



## **WHITE PAPER: HB 413 FLORIDA CONSUMER COLLECTION PRACTICES ACT**

### **I. SUMMARY**

The FTC top 10 consumer complaints for 2012, the last year the data was compiled, places debt collection complaints as number two among Florida consumers, after identity theft.<sup>1</sup> This data is the same for the military.<sup>2</sup> The complaints include both third party debt collection as well as creditor debt collection.

It is timely that HB 413 addresses efforts begun with the 2010 legislation to rein in an industry notorious for engaging in abusive practices. Incorporating practices similar to those that have been used to monitor mortgage brokers, for monitoring debt collectors, is a wise move for the Office of Financial Regulation. However, HB 413, in creating these protections, makes changes to Chapter 559, Part VI, that would reduce consumer protections, thus voiding any benefit from the bill.

### **II. BACKGROUND**

The Florida Consumer Collection Practices Act found at Part VI, Chapter 559, Florida Statutes, governs the regulation of consumer debt collection. The Act is to

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<sup>1</sup>Consumer Sentinel Network Data Book for January – December 2012, Federal Trade Commission, February 2013, [http://www.ftc.gov/sites/default/files/documents/reports\\_annual/sentinel-cy-2012/sentinel-cy2012.pdf](http://www.ftc.gov/sites/default/files/documents/reports_annual/sentinel-cy-2012/sentinel-cy2012.pdf).

<sup>2</sup> Id.

protect consumers from collection practices that involve fraud, harassment, threats, and other unscrupulous activities. The Office of Financial Regulation (OFR) is responsible for the registration of consumer collection agencies and investigation of consumer complaints. Consumer collection agencies must register with OFR. A consumer collection agency is defined to include any debt collector. The Department of Financial Services is responsible for promulgating rules, as specifically stated in law.

Sec. 559.715, Florida Statutes, addresses the assignment of consumer debts. This is applicable to the junk debt buying industry, an industry that has grown exponentially in the last few years, and that engages in buying and selling old debt for collection. Debt buyers pay, on average, \$.04 on the dollar for charged off debt according the first FTC study recently completed on the debt buying industry.<sup>3</sup> The FTC found that most debt buyers did not receive any documentation of the underlying debt at the time the debt was purchased. Debt paper may be bought and sold several times by resellers, according to the FTC. For these, and other reasons, sec. 559.715, Florida Statutes, provides for the consumer to receive timely notice when a debt is assigned to another debt collector. Debt collectors argue that when sec. 559.715 was initially adopted in Florida in 1989, (amended 1993 and 2010), the junk debt buying industry had not grown into the industry it is today. This does not nullify that the protection in sec. 559.715 remains crucial for consumers today. The section provides that consumers “will get written notice of such assignment as soon

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<sup>3</sup> The Structure and Practices of the Debt Buying Industry, Federal Trade Commission, January 2013, <http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>

as practical after the assignment is made, but at least 30 days before any action to collect the debt.” This provides important notice to the consumer about who will be collecting the debt. Without timely notice of assignment, consumers will be easy prey for anyone claiming to be collecting a debt, making the elderly particularly easy targets for identity theft, already the number one consumer complaint in Florida.

Florida provides protection to consumers against collection practices that involve fraud, harassment, threats, and other unscrupulous activities by anyone trying to collect a debt. For example, if the local used car shop finances the car sale for a consumer and they later are collecting on the car note themselves, they may not engage in fraud, harassment, threats, and other unscrupulous activities in collecting the debt. This important expansion of federal law, found at sec. 559.72, provides a level playing field for anyone collecting a debt, regardless of whether they are a registered debt collector or a “first party” debt collector.

### **III. CHANGES PROPOSED BY HB 413**

#### **A. The role of the Financial Services Commission and the Office of Financial Regulation**

HB 413 builds on the efforts of 2010, to clearly provide that the Financial Services Commission is responsible for adoption of rules for the Florida Consumer Collection Practices Act and the Office of Financial Regulation is responsible for the administration and enforcement of the Act. (Sections 1 and 5)

#### **B. Registration requirements**

A definition for “control person” is added in HB 413 and defined as any entity that directly or indirectly manages or creates policy of a company, including a

company's executive officers, a corporation's shareholders with at least 10 percent interest, a partnerships general or limited partners and special partners with 10 percent contribution, the trustee of a trust, and a limited liability company's elected managers and member with 10 percent contribution. The control person is subject to most of the requirements of the applicant and registrant, a good addition.

However, employees who may have substantial control and contact with the consumer are not required to meet the requirements of the applicant or registrant.

The commission must establish rules barring an "applicant's control persons" from registration for certain specific time periods for specified criminal convictions or guilty or nolo pleas. It is not clear if the debt collector applicant is covered or just the defined control persons and whether these are assumed to include the applicant. It is notable that there is no permanent bar for felonies involving dishonesty, breach of trust or money laundering, only a 15 year disqualifying period and the rules must provide for mitigating factors for certain crimes.

The applicant and renewal fee remain at \$200, even though considerable new requirements are placed on OFR. All the applicant's control persons must submit fingerprints and will have a criminal history background check. The application will be denied if the "applicant or one of the applicant's control persons has committed any violation of this part" or is subject to any criminal prosecution in any jurisdiction which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.

HB 413 further requires registrants and any control person to notify OFR within a specific time period of certain criminal convictions as well as a change in any control person.

### **C. Grounds for disciplinary action**

Disciplinary actions may be taken against a person registered or “required to be registered” or a control person. The acts leading to disciplinary action include fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction and similar action in any business transaction or aiding, assisting or conspiring with another in such activity; a final judgment based on fraud, embezzlement, misrepresentation, or deceit and many other transgressions. A person in violation shall be subject to reprimand, or suspension, revocation or denial of license, imposition of a fine up to \$10,000 and an administrative fine.

### **D. Assignment of Debt**

HB 413 removes crucial protections for consumers providing for the assignment of debt. Under the bill, the assignee (the person buying the debt) is given no time frame within which to notify the consumer of the debt assignment. This makes the provision useless – how does one enforce an act that has no requirements? The bill refers to the federal law at 15 U.S.C. s. 1692g, however, it does not require notice to the consumer before the commencement of debt collection activity. If the federal notice were to act as compliance with Florida’s assignment of debt provisions, as the bill intends, then consumers would not receive notice of who is collecting their debt before the debt collection process has begun.

This would lead consumers subject to guessing whether a debt junk buyer is legitimate or not when trying to collect a debt.

#### **E. First party debt collectors**

Changing the application of prohibited practices at sec. 559.72, Florida Statutes, to apply only to debt collectors would leave consumers in Florida exposed to the possibility of fraud, harassment, threats, and other unscrupulous activities by first party debt collectors. First party debt collectors are the original creditor. Florida's law allows for debt collectors to expect that creditors collecting their own debts will be subject to the same requirements as consumer collection agencies. HB 413 would remove this consumer protection and allow creditors to engage in collection practices that are banned for debt collectors. These practices include activities no one collecting a debt should engage in: use or threaten force or violence; communicate with the consumer's employer about the debt; use profane, obscene, or vulgar language; try to enforce a debt that is not legitimate; simulate judicial process; pretend to be an attorney; and many others.

#### **IV. CONCLUSION – OPPOSE HB 413 IN ITS CURRENT FORM**

HB 413 attempts to enhance the ability of the Office of Financial Regulation to monitor the activities of debt collectors. However, consumers would lose important protections they have against any person engaging in fraud, harassment, threats, and other unscrupulous activities in collecting a debt. Without amending the bill to continue these important protections for consumers, HB 413 should not be passed by the Florida Legislature.