

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: CS/SB 1034

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: March 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1034 provides that when a creditor issues an assignment to an assignee to collect on a debt and the assignee gives the debtor the required 30 days' notice of the assignment before taking any action to collect on the debt, the term "action" does not include a communication or disclosure required by law or any communication or payment initiated by the debtor.

II. Present Situation:

Consumer Debt Collection Agencies

Chapter 559, part VI ("Part VI"), F.S., regulates the collection of consumer debts and requires consumer collection agencies to be registered with the Office of Financial Regulation (Office). Part VI enumerates the powers and duties of the Office; sets forth licensure requirements; specifies prohibited practices; prescribes grounds for disciplinary action and administrative remedies; and authorizes civil and enforcement actions. The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act¹. The provisions of part VI are in addition to the requirements and regulations of the Federal Act. In the event of any

¹ Many of the provisions of the Fair Debt Collection Practices Act are similar to the Florida Consumer Collection Agency Act. There are some key consumer and regulatory provisions not included under Florida's act: such provisions pertain 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.

inconsistency between any provision of part VI and any provision of the Federal Act, the provision which is most protective of the consumer or debtor will prevail.

Assignment of Consumer Debts:

The Florida Consumer Collections Practices Act in s. 559.715, F.S., allows a creditor to assign a consumer debt to another for collection; however, the assignee must give the debtor written notice of the assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. Pursuant to s. 559.715, F.S., the assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default. Actions triggering the 30-day notification requirement would include both informal and formal actions. Hence, actions ranging from filing a civil action in court to collect the debt to simply communicating with the debtor to collect the debt would trigger this requirement.

The Federal Fair Debt Collections Practices Act requires a debt collector, within 5 days after the initial communication with a consumer in connection with the collection of any debt, to notify the debtor of the details of the debt including, amount, name of creditor, and rights to dispute the debt.² Furthermore, in each communication to a debtor, a debt collector is required to include a statement that the “debt collector is attempting to collect a debt...”. Under federal law, the consumer has the right to dispute the validity of the debt within 30 days after receipt of the notice; otherwise the debt is assumed valid by the debt collector.

The Florida Consumer Collections Practices Act creates a conflict for the debt collector because it requires the debt collector to provide notice of an assignment of debt at least 30 days before taking any action to collect the debt. However, the Federal Fair Debt Collections Practices Act requires a debt collector within 5 days of the initial communication with the consumer to give a debtor notice which includes information about the debt and their rights to dispute the debt. The Office believes the notice required in the Federal Fair Debt Collections Practices Act is a violation of the Florida Consumer Collections Practices Act because it constitutes an “action to collect the debt” and is sent within the 30-day window of unallowable action.³

III. Effect of Proposed Changes:

Currently, when a creditor issues an assignment to an assignee to collect on a debt the assignee must give 30 days’ notice before taking action to collect on the debt. The bill clarifies that the term “action” does not include a communication or disclosure required by law or any communication or payment insinuated by the debtor.

The effective date of the bill is July 1, 2019.

² 15 U.S.C. Section 1692g

³ Office of Financial Regulation, *Bill Analysis of SB 1034*, March 14, 2019 (on file with the Banking and Insurance Committee).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.715 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 25, 2019:

The CS removes the term “legal” action and clarifies that “action” does not include a communication or disclosure required by law or communication or payment insinuated by the debtor.

- B. **Amendments:**

None.