

CHAPTER 2010-127

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 2086

An act relating to consumer debt collection; creating s. 559.5556, F.S.; requiring a consumer debt collection agency to maintain records; amending s. 559.565, F.S.; increasing the administrative fine imposed against an out-of-state consumer debt collector that fails to register as required; revising provisions relating to authorized activities of the Attorney General; amending s. 559.715, F.S.; revising requirements for providing written notice of the assignment of debt; amending s. 559.72, F.S.; revising prohibited acts with respect to consumer debt collection; revising provisions governing violations of communication procedures; amending s. 559.725, F.S.; revising provisions relating to consumer complaints about a consumer collection agency; authorizing the Attorney General to take action against a person for violations involving debt collection; creating s. 669.726, F.S.; providing for the issuance of subpoenas by the Office of Financial Regulation; creating s. 559.727, F.S.; authorizing the office to issue cease and desist orders; amending s. 559.730, F.S.; revising provisions relating to administrative remedies; increasing the maximum penalty; authorizing the Financial Services Commission to adopt rules relating to penalty guidelines; amending s. 559.77, F.S., relating to civil remedies; conforming provisions to federal law; providing an effective date.

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

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

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

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

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

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least within 30 days before any action to collect the debt after the assignment. The assignee is a real party in interest and may bring an action ~~in a court of competent jurisdiction~~ to collect a debt that has been assigned to the such assignee and is in default.

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

559.72 Prohibited practices generally.—In collecting consumer debts, no person 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~~ ~~prior to~~ 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, but this does shall~~ 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 his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

559.725 Consumer complaints; administrative duties.—

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

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

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

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

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

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

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

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

~~(9) The office may issue a written reprimand when five or more such unresolved sworn complaints against a consumer collection agency collectively fall short of constituting apparent repeated violations that warrant more serious administrative sanctions. Such reprimand shall include a statement that the reprimand may constitute evidence in any future investigation of similar complaints against that agency and in any future administrative determination of the imposition of other administrative remedies available to the office.~~

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

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

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

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

559.726 Subpoenas.—

(1) The office may:

(a) Issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an investigation conducted

by the office. The office, or its authorized representative, may administer oaths and affirmations to any person.

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

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

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

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

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

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

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

559.730 Administrative remedies.—

(1) The office may impose an administrative fine against, or revoke or suspend the registration of, a any registrant under this part who has committed a violation of engaged in repeated violations which establish a clear pattern of abuse of prohibited collection practices under s. 559.72. Final office action to fine, suspend, or revoke or suspend the registration of a any registrant is shall be subject to review in accordance with chapter 120 in the same manner as revocation of a license. The repeated violations of the law by one employee shall not be grounds for revocation or suspension of the

~~registration of the employing consumer collection agency, unless the employee is also the owner of a majority interest in the collection agency.~~

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

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

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

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

~~(6) Any administrative fine imposed under this part shall be payable to the office. The office shall maintain an appropriate record and shall deposit such fine into the Regulatory Trust Fund of the office.~~

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

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

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

559.77 Civil remedies.—

(1) A debtor may bring a civil action against a person violating the provisions of s. 559.72 in a court of competent jurisdiction of the county in

which the alleged violator resides or has his or her principal place of business or in the county where ~~wherein~~ the alleged violation occurred.

(2) ~~Any person who fails to comply with any provision of s. 559.72 is Upon~~ adverse adjudication, the defendant shall be liable for actual damages and for additional statutory damages as the court may allow, but not exceeding of up to \$1,000, together with court costs and reasonable attorney’s fees incurred by the plaintiff. In determining the defendant’s liability for any additional statutory damages, the court shall consider the nature of the defendant’s noncompliance with s. 559.72, the frequency and persistence of the such noncompliance, and the extent to which the such noncompliance was intentional. In a any 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 not to exceed the lesser of \$500,000 or 1 percent of the defendant’s net worth for all remaining class members; ~~however, the but in no event may this~~ aggregate award may not provide an individual class member with additional statutory damages in excess of \$1,000. The court may, ~~in its discretion,~~ 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 ~~shall be~~ liable for court costs and reasonable attorney’s fees incurred by the defendant.

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

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

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

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

Approved by the Governor May 27, 2010.

Filed in Office Secretary of State May 27, 2010.