

HB 1371

2004

A bill to be entitled

1 An act relating to collection practices; amending s.
2 559.544, F.S.; requiring an applicant to apply to the
3 Office of Financial Regulation to register as a commercial
4 collection agency; amending s. 559.545, F.S.; requiring an
5 applicant to comply with certain procedures to register as
6 a commercial collection agency; prescribing that a
7 registration that is not renewed expires automatically;
8 providing procedures by which a commercial collection
9 agency may reinstate its registration; amending s.
10 559.546, F.S.; requiring each applicant to purchase a
11 surety bond; creating s. 559.5471, F.S.; detailing the
12 powers and duties of the office with respect to regulating
13 commercial collection agencies; authorizing the office to
14 adopt rules; authorizing the office to issue subpoenas and
15 subpoenas duces tecum under certain conditions; providing
16 procedures the office may use when a person does not
17 comply with a subpoena; permitting a court to grant
18 injunctive or other relief when a person does not comply
19 with a subpoena; authorizing the court to award attorney's
20 fees and costs to the office under certain circumstances;
21 creating s. 559.5473, F.S.; authorizing the office to seek
22 injunctive relief under certain circumstances; authorizing
23 a court to appoint a receiver under specified conditions;
24 creating s. 559.5474, F.S.; authorizing the office to
25 issue cease and desist orders; creating s. 559.5475, F.S.;
26 permitting specified documents made by a financial
27 examiner to be admitted into evidence under certain
28 conditions; creating s. 559.5476, F.S.; requiring each
29

30 | registrant to maintain business records; authorizing the
 31 | office to adopt rules to designate the types of
 32 | information a registrant must maintain; creating s.
 33 | 559.5477, F.S.; providing for administrative remedies;
 34 | specifying the grounds under which a commercial collection
 35 | agency may have its registration suspended or revoked;
 36 | permitting a commercial collection agency to terminate its
 37 | registration; authorizing the office to impose an
 38 | administrative fine up to \$1,000 per violation; amending
 39 | s. 559.55, F.S.; providing definitions; amending s.
 40 | 559.552, F.S., relating to the relationship of state and
 41 | federal laws; providing for construing interpretations of
 42 | the Federal Trade Commission and the federal courts when
 43 | applying state and federal laws and rules relating to
 44 | consumer collection practices; amending s. 559.553, F.S.;
 45 | requiring an applicant to provide certain information to
 46 | register as a consumer collection agency; amending s.
 47 | 559.555, F.S.; revising application procedures for
 48 | consumer collection agencies; requiring an applicant to
 49 | furnish specified information; requiring an applicant to
 50 | report specified information on crimes and licensure
 51 | discipline committed by the applicant; listing the grounds
 52 | for denying an application for registration; providing
 53 | that registrations automatically expire; providing
 54 | procedures for a consumer collection agency to renew its
 55 | registration; amending s. 559.565, F.S.; providing that an
 56 | out-of-state consumer collection agency otherwise subject
 57 | to this state's jurisdiction is subject to sanctions for
 58 | committing prohibited practices; amending s. 559.72, F.S.;

HB 1371

2004

59 specifying certain activities as prohibited consumer
60 collection practices; amending s. 559.725, F.S.;
61 authorizing the office to conduct investigations of
62 consumer complaints; providing for the examination of a
63 registrant; creating s. 559.726, F.S.; detailing the
64 powers and duties of the office with respect to regulating
65 consumer collection agencies; authorizing the office to
66 adopt rules; authorizing the office to issue subpoenas and
67 subpoenas duces tecum under certain conditions; providing
68 procedures the office may use when a person does not
69 comply with a subpoena; permitting a court to grant
70 injunctive or other relief when a person does not comply
71 with a subpoena; authorizing the court to award attorney's
72 fees and costs to the office under certain circumstances;
73 creating s. 559.7262, F.S.; authorizing the office to seek
74 injunctive relief under certain circumstances; creating s.
75 559.7263, F.S.; authorizing the office to issue cease and
76 desist orders; creating s. 559.7264, F.S.; permitting
77 certain documents prepared by a financial examiner to be
78 admitted into evidence under specified conditions;
79 creating s. 559.7265, F.S.; requiring each registrant to
80 maintain business records; authorizing the office to adopt
81 rules to designate the types of information a registrant
82 must maintain; amending s. 559.730, F.S.; providing
83 administrative remedies for violating prohibited consumer
84 collection practices; specifying the prohibited practices
85 for which a consumer collection agency's registration may
86 be suspended or revoked; providing that a consumer
87 collection agency may terminate its registration;

HB 1371

2004

88 authorizing the office to assess an administrative fine of
 89 up to \$1,000 per violation; amending s. 559.77, F.S.;
 90 providing for construing interpretations of the Federal
 91 Trade Commission and the federal courts when applying
 92 state and federal laws and rules; amending s. 559.785,
 93 F.S.; specifying certain activities that subject a person
 94 to a criminal penalty; repealing ss. 559.547 and 559.563,
 95 F.S., relating to void registrations; providing an
 96 effective date.

97

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

99

100 Section 1. Section 559.544, Florida Statutes, is amended
 101 to read:

102 559.544 Registration required; exemptions.--

103 (1) A ~~No~~ person may not ~~shall~~ engage in business in this
 104 state as a commercial collection agency, as defined in this
 105 part, or continue to do business in this state as a commercial
 106 collection agency, unless the person without first registers
 107 with the office according to registering in accordance with this
 108 part and thereafter maintains the ~~maintaining such~~ registration.

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

113 (3) A ~~No~~ registration is not ~~shall be~~ valid for any
 114 commercial collection agency transacting business at any place
 115 other than that designated in the registration unless the office
 116 is first notified in advance of any change of location. A

HB 1371

2004

117 registration under this part is not transferable or assignable.
 118 Any commercial collection agency desiring to change its
 119 registered name, location, or agent for service of process at
 120 any time other than renewal of the registration must ~~shall~~
 121 notify the office of the ~~such~~ change prior to the change.

122 (4) The office may ~~shall~~ not accept an application for any
 123 registration for any commercial collection agency as validly
 124 made and filed with the office under this section unless the
 125 application ~~registration~~ information furnished to the office by
 126 the applicant ~~registrant~~ is complete under ~~pursuant to~~ s.
 127 559.545 and facially demonstrates that the applicant ~~such~~
 128 ~~registrant~~ is qualified to engage in business as a commercial
 129 collection agency, including specifically that ~~neither~~ the
 130 applicant or registrant ~~nor~~ any principal of the applicant
 131 ~~registrant~~ has not engaged in any unlawful collection practices,
 132 dishonest dealings, acts of moral turpitude, or other criminal
 133 acts that reflect an inability to engage in the commercial
 134 collection agency business. The office shall inform any person
 135 whose application for registration is denied ~~rejected~~ by the
 136 office of the fact of and basis for the denial ~~such rejection~~.
 137 A prospective registrant is ~~shall be~~ entitled to be registered
 138 when her or his or its application ~~registration~~ information is
 139 complete on its face, the applicable registration fee has been
 140 paid, and the required evidence of current bond is furnished to
 141 the office.

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

143 (a) A member of The Florida Bar, unless the ~~such~~ person is
 144 primarily engaged in the collection of commercial claims.

145 "Primarily engaged in the collection of commercial claims" means

HB 1371

2004

146 that more than one-half of the person's income ~~of such person~~
 147 arises from the business of soliciting commercial claims for
 148 collection or collecting commercial claims.

149 (b) A financial institution authorized to do business in
 150 this state and any wholly owned subsidiary and affiliate
 151 thereof.

152 (c) A licensed real estate broker.

153 (d) A title insurance company authorized to do business in
 154 this state.

155 (e) A collection agency that ~~which~~ is not primarily
 156 engaged in the collection of commercial claims. "Not primarily
 157 engaged in the collection of commercial claims" means that less
 158 than one-half of the collection revenue of the ~~such~~ agency
 159 arises from the collection of commercial claims.

160 (f) A consumer finance company and any wholly owned
 161 subsidiary and affiliate thereof.

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

163 (h) A credit grantor.

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

165 (j) An FDIC-insured institution or subsidiary or affiliate
 166 thereof.

167 Section 2. Section 559.545, Florida Statutes, is amended
 168 to read:

169 559.545 Registration of commercial collection agencies;
 170 procedure.--~~A~~ Any person who wishes to apply for registration
 171 ~~register~~ as a commercial collection agency in compliance with
 172 this part must ~~shall~~ do so on forms adopted by the commission
 173 and furnished by the office. Any renewal of registration shall
 174 be made between October 1 and December 31 of each year. In

HB 1371

2004

175 applying for ~~registering~~ or renewing a registration as required
 176 by this part, each commercial collection agency shall furnish to
 177 the office a registration fee, information, and surety bond, as
 178 follows:

179 (1) The applicant or registrant shall pay to the office a
 180 registration fee of \$500. All amounts collected shall be
 181 deposited to the credit of the Regulatory Trust Fund of the
 182 office.

183 (2) The applicant or registrant must ~~shall~~ provide the
 184 following information:

185 (a) The business name or trade name of the commercial
 186 collection agency, the current mailing address of the agency,
 187 and the current business location of each place from which the
 188 agency operates either a main or branch office, with a
 189 designation of which location constitutes its principal place of
 190 business.

191 (b) The full names, current addresses, current telephone
 192 numbers, and social security numbers, or federal identification
 193 numbers of any corporate owner, of the applicant's or
 194 registrant's owners or corporate officers and directors, and of
 195 the Florida resident agent of the registering agency.

196 (c) A statement as to whether the applicant or registrant
 197 is a domestic or foreign corporation, together with the state
 198 and date of incorporation, charter number of the corporation,
 199 and, if a foreign corporation, the date the corporation first
 200 registered to do business in this state.

201 (d) A statement listing each county in this state in which
 202 the applicant or registrant is currently doing business or plans
 203 to do business within the next calendar year, indicating each

HB 1371

2004

204 county in which the applicant or registrant holds an
 205 occupational license.

206 (e) A statement listing each county in this state in which
 207 the applicant or registrant is operating under a fictitious name
 208 or trade name other than that of the applicant or registrant,
 209 indicating the date and place of registration of any such
 210 fictitious name or trade name.

211 (f) A statement listing the names of any other
 212 corporations, entities, or trade names through which any owner
 213 or director of the applicant or registrant was known or did
 214 business as a commercial or consumer collection agency within
 215 the 5 calendar years immediately preceding the year in which the
 216 agency is registering.

217 (g) A statement clearly identifying and explaining any
 218 occasion on which any professional license or occupational
 219 license held by the applicant or registrant, any principal of
 220 the applicant or registrant, or any business entity in which any
 221 principal of the applicant or registrant was the owner of 10
 222 percent or more of the ~~such~~ business was the subject of any
 223 suspension, revocation, or other disciplinary action.

224 (h) A statement clearly identifying and explaining any
 225 occasion of a finding of guilt of any crime involving moral
 226 turpitude or dishonest conduct on the part of any principal of
 227 the applicant or registrant.

228 (3) The applicant or registrant shall furnish to the
 229 office evidence, as provided in s. 559.546, of the applicant or
 230 registrant having a current surety bond in the amount of
 231 \$50,000, valid for the year of registration, paid for and issued
 232 for the use and benefit of any credit grantor who suffers or

HB 1371

2004

233 sustains any loss or damage by reason of any violation of ~~the~~
 234 ~~provisions of~~ this part by the applicant or registrant, or by
 235 any agent or employee of the applicant or registrant acting
 236 within the scope of her or his employment, and issued to ensure
 237 conformance with ~~the provisions of~~ this part.

238 (4) A registration that is not renewed by the end of the
 239 calendar year expires automatically. A commercial collection
 240 agency that has not renewed its registration by the time the
 241 registration period expires may request reactivation of its
 242 registration. The registrant must file its request with the
 243 office on or before January 31 of the year following the year of
 244 expiration. The request must contain any information the office
 245 requires, together with the registration fee required in
 246 subsection (1), and a late fee equal to the registration fee.
 247 Any reactivation of registration granted by the office during
 248 the month of January is deemed retroactive to January 1 of that
 249 year. Any registrant that engages in business as a commercial
 250 collection agency after its registration has expired violates s.
 251 559.548(1).

252 (5) An initial or renewal registration application is
 253 deemed received for purposes of s. 120.60 upon receipt of the
 254 completed application form prescribed by commission rule, the
 255 application fee of \$500, and any other fee prescribed by law or
 256 rule.

257 Section 3. Section 559.546, Florida Statutes, is amended
 258 to read:

259 559.546 Bond; evidence of current and valid
 260 bond.--Pursuant to s. 559.545, the applicant or registrant shall
 261 provide to the office evidence that the applicant or registrant

HB 1371

2004

262 has been issued a current and valid surety bond as required by
 263 this part.

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

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

271 (b) A statement from the surety that the annual premium
 272 for the bond has been paid in full by the applicant or
 273 registrant.

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

276 (2) The liability of the surety under any bond issued
 277 under ~~pursuant to~~ the requirements of this part may ~~shall~~ not
 278 exceed in the aggregate the amount of the bond, regardless of
 279 the number or amount of any claims filed or which might be
 280 asserted against the surety on the ~~such~~ bond. If multiple
 281 claims are filed against the surety on any ~~such~~ bond in excess
 282 of the amount of the bond, the surety may pay the full amount of
 283 the bond to the office and is ~~shall~~ not be further liable under
 284 the bond. The office shall hold the ~~such~~ funds for distribution
 285 to claimants and administratively determine and pay to each
 286 claimant the pro rata share of each valid claim made against the
 287 funds within 6 months after the date of the filing of the first
 288 claim against the surety.

289 Section 4. Section 559.5471, Florida Statutes, is created
 290 to read:

HB 1371

2004

291 559.5471 Powers and duties of the Office of Financial
 292 Regulation.--

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

296 (2) The commission may adopt rules under ss. 120.536(1)
 297 and 120.54 to implement and administer this part. The commission
 298 may adopt a rule to require electronic submission of any form,
 299 document, or fee required by this part, provided that the rule
 300 reasonably accommodates a person with a technological or
 301 financial hardship. The commission may adopt a rule setting
 302 forth the criteria and procedures for obtaining an exemption due
 303 to a technological or financial hardship. The commission may
 304 adopt a rule to accept certification of compliance with the
 305 requirements of this part in lieu of requiring submission of
 306 specified documents.

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

310 (4) The office, or any duly authorized representative,
 311 including any financial examiner or analyst, financial
 312 investigator, or attorney at law, may:

313 (a) Issue, revoke, quash, or modify and serve subpoenas to
 314 compel the attendance of witnesses and subpoenas duces tecum to
 315 compel the production of all books, accounts, records, and other
 316 documents and materials relevant to an examination or
 317 investigation. The office may exercise these powers even if the
 318 subject of the investigation or examination is exempt from
 319 registration.

HB 1371

2004

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

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

322 (5)(a) If the office determines that a person is in
 323 substantial noncompliance with a subpoena or subpoena duces
 324 tecum that the office issued or caused to be issued, it may
 325 petition a court of competent jurisdiction in the county where
 326 the person subpoenaed resides or has his, her, or its principal
 327 place of business, for an order requiring the person to appear
 328 and testify and to produce the books, accounts, records, and
 329 other documents that are specified in the subpoena duces tecum.

330 (b) The court may grant injunctive relief restraining the
 331 person from advertising, promoting, soliciting, entering into,
 332 offering to enter into, continuing, or completing any
 333 transaction involving commercial debt collection. The court may
 334 grant such other relief, including, but not limited to, the
 335 restraint, by injunction or appointment of a receiver, of any
 336 transfer, pledge, assignment, or other disposition of the
 337 person's assets or any concealment, alteration, destruction, or
 338 other disposition of books, accounts, records, or other
 339 documents and materials that the court deems appropriate, until
 340 the person has fully complied with the subpoena duces tecum and
 341 the office has completed its investigation or examination. The
 342 court may order the refund of any sums collected whenever books
 343 and documents substantiating the transaction are not produced or
 344 cannot be produced. The office is entitled to the summary
 345 procedure provided in s. 51.011, and the court shall advance the
 346 cause on its calendar.

347 (c) Attorney's fees and any other costs incurred by the
 348 office to obtain an order granting, in whole or part, a petition

HB 1371

2004

349 for enforcement of a subpoena or subpoena duces tecum shall be
 350 taxed against the subpoenaed person, and failure to comply with
 351 the order is a contempt of court.

352 (6) When it appears to the office that compliance with a
 353 subpoena or subpoena duces tecum issued under subsection (4) is
 354 essential and that the person or documents subpoenaed are
 355 otherwise unavailable to an investigation or examination, the
 356 office, in addition to the other remedies provided for in this
 357 section, may petition a court of competent jurisdiction in the
 358 county in which the subpoenaed person resides or has its
 359 principal place of business for a writ of ne exeat. The court
 360 shall direct the issuance of the writ against the subpoenaed
 361 person requiring sufficient bond conditioned on compliance with
 362 the subpoena or subpoena duces tecum. The court shall cause to
 363 be endorsed on the writ a suitable amount of bond upon the
 364 payment of which the person named in the writ shall be freed,
 365 having a due regard to the nature of the case.

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

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

375 (9) At a hearing on the petition to enforce compliance
 376 with a subpoena, the person subpoenaed, or any person whose
 377 interest will be substantially affected by the investigation,

HB 1371

2004

378 examination, or subpoena, may appear and object to the subpoena
 379 and to the granting of the petition. The court may make any
 380 order that justice requires in order to protect a party or other
 381 person and her or his personal and property rights, including,
 382 but not limited to, protection from annoyance, embarrassment,
 383 oppression, undue burden, or expense.

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

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

392 (12) Reasonable and necessary costs incurred by the office
 393 and payable to persons involved with an investigation may be
 394 assessed against any debt collector on the basis of actual costs
 395 incurred. Assessed expenses may include, but are not limited to,
 396 expenses for interpreters; expenses for communications; expenses
 397 for legal representation; expenses for economic, legal, or other
 398 research; analysis and testimony; and fees and expenses for
 399 witnesses. The failure to reimburse the office for its
 400 reasonable and necessary costs is a reason to deny a
 401 registrant's application or to revoke the prior approval of an
 402 application.

403 Section 5. Section 559.5473, Florida Statutes, is created
 404 to read:

405 559.5473 Injunction to restrain violations; receivers.--

HB 1371

2004

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

410 (2) In an injunctive proceeding, the court may issue a
411 subpoena requiring the attendance of any witness or a subpoena
412 duces tecum requiring the production of any book, account,
413 record, or other documents and materials relevant to the pending
414 case.

415 (3)(a) In addition to any procedure provided by law for
416 enforcing a temporary restraining order or a temporary or
417 permanent injunction, the court may, upon application of the
418 office, impound the property, assets, and business of the
419 registrant, including, but not limited to, the books, records,
420 documents, and papers of the registrant. The court may appoint a
421 receiver to administer the property. The receiver, when
422 appointed and qualified, has the powers and duties that are
423 conferred upon the receiver by the court.

424 (b) After appointing a receiver, the court may issue an
425 order staying all pending suits and enjoining any further
426 litigation affecting the receiver's custody or possession of the
427 property, assets, and business, and the court, with the consent
428 of the chief judge of the circuit, may require that all suits be
429 assigned to the circuit judge who appointed the receiver.

430 Section 6. Section 559.5474, Florida Statutes, is created
431 to read:

432 559.5474 Cease and desist orders; refund orders.--

433 (1) The office may issue and serve upon a person an order
434 to cease and desist and to take corrective action whenever the

HB 1371

2004

435 office has reason to believe that the commercial collection
 436 agency is violating, has violated, or is about to violate this
 437 part, any rule or order of the office issued under this part, or
 438 any written agreement between the commercial collection agency
 439 and the office. Procedural matters relating to the issuance and
 440 enforcement of a cease and desist order are governed by chapter
 441 120.

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

445 Section 7. Section 559.5475, Florida Statutes, is created
 446 to read:

447 559.5475 Evidence; examiner's worksheets, investigative
 448 reports, other related documents.--An official written report,
 449 sworn complaint, worksheet, or other related paper, or a
 450 certified copy thereof, compiled, prepared, drafted, or
 451 otherwise made by the financial examiner is admissible into
 452 evidence if the financial examiner is available for cross-
 453 examination; authenticates the worksheet; and testifies that the
 454 report, worksheet, or related document was prepared as a result
 455 of an examination of the books and records of a registrant or
 456 other person conducted under the authority of this part.

457 Section 8. Section 559.5476, Florida Statutes, is created
 458 to read:

459 559.5476 Books, accounts, and records; maintenance;
 460 examinations by the office.--

461 (1) Each registrant shall maintain, at its principal place
 462 of business designated on its registration, all books, accounts,

HB 1371

2004

463 records, and documents necessary to determine the registrant's
464 compliance with this part.

465 (2) The office may authorize maintenance of records at a
466 location other than a principal place of business. The office
467 may require books, accounts, and records to be produced and
468 available at a reasonable and convenient location in this state.

469 (3) All books, accounts, records, documents, and receipts
470 for payments to a registrant by a debtor, and payments made to a
471 creditor by a registrant, shall be preserved and kept available
472 for examination by the office for 3 years after the date of
473 original entry. The office shall adopt requirements by rule for
474 maintaining the books, accounts, records, and documents retained
475 by the registrant and for destroying the records.

476 (4) The office shall designate by rule the minimum
477 information that must be contained in the registrant's books,
478 accounts, records, and documents in order that the records will
479 enable the office to determine a registrant's compliance with
480 this part.

481 Section 9. Section 559.5477, Florida Statutes, is created
482 to read:

483 559.5477 Administrative remedies.--

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

486 (a) Has been found guilty of, regardless of adjudication,
487 or has entered a plea of nolo contendere or guilty to, any crime
488 involving fraud, dishonest dealing, or moral turpitude;

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

HB 1371

2004

492 (c) Has pending against the person a criminal prosecution
 493 or administrative enforcement action, in any jurisdiction, which
 494 involves fraud, dishonest dealing, or any other act of moral
 495 turpitude;

496 (d) Has had any business, professional, or occupational
 497 license or registration suspended, revoked, or otherwise acted
 498 against in any jurisdiction;

499 (e) Fails to maintain the surety bond required pursuant to
 500 s. 559.546;

501 (f) Fails to maintain books and records as required by s.
 502 559.5476;

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

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

507 (2) Any registration made under this part which is based
 508 upon false identification or false information, or an
 509 identification that is not current with respect to name,
 510 address, business location, or other fact that is material to
 511 the registration, is void. Any registration made and
 512 subsequently found to be void under this section does not create
 513 a defense to any action brought by the office to impose a
 514 sanction for a violation of this part.

515 (3) A registrant may request to terminate its registration
 516 by delivering written notice of its proposed termination to the
 517 office. However, the delivery of the termination notice does not
 518 affect any civil or criminal liability of the registrant or the
 519 authority of the office to enforce this part.

HB 1371

2004

520 (4) The office may deny a request to terminate a
 521 registration or to withdraw an application for registration if
 522 the office believes that the registrant has committed an act
 523 that would be grounds for denial, suspension, or revocation
 524 under this part.

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

528 (6) The office may impose an administrative fine of up to
 529 \$1,000 per violation against an offending registrant as an
 530 administrative sanction. Final action by the office to impose an
 531 administrative fine is subject to review in accordance with ss.
 532 120.569 and 120.57.

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

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

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

544 559.55 Definitions.--The following terms shall, unless the
 545 context otherwise indicates, have the following meanings for the
 546 purpose of this part:

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

HB 1371

2004

548 (a) Any obligation or alleged obligation of a consumer to
 549 pay money arising out of a transaction in which the money,
 550 property, insurance, or services which are the subject of the
 551 transaction are primarily for personal, family, or household
 552 purposes, whether or not such obligation has been reduced to
 553 judgment; or

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

556 (8) "Out-of-state consumer debt collector" means any
 557 person whose business activities in this state involve both
 558 collecting or attempting to collect consumer debt from debtors
 559 located in this state by means of interstate communication
 560 originating from outside this state and soliciting consumer debt
 561 accounts for collection from creditors who have a ~~business~~
 562 presence in this state. For purposes of this subsection, a
 563 creditor has a ~~business~~ presence in this state if either the
 564 creditor or an affiliate or subsidiary of the creditor has an
 565 office or resides in this state.

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

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

571 (a) Directly, indirectly, or acting through one or more
 572 other persons owns, controls, or has the power to vote 25
 573 percent or more or any class of voting securities of an
 574 applicant or registrant.

HB 1371

2004

575 (b) The office determines, after notice and opportunity
 576 for hearing, exercises a controlling influence, directly or
 577 indirectly, over the activities of an applicant or registrant.

578 (12) "Principal of a registrant or applicant" means the
 579 applicant's or registrant's owners if a partnership or sole
 580 proprietorship; the corporate officers; the corporate directors,
 581 other than directors of a not-for-profit corporation organized
 582 under chapter 617; or the Florida resident agent if a
 583 corporation is the applicant or registrant.

584 Section 11. Section 559.552, Florida Statutes, is amended
 585 to read:

586 559.552 Relationship of state and federal law.--

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

589 (2) Any violation of this part also constitutes a
 590 violation of the Florida Deceptive and Unfair Trade Practices
 591 Act.

592 (3) ~~Nothing in~~ This part does not ~~shall be construed to~~
 593 limit or restrict the continued applicability of the federal
 594 Fair Debt Collection Practices Act to consumer collection
 595 practices in this state. This part is in addition to the
 596 requirements and regulations of the federal act. In construing
 597 this part, due consideration and great weight shall be given to
 598 interpretations of the Federal Trade Commission Act and the Fair
 599 Debt Collection Practices Act by the Federal Trade Commission
 600 and the federal courts. In the event of any inconsistency
 601 between any provision of this part and any provision of the
 602 federal act, including federal case law, the provision that

HB 1371

2004

603 ~~which~~ is more protective of the consumer or debtor shall
 604 prevail.

605 Section 12. Section 559.553, Florida Statutes, is amended
 606 to read:

607 559.553 Registration of consumer collection agencies
 608 required; exemptions.--

609 (1) After January 1, 1994, a ~~no~~ person may not ~~shall~~
 610 engage in business in this state as a consumer collection agency
 611 or continue to do business in this state as a consumer
 612 collection agency without first registering in accordance with
 613 this part, and thereafter maintaining a valid registration.

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

617 (3) A prospective registrant is ~~shall be~~ entitled to be
 618 registered when registration information is complete on its face
 619 and the applicable registration fee has been paid; however, the
 620 office may deny an application for ~~reject~~ a registration
 621 submitted by a prospective registrant if the applicant
 622 ~~registrant~~ or any principal or person having control of the
 623 applicant ~~registrant~~ previously has held any professional
 624 license or state registration that ~~which~~ was the subject of any
 625 suspension or revocation ~~which has not been explained by the~~
 626 ~~prospective registrant to the satisfaction of the office either~~
 627 ~~in the registration information submitted initially or upon the~~
 628 ~~subsequent written request of the office.~~ If ~~In the event that~~
 629 an application for ~~attempted~~ registration is denied ~~rejected~~ by
 630 the office the prospective registrant shall be informed of the
 631 basis for the denial ~~rejection~~.

HB 1371

2004

- 632 (4) This section does ~~shall~~ not apply to:
- 633 (a) An ~~Any~~ original creditor.
- 634 (b) A ~~Any~~ member of The Florida Bar.
- 635 (c) A ~~Any~~ financial institution authorized to do business
 636 in this state and any wholly owned subsidiary and affiliate
 637 thereof.
- 638 (d) A ~~Any~~ licensed real estate broker.
- 639 (e) An ~~Any~~ insurance company authorized to do business in
 640 this state.
- 641 (f) A ~~Any~~ consumer finance company and a ~~any~~ wholly owned
 642 subsidiary and affiliate thereof.
- 643 (g) A ~~Any~~ person licensed under ~~pursuant to~~ chapter 520.
- 644 (h) An ~~Any~~ out-of-state consumer debt collector who does
 645 not solicit consumer debt accounts for collection from credit
 646 grantors who have a business presence in this state.
- 647 (i) A ~~Any~~ FDIC-insured institution or subsidiary or
 648 affiliate thereof.
- 649 (5) An ~~Any~~ out-of-state consumer debt collector as defined
 650 in s. 559.55(8) who is not exempt from registration by
 651 application of subsection (4) and who fails to register in
 652 accordance with this part shall be subject to an enforcement
 653 action by the state as specified in s. 559.565.
- 654 Section 13. Section 559.555, Florida Statutes, is amended
 655 to read:
- 656 559.555 Registration of consumer collection agencies;
 657 procedure.--
- 658 (1) An application for registration under this part shall
 659 be filed on a form prescribed by the office and must contain:
- 660 (a) The name, residence, and business addresses of:

HB 1371

2004

- 661 1. The applicant;
 662 2. Any person having control over the applicant or
 663 registrant;
 664 3. Any principal of an applicant or registrant;
 665 4. Each member if the applicant is a partnership or
 666 association; and
 667 5. Each officer, director, and registered agent if the
 668 applicant is a corporation.
- 669 (b) The business name, trade name, fictitious name, or
 670 name under which the consumer collection business is doing
 671 business; the current mailing address of the consumer collection
 672 agency; and the business location of each place from which the
 673 consumer collection agency operates a main or branch office,
 674 with a designation of which location constitutes its principal
 675 place of business.
- 676 (c) If the applicant is a commercial collection agency,
 677 the full name, address, telephone number, and social security
 678 number or federal identification number of each corporate owner,
 679 the applicant's owners or corporate officers and directors, and
 680 the Florida resident agent of the registering agency.
- 681 (d) A statement listing each county in this state in which
 682 the applicant is currently doing business or plans to do
 683 business within the next calendar year, indicating each county
 684 in which the applicant holds an occupational license.
- 685 (e) A statement listing each county in this state in which
 686 the applicant is currently operating under a fictitious name or
 687 trade name other than that of the applicant, indicating the date
 688 and place of registration of any fictitious name or trade name.

689 (f) A statement listing the names of any other
 690 corporations, entities, or trade names by which any owner or
 691 director of the applicant was known or did business as a
 692 collection agency in the 5 years immediately before the year in
 693 which the agency is registering.

694 (g) A statement clearly identifying and explaining each
 695 occasion on which a professional or occupational license held by
 696 the applicant, any principal of the applicant, or any business
 697 entity in which any principal of the applicant was the owner of
 698 10 percent or more of the business was the subject of any
 699 suspension, revocation, or other disciplinary action.

700 (h) A statement clearly identifying and explaining each
 701 occasion when a principal of the applicant was found guilty of a
 702 crime involving moral turpitude or dishonest conduct.

703 (i) Any additional relevant information that the office
 704 requires.

705 (2) The application information must include a statement
 706 clearly identifying and explaining each occasion when a
 707 professional license or state registration held by a person with
 708 control over an applicant or by any business entity in which any
 709 person with control over an applicant was the owner of 10
 710 percent or more of the business was the subject of a suspension
 711 or revocation proceeding. ~~Any person required to register as a~~
 712 ~~consumer collection agency shall furnish to the office the~~
 713 ~~registration fee and information as follows:~~

714 (3)(1) The applicant or registrant shall pay to the office
 715 a nonrefundable registration fee in the amount of \$200. All
 716 amounts collected shall be deposited by the office to the credit
 717 of the Regulatory Trust Fund of the office.

HB 1371

2004

718 ~~(4)(2)~~ Each applicant or registrant shall provide to the
 719 office the business name or trade name, the current mailing
 720 address, the current business location that ~~which~~ constitutes
 721 its principal place of business, and the full name of each
 722 individual who is a principal of the applicant or registrant.
 723 ~~"Principal of a registrant" means the registrant's owners if a~~
 724 ~~partnership or sole proprietorship, corporate officers,~~
 725 ~~corporate directors other than directors of a not-for-profit~~
 726 ~~corporation organized pursuant to chapter 617 and Florida~~
 727 ~~resident agent if a corporate registrant. The registration~~
 728 ~~information shall include a statement clearly identifying and~~
 729 ~~explaining any occasion on which any professional license or~~
 730 ~~state registration held by the registrant, by any principal of~~
 731 ~~the registrant, or by any business entity in which any principal~~
 732 ~~of the registrant was the owner of 10 percent or more of such~~
 733 ~~business, was the subject of any suspension or revocation.~~

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

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

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

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

744 (d) Has been found guilty of, regardless of adjudication,
 745 or has entered a plea of nolo contendere or guilty to,

HB 1371

2004

746 racketeering or any offense involving fraud or dishonest

747 dealing;

748 (e) Has been found guilty of, regardless of adjudication,
749 or has entered a plea of nolo contendere or guilty to, any
750 felony;

751 (f) Has had entered against him or her, or any business
752 for which he or she has worked or been affiliated, an
753 injunction, a temporary restraining order, or a final judgment
754 or order, including a stipulated judgment or order, an assurance
755 of voluntary compliance, or any similar document, in any civil
756 or administrative action involving racketeering, fraud, theft,
757 embezzlement, fraudulent conversion, or misappropriation of
758 property or the use of any untrue, deceptive, or misleading
759 representation in an attempt to sell or dispose of real or
760 personal property or the use of any unfair, unlawful, or
761 deceptive trade practice, whether or not there is any litigation
762 pending against the applicant;

763 (g) Is subject to or has worked or been affiliated with
764 any company that is, or ever has been, subject to any
765 injunction, temporary restraining order, including a stipulated
766 judgment or order, an assurance of voluntary compliance, or any
767 similar document, or any restrictive court order relating to
768 business activity as the result of any action brought by a
769 governmental agency, including any action affecting any license
770 to do business or practice an occupation or trade;

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

HB 1371

2004

774 (i) Falsified or willfully omitted any material
775 information asked for in any application, document, or record
776 required to be submitted under this part or the rules of the
777 office;

778 (j) Made a material false statement of fact in an
779 application for registration or in response to any request or
780 investigation by the office, the Department of Legal Affairs, or
781 the state attorney; or

782 (k) Has been the subject of any adverse decision, finding,
783 injunction, suspension, prohibition, revocation, denial, or
784 judgment by any court of competent jurisdiction or an
785 administrative order by an administrative law judge, or by any
786 state or federal agency or any business, professional, or
787 occupational association involving a violation of any law, rule,
788 or regulation relating to business or professional licensing.

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

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

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

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

HB 1371

2004

803 (a) Relocation of the place of the registrant's business;
 804 and

805 (b) The registrant becoming subject to a voluntary or
 806 involuntary bankruptcy.

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

811 (11)(a)~~(3)~~ Renewal of registration shall be made between
 812 October 1 and December 31 of each year. There shall be no
 813 proration of the fee for any registration. The office shall
 814 adopt rules for the renewal of registration.

815 (b) A registration that is not renewed by the end of the
 816 calendar year expires automatically. A consumer collection
 817 agency that has not renewed its registration by the time the
 818 registration period expires may request reactivation of its
 819 registration. The registrant must file its request with the
 820 office on or before January 31 of the year following the year of
 821 expiration. The request must contain any information the office
 822 requires, together with the registration fee required in
 823 subsection (1) and a late fee equal to the registration fee. Any
 824 reactivation of registration granted by the office during the
 825 month of January is deemed retroactive to January 1 of that
 826 year. Any registrant that engages in the business of a consumer
 827 collection agency after its registration has expired, violates
 828 ss. 559.553 and 559.785(1).

829 Section 14. Section 559.565, Florida Statutes, is amended
 830 to read:

HB 1371

2004

831 559.565 Enforcement action against out-of-state consumer
 832 debt collector.--The remedies of this section are cumulative to
 833 other sanctions and enforcement provisions of this part for any
 834 violation by an out-of-state consumer debt collector, as defined
 835 in s. 559.55(8).

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

842 (2) Any person, whether or not exempt from registration
 843 under this part, who is otherwise subject to the jurisdiction of
 844 this state and violates ~~the provisions of~~ s. 559.72 shall be
 845 subject to sanctions for the ~~such~~ violations the same as any
 846 other consumer debt collector, including imposition of an
 847 administrative fine. The registration of a duly registered out-
 848 of-state consumer debt collector shall be subject to revocation
 849 or suspension in the same manner as the registration of any
 850 other registrant under this part.

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

857 Section 15. Section 559.72, Florida Statutes, is amended
 858 to read:

HB 1371

2004

859 559.72 Prohibited practices generally.--In collecting
 860 consumer debts, a ne person may not ~~shall~~:

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

863 (2) Use or threaten force, ~~or~~ violence, or any other means
 864 to harm the physical person, property, or reputation of any
 865 person;

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

872 (4) Communicate or threaten to communicate with a debtor's
 873 employer prior to obtaining final judgment against the debtor,
 874 unless the debtor gives her or his permission in writing to
 875 contact her or his employer or acknowledges in writing the
 876 existence of the debt after the debt has been placed for
 877 collection, but this shall not prohibit a person from telling
 878 the debtor that her or his employer will be contacted if a final
 879 judgment is obtained;

880 (5) Disclose to a person other than the debtor or her or
 881 his family information affecting the debtor's reputation,
 882 whether or not for credit worthiness, with knowledge or reason
 883 to know that the other person does not have a legitimate
 884 business need for the information or that the information is
 885 false;

886 (6) Disclose information concerning the existence of a
 887 debt known to be reasonably disputed by the debtor without

HB 1371

2004

888 disclosing that fact. If a disclosure is made prior to such
889 reasonable dispute having been asserted and written notice is
890 received from the debtor that any part of the debt is disputed
891 and if such dispute is reasonable, the person who made the
892 original disclosure shall reveal upon the request of the debtor
893 within 30 days the details of the dispute to each person to whom
894 disclosure of the debt without notice of the dispute was made
895 within the preceding 90 days;

896 (7) Willfully communicate with the debtor or any member of
897 her or his family with such frequency as can reasonably be
898 expected to harass the debtor or her or his family, or willfully
899 engage in other conduct which can reasonably be expected to
900 abuse or harass the debtor or any member of her or his family;

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

904 (9) Claim, attempt, or threaten to enforce a debt when
905 such person knows that the debt is not legitimate or assert the
906 existence of some other legal right when such person knows that
907 the right does not exist;

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

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

HB 1371

2004

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

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

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

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

930 (16) Mail any communication to a debtor in an envelope or
 931 postcard with words typed, written, or printed on the outside of
 932 the envelope or postcard indicating that the purpose of the
 933 communication is to collect a debt or is otherwise calculated to
 934 embarrass the debtor. An example of this would be an envelope
 935 addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe";

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

941 (18) Communicate with a debtor if the person knows that
 942 the debtor is represented by an attorney with respect to such
 943 debt and has knowledge of, or can readily ascertain, such

HB 1371

2004

944 attorney's name and address, unless the debtor's attorney fails
 945 to respond within a reasonable period of time to a communication
 946 from the person, unless the debtor's attorney consents to a
 947 direct communication with the debtor, or unless the debtor
 948 initiates the communication; or

949 (19) Cause charges to be made to any debtor for
 950 communications by concealment of the true purpose of the
 951 communication, including collect telephone calls and telegram
 952 fees.

953 Section 16. Section 559.725, Florida Statutes, is amended
 954 to read:

955 559.725 Consumer complaints; administrative duties.--

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

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

963 (3)(a) The office may conduct examinations of any
 964 registrant. The office shall conduct all examinations at a
 965 location in this state convenient to the registrant unless the
 966 office determines that it is more effective or cost-efficient to
 967 perform the examination at the registrant's out-of-state
 968 location.

969 (b) The registrant shall pay the travel expenses and per
 970 diem subsistence at the rate provided by law for an examination
 971 conducted at the registrant's out-of-state location. The
 972 registrant shall pay for up to 30 8-hour days per year for each

HB 1371

2004

973 office examiner participating in the examination. However, if
974 the examination involves or reveals fraudulent misconduct by the
975 registrant, the registrant shall pay the travel expenses and per
976 diem subsistence, without limitation, for each examiner
977 participating in the examination.

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

981 ~~(1) The Division of Consumer Services of the Department of~~
982 ~~Financial Services shall serve as the registry for receiving and~~
983 ~~maintaining records of inquiries, correspondence, and complaints~~
984 ~~from consumers concerning any and all persons who collect debts,~~
985 ~~including consumer collection agencies.~~

986 ~~(2) The division shall classify complaints by type and~~
987 ~~identify the number of written complaints against persons~~
988 ~~collecting or attempting to collect debts in this state,~~
989 ~~including credit grantors collecting their own debts, debt~~
990 ~~collectors generally, and, specifically, consumer collection~~
991 ~~agencies as distinguished from other persons who collect debts~~
992 ~~such as commercial debt collection agencies regulated under part~~
993 ~~V of this chapter. The division shall identify the nature and~~
994 ~~number of various kinds of written complaints, including~~
995 ~~specifically those alleging violations of s. 559.72.~~

996 ~~(3) The division shall inform and furnish relevant~~
997 ~~information to the appropriate regulatory body of the state, or~~
998 ~~The Florida Bar in the case of attorneys, when any consumer debt~~
999 ~~collector exempt from registration under this part has been~~
1000 ~~named in five or more written consumer complaints alleging~~
1001 ~~violations of s. 559.72 within a 12-month period.~~

HB 1371

2004

1002 ~~(4) The division shall furnish a form to each complainant~~
 1003 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~
 1004 ~~consumer collection agency. Such form may be filed with the~~
 1005 ~~office. The form shall identify the accused consumer collection~~
 1006 ~~agency and provide for the complainant's summary of the nature~~
 1007 ~~of the alleged violation and facts which allegedly support the~~
 1008 ~~complaint. The form shall include a provision for the~~
 1009 ~~complainant to state under oath before a notary public that the~~
 1010 ~~allegations therein made are true.~~

1011 ~~(5) Upon receipt of such sworn complaint, the office shall~~
 1012 ~~promptly furnish a copy of the sworn complaint to the accused~~
 1013 ~~consumer collection agency.~~

1014 ~~(6) The office shall investigate sworn complaints by~~
 1015 ~~direct written communication with the complainant and the~~
 1016 ~~affected consumer collection agency. In addition, the office~~
 1017 ~~shall attempt to resolve each sworn complaint and shall record~~
 1018 ~~the resolution of such complaints.~~

1019 ~~(7) Periodically, the office shall identify consumer~~
 1020 ~~collection agencies that have unresolved sworn consumer~~
 1021 ~~complaints from five or more different consumers within a 12-~~
 1022 ~~month period under the provisions of this part.~~

1023 ~~(8) The office shall issue a written warning notice to the~~
 1024 ~~accused consumer collection agency if the office is unable to~~
 1025 ~~resolve all such sworn complaints and fewer than five unresolved~~
 1026 ~~complaints remain. Such notice shall include a statement that~~
 1027 ~~the warning may constitute evidence in any future investigation~~
 1028 ~~of similar complaints against that agency and in any future~~
 1029 ~~administrative determination of the imposition of other~~
 1030 ~~administrative remedies available to the office under this part.~~

HB 1371

2004

1031 ~~(9) The office may issue a written reprimand when five or~~
 1032 ~~more such unresolved sworn complaints against a consumer~~
 1033 ~~collection agency collectively fall short of constituting~~
 1034 ~~apparent repeated violations that warrant more serious~~
 1035 ~~administrative sanctions. Such reprimand shall include a~~
 1036 ~~statement that the reprimand may constitute evidence in any~~
 1037 ~~future investigation of similar complaints against that agency~~
 1038 ~~and in any future administrative determination of the imposition~~
 1039 ~~of other administrative remedies available to the office.~~

1040 ~~(10) The office shall issue a notice of intent either to~~
 1041 ~~revoke or suspend the registration or to impose an~~
 1042 ~~administrative fine when the office preliminarily determines~~
 1043 ~~that repeated violations of s. 559.72 by an accused registrant~~
 1044 ~~have occurred which would warrant more serious administrative~~
 1045 ~~sanctions being imposed under this part. The office shall~~
 1046 ~~advise each registrant of the right to require an administrative~~
 1047 ~~hearing under chapter 120, prior to the agency's final action on~~
 1048 ~~the matter as authorized by s. 559.730.~~

1049 ~~(5)(11)~~ Any government office or agency receiving a
 1050 complaint under this section ~~The office shall advise any other~~
 1051 government office or agency with apparent jurisdiction,
 1052 including the office, the appropriate state attorney, or the
 1053 Attorney General in the case of an out-of-state consumer debt
 1054 collector, of any determination by that agency ~~the office of a~~
 1055 violation, or possible violation, of the requirements of this
 1056 part by any consumer collection agency, whether or which is not
 1057 registered or exempt from registration as required by this part.
 1058 ~~The office shall furnish the state attorney or Attorney General~~

HB 1371

2004

1059 ~~with the office's information concerning the alleged violations~~
 1060 ~~of such requirements.~~

1061 Section 17. Section 559.726, Florida Statutes, is created
 1062 to read:

1063 559.726 Powers and duties of the Office of Financial
 1064 Regulation.--

1065 (1) Compliance with this part shall be enforced by the
 1066 office, except to the extent that enforcement is specifically
 1067 committed to another agency.

1068 (2) The commission may adopt rules under ss. 120.536(1)
 1069 and 120.54 to implement and administer this part. The commission
 1070 may adopt a rule to require electronic submission of any form,
 1071 document, or fee required by this part, provided that the rule
 1072 reasonably accommodates a person with a technological or
 1073 financial hardship. The commission may adopt a rule setting
 1074 forth the criteria and procedures for obtaining an exemption due
 1075 to a technological or financial hardship exemption. The
 1076 commission may adopt a rule to accept certification of
 1077 compliance with the requirements of this part in lieu of
 1078 requiring submission of documents.

1079 (3) All fees, charges, and fines collected by the office
 1080 under this part shall be deposited to the credit of the
 1081 Regulatory Trust Fund of the office.

1082 (4) The office, or any duly authorized representative,
 1083 including any financial examiner or analyst, financial
 1084 investigator, or attorney at law, may:

1085 (a) Issue, revoke, quash, or modify and serve subpoenas to
 1086 compel the attendance of witnesses and subpoenas duces tecum to
 1087 compel the production of all books, accounts, records, and other

HB 1371

2004

1088 documents and materials relevant to an examination or
 1089 investigation. The office may exercise these powers even if the
 1090 subject of the investigation or examination is exempt from
 1091 registration;

1092 (b) Administer oaths and affirmations to any person; or
 1093 (c) Take or cause to be taken testimony and depositions.

1094 (5)(a) If the office determines that a person is in
 1095 substantial noncompliance with a subpoena or subpoena duces
 1096 tecum that the office issued or caused to be issued, it may
 1097 petition a court of competent jurisdiction in the county in
 1098 which the person subpoenaed resides or has its principal place
 1099 of business for an order requiring the subpoenaed person to
 1100 appear and testify and to produce the books, accounts, records,
 1101 and other documents that are specified in the subpoena duces
 1102 tecum.

1103 (b) The court may grant injunctive relief restraining the
 1104 person from advertising, promoting, soliciting, entering into,
 1105 offering to enter into, continuing, or completing any
 1106 transaction involving consumer debt collection. The court may
 1107 grant such other relief, including, but not limited to, the
 1108 restraint, by injunction or appointment of a receiver, of any
 1109 transfer, pledge, assignment, or other disposition of the
 1110 person's assets or any concealment, alteration, destruction, or
 1111 other disposition of the books, accounts, records, or other
 1112 documents and materials that the court deems appropriate, until
 1113 the person has fully complied with the subpoena duces tecum and
 1114 the office has completed its investigation or examination. The
 1115 court may order the refund of any sums collected whenever books
 1116 and documents substantiating the transaction are not produced or

HB 1371

2004

1117 cannot be produced. The office is entitled to the summary
 1118 procedure as provided in s. 51.011, and the court shall advance
 1119 such cause on its calendar.

1120 (c) Attorney's fees and any other costs incurred by the
 1121 office to obtain an order granting, in whole or part, a petition
 1122 to enforce a subpoena or subpoena duces tecum shall be taxed
 1123 against the subpoenaed person, and failure to comply with the
 1124 order is a contempt of court.

1125 (6) When it appears to the office that compliance with a
 1126 subpoena or subpoena duces tecum issued under subsection (4) is
 1127 essential and that the person or documents subpoenaed are
 1128 otherwise unavailable to an investigation or examination, the
 1129 office, in addition to the other remedies provided for in this
 1130 section, may petition a court of competent jurisdiction in the
 1131 county in which the subpoenaed person resides or has its
 1132 principal place of business for a writ of ne exeat. The court
 1133 shall direct the issuance of the writ against the subpoenaed
 1134 person requiring sufficient bond conditioned on compliance with
 1135 the subpoena or subpoena duces tecum. The court shall cause to
 1136 be endorsed on the writ a suitable amount of bond upon the
 1137 payment of which the person named in the writ shall be freed,
 1138 having a due regard to the nature of the case.

1139 (7) The office may seek a writ of attachment from the
 1140 court having jurisdiction over the person who refuses to obey a
 1141 subpoena, to give testimony, or to produce the matters described
 1142 in the subpoena duces tecum.

1143 (8) A copy of the petition shall be served upon the person
 1144 by anyone authorized by law or this section to serve subpoenas.
 1145 The individual serving the petition shall make and file with the

HB 1371

2004

1146 court an affidavit showing the date, time, place, and manner of
 1147 service.

1148 (9) At a hearing on the petition to enforce compliance
 1149 with a subpoena, the person subpoenaed, or any person whose
 1150 interest will be substantially affected by the investigation,
 1151 examination, or subpoena, may appear and object to the subpoena
 1152 and to the granting of the petition. The court may make any
 1153 order that justice requires in order to protect a party or other
 1154 person and her or his personal and property rights, including,
 1155 but not limited to, protection from annoyance, embarrassment,
 1156 oppression, undue burden, or expense.

1157 (10) Failure to comply with an order granting, in whole or
 1158 in part, a petition to enforce a subpoena is a contempt of the
 1159 court.

1160 (11) Witnesses are entitled to the same fees and mileage
 1161 to which they would be entitled by law for attending as
 1162 witnesses in circuit court, except that fees or mileage may not
 1163 be allowed for testimony of a person taken at the person's
 1164 principal office or residence.

1165 (12) Reasonable and necessary costs incurred by the office
 1166 and payable to persons involved with an investigation may be
 1167 assessed against any debt collector on the basis of actual costs
 1168 incurred. Assessed expenses may include, but are not limited
 1169 to: expenses for interpreters; expenses for communications;
 1170 expenses for legal representation; expenses for economic, legal,
 1171 or other research, analysis and testimony; and fees and expenses
 1172 for witnesses. A failure to reimburse the office for its
 1173 reasonable and necessary costs is a reason to deny a

HB 1371

2004

1174 registrant's application or to revoke the prior approval of an
 1175 application.

1176 Section 18. Section 559.7262, Florida Statutes, is created
 1177 to read:

1178 559.7262 Injunction to restrain violations.--

1179 (1) The office may bring an action on behalf of the state
 1180 to enjoin any person who has violated, or who is about to
 1181 violate, this part or any rule or order of the office issued
 1182 under this part.

1183 (2) In an injunctive proceeding, the court may issue a
 1184 subpoena requiring the attendance of any witness or a subpoena
 1185 duces tecum requiring the production of any book, account,
 1186 record, or other documents and materials relevant to the pending
 1187 case.

1188 (3)(a) In addition to any procedure provided by law to
 1189 enforce a temporary restraining order, temporary injunction, or
 1190 permanent injunction, the court may, upon application of the
 1191 office, impound the property, assets, and business of the
 1192 registrant, including, but not limited to, the books, records,
 1193 documents, and papers of the registrant. The receiver, when
 1194 appointed and qualified, has the powers and duties that are
 1195 conferred by the court.

1196 (b) After appointing the receiver, the court may issue an
 1197 order staying all pending suits and enjoining any further
 1198 litigation affecting the receiver's custody or possession of the
 1199 property, assets, and business, and the court, with the consent
 1200 of the chief judge of the circuit, may require that all suits be
 1201 assigned to the circuit court judge who appointed the receiver.

HB 1371

2004

1202 Section 19. Section 559.7263, Florida Statutes, is created
 1203 to read:

1204 559.7263 Cease and desist orders; refund orders.--

1205 (1) The office may issue and serve upon a person an order
 1206 to cease and desist and to take corrective action whenever the
 1207 office has reason to believe that the person is violating, has
 1208 violated, or is about to violate this part, any rule or order of
 1209 the office issued under this part, or any written agreement
 1210 between the person and the office. Procedural matters relating
 1211 to issuance and enforcement of such a cease and desist order are
 1212 governed by chapter 120.

1213 (2) The office has the power to seek an order of
 1214 restitution for collected funds due to creditors or any sum
 1215 collected from a debtor without valid proof of debt.

1216 Section 20. Section 559.7264, Florida Statutes, is created
 1217 to read:

1218 559.7264 Evidence; examiner's worksheets, investigative
 1219 reports, other related documents.--An official written report,
 1220 sworn complaint, worksheet, or other related paper, or a duly
 1221 certified copy thereof, compiled, prepared, drafted, or
 1222 otherwise made by the financial examiner is admissible into
 1223 evidence if the financial examiner is available for cross-
 1224 examination; authenticates the worksheet; and testifies that the
 1225 report, worksheet, or related document was prepared as a result
 1226 of an examination of the books and records of a registrant or
 1227 other person conducted under the authority of this part.

1228 Section 21. Section 559.7265, Florida Statutes, is created
 1229 to read:

HB 1371

2004

1230 559.7265 Books, accounts, and records; maintenance;
 1231 examinations by the office.--

1232 (1) Each registrant shall maintain, at its principal place
 1233 of business designated on the registration, all books, accounts,
 1234 records, and documents necessary to determine the registrant's
 1235 compliance with this part.

1236 (2) The office may authorize maintenance of records at a
 1237 location other than a principal place of business. The office
 1238 may require books, accounts, and records to be produced and
 1239 available at a reasonable and convenient location in this state.

1240 (3) All books, accounts, records, documents, and receipts
 1241 for payments to a registrant by a debtor, and payments made to a
 1242 creditor by a registrant, shall be preserved and kept available
 1243 for examination by the department for 3 years after the date of
 1244 original entry. The commission shall adopt requirements by rule
 1245 for maintaining the books, accounts, records, and documents
 1246 retained by the registrant and for destroying the records.

1247 (4) The office shall designate by rule the minimum
 1248 information that must be contained in the books, accounts,
 1249 records, and documents of a registrant in order that the records
 1250 will enable the office to determine a registrant's compliance
 1251 with this part.

1252 Section 22. section 559.730, Florida Statutes, is amended
 1253 to read:

1254 559.730 Administrative remedies.--

1255 (1) The office may revoke or suspend the registration of
 1256 any registrant under this part who:

1257 (a) Has committed a violation of s. 559.72 or of the
 1258 federal Fair Debt Collection Practices Act;

HB 1371

2004

1259 (b) Is the subject of a complaint received by a
1260 governmental authority which indicates a clear pattern of abuse
1261 of prohibited collection practices under s. 559.72 or the
1262 federal Fair Debt Collection Practices Act;

1263 (c) Is currently under investigation by a governmental
1264 authority for violating s. 559.72, the Florida Deceptive and
1265 Unfair Trade Practices Act, or the federal Fair Debt Collection
1266 Practices Act;

1267 (d) Has been found guilty of, regardless of adjudication,
1268 or has entered a plea of nolo contendere or guilty to, any crime
1269 involving fraud, dishonest dealing, or moral turpitude;

1270 (e) Had a final judgment entered against her or him in a
1271 civil action upon the grounds of fraud, embezzlement,
1272 misrepresentation, or deceit;

1273 (f) Has pending against him or her in any jurisdiction a
1274 criminal prosecution or administrative enforcement action that
1275 involves fraud, dishonest dealing, or moral turpitude;

1276 (g) Had a business, professional, or occupational license
1277 or registration suspended, revoked, or otherwise acted against
1278 in any jurisdiction;

1279 (h) Fails to maintain the surety bond required pursuant to
1280 s. 559.555(6);

1281 (i) Fails to maintain books and records as required by s.
1282 559.7265;

1283 (j) Violates any order issued by the office;

1284 (k) Paid for a registration with a check or electronic
1285 funds transfer that failed to clear the applicant's or
1286 registrant's financial institution; or

HB 1371

2004

1287 (1) Has engaged in repeated violations ~~that which~~
1288 establish a clear pattern of abuse of prohibited collection
1289 practices under s. 559.72.

1290 (2) Any registration made under this part which is based
1291 upon false identification or false information, or an
1292 identification that is not current with respect to name,
1293 address, business location, or other fact that is material to
1294 the registration, is void. A registration made and subsequently
1295 found to be void under this section does not create a defense to
1296 any action brought by the office to impose a sanction for a
1297 violation of this part.

1298 (3) A registrant may request to terminate its registration
1299 by delivering written notice of its proposed termination to the
1300 office. However, the delivery of the termination notice does not
1301 affect any civil or criminal liability of the registrant or the
1302 authority of the office to enforce this part.

1303 (4) The office may deny a request to terminate a
1304 registration or to withdraw an application for registration if
1305 the office believes that the registrant or applicant has
1306 committed an act that would be grounds for denial, suspension,
1307 or revocation of the registration.

1308 (5) Final office action to revoke or suspend the
1309 registration of any registrant ~~is shall be~~ subject to review in
1310 accordance with chapter 120 in the same manner as revocation of
1311 a license. ~~The repeated violations of the law by one employee~~
1312 ~~shall not be grounds for revocation or suspension of the~~
1313 ~~registration of the employing consumer collection agency, unless~~
1314 ~~the employee is also the owner of a majority interest in the~~
1315 ~~collection agency.~~

HB 1371

2004

1316 ~~(2) The registration of a registrant shall not be revoked~~
 1317 ~~or suspended if the registrant shows by a preponderance of the~~
 1318 ~~evidence that the violations were not intentional and resulted~~
 1319 ~~from bona fide error notwithstanding the maintenance of~~
 1320 ~~procedures reasonably adapted to avoid any such error.~~

1321 ~~(3) The office shall consider the number of complaints~~
 1322 ~~against the registrant in relation to the accused registrant's~~
 1323 ~~volume of business when determining whether suspension or~~
 1324 ~~revocation is the more appropriate sanction when circumstances~~
 1325 ~~warrant that one or the other should be imposed upon a~~
 1326 ~~registrant.~~

1327 ~~(4) The office shall impose suspension rather than~~
 1328 ~~revocation when circumstances warrant that one or the other~~
 1329 ~~should be imposed upon a registrant and the accused registrant~~
 1330 ~~demonstrates that the registrant has taken affirmative steps~~
 1331 ~~which can be expected to effectively eliminate the repeated~~
 1332 ~~violations and that the registrant's registration has never~~
 1333 ~~previously been suspended.~~

1334 ~~(6)(5)~~ The office may impose an administrative fine up to
 1335 \$1,000 per violation against the offending registrant as an
 1336 administrative a sanction ~~for repeated violations of the~~
 1337 ~~provisions of s. 559.72 when violations do not rise to the level~~
 1338 ~~of misconduct governed by subsection (1).~~ Final office action to
 1339 impose an administrative fine is ~~shall be~~ subject to review in
 1340 accordance with ss. 120.569 and 120.57.

1341 ~~(7)(6)~~ An ~~Any~~ administrative fine imposed under this part
 1342 shall be payable to the office. The office shall maintain an
 1343 appropriate record and shall deposit the ~~such~~ fine into the
 1344 Regulatory Trust Fund of the office.

HB 1371

2004

1345 ~~(8)(7)~~ An administrative action by the office to impose
 1346 revocation, suspension, or fine must ~~shall~~ be brought within 2
 1347 years after the date of the last violation upon which the action
 1348 is founded.

1349 ~~(9)(8)~~ ~~Nothing in This part does not shall be construed to~~
 1350 preclude any person from pursuing remedies available under the
 1351 federal Fair Debt Collection Practices Act, the Federal Trade
 1352 Commission Act, or the Florida Deceptive and Unfair Trade
 1353 Practices Act for any violation of these acts ~~such act~~,
 1354 including specifically against any person who is exempt from the
 1355 registration provisions of this part.

1356 (10) The remedies under this part are in addition to
 1357 remedies otherwise available for the same conduct under state or
 1358 local law.

1359 Section 23. Subsection (5) of section 559.77, Florida
 1360 Statutes, is amended to read:

1361 559.77 Civil remedies.--

1362 (5) In applying and construing this section, due
 1363 consideration and great weight shall be given to the
 1364 interpretations of the Federal Trade Commission and the federal
 1365 courts relating to the federal Fair Debt Collection Practices
 1366 Act and the Federal Trade Commission Act. If there is an
 1367 inconsistency between this part and an interpretation of the
 1368 federal case law or the federal acts, the provision that is more
 1369 protective of the consumer or debtor shall prevail.

1370 Section 24. Section 559.785, Florida Statutes, is amended
 1371 to read:

1372 559.785 Criminal penalty.--

HB 1371

2004

1373 (1) It shall be a felony ~~misdemeanor~~ of the third ~~first~~
 1374 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or
 1375 s. 775.084, for any person not exempt from registering as
 1376 provided in this part to:

1377 (a) Operate or solicit business as a consumer collection
 1378 agency engage in collecting consumer debts in this state without
 1379 first registering with the office; ~~or to~~

1380 (b) Register or attempt to register by means of fraud,
 1381 misrepresentation, or concealment;

1382 (c) Engage in any consumer debt collection activity after
 1383 suspension or revocation of the registrant's registration under
 1384 s. 559.730(1); or

1385 (d) Engage in any consumer debt collection activity while
 1386 under a temporary or permanent injunction issued under s.
 1387 559.78.

1388 (2) Each of the following acts constitutes a misdemeanor
 1389 of the second degree, punishable as provided in s. 775.082 or s.
 1390 775.083:

1391 (a) Relocating a business as a consumer collection agency
 1392 or operating under any name other than that designated in the
 1393 registration, unless written notification is given to the office
 1394 and to the surety or sureties on the original bond.

1395 (b) Assigning or attempting to assign a registration under
 1396 this part.

1397 (3) The court may, in addition to penalties provided in
 1398 this part, invalidate the registration of any registrant under
 1399 this part who has been found guilty of conduct prohibited in
 1400 subsection (1) or subsection (2).

HB 1371

2004

1401 (4) The office may refer evidence concerning a violation
1402 of this part, or of any rule or order, to any criminal
1403 prosecuting agency that may, with or without the reference and
1404 in addition to any other action it might commence, bring an
1405 action against any person to enjoin, restrain, and prevent the
1406 commission of any prohibited act or practice.

1407 Section 25. Sections 559.547 and 559.563, Florida
1408 Statutes, are repealed.

1409 Section 26. This act shall take effect July 1, 2004.