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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

559.72 Prohibited practices generally.—Unless otherwise authorized by law, in collecting consumer debts, a debt collector may not ~~no person shall~~:

(1) Simulate in any manner a law enforcement officer or a



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11 representative of any governmental agency.

12 (2) Use or threaten force or violence.

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

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

27 (5) Disclose to a person other than the debtor or her or
28 his family information affecting the debtor's reputation,
29 whether or not for credit worthiness, with knowledge or reason
30 to know that the other person does not have a legitimate
31 business need for the information or that the information is
32 false.

33 (6) Disclose information concerning the existence of a debt
34 known to be reasonably disputed by the debtor without disclosing
35 that fact. If a disclosure is made before such dispute has been
36 asserted and written notice is received from the debtor that any
37 part of the debt is disputed, and if such dispute is reasonable,
38 the debt collector ~~person~~ who made the original disclosure must
39 reveal upon the request of the debtor within 30 days the details



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40 of the dispute to each person to whom disclosure of the debt
41 without notice of the dispute was made within the preceding 90
42 days.

43 (7) Willfully communicate with the debtor or any member of
44 her or his family with such frequency as can reasonably be
45 expected to harass the debtor or her or his family, or willfully
46 engage in other conduct which can reasonably be expected to
47 abuse or harass the debtor or any member of her or his family.

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

51 (9) Claim, attempt, or threaten to enforce a debt when such
52 debt collector ~~person~~ knows that the debt is not legitimate, or
53 assert the existence of some other legal right to enforce the
54 debt when such debt collector ~~person~~ knows that the right to
55 such enforcement does not exist.

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

60 (11) Communicate with a debtor under the guise of an
61 attorney by using the stationery of an attorney or forms or
62 instruments that only attorneys are authorized to prepare.

63 (12) Orally communicate with a debtor in a manner that
64 gives the false impression or appearance that such debt
65 collector ~~person~~ is or is associated with an attorney.

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



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69 (14) Publish or post, threaten to publish or post, or cause
70 to be published or posted before the general public individual
71 names or any list of names of debtors, commonly known as a
72 deadbeat list, for the purpose of enforcing or attempting to
73 enforce collection of consumer debts.

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

78 (16) Mail any communication to a debtor in an envelope or
79 postcard with words typed, written, or printed on the outside of
80 the envelope or postcard calculated to embarrass the debtor. An
81 example of this would be an envelope addressed to "Deadbeat,
82 Jane Doe" or "Deadbeat, John Doe."

83 (17) Communicate with the debtor by telephone call between
84 the hours of 9 p.m. and 8 a.m. in the debtor's time zone without
85 the prior consent of the debtor.

86 (a) The debt collector ~~person~~ may presume that the time a
87 telephone call is received conforms to the local time zone
88 assigned to the area code of the number called, unless the debt
89 collector ~~person~~ reasonably believes that the debtor's telephone
90 is located in a different time zone.

91 (b) If, such as with toll-free numbers, an area code is not
92 assigned to a specific geographic area, the debt collector
93 ~~person~~ may presume that the time a telephone call is received
94 conforms to the local time zone of the debtor's last known place
95 of residence, unless the debt collector ~~person~~ reasonably
96 believes that the debtor's telephone is located in a different
97 time zone.



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98 (18) Communicate with a debtor, other than communicating
99 purely for informational communications, regular billing
100 statements, or notices required by law, if the debt collector
101 ~~person~~ knows that the debtor is represented by an attorney with
102 respect to such debt and has knowledge of, or can readily
103 ascertain, such attorney's name and address, unless the debtor's
104 attorney fails to respond within 30 days to a communication from
105 the debt collector ~~person~~, unless the debtor's attorney consents
106 to a direct communication with the debtor, or unless the debtor
107 initiates the communication.

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

111 Section 2. For the purpose of incorporating the amendment
112 made by this act to section 559.72, Florida Statutes, in a
113 reference thereto, subsection (2) of section 559.565, Florida
114 Statutes, is reenacted to read:

115 559.565 Enforcement action against out-of-state consumer
116 debt collector.—The remedies of this section are cumulative to
117 other sanctions and enforcement provisions of this part for any
118 violation by an out-of-state consumer debt collector, as defined
119 in s. 559.55(11).

120 (2) A person, whether or not exempt from registration under
121 this part, who violates s. 559.72 is subject to sanctions the
122 same as any other consumer debt collector, including imposition
123 of an administrative fine. The registration of a duly registered
124 out-of-state consumer debt collector is subject to revocation or
125 suspension in the same manner as the registration of any other
126 registrant under this part.



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127 Section 3. For the purpose of incorporating the amendment
128 made by this act to section 559.72, Florida Statutes, in a
129 reference thereto, subsection (2) of section 559.725, Florida
130 Statutes, is reenacted to read:

131 559.725 Consumer complaints; administrative duties.—

132 (2) The office shall inform and furnish relevant
133 information to the appropriate regulatory body of the state or
134 the Federal Government, or The Florida Bar in the case of
135 attorneys, if a person has been named in a consumer complaint
136 pursuant to subsection (3) alleging violations of s. 559.72. The
137 Attorney General may take action against any person in violation
138 of this part.

139 Section 4. For the purpose of incorporating the amendment
140 made by this act to section 559.72, Florida Statutes, in
141 references thereto, subsections (1) and (2) of section 559.77,
142 Florida Statutes, are reenacted to read:

143 559.77 Civil remedies.—

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

148 (2) Any person who fails to comply with any provision of s.
149 559.72 is liable for actual damages and for additional statutory
150 damages as the court may allow, but not exceeding \$1,000,
151 together with court costs and reasonable attorney's fees
152 incurred by the plaintiff. In determining the defendant's
153 liability for any additional statutory damages, the court shall
154 consider the nature of the defendant's noncompliance with s.
155 559.72, the frequency and persistence of the noncompliance, and



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

170 Section 5. For the purpose of incorporating the amendment
171 made by this act to section 559.72, Florida Statutes, in a
172 reference thereto, paragraph (o) of subsection (1) of section
173 648.44, Florida Statutes, is reenacted to read:

174 648.44 Prohibitions; penalty.—

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

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

179 Section 6. For the purpose of incorporating the amendment
180 made by this act to section 559.72, Florida Statutes, in a
181 reference thereto, paragraph (b) of subsection (2) of section
182 817.7001, Florida Statutes, is reenacted to read:

183 817.7001 Definitions.—As used in this part:

184 (2)



- 185 (b) "Credit service organization" does not include:
- 186 1. Any person authorized to make loans or extensions of
- 187 credit under the laws of this state or the United States who is
- 188 subject to regulation and supervision by this state or the
- 189 United States or a lender approved by the United States
- 190 Secretary of Housing and Urban Development for participation in
- 191 any mortgage insurance program under the National Housing Act;
- 192 2. Any bank, savings bank, or savings and loan association
- 193 whose deposits or accounts are eligible for insurance by the
- 194 Federal Deposit Insurance Corporation or the Federal Savings and
- 195 Loan Insurance Corporation, or a subsidiary of such bank,
- 196 savings bank, or savings and loan association;
- 197 3. Any credit union, federal credit union, or out-of-state
- 198 credit union doing business in this state;
- 199 4. Any nonprofit organization exempt from taxation under s.
- 200 501(c)(3) of the Internal Revenue Code;
- 201 5. Any person licensed as a real estate broker by this
- 202 state if the person is acting within the course and scope of
- 203 that license;
- 204 6. Any person collecting consumer claims pursuant to s.
- 205 559.72;
- 206 7. Any person licensed to practice law in this state if the
- 207 person renders services within the course and scope of his or
- 208 her practice as an attorney and does not engage in the credit
- 209 service business on a regular and continuing basis;
- 210 8. Any broker-dealer registered with the Securities and
- 211 Exchange Commission or the Commodity Futures Trading Commission
- 212 if the broker-dealer is acting within the course and scope of
- 213 that regulation; or



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

216 Section 7. This act shall take effect upon becoming a law.
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218 ===== T I T L E A M E N D M E N T =====

219 And the title is amended as follows:

220 Delete everything before the enacting clause
221 and insert:

222 A bill to be entitled

223 An act relating to debt collection; amending s.
224 559.72, F.S.; revising prohibited practices for a debt
225 collector attempting to collect consumer debt; making
226 technical changes; reenacting ss. 559.565(2),
227 559.725(2), 559.77(1) and (2), 648.44(1)(o), and
228 817.7001(2)(b), F.S., relating to enforcement action
229 against out-of-state consumer debt collector, consumer
230 complaints and administrative duties, civil remedies,
231 prohibitions and penalties, and definitions,
232 respectively, to incorporate the amendment made to s.
233 559.72, F.S., in references thereto; providing an
234 effective date.
235

236 WHEREAS, the Legislature finds that technical changes to s.
237 559.72, Florida Statutes, are necessary to clarify that existing
238 law prohibiting communication between a debtor and a debt
239 collector between the hours of 9 p.m. and 8 a.m. applies only to
240 telephone calls, NOW, THEREFORE,