

1 A bill to be entitled

2 An act relating to prohibited practices in consumer
3 debt collection; amending s. 559.72, F.S.; making a
4 technical change; providing applicability of certain
5 prohibited practices in consumer debt collection;
6 reenacting ss. 559.565(2), 559.725(2), 559.77(1) and
7 (2), 648.44(1)(o), and 817.7001(2)(b), F.S., relating
8 to enforcement action against an out-of-state consumer
9 debt collector, consumer complaints and administrative
10 duties, civil remedies, prohibitions and penalties,
11 and definitions, respectively, to incorporate the
12 amendment made to s. 559.72, F.S., in references
13 thereto; providing an effective date.

14
15 WHEREAS, the Legislature acknowledges that s. 559.72(17),
16 Florida Statutes, was adopted before e-mail communication became
17 commonly used and that the only specific communication
18 explicitly contemplated in such subsection is telephone calls,
19 and

20 WHEREAS, the Legislature intends to update and clarify
21 prohibited practices in collecting debt to address e-mail
22 communication by excluding such communication from prohibited
23 contact between the hours of 9:00 p.m. and 8:00 a.m. because
24 such contact is less invasive and less disruptive than telephone
25 calls, NOW, THEREFORE,

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

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

559.72 Prohibited practices generally.—In collecting consumer debts, a ~~no~~ person may not ~~shall~~:

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

(2) Use or threaten force or violence.

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

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

(5) Disclose to a person other than the debtor or her or

51 his family information affecting the debtor's reputation,
52 whether or not for credit worthiness, with knowledge or reason
53 to know that the other person does not have a legitimate
54 business need for the information or that the information is
55 false.

56 (6) Disclose information concerning the existence of a
57 debt known to be reasonably disputed by the debtor without
58 disclosing that fact. If a disclosure is made before such
59 dispute has been asserted and written notice is received from
60 the debtor that any part of the debt is disputed, and if such
61 dispute is reasonable, the person who made the original
62 disclosure must reveal upon the request of the debtor within 30
63 days the details of the dispute to each person to whom
64 disclosure of the debt without notice of the dispute was made
65 within the preceding 90 days.

66 (7) Willfully communicate with the debtor or any member of
67 her or his family with such frequency as can reasonably be
68 expected to harass the debtor or her or his family, or willfully
69 engage in other conduct which can reasonably be expected to
70 abuse or harass the debtor or any member of her or his family.

71 (8) Use profane, obscene, vulgar, or willfully abusive
72 language in communicating with the debtor or any member of her
73 or his family.

74 (9) Claim, attempt, or threaten to enforce a debt when
75 such person knows that the debt is not legitimate, or assert the

76 | existence of some other legal right when such person knows that
77 | the right does not exist.

78 | (10) Use a communication that simulates in any manner
79 | legal or judicial process or that gives the appearance of being
80 | authorized, issued, or approved by a government, governmental
81 | agency, or attorney at law, when it is not.

82 | (11) Communicate with a debtor under the guise of an
83 | attorney by using the stationery of an attorney or forms or
84 | instruments that only attorneys are authorized to prepare.

85 | (12) Orally communicate with a debtor in a manner that
86 | gives the false impression or appearance that such person is or
87 | is associated with an attorney.

88 | (13) Advertise or threaten to advertise for sale any debt
89 | as a means to enforce payment except under court order or when
90 | acting as an assignee for the benefit of a creditor.

91 | (14) Publish or post, threaten to publish or post, or
92 | cause to be published or posted before the general public
93 | individual names or any list of names of debtors, commonly known
94 | as a deadbeat list, for the purpose of enforcing or attempting
95 | to enforce collection of consumer debts.

96 | (15) Refuse to provide adequate identification of herself
97 | or himself or her or his employer or other entity whom she or he
98 | represents if requested to do so by a debtor from whom she or he
99 | is collecting or attempting to collect a consumer debt.

100 | (16) Mail any communication to a debtor in an envelope or

101 postcard with words typed, written, or printed on the outside of
102 the envelope or postcard calculated to embarrass the debtor. An
103 example of this would be an envelope addressed to "Deadbeat,
104 Jane Doe" or "Deadbeat, John Doe."

105 (17) Communicate with the debtor between the hours of 9
106 p.m. and 8 a.m. in the debtor's time zone without the prior
107 consent of the debtor. This subsection does not apply to an e-
108 mail communication that is sent to an e-mail address and that
109 otherwise complies with this section.

110 (a) The person may presume that the time a telephone call
111 is received conforms to the local time zone assigned to the area
112 code of the number called, unless the person reasonably believes
113 that the debtor's telephone is located in a different time zone.

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

120 (18) Communicate with a debtor if the person knows that
121 the debtor is represented by an attorney with respect to such
122 debt and has knowledge of, or can readily ascertain, such
123 attorney's name and address, unless the debtor's attorney fails
124 to respond within 30 days to a communication from the person,
125 unless the debtor's attorney consents to a direct communication

126 with the debtor, or unless the debtor initiates the
127 communication.

128 (19) Cause a debtor to be charged for communications by
129 concealing the true purpose of the communication, including
130 collect telephone calls and telegram fees.

131 **Section 2. For the purpose of incorporating the amendment**
132 **made by this act to section 559.72, Florida Statutes, in a**
133 **reference thereto, subsection (2) of section 559.565, Florida**
134 **Statutes, is reenacted to read:**

135 559.565 Enforcement action against out-of-state consumer
136 debt collector.—The remedies of this section are cumulative to
137 other sanctions and enforcement provisions of this part for any
138 violation by an out-of-state consumer debt collector, as defined
139 in s. 559.55(11).

140 (2) A person, whether or not exempt from registration
141 under this part, who violates s. 559.72 is subject to sanctions
142 the same as any other consumer debt collector, including
143 imposition of an administrative fine. The registration of a duly
144 registered out-of-state consumer debt collector is subject to
145 revocation or suspension in the same manner as the registration
146 of any other registrant under this part.

147 **Section 3. For the purpose of incorporating the amendment**
148 **made by this act to section 559.72, Florida Statutes, in a**
149 **reference thereto, subsection (2) of section 559.725, Florida**
150 **Statutes, is reenacted to read:**

151 559.725 Consumer complaints; administrative duties.—

152 (2) The office shall inform and furnish relevant
153 information to the appropriate regulatory body of the state or
154 the Federal Government, or The Florida Bar in the case of
155 attorneys, if a person has been named in a consumer complaint
156 pursuant to subsection (3) alleging violations of s. 559.72. The
157 Attorney General may take action against any person in violation
158 of this part.

159 **Section 4. For the purpose of incorporating the amendment**
160 **made by this act to section 559.72, Florida Statutes, in**
161 **references thereto, subsections (1) and (2) of section 559.77,**
162 **Florida Statutes, are reenacted to read:**

163 559.77 Civil remedies.—

164 (1) A debtor may bring a civil action against a person
165 violating the provisions of s. 559.72 in the county in which the
166 alleged violator resides or has his or her principal place of
167 business or in the county where the alleged violation occurred.

168 (2) Any person who fails to comply with any provision of
169 s. 559.72 is liable for actual damages and for additional
170 statutory damages as the court may allow, but not exceeding
171 \$1,000, together with court costs and reasonable attorney's fees
172 incurred by the plaintiff. In determining the defendant's
173 liability for any additional statutory damages, the court shall
174 consider the nature of the defendant's noncompliance with s.
175 559.72, the frequency and persistence of the noncompliance, and

the extent to which the noncompliance was intentional. In a class action lawsuit brought under this section, the court may award additional statutory damages of up to \$1,000 for each named plaintiff and an aggregate award of additional statutory damages up to the lesser of \$500,000 or 1 percent of the defendant's net worth for all remaining class members; however, the aggregate award may not provide an individual class member with additional statutory damages in excess of \$1,000. The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part. If the court finds that the suit fails to raise a justiciable issue of law or fact, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.

Section 5. For the purpose of incorporating the amendment made by this act to section 559.72, Florida Statutes, in a reference thereto, paragraph (o) of subsection (1) of section 648.44, Florida Statutes, is reenacted to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or bail bond agency may not:

(o) Attempt to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72.

Section 6. For the purpose of incorporating the amendment made by this act to section 559.72, Florida Statutes, in a

reference thereto, paragraph (b) of subsection (2) of section 817.7001, Florida Statutes, is reenacted to read:

817.7001 Definitions.—As used in this part:

(2)

(b) "Credit service organization" does not include:

1. Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

2. Any bank, savings bank, or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or a subsidiary of such bank, savings bank, or savings and loan association;

3. Any credit union, federal credit union, or out-of-state credit union doing business in this state;

4. Any nonprofit organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code;

5. Any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;

6. Any person collecting consumer claims pursuant to s. 559.72;

226 7. Any person licensed to practice law in this state if
227 the person renders services within the course and scope of his
228 or her practice as an attorney and does not engage in the credit
229 service business on a regular and continuing basis;

230 8. Any broker-dealer registered with the Securities and
231 Exchange Commission or the Commodity Futures Trading Commission
232 if the broker-dealer is acting within the course and scope of
233 that regulation; or

234 9. Any consumer reporting agency as defined in the Federal
235 Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681t.

236 **Section 7.** This act shall take effect upon becoming law.