

By Senator Crist

12-1114A-04

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

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

1 crimes and licensure discipline committed by
2 the applicant; listing the grounds for denying
3 an application for registration; providing that
4 registrations automatically expire; providing
5 procedures for a consumer collection agency to
6 renew its registration; amending s. 559.565,
7 F.S.; providing that an out-of-state consumer
8 collection agency otherwise subject to this
9 state's jurisdiction is subject to sanctions
10 for committing prohibited practices; amending
11 s. 559.72, F.S.; specifying certain activities
12 as prohibited consumer collection practices;
13 amending s. 559.725, F.S.; authorizing the
14 office to conduct investigations of consumer
15 complaints; providing for the examination of a
16 registrant; creating s. 559.726, F.S.;
17 detailing the powers and duties of the office
18 with respect to regulating consumer collection
19 agencies; authorizing the office to adopt
20 rules; authorizing the office to issue
21 subpoenas and subpoenas duces tecum under
22 certain conditions; providing procedures the
23 office may use when a person does not comply
24 with a subpoena; permitting a court to grant
25 injunctive or other relief when a person does
26 not comply with a subpoena; authorizing the
27 court to award attorney's fees and costs to the
28 office under certain circumstances; creating s.
29 559.7262, F.S.; authorizing the office to seek
30 injunctive relief under certain circumstances;
31 creating s. 559.7263, F.S.; authorizing the

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

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 559.544, Florida Statutes, is
31 amended to read:

1 559.544 Registration required; exemptions.--

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

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

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

23 (4) The office may ~~shall~~ not accept an application for
24 ~~any~~ registration for any commercial collection agency as
25 validly made and filed with the office under this section
26 unless the application ~~registration~~ information furnished to
27 the office by the applicant ~~registrant~~ is complete under
28 ~~pursuant to~~ s. 559.545 and facially demonstrates that the
29 applicant ~~such registrant~~ is qualified to engage in business
30 as a commercial collection agency, including specifically that
31 ~~neither the~~ applicant or ~~registrant nor~~ any principal of the

1 applicant ~~registrant~~ has not engaged in any unlawful
2 collection practices, dishonest dealings, acts of moral
3 turpitude, or other criminal acts that reflect an inability to
4 engage in the commercial collection agency business. The
5 office shall inform any person whose application for
6 registration is denied ~~rejected~~ by the office of the fact of
7 and basis for the denial ~~such rejection~~. A prospective
8 registrant is ~~shall be~~ entitled to be registered when her or
9 his or its application ~~registration~~ information is complete on
10 its face, the applicable registration fee has been paid, and
11 the required evidence of current bond is furnished to the
12 office.

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

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

21 (b) A financial institution authorized to do business
22 in this state and any wholly owned subsidiary and affiliate
23 thereof.

24 (c) A licensed real estate broker.

25 (d) A title insurance company authorized to do
26 business in this state.

27 (e) A collection agency that ~~which~~ is not primarily
28 engaged in the collection of commercial claims. "Not
29 primarily engaged in the collection of commercial claims"
30 means that less than one-half of the collection revenue of the
31 ~~such~~ agency arises from the collection of commercial claims.

1 (f) A consumer finance company and any wholly owned
2 subsidiary and affiliate thereof.

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

4 (h) A credit grantor.

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

6 (j) An FDIC-insured institution or subsidiary or
7 affiliate thereof.

8 Section 2. Section 559.545, Florida Statutes, is
9 amended to read:

10 559.545 Registration of commercial collection
11 agencies; procedure.--~~A~~ Any person who wishes to apply for
12 registration ~~register~~ as a commercial collection agency in
13 compliance with this part must ~~shall~~ do so on forms adopted by
14 the commission and furnished by the office. Any renewal of
15 registration shall be made between October 1 and December 31
16 of each year. In applying for ~~registering~~ or renewing a
17 registration as required by this part, each commercial
18 collection agency shall furnish to the office a registration
19 fee, information, and surety bond, as follows:

20 (1) The applicant or registrant shall pay to the
21 office a registration fee of \$500. All amounts collected
22 shall be deposited to the credit of the Regulatory Trust Fund
23 of the office.

24 (2) The applicant or registrant must ~~shall~~ provide the
25 following information:

26 (a) The business name or trade name of the commercial
27 collection agency, the current mailing address of the agency,
28 and the current business location of each place from which the
29 agency operates either a main or branch office, with a
30 designation of which location constitutes its principal place
31 of business.

1 (b) The full names, current addresses, current
2 telephone numbers, and social security numbers, or federal
3 identification numbers of any corporate owner, of the
4 applicant's or registrant's owners or corporate officers and
5 directors, and of the Florida resident agent of the
6 registering agency.

7 (c) A statement as to whether the applicant or
8 registrant is a domestic or foreign corporation, together with
9 the state and date of incorporation, charter number of the
10 corporation, and, if a foreign corporation, the date the
11 corporation first registered to do business in this state.

12 (d) A statement listing each county in this state in
13 which the applicant or registrant is currently doing business
14 or plans to do business within the next calendar year,
15 indicating each county in which the applicant or registrant
16 holds an occupational license.

17 (e) A statement listing each county in this state in
18 which the applicant or registrant is operating under a
19 fictitious name or trade name other than that of the applicant
20 or registrant, indicating the date and place of registration
21 of any such fictitious name or trade name.

22 (f) A statement listing the names of any other
23 corporations, entities, or trade names through which any owner
24 or director of the applicant or registrant was known or did
25 business as a commercial or consumer collection agency within
26 the 5 calendar years immediately preceding the year in which
27 the agency is registering.

28 (g) A statement clearly identifying and explaining any
29 occasion on which any professional license or occupational
30 license held by the applicant or registrant, any principal of
31 the applicant or registrant, or any business entity in which

1 any principal of the applicant or registrant was the owner of
2 10 percent or more of ~~the such~~ business was the subject of any
3 suspension, revocation, or other disciplinary action.

4 (h) A statement clearly identifying and explaining any
5 occasion of a finding of guilt of any crime involving moral
6 turpitude or dishonest conduct on the part of any principal of
7 the applicant or registrant.

8 (3) The applicant or registrant shall furnish to the
9 office evidence, as provided in s. 559.546, of the applicant
10 or registrant having a current surety bond in the amount of
11 \$50,000, valid for the year of registration, paid for and
12 issued for the use and benefit of any credit grantor who
13 suffers or sustains any loss or damage by reason of any
14 violation of ~~the provisions of~~ this part by the applicant or
15 registrant, or by any agent or employee of the applicant or
16 registrant acting within the scope of her or his employment,
17 and issued to ensure conformance with ~~the provisions of~~ this
18 part.

19 (4) A registration that is not renewed by the end of
20 the calendar year expires automatically. A commercial
21 collection agency that has not renewed its registration by the
22 time the registration period expires may request reactivation
23 of its registration. The registrant must file its request with
24 the office on or before January 31 of the year following the
25 year of expiration. The request must contain any information
26 the office requires, together with the registration fee
27 required in subsection (1), and a late fee equal to the
28 registration fee. Any reactivation of registration granted by
29 the office during the month of January is deemed retroactive
30 to January 1 of that year. Any registrant that engages in

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1 business as a commercial collection agency after its
2 registration has expired violates s. 559.548(1).

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

8 Section 3. Section 559.546, Florida Statutes, is
9 amended to read:

10 559.546 Bond; evidence of current and valid
11 bond.--Pursuant to s. 559.545, the applicant or registrant
12 shall provide to the office evidence that the applicant or
13 registrant has been issued a current and valid surety bond as
14 required by this part.

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

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

22 (b) A statement from the surety that the annual
23 premium for the bond has been paid in full by the applicant or
24 registrant.

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

27 (2) The liability of the surety under any bond issued
28 under ~~pursuant to~~ the requirements of this part may ~~shall~~ not
29 exceed in the aggregate the amount of the bond, regardless of
30 the number or amount of any claims filed or which might be
31 asserted against the surety on the such bond. If multiple

1 claims are filed against the surety on any ~~such~~ bond in excess
2 of the amount of the bond, the surety may pay the full amount
3 of the bond to the office and is ~~shall not be~~ further liable
4 under the bond. The office shall hold the ~~such~~ funds for
5 distribution to claimants and administratively determine and
6 pay to each claimant the pro rata share of each valid claim
7 made against the funds within 6 months after the date of the
8 filing of the first claim against the surety.

9 Section 4. Section 559.5471, Florida Statutes, is
10 created to read:

11 559.5471 Powers and duties of the Office of Financial
12 Regulation.--

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

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

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

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1 (4) The office, or any duly authorized representative,
2 including any financial examiner or analyst, financial
3 investigator, or attorney at law, may:

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

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

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

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

23 (b) The court may grant injunctive relief restraining
24 the person from advertising, promoting, soliciting, entering
25 into, offering to enter into, continuing, or completing any
26 transaction involving commercial debt collection. The court
27 may grant such other relief, including, but not limited to,
28 the restraint, by injunction or appointment of a receiver, of
29 any transfer, pledge, assignment, or other disposition of the
30 person's assets or any concealment, alteration, destruction,
31 or other disposition of books, accounts, records, or other

1 documents and materials that the court deems appropriate,
2 until the person has fully complied with the subpoena duces
3 tecum and the office has completed its investigation or
4 examination. The court may order the refund of any sums
5 collected whenever books and documents substantiating the
6 transaction are not produced or cannot be produced. The office
7 is entitled to the summary procedure provided in s. 51.011,
8 and the court shall advance the cause on its calendar.

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

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

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

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

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

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

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

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

1 reimburse the office for its reasonable and necessary costs is
2 a reason to deny a registrant's application or to revoke the
3 prior approval of an application.

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

6 559.5473 Injunction to restrain violations;
7 receivers.--

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

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

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

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

3 Section 6. Section 559.5474, Florida Statutes, is
4 created to read:

5 559.5474 Cease and desist orders; refund orders.--

6 (1) The office may issue and serve upon a person an
7 order to cease and desist and to take corrective action
8 whenever the office has reason to believe that the commercial
9 collection agency is violating, has violated, or is about to
10 violate this part, any rule or order of the office issued
11 under this part, or any written agreement between the
12 commercial collection agency and the office. Procedural
13 matters relating to the issuance and enforcement of a cease
14 and desist order are governed by chapter 120.

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

18 Section 7. Section 559.5475, Florida Statutes, is
19 created to read:

20 559.5475 Evidence; examiner's worksheets,
21 investigative reports, other related documents.--An official
22 written report, sworn complaint, worksheet, or other related
23 paper, or a certified copy thereof, compiled, prepared,
24 drafted, or otherwise made by the financial examiner is
25 admissible into evidence if the financial examiner is
26 available for cross-examination; authenticates the worksheet;
27 and testifies that the report, worksheet, or related document
28 was prepared as a result of an examination of the books and
29 records of a registrant or other person conducted under the
30 authority of this part.

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1 Section 8. Section 559.5476, Florida Statutes, is
2 created to read:

3 559.5476 Books, accounts, and records; maintenance;
4 examinations by the office.--

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

9 (2) The office may authorize maintenance of records at
10 a location other than a principal place of business. The
11 office may require books, accounts, and records to be produced
12 and available at a reasonable and convenient location in this
13 state.

14 (3) All books, accounts, records, documents, and
15 receipts for payments to a registrant by a debtor, and
16 payments made to a creditor by a registrant, shall be
17 preserved and kept available for examination by the office for
18 3 years after the date of original entry. The office shall
19 adopt requirements by rule for maintaining the books,
20 accounts, records, and documents retained by the registrant
21 and for destroying the records.

22 (4) The office shall designate by rule the minimum
23 information that must be contained in the registrant's books,
24 accounts, records, and documents in order that the records
25 will enable the office to determine a registrant's compliance
26 with this part.

27 Section 9. Section 559.5477, Florida Statutes, is
28 created to read:

29 559.5477 Administrative remedies.--

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

1 (a) Has been found guilty of, regardless of
2 adjudication, or has entered a plea of nolo contendere or
3 guilty to, any crime involving fraud, dishonest dealing, or
4 moral turpitude;

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

8 (c) Has pending against the person a criminal
9 prosecution or administrative enforcement action, in any
10 jurisdiction, which involves fraud, dishonest dealing, or any
11 other act of moral turpitude;

12 (d) Has had any business, professional, or
13 occupational license or registration suspended, revoked, or
14 otherwise acted against in any jurisdiction;

15 (e) Fails to maintain the surety bond required
16 pursuant to s. 559.546;

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

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

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

23 (2) Any registration made under this part which is
24 based upon false identification or false information, or an
25 identification that is not current with respect to name,
26 address, business location, or other fact that is material to
27 the registration, is void. Any registration made and
28 subsequently found to be void under this section does not
29 create a defense to any action brought by the office to impose
30 a sanction for a violation of this part.

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

7 (4) The office may deny a request to terminate a
8 registration or to withdraw an application for registration if
9 the office believes that the registrant has committed an act
10 that would be grounds for denial, suspension, or revocation
11 under this part.

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

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

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

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

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

1 559.55 Definitions.--The following terms shall, unless
2 the context otherwise indicates, have the following meanings
3 for the purpose of this part:

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

5 (a) Any obligation or alleged obligation of a consumer
6 to pay money arising out of a transaction in which the money,
7 property, insurance, or services which are the subject of the
8 transaction are primarily for personal, family, or household
9 purposes, whether or not such obligation has been reduced to
10 judgment; or

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

13 (8) "Out-of-state consumer debt collector" means any
14 person whose business activities in this state involve both
15 collecting or attempting to collect consumer debt from debtors
16 located in this state by means of interstate communication
17 originating from outside this state and soliciting consumer
18 debt accounts for collection from creditors who have a
19 ~~business~~ presence in this state. For purposes of this
20 subsection, a creditor has a ~~business~~ presence in this state
21 if either the creditor or an affiliate or subsidiary of the
22 creditor has an office or resides in this state.

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

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

28 (a) Directly, indirectly, or acting through one or
29 more other persons owns, controls, or has the power to vote 25
30 percent or more or any class of voting securities of an
31 applicant or registrant.

1 **(b) The office determines, after notice and**
2 **opportunity for hearing, exercises a controlling influence,**
3 **directly or indirectly, over the activities of an applicant or**
4 **registrant.**

5 **(12) "Principal of a registrant or applicant" means**
6 **the applicant's or registrant's owners if a partnership or**
7 **sole proprietorship; the corporate officers; the corporate**
8 **directors, other than directors of a not-for-profit**
9 **corporation organized under chapter 617; or the Florida**
10 **resident agent if a corporation is the applicant or**
11 **registrant.**

12 Section 11. Section 559.552, Florida Statutes, is
13 amended to read:

14 559.552 Relationship of state and federal law.--

15 **(1) Any violation of the federal Fair Debt Collection**
16 **Practices Act constitutes a prohibited practice under s.**
17 **559.72.**

18 **(2) Any violation of this part also constitutes a**
19 **violation of the Florida Deceptive and Unfair Trade Practices**
20 **Act.**

21 **(3) ~~Nothing in~~ This part ~~does not~~ shall be construed**
22 **to limit or restrict the continued applicability of the**
23 **federal Fair Debt Collection Practices Act to consumer**
24 **collection practices in this state. This part is in addition**
25 **to the requirements and regulations of the federal act. In**
26 **construing this part, due consideration and great weight shall**
27 **be given to interpretations of the Federal Trade Commission**
28 **Act and the Fair Debt Collection Practices Act by the Federal**
29 **Trade Commission and the federal courts.**In the event of any
30 inconsistency between any provision of this part and any
31 provision of the federal act, **including federal case law,**the

1 provision that ~~which~~ is more protective of the consumer or
2 debtor shall prevail.

3 Section 12. Section 559.553, Florida Statutes, is
4 amended to read:

5 559.553 Registration of consumer collection agencies
6 required; exemptions.--

7 (1) After January 1, 1994, a ~~no~~ person may not ~~shall~~
8 engage in business in this state as a consumer collection
9 agency or continue to do business in this state as a consumer
10 collection agency without first registering in accordance with
11 this part, and thereafter maintaining a valid registration.

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

15 (3) A prospective registrant is ~~shall be~~ entitled to
16 be registered when registration information is complete on its
17 face and the applicable registration fee has been paid;
18 however, the office may deny an application for ~~reject~~ a
19 registration submitted by a prospective registrant if the
20 applicant registrant or any principal or person having control
21 of the applicant registrant previously has held any
22 professional license or state registration that ~~which~~ was the
23 subject of any suspension or revocation ~~which has not been~~
24 ~~explained by the prospective registrant to the satisfaction of~~
25 ~~the office either in the registration information submitted~~
26 ~~initially or upon the subsequent written request of the~~
27 ~~office. If in the event that an application for attempted~~
28 registration is denied ~~rejected~~ by the office the prospective
29 registrant shall be informed of the basis for the denial
30 rejection.

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

- 1 (a) An ~~Any~~ original creditor.
- 2 (b) A ~~Any~~ member of The Florida Bar.
- 3 (c) A ~~Any~~ financial institution authorized to do
4 business in this state and any wholly owned subsidiary and
5 affiliate thereof.
- 6 (d) A ~~Any~~ licensed real estate broker.
- 7 (e) An ~~Any~~ insurance company authorized to do business
8 in this state.
- 9 (f) A ~~Any~~ consumer finance company and a a ~~any~~ wholly
10 owned subsidiary and affiliate thereof.
- 11 (g) A ~~Any~~ person licensed under ~~pursuant to~~ chapter
12 520.
- 13 (h) An ~~Any~~ out-of-state consumer debt collector who
14 does not solicit consumer debt accounts for collection from
15 credit grantors who have a business presence in this state.
- 16 (i) A ~~Any~~ FDIC-insured institution or subsidiary or
17 affiliate thereof.
- 18 (5) An ~~Any~~ out-of-state consumer debt collector as
19 defined in s. 559.55(8) who is not exempt from registration by
20 application of subsection (4) and who fails to register in
21 accordance with this part shall be subject to an enforcement
22 action by the state as specified in s. 559.565.
- 23 Section 13. Section 559.555, Florida Statutes, is
24 amended to read:
- 25 559.555 Registration of consumer collection agencies;
26 procedure.--
- 27 (1) An application for registration under this part
28 shall be filed on a form prescribed by the office and must
29 contain:
- 30 (a) The name, residence, and business addresses of:
- 31 1. The applicant;

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

3 3. Any principal of an applicant or registrant;

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

6 5. Each officer, director, and registered agent if the
7 applicant is a corporation.

8 (b) The business name, trade name, fictitious name, or
9 name under which the consumer collection business is doing
10 business; the current mailing address of the consumer
11 collection agency; and the business location of each place
12 from which the consumer collection agency operates a main or
13 branch office, with a designation of which location
14 constitutes its principal place of business.

15 (c) If the applicant is a commercial collection
16 agency, the full name, address, telephone number, and social
17 security number or federal identification number of each
18 corporate owner, the applicant's owners or corporate officers
19 and directors, and the Florida resident agent of the
20 registering agency.

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

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

30 (f) A statement listing the names of any other
31 corporations, entities, or trade names by which any owner or

1 director of the applicant was known or did business as a
2 collection agency in the 5 years immediately before the year
3 in which the agency is registering.

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

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

15 (i) Any additional relevant information that the
16 office requires.

17 (2) The application information must include a
18 statement clearly identifying and explaining each occasion
19 when a professional license or state registration held by a
20 person with control over an applicant or by any business
21 entity in which any person with control over an applicant was
22 the owner of 10 percent or more of the business was the
23 subject of a suspension or revocation proceeding.~~Any person~~
24 ~~required to register as a consumer collection agency shall~~
25 ~~furnish to the office the registration fee and information as~~
26 ~~follows:~~

27 (3)~~(1)~~ The applicant or registrant shall pay to the
28 office a nonrefundable registration fee in the amount of \$200.
29 All amounts collected shall be deposited by the office to the
30 credit of the Regulatory Trust Fund of the office.

31

1 ~~(4)(2)~~ Each applicant or registrant shall provide to
2 the office the business name or trade name, the current
3 mailing address, the current business location ~~that~~ which
4 constitutes its principal place of business, and the full name
5 of each individual who is a principal of the applicant or
6 registrant. ~~"Principal of a registrant" means the~~
7 ~~registrant's owners if a partnership or sole proprietorship,~~
8 ~~corporate officers, corporate directors other than directors~~
9 ~~of a not-for-profit corporation organized pursuant to chapter~~
10 ~~617 and Florida resident agent if a corporate registrant. The~~
11 ~~registration information shall include a statement clearly~~
12 ~~identifying and explaining any occasion on which any~~
13 ~~professional license or state registration held by the~~
14 ~~registrant, by any principal of the registrant, or by any~~
15 ~~business entity in which any principal of the registrant was~~
16 ~~the owner of 10 percent or more of such business, was the~~
17 ~~subject of any suspension or revocation.~~

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

21 (a) Has committed any practice prohibited under s.
22 559.72;

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

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

29 (d) Has been found guilty of, regardless of
30 adjudication, or has entered a plea of nolo contendere or
31

1 guilty to, racketeering or any offense involving fraud or
2 dishonest dealing;

3 (e) Has been found guilty of, regardless of
4 adjudication, or has entered a plea of nolo contendere or
5 guilty to, any felony;

6 (f) Has had entered against him or her, or any
7 business for which he or she has worked or been affiliated, an
8 injunction, a temporary restraining order, or a final judgment
9 or order, including a stipulated judgment or order, an
10 assurance of voluntary compliance, or any similar document, in
11 any civil or administrative action involving racketeering,
12 fraud, theft, embezzlement, fraudulent conversion, or
13 misappropriation of property or the use of any untrue,
14 deceptive, or misleading representation in an attempt to sell
15 or dispose of real or personal property or the use of any
16 unfair, unlawful, or deceptive trade practice, whether or not
17 there is any litigation pending against the applicant;

18 (g) Is subject to or has worked or been affiliated
19 with any company that is, or ever has been, subject to any
20 injunction, temporary restraining order, including a
21 stipulated judgment or order, an assurance of voluntary
22 compliance, or any similar document, or any restrictive court
23 order relating to business activity as the result of any
24 action brought by a governmental agency, including any action
25 affecting any license to do business or practice an occupation
26 or trade;

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

30 (i) Falsified or willfully omitted any material
31 information asked for in any application, document, or record

1 required to be submitted under this part or the rules of the
2 office;

3 (j) Made a material false statement of fact in an
4 application for registration or in response to any request or
5 investigation by the office, the Department of Legal Affairs,
6 or the state attorney; or

7 (k) Has been the subject of any adverse decision,
8 finding, injunction, suspension, prohibition, revocation,
9 denial, or judgment by any court of competent jurisdiction or
10 an administrative order by an administrative law judge, or by
11 any state or federal agency or any business, professional, or
12 occupational association involving a violation of any law,
13 rule, or regulation relating to business or professional
14 licensing.

15 (6) A registrant shall maintain a surety bond of
16 \$50,000 issued by a surety company admitted to do business in
17 this state and assigned to the office for the benefit of
18 consumers.

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

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

28 (9) A registrant must give notice to the office within
29 10 business days of any of the following:

30 (a) Relocation of the place of the registrant's
31 business; and

1 (b) The registrant becoming subject to a voluntary or
2 involuntary bankruptcy.

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

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

11 (b) A registration that is not renewed by the end of
12 the calendar year expires automatically. A consumer collection
13 agency that has not renewed its registration by the time the
14 registration period expires may request reactivation of its
15 registration. The registrant must file its request with the
16 office on or before January 31 of the year following the year
17 of expiration. The request must contain any information the
18 office requires, together with the registration fee required
19 in subsection (1) and a late fee equal to the registration
20 fee. Any reactivation of registration granted by the office
21 during the month of January is deemed retroactive to January 1
22 of that year. Any registrant that engages in the business of a
23 consumer collection agency after its registration has expired,
24 violates ss. 559.553 and 559.785(1).

25 Section 14. Section 559.565, Florida Statutes, is
26 amended to read:

27 559.565 Enforcement action against out-of-state
28 consumer debt collector.--The remedies of this section are
29 cumulative to other sanctions and enforcement provisions of
30 this part for any violation by an out-of-state consumer debt
31 collector, as defined in s. 559.55(8).

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

8 (2) Any person, whether or not exempt from
9 registration under this part, who is otherwise subject to the
10 jurisdiction of this state and violates ~~the provisions of~~ s.
11 559.72 shall be subject to sanctions for the ~~such~~ violations
12 the same as any other consumer debt collector, including
13 imposition of an administrative fine. The registration of a
14 duly registered out-of-state consumer debt collector shall be
15 subject to revocation or suspension in the same manner as the
16 registration of any other registrant under this part.

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

23 Section 15. Section 559.72, Florida Statutes, is
24 amended to read:

25 559.72 Prohibited practices generally.--In collecting
26 consumer debts, a no person may not ~~shall~~:

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

29 (2) Use or threaten force, or violence, or any other
30 means to harm the physical person, property, or reputation of
31 any person;

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

8 (4) Communicate or threaten to communicate with a
9 debtor's employer prior to obtaining final judgment against
10 the debtor, unless the debtor gives her or his permission in
11 writing to contact her or his employer or acknowledges in
12 writing the existence of the debt after the debt has been
13 placed for collection, but this shall not prohibit a person
14 from telling the debtor that her or his employer will be
15 contacted if a final judgment is obtained;

16 (5) Disclose to a person other than the debtor or her
17 or his family information affecting the debtor's reputation,
18 whether or not for credit worthiness, with knowledge or reason
19 to know that the other person does not have a legitimate
20 business need for the information or that the information is
21 false;

22 (6) Disclose information concerning the existence of a
23 debt known to be reasonably disputed by the debtor without
24 disclosing that fact. If a disclosure is made prior to such
25 reasonable dispute having been asserted and written notice is
26 received from the debtor that any part of the debt is disputed
27 and if such dispute is reasonable, the person who made the
28 original disclosure shall reveal upon the request of the
29 debtor within 30 days the details of the dispute to each
30 person to whom disclosure of the debt without notice of the
31 dispute was made within the preceding 90 days;

1 (7) Willfully communicate with the debtor or any
2 member of her or his family with such frequency as can
3 reasonably be expected to harass the debtor or her or his
4 family, or willfully engage in other conduct which can
5 reasonably be expected to abuse or harass the debtor or any
6 member of her or his family;

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

10 (9) Claim, attempt, or threaten to enforce a debt when
11 such person knows that the debt is not legitimate or assert
12 the existence of some other legal right when such person knows
13 that the right does not exist;

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

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

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

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

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

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

6 (16) Mail any communication to a debtor in an envelope
7 or postcard with words typed, written, or printed on the
8 outside of the envelope or postcard indicating that the
9 purpose of the communication is to collect a debt or is
10 otherwise calculated to embarrass the debtor. An example of
11 this would be an envelope addressed to "Deadbeat, Jane Doe" or
12 "Deadbeat, John Doe";

13 (17) Communicate with the debtor between the hours of
14 9 p.m. and 8 a.m. in the debtor's time zone, at any unusual
15 time or place, or a time or place that is known or should be
16 known to be inconvenient for the debtor without the prior
17 consent of the debtor;

18 (18) Communicate with a debtor if the person knows
19 that the debtor is represented by an attorney with respect to
20 such debt and has knowledge of, or can readily ascertain, such
21 attorney's name and address, unless the debtor's attorney
22 fails to respond within a reasonable period of time to a
23 communication from the person, unless the debtor's attorney
24 consents to a direct communication with the debtor, or unless
25 the debtor initiates the communication; or

26 (19) Cause charges to be made to any debtor for
27 communications by concealment of the true purpose of the
28 communication, including collect telephone calls and telegram
29 fees.

30 Section 16. Section 559.725, Florida Statutes, is
31 amended to read:

1 559.725 Consumer complaints; administrative duties.--

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

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

9 (3)(a) The office may conduct examinations of any
10 registrant. The office shall conduct all examinations at a
11 location in this state convenient to the registrant unless the
12 office determines that it is more effective or cost-efficient
13 to perform the examination at the registrant's out-of-state
14 location.

15 (b) The registrant shall pay the travel expenses and
16 per diem subsistence at the rate provided by law for an
17 examination conducted at the registrant's out-of-state
18 location. The registrant shall pay for up to 30 8-hour days
19 per year for each office examiner participating in the
20 examination. However, if the examination involves or reveals
21 fraudulent misconduct by the registrant, the registrant shall
22 pay the travel expenses and per diem subsistence, without
23 limitation, for each examiner participating in the
24 examination.

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

28 ~~(1) The Division of Consumer Services of the~~
29 ~~Department of Financial Services shall serve as the registry~~
30 ~~for receiving and maintaining records of inquiries,~~
31 ~~correspondence, and complaints from consumers concerning any~~

1 ~~and all persons who collect debts, including consumer~~
2 ~~collection agencies.~~

3 ~~(2) The division shall classify complaints by type and~~
4 ~~identify the number of written complaints against persons~~
5 ~~collecting or attempting to collect debts in this state,~~
6 ~~including credit grantors collecting their own debts, debt~~
7 ~~collectors generally, and, specifically, consumer collection~~
8 ~~agencies as distinguished from other persons who collect debts~~
9 ~~such as commercial debt collection agencies regulated under~~
10 ~~part V of this chapter. The division shall identify the nature~~
11 ~~and number of various kinds of written complaints, including~~
12 ~~specifically those alleging violations of s. 559.72.~~

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

19 ~~(4) The division shall furnish a form to each~~
20 ~~complainant whose complaint concerns an alleged violation of~~
21 ~~s. 559.72 by a consumer collection agency. Such form may be~~
22 ~~filed with the office. The form shall identify the accused~~
23 ~~consumer collection agency and provide for the complainant's~~
24 ~~summary of the nature of the alleged violation and facts which~~
25 ~~allegedly support the complaint. The form shall include a~~
26 ~~provision for the complainant to state under oath before a~~
27 ~~notary public that the allegations therein made are true.~~

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

31

1 ~~(6) The office shall investigate sworn complaints by~~
2 ~~direct written communication with the complainant and the~~
3 ~~affected consumer collection agency. In addition, the office~~
4 ~~shall attempt to resolve each sworn complaint and shall record~~
5 ~~the resolution of such complaints.~~

6 ~~(7) Periodically, the office shall identify consumer~~
7 ~~collection agencies that have unresolved sworn consumer~~
8 ~~complaints from five or more different consumers within a~~
9 ~~12-month period under the provisions of this part.~~

10 ~~(8) The office shall issue a written warning notice to~~
11 ~~the accused consumer collection agency if the office is unable~~
12 ~~to resolve all such sworn complaints and fewer than five~~
13 ~~unresolved complaints remain. Such notice shall include a~~
14 ~~statement that the warning may constitute evidence in any~~
15 ~~future investigation of similar complaints against that agency~~
16 ~~and in any future administrative determination of the~~
17 ~~imposition of other administrative remedies available to the~~
18 ~~office under this part.~~

19 ~~(9) The office may issue a written reprimand when five~~
20 ~~or more such unresolved sworn complaints against a consumer~~
21 ~~collection agency collectively fall short of constituting~~
22 ~~apparent repeated violations that warrant more serious~~
23 ~~administrative sanctions. Such reprimand shall include a~~
24 ~~statement that the reprimand may constitute evidence in any~~
25 ~~future investigation of similar complaints against that agency~~
26 ~~and in any future administrative determination of the~~
27 ~~imposition of other administrative remedies available to the~~
28 ~~office.~~

29 ~~(10) The office shall issue a notice of intent either~~
30 ~~to revoke or suspend the registration or to impose an~~
31 ~~administrative fine when the office preliminarily determines~~

1 ~~that repeated violations of s. 559.72 by an accused registrant~~
2 ~~have occurred which would warrant more serious administrative~~
3 ~~sanctions being imposed under this part. The office shall~~
4 ~~advise each registrant of the right to require an~~
5 ~~administrative hearing under chapter 120, prior to the~~
6 ~~agency's final action on the matter as authorized by s.~~
7 ~~559.730.~~

8 (5)(11) Any government office or agency receiving a
9 complaint under this section ~~The office~~ shall advise any other
10 government office or agency with apparent jurisdiction,
11 including the office, the appropriate state attorney, or the
12 Attorney General in the case of an out-of-state consumer debt
13 collector, of any determination by that agency ~~the office~~ of a
14 violation, or possible violation, of the requirements of this
15 part by any consumer collection agency, whether or which is
16 not registered or exempt from registration as required by this
17 part. The office shall furnish the state attorney or Attorney
18 General with the office's information concerning the alleged
19 violations of such requirements.

20 Section 17. Section 559.726, Florida Statutes, is
21 created to read:

22 559.726 Powers and duties of the Office of Financial
23 Regulation.--

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

27 (2) The commission may adopt rules under ss.
28 120.536(1) and 120.54 to implement and administer this part.
29 The commission may adopt a rule to require electronic
30 submission of any form, document, or fee required by this
31 part, provided that the rule reasonably accommodates a person

1 with a technological or financial hardship. The commission may
2 adopt a rule setting forth the criteria and procedures for
3 obtaining an exemption due to a technological or financial
4 hardship exemption. The commission may adopt a rule to accept
5 certification of compliance with the requirements of this part
6 in lieu of requiring submission of documents.

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

10 (4) The office, or any duly authorized representative,
11 including any financial examiner or analyst, financial
12 investigator, or attorney at law, may:

13 (a) Issue, revoke, quash, or modify and serve
14 subpoenas to compel the attendance of witnesses and subpoenas
15 duces tecum to compel the production of all books, accounts,
16 records, and other documents and materials relevant to an
17 examination or investigation. The office may exercise these
18 powers even if the subject of the investigation or examination
19 is exempt from registration;

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

22 (c) Take or cause to be taken testimony and
23 depositions.

24 (5)(a) If the office determines that a person is in
25 substantial noncompliance with a subpoena or subpoena duces
26 tecum that the office issued or caused to be issued, it may
27 petition a court of competent jurisdiction in the county in
28 which the person subpoenaed resides or has its principal place
29 of business for an order requiring the subpoenaed person to
30 appear and testify and to produce the books, accounts,
31

1 records, and other documents that are specified in the
2 subpoena duces tecum.

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

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

25 (6) When it appears to the office that compliance with
26 a subpoena or subpoena duces tecum issued under subsection (4)
27 is essential and that the person or documents subpoenaed are
28 otherwise unavailable to an investigation or examination, the
29 office, in addition to the other remedies provided for in this
30 section, may petition a court of competent jurisdiction in the
31 county in which the subpoenaed person resides or has its

1 principal place of business for a writ of ne exeat. The court
2 shall direct the issuance of the writ against the subpoenaed
3 person requiring sufficient bond conditioned on compliance
4 with the subpoena or subpoena duces tecum. The court shall
5 cause to be endorsed on the writ a suitable amount of bond
6 upon the payment of which the person named in the writ shall
7 be freed, having a due regard to the nature of the case.

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

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

17 (9) At a hearing on the petition to enforce compliance
18 with a subpoena, the person subpoenaed, or any person whose
19 interest will be substantially affected by the investigation,
20 examination, or subpoena, may appear and object to the
21 subpoena and to the granting of the petition. The court may
22 make any order that justice requires in order to protect a
23 party or other person and her or his personal and property
24 rights, including, but not limited to, protection from
25 annoyance, embarrassment, oppression, undue burden, or
26 expense.

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

30 (11) Witnesses are entitled to the same fees and
31 mileage to which they would be entitled by law for attending

1 as witnesses in circuit court, except that fees or mileage may
2 not be allowed for testimony of a person taken at the person's
3 principal office or residence.

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

15 Section 18. Section 559.7262, Florida Statutes, is
16 created to read:

17 559.7262 Injunction to restrain violations.--

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

22 (2) In an injunctive proceeding, the court may issue a
23 subpoena requiring the attendance of any witness or a subpoena
24 duces tecum requiring the production of any book, account,
25 record, or other documents and materials relevant to the
26 pending case.

27 (3)(a) In addition to any procedure provided by law to
28 enforce a temporary restraining order, temporary injunction,
29 or permanent injunction, the court may, upon application of
30 the office, impound the property, assets, and business of the
31 registrant, including, but not limited to, the books, records,

1 documents, and papers of the registrant. The receiver, when
2 appointed and qualified, has the powers and duties that are
3 conferred by the court.

4 (b) After appointing the receiver, the court may issue
5 an order staying all pending suits and enjoining any further
6 litigation affecting the receiver's custody or possession of
7 the property, assets, and business, and the court, with the
8 consent of the chief judge of the circuit, may require that
9 all suits be assigned to the circuit court judge who appointed
10 the receiver.

11 Section 19. Section 559.7263, Florida Statutes, is
12 created to read:

13 559.7263 Cease and desist orders; refund orders.--

14 (1) The office may issue and serve upon a person an
15 order to cease and desist and to take corrective action
16 whenever the office has reason to believe that the person is
17 violating, has violated, or is about to violate this part, any
18 rule or order of the office issued under this part, or any
19 written agreement between the person and the office.

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

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

25 Section 20. Section 559.7264, Florida Statutes, is
26 created to read:

27 559.7264 Evidence; examiner's worksheets,
28 investigative reports, other related documents.--An official
29 written report, sworn complaint, worksheet, or other related
30 paper, or a duly certified copy thereof, compiled, prepared,
31 drafted, or otherwise made by the financial examiner is

1 admissible into evidence if the financial examiner is
2 available for cross-examination; authenticates the worksheet;
3 and testifies that the report, worksheet, or related document
4 was prepared as a result of an examination of the books and
5 records of a registrant or other person conducted under the
6 authority of this part.

7 Section 21. Section 559.7265, Florida Statutes, is
8 created to read:

9 559.7265 Books, accounts, and records; maintenance;
10 examinations by the office.--

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

15 (2) The office may authorize maintenance of records at
16 a location other than a principal place of business. The
17 office may require books, accounts, and records to be produced
18 and available at a reasonable and convenient location in this
19 state.

20 (3) All books, accounts, records, documents, and
21 receipts for payments to a registrant by a debtor, and
22 payments made to a creditor by a registrant, shall be
23 preserved and kept available for examination by the department
24 for 3 years after the date of original entry. The commission
25 shall adopt requirements by rule for maintaining the books,
26 accounts, records, and documents retained by the registrant
27 and for destroying the records.

28 (4) The office shall designate by rule the minimum
29 information that must be contained in the books, accounts,
30 records, and documents of a registrant in order that the
31

1 records will enable the office to determine a registrant's
2 compliance with this part.

3 Section 22. section 559.730, Florida Statutes, is
4 amended to read:

5 559.730 Administrative remedies.--

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

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

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

14 (c) Is currently under investigation by a governmental
15 authority for violating s. 559.72, the Florida Deceptive and
16 Unfair Trade Practices Act, or the federal Fair Debt
17 Collection Practices Act;

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

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

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

28 (g) Had a business, professional, or occupational
29 license or registration suspended, revoked, or otherwise acted
30 against in any jurisdiction;

31

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

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

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

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

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

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

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

26 (4) The office may deny a request to terminate a
27 registration or to withdraw an application for registration if
28 the office believes that the registrant or applicant has
29 committed an act that would be grounds for denial, suspension,
30 or revocation of the registration.

31

1 (5) Final office action to revoke or suspend the
2 registration of any registrant ~~is shall be~~ subject to review
3 in accordance with chapter 120 in the same manner as
4 revocation of a license. ~~The repeated violations of the law~~
5 ~~by one employee shall not be grounds for revocation or~~
6 ~~suspension of the registration of the employing consumer~~
7 ~~collection agency, unless the employee is also the owner of a~~
8 ~~majority interest in the collection agency.~~

9 ~~(2)~~ The registration of a registrant shall not be
10 ~~revoked or suspended if the registrant shows by a~~
11 ~~preponderance of the evidence that the violations were not~~
12 ~~intentional and resulted from bona fide error notwithstanding~~
13 ~~the maintenance of procedures reasonably adapted to avoid any~~
14 ~~such error.~~

15 ~~(3)~~ The office shall consider the number of complaints
16 against the registrant in relation to the accused registrant's
17 volume of business when determining whether suspension or
18 revocation is the more appropriate sanction when circumstances
19 warrant that one or the other should be imposed upon a
20 registrant.

21 ~~(4)~~ The office shall impose suspension rather than
22 revocation when circumstances warrant that one or the other
23 should be imposed upon a registrant and the accused registrant
24 demonstrates that the registrant has taken affirmative steps
25 which can be expected to effectively eliminate the repeated
26 violations and that the registrant's registration has never
27 previously been suspended.

28 (6)~~(5)~~ The office may impose an administrative fine up
29 to \$1,000 per violation against the offending registrant as an
30 administrative ~~a~~ sanction for repeated violations of the
31 provisions of s. 559.72 when violations do not rise to the

1 ~~level of misconduct governed by subsection (1).~~ Final office
2 action to impose an administrative fine is ~~shall be~~ subject to
3 review in accordance with ss. 120.569 and 120.57.

4 (7)~~(6)~~ An ~~Any~~ administrative fine imposed under this
5 part shall be payable to the office. The office shall
6 maintain an appropriate record and shall deposit the ~~such~~ fine
7 into the Regulatory Trust Fund of the office.

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

12 (9)~~(8)~~ ~~Nothing in~~ This part does not ~~shall be~~
13 ~~construed to~~ preclude any person from pursuing remedies
14 available under the federal Fair Debt Collection Practices
15 Act, the Federal Trade Commission Act, or the Florida
16 Deceptive and Unfair Trade Practices Act for any violation of
17 these acts ~~such act~~, including specifically against any person
18 who is exempt from the registration provisions of this part.

19 (10) The remedies under this part are in addition to
20 remedies otherwise available for the same conduct under state
21 or local law.

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

24 559.77 Civil remedies.--

25 (5) In applying and construing this section, due
26 consideration and great weight shall be given to the
27 interpretations of the Federal Trade Commission and the
28 federal courts relating to the federal Fair Debt Collection
29 Practices Act and the Federal Trade Commission Act. If there
30 is an inconsistency between this part and an interpretation of
31

1 the federal case law or the federal acts, the provision that
2 is more protective of the consumer or debtor shall prevail.

3 Section 24. Section 559.785, Florida Statutes, is
4 amended to read:

5 559.785 Criminal penalty.--

6 (1) It shall be a felony misdemeanor of the third
7 first degree, punishable as provided in s. 775.082, or s.
8 775.083, or s. 775.084, for any person not exempt from
9 registering as provided in this part to:

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

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

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

18 (d) Engage in any consumer debt collection activity
19 while under a temporary or permanent injunction issued under
20 s. 559.78.

21 (2) Each of the following acts constitutes a
22 misdemeanor of the second degree, punishable as provided in s.
23 775.082 or s. 775.083:

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

28 (b) Assigning or attempting to assign a registration
29 under this part.

30 (3) The court may, in addition to penalties provided
31 in this part, invalidate the registration of any registrant

1 under this part who has been found guilty of conduct
2 prohibited in subsection (1) or subsection (2).

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

10 Section 25. Sections 559.547 and 559.563, Florida
11 Statutes, are repealed.

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

14 *****

15 SENATE SUMMARY

16 Revises various provisions of the Florida Commercial
17 Collection Practices Act and the Florida Consumer
18 Collection Practices Act. Requires a commercial
19 collection agency to register with the Office of
20 Financial Regulation. Requires each applicant to purchase
21 a surety bond. Describes the powers and duties of the
22 office when regulating commercial collection agencies.
23 Authorizes the office to issue subpoenas and subpoenas
24 duces tecum and issue cease and desist orders. Authorizes
25 the office to impose an administrative fine up to \$1,000
26 per violation. Revises the application procedure and
27 registration requirements for consumer collection
28 agencies. Provides that an out-of-state consumer
29 collection agency otherwise subject to this state's
30 jurisdiction is subject to sanctions for committing
31 prohibited practices. Authorizes the office to conduct
investigations of consumer complaints. Authorizes the
office to issue subpoenas and subpoenas duces tecum under
certain conditions. Provides administrative remedies for
violating prohibited consumer collection practices.
Authorizes the office to assess an administrative fine of
up to \$1,000 per violation. (See bill for details.)