

By Senator Storms

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

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

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

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

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

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

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

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

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

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

48 (6) "Debt collector" means any person who uses any
49 instrumentality of commerce within this state, whether initiated
50 from within or outside this state, in any business whose ~~the~~
51 principal purpose ~~of which~~ is the collection of debts, or who
52 regularly collects or attempts to collect, directly or
53 indirectly, debts owed or due or asserted to be owed or due
54 another. The term ~~"debt collector"~~ includes any creditor who, in
55 the process of collecting her or his own debts, uses any name
56 other than her or his own which indicates ~~would indicate~~ that a
57 third person is collecting or attempting to collect such debts.
58 The term does not include:

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

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

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

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

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

80 (f) Any person collecting or attempting to collect any debt
81 ~~if owed or due or asserted to be owed or due another to the~~
82 ~~extent that~~ such activity is incidental to a bona fide fiduciary
83 obligation or a bona fide escrow arrangement; concerns a debt
84 that ~~which~~ was originated by such person; concerns a debt that
85 ~~which~~ was not in default at the time it was obtained by such
86 person; or concerns a debt obtained by such person as a secured
87 party in a commercial credit transaction involving the creditor.

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

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

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

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

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

111 (5) An ~~Any~~ out-of-state consumer debt collector ~~as defined~~
112 ~~in s. 559.55~~~~(8)~~ who is not exempt from registration under ~~by~~
113 ~~application of~~ subsection (4) and who fails to register in
114 accordance with this part is ~~shall be~~ subject to an enforcement
115 action by the state as specified in s. 559.565.

116 Section 3. Section 559.565, Florida Statutes, is amended to

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117 read:

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

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

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

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

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

144 559.717 Debt buyers.—

145 (1) RECEIPT REQUIREMENTS.—If payment is received in cash by

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146 a debt buyer from a debtor, an original receipt must be
147 furnished by the debt buyer to the debtor showing:

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

152 (b) The amount and date paid;

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

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

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

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

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

169 1. Documentation of the identity of the original creditor
170 by providing a copy of the original written contract between the
171 original creditor and debtor, or, if there is no written
172 contract, the original application for credit by the debtor, or
173 other writing evidencing the original debt, which must contain
174 the debtor's signature. If a claim is based on credit card debt

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175 or other revolving debt or open account and a signed writing
176 evidencing the original debt does not exist, copies of each of
177 the documents generated when the credit card was used or the
178 items charged must be attached;

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

181 3. The debtor's original account number;

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

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

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

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

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

201 (a) A copy of the contract or other writing evidencing the
202 original debt, which must contain the defendant's signature. If
203 there is no written contract, the original application for

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204 credit by the debtor or other writing evidencing the original
205 debt, which must contain the debtor's signature. If a claim is
206 based on credit card debt or other revolving debt or open
207 account and a signed writing evidencing the original debt does
208 not exist, copies of each of the documents generated when the
209 credit card was actually used or the items charged must be
210 attached.

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

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

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

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

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

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

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

251 (a) Before entry of a default judgment or summary judgment
252 against a debtor in a verified complaint initiated by a debt
253 buyer, the plaintiff must file competent, admissible evidence
254 with the court to establish the amount and nature of the debt.

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

- 260 1. The date of the origination of the debt.
261 2. The original account number.

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262 3. The original creditor.

263 4. The amount of the original debt or, if the debt involves
264 open-end credit, the initial credit limit.

265 5. A life-of-the-debt itemization of charges and fees owed
266 and all payments, refunds, and credits and an explanation of how
267 the outstanding balance was calculated.

268 6. If the debt has been charged off, the original charge-
269 off balance.

270 7. An itemization of post charge-off additions, if
271 applicable.

272 8. The date of assignment or purchase by the debt buyer and
273 the outstanding balance at that time.

274 9. The date and amount of last payment, together with
275 independent documentation thereof.

276 10. The amount of interest claimed throughout the
277 transaction and the basis for the computation of the interest
278 charged.

279 (6) VIOLATIONS BY DEBT BUYER.—

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

290 (b) An action brought under this subsection must be

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291 commenced within 2 years after the date on which the alleged
292 violation occurred.

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