

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 Judiciary

BILL: CS/SB 1034

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: April 5, 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>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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, 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 term “action” does not prohibit the assignee from making a communication or disclosure required by law and does not prohibit the debtor from initiating any communication or payment involving the debt.

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 Act¹. 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.²

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.³ 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 . . .”⁴ 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.⁵

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

¹ 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.

² Section 559.552, F.S.

³ 15 U.S.C. s. 1692g.

⁴ 15 U.S.C. s. 1692e(11).

⁵ 15 U.S.C. s. 1692g(a).

Act because it constitutes an “action to collect the debt” and is sent within the 30-day window of prohibited action.⁶

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 bill clarifies that, during the 30-day period, the term “action” does not prohibit the assignee from making a communication or disclosure as required by law and does not prohibit the debtor from making any communication or payment regarding the debt.

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.

⁶ 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>.

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.