

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 1034

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: April 10, 2019

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Matiyow</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | <u>Davis</u>   | <u>Cibula</u>  | <u>JU</u> | <u>Fav/CS</u> |
| 3. | _____          | _____          | <u>RC</u> | _____         |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1034 clarifies what the term “action” means because of the confusing way it is used in a statute governing the assignment and collection of consumer debts. After an assignee provides a written notice to a debtor that he or she has been assigned a debt, and the debt is in default, the assignee is prohibited from taking any “action” to collect on the debt for at least 30 days. The bill clarifies that, during the 30-day period, the assignee may:

- Provide the disclosure required under federal law by stating that he or she is a debt collector who is attempting to collect a debt and that any information obtained from the debtor will be used for that purpose.
- Provide written notice required by federal law by informing the consumer of the amount of the debt, the name of the creditor, and other statements including the consumer’s right to dispute the validity of the debt or request additional information.
- Communicate with the debtor if the debtor initiates the communication.
- Accept payment from the debtor if the debtor initiates the payment.

The assignee, as a real party in interest, may bring an action in a court of competent jurisdiction to collect a debt in default. However, that action may not be brought sooner than 30 days after the assignee has given written notice of the assignment to the debtor.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Consumer Debt Collection

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. 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 judicial enforcement actions. The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act<sup>1</sup>. The provisions of part VI are in addition to the requirements and regulations of the Federal Act. In the event of any 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.<sup>2</sup>

### Assignment of Consumer Debts

#### *Florida Law*

The portion of the Florida Consumer Collections Practices Act contained 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.

#### *Federal Law*

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, the amount of the debt, name of creditor, and rights to dispute the debt.<sup>3</sup> 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 . . . .”<sup>4</sup> Under federal law, the consumer has the right to dispute the validity of the debt within 30 days after receipt of the notice. The failure of a consumer to dispute the validity of a debt may not be construed by a court as an admission of liability.<sup>5</sup>

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<sup>1</sup> The Federal Fair Debt Collection Practices Act is set forth at 15 U.S.C. ss. 1692 et seq. 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.

<sup>2</sup> Section 559.552, F.S.

<sup>3</sup> 15 U.S.C. s. 1692g.

<sup>4</sup> 15 U.S.C. s. 1692e(11).

<sup>5</sup> 15 U.S.C. s. 1692g(a).

### ***Conflict Between Florida and Federal Law***

The Florida Consumer Collections Practices Act appears to create 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 of Financial Regulation believes that giving 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 prohibited action.<sup>6</sup>

### **III. Effect of Proposed Changes:**

Currently, when a creditor assigns the right to collect a debt to an assignee, the assignee must give 30 days’ notice to the debtor before taking any action to collect on the debt. The word “action” has created confusion as to what the debt collector may rightfully do without running afoul of restrictions imposed by law. The bill clarifies that, during the 30-day period after the assignee has provided written notice to the debtor, the assignee may:

- Provide the disclosure required by 15 U.S.C. s. 1692e(11)<sup>7</sup> which states that he or she is a debt collector who is attempting to collect a debt and that any information obtained from the debtor will be used for that purpose.
- Provide written notice required by 15 U.S.C. s. 1692g<sup>8</sup> which states that the assignee must inform the consumer of the amount of the debt, the name of the creditor, and the consumer’s right to dispute the validity of the debt and request additional information.
- Communicate with the debtor if the debtor initiates the communication.

<sup>6</sup> Office of Financial Regulation, *2019 Agency Legislative Bill Analysis of SB 1034* (March 14, 2019)

<http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28333>.

<sup>7</sup> 15 U.S.C. s. 1692e(11) states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

<sup>8</sup> 15 U.S.C. s. 1692g states:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

- Accept payment from the debtor if the debtor initiates the payment.

The assignee, as a real party in interest, may bring an action in a court of competent jurisdiction to collect a debt in default. However, that action may not be brought sooner than 30 days after the assignee has given written notice of the debt to the debtor.

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

#### **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 identified.

#### **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 Judiciary on April 8, 2019:**

The committee substitute differs from the underlying bill by specifying four things the assignee may legally do during the 30-day period after notifying the debtor of the assignee's intent to collect on the debt and before he or she may file an action in court against the debtor. In general terms, the assignee is permitted to provide disclosure provisions and notice provisions to the debtor in compliance with federal law, communicate with the debtor if the debtor initiates the communication, and accept payment from the debtor if the debtor initiates the payment. Please see "III. Effect of Proposed Changes" above for more specific information.

**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.