

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
14 for application of federal precedent regarding
15 corresponding federal laws; providing an
16 effective date.

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

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20 Section 1. Section 559.72, Florida Statutes, is
21 amended to read:22 559.72 Prohibited practices generally.--In collecting
23 consumer debts, no person shall:24 (1) Simulate in any manner a law enforcement officer
25 or a representative of any governmental agency;

26 (2) Use or threaten force or violence;

27 (3) Tell a debtor who disputes a consumer debt that
28 she or he or any person employing her or him will disclose to
29 another, orally or in writing, directly or indirectly,
30 information affecting the debtor's reputation for credit
31 worthiness without also informing the debtor that the

1 existence of the dispute will also be disclosed as required by
2 subsection (6);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 2. Section 559.77, Florida Statutes, is
24 amended to read:

25 559.77 Civil remedies.--

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

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1 (2) Upon adverse adjudication, the defendant shall be
2 liable for actual damages and for additional statutory damages
3 of up to \$1,000 or \$500, whichever is greater, together with
4 court costs and reasonable attorney's fees incurred by the
5 plaintiff. In determining the defendant's liability for any
6 additional statutory damages, the court shall consider the
7 nature of the defendant's noncompliance with s. 559.72, the
8 frequency and persistence of such noncompliance, and the
9 extent to which such noncompliance was intentional. In any
10 class-action lawsuit brought under this section, the court may
11 award additional statutory damages of up to \$1,000 for each
12 named plaintiff and an aggregate award of additional statutory
13 damages not to exceed the lesser of \$500,000 or 1 percent of
14 the defendant's net worth for all remaining class members, but
15 in no event may this aggregate award provide an individual
16 class member with additional statutory damages in excess of
17 \$1,000.The court may, in its discretion, award punitive
18 damages and may provide such equitable relief as it deems
19 necessary or proper, including enjoining the defendant from
20 further violations of this part. If the court finds that the
21 suit fails to raise a justiciable issue of law or fact, the
22 plaintiff shall be liable for court costs and reasonable
23 attorney's fees incurred by the defendant.

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

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

4 (5) In applying and construing this section, due
5 consideration and great weight shall be given to the
6 interpretations of the Federal Trade Commission and the
7 federal courts relating to the federal Fair Debt Collection
8 Practices Act.

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

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