

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1039 Assignment of Consumer Debt  
**SPONSOR(S):** Insurance & Banking Subcommittee, Latvala  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1034

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 2 N, As CS	Hinshelwood	Luczynski
2) Civil Justice Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Debt collection efforts can include calls, letters, emails, filing lawsuits, and other methods to collect alleged debts from consumers. In the course of attempting to collect debts, debt collectors must adhere to a variety of laws and regulations. The primary federal law that governs the conduct of debt collectors is the Fair Debt Collection Practices Act (FDCPA). In Florida, the collection of consumer debts is primarily governed by the Florida Consumer Collection Practices Act (FCCPA). The Office of Financial Regulation (OFR) regulates third-party debt collectors under the FCCPA.

Industry representatives and the OFR have indicated that there is apparent conflict between the notice of assignment requirement of the FCCPA and certain provisions of the FDCPA. Although the FCCPA's notice of assignment requirement provides the debtor with a 30-day period of no collection activities, the federal law requires the debt collector to give the debtor the "mini-Miranda notice" in the initial communication and to give, in the initial communication or within five days thereafter, the debtor information related to the debtor's right to validate the debt. Such federally mandated communications and disclosures would appear to be debt collection activities that must occur within the 30-day time period in which Florida law prohibits debt collection activities. Furthermore, industry representatives have indicated that, as a result of the prohibition on collection activities for 30 days, debt collectors will not communicate with debtors during that time, even when a debtor initiates contact with the debt collector to make a payment or negotiate the debt. In turn, the debtor is left incurring interest and fees during such time.

The bill clarifies that, for purposes of the 30-day period following the notice of assignment during which an action to collect a debt is prohibited, "action" does not include a communication or disclosure required by law and does not include any communication or payment initiated by the debtor. Thus, the third-party debt collector could immediately upon assignment send the debtor any communication or disclosure that is required by state or federal law. Additionally, the debt collector could communicate with debtors who initiate contact with the debt collector, including for the purpose of making a payment or negotiating the debt.

The bill will have no fiscal impact on the state or local governments and will have an indeterminate fiscal impact on the private sector.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Consumer Debt Collection**

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes.<sup>1</sup> Debt collection is an \$11.5 billion industry that employs nearly 118,500 people across approximately 7,700 collection agencies in the United States.<sup>2</sup> Debt collection efforts can include calls, letters, emails, filing lawsuits, and other methods to collect alleged debts from consumers.<sup>3</sup> In the course of attempting to collect debts, debt collectors must adhere to a variety of laws and regulations, which govern topics as diverse as telephone communications (e.g., the Telephone Consumer Protection Act) and furnishing information to credit reporting agencies (e.g., the Fair Credit Reporting Act) as well as various state statutes.<sup>4</sup> The primary federal law that governs the conduct of debt collectors is the Fair Debt Collection Practices Act (FDCPA).<sup>5</sup> In Florida, the collection of consumer debts is primarily governed by the Florida Consumer Collection Practices Act (FCCPA).<sup>6</sup>

##### *Federal Fair Debt Collection Practices Act*

In 1977, Congress enacted the FDCPA to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”<sup>7</sup> The FDCPA establishes consumer protections in the debt collection process, including the rights to dispute an alleged debt and instruct a collector to stop communication about an alleged debt.<sup>8</sup> The FDCPA prohibits debt collectors from engaging in certain types of conduct in connection with the collection of a debt and imposes certain affirmative obligations on collectors.<sup>9</sup> The FDCPA empowers the Consumer Financial Protection Bureau and the Federal Trade Commission to enforce its provisions and establishes a private right of action against any debt collector who fails to comply with the FDCPA.<sup>10</sup>

Among the specific provisions of the FDCPA is a requirement that a debt collector disclose in the initial communication with the consumer, whether written or oral, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.<sup>11</sup> This notice is often referred to as a “mini-Miranda notice.” A debt collector must disclose in subsequent communications, other than in a formal pleading made in connection with a legal action, that the communication is from a debt collector.<sup>12</sup> Additionally, the debt collector must provide the following information to the consumer, either in the initial communication with the consumer or within five days after the initial communication with the consumer:

- The amount of the debt;

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<sup>1</sup> S. 559.55(6), F.S.

<sup>2</sup> Bureau of Consumer Financial Protection, *Fair Debt Collection Practices Act: BCFP Annual Report 2019* (March 2019), available at [https://files.consumerfinance.gov/f/documents/cfbp\\_fdcpa\\_annual-report-congress\\_03-2019.pdf](https://files.consumerfinance.gov/f/documents/cfbp_fdcpa_annual-report-congress_03-2019.pdf) (last visited Mar. 23, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; 15 U.S.C. § 1692 et seq.

<sup>6</sup> Ss. 559.55 - 559.785, F.S.

<sup>7</sup> 15 U.S.C. § 1692(3).

<sup>8</sup> Bureau of Consumer Financial Protection, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. § 1692e(11).

<sup>12</sup> *Id.*

- The name of the creditor to whom the debt is owed;
- A statement that unless the consumer, within 30 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;
- A statement that if the consumer notifies the debt collector in writing within the 30-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
- A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.<sup>13</sup>

If, within the 30-day period described above, the consumer notifies the debt collector in writing that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector must cease collection of the debt until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.<sup>14</sup>

#### *Florida Consumer Collection Practices Act*

A person may not engage in the business as a consumer collection agency in Florida without first registering in accordance with the FCCPA.<sup>15</sup> Each consumer collection agency doing business in Florida must register with the Office of Financial Regulation (OFR) and renew such registration annually.<sup>16</sup> The term “consumer collection agency” is synonymous with “debt collector”, which is defined as “any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”<sup>17</sup> Thus, “debt collector” refers to a third-party, non-owner of the debt that is engaged in attempting to collect the debt. However, the term “debt collector” does include the owner of a debt “who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts.”<sup>18</sup>

Although the prohibited collection practices under the FCCPA apply to *any person* collecting a consumer debt, not just third-party debt collectors,<sup>19</sup> the OFR’s regulation under the FCCPA extends only to third-party debt collectors.

When a creditor assigns the right to bill and collect a debt to a third-party debt collector, the FCCPA requires that notice of such assignment be provided to the debtor followed by a 30-day period of no actions to collect the debt. That provision states:

This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The assignee is a real party in interest and may

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<sup>13</sup> 15 U.S.C. § 1692g(a).

<sup>14</sup> 15 U.S.C. § 1692g(b).

<sup>15</sup> S. 559.553(1), F.S.

<sup>16</sup> S. 559.553(2), F.S.

<sup>17</sup> S. 559.55(3) and (7), F.S.

<sup>18</sup> S. 559.55(7), F.S.

<sup>19</sup> S. 559.72, F.S.

bring an action to collect a debt that has been assigned to the assignee and is in default.<sup>20</sup>

Industry representatives and the OFR have indicated that there is apparent conflict between the notice of assignment requirement of the FCCPA and certain provisions of the FDCPA. Although the FCCPA's notice of assignment requirement provides the debtor with a 30-day period of no collection activities, the federal law requires the debt collector to give the debtor the "mini-Miranda notice" in the initial communication and to give, in the initial communication or within five days thereafter, the debtor information related to the debtor's right to validate the debt. Such federally mandated communications and disclosures would appear to be debt collection activities that must occur within the 30-day time period in which Florida law prohibits debt collection activities. Furthermore, industry representatives have indicated that, as a result of the prohibition on collection activities for 30 days, debt collectors will not communicate with debtors during that time, even when a debtor initiates contact with the debt collector to make a payment or negotiate the debt. In turn, the debtor is left incurring interest and fees during such time.

### **Effect of the Bill**

Currently, when the owner of a debt assigns to a third-party the right to collect the debt, such third-party debt collector must provide a debtor notice of the assignment at least 30 days before commencing any action to collect the debt. The bill clarifies that "action" does not include a communication or disclosure required by law and does not include any communication or payment initiated by the debtor. Thus, the third-party debt collector could immediately upon assignment send the debtor any communication or disclosure that is required by state or federal law. Additionally, the debt collector could communicate with debtors who initiate contact with the debt collector, including for the purpose of making a payment or negotiating the debt.

The bill takes effect July 1, 2019.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 559.715, F.S., relating to assignment of consumer debts.

**Section 2.** Provides an effective date of July 1, 2019.

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

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

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>20</sup> S. 559.715, F.S.  
**STORAGE NAME:** h1039a.IBS  
**DATE:** 3/27/2019

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is indeterminate. The bill may provide a consumer the opportunity to pay or negotiate the debt within the first 30 days after assignment to a debt collector, which industry representatives allege is prohibited under current law.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2019, the Insurance & Banking Subcommittee considered a strike-all amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute clarifies an apparent conflict between Florida law, which prohibits collection activities for 30 days following an assignment of the debt to a third-party debt collector, and federal law, which requires that third-party debt collectors provide a debtor certain disclosures in the initial communication or within five days thereafter. The committee substitute is broad enough to permit the third-party debt collector to provide a debtor, during the 30-day period following the notice of assignment, any communication or disclosure that is required by law. Additionally, the committee substitute clarifies that during the 30-day period following the notice of assignment the third-party debt collector may communicate with or take payment from a debtor where the communication or payment is initiated by the debtor. The committee substitute conforms the House bill to the Senate bill.

The staff analysis has been updated to reflect the committee substitute.