

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 413	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Santiago	114 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/HB 415; CS/SB 1006	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 413 passed the House on April 11, 2014, and subsequently passed the Senate on April 28, 2014.

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. If a borrower defaults on a consumer debt, the lender will initiate collection efforts, usually through the sale or assignment of the debt to a third-party debt collector. State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that can occur before the debtor is sued, as well as during the litigation process. At the state level, the Florida Consumer Collection Practices Act (the Act) governs the regulation and registration of consumer collection agencies, and is primarily enforced by the Office of Financial Regulation (OFR).

The bill makes the following changes to the Act:

- Requires certain "control persons" of consumer collection agencies to be subject to state and national criminal background checks, and subjects these individuals to disqualifying periods from registration based on the severity and recency of criminal convictions;
- Enhances the OFR's registration, investigative, examination, and enforcement authority over consumer collection agencies; and
- Subjects registrants to certain reporting requirements.

The bill will have a positive fiscal impact on state revenues deposited into the Operating Trust Fund within the Florida Department of Law Enforcement (FDLE). In addition, the bill will have an insignificant fiscal impact on state expenditures by the OFR. The revenues to be deposited with the FDLE consist of \$81,168 for the cost of state background checks for initial and subsequent fiscal years, and \$15,396 a year for the cost of fingerprint retention fees at the state level. The bill requires that control persons of consumer collection agency applicants submit live-scan fingerprints to the FDLE at an average cost of \$65 per control person. The collection of the fingerprint processing fee will be handled by the vendor and then transferred to the FDLE, less the vendor's associated cost of providing the fingerprinting service, which varies by vendor. The OFR will be responsible for the collection of the \$6 fingerprint retention fee, per control person per year, paid at initial registration and renewal by consumer collection agencies. After collection, the OFR will transfer the fingerprint retention fees to FDLE.

The bill was approved by the Governor on June 13, 2014, ch. 2014-116, L.O.F., and will become effective on October 1, 2014.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current 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.<sup>1</sup> 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 can in turn 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.

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

- *Federal:* The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau are the primary federal enforcement agencies of the Fair Debt Collection Practices Act (FDCPA).<sup>2</sup>
- *Florida:* At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972.<sup>3</sup> 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 collector<sup>4</sup> 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.

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 collections or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.<sup>5</sup> 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 reasonable attorney’s fees and costs. If the court finds that the suit fails to raise justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney’s fees incurred by the defendant.<sup>6</sup>

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.<sup>7</sup> The Act also provides that in the event of an inconsistency with the FDCPA, the provision which is more protective of the consumer or debtor shall prevail.<sup>8</sup>

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<sup>1</sup> 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). It should be noted that 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.

<sup>2</sup> 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 that the FTC 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).

<sup>3</sup> Chapter 72-81, Laws of Florida.

<sup>4</sup> Defined broadly at s. 559.55(6), F.S.

<sup>5</sup> Section 559.55(6), F.S., and 15 U.S.C. § 1692a(6).

<sup>6</sup> Section 559.77 and 15 U.S.C. § 1692k.

<sup>7</sup> 15 U.S.C. § 1692n.

<sup>8</sup> Section 559.552, F.S.

## Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies (CCAs). The Act provides a list of persons exempt from registration, including original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies that are authorized to do business in this state.<sup>9</sup> According to the OFR, there are currently 1,344 registered CCAs 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.<sup>10</sup> Once registered, CCAs must renew their registration between October 1 and December 31 of every year.<sup>11</sup>

A CCA 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.”<sup>12</sup> Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of CCAs. Currently, the OFR cannot deny registration to any CCAs applicant, even if its control persons have been convicted of felony financial crimes or have 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.<sup>13</sup>

Other regulatory programs administered by the OFR include statutory and rule authority to deny licensure or registration based on applicants’ civil, criminal, and regulatory histories, which provides important public protections in light of the nature of industries regulated by the OFR and their access to consumers’ financial information.<sup>14</sup> 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 programs impose disqualifying periods in that an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors through commission rule.<sup>15</sup> These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal

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<sup>9</sup> 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.

<sup>10</sup> E-mail from the OFR (received January 9, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>11</sup> During the 2012 year, 1,283 consumer collection agencies renewed their registrations with the OFR. OFR bill analysis of HB 413 (received January 17, 2013), on file with the Insurance & Banking Subcommittee.

<sup>12</sup> 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.

<sup>13</sup> *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.”)

<sup>14</sup> Mortgage loan originators and control persons of mortgage brokers and mortgage lenders (ch. 494, F.S.); relevant persons of money services businesses (ch. 560, F.S.), and associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.)

<sup>15</sup> See ch. 69V-40, Fla. Admin. Code (Mortgage Brokerage); ch. 69V-560, Fla. Admin. Code (Money Transmitters), and Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons). 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.

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 or becomes subject to a criminal prosecution.

### *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.<sup>16</sup> Additionally, unregistered out-of-state consumer debt collectors can be subject to administrative fines of up to \$10,000 and enforcement actions by the Office of the Attorney General.<sup>17</sup> However, current law limits OFR's 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*.<sup>18</sup>

### **Enforcement**

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

- Created a requirement that registrants maintain and produce certain books and records for at least three years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;<sup>19</sup>
- Designated the OFR, and 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; and
- Authorized the OFR to impose fines of up to \$10,000 per violation, suspensions or revocations on registrants as well as cease-and-desist orders against any person.<sup>20</sup>

However, the Act currently 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.<sup>21</sup>

### **Effect of the Bill on the OFR's Registration and Enforcement Authority**

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 section 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-, 7-, and 15-year disqualifying periods from registration based on applicants' criminal histories, similar to OFR's other programs.
- "Control person" is defined as individual or entity that possesses the power to direct the management or policies of a company, whether through ownership of at least 10% of a class of voting securities, by contract, or otherwise. Natural persons who meet the definition of a "control person" must be fingerprinted and will be subject to registration review by the OFR.

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<sup>16</sup> Section 559.785, F.S.

<sup>17</sup> Section 559.565, F.S.

<sup>18</sup> Sections 559.727 and 559.730, F.S.

<sup>19</sup> See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.

<sup>20</sup> Chapter 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.

<sup>21</sup> Sections 559.5556 and 559.725(4), F.S.

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 national 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.<sup>22</sup> 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).

Once approved, the bill will subject registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons enter certain convictions or pleas, and when changes occur in the information contained in the initial application (such as a new business address) and 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 a new section 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.<sup>23</sup>

The bill provides additional grounds for administrative action, 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 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 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 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 provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>22</sup> 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. E-mail from the OFR (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>23</sup> House Bill 415 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.

Total estimated state revenues to be collected during Fiscal Year 2014-15 as a result of this bill are **\$96,564** and consist of the following:

- The OFR projects that there will be 408 initial consumer collection agency applications for 2014-2015,<sup>24</sup> with an average of 2 control persons per applicant to be fingerprinted. This results in 816 new CCA control person registrants x \$24 (state background check) for Fiscal Year 2014-15 totaling **\$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.<sup>25</sup> Accordingly, Fiscal Year 2014-15 includes the following: 2,566 control persons fingerprinted at 12/31/2014 renewal x \$24 (state background check) totaling **\$61,584**.
- The bill also 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. The retention fee is passed on to the FDLE resulting in estimated Fiscal Year revenues of **\$15,396**.<sup>26</sup>

2. Expenditures:

The OFR will have increased non-operating expenditures of \$15,396, which represents the estimated fingerprint retention fees collected by the OFR at time of registration renewal that will be passed on to the FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that control persons of non-exempt collection agencies be fingerprinted and screened, and the average incurred live-scan costs will be \$65 per control person,<sup>27</sup> which consists of the live-scan vendor's cost of providing the service and the \$40.50 processing fee charged by the FDLE, which is apportioned as:

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- \$16.50 for a national background check, which is forwarded to the FBI.<sup>28</sup>

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<sup>24</sup> E-mail from the OFR (received January 22, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>25</sup> OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>26</sup> OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>27</sup> 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 (received February 10, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>28</sup> FDLE's bill analysis of HB 413 (received February 1, 2014), on file with the Insurance & Banking Subcommittee staff.

Once registered, control persons of CCAs must also submit an annual fee of \$6 for the cost of retaining fingerprints with the FDLE.<sup>29</sup>

**First Fiscal Year:**

408 applications x 2 control persons = 816 control persons  
816 x \$65 = **\$53,040**

2,566 control persons fingerprinted at 12/31/14 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**

**D. FISCAL COMMENTS:**

The fee charged by each live-scan vendor varies; however, the OFR indicates that the average fee for live-scan fingerprinting is \$65. The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the service 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
- \$16.50 for a national background check, which is forwarded to the FBI.<sup>30</sup>

The OFR indicates that the bill may result in a slight increase in investigations and examinations under the Act, however, any increase in additional workload could be absorbed within existing resources.<sup>31</sup> In addition, the FDLE has indicated that while this bill alone does not necessitate a need for additional FTE or other resources, the bill in combination with additional background screening bills could potentially create a need for additional staffing or other resources.<sup>32</sup>

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<sup>29</sup> OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>30</sup> FDLE's bill analysis of HB 413 (received February 1, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*