

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee
 3 Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 559.55, Florida Statutes, is reordered
 and amended to read:

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

(1) "Commission" means the Financial Services Commission.

(2)~~(5)~~ "Communication" means the conveying of information
 regarding a debt directly or indirectly to any person through
 any medium.

(3)~~(7)~~ "Consumer collection agency" means any debt
 collector or business entity engaged in the business of

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18 soliciting consumer debts for collection or of collecting
19 consumer debts, which debt collector or business is not
20 expressly exempted as set forth in s. 559.553(3) ~~559.553(4)~~.

21 (4) "Control person" means an individual, partnership,
22 corporation, trust, or other organization that possesses the
23 power, directly or indirectly, to direct the management or
24 policies of a company, whether through ownership of securities,
25 by contract, or otherwise. The term includes, but is not limited
26 to:

27 (a) A company's executive officers, including the
28 president, chief executive officer, chief financial officer,
29 chief operations officer, chief legal officer, chief compliance
30 officer, director, and other individuals having similar status
31 or functions.

32 (b) For a corporation, a shareholder who, directly or
33 indirectly, owns 10 percent or more or that has the power to
34 vote 10 percent or more, of a class of voting securities unless
35 the applicant is a publicly traded company.

36 (c) For a partnership, all general partners and limited or
37 special partners who have contributed 10 percent or more or that
38 have the right to receive, upon dissolution, 10 percent or more
39 of the partnership's capital.

40 (d) For a trust, each trustee.

41 (e) For a limited liability company, all elected managers
42 and those members who have contributed 10 percent or more or

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43 that have the right to receive, upon dissolution, 10 percent or
44 more of the partnership's capital.

45 ~~(5)(3)~~ "Creditor" means any person who offers or extends
46 credit creating a debt or to whom a debt is owed, but does not
47 include any person to the extent that they receive an assignment
48 or transfer of a debt in default solely for the purpose of
49 facilitating collection of such debt for another.

50 ~~(6)(1)~~ "Debt" or "consumer debt" means any obligation or
51 alleged obligation of a consumer to pay money arising out of a
52 transaction in which the money, property, insurance, or services
53 which are the subject of the transaction are primarily for
54 personal, family, or household purposes, whether or not such
55 obligation has been reduced to judgment.

56 ~~(7)(6)~~ "Debt collector" means any person who uses any
57 instrumentality of commerce within this state, whether initiated
58 from within or outside this state, in any business the principal
59 purpose of which is the collection of debts, or who regularly
60 collects or attempts to collect, directly or indirectly, debts
61 owed or due or asserted to be owed or due another. The term
62 "debt collector" includes any creditor who, in the process of
63 collecting her or his own debts, uses any name other than her or
64 his own which would indicate that a third person is collecting
65 or attempting to collect such debts. The term does not include:

66 (a) Any officer or employee of a creditor while, in the
67 name of the creditor, collecting debts for such creditor;

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68 (b) Any person while acting as a debt collector for
69 another person, both of whom are related by common ownership or
70 affiliated by corporate control, if the person acting as a debt
71 collector for persons to whom it is so related or affiliated and
72 if the principal business of such persons is not the collection
73 of debts;

74 (c) Any officer or employee of any federal, state, or
75 local governmental body to the extent that collecting or
76 attempting to collect any debt is in the performance of her or
77 his official duties;

78 (d) Any person while serving or attempting to serve legal
79 process on any other person in connection with the judicial
80 enforcement of any debt;

81 (e) Any not-for-profit organization which, at the request
82 of consumers, performs bona fide consumer credit counseling and
83 assists consumers in the liquidation of their debts by receiving
84 payments from such consumers and distributing such amounts to
85 creditors; or

86 (f) Any person collecting or attempting to collect any
87 debt owed or due or asserted to be owed or due another to the
88 extent that such activity is incidental to a bona fide fiduciary
89 obligation or a bona fide escrow arrangement; concerns a debt
90 which was originated by such person; concerns a debt which was
91 not in default at the time it was obtained by such person; or
92 concerns a debt obtained by such person as a secured party in a
93 commercial credit transaction involving the creditor.

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94 ~~(8)-(2)~~ "Debtor" or "consumer" means any natural person
95 obligated or allegedly obligated to pay any debt.

96 (9) "Federal Fair Debt Collection Practices Act" or
97 "Federal Act" means the federal legislation regulating fair debt
98 collection practices, as set forth in Pub. L. No. 95-109, as
99 amended and published in 15 U.S.C. ss. 1692 et seq.

100 ~~(10)-(4)~~ "Office" means the Office of Financial Regulation
101 of the ~~Financial Services~~ commission.

102 ~~(11)-(8)~~ "Out-of-state consumer debt collector" means any
103 person whose business activities in this state involve both
104 collecting or attempting to collect consumer debt from debtors
105 located in this state by means of interstate communication
106 originating from outside this state and soliciting consumer debt
107 accounts for collection from creditors who have a business
108 presence in this state. For purposes of this subsection, a
109 creditor has a business presence in this state if either the
110 creditor or an affiliate or subsidiary of the creditor has an
111 office in this state.

112 Section 2. Section 559.553, Florida Statutes, is amended
113 to read:

114 559.553 Registration of consumer collection agencies
115 required; exemptions.-

116 (1) A ~~After January 1, 1994, no person may not shall~~
117 engage in business in this state as a consumer collection agency
118 or continue to do business in this state as a consumer

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119 collection agency without first registering in accordance with
120 this part, and thereafter maintaining a valid registration.

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

124 ~~(3) A prospective registrant shall be entitled to be~~
125 ~~registered when registration information is complete on its face~~
126 ~~and the applicable registration fee has been paid; however, the~~
127 ~~office may reject a registration submitted by a prospective~~
128 ~~registrant if the registrant or any principal of the registrant~~
129 ~~previously has held any professional license or state~~
130 ~~registration which was the subject of any suspension or~~
131 ~~revocation which has not been explained by the prospective~~
132 ~~registrant to the satisfaction of the office either in the~~
133 ~~registration information submitted initially or upon the~~
134 ~~subsequent written request of the office. In the event that an~~
135 ~~attempted registration is rejected by the office the prospective~~
136 ~~registrant shall be informed of the basis for rejection.~~

137 (3)~~(4)~~ This section does ~~shall~~ not apply to:

138 (a) An ~~Any~~ original creditor.

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

140 (c) A ~~Any~~ financial institution authorized to do business
141 in this state and any wholly owned subsidiary and affiliate
142 thereof.

143 (d) A ~~Any~~ licensed real estate broker.

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144 (e) An ~~Any~~ insurance company authorized to do business in
145 this state.

146 (f) A ~~Any~~ consumer finance company and any wholly owned
147 subsidiary and affiliate thereof.

148 (g) A ~~Any~~ person licensed pursuant to chapter 520.

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

152 (i) An ~~Any~~ FDIC-insured institution or subsidiary or
153 affiliate thereof.

154 ~~(4)-(5)~~ An ~~Any~~ out-of-state consumer debt collector as
155 defined in s. 559.55(11) ~~559.55(8)~~ who is not exempt from
156 registration by application of subsection (3) ~~(4)~~ and who fails
157 to register in accordance with this part shall be subject to an
158 enforcement action by the state as specified in s. 559.565.

159 Section 3. Section 559.554, Florida Statutes, is created
160 to read:

161 559.554 Powers and duties of the commission and office.—

162 (1) The office is responsible for the administration and
163 enforcement of this part.

164 (2) The commission may adopt rules to administer this
165 part, including rules:

166 (a) Requiring electronic submission of forms, documents,
167 and fees required by this part.

168 (b) Establishing time periods during which a consumer
169 collection agency is barred from registration due to prior

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170 criminal convictions of, or guilty or nolo contendere pleas by,
171 an applicant's control persons, regardless of adjudication.

172 1. The rules must provide:

173 a. A 15-year disqualifying period for felonies involving
174 fraud, dishonesty, breach of trust, money laundering, or other
175 acts of moral turpitude.

176 b. A 7-year disqualifying period for all other felonies.

177 c. A 5-year disqualifying period for misdemeanors
178 involving fraud, dishonesty, or other acts of moral turpitude.

179 2. The rules must provide for an additional waiting period
180 due to dates of imprisonment or community supervision, the
181 commitment of multiple crimes, and other factors reasonably
182 related to the applicant's criminal history.

183 3. The rules must provide for mitigating factors for
184 crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.

185 4. An applicant is not eligible for registration until
186 expiration of the disqualifying period set by rule.

187 5. Section 112.011 does not apply to eligibility for
188 registration under this part.

189 (3) All fees, charges, and fines collected pursuant to
190 this part shall be deposited into the Regulatory Trust Fund of
191 the office.

192 Section 4. Section 559.5541, Florida Statutes, is created
193 to read:

194 559.5541 Examinations and investigations.-

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195 (1) Notwithstanding s. 559.725(4), the office may, without
196 advance notice, conduct examinations and investigations, within
197 or outside this state, to determine whether a person has
198 violated this part or related rules. For purposes of this
199 section, the office may examine the books, accounts, records,
200 and other documents or matters of any person subject to this
201 part. The office may compel the production of all relevant
202 books, records, and other documents and materials relative to an
203 examination or investigation. Examinations may not be made more
204 often than once during a 48-month period unless the office has
205 reason to believe a person has violated or will violate this
206 part or related rules.

207 (2) In order to reduce the burden on persons subject to
208 this part, the office may conduct a joint or concurrent
209 examination with a state or federal regulatory agency and may
210 furnish a copy of all examinations to an appropriate regulator
211 if the regulator agrees to abide by the confidentiality
212 provisions in chapter 119 and this part. The office may also
213 accept an examination from any appropriate regulator.

214 Section 5. Section 559.555, Florida Statutes, is amended
215 to read:

216 559.555 Registration of consumer collection agencies;
217 procedure.—

218 (1) A ~~Any~~ person who acts ~~required to register~~ as a
219 consumer collection agency must be registered in accordance with

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220 this section. shall furnish to the office the registration fee
221 and information as follows:

222 (2) In order to apply for a consumer collection agency
223 registration, an applicant must:

224 (a) Submit a completed application form as prescribed by
225 rule of the commission.

226 (b) Submit a nonrefundable application fee of \$200.
227 Application fees may not be prorated for partial years of
228 registration.

229 (c) Submit fingerprints for each of the applicant's
230 control persons in accordance with rules adopted by the
231 commission.

232 1. The fingerprints may be submitted through a third-party
233 vendor authorized by the Department of Law Enforcement to
234 provide live-scan fingerprinting.

235 2. A state criminal history background check must be
236 conducted through the Department of Law Enforcement, and a
237 federal criminal history background check must be conducted
238 through the Federal Bureau of Investigation.

239 3. All fingerprints submitted to the Department of Law
240 Enforcement must be submitted electronically and entered into
241 the statewide automated biometric identification system
242 established in s. 943.05(2)(b) and available for use in
243 accordance with s. 943.05(2)(g) and (h). The office shall pay an
244 annual fee to the Department of Law Enforcement to participate
245 in the system and inform the Department of Law Enforcement of

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246 any person whose fingerprints are no longer required to be
247 retained.

248 4. The costs of fingerprint processing, including the cost
249 of retaining the fingerprints, shall be borne by the person
250 subject to the background check.

251 5. The office is responsible for reviewing the results of
252 the state and federal criminal history background checks and
253 determining whether the applicant meets registration
254 requirements.

255 (3) The office shall issue a consumer collection agency
256 registration to each person who is not otherwise ineligible and
257 who meets the requirements of this section. However, it is a
258 ground for denial of registration if the applicant or one of the
259 applicant's control persons has committed any violation
260 specified in this part, or is the subject of a pending felony
261 criminal prosecution or a prosecution or an administrative
262 enforcement action, in any jurisdiction, which involves fraud,
263 dishonesty, breach of trust, money laundering, or any other act
264 of moral turpitude.

265 (4) A registration issued under this part is not
266 transferable or assignable.

267 (5) A consumer collection agency shall report, on a form
268 prescribed by rule of the commission, any change in the
269 information contained in an initial application form, or an
270 amendment thereto, within 30 days after the change is effective.

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271 ~~(1) The registrant shall pay to the office a registration~~
272 ~~fee in the amount of \$200. All amounts collected shall be~~
273 ~~deposited by the office to the credit of the Regulatory Trust~~
274 ~~Fund of the office.~~

275 ~~(2) Each registrant shall provide to the office the~~
276 ~~business name or trade name, the current mailing address, the~~
277 ~~current business location which constitutes its principal place~~
278 ~~of business, and the full name of each individual who is a~~
279 ~~principal of the registrant. "Principal of a registrant" means~~
280 ~~the registrant's owners if a partnership or sole proprietorship,~~
281 ~~corporate officers, corporate directors other than directors of~~
282 ~~a not for profit corporation organized pursuant to chapter 617~~
283 ~~and Florida resident agent if a corporate registrant. The~~
284 ~~registration information shall include a statement clearly~~
285 ~~identifying and explaining any occasion on which any~~
286 ~~professional license or state registration held by the~~
287 ~~registrant, by any principal of the registrant, or by any~~
288 ~~business entity in which any principal of the registrant was the~~
289 ~~owner of 10 percent or more of such business, was the subject of~~
290 ~~any suspension or revocation.~~

291 ~~(6)(3)~~ Renewal of registration shall be made between
292 October 1 and December 31 of each year. There shall be no
293 proration of the fee for any registration. In order to renew a
294 consumer collection agency registration, a registrant must
295 submit a nonrefundable renewal fee equal to the registration fee
296 and a nonrefundable fee to cover the costs of further

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297 fingerprint processing and retention as set forth by commission
298 rule.

299 (7) A consumer collection agency registrant whose initial
300 registration is approved and issued by the Office of Financial
301 Regulation pursuant to s. 559.555, Florida Statutes, before
302 October 1, 2014, who seeks renewal of the registration must
303 submit fingerprints for each control person for live-scan
304 processing pursuant to s. 559.555(2)(c), Florida Statutes, as
305 amended by this act. Such fingerprints must be submitted before
306 renewing a registration that is scheduled to expire December 31,
307 2014.

308 Section 6. Section 559.5551, Florida Statutes, is created
309 to read:

310 559.5551 Requirements of registrants.—A registrant under
311 this part shall report to the office in a manner prescribed by
312 rule of the commission:

313 (1) A conviction of, or plea of nolo contendere to,
314 regardless of adjudication, a crime or administrative violation
315 that involves fraud, dishonesty, breach of trust, money
316 laundering, or any other act of moral turpitude, in any
317 jurisdiction, by the registrant or any control person within 30
318 days after the date of conviction, entry of a plea of nolo
319 contendere, or final administrative action.

320 (2) A conviction of, or plea of nolo contendere to,
321 regardless of adjudication, a felony committed by the registrant

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322 or any control person within 30 days after the date of
323 conviction or the date the plea of nolo contendere is entered.

324 (3) A change to the information contained in an initial
325 application form or an amendment to the application within 30
326 days after the change is effective.

327 (4) An addition or subtraction of a control person or a
328 change in the form of business organization. A control person
329 added by a registrant is subject to this part and must submit
330 fingerprints in accordance with s. 559.555 and the rules of the
331 commission. The office may bring an administrative action in
332 accordance with s. 559.730 to enforce this part if the added
333 control person fails to meet registration requirements or comply
334 with any other provision of this part.

335 Section 7. Section 559.565, Florida Statutes, is amended
336 to read:

337 559.565 Enforcement action against out-of-state consumer
338 debt collector.— The remedies of this section are cumulative to
339 other sanctions and enforcement provisions of this part for any
340 violation by an out-of-state consumer debt collector, as defined
341 in s. 559.55(11) ~~559.55(8)~~.

342 (1) An out-of-state consumer debt collector who collects
343 or attempts to collect consumer debts in this state without
344 first registering in accordance with this part is subject to an
345 administrative fine of up to \$10,000 together with reasonable
346 attorney fees and court costs in any successful action by the
347 state to collect such fines.

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348 (2) A ~~Any~~ person, whether or not exempt from registration
349 under this part, who violates s. 559.72 is subject to sanctions
350 the same as any other consumer debt collector, including
351 imposition of an administrative fine. The registration of a duly
352 registered out-of-state consumer debt collector is subject to
353 revocation or suspension in the same manner as the registration
354 of any other registrant under this part.

355 (3) In order to effectuate this section and enforce the
356 requirements of this part as it relates to out-of-state consumer
357 debt collectors, the Attorney General is expressly authorized to
358 initiate such action on behalf of the state as he or she deems
359 appropriate in any state or federal court of competent
360 jurisdiction.

361 Section 8. Section 559.730, Florida Statutes, is amended
362 to read:

363 559.730 Grounds for disciplinary action; administrative
364 remedies.—

365 (1) Each of the following acts constitutes a ground for
366 which the disciplinary actions specified in subsection (2) may
367 be taken against a person registered or required to be
368 registered under this part:

369 (a) Failure to disburse funds in accordance with
370 agreements.

371 (b) Fraud, misrepresentation, deceit, negligence, or
372 incompetence in a collection transaction.

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373 (c) Commission of fraud, misrepresentation, concealment,
374 or dishonest dealing by trick, scheme, or device; culpable
375 negligence; breach of trust in a business transaction in any
376 state, nation, or territory; or aiding, assisting, or conspiring
377 with another person engaged in such misconduct and in
378 furtherance thereof.

379 (d) Being convicted of, or entering a plea of guilty or
380 nolo contendere to, regardless of adjudication, a felony or
381 crime involving fraud, dishonesty, breach of trust, money
382 laundering, or act of moral turpitude.

383 (e) Having a final judgment entered against the registrant
384 in a civil action upon grounds of fraud, embezzlement,
385 misrepresentation, or deceit.

386 (f) Being the subject of a decision, finding, injunction,
387 suspension, prohibition, revocation, denial, judgment, or
388 administrative order by a court of competent jurisdiction or an
389 administrative law judge, or by a state or federal agency,
390 involving a violation of a federal or state law relating to debt
391 collection or a rule or regulation adopted under such law.

392 (g) Having a license or registration, or the equivalent,
393 to practice a profession or occupation denied, suspended, or
394 revoked, or otherwise acted against, including the denial of a
395 registration or license by a registration or licensing authority
396 of this state or another state, territory, or country.

397 (h) Acting as a consumer collection agency without a
398 current registration issued under this part.

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399 (i) A material misstatement or omission of fact on an
400 initial or amended registration application.

401 (j) Payment to the office for a registration or permit
402 with a check or electronic transmission of funds, which is
403 dishonored by the applicant's or registrant's financial
404 institution.

405 (k) Failure to comply with, or a violation of, any
406 provision of this part, or any rule or order made or issued
407 pursuant to this part.

408 (l) Failure to maintain, preserve, and keep available for
409 examination all books, accounts, or other documents required by
410 this part and the rules of the commission.

411 (m) Refusal to permit an investigation or examination of
412 books and records, or refusal to comply with an office subpoena
413 or subpoena duces tecum.

414 (n) Failure to timely pay a fee, charge, or fine imposed
415 or assessed pursuant to this part and the rules of the
416 commission.

417 (2) If the office finds a person in violation of any act
418 specified in this section, it may enter an order imposing one or
419 more of the following penalties:

420 (a) Issuance of a reprimand.

421 (b) Suspension of a registration, subject to reinstatement
422 upon satisfying all reasonable conditions imposed by the office.

423 (c) Revocation of a registration.

424 (d) Denial of a registration.

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425 (e) Imposition of a fine of up to \$10,000 for each count
426 or separate offense.

427 (f) An administrative fine of up to \$1,000 per day for
428 each day that a person engages as a consumer collection agency
429 without a valid registration issued under this part.

430 ~~(1) The office may impose an administrative fine against,~~
431 ~~or revoke or suspend the registration of, a registrant under~~
432 ~~this part who has committed a violation of s. 559.72. Final~~
433 ~~action to fine, suspend, or revoke the registration of a~~
434 ~~registrant is subject to review in accordance with chapter 120.~~

435 (3)~~(2)~~ The office may impose suspension rather than
436 revocation of a registration if circumstances warrant that one
437 or the other should be imposed and the registrant demonstrates
438 that the registrant has taken affirmative steps that can be
439 expected to effectively eliminate the violations and that the
440 registrant's registration has never been previously suspended.

441 (4) A consumer collection agency is subject to the
442 disciplinary actions specified in subsection (2) for a violation
443 of subsection (1) by a control person of the consumer collection
444 agency.

445 (5) Pursuant to s. 120.06(6), the office may summarily
446 suspend the registration of a consumer collection agency if the
447 office has reason to believe that a registrant poses an
448 immediate, serious danger to the public's health, safety, or
449 welfare. The arrest of the registrant, or the consumer
450 collection agency's control person, for any felony or any crime

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451 involving fraud, dishonesty, breach of trust, money laundering,
452 or any other act of moral turpitude is deemed sufficient to
453 constitute an immediate danger to the public's health, safety,
454 or welfare. Any proceeding for the summary suspension of a
455 registration must be conducted by the commissioner of the
456 office, or designee, who shall issue the final summary order.

457 (6) The office may deny a request to terminate a
458 registration or withdraw a registration application if the
459 office believes that an act that would be a ground for
460 registration denial, suspension, restriction, or revocation
461 under this part has been committed.

462 ~~(7)(3) In addition to, or in lieu of suspension or~~
463 ~~revocation of a registration, the office may impose an~~
464 ~~administrative fine of up to \$10,000 per violation against a~~
465 ~~registrant for violations of s. 559.72. The Financial Services~~
466 commission shall adopt rules establishing guidelines for
467 imposing administrative penalties.

468 ~~(8)(4)~~ This part does not preclude any person from
469 pursuing remedies available under the Federal Fair Debt
470 Collection Practices Act for any violation of such act.

471 Section 9. This act shall take effect October 1, 2014.

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473
474 -----

T I T L E A M E N D M E N T

475
476 Remove everything before the enacting clause and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 413 (2014)

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477 An act relating to consumer collection practices; amending s.
478 559.55, F.S.; reordering and revising definitions; amending s.
479 559.553, F.S.; deleting a provision entitling prospective
480 consumer collection agency registrants to registration when
481 specified conditions are met; creating s. 559.554, F.S.;
482 providing powers and duties of the Office of Financial
483 Regulation and the Financial Services Commission; authorizing
484 the commission to adopt rules; requiring fees, charges, and
485 fines to be deposited in a specified trust fund; creating s.
486 559.5541, F.S.; authorizing the office to make investigations or
487 examinations to determine violations of specified provisions;
488 amending s. 559.555, F.S.; revising registration procedures and
489 application requirements for consumer collection agencies;
490 requiring applicants and certain registrants to submit
491 fingerprints; providing that registrations are not transferable
492 or assignable; requiring consumer collection agencies to report
493 changes in specified information within a specified period;
494 providing registration renewal and fingerprint retention fees;
495 providing for applicability to registration renewals for
496 registrants initially registered before a specified date;
497 creating s. 559.5551, F.S.; providing notification requirements
498 for consumer collection agencies; authorizing the office to
499 bring an administrative action under certain circumstances;
500 amending s. 559.565, F.S.; conforming a cross-reference;
501 amending s. 559.730, F.S.; providing grounds for disciplinary
502 action; providing penalties; providing grounds for an immediate

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 413 (2014)

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503 suspension of a consumer collection agency registration;
504 providing grounds to deny a request to terminate a registration
505 and to withdraw a registration application; providing an
506 effective date.