

By the Council for Smarter Government and 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; specifying application of federal
12 precedent regarding corresponding federal law;
13 providing an effective date.

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

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

20 559.72 Prohibited practices generally.--In collecting
21 consumer debts, no person shall:

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

27 (17) Communicate with the debtor between the hours of
28 9 p.m. and 8 a.m. in the debtor's time zone without the prior
29 consent of the debtor; ~~-~~

30 (18) Communicate with a debtor if the person knows the
31 debtor is represented by an attorney with respect to such debt

1 and has knowledge of, or can readily ascertain, such
2 attorney's name and address, unless the debtor's attorney
3 fails to respond within a reasonable period of time to a
4 communication from the person, unless the debtor's attorney
5 consents to direct communication with the debtor, or unless
6 the debtor initiates the communication; or

7 (19) Cause charges to be made to any debtor for
8 communications by concealment of the true purpose of the
9 communication, including collect telephone calls and telegram
10 fees.

11 Section 2. Section 559.77, Florida Statutes, is
12 amended to read:

13 559.77 Civil remedies.--

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

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

1 percent of the defendant's net worth for all remaining class
2 members, but in no event may this aggregate award provide an
3 individual class member with additional statutory damages in
4 excess of \$1,000.The court may, in its discretion, award
5 punitive damages and may provide such equitable relief as it
6 deems necessary or proper, including enjoining the defendant
7 from further violations of this part. If the court finds that
8 the suit fails to raise a justiciable issue of law or fact,
9 the plaintiff shall be liable for court costs and reasonable
10 attorney's fees incurred by the defendant.

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

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

20 (5) In applying and construing this section, due
21 consideration and great weight shall be given to the
22 interpretations of the Federal Trade Commission and the
23 federal courts relating to the federal Fair Debt Collection
24 Practices Act.

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

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