

## CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to collection practices; amending s.  
7 559.544, F.S.; requiring an applicant to apply to the  
8 Office of Financial Regulation to register as a commercial  
9 collection agency; amending s. 559.545, F.S.; requiring an  
10 applicant to comply with certain procedures to register as  
11 a commercial collection agency; increasing the  
12 registration fee; authorizing the Financial Services  
13 Commission or the office to require the applicant to  
14 provide certain information; requiring the office to  
15 investigate certain applicants; prescribing that a  
16 registration that is not renewed expires automatically;  
17 providing procedures by which a commercial collection  
18 agency may reinstate its registration; amending s.  
19 559.546, F.S.; requiring each applicant to purchase a  
20 surety bond; creating s. 559.5471, F.S.; detailing the  
21 powers and duties of the office with respect to regulating  
22 commercial collection agencies; authorizing the commission  
23 to adopt rules; authorizing the office to issue subpoenas

24 | and subpoenas duces tecum under certain conditions;  
25 | providing procedures the office may use when a person does  
26 | not comply with a subpoena; permitting a court to grant  
27 | injunctive or other relief when a person does not comply  
28 | with a subpoena; authorizing the court to award attorney's  
29 | fees and costs to the office under certain circumstances;  
30 | creating s. 559.5473, F.S.; authorizing the office to seek  
31 | injunctive relief under certain circumstances; authorizing  
32 | a court to appoint a receiver under specified conditions;  
33 | creating s. 559.5474, F.S.; authorizing the office to  
34 | issue cease and desist orders; creating s. 559.5475, F.S.;  
35 | permitting specified documents made by a financial  
36 | examiner to be admitted into evidence under certain  
37 | conditions; creating s. 559.5476, F.S.; requiring each  
38 | registrant to maintain business records; authorizing the  
39 | commission to adopt rules to designate the types of  
40 | information a registrant must maintain; creating s.  
41 | 559.5477, F.S.; providing for administrative remedies;  
42 | specifying the grounds under which a commercial collection  
43 | agency may have its registration suspended or revoked;  
44 | permitting a commercial collection agency to terminate its  
45 | registration; authorizing the office to impose an  
46 | administrative fine up to \$1,000 per violation; amending  
47 | s. 559.55, F.S.; providing definitions; amending s.  
48 | 559.552, F.S., relating to the relationship of state and  
49 | federal laws; providing for construing interpretations of  
50 | the Federal Trade Commission and the federal courts when  
51 | applying state and federal laws and rules relating to

52 | consumer collection practices; amending s. 559.553, F.S.;  
53 | requiring an applicant to provide certain information to  
54 | register as a consumer collection agency; amending s.  
55 | 559.555, F.S.; revising application procedures for  
56 | consumer collection agencies; requiring an applicant to  
57 | furnish specified information; requiring a surety bond;  
58 | increasing the registration fee; requiring an applicant to  
59 | report any licensure discipline or specified information  
60 | on crimes committed by the applicant; listing the grounds  
61 | for denying an application for registration; providing  
62 | that registrations automatically expire; providing  
63 | procedures for a consumer collection agency to renew its  
64 | registration; amending s. 559.565, F.S.; providing that an  
65 | out-of-state consumer collection agency otherwise subject  
66 | to this state's jurisdiction is subject to sanctions for  
67 | committing prohibited practices; amending s. 559.72, F.S.;  
68 | specifying certain activities as prohibited consumer  
69 | collection practices; amending s. 559.725, F.S.;  
70 | authorizing the office to conduct investigations of  
71 | consumer complaints; providing for the examination of a  
72 | registrant; creating s. 559.726, F.S.; detailing the  
73 | powers and duties of the office with respect to regulating  
74 | consumer collection agencies; authorizing the commission  
75 | to adopt rules; authorizing the office to issue subpoenas  
76 | and subpoenas duces tecum under certain conditions;  
77 | providing procedures the office may use when a person does  
78 | not comply with a subpoena; permitting a court to grant  
79 | injunctive or other relief when a person does not comply

80 | with a subpoena; authorizing the court to award attorney's  
81 | fees and costs to the office under certain circumstances;  
82 | creating s. 559.7262, F.S.; authorizing the office to seek  
83 | injunctive relief under certain circumstances; creating s.  
84 | 559.7263, F.S.; authorizing the office to issue cease and  
85 | desist orders; creating s. 559.7264, F.S.; permitting  
86 | certain documents prepared by a financial examiner to be  
87 | admitted into evidence under specified conditions;  
88 | creating s. 559.7265, F.S.; requiring each registrant to  
89 | maintain business records; authorizing the commission to  
90 | adopt rules to designate the types of information a  
91 | registrant must maintain; amending s. 559.730, F.S.;  
92 | providing administrative remedies for violating prohibited  
93 | consumer collection practices; specifying the prohibited  
94 | practices for which a consumer collection agency's  
95 | registration may be suspended or revoked; providing that a  
96 | consumer collection agency may terminate its registration;  
97 | authorizing the office to assess an administrative fine of  
98 | up to \$1,000 per violation; amending s. 559.77, F.S.;  
99 | providing for construing interpretations of the Federal  
100 | Trade Commission and the federal courts when applying  
101 | state and federal laws and rules; amending s. 559.785,  
102 | F.S.; specifying certain activities that subject a person  
103 | to a criminal penalty; repealing ss. 559.547 and 559.563,  
104 | F.S., relating to void registrations; providing an  
105 | appropriation; authorizing six examiner positions and one  
106 | registration analyst position for the enforcement of the  
107 | act; providing an effective date.

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

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

559.544 Registration required; exemptions.--

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

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

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

(4) The office may ~~shall~~ not accept an application for ~~any~~ registration for any commercial collection agency as validly made and filed with the office under this section unless the

136 application ~~registration~~ information furnished to the office by  
 137 the applicant ~~registrant~~ is complete under ~~pursuant to~~ s.  
 138 559.545 and facially demonstrates that the applicant ~~such~~  
 139 ~~registrant~~ is qualified to engage in business as a commercial  
 140 collection agency, including specifically that ~~neither~~ the  
 141 applicant or registrant ~~nor~~ any principal of the applicant  
 142 ~~registrant~~ has not engaged in any unlawful collection practices,  
 143 dishonest dealings, acts of moral turpitude, or other criminal  
 144 acts that reflect an inability to engage in the commercial  
 145 collection agency business. The office shall inform any person  
 146 whose application for registration is denied ~~rejected~~ by the  
 147 office of the fact of and basis for the denial ~~such rejection~~.  
 148 A prospective registrant is ~~shall be~~ entitled to be registered  
 149 when her or his or its application ~~registration~~ information is  
 150 complete on its face, the applicable registration fee has been  
 151 paid, and the required evidence of current bond is furnished to  
 152 the office.

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

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

156 "Primarily engaged in the collection of commercial claims" means  
 157 that more than one-half of the person's income ~~of such person~~  
 158 arises from the business of soliciting commercial claims for  
 159 collection or collecting commercial claims.

160 (b) A financial institution authorized to do business in  
 161 this state and any wholly owned subsidiary and affiliate  
 162 thereof.

163 (c) A licensed real estate broker.

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164 (d) A title insurance company authorized to do business in  
165 this state.

166 (e) A collection agency that ~~which~~ is not primarily  
167 engaged in the collection of commercial claims. "Not primarily  
168 engaged in the collection of commercial claims" means that less  
169 than one-half of the collection revenue of the ~~such~~ agency  
170 arises from the collection of commercial claims.

171 (f) A consumer finance company and any wholly owned  
172 subsidiary and affiliate thereof.

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

174 (h) A credit grantor.

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

176 (j) An FDIC-insured institution or subsidiary or affiliate  
177 thereof.

178 Section 2. Section 559.545, Florida Statutes, is amended  
179 to read:

180 559.545 Registration of commercial collection agencies;  
181 procedure.--~~A~~ Any person who wishes to apply for registration  
182 ~~register~~ as a commercial collection agency in compliance with  
183 this part must ~~shall~~ do so on forms adopted by the commission  
184 and furnished by the office. Any renewal of registration shall  
185 be made between October 1 and December 31 of each year. In  
186 applying for ~~registering~~ or renewing a registration as required  
187 by this part, each commercial collection agency shall furnish to  
188 the office a registration fee, information, and surety bond, as  
189 follows:

190 (1) The applicant or registrant shall pay to the office a  
191 registration fee of \$800 ~~\$500~~. All amounts collected shall be

192 deposited to the credit of the Regulatory Trust Fund of the  
193 office.

194 (2) The applicant or registrant ~~must~~ ~~shall~~ provide the  
195 following information:

196 (a) The business name or trade name of the commercial  
197 collection agency, the current mailing address of the agency,  
198 and the current business location of each place from which the  
199 agency operates either a main or branch office, with a  
200 designation of which location constitutes its principal place of  
201 business.

202 (b) The full names, current addresses, current telephone  
203 numbers, and social security numbers, or federal identification  
204 numbers of any corporate owner, of the applicant's or  
205 registrant's owners or corporate officers and directors, and of  
206 the Florida resident agent of the registering agency.

207 (c) A statement as to whether the applicant or registrant  
208 is a domestic or foreign corporation, together with the state  
209 and date of incorporation, charter number of the corporation,  
210 and, if a foreign corporation, the date the corporation first  
211 registered to do business in this state.

212 (d) A statement listing each county in this state in which  
213 the applicant or registrant is currently doing business or plans  
214 to do business within the next calendar year, indicating each  
215 county in which the applicant or registrant holds an  
216 occupational license.

217 (e) A statement listing each county in this state in which  
218 the applicant or registrant is operating under a fictitious name  
219 or trade name other than that of the applicant or registrant,



220 | indicating the date and place of registration of any such  
221 | fictitious name or trade name.

222 |       (f) A statement listing the names of any other  
223 | corporations, entities, or trade names through which any owner  
224 | or director of the applicant or registrant was known or did  
225 | business as a commercial or consumer collection agency within  
226 | the 5 calendar years immediately preceding the year in which the  
227 | agency is registering.

228 |       (g) A statement clearly identifying and explaining any  
229 | occasion on which any professional license or occupational  
230 | license held by the applicant or registrant, any principal of  
231 | the applicant or registrant, or any business entity in which any  
232 | principal of the applicant or registrant was the owner of 10  
233 | percent or more of the ~~such~~ business was the subject of any  
234 | suspension, revocation, or other disciplinary action.

235 |       (h) A statement clearly identifying and explaining any  
236 | occasion of a finding of guilt of any crime involving moral  
237 | turpitude or dishonest conduct on the part of any principal of  
238 | the applicant or registrant.

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240 | The commission or office may require each applicant for a  
241 | commercial collection agency registration to provide any  
242 | information and documentation reasonably necessary to make a  
243 | determination of the applicant's eligibility for registration.

244 |       (3) The applicant or registrant shall furnish to the  
245 | office evidence, as provided in s. 559.546, of the applicant or  
246 | registrant having a current surety bond in the amount of  
247 | \$50,000, valid for the year of registration, paid for and issued

248 | for the use and benefit of any credit grantor who suffers or  
 249 | sustains any loss or damage by reason of any violation of ~~the~~  
 250 | ~~provisions of~~ this part by the applicant or registrant, or by  
 251 | any agent or employee of the applicant or registrant acting  
 252 | within the scope of her or his employment, and issued to ensure  
 253 | conformance with ~~the provisions of~~ this part.

254 | (4) Upon the filing of an application for registration and  
 255 | payment of all applicable fees, the office shall, unless the  
 256 | application is to renew or reactivate an existing registration,  
 257 | investigate the applicant. If the office determines that  
 258 | registration should be granted, it shall register the applicant  
 259 | for a period not to exceed 1 year.

260 | (5) A registration that is not renewed by the end of the  
 261 | calendar year expires automatically. A commercial collection  
 262 | agency that has not renewed its registration by the time the  
 263 | registration period expires may request reactivation of its  
 264 | registration. The registrant must file its request with the  
 265 | office on or before January 31 of the year following the year of  
 266 | expiration. The request must contain any information the office  
 267 | requires, together with the registration fee required in  
 268 | subsection (1), and a late fee equal to the registration fee.  
 269 | Any reactivation of registration granted by the office during  
 270 | the month of January is deemed retroactive to January 1 of that  
 271 | year. Any registrant that engages in business as a commercial  
 272 | collection agency after its registration has expired violates s.  
 273 | 559.548(1).

274 | (6) An initial or renewal registration application is  
 275 | deemed received for purposes of s. 120.60 upon receipt of the

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276 completed application form prescribed by commission rule, the  
277 registration fee of \$800, and any other fee prescribed by law or  
278 rule.

279 Section 3. Section 559.546, Florida Statutes, is amended  
280 to read:

281 559.546 Bond; evidence of current and valid  
282 bond.--Pursuant to s. 559.545, the applicant or registrant shall  
283 provide to the office evidence that the applicant or registrant  
284 has been issued a current and valid surety bond as required by  
285 this part.

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

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

293 (b) A statement from the surety that the annual premium  
294 for the bond has been paid in full by the applicant or  
295 registrant.

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

298 (2) The liability of the surety under any bond issued  
299 under ~~pursuant to~~ the requirements of this part may ~~shall~~ not  
300 exceed in the aggregate the amount of the bond, regardless of  
301 the number or amount of any claims filed or which might be  
302 asserted against the surety on the ~~such~~ bond. If multiple  
303 claims are filed against the surety on any ~~such~~ bond in excess

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304 of the amount of the bond, the surety may pay the full amount of  
 305 the bond to the office and ~~is shall~~ not be further liable under  
 306 the bond. The office shall hold the ~~such~~ funds for distribution  
 307 to claimants and administratively determine and pay to each  
 308 claimant the pro rata share of each valid claim made against the  
 309 funds within 6 months after the date of the filing of the first  
 310 claim against the surety.

311 Section 4. Section 559.5471, Florida Statutes, is created  
 312 to read:

313 559.5471 Powers and duties of the Office of Financial  
 314 Regulation.--

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

318 (2) The commission may adopt rules under ss. 120.536(1)  
 319 and 120.54 to implement and administer this part. The commission  
 320 may adopt a rule to require electronic submission of any form,  
 321 document, or fee required by this part, provided that the rule  
 322 reasonably accommodates a person with a technological or  
 323 financial hardship. The commission may adopt a rule setting  
 324 forth the criteria and procedures for obtaining an exemption due  
 325 to a technological or financial hardship. The commission may  
 326 adopt a rule to accept certification of compliance with the  
 327 requirements of this part in lieu of requiring submission of  
 328 specified documents.

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

332       (4) The office, or any duly authorized representative,  
 333 including any financial examiner or analyst, financial  
 334 investigator, or attorney at law, may:

335       (a) Issue, revoke, quash, or modify and serve subpoenas to  
 336 compel the attendance of witnesses and subpoenas duces tecum to  
 337 compel the production of all books, accounts, records, and other  
 338 documents and materials relevant to an examination or  
 339 investigation. The office may exercise these powers even if the  
 340 subject of the investigation or examination is exempt from  
 341 registration.

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

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

344       (5)(a) If the office determines that a person is in  
 345 substantial noncompliance with a subpoena or subpoena duces  
 346 tecum that the office issued or caused to be issued, it may  
 347 petition a court of competent jurisdiction in the county where  
 348 the person subpoenaed resides or has her, his, or its principal  
 349 place of business for an order requiring the person to appear  
 350 and testify and to produce the books, accounts, records, and  
 351 other documents that are specified in the subpoena duces tecum.

352       (b) The court may grant injunctive relief restraining the  
 353 person from advertising, promoting, soliciting, entering into,  
 354 offering to enter into, continuing, or completing any  
 355 transaction involving commercial debt collection. The court may  
 356 grant such other relief, including, but not limited to, the  
 357 restraint, by injunction or appointment of a receiver, of any  
 358 transfer, pledge, assignment, or other disposition of the  
 359 person's assets or any concealment, alteration, destruction, or

360 other disposition of books, accounts, records, or other  
 361 documents and materials, that the court deems appropriate until  
 362 the person has fully complied with the subpoena duces tecum and  
 363 the office has completed its investigation or examination. The  
 364 court may order the refund of any sums collected whenever books  
 365 and documents substantiating the transaction are not produced or  
 366 cannot be produced. The office is entitled to the summary  
 367 procedure provided in s. 51.011, and the court shall advance the  
 368 cause on its calendar.

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

374 (6) When it appears to the office that compliance with a  
 375 subpoena or subpoena duces tecum issued under subsection (4) is  
 376 essential and that the person or documents subpoenaed are  
 377 otherwise unavailable to an investigation or examination, the  
 378 office, in addition to the other remedies provided for in this  
 379 section, may petition a court of competent jurisdiction in the  
 380 county in which the subpoenaed person resides or has her, his,  
 381 or its principal place of business for a writ of ne exeat. The  
 382 court shall direct the issuance of the writ against the  
 383 subpoenaed person requiring sufficient bond conditioned on  
 384 compliance with the subpoena or subpoena duces tecum. The court  
 385 shall cause to be endorsed on the writ a suitable amount of bond  
 386 upon the payment of which the person named in the writ shall be  
 387 freed, having a due regard to the nature of the case.

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

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

397       (9) At a hearing on the petition to enforce compliance  
 398 with a subpoena, the person subpoenaed, or any person whose  
 399 interest will be substantially affected by the investigation,  
 400 examination, or subpoena, may appear and object to the subpoena  
 401 and to the granting of the petition. The court may make any  
 402 order that justice requires in order to protect a party or other  
 403 person and her or his personal and property rights, including,  
 404 but not limited to, protection from annoyance, embarrassment,  
 405 oppression, undue burden, or expense.

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

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

414       (12) Reasonable and necessary costs incurred by the office  
 415 and payable to persons involved with an investigation may be

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416 assessed against any debt collector on the basis of actual costs  
417 incurred. Assessed expenses may include, but are not limited to,  
418 expenses for interpreters; expenses for communications; expenses  
419 for legal representation; expenses for economic, legal, or other  
420 research; analysis and testimony; and fees and expenses for  
421 witnesses. The failure to reimburse the office for its  
422 reasonable and necessary costs is a reason to deny a  
423 registrant's application or to revoke the prior approval of an  
424 application.

425 Section 5. Section 559.5473, Florida Statutes, is created  
426 to read:

427 559.5473 Injunction to restrain violations; receivers.--

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

432 (2) In an injunctive proceeding, the court may issue a  
433 subpoena requiring the attendance of any witness or a subpoena  
434 duces tecum requiring the production of any book, account,  
435 record, or other documents and materials relevant to the pending  
436 case.

437 (3)(a) In addition to any procedure provided by law for  
438 enforcing a temporary restraining order or a temporary or  
439 permanent injunction, the court may, upon application of the  
440 office, impound the property, assets, and business of the  
441 registrant, including, but not limited to, the books, records,  
442 documents, and papers of the registrant. The court may appoint a  
443 receiver to administer the property. The receiver, when



444 appointed and qualified, has the powers and duties that are  
 445 conferred upon the receiver by the court.

446 (b) After appointing a receiver, the court may issue an  
 447 order staying all pending suits and enjoining any further  
 448 litigation affecting the receiver's custody or possession of the  
 449 property, assets, and business, and the court, with the consent  
 450 of the chief judge of the circuit, may require that all suits be  
 451 assigned to the circuit judge who appointed the receiver.

452 Section 6. Section 559.5474, Florida Statutes, is created  
 453 to read:

454 559.5474 Cease and desist orders; refund orders.--

455 (1) The office may issue and serve upon a person an order  
 456 to cease and desist and to take corrective action whenever the  
 457 office has reason to believe that the commercial collection  
 458 agency is violating, has violated, or is about to violate this  
 459 part, any rule or order of the office issued under this part, or  
 460 any written agreement between the commercial collection agency  
 461 and the office. Procedural matters relating to the issuance and  
 462 enforcement of a cease and desist order are governed by chapter  
 463 120.

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

467 Section 7. Section 559.5475, Florida Statutes, is created  
 468 to read:

469 559.5475 Evidence; examiner's worksheets, investigative  
 470 reports, other related documents.--An official written report,  
 471 sworn complaint, worksheet, or other related paper, or a

472 certified copy thereof, compiled, prepared, drafted, or  
 473 otherwise made by the financial examiner is admissible into  
 474 evidence if the financial examiner is available for cross-  
 475 examination; authenticates the worksheet; and testifies that the  
 476 report, worksheet, or related document was prepared as a result  
 477 of an examination of the books and records of a registrant or  
 478 other person conducted under the authority of this part.

479 Section 8. Section 559.5476, Florida Statutes, is created  
 480 to read:

481 559.5476 Books, accounts, and records; maintenance;  
 482 examinations by the office.--

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

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

491 (3) All books, accounts, records, documents, and receipts  
 492 for payments to a registrant by a debtor, and payments made to a  
 493 creditor by a registrant, shall be preserved and kept available  
 494 for examination by the office for 3 years after the date of  
 495 original entry. The commission shall adopt requirements by rule  
 496 for maintaining the books, accounts, records, and documents  
 497 retained by the registrant and for destroying the records.

498 (4) The commission shall designate by rule the minimum  
 499 information that must be contained in the registrant's books,

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500 accounts, records, and documents in order that the records will  
 501 enable the office to determine a registrant's compliance with  
 502 this part.

503 Section 9. Section 559.5477, Florida Statutes, is created  
 504 to read:

505 559.5477 Administrative remedies.--

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

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

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

514 (c) Has pending against the person a criminal prosecution  
 515 or administrative enforcement action, in any jurisdiction, which  
 516 involves fraud, dishonest dealing, or any other act of moral  
 517 turpitude;

518 (d) Has had any business, professional, or occupational  
 519 license or registration suspended, revoked, or otherwise acted  
 520 against in any jurisdiction;

521 (e) Fails to maintain the surety bond required pursuant to  
 522 s. 559.546;

523 (f) Fails to maintain books and records as required by s.  
 524 559.5476;

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

526 (h) Paid for a registration with a check or electronic  
 527 transmission of funds which failed to clear the registrant's  
 528 financial institution.

529 (2) Any registration made under this part which is based  
 530 upon false identification or false information, or an  
 531 identification that is not current with respect to name,  
 532 address, business location, or other fact that is material to  
 533 the registration, is void. Any registration made and  
 534 subsequently found to be void under this section does not create  
 535 a defense to any action brought by the office to impose a  
 536 sanction for a violation of this part.

537 (3) A registrant may request to terminate its registration  
 538 by delivering written notice of its proposed termination to the  
 539 office. However, the delivery of the termination notice does not  
 540 affect any civil or criminal liability of the registrant or the  
 541 authority of the office to enforce this part.

542 (4) The office may deny a request to terminate a  
 543 registration or to withdraw an application for registration if  
 544 the office believes that the registrant has committed an act  
 545 that would be grounds for denial, suspension, or revocation  
 546 under this part.

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

550 (6) The office may impose an administrative fine of up to  
 551 \$1,000 per violation against an offending registrant as an  
 552 administrative sanction. Final action by the office to impose an

553 administrative fine is subject to review in accordance with ss.  
 554 120.569 and 120.57.

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

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

563 Section 10. Subsections (1) and (8) of section 559.55,  
 564 Florida Statutes, are amended, and subsections (10), (11), and  
 565 (12) are added to said section, to read:

566 559.55 Definitions.--The following terms shall, unless the  
 567 context otherwise indicates, have the following meanings for the  
 568 purpose of this part:

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

570 (a) Any obligation or alleged obligation of a consumer to  
 571 pay money arising out of a transaction in which the money,  
 572 property, insurance, or services which are the subject of the  
 573 transaction are primarily for personal, family, or household  
 574 purposes, whether or not such obligation has been reduced to  
 575 judgment; or

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

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

581 | located in this state by means of interstate communication  
 582 | originating from outside this state and soliciting consumer debt  
 583 | accounts for collection from creditors who have a ~~business~~  
 584 | presence in this state. For purposes of this subsection, a  
 585 | creditor has a ~~business~~ presence in this state if either the  
 586 | creditor or an affiliate or subsidiary of the creditor has an  
 587 | office or resides in this state.

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

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

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

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

600 | (12) "Principal of a registrant or applicant" means the  
 601 | applicant's or registrant's owners if a partnership or sole  
 602 | proprietorship; the corporate officers; the corporate directors,  
 603 | other than directors of a not-for-profit corporation organized  
 604 | under chapter 617; or the Florida resident agent if a  
 605 | corporation is the applicant or registrant.

606 | Section 11. Section 559.552, Florida Statutes, is amended  
 607 | to read:

608 | 559.552 Relationship of state and federal law.--

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

611           (2) Nothing in This part does not shall be construed to  
612 limit or restrict the continued applicability of the federal  
613 Fair Debt Collection Practices Act to consumer collection  
614 practices in this state. This part is in addition to the  
615 requirements and regulations of the federal act. In construing  
616 this part, due consideration and great weight shall be given to  
617 interpretations of the Federal Trade Commission Act and the Fair  
618 Debt Collection Practices Act by the Federal Trade Commission  
619 and the federal courts. In the event of any inconsistency  
620 between any provision of this part and any provision of the  
621 federal act, including federal case law, the provision that  
622 which is more protective of the consumer or debtor shall  
623 prevail.

624           Section 12. Section 559.553, Florida Statutes, is amended  
625 to read:

626           559.553 Registration of consumer collection agencies  
627 required; exemptions.--

628           (1) After January 1, 1994, a ~~no~~ person may not shall  
629 engage in business in this state as a consumer collection agency  
630 or continue to do business in this state as a consumer  
631 collection agency without first registering in accordance with  
632 this part, and thereafter maintaining a valid registration.

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

636 (3) A prospective registrant is ~~shall be~~ entitled to be  
 637 registered when registration information is complete on its face  
 638 and the applicable registration fee has been paid; however, the  
 639 office may deny an application for ~~reject~~ a registration  
 640 submitted by a prospective registrant if the applicant  
 641 ~~registrant~~ or any principal or person having control of the  
 642 applicant ~~registrant~~ previously has held any professional  
 643 license or state registration that ~~which~~ was the subject of any  
 644 suspension or revocation ~~which has not been explained by the~~  
 645 ~~prospective registrant to the satisfaction of the office either~~  
 646 ~~in the registration information submitted initially or upon the~~  
 647 ~~subsequent written request of the office.~~ If ~~In the event that~~  
 648 an application for ~~attempted~~ registration is denied ~~rejected~~ by  
 649 the office, the prospective registrant shall be informed of the  
 650 basis for the denial ~~rejection~~.

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

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

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

654 (c) A ~~Any~~ financial institution authorized to do business  
 655 in this state or and a ~~any~~ wholly owned subsidiary or and  
 656 affiliate thereof.

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

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

660 (f) A ~~Any~~ consumer finance company or and a ~~any~~ wholly  
 661 owned subsidiary or and affiliate thereof.

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



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

666 (i) ~~A Any~~ FDIC-insured institution or subsidiary or  
667 affiliate thereof.

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

673 Section 13. Section 559.555, Florida Statutes, is amended  
674 to read:

675 559.555 Registration of consumer collection agencies;  
676 procedure.--

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

680 (a) The full legal name, residential address, business  
681 addresses, telephone number, and social security number or  
682 federal identification number for:

683 1. The applicant;

684 2. Any person having control over the applicant or  
685 registrant;

686 3. Any principal of an applicant or registrant;

687 4. Each member if the applicant is a partnership or  
688 association; and

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

691        (b) The business name, trade name, fictitious name, or  
 692 name under which the consumer collection business is doing  
 693 business; the current mailing address of the consumer collection  
 694 agency; and the business location of each place from which the  
 695 consumer collection agency operates a main or branch office,  
 696 with a designation of which location constitutes its principal  
 697 place of business.

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

702        (d) A statement listing each county in this state in which  
 703 the applicant is currently operating under a fictitious name or  
 704 trade name other than that of the applicant, indicating the date  
 705 and place of registration of any fictitious name or trade name.

706        (e) A statement listing the names of any other  
 707 corporations, entities, or trade names by which any owner or  
 708 director of the applicant was known or did business as a  
 709 collection agency in the 5 years immediately before the year in  
 710 which the agency is registering.

711        (f) A statement clearly identifying and explaining each  
 712 occasion on which a professional or occupational license held by  
 713 the applicant, any principal of the applicant, or any business  
 714 entity in which any principal of the applicant was the owner of  
 715 10 percent or more of the business was the subject of any  
 716 suspension, revocation, or other disciplinary action.

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

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

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

726        (2) The application information must include a statement  
 727 clearly identifying and explaining each occasion when a  
 728 professional license or state registration held by a person with  
 729 control over an applicant or by any business entity in which any  
 730 person with control over an applicant was the owner of 10  
 731 percent or more of the business was the subject of a suspension  
 732 or revocation proceeding. ~~Any person required to register as a~~  
 733 ~~consumer collection agency shall furnish to the office the~~  
 734 ~~registration fee and information as follows:~~

735        (3)~~(1)~~ The applicant or registrant shall pay to the office  
 736 a nonrefundable registration fee in the amount of \$800 ~~\$200~~.  
 737 All amounts collected shall be deposited by the office to the  
 738 credit of the Regulatory Trust Fund of the office.

739        (4)~~(2)~~ Each applicant or registrant shall provide to the  
 740 office the business name or trade name, the current mailing  
 741 address, the current business location that ~~which~~ constitutes  
 742 its principal place of business, and the full name of each  
 743 individual who is a principal of the applicant or registrant.

744 ~~"Principal of a registrant" means the registrant's owners if a~~

745 ~~partnership or sole proprietorship, corporate officers,~~  
 746 ~~corporate directors other than directors of a not-for-profit~~  
 747 ~~corporation organized pursuant to chapter 617 and Florida~~  
 748 ~~resident agent if a corporate registrant. The registration~~  
 749 ~~information shall include a statement clearly identifying and~~  
 750 ~~explaining any occasion on which any professional license or~~  
 751 ~~state registration held by the registrant, by any principal of~~  
 752 ~~the registrant, or by any business entity in which any principal~~  
 753 ~~of the registrant was the owner of 10 percent or more of such~~  
 754 ~~business, was the subject of any suspension or revocation.~~

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

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

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

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

765 (d) Has been found guilty of, regardless of adjudication,  
 766 or has entered a plea of nolo contendere or guilty to,  
 767 racketeering or any offense involving fraud or dishonest  
 768 dealing;

769 (e) Has been found guilty of, regardless of adjudication,  
 770 or has entered a plea of nolo contendere or guilty to, any  
 771 felony;

772       (f) Has had entered against him or her, or any business  
 773 for which he or she has worked or been affiliated, an  
 774 injunction, a temporary restraining order, or a final judgment  
 775 or order, including a stipulated judgment or order, an assurance  
 776 of voluntary compliance, or any similar document, in any civil  
 777 or administrative action involving racketeering, fraud, theft,  
 778 embezzlement, fraudulent conversion, or misappropriation of  
 779 property or the use of any untrue, deceptive, or misleading  
 780 representation in an attempt to sell or dispose of real or  
 781 personal property or the use of any unfair, unlawful, or  
 782 deceptive trade practice, whether or not there is any litigation  
 783 pending against the applicant;

784       (g) Is subject to or has worked or been affiliated with  
 785 any company that is, or ever has been, subject to any  
 786 injunction, temporary restraining order, including a stipulated  
 787 judgment or order, an assurance of voluntary compliance, or any  
 788 similar document, or any restrictive court order relating to  
 789 business activity as the result of any action brought by a  
 790 governmental agency, including any action affecting any license  
 791 to do business or practice an occupation or trade;

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

795       (i) Falsified or willfully omitted any material  
 796 information asked for in any application, document, or record  
 797 required to be submitted under this part or the rules of the  
 798 office;

799        (j) Made a material false statement of fact in an  
 800 application for registration or in response to any request or  
 801 investigation by the office, the Department of Legal Affairs, or  
 802 the state attorney; or

803        (k) Has been the subject of any adverse decision, finding,  
 804 injunction, suspension, prohibition, revocation, denial, or  
 805 judgment by any court of competent jurisdiction or an  
 806 administrative order by an administrative law judge, or by any  
 807 state or federal agency or any business, professional, or  
 808 occupational association involving a violation of any law, rule,  
 809 or regulation relating to business or professional licensing.

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

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

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

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

824        (a) Relocation of the place of the registrant's business;  
 825 and

826        (b) The registrant's becoming subject to a voluntary or  
827 involuntary bankruptcy.

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

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

836        (b) A registration that is not renewed by the end of the  
837 calendar year expires automatically. A consumer collection  
838 agency that has not renewed its registration by the time the  
839 registration period expires may request reactivation of its  
840 registration. The registrant must file its request with the  
841 office on or before January 31 of the year following the year of  
842 expiration. The request must contain any information the office  
843 requires, together with the registration fee required in  
844 subsection (1) and a late fee equal to the registration fee. Any  
845 reactivation of registration granted by the office during the  
846 month of January is deemed retroactive to January 1 of that  
847 year. Any registrant that engages in the business of a consumer  
848 collection agency after its registration has expired violates  
849 ss. 559.553 and 559.785(1).

850        Section 14. Section 559.565, Florida Statutes, is amended  
851 to read:

852        559.565 Enforcement action against out-of-state consumer  
853 debt collector.--The remedies of this section are cumulative to

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854 other sanctions and enforcement provisions of this part for any  
855 violation by an out-of-state consumer debt collector, as defined  
856 in s. 559.55(8).

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

863 (2) Any person, whether or not exempt from registration  
864 under this part, who is otherwise subject to the jurisdiction of  
865 this state and violates ~~the provisions of~~ s. 559.72 shall be  
866 subject to sanctions for the ~~such~~ violations the same as any  
867 other consumer debt collector, including imposition of an  
868 administrative fine. The registration of a duly registered out-  
869 of-state consumer debt collector shall be subject to revocation  
870 or suspension in the same manner as the registration of any  
871 other registrant under this part.

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

878 Section 15. Section 559.72, Florida Statutes, is amended  
879 to read:

880 559.72 Prohibited practices generally.--In collecting  
881 consumer debts, a ~~no~~ person may not ~~shall~~:



- 882           (1) Simulate in any manner a law enforcement officer or a  
883 representative of any governmental agency;
- 884           (2) Use or threaten force, ~~or~~ violence, or any other means  
885 to harm the physical person, property, or reputation of any  
886 person;
- 887           (3) Tell a debtor who disputes a consumer debt that she or  
888 he or any person employing her or him will disclose to another,  
889 orally or in writing, directly or indirectly, information  
890 affecting the debtor's reputation for credit worthiness without  
891 also informing the debtor that the existence of the dispute will  
892 also be disclosed as required by subsection (6);
- 893           (4) Communicate or threaten to communicate with a debtor's  
894 employer prior to obtaining final judgment against the debtor,  
895 unless the debtor gives her or his permission in writing to  
896 contact her or his employer or acknowledges in writing the  
897 existence of the debt after the debt has been placed for  
898 collection, but this shall not prohibit a person from telling  
899 the debtor that her or his employer will be contacted if a final  
900 judgment is obtained;
- 901           (5) Disclose to a person other than the debtor or her or  
902 his family information affecting the debtor's reputation,  
903 whether or not for credit worthiness, with knowledge or reason  
904 to know that the other person does not have a legitimate  
905 business need for the information or that the information is  
906 false;
- 907           (6) Disclose information concerning the existence of a  
908 debt known to be reasonably disputed by the debtor without  
909 disclosing that fact. If a disclosure is made prior to such

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910 reasonable dispute having been asserted and written notice is  
911 received from the debtor that any part of the debt is disputed  
912 and if such dispute is reasonable, the person who made the  
913 original disclosure shall reveal upon the request of the debtor  
914 within 30 days the details of the dispute to each person to whom  
915 disclosure of the debt without notice of the dispute was made  
916 within the preceding 90 days;

917 (7) Willfully communicate with the debtor or any member of  
918 her or his family with such frequency as can reasonably be  
919 expected to harass the debtor or her or his family, or willfully  
920 engage in other conduct which can reasonably be expected to  
921 abuse or harass the debtor or any member of her or his family;

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

925 (9) Claim, attempt, or threaten to enforce a debt when  
926 such person knows that the debt is not legitimate or assert the  
927 existence of some other legal right when such person knows that  
928 the right does not exist;

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

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

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

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

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

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

951 (16) Mail any communication to a debtor in an envelope or  
952 postcard with words typed, written, or printed on the outside of  
953 the envelope or postcard indicating that the purpose of the  
954 communication is to collect a debt or is otherwise calculated to  
955 embarrass the debtor. An example of this would be an envelope  
956 addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe";

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

962 (18) Communicate with a debtor if the person knows that  
963 the debtor is represented by an attorney with respect to such

964 debt and has knowledge of, or can readily ascertain, such  
 965 attorney's name and address, unless the debtor's attorney fails  
 966 to respond within a reasonable period of time to a communication  
 967 from the person, unless the debtor's attorney consents to a  
 968 direct communication with the debtor, or unless the debtor  
 969 initiates the communication; or

970 (19) Cause charges to be made to any debtor for  
 971 communications by concealment of the true purpose of the  
 972 communication, including collect telephone calls and telegram  
 973 fees.

974 Section 16. Section 559.725, Florida Statutes, is amended  
 975 to read:

976 559.725 Consumer complaints; administrative duties.--

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

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

984 (3)(a) The office may conduct examinations of any  
 985 registrant. The office shall conduct all examinations at a  
 986 location in this state convenient to the registrant unless the  
 987 office determines that it is more effective or cost-efficient to  
 988 perform the examination at the registrant's out-of-state  
 989 location.

990 (b) The registrant shall pay the travel expenses and per  
 991 diem subsistence at the rate provided by law for an examination

992 conducted at the registrant's out-of-state location. The  
 993 registrant shall pay for up to 30 8-hour days per year for each  
 994 office examiner participating in the examination. However, if  
 995 the examination involves or reveals fraudulent misconduct by the  
 996 registrant, the registrant shall pay the travel expenses and per  
 997 diem subsistence, without limitation, for each examiner  
 998 participating in the examination.

999 (4) Nothing in this part may be construed to be a  
 1000 jurisdictional prerequisite to enforcement by the office, the  
 1001 Department of Legal Affairs, or a state attorney.

1002 ~~(1) The Division of Consumer Services of the Department of~~  
 1003 ~~Financial Services shall serve as the registry for receiving and~~  
 1004 ~~maintaining records of inquiries, correspondence, and complaints~~  
 1005 ~~from consumers concerning any and all persons who collect debts,~~  
 1006 ~~including consumer collection agencies.~~

1007 ~~(2) The division shall classify complaints by type and~~  
 1008 ~~identify the number of written complaints against persons~~  
 1009 ~~collecting or attempting to collect debts in this state,~~  
 1010 ~~including credit grantors collecting their own debts, debt~~  
 1011 ~~collectors generally, and, specifically, consumer collection~~  
 1012 ~~agencies as distinguished from other persons who collect debts~~  
 1013 ~~such as commercial debt collection agencies regulated under part~~  
 1014 ~~V of this chapter. The division shall identify the nature and~~  
 1015 ~~number of various kinds of written complaints, including~~  
 1016 ~~specifically those alleging violations of s. 559.72.~~

1017 ~~(3) The division shall inform and furnish relevant~~  
 1018 ~~information to the appropriate regulatory body of the state, or~~  
 1019 ~~The Florida Bar in the case of attorneys, when any consumer debt~~

1020 ~~collector exempt from registration under this part has been~~  
 1021 ~~named in five or more written consumer complaints alleging~~  
 1022 ~~violations of s. 559.72 within a 12-month period.~~

1023 ~~(4) The division shall furnish a form to each complainant~~  
 1024 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~  
 1025 ~~consumer collection agency. Such form may be filed with the~~  
 1026 ~~office. The form shall identify the accused consumer collection~~  
 1027 ~~agency and provide for the complainant's summary of the nature~~  
 1028 ~~of the alleged violation and facts which allegedly support the~~  
 1029 ~~complaint. The form shall include a provision for the~~  
 1030 ~~complainant to state under oath before a notary public that the~~  
 1031 ~~allegations therein made are true.~~

1032 ~~(5) Upon receipt of such sworn complaint, the office shall~~  
 1033 ~~promptly furnish a copy of the sworn complaint to the accused~~  
 1034 ~~consumer collection agency.~~

1035 ~~(6) The office shall investigate sworn complaints by~~  
 1036 ~~direct written communication with the complainant and the~~  
 1037 ~~affected consumer collection agency. In addition, the office~~  
 1038 ~~shall attempt to resolve each sworn complaint and shall record~~  
 1039 ~~the resolution of such complaints.~~

1040 ~~(7) Periodically, the office shall identify consumer~~  
 1041 ~~collection agencies that have unresolved sworn consumer~~  
 1042 ~~complaints from five or more different consumers within a 12-~~  
 1043 ~~month period under the provisions of this part.~~

1044 ~~(8) The office shall issue a written warning notice to the~~  
 1045 ~~accused consumer collection agency if the office is unable to~~  
 1046 ~~resolve all such sworn complaints and fewer than five unresolved~~  
 1047 ~~complaints remain. Such notice shall include a statement that~~

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1048 ~~the warning may constitute evidence in any future investigation~~  
 1049 ~~of similar complaints against that agency and in any future~~  
 1050 ~~administrative determination of the imposition of other~~  
 1051 ~~administrative remedies available to the office under this part.~~

1052 ~~(9) The office may issue a written reprimand when five or~~  
 1053 ~~more such unresolved sworn complaints against a consumer~~  
 1054 ~~collection agency collectively fall short of constituting~~  
 1055 ~~apparent repeated violations that warrant more serious~~  
 1056 ~~administrative sanctions. Such reprimand shall include a~~  
 1057 ~~statement that the reprimand may constitute evidence in any~~  
 1058 ~~future investigation of similar complaints against that agency~~  
 1059 ~~and in any future administrative determination of the imposition~~  
 1060 ~~of other administrative remedies available to the office.~~

1061 ~~(10) The office shall issue a notice of intent either to~~  
 1062 ~~revoke or suspend the registration or to impose an~~  
 1063 ~~administrative fine when the office preliminarily determines~~  
 1064 ~~that repeated violations of s. 559.72 by an accused registrant~~  
 1065 ~~have occurred which would warrant more serious administrative~~  
 1066 ~~sanctions being imposed under this part. The office shall~~  
 1067 ~~advise each registrant of the right to require an administrative~~  
 1068 ~~hearing under chapter 120, prior to the agency's final action on~~  
 1069 ~~the matter as authorized by s. 559.730.~~

1070 ~~(5)(11)~~ Any government office or agency receiving a  
 1071 complaint under this section ~~The office shall advise any other~~  
 1072 government office or agency with apparent jurisdiction,  
 1073 including the office, the appropriate state attorney, or the  
 1074 Attorney General in the case of an out-of-state consumer debt  
 1075 collector, of any determination by that agency ~~the office~~ of a

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1076 | violation, or possible violation, of the requirements of this  
 1077 | part by any consumer collection agency, whether or ~~which is~~ not  
 1078 | registered or exempt from registration as required by this part.  
 1079 | ~~The office shall furnish the state attorney or Attorney General~~  
 1080 | ~~with the office's information concerning the alleged violations~~  
 1081 | ~~of such requirements.~~

1082 |       Section 17. Section 559.726, Florida Statutes, is created  
 1083 | to read:

1084 |       559.726 Powers and duties of the Office of Financial  
 1085 | Regulation.--

1086 |       (1) Compliance with this part shall be enforced by the  
 1087 | office, except to the extent that enforcement is specifically  
 1088 | committed to another agency.

1089 |       (2) The commission may adopt rules under ss. 120.536(1)  
 1090 | and 120.54 to implement and administer this part. The commission  
 1091 | may adopt a rule to require electronic submission of any form,  
 1092 | document, or fee required by this part, provided that the rule  
 1093 | reasonably accommodates a person with a technological or  
 1094 | financial hardship. The commission may adopt a rule setting  
 1095 | forth the criteria and procedures for obtaining an exemption due  
 1096 | to a technological or financial hardship exemption. The  
 1097 | commission may adopt a rule to accept certification of  
 1098 | compliance with the requirements of this part in lieu of  
 1099 | requiring submission of documents.

1100 |       (3) All fees, charges, and fines collected by the office  
 1101 | under this part shall be deposited to the credit of the  
 1102 | Regulatory Trust Fund of the office.



1103       (4) The office, or any duly authorized representative,  
 1104 including any financial examiner or analyst, financial  
 1105 investigator, or attorney at law, may:

1106       (a) Issue, revoke, quash, or modify and serve subpoenas to  
 1107 compel the attendance of witnesses and subpoenas duces tecum to  
 1108 compel the production of all books, accounts, records, and other  
 1109 documents and materials relevant to an examination or  
 1110 investigation. The office may exercise these powers even if the  
 1111 subject of the investigation or examination is exempt from  
 1112 registration;

1113       (b) Administer oaths and affirmations to any person; or

1114       (c) Take, or cause to be taken, testimony and depositions.

1115       (5)(a) If the office determines that a person is in  
 1116 substantial noncompliance with a subpoena or subpoena duces  
 1117 tecum that the office issued or caused to be issued, it may  
 1118 petition a court of competent jurisdiction in the county in  
 1119 which the person subpoenaed resides or has her, his, or its  
 1120 principal place of business for an order requiring the  
 1121 subpoenaed person to appear and testify and to produce the  
 1122 books, accounts, records, and other documents that are specified  
 1123 in the subpoena duces tecum.

1124       (b) The court may grant injunctive relief restraining the  
 1125 person from advertising, promoting, soliciting, entering into,  
 1126 offering to enter into, continuing, or completing any  
 1127 transaction involving consumer debt collection. The court may  
 1128 grant such other relief, including, but not limited to, the  
 1129 restraint, by injunction or appointment of a receiver, of any  
 1130 transfer, pledge, assignment, or other disposition of the

1131 person's assets or any concealment, alteration, destruction, or  
 1132 other disposition of the books, accounts, records, or other  
 1133 documents and materials, that the court deems appropriate until  
 1134 the person has fully complied with the subpoena duces tecum and  
 1135 the office has completed its investigation or examination. The  
 1136 court may order the refund of any sums collected whenever books  
 1137 and documents substantiating the transaction are not produced or  
 1138 cannot be produced. The office is entitled to the summary  
 1139 procedure provided in s. 51.011, and the court shall advance the  
 1140 cause on its calendar.

1141 (c) Attorney's fees and any other costs incurred by the  
 1142 office to obtain an order granting, in whole or part, a petition  
 1143 to enforce a subpoena or subpoena duces tecum shall be taxed  
 1144 against the subpoenaed person, and failure to comply with the  
 1145 order is a contempt of court.

1146 (6) When it appears to the office that compliance with a  
 1147 subpoena or subpoena duces tecum issued under subsection (4) is  
 1148 essential and that the person or documents subpoenaed are  
 1149 otherwise unavailable to an investigation or examination, the  
 1150 office, in addition to the other remedies provided for in this  
 1151 section, may petition a court of competent jurisdiction in the  
 1152 county in which the subpoenaed person resides or has her, his,  
 1153 or its principal place of business for a writ of ne exeat. The  
 1154 court shall direct the issuance of the writ against the  
 1155 subpoenaed person requiring sufficient bond conditioned on  
 1156 compliance with the subpoena or subpoena duces tecum. The court  
 1157 shall cause to be endorsed on the writ a suitable amount of bond

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1158 upon the payment of which the person named in the writ shall be  
 1159 freed, having a due regard to the nature of the case.

1160 (7) The office may seek a writ of attachment from the  
 1161 court having jurisdiction over the person who refuses to obey a  
 1162 subpoena, to give testimony, or to produce the matters described  
 1163 in the subpoena duces tecum.

1164 (8) A copy of the petition shall be served upon the person  
 1165 by anyone authorized by law or this section to serve subpoenas.  
 1166 The individual serving the petition shall make and file with the  
 1167 court an affidavit showing the date, time, place, and manner of  
 1168 service.

1169 (9) At a hearing on the petition to enforce compliance  
 1170 with a subpoena, the person subpoenaed, or any person whose  
 1171 interest will be substantially affected by the investigation,  
 1172 examination, or subpoena, may appear and object to the subpoena  
 1173 and to the granting of the petition. The court may make any  
 1174 order that justice requires in order to protect a party or other  
 1175 person and her or his personal and property rights, including,  
 1176 but not limited to, protection from annoyance, embarrassment,  
 1177 oppression, undue burden, or expense.

1178 (10) Failure to comply with an order granting, in whole or  
 1179 in part, a petition to enforce a subpoena is a contempt of the  
 1180 court.

1181 (11) Witnesses are entitled to the same fees and mileage  
 1182 to which they would be entitled by law for attending as  
 1183 witnesses in circuit court, except that fees or mileage may not  
 1184 be allowed for testimony of a person taken at the person's  
 1185 principal office or residence.

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1186       (12) Reasonable and necessary costs incurred by the office  
 1187 and payable to persons involved with an investigation may be  
 1188 assessed against any debt collector on the basis of actual costs  
 1189 incurred. Assessed expenses may include, but are not limited to,  
 1190 expenses for interpreters; expenses for communications; expenses  
 1191 for legal representation; expenses for economic, legal, or other  
 1192 research; expenses for analysis and testimony; and fees and  
 1193 expenses for witnesses. The failure to reimburse the office for  
 1194 its reasonable and necessary costs is a reason to deny a  
 1195 registrant's application or to revoke the prior approval of an  
 1196 application.

1197       Section 18. Section 559.7262, Florida Statutes, is created  
 1198 to read:

1199       559.7262 Injunction to restrain violations.--

1200       (1) The office may bring an action on behalf of the state  
 1201 to enjoin any person who has violated, or who is about to  
 1202 violate, this part or any rule or order of the office issued  
 1203 under this part.

1204       (2) In an injunctive proceeding, the court may issue a  
 1205 subpoena requiring the attendance of any witness or a subpoena  
 1206 duces tecum requiring the production of any book, account,  
 1207 record, or other documents and materials relevant to the pending  
 1208 case.

1209       (3)(a) In addition to any procedure provided by law to  
 1210 enforce a temporary restraining order, temporary injunction, or  
 1211 permanent injunction, the court may, upon application of the  
 1212 office, impound the property, assets, and business of the  
 1213 registrant, including, but not limited to, the books, records,

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1214 documents, and papers of the registrant. The receiver, when  
 1215 appointed and qualified, has the powers and duties that are  
 1216 conferred by the court.

1217 (b) After appointing the receiver, the court may issue an  
 1218 order staying all pending suits and enjoining any further  
 1219 litigation affecting the receiver's custody or possession of the  
 1220 property, assets, and business, and the court, with the consent  
 1221 of the chief judge of the circuit, may require that all suits be  
 1222 assigned to the circuit court judge who appointed the receiver.

1223 Section 19. Section 559.7263, Florida Statutes, is created  
 1224 to read:

1225 559.7263 Cease and desist orders; refund orders.--

1226 (1) The office may issue and serve upon a person an order  
 1227 to cease and desist and to take corrective action whenever the  
 1228 office has reason to believe that the person is violating, has  
 1229 violated, or is about to violate this part, any rule or order of  
 1230 the office issued under this part, or any written agreement  
 1231 between the person and the office. Procedural matters relating  
 1232 to issuance and enforcement of such a cease and desist order are  
 1233 governed by chapter 120.

1234 (2) The office has the power to seek an order of  
 1235 restitution for collected funds due to creditors or any sum  
 1236 collected from a debtor without valid proof of debt.

1237 Section 20. Section 559.7264, Florida Statutes, is created  
 1238 to read:

1239 559.7264 Evidence; examiner's worksheets, investigative  
 1240 reports, other related documents.--An official written report,  
 1241 sworn complaint, worksheet, or other related paper, or a duly

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1242 certified copy thereof, compiled, prepared, drafted, or  
 1243 otherwise made by the financial examiner is admissible into  
 1244 evidence if the financial examiner is available for cross-  
 1245 examination; authenticates the worksheet; and testifies that the  
 1246 report, worksheet, or related document was prepared as a result  
 1247 of an examination of the books and records of a registrant or  
 1248 other person conducted under the authority of this part.

1249 Section 21. Section 559.7265, Florida Statutes, is created  
 1250 to read:

1251 559.7265 Books, accounts, and records; maintenance;  
 1252 examinations by the office.--

1253 (1) Each registrant shall maintain, at its principal place  
 1254 of business designated on the registration, all books, accounts,  
 1255 records, and documents necessary to determine the registrant's  
 1256 compliance with this part.

1257 (2) The office may authorize maintenance of records at a  
 1258 location other than a principal place of business. The office  
 1259 may require books, accounts, and records to be produced and  
 1260 available at a reasonable and convenient location in this state.

1261 (3) All books, accounts, records, documents, and receipts  
 1262 for payments to a registrant by a debtor, and payments made to a  
 1263 creditor by a registrant, shall be preserved and kept available  
 1264 for examination by the department for 3 years after the date of  
 1265 original entry. The commission shall adopt requirements by rule  
 1266 for maintaining the books, accounts, records, and documents  
 1267 retained by the registrant and for destroying the records.

1268 (4) The commission shall designate by rule the minimum  
 1269 information that must be contained in the books, accounts,

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1270 records, and documents of a registrant in order that the records  
 1271 will enable the office to determine a registrant's compliance  
 1272 with this part.

1273 Section 22. Section 559.730, Florida Statutes, is amended  
 1274 to read:

1275 559.730 Administrative remedies.--

1276 (1) The office may revoke or suspend the registration of  
 1277 any registrant under this part who:

1278 (a) Has committed a violation of s. 559.72 or of the  
 1279 federal Fair Debt Collection Practices Act;

1280 (b) Is the subject of a complaint received by a  
 1281 governmental authority which indicates a clear pattern of abuse  
 1282 of prohibited collection practices under s. 559.72 or the  
 1283 federal Fair Debt Collection Practices Act;

1284 (c) Is currently under investigation by a governmental  
 1285 authority for violating s. 559.72, the Florida Deceptive and  
 1286 Unfair Trade Practices Act, or the federal Fair Debt Collection  
 1287 Practices Act;

1288 (d) Has been found guilty of, regardless of adjudication,  
 1289 or has entered a plea of nolo contendere or guilty to, any crime  
 1290 involving fraud, dishonest dealing, or moral turpitude;

1291 (e) Had a final judgment entered against her or him in a  
 1292 civil action upon the grounds of fraud, embezzlement,  
 1293 misrepresentation, or deceit;

1294 (f) Has pending against her or him in any jurisdiction a  
 1295 criminal prosecution or administrative enforcement action that  
 1296 involves fraud, dishonest dealing, or moral turpitude;

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1297 (g) Had a business, professional, or occupational license  
 1298 or registration suspended, revoked, or otherwise acted against  
 1299 in any jurisdiction;

1300 (h) Fails to maintain the surety bond required pursuant to  
 1301 s. 559.555(6);

1302 (i) Fails to maintain books and records as required by s.  
 1303 559.7265;

1304 (j) Violates any order issued by the office;

1305 (k) Paid for a registration with a check or electronic  
 1306 funds transfer that failed to clear the applicant's or  
 1307 registrant's financial institution; or

1308 (l) Has engaged in repeated violations ~~that~~ which  
 1309 establish a clear pattern of abuse of prohibited collection  
 1310 practices under s. 559.72.

1311 (2) Any registration made under this part which is based  
 1312 upon false identification or false information, or an  
 1313 identification that is not current with respect to name,  
 1314 address, business location, or other fact that is material to  
 1315 the registration, is void. A registration made and subsequently  
 1316 found to be void under this section does not create a defense to  
 1317 any action brought by the office to impose a sanction for a  
 1318 violation of this part.

1319 (3) A registrant may request to terminate its registration  
 1320 by delivering written notice of its proposed termination to the  
 1321 office. However, the delivery of the termination notice does not  
 1322 affect any civil or criminal liability of the registrant or the  
 1323 authority of the office to enforce this part.



1324       (4) The office may deny a request to terminate a  
 1325 registration or to withdraw an application for registration if  
 1326 the office believes that the registrant or applicant has  
 1327 committed an act that would be grounds for denial, suspension,  
 1328 or revocation of the registration.

1329       (5) Final office action to revoke or suspend the  
 1330 registration of any registrant is shall be subject to review in  
 1331 accordance with chapter 120 in the same manner as revocation of  
 1332 a license. The repeated violations of the law by one employee  
 1333 shall not be grounds for revocation or suspension of the  
 1334 registration of the employing consumer collection agency, unless  
 1335 the employee is also the owner of a majority interest in the  
 1336 collection agency.

1337       ~~(2) The registration of a registrant shall not be revoked~~  
 1338 ~~or suspended if the registrant shows by a preponderance of the~~  
 1339 ~~evidence that the violations were not intentional and resulted~~  
 1340 ~~from bona fide error notwithstanding the maintenance of~~  
 1341 ~~procedures reasonably adapted to avoid any such error.~~

1342       ~~(3) The office shall consider the number of complaints~~  
 1343 ~~against the registrant in relation to the accused registrant's~~  
 1344 ~~volume of business when determining whether suspension or~~  
 1345 ~~revocation is the more appropriate sanction when circumstances~~  
 1346 ~~warrant that one or the other should be imposed upon a~~  
 1347 ~~registrant.~~

1348       ~~(4) The office shall impose suspension rather than~~  
 1349 ~~revocation when circumstances warrant that one or the other~~  
 1350 ~~should be imposed upon a registrant and the accused registrant~~  
 1351 ~~demonstrates that the registrant has taken affirmative steps~~

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1352 ~~which can be expected to effectively eliminate the repeated~~  
 1353 ~~violations and that the registrant's registration has never~~  
 1354 ~~previously been suspended.~~

1355 (6)~~(5)~~ The office may impose an administrative fine up to  
 1356 \$1,000 per violation against the offending registrant as an  
 1357 administrative a sanction ~~for repeated violations of the~~  
 1358 ~~provisions of s. 559.72 when violations do not rise to the level~~  
 1359 ~~of misconduct governed by subsection (1).~~ Final office action to  
 1360 impose an administrative fine is ~~shall be~~ subject to review in  
 1361 accordance with ss. 120.569 and 120.57.

1362 (7)~~(6)~~ An Any administrative fine imposed under this part  
 1363 shall be payable to the office. The office shall maintain an  
 1364 appropriate record and shall deposit the ~~such~~ fine into the  
 1365 Regulatory Trust Fund of the office.

1366 (8)~~(7)~~ An administrative action by the office to impose  
 1367 revocation, suspension, or fine must ~~shall~~ be brought within 2  
 1368 years after the date of the last violation upon which the action  
 1369 is founded.

1370 (9)~~(8)~~ ~~Nothing in~~ This part does not ~~shall be construed to~~  
 1371 preclude any person from pursuing remedies available under the  
 1372 federal Fair Debt Collection Practices Act, the Federal Trade  
 1373 Commission Act, or the Florida Deceptive and Unfair Trade  
 1374 Practices Act for any violation of these acts ~~such act~~,  
 1375 including specifically against any person who is exempt from the  
 1376 registration provisions of this part.

1377 (10) The remedies under this part are in addition to  
 1378 remedies otherwise available for the same conduct under state or  
 1379 local law.

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1380 Section 23. Subsection (5) of section 559.77, Florida  
1381 Statutes, is amended to read:

1382 559.77 Civil remedies.--

1383 (5) In applying and construing this section, due  
1384 consideration and great weight shall be given to the  
1385 interpretations of the Federal Trade Commission and the federal  
1386 courts relating to the federal Fair Debt Collection Practices  
1387 Act and the Federal Trade Commission Act. If there is an  
1388 inconsistency between this part and an interpretation of the  
1389 federal case law or the federal acts, the provision that is more  
1390 protective of the consumer or debtor shall prevail.

1391 Section 24. Section 559.785, Florida Statutes, is amended  
1392 to read:

1393 559.785 Criminal penalty.--

1394 (1) It shall be a felony ~~misdemeanor~~ of the third first  
1395 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or  
1396 s. 775.084, for any person not exempt from registering as  
1397 provided in this part to:

1398 (a) Operate or solicit business as a consumer collection  
1399 agency engage in collecting consumer debts in this state without  
1400 first registering with the office; ~~or to~~

1401 (b) Register or attempt to register by means of fraud,  
1402 misrepresentation, or concealment; ~~or~~

1403 (c) Engage in any consumer debt collection activity after  
1404 suspension or revocation of the registrant's registration under  
1405 s. 559.730(1); or

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1406        (d) Engage in any consumer debt collection activity while  
 1407 under a temporary or permanent injunction issued under s.  
 1408 559.78.

1409        (2) Each of the following acts constitutes a misdemeanor  
 1410 of the second degree, punishable as provided in s. 775.082 or s.  
 1411 775.083:

1412        (a) Relocating a business as a consumer collection agency  
 1413 or operating under any name other than that designated in the  
 1414 registration, unless written notification is given to the office  
 1415 and to the surety or sureties on the original bond.

1416        (b) Assigning or attempting to assign a registration under  
 1417 this part.

1418        (3) The court may, in addition to penalties provided in  
 1419 this part, invalidate the registration of any registrant under  
 1420 this part who has been found guilty of conduct prohibited in  
 1421 subsection (1) or subsection (2).

1422        (4) The office may refer evidence concerning a violation  
 1423 of this part, or of any rule or order, to any criminal  
 1424 prosecuting agency that may, with or without the reference and  
 1425 in addition to any other action it might commence, bring an  
 1426 action against any person to enjoin, restrain, and prevent the  
 1427 commission of any prohibited act or practice.

1428        Section 25. Sections 559.547 and 559.563, Florida  
 1429 Statutes, are repealed.

1430        Section 26. For the 2004-2005 fiscal year, seven positions  
 1431 are authorized and the sum of \$450,575 is appropriated from the  
 1432 Regulatory Trust Fund to the Office of Financial Regulation for

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1433 | the purpose of enforcing this act. The seven positions consist  
1434 | of six examiners and one registration analyst.

1435 |       Section 27. This act shall take effect July 1, 2004.