

1 A bill to be entitled
 2 An act relating to debt buyers; amending s. 559.55, F.S.;
 3 providing a definition for "debt buyer"; amending ss.
 4 559.553 and 559.565, F.S.; conforming cross-references;
 5 creating s. 559.717, F.S.; providing requirements for debt
 6 buyers; requiring a debt buyer to provide a receipt for
 7 any payments made by a debtor; providing acts that are
 8 prohibited by a debt buyer; providing the requirements for
 9 filing an action against a debtor by a debt buyer or for
 10 collecting attorney's fees charged for collection
 11 services; providing requirements for obtaining a default
 12 or summary judgment against a debtor; providing penalties
 13 against a debt buyer for violations; providing an
 14 effective date.

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

17
 18 Section 1. Section 559.55, Florida Statutes, is reordered
 19 and amended to read:

20 559.55 Definitions.—As used in ~~The following terms shall,~~
 21 ~~unless the context otherwise indicates, have the following~~
 22 ~~meanings for the purpose of this part, the term:~~

23 (4)~~(1)~~ "Debt" or "consumer debt" means any obligation or
 24 alleged obligation of a consumer to pay money arising out of a
 25 transaction in which the money, property, insurance, or services
 26 that ~~which~~ are the subject of the transaction are primarily for
 27 personal, family, or household purposes, whether or not such
 28 obligation has been reduced to judgment.

29 ~~(7)-(2)~~ "Debtor" or "consumer" means any natural person
 30 obligated or allegedly obligated to pay any debt.

31 (3) "Creditor" means any person who offers or extends
 32 credit creating a debt or to whom a debt is owed, but does not
 33 include a any person who receives ~~to the extent that they~~
 34 ~~receive~~ an assignment or transfer of a debt in default solely
 35 for the purpose of facilitating collection of such debt for
 36 another.

37 ~~(9)-(4)~~ "Office" means the Office of Financial Regulation
 38 ~~of the Financial Services Commission.~~

39 ~~(1)-(5)~~ "Communication" means conveying ~~the conveying of~~
 40 information regarding a debt directly or indirectly to any
 41 person through any medium.

42 (5) "Debt buyer" means a creditor who is also engaged in
 43 the business of purchasing consumer debt for collection
 44 purposes, whether it collects the debt itself, hires a debt
 45 collector to collect the debt, or hires an attorney to litigate
 46 for the collection of the debt.

47 (6) "Debt collector" means any person who uses any
 48 instrumentality of commerce within this state, whether initiated
 49 from within or outside this state, in any business whose ~~the~~
 50 principal purpose ~~of which~~ is the collection of debts, or who
 51 regularly collects or attempts to collect, directly or
 52 indirectly, debts owed or due or asserted to be owed or due
 53 another. The term ~~"debt collector"~~ includes any creditor who, in
 54 the process of collecting her or his own debts, uses any name
 55 other than her or his own which indicates ~~would indicate~~ that a
 56 third person is collecting or attempting to collect such debts.

57 The term does not include:

58 (a) Any officer or employee of a creditor who ~~while~~, in
 59 the name of the creditor, collects ~~collecting~~ debts for such
 60 creditor;

61 (b) Any person ~~while~~ acting as a debt collector for
 62 another person, both of whom are related by common ownership or
 63 affiliated by corporate control, if the person acting as a debt
 64 collector for persons to whom it is so related or affiliated and
 65 if the principal business of such persons is not the collection
 66 of debts;

67 (c) Any officer or employee of any federal, state, or
 68 local governmental body ~~to the extent that~~ collecting or
 69 attempting to collect any debt ~~is~~ in the performance of her or
 70 his official duties;

71 (d) Any person ~~while~~ serving or attempting to serve legal
 72 process on any other person in connection with the judicial
 73 enforcement of a ~~any~~ debt;

74 (e) Any not-for-profit organization that ~~which~~, at the
 75 request of consumers, performs bona fide consumer credit
 76 counseling and assists consumers in the liquidation of their
 77 debts by receiving payments from such consumers and distributing
 78 such amounts to creditors; or

79 (f) Any person collecting or attempting to collect any
 80 debt if ~~owed or due or asserted to be owed or due another to the~~
 81 ~~extent that~~ such activity is incidental to a bona fide fiduciary
 82 obligation or a bona fide escrow arrangement; concerns a debt
 83 that ~~which~~ was originated by such person; concerns a debt that
 84 ~~which~~ was not in default at the time it was obtained by such

85 person; or concerns a debt obtained by such person as a secured
 86 party in a commercial credit transaction involving the creditor.

87 ~~(2)-(7)~~ "Consumer collection agency" means any debt
 88 collector or business entity engaged in the business of
 89 soliciting consumer debts for collection or ~~of~~ collecting
 90 consumer debts, which ~~debt collector or business~~ is not
 91 expressly exempted under ~~as set forth in~~ s. 559.553(4).

92 ~~(10)-(8)~~ "Out-of-state consumer debt collector" means any
 93 person whose business activities in this state involve both
 94 collecting or attempting to collect consumer debt from debtors
 95 located in this state by means of interstate communication
 96 originating from outside this state and soliciting consumer debt
 97 accounts for collection from creditors who have a business
 98 presence in this state. For purposes of this subsection, a
 99 creditor has a business presence in this state if ~~either~~ the
 100 creditor or an affiliate or subsidiary of the creditor has an
 101 office in this state.

102 ~~(8)-(9)~~ "Federal Fair Debt Collection Practices Act" or
 103 "Federal Act" means the federal legislation regulating fair debt
 104 collection practices, as set forth in Pub. L. No. 95-109, as
 105 amended and published in 15 U.S.C. ss. 1692 et seq.

106 Section 2. Subsection (5) of section 559.553, Florida
 107 Statutes, is amended to read:

108 559.553 Registration of consumer collection agencies
 109 required; exemptions.—

110 (5) An ~~Any~~ out-of-state consumer debt collector ~~as defined~~
 111 ~~in s. 559.55(8)~~ who is not exempt from registration under ~~by~~
 112 ~~application of~~ subsection (4) and who fails to register in

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113 accordance with this part is ~~shall be~~ subject to an enforcement
114 action by the state as specified in s. 559.565.

115 Section 3. Section 559.565, Florida Statutes, is amended
116 to read:

117 559.565 Enforcement action against out-of-state consumer
118 debt collector.—The remedies of this section are cumulative to
119 other sanctions and enforcement provisions of this part for any
120 violation by an out-of-state consumer debt collector, ~~as defined~~
121 ~~in s. 559.55(8)~~.

122 (1) An out-of-state consumer debt collector who collects
123 or attempts to collect consumer debts in this state without
124 first registering in accordance with this part is subject to an
125 administrative fine of up to \$10,000 together with reasonable
126 attorney fees and court costs in any successful action by the
127 state to collect such fines.

128 (2) Any person, whether or not exempt from registration
129 under this part, who violates s. 559.72 is subject to sanctions
130 the same as any other consumer debt collector, including
131 imposition of an administrative fine. The registration of a duly
132 registered out-of-state consumer debt collector is subject to
133 revocation or suspension in the same manner as the registration
134 of any other registrant under this part.

135 (3) In order to effectuate this section and enforce the
136 requirements of this part as it relates to out-of-state consumer
137 debt collectors, the Attorney General is expressly authorized to
138 initiate such action on behalf of the state as he or she deems
139 appropriate in any state or federal court of competent
140 jurisdiction.

141 Section 4. Section 559.717, Florida Statutes, is created
 142 to read:

143 559.717 Debt buyers.-

144 (1) RECEIPT REQUIREMENTS.-If payment is received in cash
 145 by a debt buyer from a debtor, an original receipt must be
 146 furnished by the debt buyer to the debtor showing:

147 (a) The name of the creditor for whom the payment is
 148 collected, the account number assigned by the creditor, and, if
 149 the current creditor is not the original creditor, the account
 150 number assigned to the debt by the original creditor;

151 (b) The amount and date paid;

152 (c) The name of the person accepting payment; and

153 (d) A clear statement of whether the payment is accepted
 154 as payment in full or a full and final compromise of the debt,
 155 or if not, the balance due after payment is credited.

156 (2) PROHIBITED ACTS.-A debt buyer may not bring suit or
 157 initiate an arbitration proceeding against the debtor, or
 158 otherwise attempt to collect on the debt:

159 (a) If the debt buyer knows, or reasonably should know,
 160 that such collection is barred by the applicable statute of
 161 limitations or the debt has been discharged in bankruptcy;

162 (b) Without valid documentation that the debt buyer is the
 163 owner of the debt instrument or account at issue and reasonable
 164 substantiation by admissible evidence and verification of the
 165 amount of the debt owed by the debtor. For purposes of this
 166 paragraph, reasonable substantiation by admissible evidence and
 167 verification requires:

168 1. Documentation of the identity of the original creditor

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169 by providing a copy of the original written contract between the
170 original creditor and debtor, or, if there is no written
171 contract, the original application for credit by the debtor, or
172 other writing evidencing the original debt, which must contain
173 the debtor's signature. If a claim is based on credit card debt
174 or other revolving debt or open account and a signed writing
175 evidencing the original debt does not exist, copies of each of
176 the documents generated when the credit card was used or the
177 items charged must be attached;

178 2. The name and address of the debtor as it appears in the
179 original creditor's records;

180 3. The debtor's original account number;

181 4. A life-of-the-debt itemized accounting of the amount
182 owed, including all interest, fees, and charges and all
183 payments, refunds, and credits;

184 5. If there is an arbitration agreement, a valid, signed
185 agreement to arbitrate the type of claim which is the subject of
186 the arbitration; and

187 6. If equitable relief is sought, documentation evidencing
188 the amount paid for the debt by the debt buyer; and

189 (c) Without first giving the debtor written notice of
190 intent to file a legal action at least 30 days before filing the
191 notice. The notice must include the name, address, and telephone
192 number of the debt buyer; the name of the original creditor and
193 the debtor's original account number; a copy of the original
194 written contract or other document evidencing the original debt;
195 and a life-of-the-debt itemized accounting of all amounts
196 claimed to be owed.

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197 (3) COMPLAINT AGAINST DEBTOR.—In any cause of action
198 initiated by a debt buyer, all of the following must be attached
199 to the complaint, which must be verified under oath:

200 (a) A copy of the contract or other writing evidencing the
201 original debt, which must contain the defendant's signature. If
202 there is no written contract, the original application for
203 credit by the debtor or other writing evidencing the original
204 debt, which must contain the debtor's signature. If a claim is
205 based on credit card debt or other revolving debt or open
206 account and a signed writing evidencing the original debt does
207 not exist, copies of each of the documents generated when the
208 credit card was actually used or the items charged must be
209 attached.

210 (b) A copy of the assignment and all attachments
211 referenced therein relating to the debt or other writing
212 establishing that the plaintiff is the owner of the debt and a
213 copy of all notices of assignment sent to the debtor. If the
214 debt has been assigned more than once, each assignment and all
215 attachments referenced therein relating to the debt or other
216 writing evidencing transfer of ownership and establishing an
217 unbroken chain of ownership must be attached. Each assignment or
218 other writing evidencing transfer of ownership must contain the
219 debtor's original account number and clearly show the debtor's
220 name associated with that account number.

221 (4) ATTORNEY'S FEES AND COSTS.—If attorney's fees are
222 charged for collection services rendered to a debt buyer, all of
223 the following materials setting forth a party's obligation to
224 pay the fees must be provided to the court before a court may

225 enforce those provisions:

226 (a) A copy of the contract or other writing evidencing the
 227 original debt, which must contain the defendant's signature. If
 228 a claim is based on credit card debt and a signed writing
 229 evidencing the original debt does not exist, copies of each of
 230 the documents generated when the credit card was used must be
 231 attached.

232 (b) A copy of the assignment and all attachments
 233 referenced therein relating to the debt or other writing
 234 establishing that the plaintiff is the owner of the debt. If the
 235 debt has been assigned more than once, each assignment and all
 236 attachments referenced therein relating to the debt or other
 237 writing evidencing transfer of ownership and establishing an
 238 unbroken chain of ownership must be attached. Each assignment or
 239 other writing evidencing transfer of ownership must include the
 240 debtor's original account number and clearly show the debtor's
 241 name associated with the account number.

242 (c) A verified copy of the fee agreement between the
 243 attorney seeking fees and the debt buyer, documenting the amount
 244 of fees payable by the debt buyer to the attorney for collection
 245 services.

246 (d) Documentation of each item of costs claimed as
 247 recoverable, including the source of each cost and the invoice
 248 for the cost.

249 (5) DEFAULT OR SUMMARY JUDGMENT AGAINST A DEBTOR.—

250 (a) Before entry of a default judgment or summary judgment
 251 against a debtor in a verified complaint initiated by a debt
 252 buyer, the plaintiff must file competent, admissible evidence

253 with the court to establish the amount and nature of the debt.

254 (b) The only evidence sufficient to establish the amount
 255 and nature of the debt are properly authenticated business
 256 records that satisfy Rules 90.803(6) and 90.901, Florida Rules
 257 of Evidence. The authenticated business records must, at a
 258 minimum, include all of the following:

- 259 1. The date of the origination of the debt.
- 260 2. The original account number.
- 261 3. The original creditor.
- 262 4. The amount of the original debt or, if the debt
 263 involves open-end credit, the initial credit limit.
- 264 5. A life-of-the-debt itemization of charges and fees owed
 265 and all payments, refunds, and credits and an explanation of how
 266 the outstanding balance was calculated.
- 267 6. If the debt has been charged off, the original charge-
 268 off balance.
- 269 7. An itemization of post charge-off additions, if
 270 applicable.
- 271 8. The date of assignment or purchase by the debt buyer
 272 and the outstanding balance at that time.
- 273 9. The date and amount of last payment, together with
 274 independent documentation thereof.
- 275 10. The amount of interest claimed throughout the
 276 transaction and the basis for the computation of the interest
 277 charged.

278 (6) VIOLATIONS BY DEBT BUYER.—

279 (a) Any debt buyer who violates any provisions of this
 280 section is liable to the debtor for statutory damages in the

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281 amount of the purported debt or \$1,000, whichever is smaller,
282 for each such violation, or, if a class action lawsuit is
283 brought under this section, the lesser of 1 percent of the net
284 worth of the debt buyer or \$500,000, and actual damages,
285 punitive damages, reasonable attorney's fees and costs, and
286 appropriate equitable relief. The remedies provided in the
287 paragraph are cumulative and in addition to any other remedies
288 available.

289 (b) An action brought under this subsection must be
290 commenced within 2 years after the date on which the alleged
291 violation occurred.

292 Section 5. This act shall take effect July 1, 2011.