

By the Committee on Judiciary and Senator Laurent

308-824-01

1 A bill to be entitled
2 An act relating to consumer collection
3 practices; amending s. 559.72, F.S.;
4 prohibiting certain communications with a
5 debtor who is represented by an attorney;
6 prohibiting the causing of charges to be made
7 to a debtor; amending s. 559.77, F.S.; revising
8 civil remedies for engaging in prohibited
9 collection practices; providing for damages in
10 class actions; prescribing circumstances under
11 which liability does not attach; providing a
12 limitation on bringing an action for a remedy
13 for unlawful collection practices; providing an
14 effective date.

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

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18 Section 1. Section 559.72, Florida Statutes, is
19 amended to read:

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

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

24 (2) Use or threaten force or violence;

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

1 (4) Communicate or threaten to communicate with a
2 debtor's employer prior to obtaining final judgment against
3 the debtor, unless the debtor gives her or his permission in
4 writing to contact her or his employer or acknowledges in
5 writing the existence of the debt after the debt has been
6 placed for collection, but this shall not prohibit a person
7 from telling the debtor that her or his employer will be
8 contacted if a final judgment is obtained;

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

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

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

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

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

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

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

15 (12) Orally communicate with a debtor in such a manner
16 as to give the false impression or appearance that such person
17 is or is associated with an attorney;

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

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

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

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

6 (17) Communicate with the debtor between the hours of
7 9 p.m. and 8 a.m. in the debtor's time zone without the prior
8 consent of the debtor; ~~-~~

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

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

21 Section 2. Section 559.77, Florida Statutes, is
22 amended to read:

23 559.77 Civil remedies.--

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

29 (2) Upon adverse adjudication, the defendant shall be
30 liable for actual damages and for additional statutory damages
31 of up to \$1,000 ~~or \$500, whichever is greater~~, together with

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

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

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 94

Adds an exception to the prohibited activity of communication with a debtor who is represented by an attorney. A person may communicate with a debtor who is represented by an attorney when the debtor initiates the communication.