

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 2086

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Consumer Debt Collection

DATE: March 24, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.			CM	
3.			GA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Part VI of ch. 559, F.S., governs the regulation of consumer debt collection agencies. The Office of Financial Regulation (OFR) is responsible for the registration and regulation of consumer debt collection agencies. The Attorney General is authorized to initiate actions in any federal court against out-of-state consumer collection agencies for violations of this part. The bill provides the following regulatory and enforcement changes:

- Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.
- Codifies the prohibited acts in the federal Fair Debt Collection Act, providing greater consumer protections, and clarifies existing Florida Statutes.
- Provides that a violation of part VI, ch. 559, F.S., is actionable by the Attorney General as a violation of the Florida Deceptive and Unfair Trade Practices Act and such violation is subject to the enforcement remedies and penalties under Part II of ch. 501, F.S.
- Increases administrative fines for violations, currently capped at \$1,000 to \$25,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.

- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency. Investigations would be based on the nature and severity of an alleged violation rather than the accumulation of five unresolved sworn complaints.

This bill creates the following sections of the Florida Statutes: 559.5522, 559.5524, 559.5551, 559.5554, 559.566, 559.726, and 559.727. The bill amends the following sections of the Florida Statutes: 559.55, 559.551, 559.552, 559.553, 559.555, 559.565, 559.715, 559.72, 559.725, 559.730, 559.77, 559.78, and 559.785. The bill repeals the following sections of the Florida Statutes: 559.563.

II. Present Situation:

Consumer Debt Collection Agencies -- Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. Section 559.725, F.S., designates the Department of Financial Services (DFS) as the registry for consumer complaints. Once the DFS receives a sworn complaint against an entity, the DFS refers the complaints to the appropriate regulatory authority or the Florida Bar, if appropriate. However, in January 2008, the OFR and the DFS mutually agreed to delegate the registry to the OFR.

The OFR is responsible for the registration¹ of consumer collection agencies and has limited investigative and enforcement powers and duties. Any out-of-state debt collector who collects or attempts to collect consumer debt, prior to registration is subject to an administrative fine, not to exceed \$1,000.² Section 559.72, F.S., outlines prohibited practices as they relate to the collection of consumer debts. Such practices range from prohibitions against persons impersonating a law enforcement officer or government agent to using threats of force or violence. Section 559.725, F.S., authorizes the OFR to investigate with the accused collection agency by means of written communication. However, the OFR has no authority in examining the actual books and records of a consumer collection agency in determining the factual basis of a complaint. Before the OFR takes action, there must be at least five, unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency.

The OFR is required to notify the appropriate state attorney or the Attorney General for cases pertaining to out-of-state consumer debt collectors, of any determination by the OFR of a violation of the requirements of this part.³ State attorneys may apply to a court of competent jurisdiction upon the sworn affidavit of any person alleging a violation of any of the provisions of this part.⁴

Consumer Debt Collection Agencies -- Currently, there are 1,313 consumer collection agencies registered with the OFR. Since January 2008, the OFR has not levied any fines, nor has it suspended or revoked any registrations because it has not documented five unresolved complaints by five different consumers against one specific consumer collection agency. The

¹ Section 559.555, F.S.

² Section 559.565, F.S.

³ Section 559.725, F.S.

⁴ Section 559.78, F.S.

current statutory framework prevents the OFR from initiating disciplinary action against a debt collector until the OFR receives at least five, unresolved, sworn complaints from five different consumers within a 12-month period, regardless of the severity of the alleged violation. The OFR does not have the statutory authority to examine or investigate the books or records of a debt collector to determine the legitimacy of the complaint.

The OFR's authority to discipline registrants is limited. For example, the OFR may not revoke or suspend a registration if the collection agency can show by a preponderance of the evidence that the violations were not intentional and resulting from a bona fide error.⁵ The OFR must also consider the registrant's volume of business when deciding whether to suspend or revoke a registration. The law allows the OFR to fine a registrant, not to exceed \$1,000 for a violation of the prohibited practices provisions. However, any action by the OFR to revoke, suspend, or issue an administrative fine must be taken within two years of the date of the last violation upon which the action is founded. The OFR does not have the authority to impose significant administrative sanctions against a consumer collection agency that fails to register. Rather, the act provides it is a first-degree misdemeanor to operate a consumer collection agency without first registering with the office, unless the entity is exempt.⁶

The federal version of Florida's Consumer Collection Agency Act is known as the Fair Debt Collection Practices Act (FDCPA). Many of the provisions of the federal act are similar to the Florida Consumer Collection Agency Act. However, there are some key consumer and regulatory provisions in the FDCPA that are not included under Florida's law: provisions pertaining to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

III. Effect of Proposed Changes:

Consumer Debt Collection

Registration -- The bill strengthens registration requirements by authorizing the adoption of rules by the Financial Services Commission that oversees the OFR and establishes the following time period during which an applicant is barred from the initial registration or renewal:

- A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft;
- A 15-year disqualifying period for felonies involving moral turpitude;
- A 7-year disqualifying period for all other felonies; and
- A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

The bill increases the annual registration fee from \$200 to \$600 to fund the additional positions that will be necessary to provide the enhanced regulation and enforcement. The bill also requires: state and federal criminal background checks for an applicant and any control person of the

⁵ Section 559.730, F.S.

⁶ Section 559.785, F.S.

applicant at the time of the initial registration and subsequent renewal; and the maintenance of a surety bond in the amount of at least \$50,000. The bill also revises the entities that are exempt from registration to conform to the exemptions provided under the federal act.

In order to implement the new registration requirements, effective as of October 1, 2010, all current registrations for consumer collection agencies, due to expire between October 1 and December 31, 2010, will expire permanently March 31, 2011. Effective January 1, 2011, all registrations issued between January 1, 2011, and March 31, 2011, will expire March 30, 2012.

Under current law, a consumer collection agency must meet minimal requirements to register with the OFR. The applicant is required to submit an application and pay a registration fee. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.⁷

Regulatory and enforcement powers -- The bill provides the following:

- Authorizes the OFR to investigate any debt collector whom they believe has violated any provision of part VI of ch. 559, F.S. Under current law, there must be at least five, unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency prior to the OFR initiating action to investigate a complaint.
- Requires a registered consumer collection agency to respond in writing within 20 days after receipt of a written request from the OFR, concerning a consumer complaint.
- Requires registrants to maintain specified books and records for 5 years and allows the OFR access to such books and records.
- Increases maximum administrative fines from \$1,000 to \$25,000 for violations of the prohibited acts delineated in s. 559.72, F.S.
- Increases the maximum administrative fine from \$1,000 to \$25,000 for a consumer collection agency that collects or attempts to collect debt in Florida prior to registering with the OFR. The collection agency would also be subject to reasonable attorney fees and court costs in any successful action by the state to collect such fine.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions under s. 559.72, F.S. Under current law, the OFR may take action if a registrant has engaged in repeated violations, establishing a clear pattern of abuse of prohibited acts under this section.
- Authorizes the OFR to issue subpoenas, issue cease, and desist-orders.
- Increases the penalties for unregistered activity, from a misdemeanor of the first degree, to a felony of the third degree.
- Provides that a violation of part VI, ch. 559, F.S., is actionable by the Attorney General as a violation of the Florida Deceptive and Unfair Trade Practices Act and such violation is subject to the enforcement remedies and penalties under Part II of ch. 501, F.S.

⁷ Section 559.555, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The registration fee for consumer debt collection agencies increases from \$200 to \$600 per year to fund the additional regulatory and enforcement staffing required by the bill. Applicants would incur a fee of \$43.25 for background checks for each “control person” of the consumer debt collection agency.

B. Private Sector Impact:**Consumer Debt Collection**

The bill expedites the complaint process required under ch. 559, F.S. for consumers, by eliminating the requirement of a sworn complaint. A sworn complaint imposes a chilling effect on persons seeking the resolution of a complaint.

The bill provides greater protections for consumers by increasing regulatory oversight and enforcement authority by the OFR and the Attorney General. The OFR would have broad, discretionary authority to promptly investigate the books and records of a consumer collection agency. The bill increases administrative fines, currently capped at \$1,000, to \$25,000, and allows the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies. The bill also provides that any violation of part VI, ch. 559, F.S., is actionable by the Attorney General as a violation of the Florida Deceptive and Unfair Trade Practices Act and such violation is subject to the enforcement remedies and penalties under Part II of ch. 501, F.S.

C. Government Sector Impact:

The Office of Financial Regulation provided the following fiscal impacts.

ESTIMATED FISCAL IMPACT

	(FY 10-11)	(FY 11-12)	(FY 12-13)
A. Revenues			
1. Recurring			
Application and renewal fees (\$600 x 1,477)	\$ 886,200	\$ 886,200	\$ 886,200
2. Non-Recurring			
Total Revenues	\$ 886,200	\$ 886,200	\$ 886,200
B. Expenditures			
1. Recurring – 5 FTE			
Salary and Benefits	\$ 376,512	\$ 376,512	\$ 376,512
Expense	\$ 62,540	\$ 62,540	\$ 62,540
Transfer to DMS	\$ 1,995	\$ 1,995	\$ 1,995
Service Charge to General Revenue (8%)	\$ 70,896	\$ 70,896	\$ 70,896
Total Recurring*	\$ 511,943	\$ 511,943	\$ 511,943
*Recurring Expenses already incurred but not included above, \$205,118 annually (3 FTE)			
2. Non-Recurring			
Expense	\$ 19,385		
OCO	\$ 6,500		
Total Non-Recurring	\$ 25,885		
Total Expenditures	\$ 537,828	\$ 511,943	\$ 511,943

Additional OFR Fiscal Comments

For the last three fiscal years, the OFR has had 1,102, 1,160 and 1,242 active licensees, respectively, in the consumer collection industry, and anticipates 1,296 by the end of FY 09-10. This represents a 4 – 7 percent annual growth rate. Approximately 80 percent of the active registrants renew each year. New applications remained fairly stable at 350 per year, until a jump to 450 in FY 08-09. Based on the numbers received year-to-date, the OFR anticipates receiving 440 new applications for the current fiscal year. The OFR does not anticipate continued growth in registrations due to the fingerprint requirement; therefore, the OFR only anticipates receiving 440 new applications and 1,037 renewals each year.

Based on the additional requirement for new applications and renewals (including fingerprint review), one additional analyst is necessary in licensing. Three additional examiners would be needed to conduct investigations of consumer complaints. Due to the stronger statutory authority, it is anticipated that at least one attorney is needed for licensing for investigative and enforcement issues. Positions are requested at 20 percent

above the minimum salary for the different class codes due to the knowledge required of the positions. Additional expense dollars are requested to allow for travel related to the complaint investigations.

Implementation of the proposed bill will also require the OFR to make changes to the Regulatory and Licensing (REAL) System. The necessary changes are minimal and will be completed by the vendor within the maintenance contract at no additional charge.

The revenue identified above would be the total revenue generated from application and renewal fees. In January 2010, the OFR provided information on the program under the current statute. The \$285,485 in Consumer Collection revenue identified the information for FY 2008-09 would be replaced by the revenue above. There are currently three positions dedicated to licensing and complaint functions with an annual expenditure of \$205,118.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 24, 2010:

Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency, by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR.

- Strengthens registration requirements by authorizing the adoption of rules by the Financial Services Commission that oversees the OFR and establishes the following time period during which an applicant is barred from the initial registration or renewal:
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- Increases administrative fines for violations, currently capped at \$1,000 to \$25,000. It would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority in promptly investigating the books and records of a consumer collection agency.
- Increases the registration fee from \$200 to \$600 to fund the additional positions that will be necessary to provide the enhanced regulation and enforcement.

B. Amendments:

None.