

By the Committee on Banking and Insurance; and Senator Crist

311-2235-04

1                                   A bill to be entitled  
2           An act relating to collection practices;  
3           amending s. 559.544, F.S.; requiring an  
4           applicant to apply to the Office of Financial  
5           Regulation to register as a commercial  
6           collection agency; amending s. 559.545, F.S.;  
7           requiring an applicant to comply with certain  
8           procedures to register as a commercial  
9           collection agency; prescribing that a  
10          registration that is not renewed expires  
11          automatically; providing procedures by which a  
12          commercial collection agency may reinstate its  
13          registration; increasing the registration fee;  
14          prescribing when an applicant must be  
15          investigated; amending s. 559.546, F.S.;  
16          requiring each applicant to purchase a surety  
17          bond; creating s. 559.5471, F.S.; detailing the  
18          powers and duties of the office with respect to  
19          regulating commercial collection agencies;  
20          authorizing the commission to adopt rules;  
21          authorizing the office to issue subpoenas and  
22          subpoenas duces tecum under certain conditions;  
23          providing procedures the office may use when a  
24          person does not comply with a subpoena;  
25          permitting a court to grant injunctive or other  
26          relief when a person does not comply with a  
27          subpoena; authorizing the court to award  
28          attorney's fees and costs to the office under  
29          certain circumstances; creating s. 559.5473,  
30          F.S.; authorizing the office to seek injunctive  
31          relief under certain circumstances; authorizing

1 a court to appoint a receiver under specified  
2 conditions; creating s. 559.5474, F.S.;  
3 authorizing the office to issue cease and  
4 desist orders; creating s. 559.5475, F.S.;  
5 permitting specified documents made by a  
6 financial examiner to be admitted into evidence  
7 under certain conditions; creating s. 559.5476,  
8 F.S.; requiring each registrant to maintain  
9 business records; authorizing the commission to  
10 adopt rules to designate the types of  
11 information a registrant must maintain;  
12 creating s. 559.5477, F.S.; providing for  
13 administrative remedies; specifying the grounds  
14 under which a commercial collection agency may  
15 have its registration suspended or revoked;  
16 permitting a commercial collection agency to  
17 terminate its registration; authorizing the  
18 office to impose an administrative fine up to  
19 \$1,000 per violation; amending s. 559.55, F.S.;  
20 providing definitions; amending s. 559.552,  
21 F.S., relating to the relationship of state and  
22 federal laws; providing for construing  
23 interpretations of the Federal Trade Commission  
24 and the federal courts when applying state and  
25 federal laws and rules relating to consumer  
26 collection practices; amending s. 559.553,  
27 F.S.; requiring an applicant to provide certain  
28 information to register as a consumer  
29 collection agency; amending s. 559.555, F.S.;  
30 revising application procedures for consumer  
31 collection agencies; requiring an applicant to

1 furnish specified information; requiring a  
2 surety bond; increasing the registration fee;  
3 requiring an applicant to report specified  
4 information on crimes and licensure discipline  
5 committed by the applicant; listing the grounds  
6 for denying an application for registration;  
7 providing that registrations automatically  
8 expire; providing procedures for a consumer  
9 collection agency to renew its registration;  
10 amending s. 559.565, F.S.; providing that an  
11 out-of-state consumer collection agency  
12 otherwise subject to this state's jurisdiction  
13 is subject to sanctions for committing  
14 prohibited practices; amending s. 559.72, F.S.;  
15 specifying certain activities as prohibited  
16 consumer collection practices; amending s.  
17 559.725, F.S.; authorizing the office to  
18 conduct investigations of consumer complaints;  
19 providing for the examination of a registrant;  
20 creating s. 559.726, F.S.; detailing the powers  
21 and duties of the office with respect to  
22 regulating consumer collection agencies;  
23 authorizing the commission to adopt rules;  
24 authorizing the office to issue subpoenas and  
25 subpoenas duces tecum under certain conditions;  
26 providing procedures the office may use when a  
27 person does not comply with a subpoena;  
28 permitting a court to grant injunctive or other  
29 relief when a person does not comply with a  
30 subpoena; authorizing the court to award  
31 attorney's fees and costs to the office under

1 certain circumstances; creating s. 559.7262,  
2 F.S.; authorizing the office to seek injunctive  
3 relief under certain circumstances; creating s.  
4 559.7263, F.S.; authorizing the office to issue  
5 cease and desist orders; creating s. 559.7264,  
6 F.S.; permitting certain documents prepared by  
7 a financial examiner to be admitted into  
8 evidence under specified conditions; creating  
9 s. 559.7265, F.S.; requiring each registrant to  
10 maintain business records; authorizing the  
11 commission to adopt rules to designate the  
12 types of information a registrant must  
13 maintain; amending s. 559.730, F.S.; providing  
14 administrative remedies for violating  
15 prohibited consumer collection practices;  
16 specifying the prohibited practices for which a  
17 consumer collection agency's registration may  
18 be suspended or revoked; providing that a  
19 consumer collection agency may terminate its  
20 registration; authorizing the office to assess  
21 an administrative fine of up to \$1,000 per  
22 violation; amending s. 559.77, F.S.; providing  
23 for construing interpretations of the Federal  
24 Trade Commission and the federal courts when  
25 applying state and federal laws and rules;  
26 amending s. 559.785, F.S.; specifying certain  
27 activities that subject a person to a criminal  
28 penalty; making an appropriation; repealing ss.  
29 559.547 and 559.563, F.S., relating to void  
30 registrations; providing an effective date.  
31

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 559.544, Florida Statutes, is  
4 amended to read:

5 559.544 Registration required; exemptions.--

6 (1) A ~~No~~ person may not ~~shall~~ engage in business in  
7 this state as a commercial collection agency, as defined in  
8 this part, or continue to do business in this state as a  
9 commercial collection agency, unless the person ~~without~~ first  
10 registers with the office according to ~~registering in~~  
11 ~~accordance with~~ this part and thereafter maintains the  
12 ~~maintaining such~~ registration.

13 (2) Each commercial collection agency doing business  
14 in this state shall register with the office and annually  
15 renew the ~~such~~ registration, providing the registration fee,  
16 information, and surety bond required by this part.

17 (3) A ~~No~~ registration is not ~~shall be~~ valid for any  
18 commercial collection agency transacting business at any place  
19 other than that designated in the registration unless the  
20 office is first notified in advance of any change of location.  
21 A registration under this part is not transferable or  
22 assignable. Any commercial collection agency desiring to  
23 change its registered name, location, or agent for service of  
24 process at any time other than renewal of the registration  
25 must ~~shall~~ notify the office of the ~~such~~ change prior to the  
26 change.

27 (4) The office may ~~shall~~ not accept an application for  
28 ~~any~~ registration for any commercial collection agency as  
29 validly made and filed with the office under this section  
30 unless the application ~~registration~~ information furnished to  
31 the office by the applicant ~~registrant~~ is complete under

1 ~~pursuant to~~ s. 559.545 and facially demonstrates that the  
2 applicant ~~such registrant~~ is qualified to engage in business  
3 as a commercial collection agency, including specifically that  
4 ~~neither the applicant or registrant nor~~ any principal of the  
5 applicant ~~registrant~~ has not engaged in any unlawful  
6 collection practices, dishonest dealings, acts of moral  
7 turpitude, or other criminal acts that reflect an inability to  
8 engage in the commercial collection agency business. The  
9 office shall inform any person whose application for  
10 registration is denied ~~rejected~~ by the office of the fact of  
11 and basis for the denial ~~such rejection~~. A prospective  
12 registrant is ~~shall be~~ entitled to be registered when her or  
13 his or its application ~~registration~~ information is complete on  
14 its face, the applicable registration fee has been paid, and  
15 the required evidence of current bond is furnished to the  
16 office.

17 (5) This section does ~~shall~~ not apply to:

18 (a) A member of The Florida Bar, unless the ~~such~~  
19 person is primarily engaged in the collection of commercial  
20 claims. "Primarily engaged in the collection of commercial  
21 claims" means that more than one-half of the person's income  
22 ~~of such person~~ arises from the business of soliciting  
23 commercial claims for collection or collecting commercial  
24 claims.

25 (b) A financial institution authorized to do business  
26 in this state and any wholly owned subsidiary and affiliate  
27 thereof.

28 (c) A licensed real estate broker.

29 (d) A title insurance company authorized to do  
30 business in this state.

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1           (e) A collection agency that ~~which~~ is not primarily  
2 engaged in the collection of commercial claims. "Not  
3 primarily engaged in the collection of commercial claims"  
4 means that less than one-half of the collection revenue of the  
5 ~~such~~ agency arises from the collection of commercial claims.

6           (f) A consumer finance company and any wholly owned  
7 subsidiary and affiliate thereof.

8           (g) A person licensed pursuant to chapter 520.

9           (h) A credit grantor.

10          (i) An out-of-state collector as defined in this part.

11          (j) An FDIC-insured institution or subsidiary or  
12 affiliate thereof.

13          Section 2. Section 559.545, Florida Statutes, is  
14 amended to read:

15           559.545 Registration of commercial collection  
16 agencies; procedure.--A ~~Any~~ person who wishes to apply for  
17 registration ~~register~~ as a commercial collection agency in  
18 compliance with this part must ~~shall~~ do so on forms adopted by  
19 the commission and furnished by the office. Any renewal of  
20 registration shall be made between October 1 and December 31  
21 of each year. In applying for ~~registering~~ or renewing a  
22 registration as required by this part, each commercial  
23 collection agency shall furnish to the office a registration  
24 fee, information, and surety bond, as follows:

25           (1) The applicant or registrant shall pay to the  
26 office a registration fee of \$800 ~~\$500~~. All amounts collected  
27 shall be deposited to the credit of the Regulatory Trust Fund  
28 of the office.

29           (2) The applicant or registrant must ~~shall~~ provide the  
30 following information:

31

1           (a) The business name or trade name of the commercial  
2 collection agency, the current mailing address of the agency,  
3 and the current business location of each place from which the  
4 agency operates either a main or branch office, with a  
5 designation of which location constitutes its principal place  
6 of business.

7           (b) The full names, current addresses, current  
8 telephone numbers, and social security numbers, or federal  
9 identification numbers of any corporate owner, of the  
10 applicant's or registrant's owners or corporate officers and  
11 directors, and of the Florida resident agent of the  
12 registering agency.

13           (c) A statement as to whether the applicant or  
14 registrant is a domestic or foreign corporation, together with  
15 the state and date of incorporation, charter number of the  
16 corporation, and, if a foreign corporation, the date the  
17 corporation first registered to do business in this state.

18           (d) A statement listing each county in this state in  
19 which the applicant or registrant is currently doing business  
20 or plans to do business within the next calendar year,  
21 indicating each county in which the applicant or registrant  
22 holds an occupational license.

23           (e) A statement listing each county in this state in  
24 which the applicant or registrant is operating under a  
25 fictitious name or trade name other than that of the applicant  
26 or registrant, indicating the date and place of registration  
27 of any such fictitious name or trade name.

28           (f) A statement listing the names of any other  
29 corporations, entities, or trade names through which any owner  
30 or director of the applicant or registrant was known or did  
31 business as a commercial or consumer collection agency within

1 the 5 calendar years immediately preceding the year in which  
2 the agency is registering.

3 (g) A statement clearly identifying and explaining any  
4 occasion on which any professional license or occupational  
5 license held by the applicant or registrant, any principal of  
6 the applicant or registrant, or any business entity in which  
7 any principal of the applicant or registrant was the owner of  
8 10 percent or more of ~~the such~~ business was the subject of any  
9 suspension, revocation, or other disciplinary action.

10 (h) A statement clearly identifying and explaining any  
11 occasion of a finding of guilt of any crime involving moral  
12 turpitude or dishonest conduct on the part of any principal of  
13 the applicant or registrant.

14 (i) The commission or office may require each  
15 applicant for a commercial collection agency registration to  
16 provide any information and documentation reasonably necessary  
17 to make a determination of the applicant's eligibility for  
18 registration.

19 (3) The applicant or registrant shall furnish to the  
20 office evidence, as provided in s. 559.546, of the applicant  
21 or registrant having a current surety bond in the amount of  
22 \$50,000, valid for the year of registration, paid for and  
23 issued for the use and benefit of any credit grantor who  
24 suffers or sustains any loss or damage by reason of any  
25 violation of ~~the provisions of~~ this part by the applicant or  
26 registrant, or by any agent or employee of the applicant or  
27 registrant acting within the scope of her or his employment,  
28 and issued to ensure conformance with ~~the provisions of~~ this  
29 part.

30 (4) Upon the filing of an application for registration  
31 and payment of all applicable fees, the office shall, unless

1 the application is to renew or reactivate an existing  
2 registration, investigate the applicant. If the office  
3 determines that registration should be granted, it shall  
4 register the applicant for a period not to exceed 1 year.

5 (5) A registration that is not renewed by the end of  
6 the calendar year expires automatically. A commercial  
7 collection agency that has not renewed its registration by the  
8 time the registration period expires may request reactivation  
9 of its registration. The registrant must file its request with  
10 the office on or before January 31 of the year following the  
11 year of expiration. The request must contain any information  
12 the office requires, together with the registration fee  
13 required in subsection (1), and a late fee equal to the  
14 registration fee. Any reactivation of registration granted by  
15 the office during the month of January is deemed retroactive  
16 to January 1 of that year. Any registrant that engages in  
17 business as a commercial collection agency after its  
18 registration has expired violates s. 559.548(1).

19 (6) An initial or renewal registration application is  
20 deemed received for purposes of s. 120.60 upon receipt of the  
21 completed application form prescribed by commission rule, the  
22 application fee of \$800, and any other fee prescribed by law  
23 or rule.

24 Section 3. Section 559.546, Florida Statutes, is  
25 amended to read:

26 559.546 Bond; evidence of current and valid  
27 bond.--Pursuant to s. 559.545, the applicant or registrant  
28 shall provide to the office evidence that the applicant or  
29 registrant has been issued a current and valid surety bond as  
30 required by this part.

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1           (1) In addition to each registration filed under  
2 ~~pursuant to~~ s. 559.545 and any renewal of the such  
3 registration, each applicant or registrant shall furnish to  
4 the office the following:

5           (a) A copy of the surety bond, which bond shall be one  
6 issued by a surety known by the applicant or registrant to be  
7 acceptable to the office.

8           (b) A statement from the surety that the annual  
9 premium for the bond has been paid in full by the applicant or  
10 registrant.

11           (c) A statement from the surety that the bond issued  
12 by the surety meets the requirements of this part.

13           (2) The liability of the surety under any bond issued  
14 under ~~pursuant to~~ the requirements of this part may ~~shall~~ not  
15 exceed in the aggregate the amount of the bond, regardless of  
16 the number or amount of any claims filed or which might be  
17 asserted against the surety on the such bond. If multiple  
18 claims are filed against the surety on any ~~such~~ bond in excess  
19 of the amount of the bond, the surety may pay the full amount  
20 of the bond to the office and is ~~shall~~ not ~~be~~ further liable  
21 under the bond. The office shall hold the such funds for  
22 distribution to claimants and administratively determine and  
23 pay to each claimant the pro rata share of each valid claim  
24 made against the funds within 6 months after the date of the  
25 filing of the first claim against the surety.

26           Section 4. Section 559.5471, Florida Statutes, is  
27 created to read:

28           559.5471 Powers and duties of the Office of Financial  
29 Regulation.--

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1           (1) Compliance with this part shall be enforced by the  
2 office, except when enforcement is specifically committed to  
3 another agency.

4           (2) The commission may adopt rules under ss.  
5 120.536(1) and 120.54 to implement and administer this part.  
6 The commission may adopt a rule to require electronic  
7 submission of any form, document, or fee required by this  
8 part, provided that the rule reasonably accommodates a person  
9 with a technological or financial hardship. The commission may  
10 adopt a rule setting forth the criteria and procedures for  
11 obtaining an exemption due to a technological or financial  
12 hardship. The commission may adopt a rule to accept  
13 certification of compliance with the requirements of this part  
14 in lieu of requiring submission of specified documents.

15           (3) All fees, charges, and fines collected by the  
16 office under this part shall be deposited to the credit of the  
17 Regulatory Trust Fund of the office.

18           (4) The office, or any duly authorized representative,  
19 including any financial examiner or analyst, financial  
20 investigator, or attorney at law, may:

21           (a) Issue, revoke, quash, or modify and serve  
22 subpoenas to compel the attendance of witnesses and subpoenas  
23 duces tecum to compel the production of all books, accounts,  
24 records, and other documents and materials relevant to an  
25 examination or investigation. The office may exercise these  
26 powers even if the subject of the investigation or examination  
27 is exempt from registration.

28           (b) Administer oaths and affirmations to any person.

29           (c) Take, or cause to be taken, testimony and  
30 depositions.

31

1           (5)(a) If the office determines that a person is in  
2 substantial noncompliance with a subpoena or subpoena duces  
3 tecum that the office issued or caused to be issued, it may  
4 petition a court of competent jurisdiction in the county where  
5 the person subpoenaed resides or has his, her, or its  
6 principal place of business, for an order requiring the person  
7 to appear and testify and to produce the books, accounts,  
8 records, and other documents that are specified in the  
9 subpoena duces tecum.

10           (b) The court may grant injunctive relief restraining  
11 the person from advertising, promoting, soliciting, entering  
12 into, offering to enter into, continuing, or completing any  
13 transaction involving commercial debt collection. The court  
14 may grant such other relief, including, but not limited to,  
15 the restraint, by injunction or appointment of a receiver, of  
16 any transfer, pledge, assignment, or other disposition of the  
17 person's assets or any concealment, alteration, destruction,  
18 or other disposition of books, accounts, records, or other  
19 documents and materials that the court deems appropriate,  
20 until the person has fully complied with the subpoena duces  
21 tecum and the office has completed its investigation or  
22 examination. The court may order the refund of any sums  
23 collected whenever books and documents substantiating the  
24 transaction are not produced or cannot be produced. The office  
25 is entitled to the summary procedure provided in s. 51.011,  
26 and the court shall advance the cause on its calendar.

27           (c) Attorney's fees and any other costs incurred by  
28 the office to obtain an order granting, in whole or part, a  
29 petition for enforcement of a subpoena or subpoena duces tecum  
30 shall be taxed against the subpoenaed person, and failure to  
31 comply with the order is a contempt of court.

1           (6) When it appears to the office that compliance with  
2 a subpoena or subpoena duces tecum issued under subsection (4)  
3 is essential and that the person or documents subpoenaed are  
4 otherwise unavailable to an investigation or examination, the  
5 office, in addition to the other remedies provided for in this  
6 section, may petition a court of competent jurisdiction in the  
7 county in which the subpoenaed person resides or has its  
8 principal place of business for a writ of ne exeat. The court  
9 shall direct the issuance of the writ against the subpoenaed  
10 person requiring sufficient bond conditioned on compliance  
11 with the subpoena or subpoena duces tecum. The court shall  
12 cause to be endorsed on the writ a suitable amount of bond  
13 upon the payment of which the person named in the writ shall  
14 be freed, having a due regard to the nature of the case.

15           (7) The office may seek a writ of attachment from a  
16 court having jurisdiction over the person who refuses to obey  
17 a subpoena, to give testimony, or to produce materials  
18 described in the subpoena duces tecum.

19           (8) A copy of the petition shall be served upon the  
20 person by anyone authorized by law or this section to serve  
21 subpoenas. The individual serving the petition shall make and  
22 file with the court an affidavit showing the date, time,  
23 place, and manner of service.

24           (9) At a hearing on the petition to enforce compliance  
25 with a subpoena, the person subpoenaed, or any person whose  
26 interest will be substantially affected by the investigation,  
27 examination, or subpoena, may appear and object to the  
28 subpoena and to the granting of the petition. The court may  
29 make any order that justice requires in order to protect a  
30 party or other person and her or his personal and property  
31 rights, including, but not limited to, protection from

1 annoyance, embarrassment, oppression, undue burden, or  
2 expense.

3 (10) Failure to comply with an order granting, in  
4 whole or in part, a petition to enforce a subpoena is a  
5 contempt of the court.

6 (11) Witnesses are entitled to the same fees and  
7 mileage to which they would be entitled by law for attending  
8 as witnesses in circuit court, except that fees or mileage may  
9 not be allowed for testimony of a person taken at the person's  
10 principal office or residence.

11 (12) Reasonable and necessary costs incurred by the  
12 office and payable to persons involved with an investigation  
13 may be assessed against any debt collector on the basis of  
14 actual costs incurred. Assessed expenses may include, but are  
15 not limited to, expenses for interpreters; expenses for  
16 communications; expenses for legal representation; expenses  
17 for economic, legal, or other research; analysis and  
18 testimony; and fees and expenses for witnesses. The failure to  
19 reimburse the office for its reasonable and necessary costs is  
20 a reason to deny a registrant's application or to revoke the  
21 prior approval of an application.

22 Section 5. Section 559.5473, Florida Statutes, is  
23 created to read:

24 559.5473 Injunction to restrain violations;  
25 receivers.--

26 (1) The office may bring an action on behalf of the  
27 state to enjoin any person who has violated, or is about to  
28 violate, this part or any rule or order of the office issued  
29 under this part.

30 (2) In an injunctive proceeding, the court may issue a  
31 subpoena requiring the attendance of any witness or a subpoena

1 duces tecum requiring the production of any book, account,  
2 record, or other documents and materials relevant to the  
3 pending case.

4 (3)(a) In addition to any procedure provided by law  
5 for enforcing a temporary restraining order or a temporary or  
6 permanent injunction, the court may, upon application of the  
7 office, impound the property, assets, and business of the  
8 registrant, including, but not limited to, the books, records,  
9 documents, and papers of the registrant. The court may appoint  
10 a receiver to administer the property. The receiver, when  
11 appointed and qualified, has the powers and duties that are  
12 conferred upon the receiver by the court.

13 (b) After appointing a receiver, the court may issue  
14 an order staying all pending suits and enjoining any further  
15 litigation affecting the receiver's custody or possession of  
16 the property, assets, and business, and the court, with the  
17 consent of the chief judge of the circuit, may require that  
18 all suits be assigned to the circuit judge who appointed the  
19 receiver.

20 Section 6. Section 559.5474, Florida Statutes, is  
21 created to read:

22 559.5474 Cease and desist orders; refund orders.--

23 (1) The office may issue and serve upon a person an  
24 order to cease and desist and to take corrective action  
25 whenever the office has reason to believe that the commercial  
26 collection agency is violating, has violated, or is about to  
27 violate this part, any rule or order of the office issued  
28 under this part, or any written agreement between the  
29 commercial collection agency and the office. Procedural  
30 matters relating to the issuance and enforcement of a cease  
31 and desist order are governed by chapter 120.

1           (2) The office may seek an order of restitution for  
2 collected funds due to creditors or any sum collected from a  
3 debtor without valid proof of debt.

4           Section 7. Section 559.5475, Florida Statutes, is  
5 created to read:

6           559.5475 Evidence; examiner's worksheets,  
7 investigative reports, other related documents.--An official  
8 written report, sworn complaint, worksheet, or other related  
9 paper, or a certified copy thereof, compiled, prepared,  
10 drafted, or otherwise made by the financial examiner is  
11 admissible into evidence if the financial examiner is  
12 available for cross-examination; authenticates the worksheet;  
13 and testifies that the report, worksheet, or related document  
14 was prepared as a result of an examination of the books and  
15 records of a registrant or other person conducted under the  
16 authority of this part.

17           Section 8. Section 559.5476, Florida Statutes, is  
18 created to read:

19           559.5476 Books, accounts, and records; maintenance;  
20 examinations by the office.--

21           (1) Each registrant shall maintain, at its principal  
22 place of business designated on its registration, all books,  
23 accounts, records, and documents necessary to determine the  
24 registrant's compliance with this part.

25           (2) The office may authorize maintenance of records at  
26 a location other than a principal place of business. The  
27 office may require books, accounts, and records to be produced  
28 and available at a reasonable and convenient location in this  
29 state.

30           (3) All books, accounts, records, documents, and  
31 receipts for payments to a registrant by a debtor, and

1 payments made to a creditor by a registrant, shall be  
2 preserved and kept available for examination by the office for  
3 3 years after the date of original entry. The commission shall  
4 adopt requirements by rule for maintaining the books,  
5 accounts, records, and documents retained by the registrant  
6 and for destroying the records.

7 (4) The commission shall designate by rule the minimum  
8 information that must be contained in the registrant's books,  
9 accounts, records, and documents in order that the records  
10 will enable the office to determine a registrant's compliance  
11 with this part.

12 Section 9. Section 559.5477, Florida Statutes, is  
13 created to read:

14 559.5477 Administrative remedies.--

15 (1) The office may revoke or suspend the registration  
16 of a registrant under this part who:

17 (a) Has been found guilty of, regardless of  
18 adjudication, or has entered a plea of nolo contendere or  
19 guilty to, any crime involving fraud, dishonest dealing, or  
20 moral turpitude;

21 (b) Has had a final judgment entered against the  
22 person in a civil action upon the grounds of fraud,  
23 embezzlement, misrepresentation, or deceit;

24 (c) Has pending against the person a criminal  
25 prosecution or administrative enforcement action, in any  
26 jurisdiction, which involves fraud, dishonest dealing, or any  
27 other act of moral turpitude;

28 (d) Has had any business, professional, or  
29 occupational license or registration suspended, revoked, or  
30 otherwise acted against in any jurisdiction;

31

1           (e) Fails to maintain the surety bond required  
2 pursuant to s. 559.546;

3           (f) Fails to maintain books and records as required by  
4 s. 559.5476;

5           (g) Violates any order issued by the office; or

6           (h) Paid for a registration with a check or electronic  
7 transmission of funds which failed to clear the applicant's or  
8 registrant's financial institution.

9           (2) Any registration made under this part which is  
10 based upon false identification or false information, or an  
11 identification that is not current with respect to name,  
12 address, business location, or other fact that is material to  
13 the registration, is void. Any registration made and  
14 subsequently found to be void under this section does not  
15 create a defense to any action brought by the office to impose  
16 a sanction for a violation of this part.

17           (3) A registrant may request to terminate its  
18 registration by delivering written notice of its proposed  
19 termination to the office. However, the delivery of the  
20 termination notice does not affect any civil or criminal  
21 liability of the registrant or the authority of the office to  
22 enforce this part.

23           (4) The office may deny a request to terminate a  
24 registration or to withdraw an application for registration if  
25 the office believes that the registrant has committed an act  
26 that would be grounds for denial, suspension, or revocation  
27 under this part.

28           (5) Final action by the office to revoke or suspend  
29 the registration of a registrant is subject to review  
30 according to chapter 120 in the same manner as revocation of a  
31 license.

1           (6) The office may impose an administrative fine of up  
2 to \$1,000 per violation against an offending registrant as an  
3 administrative sanction. Final action by the office to impose  
4 an administrative fine is subject to review in accordance with  
5 ss. 120.569 and 120.57.

6           (7) Any administrative fine imposed under this part  
7 shall be payable to the office. The office shall maintain an  
8 appropriate record and deposit the fine into the Regulatory  
9 Trust Fund of the office.

10           (8) An administrative action by the office to impose  
11 revocation, suspension, or a fine must be brought within 2  
12 years after the date of the last violation upon which the  
13 action is founded.

14           Section 10. Subsections (1) and (8) of section 559.55,  
15 Florida Statutes, are amended, and subsections (10), (11), and  
16 (12) are added to that section, to read:

17           559.55 Definitions.--The following terms shall, unless  
18 the context otherwise indicates, have the following meanings  
19 for the purpose of this part:

20           (1) "Debt" or "consumer debt" means:

21           (a) Any obligation or alleged obligation of a consumer  
22 to pay money arising out of a transaction in which the money,  
23 property, insurance, or services which are the subject of the  
24 transaction are primarily for personal, family, or household  
25 purposes, whether or not such obligation has been reduced to  
26 judgment; or

27           (b) Any unsatisfied obligation for the payment of  
28 money arising out of any legal order.

29           (8) "Out-of-state consumer debt collector" means any  
30 person whose business activities in this state involve both  
31 collecting or attempting to collect consumer debt from debtors

1 | located in this state by means of interstate communication  
2 | originating from outside this state and soliciting consumer  
3 | debt accounts for collection from creditors who have a  
4 | ~~business~~ presence in this state. For purposes of this  
5 | subsection, a creditor has a ~~business~~ presence in this state  
6 | if either the creditor or an affiliate or subsidiary of the  
7 | creditor has an office or resides in this state.

8 |       (10) "Federal Trade Commission Act" means the federal  
9 | legislation regulating unfair or deceptive practices or acts,  
10 | as set forth in 15 U.S.C. ss. 41 et seq.

11 |       (11) "A person who has control over an applicant or  
12 | registrant" means a person who:

13 |           (a) Directly, indirectly, or acting through one or  
14 | more other persons owns, controls, or has the power to vote 25  
15 | percent or more or any class of voting securities of an  
16 | applicant or registrant.

17 |           (b) The office determines, after notice and  
18 | opportunity for hearing, exercises a controlling influence,  
19 | directly or indirectly, over the activities of an applicant or  
20 | registrant.

21 |       (12) "Principal of a registrant or applicant" means  
22 | the applicant's or registrant's owners if a partnership or  
23 | sole proprietorship; the corporate officers; the corporate  
24 | directors, other than directors of a not-for-profit  
25 | corporation organized under chapter 617; or the Florida  
26 | resident agent if a corporation is the applicant or  
27 | registrant.

28 |       Section 11. Section 559.552, Florida Statutes, is  
29 | amended to read:

30 |       559.552 Relationship of state and federal law.--

31 |

1           (1) Any violation of the federal Fair Debt Collection  
2 Practices Act constitutes a prohibited practice under s.  
3 559.72.

4           (2) Nothing in This part does not shall be construed  
5 to limit or restrict the continued applicability of the  
6 federal Fair Debt Collection Practices Act to consumer  
7 collection practices in this state. This part is in addition  
8 to the requirements and regulations of the federal act. In  
9 construing this part, due consideration and great weight shall  
10 be given to interpretations of the Federal Trade Commission  
11 Act and the Fair Debt Collection Practices Act by the Federal  
12 Trade Commission and the federal courts.In the event of any  
13 inconsistency between any provision of this part and any  
14 provision of the federal act, including federal case law,the  
15 provision that which is more protective of the consumer or  
16 debtor shall prevail.

17           Section 12. Section 559.553, Florida Statutes, is  
18 amended to read:

19           559.553 Registration of consumer collection agencies  
20 required; exemptions.--

21           (1) After January 1, 1994, a no person may not shall  
22 engage in business in this state as a consumer collection  
23 agency or continue to do business in this state as a consumer  
24 collection agency without first registering in accordance with  
25 this part, and thereafter maintaining a valid registration.

26           (2) Each consumer collection agency doing business in  
27 this state shall register with the office and renew its such  
28 registration annually as set forth in s. 559.555.

29           (3) A prospective registrant is shall be entitled to  
30 be registered when registration information is complete on its  
31 face and the applicable registration fee has been paid;

1 | however, the office may deny an application for ~~reject~~ a  
2 | registration submitted by a prospective registrant if the  
3 | applicant ~~registrant~~ or any principal or person having control  
4 | of the applicant ~~registrant~~ previously has held any  
5 | professional license or state registration that ~~which~~ was the  
6 | subject of any suspension or revocation ~~which has not been~~  
7 | ~~explained by the prospective registrant to the satisfaction of~~  
8 | ~~the office either in the registration information submitted~~  
9 | ~~initially or upon the subsequent written request of the~~  
10 | ~~office. If in the event that an application for attempted~~  
11 | registration is denied ~~rejected~~ by the office the prospective  
12 | registrant shall be informed of the basis for the denial  
13 | ~~rejection~~.

14 |       (4) This section does ~~shall~~ not apply to:

15 |       (a) An ~~Any~~ original creditor.

16 |       (b) A ~~Any~~ member of The Florida Bar.

17 |       (c) A ~~Any~~ financial institution authorized to do  
18 | business in this state and any wholly owned subsidiary and  
19 | affiliate thereof.

20 |       (d) A ~~Any~~ licensed real estate broker.

21 |       (e) An ~~Any~~ insurance company authorized to do business  
22 | in this state.

23 |       (f) A ~~Any~~ consumer finance company and a ~~any~~ wholly  
24 | owned subsidiary and affiliate thereof.

25 |       (g) A ~~Any~~ person licensed under ~~pursuant to~~ chapter  
26 | 520.

27 |       (h) An ~~Any~~ out-of-state consumer debt collector who  
28 | does not solicit consumer debt accounts for collection from  
29 | credit grantors who have a business presence in this state.

30 |       (i) A ~~Any~~ FDIC-insured institution or subsidiary or  
31 | affiliate thereof.

1           (5) ~~An Any~~ out-of-state consumer debt collector as  
2 defined in s. 559.55(8) who is not exempt from registration by  
3 application of subsection (4) and who fails to register in  
4 accordance with this part shall be subject to an enforcement  
5 action by the state as specified in s. 559.565.

6           Section 13. Section 559.555, Florida Statutes, is  
7 amended to read:

8           559.555 Registration of consumer collection agencies;  
9 procedure.--

10           (1) An application for registration under this part  
11 shall be filed on a form prescribed by the commission and must  
12 contain:

13           (a) The full legal name, residential address, business  
14 addresses, telephone number, and social security number or  
15 federal identification number for:

16           1. The applicant;

17           2. Any person having control over the applicant or  
18 registrant;

19           3. Any principal of an applicant or registrant;

20           4. Each member if the applicant is a partnership or  
21 association; and

22           5. Each owner, officer, director, and registered agent  
23 if the applicant is a corporation.

24           (b) The business name, trade name, fictitious name, or  
25 name under which the consumer collection business is doing  
26 business; the current mailing address of the consumer  
27 collection agency; and the business location of each place  
28 from which the consumer collection agency operates a main or  
29 branch office, with a designation of which location  
30 constitutes its principal place of business.

31

1           (c) A statement listing each county in this state in  
2 which the applicant is currently doing business or plans to do  
3 business within the next calendar year, indicating each county  
4 in which the applicant holds an occupational license.

5           (d) A statement listing each county in this state in  
6 which the applicant is currently operating under a fictitious  
7 name or trade name other than that of the applicant,  
8 indicating the date and place of registration of any  
9 fictitious name or trade name.

10           (e) A statement listing the names of any other  
11 corporations, entities, or trade names by which any owner or  
12 director of the applicant was known or did business as a  
13 collection agency in the 5 years immediately before the year  
14 in which the agency is registering.

15           (f) A statement clearly identifying and explaining  
16 each occasion on which a professional or occupational license  
17 held by the applicant, any principal of the applicant, or any  
18 business entity in which any principal of the applicant was  
19 the owner of 10 percent or more of the business was the  
20 subject of any suspension, revocation, or other disciplinary  
21 action.

22           (g) A statement clearly identifying and explaining  
23 each occasion when a principal of the applicant was found  
24 guilty of a crime involving moral turpitude or dishonest  
25 conduct.

26           (h) Any information and documentation reasonably  
27 necessary to make a determination of the applicant's  
28 eligibility for registration, as required by the office or  
29 commission.

30  
31

1           (i) A surety bond in the amount of \$50,000 issued by a  
2 surety company admitted to do business in this state and  
3 assigned to the office for the benefit of consumers.

4           (2) The application information must include a  
5 statement clearly identifying and explaining each occasion  
6 when a professional license or state registration held by a  
7 person with control over an applicant or by any business  
8 entity in which any person with control over an applicant was  
9 the owner of 10 percent or more of the business was the  
10 subject of a suspension or revocation proceeding.

~~Any person  
11 required to register as a consumer collection agency shall  
12 furnish to the office the registration fee and information as  
13 follows:~~

14           (3)~~(1)~~ The applicant or registrant shall pay to the  
15 office a nonrefundable registration fee in the amount of \$800  
16 ~~\$200~~. All amounts collected shall be deposited by the office  
17 to the credit of the Regulatory Trust Fund of the office.

18           (4)~~(2)~~ Each applicant or registrant shall provide to  
19 the office the business name or trade name, the current  
20 mailing address, the current business location that which  
21 constitutes its principal place of business, and the full name  
22 of each individual who is a principal of the applicant or  
23 registrant. ~~"Principal of a registrant" means the~~  
24 ~~registrant's owners if a partnership or sole proprietorship,~~  
25 ~~corporate officers, corporate directors other than directors~~  
26 ~~of a not-for-profit corporation organized pursuant to chapter~~  
27 ~~617 and Florida resident agent if a corporate registrant. The~~  
28 ~~registration information shall include a statement clearly~~  
29 ~~identifying and explaining any occasion on which any~~  
30 ~~professional license or state registration held by the~~  
31 ~~registrant, by any principal of the registrant, or by any~~

1 ~~business entity in which any principal of the registrant was~~  
2 ~~the owner of 10 percent or more of such business, was the~~  
3 ~~subject of any suspension or revocation.~~

4 (5) Notwithstanding s. 559.553(3), the office may deny  
5 registration if the applicant, any principal of the applicant,  
6 or any person having control of the applicant:

7 (a) Has committed any practice prohibited under s.  
8 559.72;

9 (b) Is under investigation by the office, any state  
10 attorney, or the Department of Legal Affairs for committing a  
11 practice prohibited under s. 559.72;

12 (c) Is currently subject to pending enforcement by any  
13 federal authority for violations of the Fair Debt Collection  
14 Practices Act or the Federal Trade Commission Act;

15 (d) Has been found guilty of, regardless of  
16 adjudication, or has entered a plea of nolo contendere or  
17 guilty to, racketeering or any offense involving fraud or  
18 dishonest dealing;

19 (e) Has been found guilty of, regardless of  
20 adjudication, or has entered a plea of nolo contendere or  
21 guilty to, any felony;

22 (f) Has had entered against him or her, or any  
23 business for which he or she has worked or been affiliated, an  
24 injunction, a temporary restraining order, or a final judgment  
25 or order, including a stipulated judgment or order, an  
26 assurance of voluntary compliance, or any similar document, in  
27 any civil or administrative action involving racketeering,  
28 fraud, theft, embezzlement, fraudulent conversion, or  
29 misappropriation of property or the use of any untrue,  
30 deceptive, or misleading representation in an attempt to sell  
31 or dispose of real or personal property or the use of any

1 unfair, unlawful, or deceptive trade practice, whether or not  
2 there is any litigation pending against the applicant;

3 (g) Is subject to or has worked or been affiliated  
4 with any company that is, or ever has been, subject to any  
5 injunction, temporary restraining order, including a  
6 stipulated judgment or order, an assurance of voluntary  
7 compliance, or any similar document, or any restrictive court  
8 order relating to business activity as the result of any  
9 action brought by a governmental agency, including any action  
10 affecting any license to do business or practice an occupation  
11 or trade;

12 (h) Has at any time during the previous 7 years filed  
13 for bankruptcy, been adjudged bankrupt, or been reorganized  
14 because of insolvency;

15 (i) Falsified or willfully omitted any material  
16 information asked for in any application, document, or record  
17 required to be submitted under this part or the rules of the  
18 office;

19 (j) Made a material false statement of fact in an  
20 application for registration or in response to any request or  
21 investigation by the office, the Department of Legal Affairs,  
22 or the state attorney; or

23 (k) Has been the subject of any adverse decision,  
24 finding, injunction, suspension, prohibition, revocation,  
25 denial, or judgment by any court of competent jurisdiction or  
26 an administrative order by an administrative law judge, or by  
27 any state or federal agency or any business, professional, or  
28 occupational association involving a violation of any law,  
29 rule, or regulation relating to business or professional  
30 licensing.

31

1           (6) A registrant shall maintain a surety bond of  
2 \$50,000 issued by a surety company admitted to do business in  
3 this state and assigned to the office for the benefit of  
4 consumers.

5           (7) Upon the filing of an application for registration  
6 and payment of all applicable fees, the office shall, unless  
7 the application is to renew or reactivate an existing license,  
8 investigate the applicant. If the office determines that  
9 registration should be granted, it shall register the  
10 applicant for a period not to exceed 1 year.

11           (8) A registration must be obtained for each place of  
12 business subject to registration under this chapter. A  
13 registration is not transferable or assignable.

14           (9) A registrant must give notice to the office within  
15 10 business days of any of the following:

16           (a) Relocation of the place of the registrant's  
17 business; and

18           (b) The registrant becoming subject to a voluntary or  
19 involuntary bankruptcy.

20           (10) An application form is deemed to be received for  
21 purposes of s. 120.60 upon receipt of a completed application,  
22 as prescribed by commission rule, the nonrefundable  
23 application fee, and any other fee prescribed by law or rule.

24           (11)(a)(3) Renewal of registration shall be made  
25 between October 1 and December 31 of each year. There shall  
26 be no proration of the fee for any registration. The office  
27 shall adopt rules for the renewal of registration.

28           (b) A registration that is not renewed by the end of  
29 the calendar year expires automatically. A consumer collection  
30 agency that has not renewed its registration by the time the  
31 registration period expires may request reactivation of its

1 registration. The registrant must file its request with the  
2 office on or before January 31 of the year following the year  
3 of expiration. The request must contain any information the  
4 office requires, together with the registration fee required  
5 in subsection (1) and a late fee equal to the registration  
6 fee. Any reactivation of registration granted by the office  
7 during the month of January is deemed retroactive to January 1  
8 of that year. Any registrant that engages in the business of a  
9 consumer collection agency after its registration has expired,  
10 violates ss. 559.553 and 559.785(1).

11           Section 14. Section 559.565, Florida Statutes, is  
12 amended to read:

13           559.565 Enforcement action against out-of-state  
14 consumer debt collector.--The remedies of this section are  
15 cumulative to other sanctions and enforcement provisions of  
16 this part for any violation by an out-of-state consumer debt  
17 collector, as defined in s. 559.55(8).

18           (1) Any out-of-state consumer debt collector who  
19 collects or attempts to collect consumer debts in this state  
20 without first registering in accordance with this part shall  
21 be subject to an administrative fine not to exceed \$1,000 per  
22 violation together with reasonable attorney fees and court  
23 costs in any successful action by the state to collect the  
24 ~~such~~ fines.

25           (2) Any person, whether or not exempt from  
26 registration under this part, who is otherwise subject to the  
27 jurisdiction of this state and violates ~~the provisions of s.~~  
28 559.72 shall be subject to sanctions for the ~~such~~ violations  
29 the same as any other consumer debt collector, including  
30 imposition of an administrative fine. The registration of a  
31 duly registered out-of-state consumer debt collector shall be

1 subject to revocation or suspension in the same manner as the  
2 registration of any other registrant under this part.

3 (3) In order to effectuate ~~the provisions of this~~  
4 section and enforce the requirements of this part as it  
5 relates to out-of-state consumer debt collectors, the Attorney  
6 General is expressly authorized to initiate an ~~such~~ action on  
7 behalf of the state as he or she deems appropriate in any  
8 federal district court of competent jurisdiction.

9 Section 15. Section 559.72, Florida Statutes, is  
10 amended to read:

11 559.72 Prohibited practices generally.--In collecting  
12 consumer debts, a no person may not ~~shall~~:

13 (1) Simulate in any manner a law enforcement officer  
14 or a representative of any governmental agency;

15 (2) Use or threaten force, or violence, or any other  
16 means to harm the physical person, property, or reputation of  
17 any person;

18 (3) Tell a debtor who disputes a consumer debt that  
19 she or he or any person employing her or him will disclose to  
20 another, orally or in writing, directly or indirectly,  
21 information affecting the debtor's reputation for credit  
22 worthiness without also informing the debtor that the  
23 existence of the dispute will also be disclosed as required by  
24 subsection (6);

25 (4) Communicate or threaten to communicate with a  
26 debtor's employer prior to obtaining final judgment against  
27 the debtor, unless the debtor gives her or his permission in  
28 writing to contact her or his employer or acknowledges in  
29 writing the existence of the debt after the debt has been  
30 placed for collection, but this shall not prohibit a person  
31

1 from telling the debtor that her or his employer will be  
2 contacted if a final judgment is obtained;

3 (5) Disclose to a person other than the debtor or her  
4 or his family information affecting the debtor's reputation,  
5 whether or not for credit worthiness, with knowledge or reason  
6 to know that the other person does not have a legitimate  
7 business need for the information or that the information is  
8 false;

9 (6) Disclose information concerning the existence of a  
10 debt known to be reasonably disputed by the debtor without  
11 disclosing that fact. If a disclosure is made prior to such  
12 reasonable dispute having been asserted and written notice is  
13 received from the debtor that any part of the debt is disputed  
14 and if such dispute is reasonable, the person who made the  
15 original disclosure shall reveal upon the request of the  
16 debtor within 30 days the details of the dispute to each  
17 person to whom disclosure of the debt without notice of the  
18 dispute was made within the preceding 90 days;

19 (7) Willfully communicate with the debtor or any  
20 member of her or his family with such frequency as can  
21 reasonably be expected to harass the debtor or her or his  
22 family, or willfully engage in other conduct which can  
23 reasonably be expected to abuse or harass the debtor or any  
24 member of her or his family;

25 (8) Use profane, obscene, vulgar, or willfully abusive  
26 language in communicating with the debtor or any member of her  
27 or his family;

28 (9) Claim, attempt, or threaten to enforce a debt when  
29 such person knows that the debt is not legitimate or assert  
30 the existence of some other legal right when such person knows  
31 that the right does not exist;

1           (10) Use a communication which simulates in any manner  
2 legal or judicial process or which gives the appearance of  
3 being authorized, issued or approved by a government,  
4 governmental agency, or attorney at law, when it is not;

5           (11) Communicate with a debtor under the guise of an  
6 attorney by using the stationery of an attorney or forms or  
7 instruments which only attorneys are authorized to prepare;

8           (12) Orally communicate with a debtor in such a manner  
9 as to give the false impression or appearance that such person  
10 is or is associated with an attorney;

11           (13) Advertise or threaten to advertise for sale any  
12 debt as a means to enforce payment except under court order or  
13 when acting as an assignee for the benefit of a creditor;

14           (14) Publish or post, threaten to publish or post, or  
15 cause to be published or posted before the general public  
16 individual names or any list of names of debtors, commonly  
17 known as a deadbeat list, for the purpose of enforcing or  
18 attempting to enforce collection of consumer debts;

19           (15) Refuse to provide adequate identification of  
20 herself or himself or her or his employer or other entity whom  
21 she or he represents when requested to do so by a debtor from  
22 whom she or he is collecting or attempting to collect a  
23 consumer debt;

24           (16) Mail any communication to a debtor in an envelope  
25 or postcard with words typed, written, or printed on the  
26 outside of the envelope or postcard indicating that the  
27 purpose of the communication is to collect a debt or is  
28 otherwise calculated to embarrass the debtor. An example of  
29 this would be an envelope addressed to "Deadbeat, Jane Doe" or  
30 "Deadbeat, John Doe";

31

1           (17) Communicate with the debtor between the hours of  
2 9 p.m. and 8 a.m. in the debtor's time zone, at any unusual  
3 time or place, or a time or place that is known or should be  
4 known to be inconvenient for the debtor without the prior  
5 consent of the debtor;

6           (18) Communicate with a debtor if the person knows  
7 that the debtor is represented by an attorney with respect to  
8 such debt and has knowledge of, or can readily ascertain, such  
9 attorney's name and address, unless the debtor's attorney  
10 fails to respond within a reasonable period of time to a  
11 communication from the person, unless the debtor's attorney  
12 consents to a direct communication with the debtor, or unless  
13 the debtor initiates the communication; or

14           (19) Cause charges to be made to any debtor for  
15 communications by concealment of the true purpose of the  
16 communication, including collect telephone calls and telegram  
17 fees.

18           Section 16. Section 559.725, Florida Statutes, is  
19 amended to read:

20           559.725 Consumer complaints; administrative duties.--

21           (1) Any person having reason to believe that this part  
22 has been violated may file a written complaint with the office  
23 setting forth the details of the alleged violation.

24           (2) The office may conduct an investigation of any  
25 person, within or outside this state, which it believes is  
26 necessary in order to determine whether a person has violated  
27 this part or the rules adopted by the office.

28           (3)(a) The office may conduct examinations of any  
29 registrant. The office shall conduct all examinations at a  
30 location in this state convenient to the registrant unless the  
31 office determines that it is more effective or cost-efficient

1 to perform the examination at the registrant's out-of-state  
2 location.

3 (b) The registrant shall pay the travel expenses and  
4 per diem subsistence at the rate provided by law for an  
5 examination conducted at the registrant's out-of-state  
6 location. The registrant shall pay for up to 30 8-hour days  
7 per year for each office examiner participating in the  
8 examination. However, if the examination involves or reveals  
9 fraudulent misconduct by the registrant, the registrant shall  
10 pay the travel expenses and per diem subsistence, without  
11 limitation, for each examiner participating in the  
12 examination.

13 (4) Nothing in this part may be construed to be a  
14 jurisdictional prerequisite to enforcement by the office, the  
15 Department of Legal Affairs, or a state attorney.

16 ~~(1) The Division of Consumer Services of the~~  
17 ~~Department of Financial Services shall serve as the registry~~  
18 ~~for receiving and maintaining records of inquiries,~~  
19 ~~correspondence, and complaints from consumers concerning any~~  
20 ~~and all persons who collect debts, including consumer~~  
21 ~~collection agencies.~~

22 ~~(2) The division shall classify complaints by type and~~  
23 ~~identify the number of written complaints against persons~~  
24 ~~collecting or attempting to collect debts in this state,~~  
25 ~~including credit grantors collecting their own debts, debt~~  
26 ~~collectors generally, and, specifically, consumer collection~~  
27 ~~agencies as distinguished from other persons who collect debts~~  
28 ~~such as commercial debt collection agencies regulated under~~  
29 ~~part V of this chapter. The division shall identify the nature~~  
30 ~~and number of various kinds of written complaints, including~~  
31 ~~specifically those alleging violations of s. 559.72.~~

1           ~~(3) The division shall inform and furnish relevant~~  
2 ~~information to the appropriate regulatory body of the state,~~  
3 ~~or The Florida Bar in the case of attorneys, when any consumer~~  
4 ~~debt collector exempt from registration under this part has~~  
5 ~~been named in five or more written consumer complaints~~  
6 ~~alleging violations of s. 559.72 within a 12-month period.~~

7           ~~(4) The division shall furnish a form to each~~  
8 ~~complainant whose complaint concerns an alleged violation of~~  
9 ~~s. 559.72 by a consumer collection agency. Such form may be~~  
10 ~~filed with the office. The form shall identify the accused~~  
11 ~~consumer collection agency and provide for the complainant's~~  
12 ~~summary of the nature of the alleged violation and facts which~~  
13 ~~allegedly support the complaint. The form shall include a~~  
14 ~~provision for the complainant to state under oath before a~~  
15 ~~notary public that the allegations therein made are true.~~

16           ~~(5) Upon receipt of such sworn complaint, the office~~  
17 ~~shall promptly furnish a copy of the sworn complaint to the~~  
18 ~~accused consumer collection agency.~~

19           ~~(6) The office shall investigate sworn complaints by~~  
20 ~~direct written communication with the complainant and the~~  
21 ~~affected consumer collection agency. In addition, the office~~  
22 ~~shall attempt to resolve each sworn complaint and shall record~~  
23 ~~the resolution of such complaints.~~

24           ~~(7) Periodically, the office shall identify consumer~~  
25 ~~collection agencies that have unresolved sworn consumer~~  
26 ~~complaints from five or more different consumers within a~~  
27 ~~12-month period under the provisions of this part.~~

28           ~~(8) The office shall issue a written warning notice to~~  
29 ~~the accused consumer collection agency if the office is unable~~  
30 ~~to resolve all such sworn complaints and fewer than five~~  
31 ~~unresolved complaints remain. Such notice shall include a~~

1 ~~statement that the warning may constitute evidence in any~~  
2 ~~future investigation of similar complaints against that agency~~  
3 ~~and in any future administrative determination of the~~  
4 ~~imposition of other administrative remedies available to the~~  
5 ~~office under this part.~~

6 ~~(9) The office may issue a written reprimand when five~~  
7 ~~or more such unresolved sworn complaints against a consumer~~  
8 ~~collection agency collectively fall short of constituting~~  
9 ~~apparent repeated violations that warrant more serious~~  
10 ~~administrative sanctions. Such reprimand shall include a~~  
11 ~~statement that the reprimand may constitute evidence in any~~  
12 ~~future investigation of similar complaints against that agency~~  
13 ~~and in any future administrative determination of the~~  
14 ~~imposition of other administrative remedies available to the~~  
15 ~~office.~~

16 ~~(10) The office shall issue a notice of intent either~~  
17 ~~to revoke or suspend the registration or to impose an~~  
18 ~~administrative fine when the office preliminarily determines~~  
19 ~~that repeated violations of s. 559.72 by an accused registrant~~  
20 ~~have occurred which would warrant more serious administrative~~  
21 ~~sanctions being imposed under this part. The office shall~~  
22 ~~advise each registrant of the right to require an~~  
23 ~~administrative hearing under chapter 120, prior to the~~  
24 ~~agency's final action on the matter as authorized by s.~~  
25 ~~559.730.~~

26 ~~(5)(11)~~ Any government office or agency receiving a  
27 complaint under this section ~~The office~~ shall advise any other  
28 government office or agency with apparent jurisdiction,  
29 including the office, the appropriate state attorney, or the  
30 Attorney General in the case of an out-of-state consumer debt  
31 collector, of any determination by that agency ~~the office~~ of a

1 violation, or possible violation, of the requirements of this  
2 part by any consumer collection agency, whether or ~~which is~~  
3 not registered or exempt from registration as required by this  
4 part. ~~The office shall furnish the state attorney or Attorney~~  
5 ~~General with the office's information concerning the alleged~~  
6 ~~violations of such requirements.~~

7 Section 17. Section 559.726, Florida Statutes, is  
8 created to read:

9 559.726 Powers and duties of the Office of Financial  
10 Regulation.--

11 (1) Compliance with this part shall be enforced by the  
12 office, except to the extent that enforcement is specifically  
13 committed to another agency.

14 (2) The commission may adopt rules under ss.  
15 120.536(1) and 120.54 to implement and administer this part.  
16 The commission may adopt a rule to require electronic  
17 submission of any form, document, or fee required by this  
18 part, provided that the rule reasonably accommodates a person  
19 with a technological or financial hardship. The commission may  
20 adopt a rule setting forth the criteria and procedures for  
21 obtaining an exemption due to a technological or financial  
22 hardship exemption. The commission may adopt a rule to accept  
23 certification of compliance with the requirements of this part  
24 in lieu of requiring submission of documents.

25 (3) All fees, charges, and fines collected by the  
26 office under this part shall be deposited to the credit of the  
27 Regulatory Trust Fund of the office.

28 (4) The office, or any duly authorized representative,  
29 including any financial examiner or analyst, financial  
30 investigator, or attorney at law, may:

31

1           (a) Issue, revoke, quash, or modify and serve  
2 subpoenas to compel the attendance of witnesses and subpoenas  
3 duces tecum to compel the production of all books, accounts,  
4 records, and other documents and materials relevant to an  
5 examination or investigation. The office may exercise these  
6 powers even if the subject of the investigation or examination  
7 is exempt from registration;

8           (b) Administer oaths and affirmations to any person;  
9 or

10           (c) Take or cause to be taken testimony and  
11 depositions.

12           (5)(a) If the office determines that a person is in  
13 substantial noncompliance with a subpoena or subpoena duces  
14 tecum that the office issued or caused to be issued, it may  
15 petition a court of competent jurisdiction in the county in  
16 which the person subpoenaed resides or has its principal place  
17 of business for an order requiring the subpoenaed person to  
18 appear and testify and to produce the books, accounts,  
19 records, and other documents that are specified in the  
20 subpoena duces tecum.

21           (b) The court may grant injunctive relief restraining  
22 the person from advertising, promoting, soliciting, entering  
23 into, offering to enter into, continuing, or completing any  
24 transaction involving consumer debt collection. The court may  
25 grant such other relief, including, but not limited to, the  
26 restraint, by injunction or appointment of a receiver, of any  
27 transfer, pledge, assignment, or other disposition of the  
28 person's assets or any concealment, alteration, destruction,  
29 or other disposition of the books, accounts, records, or other  
30 documents and materials that the court deems appropriate,  
31 until the person has fully complied with the subpoena duces

1 tecum and the office has completed its investigation or  
2 examination. The court may order the refund of any sums  
3 collected whenever books and documents substantiating the  
4 transaction are not produced or cannot be produced. The office  
5 is entitled to the summary procedure as provided in s. 51.011,  
6 and the court shall advance such cause on its calendar.

7 (c) Attorney's fees and any other costs incurred by  
8 the office to obtain an order granting, in whole or part, a  
9 petition to enforce a subpoena or subpoena duces tecum shall  
10 be taxed against the subpoenaed person, and failure to comply  
11 with the order is a contempt of court.

12 (6) When it appears to the office that compliance with  
13 a subpoena or subpoena duces tecum issued under subsection (4)  
14 is essential and that the person or documents subpoenaed are  
15 otherwise unavailable to an investigation or examination, the  
16 office, in addition to the other remedies provided for in this  
17 section, may petition a court of competent jurisdiction in the  
18 county in which the subpoenaed person resides or has its  
19 principal place of business for a writ of ne exeat. The court  
20 shall direct the issuance of the writ against the subpoenaed  
21 person requiring sufficient bond conditioned on compliance  
22 with the subpoena or subpoena duces tecum. The court shall  
23 cause to be endorsed on the writ a suitable amount of bond  
24 upon the payment of which the person named in the writ shall  
25 be freed, having a due regard to the nature of the case.

26 (7) The office may seek a writ of attachment from the  
27 court having jurisdiction over the person who refuses to obey  
28 a subpoena, to give testimony, or to produce the matters  
29 described in the subpoena duces tecum.

30 (8) A copy of the petition shall be served upon the  
31 person by anyone authorized by law or this section to serve

1 subpoenas. The individual serving the petition shall make and  
2 file with the court an affidavit showing the date, time,  
3 place, and manner of service.

4 (9) At a hearing on the petition to enforce compliance  
5 with a subpoena, the person subpoenaed, or any person whose  
6 interest will be substantially affected by the investigation,  
7 examination, or subpoena, may appear and object to the  
8 subpoena and to the granting of the petition. The court may  
9 make any order that justice requires in order to protect a  
10 party or other person and her or his personal and property  
11 rights, including, but not limited to, protection from  
12 annoyance, embarrassment, oppression, undue burden, or  
13 expense.

14 (10) Failure to comply with an order granting, in  
15 whole or in part, a petition to enforce a subpoena is a  
16 contempt of the court.

17 (11) Witnesses are entitled to the same fees and  
18 mileage to which they would be entitled by law for attending  
19 as witnesses in circuit court, except that fees or mileage may  
20 not be allowed for testimony of a person taken at the person's  
21 principal office or residence.

22 (12) Reasonable and necessary costs incurred by the  
23 office and payable to persons involved with an investigation  
24 may be assessed against any debt collector on the basis of  
25 actual costs incurred. Assessed expenses may include, but are  
26 not limited to: expenses for interpreters; expenses for  
27 communications; expenses for legal representation; expenses  
28 for economic, legal, or other research, analysis and  
29 testimony; and fees and expenses for witnesses. A failure to  
30 reimburse the office for its reasonable and necessary costs is  
31

1 a reason to deny a registrant's application or to revoke the  
2 prior approval of an application.

3 Section 18. Section 559.7262, Florida Statutes, is  
4 created to read:

5 559.7262 Injunction to restrain violations.--

6 (1) The office may bring an action on behalf of the  
7 state to enjoin any person who has violated, or who is about  
8 to violate, this part or any rule or order of the office  
9 issued under this part.

10 (2) In an injunctive proceeding, the court may issue a  
11 subpoena requiring the attendance of any witness or a subpoena  
12 duces tecum requiring the production of any book, account,  
13 record, or other documents and materials relevant to the  
14 pending case.

15 (3)(a) In addition to any procedure provided by law to  
16 enforce a temporary restraining order, temporary injunction,  
17 or permanent injunction, the court may, upon application of  
18 the office, impound the property, assets, and business of the  
19 registrant, including, but not limited to, the books, records,  
20 documents, and papers of the registrant. The receiver, when  
21 appointed and qualified, has the powers and duties that are  
22 conferred by the court.

23 (b) After appointing the receiver, the court may issue  
24 an order staying all pending suits and enjoining any further  
25 litigation affecting the receiver's custody or possession of  
26 the property, assets, and business, and the court, with the  
27 consent of the chief judge of the circuit, may require that  
28 all suits be assigned to the circuit court judge who appointed  
29 the receiver.

30 Section 19. Section 559.7263, Florida Statutes, is  
31 created to read:

1           559.7263 Cease and desist orders; refund orders.--

2           (1) The office may issue and serve upon a person an  
3 order to cease and desist and to take corrective action  
4 whenever the office has reason to believe that the person is  
5 violating, has violated, or is about to violate this part, any  
6 rule or order of the office issued under this part, or any  
7 written agreement between the person and the office.

8 Procedural matters relating to issuance and enforcement of  
9 such a cease and desist order are governed by chapter 120.

10           (2) The office has the power to seek an order of  
11 restitution for collected funds due to creditors or any sum  
12 collected from a debtor without valid proof of debt.

13           Section 20. Section 559.7264, Florida Statutes, is  
14 created to read:

15           559.7264 Evidence; examiner's worksheets,  
16 investigative reports, other related documents.--An official  
17 written report, sworn complaint, worksheet, or other related  
18 paper, or a duly certified copy thereof, compiled, prepared,  
19 drafted, or otherwise made by the financial examiner is  
20 admissible into evidence if the financial examiner is  
21 available for cross-examination; authenticates the worksheet;  
22 and testifies that the report, worksheet, or related document  
23 was prepared as a result of an examination of the books and  
24 records of a registrant or other person conducted under the  
25 authority of this part.

26           Section 21. Section 559.7265, Florida Statutes, is  
27 created to read:

28           559.7265 Books, accounts, and records; maintenance;  
29 examinations by the office.--

30           (1) Each registrant shall maintain, at its principal  
31 place of business designated on the registration, all books,

1 accounts, records, and documents necessary to determine the  
2 registrant's compliance with this part.

3 (2) The office may authorize maintenance of records at  
4 a location other than a principal place of business. The  
5 office may require books, accounts, and records to be produced  
6 and available at a reasonable and convenient location in this  
7 state.

8 (3) All books, accounts, records, documents, and  
9 receipts for payments to a registrant by a debtor, and  
10 payments made to a creditor by a registrant, shall be  
11 preserved and kept available for examination by the department  
12 for 3 years after the date of original entry. The commission  
13 shall adopt requirements by rule for maintaining the books,  
14 accounts, records, and documents retained by the registrant  
15 and for destroying the records.

16 (4) The commission shall designate by rule the minimum  
17 information that must be contained in the books, accounts,  
18 records, and documents of a registrant in order that the  
19 records will enable the office to determine a registrant's  
20 compliance with this part.

21 Section 22. Section 559.730, Florida Statutes, is  
22 amended to read:

23 559.730 Administrative remedies.--

24 (1) The office may revoke or suspend the registration  
25 of any registrant under this part who:

26 (a) Has committed a violation of s. 559.72 or of the  
27 federal Fair Debt Collection Practices Act;

28 (b) Is the subject of a complaint received by a  
29 governmental authority which indicates a clear pattern of  
30 abuse of prohibited collection practices under s. 559.72 or  
31 the federal Fair Debt Collection Practices Act;

1           (c) Is currently under investigation by a governmental  
2 authority for violating s. 559.72, the Florida Deceptive and  
3 Unfair Trade Practices Act, or the federal Fair Debt  
4 Collection Practices Act;

5           (d) Has been found guilty of, regardless of  
6 adjudication, or has entered a plea of nolo contendere or  
7 guilty to, any crime involving fraud, dishonest dealing, or  
8 moral turpitude;

9           (e) Had a final judgment entered against her or him in  
10 a civil action upon the grounds of fraud, embezzlement,  
11 misrepresentation, or deceit;

12           (f) Has pending against him or her in any jurisdiction  
13 a criminal prosecution or administrative enforcement action  
14 that involves fraud, dishonest dealing, or moral turpitude;

15           (g) Had a business, professional, or occupational  
16 license or registration suspended, revoked, or otherwise acted  
17 against in any jurisdiction;

18           (h) Fails to maintain the surety bond required  
19 pursuant to s. 559.555(6);

20           (i) Fails to maintain books and records as required by  
21 s. 559.7265;

22           (j) Violates any order issued by the office;

23           (k) Paid for a registration with a check or electronic  
24 funds transfer that failed to clear the applicant's or  
25 registrant's financial institution; or

26           (l) Has engaged in repeated violations that ~~which~~  
27 establish a clear pattern of abuse of prohibited collection  
28 practices under s. 559.72.

29           (2) Any registration made under this part which is  
30 based upon false identification or false information, or an  
31 identification that is not current with respect to name,

1 address, business location, or other fact that is material to  
2 the registration, is void. A registration made and  
3 subsequently found to be void under this section does not  
4 create a defense to any action brought by the office to impose  
5 a sanction for a violation of this part.

6 (3) A registrant may request to terminate its  
7 registration by delivering written notice of its proposed  
8 termination to the office. However, the delivery of the  
9 termination notice does not affect any civil or criminal  
10 liability of the registrant or the authority of the office to  
11 enforce this part.

12 (4) The office may deny a request to terminate a  
13 registration or to withdraw an application for registration if  
14 the office believes that the registrant or applicant has  
15 committed an act that would be grounds for denial, suspension,  
16 or revocation of the registration.

17 (5) Final office action to revoke or suspend the  
18 registration of any registrant is ~~shall be~~ subject to review  
19 in accordance with chapter 120 in the same manner as  
20 revocation of a license. ~~The repeated violations of the law~~  
21 ~~by one employee shall not be grounds for revocation or~~  
22 ~~suspension of the registration of the employing consumer~~  
23 ~~collection agency, unless the employee is also the owner of a~~  
24 ~~majority interest in the collection agency.~~

25 ~~(2) The registration of a registrant shall not be~~  
26 ~~revoked or suspended if the registrant shows by a~~  
27 ~~preponderance of the evidence that the violations were not~~  
28 ~~intentional and resulted from bona fide error notwithstanding~~  
29 ~~the maintenance of procedures reasonably adapted to avoid any~~  
30 ~~such error.~~

31

1           ~~(3) The office shall consider the number of complaints~~  
2 ~~against the registrant in relation to the accused registrant's~~  
3 ~~volume of business when determining whether suspension or~~  
4 ~~revocation is the more appropriate sanction when circumstances~~  
5 ~~warrant that one or the other should be imposed upon a~~  
6 ~~registrant.~~

7           ~~(4) The office shall impose suspension rather than~~  
8 ~~revocation when circumstances warrant that one or the other~~  
9 ~~should be imposed upon a registrant and the accused registrant~~  
10 ~~demonstrates that the registrant has taken affirmative steps~~  
11 ~~which can be expected to effectively eliminate the repeated~~  
12 ~~violations and that the registrant's registration has never~~  
13 ~~previously been suspended.~~

14           ~~(6)~~(5) The office may impose an administrative fine up  
15 to \$1,000 per violation against the offending registrant as an  
16 administrative a sanction for repeated violations of the  
17 provisions of s. 559.72 when violations do not rise to the  
18 level of misconduct governed by subsection ~~(1)~~. Final office  
19 action to impose an administrative fine is ~~shall be~~ subject to  
20 review in accordance with ss. 120.569 and 120.57.

21           ~~(7)~~(6) An ~~Any~~ administrative fine imposed under this  
22 part shall be payable to the office. The office shall  
23 maintain an appropriate record and shall deposit the ~~such~~ fine  
24 into the Regulatory Trust Fund of the office.

25           ~~(8)~~(7) An administrative action by the office to  
26 impose revocation, suspension, or fine must ~~shall~~ be brought  
27 within 2 years after the date of the last violation upon which  
28 the action is founded.

29           ~~(9)~~(8) ~~Nothing in This part does not~~ shall be  
30 ~~construed to~~ preclude any person from pursuing remedies  
31 available under the federal Fair Debt Collection Practices

1 Act, the Federal Trade Commission Act, or the Florida  
2 Deceptive and Unfair Trade Practices Act for any violation of  
3 these acts ~~such act~~, including specifically against any person  
4 who is exempt from the registration provisions of this part.

5 (10) The remedies under this part are in addition to  
6 remedies otherwise available for the same conduct under state  
7 or local law.

8 Section 23. Subsection (5) of section 559.77, Florida  
9 Statutes, is amended to read:

10 559.77 Civil remedies.--

11 (5) In applying and construing this section, due  
12 consideration and great weight shall be given to the  
13 interpretations of the Federal Trade Commission and the  
14 federal courts relating to the federal Fair Debt Collection  
15 Practices Act and the Federal Trade Commission Act. If there  
16 is an inconsistency between this part and an interpretation of  
17 the federal case law or the federal acts, the provision that  
18 is more protective of the consumer or debtor shall prevail.

19 Section 24. Section 559.785, Florida Statutes, is  
20 amended to read:

21 559.785 Criminal penalty.--

22 (1) It shall be a felony misdemeanor of the third  
23 ~~first~~ degree, punishable as provided in s. 775.082, ~~or s.~~  
24 775.083, or s. 775.084, for any person not exempt from  
25 registering as provided in this part to:

26 (a) Operate or solicit business as a consumer  
27 collection agency ~~engage in collecting consumer debts~~ in this  
28 state without first registering with the office; ~~or to~~

29 (b) Register or attempt to register by means of fraud,  
30 misrepresentation, or concealment;  
31

1           (c) Engage in any consumer debt collection activity  
2 after suspension or revocation of the registrant's  
3 registration under s. 559.730(1); or

4           (d) Engage in any consumer debt collection activity  
5 while under a temporary or permanent injunction issued under  
6 s. 559.78.

7           (2) Each of the following acts constitutes a  
8 misdemeanor of the second degree, punishable as provided in s.  
9 775.082 or s. 775.083:

10           (a) Relocating a business as a consumer collection  
11 agency or operating under any name other than that designated  
12 in the registration, unless written notification is given to  
13 the office and to the surety or sureties on the original bond.

14           (b) Assigning or attempting to assign a registration  
15 under this part.

16           (3) The court may, in addition to penalties provided  
17 in this part, invalidate the registration of any registrant  
18 under this part who has been found guilty of conduct  
19 prohibited in subsection (1) or subsection (2).

20           (4) The office may refer evidence concerning a  
21 violation of this part, or of any rule or order, to any  
22 criminal prosecuting agency that may, with or without the  
23 reference and in addition to any other action it might  
24 commence, bring an action against any person to enjoin,  
25 restrain, and prevent the commission of any prohibited act or  
26 practice.

27           Section 25. For 2004-2005 fiscal year, seven positions  
28 are authorized and the sum of \$450,575 is appropriated from  
29 the Regulatory Trust Fund to the Office of Financial  
30 Regulation for the purpose of enforcing this act. The seven  
31

1 positions consist of six examiners and one registration  
2 analyst.

3 Section 26. Sections 559.547 and 559.563, Florida  
4 Statutes, are repealed.

5 Section 27. This act shall take effect July 1, 2004.

6

7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 Senate Bill 2430

10 Requires an applicant for a commercial collection agency  
11 registration to provide information reasonably necessary for  
12 the Office of Financial Regulation and the Financial Services  
13 Commission to determine the applicant's eligibility.

14 Requires the Office of Financial Regulation to investigate  
15 applicants for commercial collection agency registrations upon  
16 the filing of the application and fee.

17 Requires consumer collection agency applicants to have a  
18 \$50,000 surety bond.

19 Increases application, renewal, and late fees for commercial  
20 collection agency applicants and registrants from \$500 to \$800  
21 and increases similar fees for consumer collection agency  
22 applicants and registrants from \$200 to \$800.

23 Provides for an appropriation of \$450,575 for fiscal year  
24 2004-05, and authorizes seven FTE positions for the Office of  
25 Financial Regulation from the Regulatory Trust Fund.

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