

By the Committee on Banking and Representative Cantens

1 A bill to be entitled
2 An act relating to consumer collection
3 practices; amending s. 559.72, F.S.; specifying
4 additional prohibited practices in collecting
5 consumer debts; providing penalties; amending
6 s. 559.77, F.S.; revising civil remedies;
7 providing for increased statutory damages under
8 certain circumstances; providing for absence of
9 liability under certain circumstances;
10 specifying a time certain for bringing certain
11 actions; providing an effective date.

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

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15 Section 1. Subsections (16) and (17) of section
16 559.72, Florida Statutes, are amended, and subsections (18)
17 and (19) are added to said section, to read:

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

20 (16) Mail any communication to a debtor in an envelope
21 or postcard with words typed, written, or printed on the
22 outside of the envelope or postcard calculated to embarrass
23 the debtor. An example of this would be an envelope addressed
24 to "Deadbeat, Jane Doe" or "Deadbeat, John Doe"; ~~or~~

25 (17) Communicate with the debtor between the hours of
26 9 p.m. and 8 a.m. in the debtor's time zone without the prior
27 consent of the debtor;~~;~~

28 (18) Communicate with a debtor if the person knows the
29 debtor is represented by an attorney with respect to such debt
30 and has knowledge of, or can readily ascertain, such
31 attorney's name and address, unless the debtor's attorney

1 fails to respond within a reasonable period of time to a
2 communication from the person, unless the debtor's attorney
3 consents to direct communication with the debtor, or unless
4 the debtor initiates the communication; or
5 (19) Cause charges to be made to any debtor for
6 communications by concealment of the true purpose of the
7 communication, including collect telephone calls and telegram
8 fees.

9 Section 2. Section 559.77, Florida Statutes, is
10 amended to read:

11 559.77 Civil remedies.--

12 (1) A debtor may bring a civil action against a person
13 violating the provisions of s. 559.72 in a court of competent
14 jurisdiction of the county in which the alleged violator
15 resides or has his or her principal place of business or in
16 the county wherein the alleged violation occurred.

17 (2) Upon adverse adjudication, the defendant shall be
18 liable for actual damages and for additional statutory damages
19 of up to \$1,000 ~~or \$500, whichever is greater~~, together with
20 court costs and reasonable attorney's fees incurred by the
21 plaintiff. In determining the defendant's liability for any
22 additional statutory damages, the court shall consider the
23 nature of the defendant's noncompliance with s. 559.72, the
24 frequency and persistence of such noncompliance, and the
25 extent to which such noncompliance was intentional. In any
26 class action lawsuit brought under this section, the court may
27 award additional statutory damages of up to \$1,000 for each
28 named plaintiff, and an aggregate award of additional
29 statutory damages not to exceed the lesser of \$500,000 or 1
30 percent of the defendant's net worth for all remaining class
31 members.The court may, in its discretion, award punitive

1 damages and may provide such equitable relief as it deems
2 necessary or proper, including enjoining the defendant from
3 further violations of this part. If the court finds that the
4 suit fails to raise a justiciable issue of law or fact, the
5 plaintiff shall be liable for court costs and reasonable
6 attorney's fees incurred by the defendant.

7 (3) A person shall not be held liable in any action
8 brought under this section if the person shows by a
9 preponderance of the evidence that the violation was not
10 intentional and resulted from a bona fide error
11 notwithstanding the maintenance of procedures reasonably
12 adapted to avoid any such error.

13 (4) An action brought under this section must be
14 commenced within 2 years after the date on which the alleged
15 violation occurred.

16 Section 3. This act shall take effect July 1, 2001,
17 and applies to any cause of action accruing on or after that
18 date.

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