

**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 Banking and Insurance

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BILL: SB 1034

INTRODUCER: Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: March 15, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1034 provides that when a creditor issues an assignment to an assignee to collect on a debt the assignee must give the debtor 30 days' notice of the assignment before bringing a legal action.

Current law requires 30-days' notice of the assignment before an assignee debt collector may take any action to collect on the debt.

**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 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.

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<sup>1</sup> 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.

### **Assignment of Consumer Debts:**

Section 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.<sup>2</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...”. 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 requires a debt collector to give notice of an assignment at least 30 days before any action to collect a debt.

The Florida Consumer Collections Practices Act creates a conflict for the debt collector that require 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 to give a debtor notice within 5 days 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 is considered “any action” and is sent within the 30-day window of unallowable action.<sup>3</sup>

### **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 would allow assignees to begin collection on a debt immediately and the assignee would only need to give notice of their assignment to the debtor 30 days prior to bringing a legal action. The bill would appear to allow an assignee to immediately begin taking action to collect on a debt without having given notice to the debtor as to their assignment.

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

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<sup>2</sup> 15 U.S.C. Section 1692g

<sup>3</sup> 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:**

In the case of Bank of Am., N.A. v. Siefker, 201 So.3d 811 (Fla. 4th DCA 2016), the courts addressed the question of whether the notice of assignment requirement in s. 559.715, F.S., operates as a condition precedent to bringing a mortgage foreclosure suit. The court in Siefker agreed with the Second District Court of Appeal before it in concluding that the notice of assignment requirement is not a condition precedent to bringing a mortgage foreclosure suit. Both courts stated that “the Legislature knows how to condition the filing of a lawsuit on a prior occurrence . . . . ‘Because the Legislature declined to be more specific when enacting

section 559.715, we will not expand the statute to include language the Legislature did not enact.” Siefker, 201 So.3d at 816.

The change proposed in SB 1034 to s. 559.715, F.S., would specifically state, in relation to legal action, that the notice to the debtor must be given at least 30 days prior. Therefore, a court could conclude that the Legislature intended to create a condition precedent to legal action on the debt, which would mean that a debtor could defend against the suit based on the failure to provide the notice of assignment at least 30 days before the legal action was commenced.

#### **VIII. Statutes Affected:**

This bill substantially amends section 559.715 of the Florida Statutes.

#### **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.