

By the Committees on Commerce; and Banking and Insurance; and
Senator Richter

577-04807-10

20102086c2

1 A bill to be entitled
2 An act relating to consumer debt collection; creating
3 s. 559.5556, F.S.; requiring a consumer debt
4 collection agency to maintain records; amending s.
5 559.565, F.S.; increasing the administrative fine
6 imposed against an out-of-state consumer debt
7 collector that fails to register as required; revising
8 provisions relating to authorized activities of the
9 Attorney General; amending s. 559.715, F.S.; revising
10 requirements for providing written notice of the
11 assignment of debt; amending s. 559.72, F.S.; revising
12 prohibited acts with respect to consumer debt
13 collection; revising provisions governing violations
14 of communication procedures; amending s. 559.725,
15 F.S.; revising provisions relating to consumer
16 complaints about a consumer collection agency;
17 authorizing the Attorney General to take action
18 against a person for violations involving debt
19 collection; creating s. 669.726, F.S.; providing for
20 the issuance of subpoenas by the Office of Financial
21 Regulation; creating s. 559.727, F.S.; authorizing the
22 office to issue cease and desist orders; amending s.
23 559.730, F.S.; revising provisions relating to
24 administrative remedies; increasing the maximum
25 penalty; authorizing the Financial Services Commission
26 to adopt rules relating to penalty guidelines;
27 amending s. 559.77, F.S., relating to civil remedies;
28 conforming provisions to federal law; providing an
29 effective date.

577-04807-10

20102086c2

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

Section 1. Section 559.5556, Florida Statutes, is created to read:

559.5556 Maintenance of records.-

(1) Each registered consumer collection agency shall maintain, at the principal place of business designated on the registration, all books, accounts, records, and documents necessary to determine the registrant's compliance with this part.

(2) The office may authorize the maintenance of records at a location other than a principal place of business. The office may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of registrants so that such records enable the office to determine the registrant's compliance with this part.

(4) All books, accounts, records, documents, and receipts of any debt collection transaction must be preserved and kept available for inspection by the office for at least 3 years after the date the transaction is completed. The commission may prescribe by rule requirements for the destruction of books, accounts, records, and documents retained by the registrant after the completion of the 3 years.

Section 2. Section 559.565, Florida Statutes, is amended to read:

559.565 Enforcement action against out-of-state consumer

577-04807-10

20102086c2

59 debt collector.— The remedies of this section are cumulative to
60 other sanctions and enforcement provisions of this part for any
61 violation by an out-of-state consumer debt collector, as defined
62 in s. 559.55(8).

63 (1) ~~An~~ Any out-of-state consumer debt collector who
64 collects or attempts to collect consumer debts in this state
65 without first registering in accordance with this part ~~is shall~~
66 ~~be~~ subject to an administrative fine of up to \$10,000 ~~not to~~
67 ~~exceed \$1,000~~ together with reasonable attorney fees and court
68 costs in any successful action by the state to collect such
69 fines.

70 (2) Any person, whether or not exempt from registration
71 under this part, who violates ~~the provisions of~~ s. 559.72 is
72 ~~shall be~~ subject to sanctions ~~for such violations~~ the same as
73 any other consumer debt collector, including imposition of an
74 administrative fine. The registration of a duly registered out-
75 of-state consumer debt collector ~~is shall be~~ subject to
76 revocation or suspension in the same manner as the registration
77 of any other registrant under this part.

78 (3) In order to effectuate ~~the provisions of~~ this section
79 and enforce the requirements of this part as it relates to out-
80 of-state consumer debt collectors, the Attorney General is
81 expressly authorized to initiate such action on behalf of the
82 state as he or she deems appropriate in any state or federal
83 ~~district~~ court of competent jurisdiction.

84 Section 3. Section 559.715, Florida Statutes, is amended to
85 read:

86 559.715 Assignment of consumer debts.—This part does not
87 prohibit the assignment, by a creditor, of the right to bill and

577-04807-10

20102086c2

88 collect a consumer debt. However, the assignee must give the
89 debtor written notice of such assignment at least ~~within~~ 30 days
90 before any action to collect the debt after the assignment. The
91 assignee is a real party in interest and may bring an action ~~in~~
92 ~~a court of competent jurisdiction~~ to collect a debt that has
93 been assigned to the ~~such~~ assignee and is in default.

94 Section 4. Section 559.72, Florida Statutes, is amended to
95 read:

96 559.72 Prohibited practices generally.—In collecting
97 consumer debts, no person shall:

98 (1) Simulate in any manner a law enforcement officer or a
99 representative of any governmental agency.†

100 (2) Use or threaten force or violence.†

101 (3) Tell a debtor who disputes a consumer debt that she or
102 he or any person employing her or him will disclose to another,
103 orally or in writing, directly or indirectly, information
104 affecting the debtor's reputation for credit worthiness without
105 also informing the debtor that the existence of the dispute will
106 also be disclosed as required by subsection (6).†

107 (4) Communicate or threaten to communicate with a debtor's
108 employer before ~~prior to~~ obtaining final judgment against the
109 debtor, unless the debtor gives her or his permission in writing
110 to contact her or his employer or acknowledges in writing the
111 existence of the debt after the debt has been placed for
112 collection. However, ~~but~~ this does shall not prohibit a person
113 from telling the debtor that her or his employer will be
114 contacted if a final judgment is obtained.†

115 (5) Disclose to a person other than the debtor or her or
116 his family information affecting the debtor's reputation,

577-04807-10

20102086c2

117 whether or not for credit worthiness, with knowledge or reason
118 to know that the other person does not have a legitimate
119 business need for the information or that the information is
120 false.~~†~~

121 (6) Disclose information concerning the existence of a debt
122 known to be reasonably disputed by the debtor without disclosing
123 that fact. If a disclosure is made before ~~prior to~~ such
124 ~~reasonable~~ dispute has ~~having~~ been asserted and written notice
125 is received from the debtor that any part of the debt is
126 disputed, and if such dispute is reasonable, the person who made
127 the original disclosure must ~~shall~~ reveal upon the request of
128 the debtor within 30 days the details of the dispute to each
129 person to whom disclosure of the debt without notice of the
130 dispute was made within the preceding 90 days.~~†~~

131 (7) Willfully communicate with the debtor or any member of
132 her or his family with such frequency as can reasonably be
133 expected to harass the debtor or her or his family, or willfully
134 engage in other conduct which can reasonably be expected to
135 abuse or harass the debtor or any member of her or his family.~~†~~

136 (8) Use profane, obscene, vulgar, or willfully abusive
137 language in communicating with the debtor or any member of her
138 or his family.~~†~~

139 (9) Claim, attempt, or threaten to enforce a debt when such
140 person knows that the debt is not legitimate, or assert the
141 existence of some other legal right when such person knows that
142 the right does not exist.~~†~~

143 (10) Use a communication that ~~which~~ simulates in any manner
144 legal or judicial process or that ~~which~~ gives the appearance of
145 being authorized, issued, or approved by a government,

577-04807-10

20102086c2

146 governmental agency, or attorney at law, when it is not.†

147 (11) Communicate with a debtor under the guise of an
148 attorney by using the stationery of an attorney or forms or
149 instruments that ~~which~~ only attorneys are authorized to
150 prepare.†

151 (12) Orally communicate with a debtor in ~~such~~ a manner that
152 gives ~~as to give~~ the false impression or appearance that such
153 person is or is associated with an attorney.†

154 (13) Advertise or threaten to advertise for sale any debt
155 as a means to enforce payment except under court order or when
156 acting as an assignee for the benefit of a creditor.†

157 (14) Publish or post, threaten to publish or post, or cause
158 to be published or posted before the general public individual
159 names or any list of names of debtors, commonly known as a
160 deadbeat list, for the purpose of enforcing or attempting to
161 enforce collection of consumer debts.†

162 (15) Refuse to provide adequate identification of herself
163 or himself or her or his employer or other entity whom she or he
164 represents if ~~when~~ requested to do so by a debtor from whom she
165 or he is collecting or attempting to collect a consumer debt.†

166 (16) Mail any communication to a debtor in an envelope or
167 postcard with words typed, written, or printed on the outside of
168 the envelope or postcard calculated to embarrass the debtor. An
169 example of this would be an envelope addressed to "Deadbeat,
170 Jane Doe" or "Deadbeat, John Doe."†

171 (17) Communicate with the debtor between the hours of 9
172 p.m. and 8 a.m. in the debtor's time zone without the prior
173 consent of the debtor.†

174 (a) The person may presume that the time a telephone call

577-04807-10

20102086c2

175 is received conforms to the local time zone assigned to the area
176 code of the number called, unless the person reasonably believe
177 that the debtor's telephone is located in a different time zone.

178 (b) If, such as with toll-free numbers, an area code is not
179 assigned to a specific geographic area, the person may presume
180 that the time a telephone call is received conforms to the local
181 time zone of the debtor's last known place of residence, unless
182 the person reasonably believes that the debtor's telephone is
183 located in a different time zone.

184 (18) Communicate with a debtor if the person knows that the
185 debtor is represented by an attorney with respect to such debt
186 and has knowledge of, or can readily ascertain, such attorney's
187 name and address, unless the debtor's attorney fails to respond
188 within 30 days ~~a reasonable period of time~~ to a communication
189 from the person, unless the debtor's attorney consents to a
190 direct communication with the debtor, or unless the debtor
191 initiates the communication. ~~;~~ ~~or~~

192 (19) Cause a ~~charges to be made to any debtor~~ to be charged
193 for communications by concealing ~~concealment of~~ the true purpose
194 of the communication, including collect telephone calls and
195 telegram fees.

196 Section 5. Section 559.725, Florida Statutes, is amended to
197 read:

198 559.725 Consumer complaints; administrative duties.—

199 (1) The office ~~Division of Consumer Services of the~~
200 ~~Department of Financial Services~~ shall receive and maintain
201 ~~serve as the registry for receiving and maintaining~~ records of
202 ~~inquiries,~~ correspondence, ~~and~~ complaints from consumers
203 concerning any and all persons who collect debts, including

577-04807-10

20102086c2

204 consumer collection agencies.

205 ~~(2) The division shall classify complaints by type and~~
206 ~~identify the number of written complaints against persons~~
207 ~~collecting or attempting to collect debts in this state,~~
208 ~~including credit grantors collecting their own debts, debt~~
209 ~~collectors generally, and, specifically, consumer collection~~
210 ~~agencies as distinguished from other persons who collect debts~~
211 ~~such as commercial debt collection agencies regulated under part~~
212 ~~V of this chapter. The division shall identify the nature and~~
213 ~~number of various kinds of written complaints, including~~
214 ~~specifically those alleging violations of s. 559.72.~~

215 ~~(2)(3)~~ The office division shall inform and furnish
216 relevant information to the appropriate regulatory body of the
217 state or the Federal Government, or The Florida Bar in the case
218 of attorneys, if a person when any consumer debt collector
219 exempt from registration under this part has been named in a
220 five or more written consumer complaint pursuant to subsection
221 (3) complaints alleging violations of s. 559.72 within a 12-
222 month period. The Attorney General may take action against any
223 person in violation of this part.

224 ~~(4) The division shall furnish a form to each complainant~~
225 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~
226 ~~consumer collection agency. Such form may be filed with the~~
227 ~~office. The form shall identify the accused consumer collection~~
228 ~~agency and provide for the complainant's summary of the nature~~
229 ~~of the alleged violation and facts which allegedly support the~~
230 ~~complaint. The form shall include a provision for the~~
231 ~~complainant to state under oath before a notary public that the~~
232 ~~allegations therein made are true.~~

577-04807-10

20102086c2

233 (3)(5) The complainant, subject to penalty of perjury as
234 provided in s. 837.06, shall certify on a form approved by the
235 Financial Services Commission a summary of the nature of the
236 alleged violation and the facts that allegedly support the
237 complaint, and shall submit the form to the office. Upon receipt
238 of such sworn complaint, the office shall promptly furnish a
239 copy of the sworn complaint to the accused consumer collection
240 agency.

241 (4)(6) The office shall investigate sworn complaints by
242 direct written communication with the complainant and the
243 affected consumer collection agency. In addition, the office
244 shall attempt to resolve each sworn complaint and shall record
245 the resolution of such complaints.

246 (7) Periodically, the office shall identify consumer
247 collection agencies that have unresolved sworn consumer
248 complaints from five or more different consumers within a 12-
249 month period under the provisions of this part.

250 (8) The office shall issue a written warning notice to the
251 accused consumer collection agency if the office is unable to
252 resolve all such sworn complaints and fewer than five unresolved
253 complaints remain. Such notice shall include a statement that
254 the warning may constitute evidence in any future investigation
255 of similar complaints against that agency and in any future
256 administrative determination of the imposition of other
257 administrative remedies available to the office under this part.

258 (9) The office may issue a written reprimand when five or
259 more such unresolved sworn complaints against a consumer
260 collection agency collectively fall short of constituting
261 apparent repeated violations that warrant more serious

577-04807-10

20102086c2

262 ~~administrative sanctions. Such reprimand shall include a~~
263 ~~statement that the reprimand may constitute evidence in any~~
264 ~~future investigation of similar complaints against that agency~~
265 ~~and in any future administrative determination of the imposition~~
266 ~~of other administrative remedies available to the office.~~

267 ~~(10) The office shall issue a notice of intent either to~~
268 ~~revoke or suspend the registration or to impose an~~
269 ~~administrative fine when the office preliminarily determines~~
270 ~~that repeated violations of s. 559.72 by an accused registrant~~
271 ~~have occurred which would warrant more serious administrative~~
272 ~~sanctions being imposed under this part. The office shall advise~~
273 ~~each registrant of the right to require an administrative~~
274 ~~hearing under chapter 120, prior to the agency's final action on~~
275 ~~the matter as authorized by s. 559.730.~~

276 ~~(5) (11)~~ The office shall advise the appropriate state
277 attorney, ~~or the Attorney General in the case of an out-of-state~~
278 consumer debt collector, ~~of any determination by the office of a~~
279 violation of the requirements of this part by any consumer
280 collection agency that ~~which~~ is not registered as required by
281 this part. The office shall furnish the state attorney or
282 Attorney General with the office's information concerning the
283 alleged violations of such requirements.

284 (6) A registered consumer collection agency must provide a
285 written response to the office within 45 days after receipt of a
286 written request from the office for information concerning a
287 consumer complaint. The response must address the issues and
288 allegations raised in the complaint. The office may impose an
289 administrative fine of up to \$250 per request per day upon any
290 registrant that fails to comply with this subsection.

577-04807-10

20102086c2

291 Section 6. Section 559.726, Florida Statutes, is created to
292 read:

293 559.726 Subpoenas.-

294 (1) The office may:

295 (a) Issue and serve subpoenas and subpoenas duces tecum to
296 compel the attendance of witnesses and the production of all
297 books, accounts, records, and other documents and materials
298 relevant to an investigation conducted by the office. The
299 office, or its authorized representative, may administer oaths
300 and affirmations to any person.

301 (b) Seek subpoenas or subpoenas duces tecum from any court
302 to command the appearance of witnesses and the production of
303 books, accounts, records, and other documents or materials at a
304 time and place named in the subpoenas, and an authorized
305 representative of the office may serve such subpoenas.

306 (2) If there is substantial noncompliance with a subpoena
307 or subpoena duces tecum issued by the office, the office may
308 petition the court in the county where the person subpoenaed
309 resides or has his or her principal place of business for an
310 order requiring the person to appear, testify, or produce such
311 books, accounts, records, and other documents as are specified
312 in the subpoena or subpoena duces tecum.

313 (3) The office is entitled to the summary procedure
314 provided in s. 51.011, and the court shall advance such cause on
315 its calendar. Attorney's fees and any other costs incurred by
316 the office to obtain an order granting, in whole or in part, a
317 petition for enforcement of a subpoena or subpoena duces tecum
318 shall be taxed against the subpoenaed person, and failure to
319 comply with such order is a contempt of court.

577-04807-10

20102086c2

320 (4) To aid in the enforcement of this part, the office may
321 require or permit a person to file a statement in writing, under
322 oath, or otherwise as the office determines, as to all the facts
323 and circumstances concerning the matter to be investigated.

324 Section 7. Section 559.727, Florida Statutes, is created to
325 read:

326 559.727 Cease and desist orders.—The office may issue and
327 serve upon any person an order to cease and desist and to take
328 corrective action if it has reason to believe the person is
329 violating, has violated, or is about to violate any provision of
330 this part, any rule or order issued under this part, or any
331 written agreement between the person and the office. All
332 procedural matters relating to issuance and enforcement of such
333 order are governed by chapter 120.

334 Section 8. Section 559.730(5), Florida Statutes, is amended
335 to read:

336 559.730 Administrative remedies.—

337 (1) The office may impose an administrative fine against,
338 or revoke or suspend the registration of, a any registrant under
339 this part who has committed a violation of ~~engaged in repeated~~
340 ~~violations which establish a clear pattern of abuse of~~
341 ~~prohibited collection practices under s. 559.72. Final office~~
342 action to fine, suspend, or revoke ~~or suspend~~ the registration
343 of a any registrant is ~~shall be~~ subject to review in accordance
344 with chapter 120 ~~in the same manner as revocation of a license.~~
345 ~~The repeated violations of the law by one employee shall not be~~
346 ~~grounds for revocation or suspension of the registration of the~~
347 ~~employing consumer collection agency, unless the employee is~~
348 ~~also the owner of a majority interest in the collection agency.~~

577-04807-10

20102086c2

349 ~~(2) The registration of a registrant shall not be revoked~~
350 ~~or suspended if the registrant shows by a preponderance of the~~
351 ~~evidence that the violations were not intentional and resulted~~
352 ~~from bona fide error notwithstanding the maintenance of~~
353 ~~procedures reasonably adapted to avoid any such error.~~

354 ~~(3) The office shall consider the number of complaints~~
355 ~~against the registrant in relation to the accused registrant's~~
356 ~~volume of business when determining whether suspension or~~
357 ~~revocation is the more appropriate sanction when circumstances~~
358 ~~warrant that one or the other should be imposed upon a~~
359 ~~registrant.~~

360 ~~(2)-(4)~~ The office may ~~shall~~ impose suspension rather than
361 revocation of a registration if ~~when~~ circumstances warrant that
362 one or the other should be imposed ~~upon a registrant~~ and the
363 ~~accused~~ registrant demonstrates that the registrant has taken
364 affirmative steps that ~~which~~ can be expected to effectively
365 eliminate the ~~repeated~~ violations and that the registrant's
366 registration has never been previously ~~been~~ suspended.

367 ~~(3)-(5)~~ In addition to, or in lieu of suspension or
368 revocation of a registration, the office may impose an
369 administrative fine of up to \$10,000 per violation ~~\$1,000~~
370 against a ~~the offending~~ registrant as a sanction for repeated
371 violations of the provisions of s. 559.72 ~~when violations do not~~
372 ~~rise to the level of misconduct governed by subsection (1).~~ The
373 Financial Services Commission shall adopt rules establishing
374 guidelines for imposing administrative penalties. ~~Final office~~
375 ~~action to impose an administrative fine shall be subject to~~
376 ~~review in accordance with ss. 120.569 and 120.57.~~

377 ~~(6) Any administrative fine imposed under this part shall~~

577-04807-10

20102086c2

378 ~~be payable to the office. The office shall maintain an~~
379 ~~appropriate record and shall deposit such fine into the~~
380 ~~Regulatory Trust Fund of the office.~~

381 ~~(7) An administrative action by the office to impose~~
382 ~~revocation, suspension, or fine shall be brought within 2 years~~
383 ~~after the date of the last violation upon which the action is~~
384 ~~founded.~~

385 ~~(4)(8) Nothing in This part does not shall be construed to~~
386 ~~preclude any person from pursuing remedies available under the~~
387 ~~Federal Fair Debt Collection Practices Act for any violation of~~
388 ~~such act, including specifically against any person who is~~
389 ~~exempt from the registration provisions of this part.~~

390 Section 9. Section 559.77, Florida Statutes, is amended to
391 read:

392 559.77 Civil remedies.-

393 (1) A debtor may bring a civil action against a person
394 violating the provisions of s. 559.72 in ~~a court of competent~~
395 ~~jurisdiction of~~ the county in which the alleged violator resides
396 or has his or her principal place of business or in the county
397 where ~~wherein~~ the alleged violation occurred.

398 (2) Any person who fails to comply with any provision of s.
399 559.72 is ~~Upon adverse adjudication, the defendant shall be~~
400 ~~liable for actual damages and for additional statutory damages~~
401 ~~as the court may allow, but not exceeding of up to \$1,000,~~
402 ~~together with court costs and reasonable attorney's fees~~
403 ~~incurred by the plaintiff. In determining the defendant's~~
404 ~~liability for any additional statutory damages, the court shall~~
405 ~~consider the nature of the defendant's noncompliance with s.~~
406 ~~559.72, the frequency and persistence of the ~~such~~ noncompliance,~~

577-04807-10

20102086c2

407 and the extent to which the ~~such~~ noncompliance was intentional.
408 In a ~~any~~ class action lawsuit brought under this section, the
409 court may award additional statutory damages of up to \$1,000 for
410 each named plaintiff and an aggregate award of additional
411 statutory damages up ~~not~~ to ~~exceed~~ the lesser of \$500,000 or 1
412 percent of the defendant's net worth for all remaining class
413 members; however, the ~~but in no event may this~~ aggregate award
414 may not provide an individual class member with additional
415 statutory damages in excess of \$1,000. The court may, ~~in its~~
416 ~~discretion,~~ award punitive damages and may provide such
417 equitable relief as it deems necessary or proper, including
418 enjoining the defendant from further violations of this part. If
419 the court finds that the suit fails to raise a justiciable issue
420 of law or fact, the plaintiff is ~~shall be~~ liable for court costs
421 and reasonable attorney's fees incurred by the defendant.

422 (3) A person may ~~shall~~ not be held liable in any action
423 brought under this section if the person shows by a
424 preponderance of the evidence that the violation was not
425 intentional and resulted from a bona fide error, notwithstanding
426 the maintenance of procedures reasonably adapted to avoid ~~any~~
427 such error.

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

431 (5) In applying and construing this section, due
432 consideration and great weight shall be given to the
433 interpretations of the Federal Trade Commission and the federal
434 courts relating to the federal Fair Debt Collection Practices
435 Act.

577-04807-10

20102086c2

436

Section 10. This act shall take effect October 1, 2010.