

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 Committee on Banking and Insurance

BILL: SB 1006

INTRODUCER: Senator Hays

SUBJECT: Consumer Collection Practices

DATE: February 26, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Favorable
2.			CJ	
3.			AP	

I. Summary:

SB 1006 subjects “control persons” of consumer collection agencies (CCAs) to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of a criminal conviction. The bill enhances the authority of the Office of Financial Regulation (OFR) to register, investigate, examine, and bring enforcement actions against consumer collection agencies. The bill requires CCA registrants to report criminal convictions, changes from the initial application, and changes to the controlling persons of a CCA agency.

II. Present Situation:

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged off” corporate records.¹ Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which in turn may use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

¹ The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36,903 (June 12, 2000). A “charge-off” does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies.

State and Federal Regulation

State and federal debt collection laws provide consumer protections against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

Federal: The Fair Debt Collection Practices Act (FDCPA) is primarily enforced by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau.² The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past 3 years.³

Florida: At the state level, part VI of chapter 559, Florida Statutes, is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972.⁴ The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines “consumer collection agency” as “any debt collector⁵ or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act.”⁶ The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.⁷

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.⁸ Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and attorney’s fees and costs. If the court finds that the suit fails to raise a justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney’s fees incurred by the defendant.⁹

In terms of the FDCPA’s relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.¹⁰ The Act also provides that in the event

² 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs the FTC to coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

³ *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 1 (July 7, 2013) (statement of James Reilly Dolan, Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission).

⁴ Chapter 72-81, Laws of Florida.

⁵ Defined broadly at s. 559.55(6), F.S.

⁶ Section 559.55(7), F.S.

⁷ E-mail from the OFR on file with Banking & Insurance staff.

⁸ Section 559.55(6), F.S., and 15 U.S.C. 1692a(6).

⁹ Section 559.77 and 15 U.S.C. § 1692k.

¹⁰ 15 U.S.C. § 1692n.

of an inconsistency with the FDCPA, the provision which is more protective for the consumer or debtor shall prevail.¹¹

Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies that are not otherwise exempted by the Act. The Act exempts from registration, original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies authorized to do business in this state.¹²

According to the OFR, there are currently 1,344 registered consumer collection agencies in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. Of that number, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.¹³ Once registered, CCAs must renew their registration between October 1 and December 31 of every year.¹⁴

A consumer collection agency must meet minimal requirements to register with the OFR and is “entitled to be registered when registration information is complete on its face and the \$200 registration fee has been paid.”¹⁵ Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of consumer collection agencies. Currently, the OFR cannot deny registration to any applicant, even if its control persons have been convicted of felony financial crimes or the applicant has been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.¹⁶

Other regulatory programs administered by the OFR provide statutory and rule authority to deny licensure or registration based on applicants’ civil, criminal, and regulatory history, which provides important public protections in light of the nature of industries regulated by the OFR

¹¹ Section 559.552, F.S.

¹² Section 559.553(4), F.S. However, it is noted that these persons are only exempt from the registration requirement in this section, not the rest of the Act.

¹³ E-mail from the OFR on file with Banking & Insurance staff.

¹⁴ During the 2012 year, 1,283 consumer collection agencies renewed their registrations with the OFR. OFR bill analysis of SB 1006 on file with Banking & Insurance staff.

¹⁵ Section 559.553(3), F.S. 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.

¹⁶ *Id.* See *Welch v. Florida West Coast, Inc.*, 816 So.2d 711 (Fla. 2nd DCA 2002) (holding that registration to engage in business as consumer collection agency is complete upon submission of registration form together with required fee). But see *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) (holding that failing to register as a consumer collection agency in Florida may serve as a basis for a claim under the FDCPA, which prohibits “claim[ing], attempt[ing], or threatening to enforce a debt when such person knows that the debt is not legitimate, or assert[ing] the existence of some other legal right when such person knows that the right does not exist.”)

and their access to consumers’ financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or “control or relevant persons” listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods during which an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

The following table illustrates disqualifying periods for these other licenses under the OFR’s jurisdiction. These disqualifying periods are explained in further detail through commission rule.¹⁷

Industry/License Type	Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude	All other felonies	Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude
Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.) ¹⁸	- Permanent bar ¹⁹ - 15 year bar for felonies involving acts of moral turpitude	7 year bar	5 year bar
Relevant persons of money services businesses (ch. 560, F.S.) ²⁰	15 year bar	7 year bar	5 year bar
Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.) ²¹	15 year bar	N/A	5 year bar

Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.²² Additionally, unregistered out-of-state consumer debt collectors can be subject to

¹⁷ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR’s Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR’s regulatory authority.

¹⁸ See Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).

¹⁹ The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch. 560 and ch. 517, F.S.).

²⁰ See Chapter 69V-560, Fla. Admin. Code (Money Transmitters).

²¹ See Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).

²² Section 559.785, F.S.

administrative fines of up to \$10,000 and enforcement actions by the Office of the Attorney General.²³

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over any person if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on registrants.²⁴

Enforcement

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry:

- Required registrants to maintain and produce certain books and records for at least 3 years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;²⁵
- Designated the OFR, not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute; required consumer complaints to be subject to penalty of perjury; required registrants to respond to the OFR's inquiries regarding consumer complaints;
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to \$10,000 per violation, suspensions or revocations on registrants, and cease-and-desist orders against any person.²⁶

The OFR is required to notify the appropriate state attorney or the Attorney General of any determination by the OFR that an unregistered CCA has violated the Act.²⁷

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.²⁸

III. Effect of Proposed Changes:

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S., of the Act:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new s. 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-year, 7-year, and 15-year disqualifying periods from registration based on applicants' criminal histories.

²³ Section 559.565, F.S.

²⁴ Sections 559.727 and 559.730, F.S.

²⁵ See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.

²⁶ Ch. 2010-127, L.O.F. and s. 559.5556, F.S. *See also* Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.

²⁷ Section 559.725(5), F.S.

²⁸ Sections 559.5556 and 559.725(4), F.S.

- “Control person” – these natural persons must be fingerprinted and will be subject to registration review.

The bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S., for applicants, including a completed application form, a nonrefundable application fee of \$200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and by the Federal Bureau of Investigation (FBI) for federal criminal background checks to enable the OFR to determine applicants’ fitness for registration. The costs of fingerprint processing are borne by the persons subject to the background check, while the OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is \$65 per control person, and the annual retention fee is \$6.²⁹ CCAs who become registered before the bill’s effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e. before the next renewal cycle).

The bill subjects registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons are convicted or plead no lo contendere to certain offenses, when changes occur in the information contained in the initial application (such as a new business address), and of changes in the registrant’s business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act, in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable \$200 renewal fee and fingerprint retention fee of \$6 at renewal time.

The bill creates s. 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of ch. 119 and the Act.³⁰

The bill provides additional grounds for administrative action in s. 559.730, F.S., such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to denial, suspension, revocation, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to \$1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such

²⁹ E-mail from the OFR on file with Banking & Insurance staff.

³⁰ Senate bill 1004 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

The bill provides an effective date of October 1, 2014.

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:

The bill requires control persons to submit electronic/live-scan fingerprints to live-scan vendors (who in turn submit fees to the FDLE for the background checks). This will result in estimated total revenues of \$53,040. This estimate is based on the OFR's revenue projection estimate that the OFR will receive 408 initial consumer collection agency applications for 2014-2015,³¹ with an average of 2 control persons per applicant to be fingerprinted.

Although the fee charged by each live-scan vendor varies, the average fee (according to the OFR) is \$65.

- 408 applications x 2 control persons per applicant = 816 control persons expected for the first fiscal year and for each subsequent fiscal year.³²
- 816 control persons x \$65 per applicant = \$53,040 to cover the costs of fingerprinting each control person related to a CCA application (paid directly to FDLE).

The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

³¹ E-mail from the OFR on file with Banking & Insurance staff.

³² According to the OFR, the number of projected control persons remained the same for subsequent fiscal years due to the possibility that the number of licensees may either increase or decrease. E-mail from the OFR on file with Banking & Insurance staff.

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- \$16.50 for a federal background check, which is forwarded to the FBI.³³

For state revenue purposes, the estimated fiscal impact is:

- 816 control persons x \$24 (state background check) for the initial and each subsequent fiscal year = \$19,584.
- Due to the bill's October 1, 2014 effective date, only a small population in the 2014 renewal cycle would be subject to the new fingerprinting requirements of the bill. Accordingly, the initial fiscal year impact includes the fingerprinting of 2,566 control persons. It should be noted, however, that the bill would authorize full fingerprinting at renewal time for those registrants renewing by December 31, 2014 that were approved before October 1, 2014.³⁴
- Accordingly, the first fiscal year includes:
- 2,566 control persons fingerprinted at 12/31/2014, renewal x \$24 (state background check) = \$61,584.
- The total estimated revenue for the first fiscal year is \$81,168.

In addition, the bill requires that fingerprints be retained as part of renewing a CCA registration. The cost to retain fingerprints at the state level is \$6 per control person. Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of 2 control persons per CCA, there would be 2,566 control persons subject to the \$6 annual retention fee that OFR would collect during registration renewal. Thus, the estimated total revenues for retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses to the FDLE.³⁵

- 1,283 CCA registrant renewals x 2 control persons per registrant = 2,566 control persons.
- 2,566 control persons x \$6 per person = \$15,396 to cover the costs of retained fingerprint fees to be passed onto FDLE (for the initial and each subsequent fiscal year).

B. Private Sector Impact:

The bill requires that control persons of non-exempt collection agencies be fingerprinted and screened. Each control person will incur an average live-scan cost of \$65.³⁶ The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and

³³ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁴ OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁵ *Id.*

³⁶ According to the OFR, the average cost to process electronic fingerprints through a live-scan vendor is \$65, which is inclusive of the \$40.50 charge by FDLE and a cost added by the vendor to cover their services. E-mail from the OFR on file with Banking & Insurance staff.

- \$16.50 for a federal background check, which is forwarded to the FBI.³⁷

Once registered, control persons of CCAs must submit an annual fee of \$6 for the cost of retaining fingerprints with the FDLE.³⁸

First Fiscal Year:

408 applications x 2 control persons = 816 control persons

816 x \$65 = \$53,040

2,566 control persons fingerprinted at December 31, 2014, renewal

2,566 x \$65 = \$166,790

Total for Year 1 = \$219,830

Subsequent Fiscal Years:

408 applications x 2 control persons = 816 control persons

816 x \$65 = \$53,040

Retained print costs for 2,566 control persons at each renewal

2,566 x \$6 = \$15,396

Total Year 2 = \$68,436

C. Government Sector Impact:

The estimated total revenues for fingerprint retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses.

The FDLE has indicated that while this bill alone does not necessitate additional FTE or other resources, the bill in combination with additional background screening bills could create a need for additional staffing or other resources.³⁹

The OFR indicated that the bill may result in a slight increase in investigations and examinations under the Act, but it should be able to absorb this caseload increase with existing resources.⁴⁰

The bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements.

VI. Technical Deficiencies:

None.

³⁷ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁸ OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁹ *Id.*

⁴⁰ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.55, 559.553, 559.555, 559.565, and 559.730.

This bill creates the following sections of the Florida Statutes: 559.554, 559.5541, and 559.5551.

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

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

None.

B. Amendments:

None.