

**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 Appropriations Committee on Agriculture, Environment, and General Government

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BILL: CS/SB 128

INTRODUCER: Banking and Insurance Committee and Senator Rodriguez

SUBJECT: Contacting Consumer Debtors

DATE: April 17, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 128 creates s. 559.721, Florida Statutes, to prohibit consumer collection agencies from contacting, for the purpose of collecting a debt, victims of human trafficking and economic abuse and a debtor whose debt arose when the debtor was in foster care.

The bill's prohibition on consumer debt collection requires victims of human trafficking to provide copies of official documentation to creditors as proof they are a crime victim. Such victims and a debtor whose debt arose when he or she was in foster care also must provide the creditor with an affidavit confirming certain information regarding the debt and how it was incurred.

Victims of human trafficking who comply with these requirements may not be contacted by creditors for one year from the date the affidavit is provided or indefinitely if the perpetrator of the crime has been convicted of the reported offense.

The Office of Financial Regulation (OFR) is required to report certain information regarding consumer complaints of an alleged violation of the new section to the appropriate regulatory body, the Federal Government, or the Florida Bar.

The bill does not impact state revenues or expenditures.

The bill is effective July 1, 2023.

## II. Present Situation:

### Debt Collection Laws

#### *Federal Fair Debt Collection Practices Act (FDCPA)*

The FDCPA was established as a result of abusive, deceptive, and unfair debt collection practices.<sup>1</sup> The FDCPA is aimed at eliminating abusive debt collection practices by debt collectors,<sup>2</sup> to ensure those that do not engage in abusive practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.<sup>3,4</sup>

A debt collector who is attempting to acquire location information of the consumer must comply with certain requirements, such as identify himself, state he is confirming or correcting location information, and identify his employer only if expressly asked.<sup>5</sup> With limited exceptions, the FDCPA limits circumstances under which a debt collector may communicate with a consumer<sup>6</sup> with respect to collecting any debt,<sup>7,8</sup> and restricts the individuals with whom a debt collector may communicate about any debt.<sup>9</sup> If a consumer notifies a debt collector in writing that he or she refuses to pay a debt or wishes to cease communication, the debt collector must not communicate with the consumer except to notify the consumer of specified information.<sup>10</sup> Except if the information is relayed during initial communications or the consumer paid the debt, within five days after the initial communication with a consumer, a debt collector must provide the consumer with a written notice containing information related to the debt.<sup>11</sup>

The FDCPA prohibits a debt collector from engaging in any conduct that results in harassment, oppression, or abuse of any person in collection of a debt, and specifies certain conduct which constitutes a violation of this provision.<sup>12</sup> A debt collector is also prohibited from using any false, deceptive, or misleading representation or means in the collection of any debt, and the FDCPA specifies conduct which constitutes a violation of this provision.<sup>13</sup>

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<sup>1</sup> 15 U.S.C. s. 1692(a).

<sup>2</sup> 15 U.S.C. s. 1692a(6) defines “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding certain exclusions, the term included any creditor who, in the process of collecting his debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For purposes of s. 1692f(6), the term includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interest. The term excludes certain persons, such as any officer or employee of a creditor.

<sup>3</sup> 15 U.S.C. s. 1692a(3) defines “consumer” as any natural person obligated or allegedly obligated to pay any debt.

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

<sup>5</sup> 15 U.S.C. s. 1692b(1).

<sup>6</sup> 15 U.S.C. s. 1692b(d) defines “consumer,” for purposes of this section, to include the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

<sup>7</sup> 15 U.S.C. s. 1692a(5) defines “debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

<sup>8</sup> 15 U.S.C. s. 1692c(a) (for instance, providing the time or place in which the communication may take place, and prohibiting contact with the consumer who is represented by an attorney except for certain circumstances).

<sup>9</sup> 15 U.S.C. s. 1692c(b).

<sup>10</sup> 15 U.S.C. s. 1692c(c).

<sup>11</sup> 15 U.S.C. s. 1692g(a).

<sup>12</sup> 15 U.S.C. s. 1692d.

<sup>13</sup> 15 U.S.C. s. 1692e.

Any debt collector who violates these provisions is liable for actual damages, additional damages up to \$1,000 as a court allows, or certain amounts for class action suits.<sup>14</sup> When determining liability, a court must consider, at a minimum, certain specified factors, such as the frequency and persistence of noncompliance by the debt collector and the nature of noncompliance.<sup>15</sup>

The Consumer Financial Protection Bureau (CFPB) must by regulation exempt from requirements of the FDCPA any class of debt collection practices within any state if the CFPB determines the laws of such state are substantially similar to the provision of FDCPA and have adequate provisions of enforcement.<sup>16</sup>

### ***Florida Consumer Collection Practices Act***

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and securities.<sup>17</sup> The OFR has three divisions, including a Division of Consumer Finance which is responsible for the administration and enforcement of ch. 559, F.S.,<sup>18</sup> known as the Florida Consumer Collection Practices Act (FCCPA). The OFR registers and regulates consumer collection agencies.<sup>19,20</sup> A person is prohibited from engaging in business as a consumer collection agency without registering with the OFR and must renew such registration annually.<sup>21</sup> The following persons or entities are not required to register with the OFR:

- An original creditor, that is any person who offers or extends credit creating a debt<sup>22</sup> or to whom a debt is owed, but does not include any person to the extent they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;<sup>23</sup>
- A member of the Florida Bar;
- A financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- A licensed real estate broker;

<sup>14</sup> 15 U.S.C. s. 1692k(a).

<sup>15</sup> 15 U.S.C. s. 1692k(b).

<sup>16</sup> 15 U.S.C. s. 1692o.

<sup>17</sup> Section 20.121(3)(a)2., F.S.

<sup>18</sup> Section 494.0011(1), F.S.

<sup>19</sup> Section 559.55(3), F.S., defines “consumer collection agency” as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted under s. 559.553(3), F.S. Section 559.55(7), F.S., defines “debt collector” 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. The term “debt collection” includes any creditor 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 person is collecting or attempting to collect such debts. The term does not include specified persons.

<sup>20</sup> Section 559.554(1), F.S.

<sup>21</sup> Section 559.553(1) and (2), F.S.

<sup>22</sup> Section 559.55(7), F.S., defines “debt” or “consumer debt” as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

<sup>23</sup> Section 559.55(5), F.S.

- An insurance real estate broker;
- An insurance company authorized to do business in this state;
- A consumer finance company and any wholly owned subsidiary and affiliate;
- A person licensed pursuant to ch. 520, F.S.;
- Certain out-of-state consumer debt collectors;<sup>24</sup> and
- An FDIC-insured institution or subsidiary or affiliate.<sup>25</sup>

An out-of-state consumer debt collector who is not exempt and who fails to register is subject to an enforcement action by the state.<sup>26</sup>

A person collecting consumer debts is prohibited from engaging in certain conduct, such as to:

- Simulate a law enforcement officer or a representative of any governmental agency;
- Use or threaten force or violence;
- Tell a debtor who disputes a consumer debt that the person will disclose to another information affecting the debtor's reputation for credit worthiness without also informing the debtor of certain information;
- Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless certain circumstances exist;
- Use profane, obscene, vulgar, or willfully abuse language in communicating with the debtor or any of the debtor's family members; and
- Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate.<sup>27</sup>

A debtor<sup>28</sup> may bring a civil action against a person who violated any of the specified prohibited acts.<sup>29</sup> Further a person who engages in any of the prohibited acts is liable for actual damages and for additional statutory damages as the court may allow, but not exceeding \$1,000 plus court costs and reasonable attorney fees.<sup>30</sup> A court may order additional statutory damages for class action suits, punitive damages, or other equitable relief as it deems necessary or proper.<sup>31</sup> The court must consider the nature of the defendant's noncompliance, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional.<sup>32</sup> A person may not be held liable if the person shows by a preponderance of the evidence the violation was

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<sup>24</sup> Section 559.55(11), F.S., defines "out-of-state consumer debt collector" as any person whose business activities in Florida involve both collecting or attempting to collect consumer debt from debtors located in Florida by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in Florida. For purposes of this subsection, a creditor has a business presence in Florida if either the creditor or an affiliate or subsidiary of the creditor has an office in Florida.

<sup>25</sup> Section 559.553(6), F.S.

<sup>26</sup> Section 559.553(4), F.S. An out-of-state consumer debt collector who is the subject of an enforcement action is liable up to \$10,000, reasonable attorney fees, and court costs. Section 559.565(1), F.S.

<sup>27</sup> Section 559.72, F.S.

<sup>28</sup> Section 559.55(8), F.S., defines "debtor" or "consumer" as any natural person obligated or allegedly obligated to pay any debt.

<sup>29</sup> Section 559.77(1), F.S.

<sup>30</sup> Section 559.77(2), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

not intentional and resulted from a bona fide error.<sup>33</sup> Any suit brought under s. 559.77(4), F.S., must commence within two years after the date of the alleged violation.<sup>34</sup>

A person who is registered or required to be registered in Florida as a consumer collection agency is subject to disciplinary action for engaging in specified acts, such as fraud, misrepresentation, concealment, or dishonest dealing by trick.<sup>35</sup> Potential penalties include, for instance, issuance of a reprimand, suspension of registration, revocation of a registration, denial of a registration, imposition of a fine of up to \$10,000 for each count or separate offense, and an administrative fine of up to \$1,000 per day for each day that a person engages as a consumer collection agency without a valid registration.<sup>36</sup>

The OFR is responsible for receiving and maintaining records of complaints from consumers concerning all persons who collect debts, including consumer collection agencies.<sup>37</sup> The OFR must inform and furnish any relevant information to the appropriate regulatory body of Florida, the federal government, or the Florida Bar, if a person has been named in a consumer complaint alleging a violation of s. 559.72, F.S.<sup>38</sup>

### **Human Trafficking**

Human trafficking is a form of modern-day slavery.<sup>39</sup> Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.<sup>40</sup> Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.<sup>41</sup> Any person who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.<sup>42</sup> Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.<sup>43</sup> The average ages of youth who are trafficked are 11-13 years old.<sup>44</sup>

The United States Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers,

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<sup>33</sup> Section 559.77(3), F.S.

<sup>34</sup> Section 559.77(4).

<sup>35</sup> Section 559.730(1), F.S.

<sup>36</sup> Section 559.730(2), F.S.

<sup>37</sup> Section 559.725(1), F.S.

<sup>38</sup> Section 559.772(2), F.S.

<sup>39</sup> Section 787.06(1)(a), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited April 4, 2023) (hereinafter cited as “DOE Human Trafficking”).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited April 4, 2023).

preventing trafficking, and protecting victims.<sup>45</sup> The Act contains severe penalties and mandates restitution for victims of human trafficking.<sup>46</sup>

The United States Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.<sup>47</sup> Approximately 24.9 million people are human trafficking victims in the world.<sup>48</sup> There are approximately 2.5 million victims of human trafficking in the United States.<sup>49</sup> Since 2007, the U.S. National Human Trafficking Hotline (NHTH) has identified 82,301 cases of human trafficking with 164,839 victims being identified in the cases.<sup>50</sup>

### ***Federal Regulation***

In cases of human trafficking victims, the Code of Federal Regulation (regulation) prohibits the inclusion of adverse information in consumer reporting.<sup>51</sup> The regulation prohibits consumer reporting agencies from furnishing any consumer report that contains adverse information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if certain specified documents is provided to the consumer reporting agency.<sup>52</sup> Examples of acceptable documentation include a determination made by a court of competent jurisdiction or a signed statement by the consumer attesting the consumer is a victim of trafficking if the document is certified by specified certain entities (e.g. federal or state entity).<sup>53</sup>

### ***Human Trafficking in Florida***

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>54</sup> purchasing, patronizing, procuring, or obtaining<sup>55</sup> another person for the purpose of exploitation of that person.<sup>56</sup> In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.<sup>57</sup> Florida law sets out several circumstances which give rise to human trafficking and specified penalties including, in part:

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<sup>45</sup> Pub. L. No. 106-386 (2000).

<sup>46</sup> *Id.*

<sup>47</sup> DOE Human Trafficking.

<sup>48</sup> National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited April 4, 2023).

<sup>49</sup> DOE Human Trafficking.

<sup>50</sup> National Human Trafficking Hotline (NHTH), *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited April 4, 2023).

<sup>51</sup> 12 C.F.R. s. 1022.142

<sup>52</sup> 12 C.F.R. s. 1022.142(c).

<sup>53</sup> 12 C.F.R. s. 1022.142(b)(6).

<sup>54</sup> Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service.

Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

<sup>55</sup> Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.

<sup>56</sup> Section 787.06(2)(d), F.S.

<sup>57</sup> Section 787.06(3), F.S.

- Labor<sup>58</sup> or services<sup>59</sup> of any child under the age of 18 or adult believed to be a child younger than 18 years old commits a first degree felony;<sup>60</sup>
- Labor or services of any child under the age of 18 or adult believed to be a child younger than 18 years old who is an unauthorized alien<sup>61</sup> commits a first degree felony;<sup>62</sup>
- Labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;<sup>63</sup>
- Commercial sexual activity<sup>64</sup> who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;<sup>65</sup> or
- Commercial sexual activity<sup>66</sup> in which any child under the age of 18 or an adult believed to be a child younger than 18 years old, or in which any person who is mentally defective<sup>67</sup> or mentally incapacitated<sup>68</sup> is involved commits a life felony.<sup>69</sup>

First degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.<sup>70</sup> Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.<sup>71</sup>

<sup>58</sup> Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.

<sup>59</sup> Section 787.06(2)(h), F.S., provides "services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

<sup>60</sup> Section 787.06(3)(a)1., F.S.

<sup>61</sup> Section 787.06(2)(j), F.S., defines "unauthorized alien" as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

<sup>62</sup> Section 787.06(3)(c)1., F.S.

<sup>63</sup> Section 787.06(3)(e)1., F.S.

<sup>64</sup> Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>65</sup> Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>66</sup> Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

<sup>67</sup> Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

<sup>68</sup> Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

<sup>69</sup> A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

<sup>70</sup> Section 787.06(8)(b), F.S.

<sup>71</sup> Section 787.06(9), F.S.

## Foster Care

The child welfare system identifies families whose children<sup>72</sup> are in danger of suffering or have suffered abuse,<sup>73</sup> abandonment,<sup>74</sup> or neglect<sup>75</sup> and works with those families to address the problems that are endangering children. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as foster care, relative and nonrelative caregivers, or adoptive families.<sup>76</sup> “Foster care” is defined as care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.<sup>77</sup>

### *Action Letters for Foster Children*

In 2014, the CFPB released action letters for child welfare case workers to send to credit bureaus for debt incurred by foster children.<sup>78</sup> The three letters address credit reports that: (a) should not exist for the child in foster care,<sup>79</sup> (b) has errors from before the youth turned 18,<sup>80</sup> and (c) has

<sup>72</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent.”

<sup>73</sup> Section 39.01(2), F.S. The term “abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

<sup>74</sup> Section 39.01(1), F.S. The term “abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

<sup>75</sup> Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

<sup>76</sup> See s. 39.001(1), F.S.

<sup>77</sup> Section 39.01(29), F.S.

<sup>78</sup> The Consumer Financial Protection Bureau (CFPB), *CFPB Releases Tools to Protect Foster Care Children from Credit Reporting Problems*, May 1, 2014, available at [CFPB Releases Tools To Protect Foster Care Children From Credit Reporting Problems | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute) (hereinafter cited as “CFPB Tools to Protect Foster Care Children”) (last visited April 4, 2023).

<sup>79</sup> The CFPB, *Credit Report Dispute Template for Youth in Foster Care*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

<sup>80</sup> The CFPB, *How to protect vulnerable children from credit reporting problems, Credit Report Dispute Template for Youth 18 or Older in Foster Care – Activity Occurred When Minor*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

errors for foster care youth over 18.<sup>81</sup> Case workers are encouraged to send the relevant letters to the credit bureaus if they find errors on foster children's credit reports.<sup>82</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill creates s. 559.721, F.S., which prohibits consumer collection agencies from contacting certain debtors once the consumer collection agency receives specified evidence. A creditor may not contact a debtor regarding a debt that arises from documented human trafficking and economic abuse or a debt that arose when the debtor was in foster care.

For the no contact provision to apply to victims of human trafficking and economic abuse, the debtor must provide to the creditor: (a) official documentation<sup>83</sup> that shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim or in which the debtor received relocation assistance,<sup>84</sup> and (b) a signed affidavit swearing under penalty of perjury that the following are true:

- The debtor was the victim of human trafficking as documented in a police report, or there has been a determination that the debtor should receive relocation assistance;
- As a result of the human trafficking, the debtor was compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, such as the debtor's identity being stolen; and
- The debt was incurred solely because of and during the period of human trafficking.

If the debtor complies with these requirements, the no contact provision applies either (a) for one year after the affidavit is provided, or (b) indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

For the no contact provision to apply to children who were in foster care, the debtor must provide to the creditor a signed affidavit, swearing under penalty of perjury, the debtor was in foster care and the debt was incurred during the time when the debtor was in foster care.

**Section 2** requires the Office of Financial Regulation to inform and furnish relevant information to specified entities if a person has been named in a consumer complaint alleging a violation of s. 559.721, F.S.

**Section 3** provides the bill is effective July 1, 2023.

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<sup>81</sup> The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care*, available at <https://www.consumerfinance.gov/about-us/blog/how-to-protect-vulnerable-children-from-identity-theft/#dispute> (last visited April 4, 2023).

<sup>82</sup> The CFPB Tools to Protect Foster Care Children.

<sup>83</sup> Section 943.0583(1)(b), F.S., defines "official documentation" as any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.

<sup>84</sup> Section 960.196(2), F.S., provides that a victim may be granted an award for relocation assistance if there is proof that a human trafficking offense was committed as provided in s. 787.06(3)(b), (d), (f), and (g), and that the crime was reported to the proper authorities and filed within specified timeframes depending on when the crime occurred.

**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:

Federal law and Florida law provide that, in the event any inconsistency between any provision of Fair Debt Collection Practices Act and the Florida's Consumer Protection Practices Act, the provision which is more protective of the consumer or debtor must prevail.<sup>85</sup> The bill would add provisions that are more protective of certain categories of persons and therefore should prevail.

**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.

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<sup>85</sup> 15 U.S.C. s. 1692n; Section 559.552, F.S.

**VIII. Statutes Affected:**

This bill substantially amends section 559.725 of the Florida Statutes.

This bill creates section 559.721 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 Committee on March 29, 2023:**

The committee substitute makes the following changes:

- Removes the provisions that prohibit a creditor from contacting:
  - A victim of elder and economic abuse;
  - A victim of identity theft; and
  - A debtor upon receiving notice that the debtor is protected by an injunction for protection against exploitation of a vulnerable adult under s. 825.1035, F.S.;
- Modifies the provisions that prohibit a “creditor” to prohibit a “consumer collection agency” from making contact with specified groups of individuals;
- Removes the provision that s. 559.721, F.S., applies to out-of-state consumer debt collectors, even if they are exempted from registering with the Office of Financial Regulation;
- Removes the provision that such section may not be construed to mean that the debtor is discharged from the debt that he or she may have incurred as a result of the crime; and
- Removes the modification to s. 559.77, F.S., in the bill that makes a creditor who violates the provisions prohibiting contact with the specified categories of persons subject to civil remedies.

- B. **Amendments:**

None.