

HB 7233

2010

1 A bill to be entitled  
2 An act relating to consumer debt collection; creating s.  
3 559.5556, F.S.; requiring a consumer debt collection  
4 agency to maintain certain records; amending s. 559.565,  
5 F.S.; increasing the administrative fine imposed against  
6 an out-of-state consumer debt collector that fails to  
7 register as required; revising provisions relating to  
8 authorized activities of the Attorney General; amending s.  
9 559.715, F.S.; revising requirements for providing written  
10 notice of the assignment of debt; amending s. 559.72,  
11 F.S.; revising prohibited acts with respect to consumer  
12 debt collection; revising provisions governing violations  
13 of communication procedures; amending s. 559.725, F.S.;  
14 revising provisions relating to consumer complaints about  
15 a consumer collection agency; authorizing the Attorney  
16 General to take action against a person for violations  
17 involving debt collection; creating s. 559.726, F.S.;  
18 providing for the issuance of subpoenas by the Office of  
19 Financial Regulation; creating s. 559.727, F.S.;  
20 authorizing the office to issue cease and desist orders;  
21 amending s. 559.730, F.S.; revising provisions relating to  
22 administrative remedies; increasing the maximum penalty;  
23 authorizing the Financial Services Commission to adopt  
24 rules relating to penalty guidelines; amending s. 559.77,  
25 F.S., relating to civil remedies; conforming provisions to  
26 federal law; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

HB 7233

2010

29  
30 Section 1. Section 559.5556, Florida Statutes, is created  
31 to read:

32 559.5556 Maintenance of records.—

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

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

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

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

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

56 559.565 Enforcement action against out-of-state consumer

HB 7233

2010

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

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

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

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

82 Section 3. Section 559.715, Florida Statutes, is amended  
 83 to read:

84 559.715 Assignment of consumer debts.—This part does not

HB 7233

2010

85 prohibit the assignment, by a creditor, of the right to bill and  
 86 collect a consumer debt. However, the assignee must give the  
 87 debtor written notice of such assignment as soon as practical  
 88 after the assignment is made but at least ~~within~~ 30 days before  
 89 any action to collect the debt ~~after the assignment~~. The  
 90 assignee is a real party in interest and may bring an action ~~in~~  
 91 ~~a court of competent jurisdiction~~ to collect a debt that has  
 92 been assigned to the ~~such~~ assignee and is in default.

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

95 559.72 Prohibited practices generally.—In collecting  
 96 consumer debts, no person shall:

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

99 (2) Use or threaten force or violence. ~~†~~

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

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

113 | contacted if a final judgment is obtained.†

114 |       (5) Disclose to a person other than the debtor or her or  
 115 | his family information affecting the debtor's reputation,  
 116 | whether or not for credit worthiness, with knowledge or reason  
 117 | to know that the other person does not have a legitimate  
 118 | business need for the information or that the information is  
 119 | false.†

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

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

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

138 |       (9) Claim, attempt, or threaten to enforce a debt when  
 139 | such person knows that the debt is not legitimate, or assert the  
 140 | existence of some other legal right when such person knows that

141 the right does not exist.†

142 (10) Use a communication that ~~which~~ simulates in any  
 143 manner legal or judicial process or that ~~which~~ gives the  
 144 appearance of being authorized, issued, or approved by a  
 145 government, governmental agency, or attorney at law, when it is  
 146 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  
 152 that gives ~~as to give~~ the false impression or appearance that  
 153 such 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  
 158 cause to be published or posted before the general public  
 159 individual names or any list of names of debtors, commonly known  
 160 as a deadbeat list, for the purpose of enforcing or attempting  
 161 to 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  
175 is received conforms to the local time zone assigned to the area  
176 code of the number called, unless the person reasonably believes  
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  
179 not assigned to a specific geographic area, the person may  
180 presume that the time a telephone call is received conforms to  
181 the local time zone of the debtor's last known place of  
182 residence, unless the person reasonably believes that the  
183 debtor's telephone is located in a different time zone.

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

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

196 Section 5. Section 559.725, Florida Statutes, is amended

HB 7233

2010

197 to 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  
 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~~



HB 7233

2010

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.~~

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~~  
 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

HB 7233

2010

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.

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

HB 7233

2010

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 use of 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.

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  
 325 to 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 the office has reason to believe that the  
 329 person is violating, has violated, or is about to violate any  
 330 provision of this part, any rule or order issued under this  
 331 part, or any written agreement between the person and the  
 332 office. All procedural matters relating to issuance and  
 333 enforcement of such order are governed by chapter 120.

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

336 559.730 Administrative remedies.—

HB 7233

2010

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.~~

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

HB 7233

2010

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 commission shall adopt rules establishing guidelines for  
 374 imposing administrative penalties. ~~Final office action to impose~~  
 375 ~~an administrative fine shall be subject to review in accordance~~  
 376 ~~with ss. 120.569 and 120.57.~~

377 ~~(6)~~ ~~Any administrative fine imposed under this part shall~~  
 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  
 399 s. 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 to exceed ~~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,  
 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

HB 7233

2010

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.

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