

**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 128

INTRODUCER: Senator Rodriguez

SUBJECT: Contacting Consumer Debtors

DATE: March 28, 2023

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Moody   | Knudson        | BI        | <b>Pre-meeting</b> |
| 2. |         |                | AEG       |                    |
| 3. |         |                | FP        |                    |

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**I. Summary:**

Senate Bill 128 creates s. 559.721, F.S., to prohibit creditors – defined as consumer collection agencies and out-of-state consumer debt collectors – from contacting for the purpose of collecting a debt certain debtors that are victims of certain crimes, or part of vulnerable classes of persons:

- Victims of elders and economic abuse;
- Victims of human trafficking and economic abuse;
- Victims of identity theft;
- A debtor who is protected by an injunction for protection against exploitation of a vulnerable adult; and
- A debtor whose debt arose when the debtor was in foster care.

The bill’s prohibition on consumer debt collection requires proof be provided to the creditor that the debtor was a crime victim. Victims of elder economic abuse, human trafficking, and identity theft must provide a creditor with a specified copy of an official report, such as a police report or an official documentation. These 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 elder economic abuse or human trafficking who comply with these requirements may not be contacted by creditors for two years from the date the affidavit is provided or indefinitely if the perpetrator of the crime has been convicted of the reported offense.

The bill provides that the new section may not be construed to mean that the debtor is discharged from the debt that he or she may have been incurred as a result of the crime. The bill also provides that the provisions of the new section applies to out-of-state consumer debt collectors, even if they are exempted from registering with the Office of Financial Regulation (OFR). 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. Finally, the bill applies the provisions of s. 559.77, F.S., regarding civil remedies which authorize a debtor to bring an action against a creditor who violates s. 559.721, F.S., and subjects such creditor to certain damages, costs, and fees.

The bill is effective July 1, 2023.

## II. Present Situation:

### Debt Collection Laws

#### *Federal Fair Debt Collection Practices Act (the 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 that 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

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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).

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 also is 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>

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 ~~Bureau~~ of 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 Bureau determines that 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 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:

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<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.

<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. 559.55(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.

- 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 that 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;
- 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 abusive 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>

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<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.

<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.

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 that the violation was 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 2 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>

### **Elder Abuse**

As the country's "baby-boomer" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 49.2 million in 2016<sup>39</sup> to 79 million by 2034.<sup>40</sup> Florida has long been a destination state for senior citizens and has one of the

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<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.*

<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> Press Release, U.S. Census Bureau, *The Nation's Older Population is Still Growing*, *Census Bureau Reports*, June 22, 2017, Release Number: CB17-100, available at <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> (last visited Mar. 26, 2023).

<sup>40</sup> Press Release, U.S. Census Bureau, *Older People Projected to Outnumber Children for First Time in U.S. History*, revised October 8, 2019, available at <https://www.census.gov/newsroom/press-releases/2018/cb18-41-population-projections.html> (last visited Mar. 26, 2023).

highest percentage of senior residents in the entire nation.<sup>41</sup> In 2019, individuals age 65 and older represented approximately 20.9 percent of Florida’s total population.<sup>42</sup> By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state’s population and it is estimated that individuals age 65 and older will account for approximately 47.9 percent of the state’s population growth between 2010 and 2030.<sup>43</sup> Elder populations are vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>44</sup> According to the U.S. Department of Justice, approximately 1 in 10 seniors is abused each year in the United States, though incidents of elder abuse are reported to local authorities in 1 out of every 24 cases.<sup>45</sup> Elder abuse can have significant physical and emotional effects on an older adult and can lead to premature death.<sup>46</sup> Abused seniors are twice as likely to be hospitalized and three times more likely to die than non-abused seniors.<sup>47</sup>

Florida law provides criminal penalties for the abuse, neglect, and exploitation of elderly.<sup>48</sup> Under s. 825.103, F.S., a person is guilty of the “exploitation of an elderly person or disabled adult” when he or she:

- Stands in a position of trust and confidence, or has a business relationship, with an elderly person and knowingly obtains or uses, or endeavors to obtain or use, the elderly person’s funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person;<sup>49</sup>
- Obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person’s funds, assets, or property with the intent to temporarily or permanently

<sup>41</sup> Pew Research Center, *Where Do the Oldest Americans Live?*, July 9, 2015, available at <https://www.pewresearch.org/fact-tank/2015/07/09/where-do-the-oldest-americans-live/> (last visited Mar. 26, 2023).

<sup>42</sup> U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age*, June 25, 2020, available at <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited Mar. 26, 2023).

<sup>43</sup> The Office of Economic & Demographic Research (EDR), *Population Data: 2016, 2020, 2025, 2030, 2035, 2040, & 2045, County by Age, Race, Sex, and Hispanic Origin*, pp. 89-90 and 269-70, available at [http://edr.state.fl.us/Content/population-demographics/data/Medium\\_Projections\\_ARSH.pdf](http://edr.state.fl.us/Content/population-demographics/data/Medium_Projections_ARSH.pdf) (last visited Mar. 26, 2023); and the EDR, *Econographic News: Economic and Demographic News for Decision Makers, 2019, Vol. 1*, available at <http://edr.state.fl.us/content/population-demographics/reports/econographicnews-2019v1.pdf> (last visited Mar. 26, 2023).

<sup>44</sup> National Center on Elder Abuse, *What are the Risk Factors?*, available at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#risk> (visited Mar. 26, 2023).

<sup>45</sup> U.S. Department of Justice, *Elder Justice Initiative*, available at <https://www.justice.gov/elderjustice> (last visited Mar. 26, 2023); and National Center on Elder Abuse, *What is Known about the Incidence and Prevalence of Elder Abuse in the Community Setting?*, available at <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#prevalence> (last visited Mar. 26, 2023); see also, Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100:2 Am. J. Pub. Health, at 292-297 (February 2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/> (last visited Mar. 26, 2023).

<sup>46</sup> U.S. Department of Justice, *Elder Justice Initiative: About Elder Abuse*, available at <https://www.justice.gov/elderjustice/about-elder-abuse> (Mar. 26, 2023); see also, Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280:5 JAMA at 428-432 (1998), available at <https://jamanetwork.com/journals/jama/fullarticle/187817> (all sites last visited Mar. 26, 2023).

<sup>47</sup> XinQi Dong, et al., *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173(10), JAMA Intern Med. At 911-917 (2013), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1675876> (last visited Mar. 26, 2023).

<sup>48</sup> Sections 825.101-825.106, F.S.

<sup>49</sup> Section 825.103(1)(a), F.S.

deprive the elderly person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person, and he or she knows or reasonably should know that the elderly person lacks the capacity to consent;<sup>50,51</sup>

- Breaches a fiduciary duty to the elderly person while acting as the person’s guardian, trustee, or agent under a power of attorney, and such breach results in an unauthorized appropriation, sale, or transfer of property;<sup>52</sup>
- Misappropriates, misuses, or transfers without authorization money belonging to an elderly person from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer;<sup>53</sup> or
- Intentionally or negligently fails to effectively use an elderly person’s income and assets for the necessities required for that person’s support and maintenance while acting as a caregiver or standing in a position of trust and confidence with the elderly person.<sup>54</sup>

An offender commits a first-degree felony<sup>55</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more.<sup>56</sup> An offender commits a second-degree felony<sup>57</sup> if the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued between \$10,000 and \$50,000.<sup>58</sup> An offender commits a third-degree felony<sup>59</sup> if the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000.<sup>60</sup>

### **Human Trafficking**

Human trafficking is a form of modern-day slavery.<sup>61</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>62</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>63</sup> Any

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<sup>50</sup> Section 825.101(8), F.S., defines “lacks the capacity to consent” as an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, causing an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning their person or property.

<sup>51</sup> Section 825.103(1)(b), F.S.

<sup>52</sup> Section 825.103(1)(c), F.S.

<sup>53</sup> Section 825.103(1)(d), F.S.

<sup>54</sup> Section 825.103(1)(e), F.S.

<sup>55</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>56</sup> Section 825.103(3)(a), F.S.

<sup>57</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>58</sup> Section 825.103(3)(b), F.S.

<sup>59</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>60</sup> Section 825.103(3)(c), F.S.

<sup>61</sup> Section 787.06(1)(a), F.S.

<sup>62</sup> *Id.*

<sup>63</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 Mar. 25, 2023) (hereinafter cited as “DOE Human Trafficking”).

~~minor~~ 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>64</sup> Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.<sup>65</sup> The average ages of youth who are trafficked are 11-13 years old.<sup>66</sup>

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing trafficking, and protecting victims.<sup>67</sup> The Act contains severe penalties and mandates restitution for victims of human trafficking.<sup>68</sup>

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.<sup>69</sup> Approximately 24.9 million people are human trafficking victims in the world.<sup>70</sup> There are approximately 2.5 million victims of human trafficking in the United States.<sup>71</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>72</sup>

### ***Federal Regulation***

The Code of Federal Regulation prohibits the inclusion of adverse information in consumer reporting in cases of human trafficking victims.<sup>73</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>74</sup> Examples of acceptable documentation include a determination made by a court of competent jurisdiction or a signed statement by the consumer attesting that the consumer is a victim of trafficking if the document is certified by specified certain entities (e.g. federal or state entity).<sup>75</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</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 Mar. 25, 2023).

<sup>67</sup> Pub. L. No. 106-386 (2000).

<sup>68</sup> *Id.*

<sup>69</sup> DOE Human Trafficking.

<sup>70</sup> National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited Mar. 25, 2023).

<sup>71</sup> DOE Human Trafficking.

<sup>72</sup> NHTH, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited Mar. 25, 2023).

<sup>73</sup> 12 C.F.R. s. 1022.142

<sup>74</sup> 12 C.F.R. s. 1022.142(c).

<sup>75</sup> 12 C.F.R. s. 1022.142(b)(6).

### *Human Trafficking in Florida*

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,<sup>76</sup> purchasing, patronizing, procuring, or obtaining<sup>77</sup> another person for the purpose of exploitation of that person.<sup>78</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>79</sup> Florida law sets out several circumstances which give rise to human trafficking and specified penalties including, in part:

- Labor<sup>80</sup> or services<sup>81</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>82</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>83</sup> commits a first degree felony;<sup>84</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>85</sup>
- Commercial sexual activity<sup>86</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>87</sup> or

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<sup>76</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>77</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>78</sup> Section 787.06(2)(d), F.S.

<sup>79</sup> Section 787.06(3), F.S.

<sup>80</sup> Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

<sup>81</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>82</sup> Section 787.06(3)(a)1., F.S.

<sup>83</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>84</sup> Section 787.06(3)(c)1., F.S.

<sup>85</sup> Section 787.06(3)(e)1., F.S.

<sup>86</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>87</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.

- Commercial sexual activity<sup>88</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>89</sup> or mentally incapacitated<sup>90</sup> is involved commits a life felony.<sup>91</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>92</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>93</sup>

## Identity Theft

Federal laws establish several offenses for identity theft, such as knowingly and without legal authority producing an identification document, authentication feature, or a false identification document.<sup>94</sup> Other federal law offenses relating to identity theft or fraud include violations of other statutes such as credit card fraud,<sup>95</sup> computer fraud,<sup>96</sup> mail fraud,<sup>97</sup> wire fraud,<sup>98</sup> or financial institutions fraud.<sup>99</sup> Each of these offenses are felonies that carry substantial penalties, including imprisonment up to 30 years, fines, and criminal forfeiture.<sup>100</sup> Victims of identity theft may report such crimes to the Federal Trade Commission.<sup>101</sup>

There are also Florida laws which establish criminal offenses for identity theft, such as willfully and without authorization<sup>102</sup> fraudulently using or possessing personal identification information of another person without first obtaining the person’s consent.<sup>103</sup> Offenses may be first, second,

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<sup>88</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>89</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>90</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>91</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>92</sup> Section 787.06(8)(b), F.S.

<sup>93</sup> Section 787.06(9), F.S.

<sup>94</sup> 18 U.S.C. s. 1028.

<sup>95</sup> 18 U.S.C. s. 1029.

<sup>96</sup> 18 U.S.C. s. 1030.

<sup>97</sup> 18 U.S.C. s. 1341.

<sup>98</sup> 18 U.S.C. s. 1343.

<sup>99</sup> 18 U.S.C. s. 1344.

<sup>100</sup> The United States Department of Justice, *Identity Theft*, Nov. 16, 2020, available at: [Identity Theft \(justice.gov\)](https://www.justice.gov/identity-theft) (last visited Mar. 26, 2023).

<sup>101</sup> The Federal Trade Commission, *Report Identity Theft*, available at: [Report Identity Theft | Federal Trade Commission \(ftc.gov\)](https://www.ftc.gov/identity-theft) (last visited Mar. 26, 2023).

<sup>102</sup> Section 817.568(1)(b), F.S., defines “authorization” as empowerment, permission, or competence to act.

<sup>103</sup> Section 817.568(2), F.S.

or third degree felonies depending on the amount and number of persons affected.<sup>104</sup> Florida laws also contain criminal provisions relating to theft<sup>105</sup> and other fraudulent practices.<sup>106</sup>

### **Elder Exploitation Injunctions**

In 2018, the Legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult.<sup>107</sup> Section 825.1035, F.S., specifies who may file for an injunction, including:

- A vulnerable adult in imminent danger of being exploited;
- The guardian of a vulnerable adult in imminent danger of being exploited;
- A person or organization acting on behalf of the vulnerable adult with the consent of the vulnerable adult or his or her guardian;
- An agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.<sup>108</sup>

Current law also:

- Allows the court to grant a temporary injunction under certain circumstances;
- Lists standards for the court to follow when issuing an injunction; and
- Identifies forms of relief the court may grant to a vulnerable adult in issuing an injunction, including temporary and exclusive use of a shared residence and freezing the assets and credit lines of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult.<sup>109</sup>

The court may issue a temporary injunction *ex parte*, prior to the hearing on the petition, which grants relief as the court deems proper if the court finds:

- An immediate and present danger of exploitation of the vulnerable adult exists;
- There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent;
- Granting a temporary injunction will not disserve the public interest; and
- Such injunction provides for the vulnerable adult's physical or financial safety.<sup>110</sup>

An *ex parte* temporary injunction may not exceed 15 days, and a hearing on the petition for the injunction must be set for a date no later than the last day the temporary injunction is effective.<sup>111</sup>

The court may grant a continuance for the hearing, for good cause shown. However, the *ex parte* injunction is not be extended beyond the initial 15 days as a result of the continuance.<sup>112</sup>

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<sup>104</sup> *Id.*

<sup>105</sup> Ch. 812, F.S.

<sup>106</sup> Ch. 817, F.S.

<sup>107</sup> Chapter 2018-100, L.O.F.; codified in s. 825.1035, F.S.

<sup>108</sup> Section 825.1035(2)(a)1.-5., F.S.

<sup>109</sup> *See* s. 825.1035, F.S.

<sup>110</sup> Section 825.1035(5)(a), F.S.

<sup>111</sup> Section 825.1035(5)(d), F.S.

<sup>112</sup> *Id.*

The court may issue a final injunction upon notice and hearing if the court finds:

- The vulnerable adult is the victim or imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and nonavailability of an adequate remedy at law;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent;
- Where the injunction freezes assets of the respondent, the court finds probable cause that exploitation has occurred, the freeze only affects the proceeds of such exploitation, and there is a substantial likelihood that such assets will be ordered to be returned to the vulnerable adult; and
- The relief provides for the vulnerable adult’s physical or financial safety.<sup>113</sup>

The terms of the injunction may remain in effect until the injunction is modified or dissolved.<sup>114</sup>

### **Foster Care**

The child welfare system identifies families whose children<sup>115</sup> are in danger of suffering or have suffered abuse,<sup>116</sup> abandonment,<sup>117</sup> or neglect<sup>118</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>119</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>120</sup>

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<sup>113</sup> Section 825.1035(8)(a)1., F.S.

<sup>114</sup> Section 825.1035(8)(c), F.S.

<sup>115</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent.”

<sup>116</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>117</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>118</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>119</sup> See s. 39.001(1), F.S.

<sup>120</sup> Section 39.01(29), F.S.

### *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>121</sup> The three letters address credit reports that: (a) should not exist for the child in foster care,<sup>122</sup> (b) has errors from before the youth turned 18,<sup>123</sup> and (c) has errors for foster care youth over 18.<sup>124</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>125</sup>

### III. Effect of Proposed Changes:

**Section 2** of the bill creates s. 559.721, F.S., which prohibits consumer collection agencies from contacting certain debtors once the creditor received specified evidence. A creditor may not contact a debtor regarding a debt that arises from documented elder and economic abuse, human trafficking and economic abuse, identity theft, or a debt that arose when the debtor was in foster care. Also, a creditor may not contact a debtor upon receiving notice that the debtor is protected by an injunction for protection against exploitation of a vulnerable adult.

For the no contact provision to apply to victims of elder and economic abuse, the debtor, or a person with fiduciary responsibility, must provide to the creditor: (a) a police report that a debtor has been the victim of elder abuse by a specified alleged perpetrator, and (b) a signed affidavit swearing under penalty of perjury that the following are true:

- The debtor was the victim of elder abuse as documented in a police report;
- As a result of the abuse, 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 elder abuse.

If the debtor complies with these requirements, the no contact provision applies either (a) for 2 years after the affidavit is provided, or (b) indefinitely, if the perpetrator has been convicted of a crime relating to elder abuse arising from the conduct referenced in the police report.

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>126</sup> that shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim and in which the

<sup>121</sup> The 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/press-releases/cfpb-releases-tools-to-protect-foster-care-children-from-credit-reporting-problems) (hereinafter cited as “CFPB Tools to Protect Foster Care Children”) (last visited Mar. 25, 2023).

<sup>122</sup> The CFPB, *Credit Report Dispute Template for Youth in Foster Care*, available at: [201405\\_cfpb\\_foster-youth-letter\\_minor-dispute.doc \(live.com\)](https://www.consumerfinance.gov/press-releases/cfpb-releases-credit-report-dispute-template-for-youth-in-foster-care) (last visited Mar. 25, 2023).

<sup>123</sup> The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care – Activity Occurred When Minor*, available at: [201405\\_cfpb\\_foster-youth-letter\\_adult-minor-dispute.doc \(live.com\)](https://www.consumerfinance.gov/press-releases/cfpb-releases-credit-report-dispute-template-for-youth-18-or-older-in-foster-care-activity-occurred-when-minor) (last visited Mar. 25, 2023).

<sup>124</sup> The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care*, available at: [201405\\_cfpb\\_foster-youth-letter\\_adult-dispute.doc \(live.com\)](https://www.consumerfinance.gov/press-releases/cfpb-releases-credit-report-dispute-template-for-youth-18-or-older-in-foster-care) (last visited Mar. 25, 2023).

<sup>125</sup> The CFPB Tools to Protect Foster Care Children.

<sup>126</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.

debtor received relocation assistance,<sup>127</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 2 years 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 victims of identity theft, the debtor must provide to the creditor: (a) a Federal Trade Commission identity theft report confirming that the debtor is the victim of identity theft, and (b) a signed affidavit swearing the following are true:

- The debtor was the victim of identity theft as documented in the Federal Trade Commission identity theft report;
- As a result of the identity theft, the debt was incurred in the debtor's name but in no way benefited the debtor; and
- The debt that is the subject of the creditor's contact with the debtor was incurred solely because of identity theft.

If the debtor complies with these requirements, there is no time limit for how long the provision applies.

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, that the following are true:

- The debtor was in foster care; and
- The debt was incurred during the time when the debtor was in foster care.
- If the debtor complies with these requirements, there is no time limit for how long the provision applies.

The bill provides that s. 559.721, F.S., may not be construed or interpreted to discharge an individual from a debt he or she may have incurred as a result of a crime.

“Creditor” is defined as a person required to be registered under s. 559.553, F.S. A consumer collection agency is required to be registered under that section.

**Section 1** provides that out-of-state consumer debt collectors, whether registered or exempt from registration, are subject to sanctions for violating s. 559.721, F.S.

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<sup>127</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.

**Section 3** requires the OFR 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 4** authorizes a debtor to bring a civil action against a person for violating s. 559.721, F.S. in the county where the alleged violator resides or has its principal place of business, or in the county where the violation occurred. The bill makes any person who fails to comply with the new section liable for damages, court costs, and reasonable attorney fees as provided under current law for other prohibited acts under ch. 559, F.S.

**Section 5** provides the bill is effective July 1, 2023.

#### **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 FDCPA and the FCCPA, the provision which is more protective of the consumer or debtor must prevail.<sup>128</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.

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<sup>128</sup> 15 U.S.C. s. 1692n; Section 559.552, F.S.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 559.565, 559.725, 559.77 of the Florida Statutes.  
This bill creates section 559.721 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.