

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 94

SPONSOR: Judiciary Committee and Senator Laurent

SUBJECT: Consumer Collection Practices

DATE: March 6, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Joseph</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute amends ss. 559.72 and 559.77, F.S., which are part of the Florida Consumer Collection Practices Act (FCCPA). Section 559.72, F.S., is amended to add additional activities in which debt collectors are prohibited from engaging. Section 559.77, F.S., which provides civil remedies for violations of the FCCPA, is amended to: 1) revise the amount of damages from the greater of actual damages or \$500 to actual damages and additional statutory damages of up to \$1,000; 2) allow class action plaintiffs to recover additional statutory damages of up to \$1,000 per named plaintiff; and 3) authorize an aggregate award not to exceed the lesser of \$500,000 or 1 percent of the defendant's net worth for all remaining class members. Additionally, a bona fide error affirmative defense and a two-year statute of limitation are added to s. 559.77, F.S.

The committee substitute substantially amends the following sections of the Florida Statutes: 559.72 and 559.77.

II. Present Situation:

Florida Consumer Collection Practices Act

Sections 559.55-559.785, F.S., are known as the Florida Consumer Collection Practices Act (FCCPA). This act provides a series of measures designed to regulate consumer collection agencies and protect Florida citizens from certain debt collection practices that involve fraud, harassment, threats, and other activities. The provisions apply to debts of a consumer arising out of a transaction that is primarily for personal, household, or family purposes.

The FCCPA also allows a debtor to bring a civil action against a person violating the debt collection provisions in s. 559.72, F.S., which currently enumerates 17 prohibited activities. Section 559.77, F.S., provides that upon adverse adjudication, the defendant is liable for actual damages or \$500, whichever is greater, together with court costs and attorney's fees. The statute also provides for punitive damages in the court's discretion and for equitable relief, including enjoining the defendant from further violations. Section 559.77, F.S., also provides for reasonable attorney's fees and costs to be awarded to the defendant in the event the court finds the suit failed to raise a justiciable issue of law or fact.

The prohibited practices contained in the FCCPA do not apply just to collection agencies and debt collectors. Section 559.72, F.S., mandates "no person" shall engage in the prohibited activities. Florida appellate courts have ruled that this provision allows debtors to bring actions against all persons, including natural persons, corporations, and law firms. *See, e.g., Cook v. Blazer Financial Services, Inc.*, 332 So. 2d 677 (Fla. 1st D.C.A. 1976); *Williams v. Streeps Music Company, Inc.*, 333 So. 2d 65 (Fla. 4th D.C.A. 1976); *Sandlin v. Shapiro & Fishman*, 919 F. Supp 1564 (M.D. Fla. 1996) (construing similar provision in the Fair Debt Collection Practices Act (FDCPA), the federal version of the FCCPA).

Federal Fair Debt Collection Practices Act

The federal version of the FCCPA is known as the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. s. 1692, et seq.). Many of the provisions of the FDCPA are similar to the Florida version. However, the federal version does have the following significant differences:

- Unlike Florida, it does not include a \$500 minimum damages award; rather, damages are awardable in an amount up to \$1,000 based on the court's discretion.
- Unlike Florida, it prohibits punitive damages.
- Damages in class action lawsuits are limited to the lesser of \$500,000 or 1 percent of the defendant's net worth; Florida has no limit in the FCCPA.

III. Effect of Proposed Changes:

The committee substitute amends two sections of the Florida Consumer Collection Practices Act (FCCPA). The committee substitute adds two new subsections to the list of prohibited practices contained in s. 559.72, F.S. New subsection (18) prohibits a debt collector from communicating with a debtor if the debt collector knows the debtor is represented by an attorney and the debt collector has knowledge of, or can readily ascertain, such attorney's name and address. The debt collector is not prohibited from contacting a represented debtor if the debtor's attorney fails to respond within a reasonable period of time or the attorney consents to direct communication with the debtor. The committee substitute does not provide any parameters for determining what a reasonable period of time is before a debt collector can contact a debtor whose attorney has failed to respond to a debt collector's communication. The committee substitute also does not prohibit communication with a debtor when the debtor initiates the communication. These changes are similar to the federal version of the FCCPA. *See* 15 U.S.C. s. 1629(f).

New subsection (19) to s. 559.72, F.S., prohibits a debt collector from causing charges to be made to any debtor for communications by concealment of the true purpose of the communication, including collect telephone calls and telegram fees. This change mirrors the federal version of the FCCPA. *See* 15 U.S.C. s. 1629(f).

The second section of the FCCPA amended by the committee substitute is s. 559.77, F.S., which provides civil remedies for violations of the act. The amount of damages that a prevailing debtor can recover is increased from the greater of actual damages or \$500 to actual damages and additional statutory damages of up to \$1,000. The committee substitute provides that, in determining liability for any additional statutory damages, the court shall consider the nature of the defendant's noncompliance with s. 559.72, F.S., the frequency and persistence of such noncompliance, and the extent to which such noncompliance was intentional.

The committee substitute also provides a specific damages provision for class action lawsuits. In any class action lawsuit, the court may award additional statutory damages of up to \$1,000 for each named plaintiff. Also, for all remaining class members, there may be an aggregate award of additional statutory damages not to exceed the lesser of \$500,000 or 1 percent of the defendant's net worth. This change mirrors a similar provision in the federal version of the FCCPA. *See* 15 U.S.C. s. 1692k(a)(2)(B).

The committee substitute adds the "bona fide error" affirmative defense, which provides that a debt collector shall not be held liable if the debt collector shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. This mirrors the similar federal provision in 15 U.S.C. s. 1692(k)(c). Federal courts have construed this provision to mean that the debt collector must prove the act was unintentional and it occurred despite having preventative operations and procedures in place. *See, e.g., Adams v. Law Office of Stuckert & Yates*, 926 F. Supp. 521 (E.D. Pa. 1996).

The committee substitute also includes a two-year statute of limitation. The committee substitute provides that an action brought under s. 559.77, F.S., must be commenced within two years after the date on which the alleged violation occurred. The statute of limitation provision in the federal version is one year. *See* 15 U.S.C. s. 1692(k)(d).

The committee substitute takes effect on July 1, 2001, and applies to any cause of action accruing on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The committee substitute expands the activities that debt collectors are prohibited from doing, thus providing added protection to consumers. The committee substitute also provides the ability for consumers to potentially recover a greater amount of damages from offending debt collectors. The committee substitute also provides some protection to debt collectors that are the subject of class action lawsuits by limiting their liability to a set amount of damages. However, the precise impact on consumers and debt collectors cannot be determined at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
