

By the Committee on Judiciary and Senator Laurent

308-1720-00

1                                   A bill to be entitled  
2           An act relating to consumer collection  
3           practices; amending s. 559.72, F.S.; revising  
4           those practices prohibited in debt collection;  
5           prohibiting certain communications with a  
6           debtor's attorney; prohibiting the causing of  
7           charges to be made to any debtor; providing  
8           penalties; amending s. 559.77, F.S.; increasing  
9           the maximum amount of civil penalties; amending  
10          s. 559.78, F.S.; revising provisions relating  
11          to judicial enforcement; providing  
12          applicability; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Section 559.72, Florida Statutes, is  
17 amended to read:

18           559.72 Prohibited practices generally.--In collecting  
19 consumer debts, no debt collector ~~person~~ shall:

20           (1) Simulate in any manner a law enforcement officer  
21 or a representative of any governmental agency;

22           (2) Use or threaten force or violence;

23           (3) Tell a debtor who disputes a consumer debt that  
24 she or he or any person employing her or him will disclose to  
25 another, orally or in writing, directly or indirectly,  
26 information affecting the debtor's reputation for credit  
27 worthiness without also informing the debtor that the  
28 existence of the dispute will also be disclosed as required by  
29 subsection (6);

30           (4) Communicate or threaten to communicate with a  
31 debtor's employer prior to obtaining final judgment against

1 the debtor, unless the debtor gives her or his permission in  
2 writing to contact her or his employer or acknowledges in  
3 writing the existence of the debt after the debt has been  
4 placed for collection, but this shall not prohibit a debt  
5 collector ~~person~~ from telling the debtor that her or his  
6 employer will be contacted if a final judgment is obtained;

7 (5) Disclose to a person other than the debtor or her  
8 or his family information affecting the debtor's reputation,  
9 whether or not for credit worthiness, with knowledge or reason  
10 to know that the other person does not have a legitimate  
11 business need for the information or that the information is  
12 false;

13 (6) Disclose information concerning the existence of a  
14 debt known to be reasonably disputed by the debtor without  
15 disclosing that fact. If a disclosure is made prior to such  
16 reasonable dispute having been asserted and written notice is  
17 received from the debtor that any part of the debt is disputed  
18 and if such dispute is reasonable, the person who made the  
19 original disclosure shall reveal upon the request of the  
20 debtor within 30 days the details of the dispute to each  
21 person to whom disclosure of the debt without notice of the  
22 dispute was made within the preceding 90 days;

23 (7) Willfully communicate with the debtor or any  
24 member of her or his family with such frequency as can  
25 reasonably be expected to harass the debtor or her or his  
26 family, or willfully engage in other conduct which can  
27 reasonably be expected to abuse or harass the debtor or any  
28 member of her or his family;

29 (8) Use profane, obscene, vulgar, or willfully abusive  
30 language in communicating with the debtor or any member of her  
31 or his family;

1           (9) Claim, attempt, or threaten to enforce a debt when  
2 such debt collector ~~person~~ knows that the debt is not  
3 legitimate or assert the existence of some other legal right  
4 when such debt collector ~~person~~ knows that the right does not  
5 exist;

6           (10) Use a communication which simulates in any manner  
7 legal or judicial process or which gives the appearance of  
8 being authorized, issued or approved by a government,  
9 governmental agency, or attorney at law, when it is not;

10           (11) Communicate with a debtor under the guise of an  
11 attorney by using the stationery of an attorney or forms or  
12 instruments which only attorneys are authorized to prepare;

13           (12) Orally communicate with a debtor in such a manner  
14 as to give the false impression or appearance that such debt  
15 collector ~~person~~ is or is associated with an attorney;

16           (13) Advertise or threaten to advertise for sale any  
17 debt as a means to enforce payment except under court order or  
18 when acting as an assignee for the benefit of a creditor;

19           (14) Publish or post, threaten to publish or post, or  
20 cause to be published or posted before the general public  
21 individual names or any list of names of debtors, commonly  
22 known as a deadbeat list, for the purpose of enforcing or  
23 attempting to enforce collection of consumer debts;

24           (15) Refuse to provide adequate identification of  
25 herself or himself or her or his employer or other entity whom  
26 she or he represents when requested to do so by a debtor from  
27 whom she or he is collecting or attempting to collect a  
28 consumer debt;

29           (16) Mail any communication to a debtor in an envelope  
30 or postcard with words typed, written, or printed on the  
31 outside of the envelope or postcard calculated to embarrass

1 the debtor. An example of this would be an envelope addressed  
2 to "Deadbeat, Jane Doe" or "Deadbeat, John Doe"; ~~or~~

3 (17) Communicate with the debtor between the hours of  
4 9 p.m. and 8 a.m. in the debtor's time zone without the prior  
5 consent of the debtor; ~~-~~

6 (18) Communicate with a debtor if the debt collector  
7 knows the debtor is represented by an attorney with respect to  
8 such debt and has knowledge of, or can readily ascertain, such  
9 attorney's name and address, unless the debtor's attorney  
10 fails to respond within a reasonable period of time to a  
11 communication from the debt collector or unless the debtor's  
12 attorney consents to direct communication with the debtor; or

13 (19) Cause charges to be made to any debtor for  
14 communications by concealment of the true purpose of the  
15 communication, including collect telephone calls and telegram  
16 fees.

17 Section 2. Section 559.77, Florida Statutes, is  
18 amended to read:

19 559.77 Civil remedies.--

20 (1) A debtor may bring a civil action against a debt  
21 collector ~~person~~ violating the provisions of s. 559.72 in a  
22 court of competent jurisdiction of the county in which the  
23 alleged violator resides or has his or her principal place of  
24 business or in the county wherein the alleged violation  
25 occurred.

26 (2) Upon adverse adjudication, the defendant shall be  
27 liable for actual damages and for additional statutory damages  
28 of up to \$1,000 ~~or \$500, whichever is greater~~, together with  
29 court costs and reasonable attorney's fees incurred by the  
30 plaintiff. In determining the defendant's liability for any  
31 additional statutory damages, the court shall consider the

1 nature of the defendant's noncompliance with s. 559.72, the  
2 frequency and persistence of such noncompliance, and the  
3 extent to which such noncompliance was intentional. In any  
4 class action lawsuit brought under this section, the court may  
5 award additional statutory damages of up to \$1,000 for each  
6 named plaintiff, and an aggregate award of additional  
7 statutory damages not to exceed the lesser of \$500,000 or 1  
8 percent of the defendant's net worth for all remaining class  
9 members.~~The court may not, in its discretion, award~~ punitive  
10 damages, but ~~and~~ may provide such equitable relief as it deems  
11 necessary or proper, including enjoining the defendant from  
12 further violations of this part. If the court finds that the  
13 suit fails to raise a justiciable issue of law or fact, the  
14 plaintiff shall be liable for court costs and reasonable  
15 attorney's fees incurred by the defendant.

16 (3) A debt collector shall not be held liable in any  
17 action brought under this section if the debt collector shows  
18 by a preponderance of the evidence that the violation was not  
19 intentional and resulted from a bona fide error  
20 notwithstanding the maintenance of procedures reasonably  
21 adapted to avoid any such error.

22 (4) An action brought under this section must be  
23 commenced within 1 year after the date on which the alleged  
24 violation occurred.

25 Section 3. Section 559.78, Florida Statutes, is  
26 amended to read:

27 559.78 Judicial enforcement.--In addition to other  
28 penalties provided in this part, state attorneys and their  
29 assistants are authorized to apply to the court of competent  
30 jurisdiction within their respective jurisdictions, upon the  
31 sworn affidavit of any person alleging a violation of any of

1 the provisions of this part. Such court shall have  
2 jurisdiction, upon hearing and for cause shown, to grant a  
3 temporary or permanent injunction restraining any debt  
4 collector ~~person~~ from violating any provision of this part,  
5 whether or not there exists an adequate remedy at law; and  
6 such injunction, suspension, or revocation shall issue without  
7 bond.

8 Section 4. This act shall take effect July 1, 2000,  
9 and applies to any cause of action accruing on or after that  
10 date.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 760

4 Deletes from the bill the creation of new s. 702.11, F.S.,  
5 which would have provided for a mortgagor's right to receive a  
6 written reinstatement of payoff quote after a complaint  
7 initiating mortgage foreclosure proceedings had been filed and  
8 would have exempted the mortgagee's attorney from the  
9 provisions of part VI of chapter 559, the Florida Consumer  
10 Collection Practices Act.

11 Amends s. 559.72, F.S., which pertains to prohibited practices  
12 under the Florida Consumer Collection Practices Act (FCCPA).  
13 The term "debt collector" is substituted for the word "person"  
14 throughout the section. Additionally, paragraphs (18) and (19)  
15 are added to the list of activities which debt collectors  
16 cannot perform. Paragraph (18) prohibits communication with a  
17 debtor if the debt collector knows the debtor is represented  
18 by an attorney. Paragraph (19) prohibits charging debtors for  
19 communications, such as collect calls and telegrams, in which  
20 the true purpose of the communication is concealed.

21 Amends s. 559.77, F.S., which provides for civil remedies  
22 under the FCCPA. Upon adverse adjudication, the defendant will  
23 be liable for actual damages and additional statutory damages  
24 of up to \$1,000. Punitive damages may not be awarded. In a  
25 class action, additional statutory damages of up to \$1,000 may  
26 be awarded to each named plaintiff, and an aggregate award of  
27 additional statutory damages not to exceed the lesser of  
28 \$500,000 or 1 percent of the defendant's net worth for all  
29 remaining class members may be awarded.

30 Amends s. 559.77, F.S., by adding new paragraphs (3) and (4).  
31 Paragraph (3) provides a debt collector with a bona fide error  
affirmative defense. Paragraph (4) provides for a 1 year  
statute of limitations for claims brought under s. 559.72,  
F.S.

Amends s. 559.78, F.S., which provides judicial enforcement  
penalties under the FCCPA, to substitute the term "debt  
collector" for the word "person."