

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/CS/SB 2086

INTRODUCER: General Government Appropriations Committee, Commerce Committee, Banking and Insurance Committee, and Senator Richter

SUBJECT: Consumer Debt Collection

DATE: April 20, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Hrdlicka	Cooper	CM	Fav/CS
3.	Frederick	DeLoach	GA	Fav/CS
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Part VI of chapter 559, Florida Statutes, governs the regulation of consumer debt collection agencies. The Office of Financial Regulation (OFR) is responsible for the registration and regulation of consumer debt collection agencies. The Attorney General is authorized to initiate actions in any federal court against out-of-state consumer collection agencies for violations of this part. This bill provides the following regulatory and enforcement changes.

- Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.
- Provides that a violation of Part VI, ch. 559, F.S., is actionable by the Attorney General, including consumer complaints.
- Increases administrative fines for violations, currently capped at \$1,000, to \$10,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency. Investigations would be based on the nature and

severity of an alleged violation rather than the accumulation of five unresolved sworn complaints.

The bill substantially amends the following sections of the Florida Statutes: 559.565, 559.715, 559.72, 559.725, 559.730, and 559.77.

The bill creates sections 559.5556, 559.726, and 559.727, Florida Statutes.

II. Present Situation:

Consumer Debt Collection Agencies

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. Section 559.725, F.S., designates the Department of Financial Services (DFS) as the registry for consumer complaints. Once the DFS receives a sworn complaint against an entity, the DFS refers the complaints to the appropriate regulatory authority or the Florida Bar, if appropriate. However, in January 2008, the OFR and the DFS mutually agreed to delegate the registry to the OFR.

The OFR is responsible for the registration of consumer collection agencies. A consumer collection agency must meet minimal requirements to register with the OFR. The applicant is required to submit an application and pay a registration fee. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.¹

The OFR has limited investigative and enforcement powers and duties. Any out-of-state debt collector who collects or attempts to collect consumer debt, prior to registration is subject to an administrative fine, not to exceed \$1,000.² Section 559.72, F.S., outlines prohibited practices as they relate to the collection of consumer debts. Such practices range from prohibitions against persons impersonating a law enforcement officer or government agent to using threats of force or violence. Section 559.725, F.S., authorizes the OFR to investigate with the accused collection agency by means of written communication. However, the OFR has no authority in examining the actual books and records of a consumer collection agency in determining the factual basis of a complaint. Before the OFR takes action, there must be at least five unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency.

The OFR is required to notify the appropriate state attorney or the Attorney General for cases pertaining to out-of-state consumer debt collectors, of any determination by the OFR of a violation of the requirements of this part.³ State attorneys may apply to a court of competent

¹ Section 559.555, F.S.

² Section 559.565, F.S.

³ Section 559.725, F.S.

jurisdiction upon the sworn affidavit of any person alleging a violation of any of the provisions of this part.⁴

Regulatory and enforcement powers

Currently, there are 1,313 consumer collection agencies registered with the OFR. Since January 2008, the OFR has not levied any fines, nor has it suspended or revoked any registrations because it has not documented five unresolved complaints by five different consumers against one specific consumer collection agency. The current statutory framework prevents the OFR from initiating disciplinary action against a debt collector until the OFR receives at least five unresolved, sworn complaints from five different consumers within a 12-month period, regardless of the severity of the alleged violation. The OFR does not have the statutory authority to examine or investigate the books or records of a debt collector to determine the legitimacy of the complaint.

The OFR's authority to discipline registrants is limited. For example, the OFR may not revoke or suspend a registration if the collection agency can show by a preponderance of the evidence that the violations were not intentional and resulting from a bona fide error.⁵ The OFR must also consider the registrant's volume of business when deciding whether to suspend or revoke a registration. The law allows the OFR to fine a registrant, not to exceed \$1,000, for a violation of the prohibited practices provisions. However, any action by the OFR to revoke, suspend, or issue an administrative fine must be taken within 2 years of the date of the last violation upon which the action is founded. The OFR does not have the authority to impose significant administrative sanctions against a consumer collection agency that fails to register. Rather, the act provides it is a first-degree misdemeanor to operate a consumer collection agency without first registering with the office, unless the entity is exempt.⁶

Fair Debt Collection Practices Act

The federal version of Florida's Consumer Collection Agency Act is known as the Fair Debt Collection Practices Act (FDCPA). Many of the provisions of the federal act are similar to the Florida Consumer Collection Agency Act. However, there are some key consumer and regulatory provisions in the FDCPA that are not included under Florida's law: provisions pertaining to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

III. Effect of Proposed Changes:

The bill includes the following provisions.

- Authorizes the OFR to investigate any person whom they believe has violated any provision of Part VI of ch. 559, F.S. (Section 8). Under current law, there must be at least five, unresolved, sworn complaints filed by five different consumers within a 12-month period

⁴ Section 559.78, F.S.

⁵ Section 559.730, F.S.

⁶ Section 559.785, F.S.

against a consumer collection agency prior to the OFR initiating action to investigate a complaint.

- Requires a registered consumer collection agency to respond in writing within 45 days after receipt of a written request from the OFR, concerning a consumer complaint.
- Requires registrants to maintain specified books and records for 3 years and allows the OFR access to such books and records (Section 1).
- Increases maximum administrative fines from \$1,000 to \$10,000 for violations of the prohibited acts delineated in s. 559.72, F.S. (Section 8).
- Increases the maximum administrative fine from \$1,000 to \$10,000 for a consumer collection agency that collects or attempts to collect debt in Florida prior to registering with the OFR (Section 2). The collection agency is also currently subject to reasonable attorney fees and court costs in any successful action by the state to collect such fines.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions under s. 559.72, F.S. (Section 8). Under current law, the OFR may take action if a registrant has engaged in repeated violations, establishing a clear pattern of abuse of prohibited acts under this section.
- Authorizes the OFR to issue subpoenas and cease and desist orders (Sections 6 and 7).
- Provides that a violation of Part VI, ch. 559, F.S., is actionable by the Attorney General (Section 2), and permits the Attorney General to take action against any person against whom a complaint has been made that the person committed a prohibited act (Section 5).
- Modifies the required notice related to the assignment of a debt, such that the notice must be given to the debtor as soon as practical after the assignment is made, but at least 30 days before any action is taken to collect the debt (Section 3). Current law requires the notice to be given to the debtor within 30 days after the assignment is made.
- Requires complainants, subject to penalties of perjury, to certify their complaints on a form approved by the Financial Services Commission (Section 5).

This bill provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill expedites the complaint process required under ch. 559, F.S., for consumers by eliminating the requirement of a sworn complaint. A sworn complaint imposes a chilling effect on persons seeking the resolution of a complaint. However, the complaint must be certified and is subject to penalty of perjury.

The bill provides greater protections for consumers by increasing regulatory oversight and enforcement authority by the OFR and the Attorney General. The OFR would have broad, discretionary authority to promptly investigate the books and records of a consumer collection agency. The bill increases administrative fines, currently capped at \$1,000, to \$10,000, and allows the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies. The bill also provides that any violation of Part VI, ch. 559, F.S., is actionable by the Attorney General.

C. Government Sector Impact:

The OFR anticipates that implementation of the bill's provisions to remove barriers to filing consumer debt collection agency complaints and obstacles to enforcement, will increase the workload of the department. However, because of the uncertainty of the level of workload increases for the upcoming fiscal year, the Office will absorb any additional increases within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by General Government Appropriations on April 19, 2010:

The committee substitute modifies the required notice related to the assignment of debt, such that written notice must be given to the debtor as soon as practical after the assignment is made, but at least 30 days before any action is taken to collect the debt.

CS by the Commerce Committee on April 13, 2010:

This CS differs from CS/SB 2086 in the following ways:

- Restores definitions currently in law, and does not specifically exempt attorneys from the definition of debt collectors (this is preserved in current law, which the CS does not strike) or set forth definitions for terms not utilized in the committee substitute. The provisions of the CS apply to original creditors.

- Does not create new statutory sections which would specifically set forth the powers and duties of OFR, and rulemaking authority, in part related to registration restrictions (including permanent bars for applicants or registrants who commit certain financial-related felonies).
- Restores current law related to registration of consumer collection agencies, and does not require a background check or fingerprinting for registration or renewal, and does not increase the registration fee (currently \$200 annually).
- Does not revise the entities that are exempt from registration, which would have conformed Florida law to federal law.
- Does not require a surety bond.
- Shortens the time required to maintain books and records from 5 years to 3 years.
- Restores current law and reduces the fine on out of state consumer collection agencies for failing to register from \$25,000 to \$10,000 (this is an increase from \$1,000 which is in current law). Further, by restoring current law it does not specifically authorize the Attorney General to take action against an out-of-state debt collector for violations of the Florida Deceptive and Unfair Trade Practices Act, and recover attorney's fees and costs.
- Does not codify the provisions of the federal Fair Debt Collection Act related to communications by debt collectors, but does include two provisions related to presumptions that may be made by someone attempting to collect on a debt when making telephone calls in the prohibited acts.
- Modifies the required notice related to the assignment of a debt such that the notice must be given to the debtor at least 30 days before any action is taken to collect the debt (current law requires the notice to be given to the debtor within 30 days after the assignment is made).
- Restores current law related to prohibited practices, and in doing so such prohibited practices apply to any person and the CS does not codify the provisions of the federal Fair Debt Collection Act related to prohibited practices by debt collectors. The CS does include the two communications presumptions discussed above, and permits a person to contact a debtor whom the person knows is represented by an attorney if the attorney does not respond within 30 days (this is more specific than current law which requires that the unresponsiveness be for "a reasonable period of time").
- Permits the Attorney General to take action against any person that has had a complaint filed against them which alleges that the person committed a prohibited act.
- Requires complainants, subject to penalty of perjury, to certify their complaints to OFR.
- Reduces the maximum administrative fine for a consumer collection agency's failure to respond to a request for information regarding a complaint from \$2,500 to \$250 per day, and increases the time to respond from 20 days to 45 days.
- Reduces the maximum administrative fine that OFR may impose for committing a prohibited act from \$25,000 to \$10,000.
- Restores current law that permits a debtor to bring a civil action against any person who commits a prohibited act.
- Restores current law which permits state attorneys to seek suspensions or revocations of licenses.

- Restores current law which provides that failure to register is a 1st degree misdemeanor, instead of a 3rd degree felony.
- Provides an effective date of October 1, 2010.

CS by Banking and Insurance on March 24, 2010:

Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.

- Strengthens registration requirements by authorizing the adoption of rules by the Financial Services Commission that oversees the OFR and establishes the following time period during which an applicant is barred from the initial registration or renewal:
 - A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft;
 - A 15-year disqualifying period for felonies involving moral turpitude;
 - A 7-year disqualifying period for all other felonies; and
 - A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.
- Provides that any violation of Part VI, ch. 559, F.S., is actionable by the Attorney General as a violation of the Florida Deceptive and Unfair Trade Practices Act and such violation is subject to the enforcement remedies and penalties under Part II of ch. 501, F.S.
- Increases administrative fines for violations, currently capped at \$1,000 to \$25,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency.
- Increases the registration fee from \$200 to \$600 to fund the additional positions that will be necessary to provide the enhanced regulation and enforcement.

B. Amendments:

None.