associations, consumer finance companies, industrial loan companies, title insurance companies, abstract companies doing an escrow business, organizations dealing with debts owing from commercial enterprises, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity upon the staff of employes of only one person, one firm or one corporation not engaged in the business of debt consolidation, express companies and telegraph companies doing business subject to public supervision and regulation, any public officer or any person acting under an order of court.

(3) In addition to other persons not included in the term "debt consolidating agency" under subsection (2) of this section, such term does not include an agency organized as a nonprofit corporation under ORS chapter 61 to provide debt consolidating and credit counseling service to the public. Such organization shall advise the commissioner of the date it undertakes to provide such services to the public and its annual accounting period. Further, after December 31, 1969, such organization shall submit to the commissioner an annual report within 120 days of the close of the organization's annual accounting period which shall show its total income and the sources thereof, by major classification its expenditures, the salaries of all personnel, the total dollar volume of accounts handled, the number of individuals served and the membership of its board of directors. The commissioner shall have the right to investigate the records of any such organization to verify the validity of any information contained in the annual report. If the organization fails to submit an annual report as required by this subsection it shall become subject to the requirements of ORS 697.610 to 697.655 and 697.660 to 697.785.
[1959 c.635 §2; 1969 c.334 §1]

697.620 License required for business of debt consolidating. (1) Without first having applied for and obtained a license under ORS 697.610 to 697.655 and 697.660 to 697.785, no person shall engage in the business of debt consolidating within this state.

(2) Nothing contained in this section shall be construed to require the employes of a debt consolidating agency licensed under ORS 697.610 to 697.655 and 697.660 to 697.785 to procure a debt consolidating agency license.
[1959 c.635 §3]

697.625 Qualifications of applicants for licenses. Debt consolidating agency licenses shall be granted only to persons who are 18 years of age or older and who are trustworthy and competent to transact the business of a debt consolidating agency and to corporations and associations authorized to do business in this state.
[1959 c.635 §4; 1973 c.827 §80]

697.630 Educational qualifications of original applicant or its officers and directors. (1) An original applicant for a license under ORS 697.610 to 697.655 and 697.660 to 697.785 shall, in addition to meeting the requirements of ORS 697.625, be at least a graduate of a four-year high school or shall prove satisfactorily to the commissioner that he is possessed of the equivalent of a four-year high school education in point of intellectual competency and achievement.

(2) If the original applicant be a corporation or association, its officers and directors must meet the qualifications specified in subsection (1) of this section.
[1959 c.635 §5]

697.635 Application for license. Every applicant for a debt consolidating agency license, or the renewal thereof, shall apply therefor in writing, under oath, upon blanks furnished by the commissioner, and shall state his full name and residence address and the business name and address of his agency. If the applicant be a partnership, the full name and residence address of each partner must also be given. If the applicant be a corporation or association, the full name and residence address of each of its officers and directors must also be given.
[1959 c.635 §6]

697.640 Fee, bond and other material to accompany applications. The application for a debt consolidating agency license shall be accompanied by:

(1) An annual license fee as provided in ORS 697.665.

(2) Complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors.

(3) Complete forms of all contracts and releases designed for execution by creditors to whom payments are made by the applicant.

(4) A list containing the names and residence addresses of all solicitors for the applicant.

(5) An appointment of the commissioner as agent of the applicant for service of process in this state.

(6) A bond running to the State of Oregon with a surety or sureties to the satisfaction of the commissioner, and conditioned upon strict, honest and faithful compliance by the applicant with the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785, or, in lieu of such bond, a deposit of securities as provided in ORS 697.657.
[1959 c.635 §7; 1963 c.470 §7]

697.645 Debt consolidating agency bond. The bond provided for in subsection (6) of ORS 697.640 shall be executed by the applicant, as principal, and by a corporation, which is licensed by the State Insurance Commissioner to transact the business of fidelity and surety insurance, as surety. Any licensee may, at any time, file with the commissioner a new bond. Any surety may file with the commissioner notice of his withdrawal as surety on the bond of any licensee. Upon filing of such new bond, upon the revocation of the debt consolidating agency license or upon expiration of 30 days after the filing of notice of withdrawal, as surety, by the surety, the liability of the former surety for all future acts of the licensee shall terminate. The commissioner shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the State Insurance Commissioner. Upon the filing with the commissioner of notice by a surety of his withdrawal as the surety on the bond of any licensee, or upon the cancellation by the commissioner of the bond of any surety company as provided in this section, the commissioner shall give notice to the licensee of such withdrawal or cancellation, which notice shall be by registered mail with request for a return receipt and addressed to the licensee at his main office, as shown by the records of the commissioner. At the expiration of 30 days from the date of mailing the notice, the license of such licensee shall be terminated, unless the licensee has filed a new bond with a surety, or sureties, satisfactory to the commissioner. All bonds given under the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785 shall be filed and held in the office of the commissioner.
[1959 c.635 §8; 1963 c.470 §8]

697.650 Amount of bond. The bond of each licensee shall be for $10,000. However, when an applicant or licensee operates more than one office, under one ownership, one bond shall cover all such offices and the amount of the bond shall be equal to the sum of $10,000 for each office. When an applicant or licensee operates more than one office, the commissioner shall ascertain the number of additional offices and set the amount of the bond required.
[1959 c.635 §9; 1963 c.470 §9]

697.655 Form of bond. The bond required by ORS 697.640 shall be in the form substantially as follows:

Know All Men by These Presents that we, ———, as principal, and ———, as suret——, are held and firmly bound unto the State of Oregon, in the penal sum of ———, ($———), lawful money of the United States, for the payment of which well and truly to be made we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas, the above bounden principal has applied to the Real Estate Commissioner of the State of Oregon for a debt consolidating agency license under the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785, and is required by the provisions of that law to furnish a bond conditioned as herein set forth.

Now, therefore, if the said ——— shall strictly, honestly and faithfully comply with the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785, and all amendments thereof and supplemental thereto, now or hereafter enacted, then this obligation shall be void, otherwise to remain in full force and effect.

This bond shall become effective on the ——— day of ———, 19——. The suret——— may be relieved of future liability hereunder by giving 30 days' written notice to the principal and to the Real Estate Commissioner of the State of Oregon.

This bond shall be one continuing obligation and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In Witness Whereof we have hereunto set our hands and seals at ——— in the State of Oregon, this ——— day of ———, 19——.

———————(SEAL)
Principal
———————(SEAL)
———————(SEAL)
Suret——

[1959 c.635 §10; 1963 c.470 §10]

697.657 Deposit of money or negotiable securities in lieu of bond. (1) An applicant for a debt consolidating agency license may furnish, file and deposit with the commissioner, in lieu of the surety bond provided for in ORS 697.650, money or bonds, negotiable by delivery, of the State of Oregon, school districts therein of the first class, or of any county therein, or obligations of the United States, or obligations for which the faith of the United States is pledged for the payment of both the principal and interest, equal in amount to the amount of the bond required by the commissioner.

(2) So long as the deposit remains unencumbered, the depositor is entitled to collect the interest upon such securities.

(3) The commissioner shall hold the securities upon such terms as he shall designate and approve pursuant to the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785, and shall deliver such securities to the State Treasurer, who shall receive and hold them subject to the lawful orders of the commissioner. The State Treasurer and his surety shall be liable upon his official bond for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by him in the mailing, insuring, shipping or delivering of any such securities, or of the interest coupons attached thereto as they mature.

(4) Such substituted security shall be subject to the liabilities imposed by the terms of the bond prescribed in ORS 697.655.

(5) The securities provided for in this section shall not be subject to withdrawal or assignment by the holder of the license, either voluntarily or by operation of law, until the expiration of one year after the holder of the license in connection with which they are furnished:

(a) Has substituted therefor a surety bond as provided in ORS 697.655;

(b) Has his license revoked; or

(c) Has surrendered such license to the commissioner for revocation and has ceased operation thereunder.

(6) If any such securities become impaired in value, the commissioner shall require additional protection by bond to the extent that the value of the securities, or any of them, may have become impaired.

[1963 c.470 §11]

697.660 Examination of new applicants; fee. Each applicant not previously licensed under ORS 697.610 to 697.655 and 697.660 to 697.785 but making an original application for a license under ORS 697.610 to 697.655 and 697.660 to 697.785 shall, before being licensed, in addition to complying with the other provisions of ORS 697.610 to 697.655 and 697.660 to 697.785, comply with the provisions of this section. Each such original applicant shall pay, in addition to all other fees payable by licensees under ORS 697.610 to 697.655 and 697.660 to 697.785, an examination fee of $20. The commissioner shall examine all such original applicants for licenses and issue licenses to those found qualified to be licensed as provided in ORS 697.610 to 697.655 and 697.660 to 697.785. The examinations of such original applicants may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain their fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds and the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785 may be included in the examination.

[1959 c.635 §11]

697.665 Fee for license; return of fee and bond if license not issued. (1) The fee for all licenses issued shall, at all periods of the year, be the same as prescribed in ORS 697.610 to 697.655 and 697.660 to 697.785. No other license or fee shall be required of such licensee by any city, county, town or other political subdivision thereof. If the commissioner does not issue the license applied for, the fee and bond shall be returned to the applicant. Each debt consolidating agency must procure a license.

(2) The debt consolidating agency shall pay for its original application for a license, a license fee of $150 plus a fee of $100 for each branch office in this state. A debt consolidating agency applying for a renewal of its license shall pay a license fee of $150 plus a fee of $100 for each branch office in this state.

[1959 c.635 §12; 1963 c.546 §3]

697.670 Issuance of licenses; renewal; form; display. (1) The commissioner shall issue to each applicant entitled thereto, as a previous licensee under ORS 697.610 to 697.655 and 697.660 to 697.785, a renewal license upon receipt of the proper application, bond and fee before July 1 of the fiscal year for which the license is to be issued.

(2) Upon failure to file the application for renewal, bond and fee before July 1 of the fiscal year for which the license is to be issued, the commissioner may, in his discretion, accept a later payment, subject to such conditions as he may specify. Any licensee who fails to pay his renewal fee before July 1 shall, in addition to the regular license fee, be penalized $5, payable to the commissioner, before a renewal license is granted. The commissioner shall notify the delinquent licensee of his failure to apply as required by this section. This notification shall be by registered mail, addressed to the principal place of business of the licensee as shown by the commissioner's records, notifying him of his failure to apply. The notification shall state that the licensee's license will be revoked unless the application for renewal, renewal of the bond and payment of the renewal license fee together with the $5 penalty is submitted within 15 days from the date of mailing the notice. Notwithstanding ORS 697.760, failure to file within the prescribed 15 days shall work an automatic forfeiture of the delinquent's license unless just cause is shown for a further extension of time. Any provisions of ORS chapter 183 which conflict with this subsection are hereby superseded.

(3) The license mentioned in this section shall be of the form and size prescribed by the commissioner. Each license shall show the name and residence address of the licensee, the business name and address of the licensee, the date of expiration of such license and such other matter as may be prescribed by the commissioner. While any such license is in force it shall at all times be displayed in a conspicuous place in the outer office of the debt consolidating agency.
[1959 c.635 §13]

697.675 Grounds for denial, suspension or revocation of license. (1) A debt consolidating agency license or renewal thereof shall be denied in every case in which the applicant, if an individual, or any member of the firm, if the applicant is a partnership or any of its officers or directors, if the applicant is a corporation or association, has ever been:

(a) In default in the payment of money collected for others, while operating a debt consolidating agency or similar debt-pooling or debt-adjusting agency in this state or elsewhere, including the discharge of such debts through bankruptcy proceedings;

(b) Convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, theft, theft by extortion, conspiracy to defraud or other like offense; or,

(c) Disbarred from the practice of law.

(2) The occurrence of any of the grounds listed in subsection (1) of this section while a debt consolidating agency license is in effect, shall constitute grounds for the suspension or revocation of the license by the commissioner.

(3) Failure to comply with ORS 697.610 to 697.655 and 697.660 to 697.785 or any lawful order of the commissioner, is sufficient cause for suspension or revocation of any license issued under ORS 697.610 to 697.655 and 697.660 to 697.785.
[1959 c.635 §14; 1963 c.470 §12; 1971 c.743 §410]

697.680 Person soliciting business for debt consolidating agency required to have certificate. No person shall solicit or attempt to solicit business for a debt consolidating agency by himself or by any other person without a solicitor's certificate, or fail to display the certificate upon request of the person being solicited, or fail to surrender his solicitor's certificate to his employer or the commissioner within five days after the termination of his employment.
[1959 c.635 §17]

697.685 Solicitor to present pocket card upon demand. Any person who solicits or attempts to solicit property from a debtor or assignments of his wages, salaries, income or credits for the purpose of paying the net proceeds of such property, wages, salaries, income or credits to creditors of the debtor, by himself or by any other person, shall, on demand of any person being solicited, present a pocket card issued by the commissioner showing that he is a licensee, or the employe of a debt consolidating agency licensed in accordance with ORS 697.610 to 697.655 and 697.660 to 697.785.
[1959 c.635 §15]

697.690 Solicitor's certificate and pocket card. (1) The commissioner shall issue one solicitor's certificate and pocket card free to each licensed debt consolidating agency and shall issue a solicitor's card to any qualified employe of such agency upon written application therefor, on forms supplied by the commissioner, and upon the payment of a fee of $2.

(2) Solicitors' certificates and pocket cards shall be granted only to persons who are citizens of the United States and who shall submit such proof as required by the commissioner of their honesty, truthfulness, integrity, good reputation and competency. The application for a solicitor's certificate shall be signed by the applicant and his employer. The solicitor's certificate shall be kept at the principal place of business of his employer.

(3) The solicitor's card shall contain the name of the solicitor, the name and address of the debt consolidating agency by whom he is employed and such other matter as shall be prescribed by the commissioner. All such solicitor's pocket cards shall expire on June 30 after issue or upon the revocation or suspension of his employer's license.
[1959 c.635 §16]

697.695 Assignability of licenses; procedure on death of licensee. (1) Except as provided in subsection (2) of this section, any license granted under ORS 697.610 to 697.655 and 697.660 to 697.785 is a personal privilege and shall not be assignable.

(2) Upon the death of any licensee the commissioner shall have the right to transfer the license of the decedent to the personal representative of his estate for the period of the unexpired term of the license and thereupon the court having jurisdiction of the probate of the estate of said decedent may authorize such personal representative to continue the business of debt consolidating formerly carried on by the decedent pursuant to the provisions of ORS 114.445, and upon such other terms and conditions as the court may prescribe.
[1959 c.635 §18; 1969 c.591 §301]

697.700 Procedure on change of name or address of business. Upon change of an assumed business name or removal from the address stated in any license issued under ORS 697.610 to 697.655 and 697.660 to 697.785, the licensee shall, within five days thereafter deposit his license and full information regarding the change with the commissioner and pay a fee of $5. The commissioner shall note on the face of the license the change so made and make an appropriate entry in his records and return the license to the licensee.
[1959 c.635 §19]

697.705 Expiration date of licenses. All licenses issued under ORS 697.610 to 697.655 and 697.660 to 697.785 expire on June 30 following the issuance thereof.
[1959 c.635 §20]

697.710 Annual statement concerning business. Each licensee, or a partner or officer thereof, shall, not later than January 31 of each calendar year, file with the commissioner a duly verified annual statement for the preceding calendar year, listing all property other than wages, salaries, income and credits received from each debtor and showing the respective amounts of each debtor's wages, salaries, income and credits received and the proceeds of each debtor's property sold by the licensee during the preceding calendar year, which have not been remitted to creditors of the debtor entitled thereto or property which has not previously been accounted for, and showing also the amount of each debtor's wages, salaries, income and credits and the proceeds of each debtor's property sold by the licensee which the licensee has on deposit in any bank or in the licensee's possession for the purpose of liquidating any and all amounts due to creditors of such debtors.
[1959 c.635 §21]

697.715 False declarations in annual statement prohibited. The wilful making of any false declaration in the annual statement required under ORS 697.710 is a violation of this section and is sufficient grounds for revocation of the license of the licensee after hearing and determination as provided in ORS 697.610 to 697.655 and 697.660 to 697.785.
[1959 c.635 §22]

697.720 Consequences for failure to file annual statement. If the annual statement is not filed as required, the failure to file it is grounds for the immediate suspension of the license of the licensee so failing to file the statement and the commissioner shall notify the licensee by registered mail that the license of the licensee will be suspended

upon the expiration of the period of 10 days thereafter unless the licensee complies with the provisions of ORS 697.710. However, for good cause shown and upon satisfactory proof furnished by the licensee that the failure to file the statement was due to a condition not within the control, or was due to excusable neglect, of the licensee, the commissioner may permit the filing of the statement after the time limited and excuse the failure to file the statement within the time limited. If the statement required by ORS 697.710 is not filed with the commissioner as required in this section or ORS 697.710, the commissioner shall revoke the license of such licensee.
[1959 c.635 §23]

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

697.730 Investigation of alleged or suspected violations. The commissioner may, upon his own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any person or persons, claimed to have violated ORS 697.610 to 697.655 and 697.660 to 697.785, and for that purpose the commissioner shall have free access during all reasonable hours to the offices and places of business, books, accounts, records, papers, files, safes and vaults of all such persons, but no complaint shall be held to be sufficient basis for the denial, revocation or suspension of a license unless it specifies in detail the charges made against the licensee.
[1959 c.635 §25]

697.733 Prohibited charge practices and other dealings with debtor. A debt consolidating agency shall not take:

(1) Any contract, promise to pay or other instrument which has any blank spaces when signed by a debtor;

(2) Any negotiable instrument for the debt consolidating agencies' charges;

(3) Any note, wage assignment, real estate or chattel mortgage or other security to secure the debt consolidating agencies' charges;

(4) Any confession of judgment or power of attorney to confess judgment against the debtor or to appear for the debtor in a judicial proceeding;

(5) Concurrent with the signing of the contract or agreement or as a part of the contract or agreement or as part of the application for the contract or agreement, a release of any obligation to be performed on the part of the debt consolidating agency; or

(6) Any contract or agreement which provides for late charges or reserves for liquidated damages in addition to the charges authorized under subsection (3) of ORS 697.740.
[1963 c.470 §4]

697.737 Notice required before charges made. A debt consolidating agency shall not make any charge unless it notifies, or attempts to notify, all creditors listed in the debt consolidating agencies' contract or agreement with the debtor of the terms for retiring the indebtedness of the debtor.
[1963 c.470 §5]

697.740 Licensee's records; handling money and property; charges; advertising. (1) Every licensee shall make a permanent record of all debtors' wages, salaries, income, credits or property received by him, and of all debtors' property sold by him for the purpose of remitting the proceeds to creditors of such debtors, and of all disbursements to creditors of such debtors made by him, and shall maintain and keep all such records and all such wages, salaries, income, credits or property, or proceeds thereof, in this state. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the commissioner or his authorized agent.

(2) A licensee shall not commingle debtors' wages, salaries, income, credits or property received by him or the proceeds of debtors' property sold by him with his own property or funds, but shall maintain a separate trust account and deposit in such account such wages, salaries, income, credits or property, or proceeds thereof. All disbursements to the debtor or on his behalf, including the licensee's fees, shall be made from such account.

(3) A debt consolidator shall make no set-up charge nor consultation charge nor take his fee at a faster rate than the rate of distribution to any unsecured creditor who is willing to accept payments from the consolidator. No debt consolidating agency shall take or receive for services performed by it for any one person more than 15 percent of the amount actually paid to creditors on behalf of that person. However, a deposit not to exceed $20 may be required by the debt consolidating agency, which deposit

shall be returned to the debtor upon completion of the contract.

(4) No licensee or other person shall advertise, print, display, publish, distribute or broadcast or cause to permit to be advertised, printed, displayed, published, distributed or broadcast, in any manner whatsoever any false or misleading statement or representation with regard to the rates, terms or services of a debt consolidating agency.

[1959 c.635 §26; 1963 c.470 §13]

697.743 Requirements of contract between debtor and agency. (1) Every contract or agreement between the debt consolidating agency and the debtor shall:

(a) Disclose the name and address of the debt consolidating agency and of the debtor;

(b) List every debt to be consolidated with the creditor's name and address and disclose the approximate total of all such debts;

(c) Provide in precise terms payments reasonably within the ability of the debtor to pay;

(d) Disclose in precise terms the rate to be charged by the debt consolidating agency;

(e) Disclose the approximate number and amount of instalments as a schedule showing the ratio or other arrangement made to pay the debts in full;

(f) Contain a provision permitting the debtor to examine the debtor's account in the office of the debt consolidating agency during office hours;

(g) Provide that the debt consolidating contract or agreement shall not be canceled by the debt consolidating agency without the debtor's written authorization while the debtor is employed and his salary is subject to any wage assignment made to the debt consolidating agency; and

(h) Contain such other provision or disclosure as the commissioner shall determine is necessary for the protection of the debtor and the proper conduct of business by a debt consolidating agency.

(2) Every debt consolidating agency shall deliver a copy of any contract or agreement between the debt consolidating agency and the debtor to the debtor immediately after the debtor executes it, and the debtor's copy shall be executed by the debt consolidating agency.

(3) A contract shall not be effective until a debtor has made a payment to the debt consolidating agency for distribution to his creditors.

[1963 c.470 §§2, 3]

697.745 Agency required to report to debtor and pay to creditor. Every debt consolidating agency shall, within 30 days after the close of each calendar month, make a report to each debtor showing the total amount which any creditor has agreed to accept as payment in full on any debt owed him by the debtor and all payments made by the agency to his creditors, and shall pay to such creditors the net proceeds of all wages, salaries, income, credits or property of the debtor received during that calendar month.

[1959 c.635 §27; 1963 c.470 §14]

697.750 Action on agency bond. If a debt consolidating agency has failed to account to a debtor or pay over a debtor's wages, salaries, income, credits or property, or proceeds from the sale thereof, to the debtor's creditors, the debtor, his legal representative, receiver or the commissioner shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to the provisions of ORS 697.610 to 697.655 and 697.660 to 697.785 for any loss suffered by the debtor, not exceeding the face of the bond or the security, and without the necessity of joining the debt consolidating agency in such suit or action. No action shall be brought upon any bond given under ORS 697.610 to 697.655 and 697.660 to 697.785 after the expiration of two years from the revocation or expiration of the license issued thereon, and the total of all recoveries from the sureties shall not exceed the face of the bond. Upon entering judgment for plaintiff in any action on the bond required by ORS 697.610 to 697.655 and 697.660 to 697.785 for more than the sum tendered in court by the defendant, if any, the court shall include in the judgment reasonable compensation for the service of plaintiff's attorney in the action.

[1959 c.635 §30; 1963 c.470 §15]

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

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

697.765 Commissioner's powers in enforcement of ORS 697.610 to 697.655 and 697.660 to 697.785. (1) The commissioner shall enforce the provisions of ORS 697.610

to 697.655 and 697.660 to 697.785, and he shall have full power to issue licenses and solicitors' certificates to applicants and to deny, suspend or revoke licenses or solicitors' certificates for any violation of ORS 697.610 to 697.655 and 697.660 to 697.785, and to perform all other acts and duties provided for in ORS 697.610 to 697.655 and 697.660 to 697.785 and necessary to its enforcement.

(2) The commissioner may require, in addition to the annual statement required by ORS 697.710, an examination and audit of the books and records of any debt consolidating agency. If required by the commissioner, an examination and audit shall be made by a certified public accountant at the expense of the debt consolidating agency.

(3) If the commissioner finds as a result of an annual statement or examination and audit that a debt consolidating agency is insolvent or conducting business in such an unsafe or injurious manner as to render its further operations hazardous to the public, or if any debt consolidating agency fails to open for business on any three consecutive calendar work days without good cause being shown, the commissioner may forthwith impound the books and records of the debt consolidating agency and by an order addressed to and served on the debt consolidating agency by registered or certified mail and on any other person having funds of the debt consolidating agency or its customers in that other person's possession, direct discontinuance of the disbursement of such funds and the further conduct of business by the debt consolidating agency. While the order is in effect, the commissioner shall have power of attorney for the purpose of transacting the business of the agency. The order shall be conditioned to remain in effect until:

(a) Set aside by the commissioner in whole or in part;

(b) The debt consolidating agency is adjudged a bankrupt;

(c) A receiver has been appointed by a court of competent jurisdiction pursuant to a petition filed by the commissioner or other interested person; or

(d) The commissioner's failure to hold a hearing within 15 days after receipt of a written request for a hearing by the debt consolidating agency.

(4) The commissioner shall establish and enforce rules and regulations as may be reasonable and necessary for the examining and licensing of applicants and for the conduct of licensees and solicitors. He shall employ such clerks and assistants as he may need to discharge the duties imposed upon him by ORS 697.610 to 697.655 and 697.660 to 697.785 and fix their compensation, which shall be paid as other state salaries are paid.
[1959 c.635 §31; 1963 c.470 §16]

697.770 Records of commissioner as evidence. Copies of all records and papers in the office of the commissioner, certified to be a true copy by the commissioner, shall be received in evidence in all cases equally and with like effect as the originals.
[1959 c.635 §32]

697.775 Publication of directory. On or about September 1 in each year, the commissioner shall publish a directory containing a list of all the licensed debt consolidating agencies in this state and a copy of ORS 697.610 to 697.655 and 697.660 to 697.785 and such other material as the commissioner shall prescribe, and without charge therefor mail one copy to each licensed debt consolidating agency, and one to each person in the state upon request.
[1959 c.635 §33]

697.780 Disposition of receipts; Debt Consolidating Agencies Account. All fees, fines and penalties provided for in ORS 697.610 to 697.655 and 697.660 to 697.785 shall be paid to the commissioner, and by him paid to the State Treasurer at the end of every calendar month and shall be placed in an account in the General Fund to be known as the Debt Consolidating Agencies Account. All such funds so received and paid to the State Treasurer, or so much thereof as may be necessary, shall be continuously appropriated for the payment of the expenses and salaries incurred under ORS 697.610 to 697.655 and 697.660 to 697.785, including the payment of such part of the salary of the commissioner as may be fixed by law to be paid from funds received under ORS 697.610 to 697.655 and 697.660 to 697.785.
[1959 c.635 §34; 1961 c.309 §7; 1967 c.216 §2]

697.783 Engaging in business unlawfully; enjoining violation. Engaging in the business of debt consolidating without a valid existing license to do so or with a license while violating any provisions of ORS 697.610 to 697.655 and 697.660 to 697.785,

hereby is declared to be inimical to the public welfare and to constitute a public nuisance. The commissioner may, in the name of the people of the State of Oregon through the Attorney General or the district attorney of any county in the state, apply for an injunction in any court of competent jurisdiction, to enjoin any person, firm, association or corporation from engaging in the business of debt consolidating. Any such court may, as in cases relating to injunction in the state, issue temporary or permanent injunctions as the circumstances shall require; and in case of the violation of any injunction issued under this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court for each violation. Such injunction proceeding shall be in addition to, and not in lieu of, penalties and remedies otherwise provided.
[1963 c.470 §6]

697.785 Remedies not exclusive. The remedies provided for in ORS 697.610 to 697.655 and 697.660 to 697.785 are in addition to and not exclusive of any other remedies provided by law.
[1959 c.635 §35]

697.790 Advertising of debt consolidation by unlicensed persons prohibited; exception. (1) Except for licensed debt consolidating agencies and persons licensed or otherwise authorized by statute to engage in the business of lending money, no person shall advertise the availability or practice of consolidation of debts, whether such consolidation is by means of a loan to the debtor or otherwise.

(2) Nothing in subsection (1) of this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes such advertising in good faith without knowledge of its unlawful character.
[1965 c.190 §2]

ADMINISTRATIVE PROCEDURE

697.810 License denial procedure; promulgation, review of rules and orders. (1) Where the commissioner proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.500.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS 183.310 to 183.500.
[1971 c.734 §163]

Note: 697.810 and 697.820 were added to ORS chapter 697 by legislative action but were not added to 697.010 to 697.470 or 697.610 to 697.655 or 697.660 to 697.785.

697.820 Civil penalty. (1) Any person who violates any provision of this chapter, any lawful rule, regulation or final order of the commissioner, or any final judgment or decree made by any court upon application of the commissioner, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of not more than $500 for each offense, or $1,000 for the aggregate for all such offenses within any three-month period. In the case of individual licensees, operators and solicitors, the civil penalty shall not be more than $100 for each offense or $500 in the aggregate for all offenses within any three-month period. Each violation shall be deemed a separate offense.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of this chapter, any lawful rule, regulation or final order of the commissioner or any final judgment or decree made by a court upon application to the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction which violates any such provision, rule, regulation, order, judgment or decree.

(3) Such civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(4) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

(5) The provisions of this section are in addition to and not in lieu of any other enforcement provision contained in this chapter.

(6) The commissioner may mitigate any penalty provided for in this section on such terms as he considers proper upon a finding that the circumstances are such that it would be in the interest of justice to mitigate this penalty.

(7) Such penalty shall not be imposed except by order following complaint as provided in ORS 183.415 to 183.425 and 183.440 to 183.480. Such proceeding may only be commenced within two years following discovery of the violation complained of by the commissioner.

[1973 c.548 §2]

Note: See note under 697.810.

PENALTIES

697.990 Penalties. (1) Violation of any of the provisions of this chapter by an individual is punishable, upon conviction, by a fine of not more than $500 or by imprisonment for a term not to exceed six months, or by both.

(2) Violation of this chapter by a corporation is punishable, upon conviction, by a fine of not more than $1,000. Any officer or agent of a corporation or association who personally participates in any violation of this chapter by such corporation or association is subject to the penalties prescribed in subsection (1) of this section.

(3) Violation of ORS 697.680 is punishable, upon conviction, by a fine of not more than $100, or by imprisonment not to exceed 30 days, or by both.

[Amended by 1959 c.525 §35; subsection (1) derived from subsection (1) of 697.990 (1957 Replacement Part) and subsection (1) of 1959 c.635 §37; subsection (2) derived from subsection (2) of 697.990 (1957 Replacement Part) and subsection (2) of 1959 c.635 §37; subsection (3) derived from subsection (3) of 1959 c.635 §37]

697.992 Jurisdiction of courts. Justice courts and district courts have concurrent jurisdiction with circuit courts in all criminal prosecutions for violation of this chapter.

[Derived from 697.480 (1957 Replacement Part) and 1959 c.635 §36]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon, on November 1, 1973.

Thomas G. Clifford
Legislative Counsel