

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1133 CS Commercial and Consumer Collection Practices
SPONSOR(S): Carroll
TIED BILLS: HB 1135 **IDEN./SIM. BILLS:** SB 1984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>12 Y, 0 N, w/CS</u>	<u>Sheheane</u>	<u>Carlson</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u>	<u>Belcher</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill substantially revises chapter 559, F.S., to amend current laws regulating commercial and consumer debt collection agencies.

The bill :

- Provides detailed requirements for registration and denial of applications, including the denial of licensure for criminal activities.
- Requires consumer collection registrants to maintain a surety bond of \$25,000 to cover collected amounts owed to creditors.
- Increases criminal penalties for consumer collectors; fines for non-willful violation that does not constitute a bona fide error impose fines up to \$1,000 per violation to an aggregate maximum of \$10,000, and for any willful violation up to \$2,500 per violation to an aggregate maximum of \$100,000.
- Increases registration fees for registration as a consumer collection agency from \$200 to \$900, and renewal fees change from \$200 to \$450.
- Increases registration fees for registration as a commercial collection agency from \$500 to \$900, and renewal fees change from \$500 to \$450.
- Establishes a reactivation fee of \$250 for both the consumer collection agency and the commercial collection agency.
- Requires registrants to maintain books and records as necessary to determine compliance.

The bill grants the Financial Services Commission (commission) the rule making authority to adopt rules, issue cease and desist orders, injunctions, and subpoenas to enforce compliance; issue restitution orders; conduct examinations, investigations and receive complaints.

The bill provides six positions and appropriates \$428,588 from the Regulatory Trust Fund to the Office of Financial Regulation (OFR). The OFR estimates that \$418,150 from increased application and renewal fees will be deposited into the Regulatory Trust Fund.

The bill will take effect July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1133b.STA.doc
DATE: 4/12/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill substantially increases the Office of Financial Regulation's authority to govern commercial and consumer collection agencies.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Parts V and VI of chapter 559, F.S., provide the regulation for commercial and consumer collection agencies. The chapter includes registration provisions, surety bond requirements, enforcement actions and penalties, prohibited practices, consumer complaints, and administrative remedies.

However, the Office of Financial Regulation (office) has limited authority over commercial and consumer collection agencies. The office cannot impose sanctions for failure to register a consumer collection agency; has limited authority to take action against a consumer collection agency for violations of the prohibited collection practices; cannot enforce the commercial registration requirements; has no authority to take administrative action for any violations of the commercial act; does not have any authority to audit or examine a commercial collection agency; and does not have rulemaking authority.

Proposed Changes

Commercial Collection Agencies

The bill substantially amends current law regulating commercial collection agencies.

Registration Requirements and Exemptions (Sections 2 and 3)

A person must be registered with the office and maintain the registration in order to engage in business as a commercial collection agency. A registration is not considered valid for any commercial collection agency transacting business in a different location than the location specified in the registration unless the office is first notified. The Financial Services Commission (commission) has authority to adopt forms for the registration of commercial collection agencies. The bill gives the commission rule making authority for depositing fees and filing documents by electronic means provided the applicant provides the office with all of the information required.

The office may require each applicant applying for registration as a commercial collection agency to provide specific information including, but not limited to, any names or addresses under which the applicant may conduct business, documents demonstrating that the bonding requirements¹ have been satisfied, and a nonrefundable application fee of \$900 which will be deposited in the Regulatory Trust Fund.

The office may require information about any applicant, including, but not limited to, the full name of the applicant, the current address, current telephone number, social security number or the federal identification number of any corporate owner, or any judgment by any court of competent jurisdiction or an administrative order by an administrative law judge. The applicant is required to provide any information that the office may require about any partner, officer, or director of the applicant, or any person directly or indirectly controlling the applicant.

¹ See s. 559.546, F.S.

An application is deemed received upon receipt of a completed application form prescribed by commission rule, the nonrefundable application fee of \$900, and any other fee prescribed by law.

A financial institution authorized to do business in this state or wholly owned subsidiary or an affiliate thereof is exempt from registration requirements of commercial collection agencies. A consumer finance company or wholly owned subsidiary or an affiliate thereof is exempt from registration requirements.

A commercial collection agency registration expires on December 31, of the year in which the registration became effective. A registration may be renewed as the commission may require by rule, together with a payment of \$450. A commercial collection agency may request reactivation of its registration and submit a nonrefundable \$250 reactivation fee. The registrant is to file its request with the office on or before January 31, of the year following the year of expiration. Any commercial collection agency that engages in business after its registration has expired is in violation of provisions requiring valid registration for a commercial collection agency and such actions will constitute a felony of the third degree and a fine not to exceed \$1,000 per day for each day in violation of registration.

The office may deny registration if the applicant, any principal of the applicant, or any person having control of the applicant:

- Has committed a violation of generally prohibited practices of collection agencies².
- Is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction.
- Is currently subject to a pending enforcement action by federal authority for violations of the Fair Debt Collection Practices Act or the Federal Trade Commission Act.
- Has been guilty of any offense involving fraud, dishonest dealing, or moral turpitude.
- Has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any felony.
- Has had entered against him or her or any business for which he or she was directly or indirectly a controlling person in the business or controlled the business, an injunction, a temporary restraining order, or a final judgment or order.
- Falsified or willfully omitted any material information asked for in any application or document required to be submitted under the rules of the commission.
- Made a material false statement of fact in an application for registration or in response to any request by the office.
- Has been the subject of any adverse decision or judgment by any court or an administrative law judge, any state or federal agency, or any business, professional, or occupational association involving a violation of any law or rule relating to business or professional licensing.

Surety Bond (Section 4)

The bill substantially rewords s. 559.546, F.S., relating to surety bonds for commercial collection agencies.

The bill requires that a corporate surety bond in the amount of \$50,000 be obtained by a commercial collection agency before the office will issue registration. If multiple claims are filed against the surety bond and in excess of the bond amount, the surety may pay the full amount liable under the bond. The office will then distribute pro rata amounts to the claimants within six months after the first claim is filed. Any cancellation of the surety bond by the registrant or the corporate surety must be done in writing to the office by registered or certified mail. A cancellation will not take effect less than 30 days after receipt by the office of the written notice. Within 10 days after the surety pays any claim, the corporate surety must give written notice to the office of the payment with specific details. When the principle sum of a bond is reduced by one or more payments, the registrant must furnish a new bond so the total sum of the bonds equals \$50,000. Alternatively, a registrant may furnish an endorsement executed by the corporate surety reinstating the bond to the required sum.

² s. 559.72, F.S.

Investigations (Section 5)

The office is authorized to conduct an investigation of any person, in or out of the state, which may be necessary to determine if someone has violated ch. 559, F.S., or any commission rules. The office is permitted to commence an investigation when it receives information from a complaint, the public media, an informant, or any other source that informs the office that a violation of this chapter has occurred or may occur.

The bill provides the office with authority to issue, revoke, quash, or modify and serve subpoenas for purposes of investigations; administer oaths; and take testimony and depositions. In the event of noncompliance with a subpoena, the office may petition a court for an order requiring the person to appear and testify. At a hearing on the petition, any person who may be affected by the investigation may appear to object the subpoena and granting of the petition. The court may make any order that justice requires to protect any party involved. Witnesses are provided the same fees and mileage as witnesses in circuit court, however fees and mileage are not provided for witnesses interviewed at the person's principle office or residence. Reasonable costs incurred by the office during an investigation may be assessed against any debt collector on the basis of actual costs incurred. All fees collected by the office will be deposited in the Regulatory Trust Fund.

Violations (Section 5)

The office may bring an action on behalf of the state against anyone violating any rule of the commission or any order of the office. The court may issue a subpoena requiring the attendance of any witness or a subpoena duces tecum requiring any documents to be produced relating to any investigation.

The court may impound any property relating to a pending case and appoint a receiver to administer the property. After appointing a receiver, the court may issue an order staying all pending suits.

Rulemaking (Section 5)

The commission may adopt rules requiring electronic submission of any form, document, or fee required by this part, provided the rule reasonably accommodates a person with a technological or financial hardship; setting forth the criteria and procedures for obtaining an exemption due to a technological or financial hardship; and accepting certification of compliance with the requirements of this part in lieu of requiring submission of specified documents.

Cease and Desist Orders (Section 5)

The office may issue and serve upon a person an order to cease and desist. Procedural matters relating to the issuance and enforcement of a cease and desist order are governed by chapter 120, F.S.³ The office may seek restitution for collected funds due to creditors without valid proof of debt.

Evidence, Examiner's Worksheets, Investigative Reports (Section 5)

Any official document or report is admissible into evidence if the financial examiner is available for cross-examination and testifies that the related document was prepared as a result of an examination conducted under the authority of the office.

Books, Accounts, and Records (Section 5)

³ Administrative Procedure Act

Each registrant must maintain books and records to prove compliance with the regulations provided and the office may authorize maintenance of records at another location in the state. All books, accounts and records for payments to a registrant by a debtor and payments made to a creditor by a registrant are to be kept and made available to the office for three years after original entry. The commission is given rule making authority to adopt requirements for maintenance of books, accounts, records, and documents retained by the registrant and also for any destruction of records.

Administrative Remedies (Section 5)

The office may revoke a registration of a registrant who:

- Has been found guilty of or entered a plea of nolo contendere or plead guilty to any crime involving fraud, dishonest dealing, or moral turpitude;
- Has had a final judgment entered against them in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit; has had any business related license suspended or revoked in any jurisdiction;
- Fails to maintain the required surety bond; violates any provision provided in chapter 559, F.S.;
- Pays with a check or electronic transmission that fails to clear the financial institution;
- Falsifies or willfully omitted any material asked for in any application under the rules of the commission;
- Makes a false statement of fact in an application of registration; or
- Employs a person who may, directly or indirectly, control the applicant who commits an act against provisions set out in s. 559.5477, F.S.

A registrant may request termination of its registration by written notice to the office, however the termination notice does not affect any civil or criminal liability of the registrant. The office may deny a request to terminate an registration if the office determines the registrant has committed an act that would be grounds for denial.

Final action to revoke or suspend a registration is subject to chapter 120, F.S., in the same manner as revocation of a license. The office may impose an administrative fine of up to \$1,000 per nonwillful violation of ss. 559.545,⁴ 559.546,⁵ or 559.5476,⁶ F.S., against an offending registrant as an administrative action. The fine shall not exceed \$10,000 for all nonwillful violations arising out of the same action. For any willful violation, the office may impose a fine of up to \$2,500 per violation. However, the fine shall not exceed \$100,000 for all willful violations arising out of the same action. The office may impose a fine of not more than \$1,000 per day, each day that a person violates this code by engaging in the business of a commercial collection agency without being registered. Any administrative fine imposed is due to the office and will be deposited into the Regulatory Trust Fund. A revocation, suspension, or fine must be brought within five years after the date of the last violation for which the action is founded.

The bill provides that in imposing any administrative remedy or penalty provided for, the office shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and other such matters as justice may require.

Definitions (Sections 1 and 6)

The bill amends certain definitions for clarification and to provide that an “out of state debt collector” does not include a person who solicits consumer debt accounts for collection from creditors who have a business presence in this state.

⁴ Registration of commercial collection agencies

⁵ Surety bond

⁶ Books, accounts, records, maintenance; examinations by the office

The bill provides the definition for “credit grantor” to mean any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

The bill provides a definition for “principal of a registrant or applicant” to mean any owner of the applicant or registrant if a partnership or sole proprietorship, the corporate officers, the corporate directors other than directors of a not-for-profit corporation organized under chapter 617, F.S., or the resident agent in this state if a corporation is the applicant or registrant.

State and Federal Law (Section 7)

The bill provides that any violation of the federal Fair Debt Collection Practices Act constitutes a prohibited act under state law. The bill provides that due consideration shall be given to interpretations of the Federal Trade Commission Act and the Fair Debt Collection Practices Act by the Federal Trade Commission in construing the relationship between federal and state law.

In the event of any inconsistency between this act and any provision of the federal act, the provision that is more protective of the consumer or debtor shall prevail unless the more protective interpretation conflicts with the case law opinions of the state and federal courts of the state or the opinions of the Eleventh Circuit Court of Appeals.

Consumer Collection Agencies

Registration Requirements and Exemptions (Sections 8 and 9)

The bill substantially amends current law regulating consumer collection agencies.

A person must be registered with the office and maintain the registration in order to engage in business as a consumer collection agency in the state. A registration is not considered valid for any consumer collection agency transacting business in a different location than the location specified in the registration unless the office is first notified. The commission has authority to adopt forms for the registration of consumer collection agencies. The bill provides the commission with rule making authority for depositing fees and filing documents by electronic means provided the procedures provide the office with all of the information required.

The commission or office may require each applicant applying for registration as a consumer collection agency to provide: a nonrefundable application fee of \$900 which will be deposited in the Regulatory Trust Fund; any names under which the applicant may conduct business, and the addresses of the applicant’s places of business in the state; the applicant’s form and place of organization; and in the cases of corporations, a copy of the articles of incorporation and any amendments to the articles, if the applicant is a partnership then a copy of the partnership agreement is required for registration, in the case of a limited liability company, a copy of the articles of organization is required; documents demonstrating that the bonding requirements for consumer collection agencies have been satisfied; and information and documentation necessary to make a determination of the applicants eligibility for registration.

The office may require information about any applicant, including: the full name of the applicant, the current address, current telephone number, date of birth, or social security number or the federal identification number of any corporate owner; the applicant’s previous 10 year educational or employment history; any adverse decision, finding, injunction, suspension, prohibition, revocation, denial, or judgment by any court of competent jurisdiction or an administrative order by an administrative law judge, or by any state or federal agency or any business, professional, or occupational association involving a violation of any law, rule, or regulation relating to any business or professional licensing; the applicant’s commission of any acts which would be grounds for denial of an application under s. 559.555(10), F.S.

Registration requirements for a consumer collection agency do not apply to any credit grantor or any member of the Florida Bar, unless the person is primarily engaged in the collection of consumer debts.

An application is deemed received upon receipt of a completed application form prescribed by commission rule, the nonrefundable application fee of \$900, and any other fee prescribed by law. The current fee for registration is \$200. Upon the filing of an application for registration and payment of all applicable fees, the office will investigate the applicant. Registrations may be granted for no longer than one year.

A consumer collection agency expires on December 31 of the year in which the registration became effective unless the registration is renewed before that date. A registration may be renewed as the commission may require by rule, together with a payment of \$450 and the payment of any amount lawfully due to the office. A consumer collection agency may request reactivation of its registration and submit a nonrefundable \$250 reactivation fee. The registrant is to file its request with the office on or before January 31 of the year following the year of expiration. Any reactivation of registration during the month of January is deemed effective retroactive to January 1 of that year.

Any consumer collection agency that engages in business after its registration has expired is in violation of provisions requiring valid registration for a consumer collection agency and such actions will constitute a felony of the third degree and a fine not to exceed \$1,000 per day for each day in violation of registration.

The office may deny registration if the applicant, any principal of the applicant, or any person having control of the applicant:

- Has committed a violation of generally prohibited practices of collection agencies.
- Is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction.
- Is currently subject to a pending enforcement action by federal authority for violations of the Fair Debt Collection Practices Act or the Federal Trade Commission Act.
- Has been guilty of any offense involving fraud, dishonest dealing, or moral turpitude;
- Has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any felony.
- Has had entered against him or her or any business for which he or she was, directly or indirectly, a controlling person in the business or controlled the business, an injunction, a temporary restraining order, or a final judgment or order.
- Falsified or willfully omitted any material information asked for in any application or document required to be submitted under the rules of the commission.
- Made a material false statement of fact in an application for registration or in response to any request by the office.
- Has been the subject of any adverse decision or judgment by any court or an administrative law judge, any state or federal agency, or any business, professional, or occupational association involving a violation of any law or rule relating to business or professional licensing.

Surety Bond (Section 10)

The bill creates s. 559.556, F.S., requiring surety bonds for consumer collection agencies.

The bill requires that a corporate surety bond in the amount of \$25,000 be obtained by a consumer collection agency before the office will issue registration. Consumer collection agencies have not previously had a bond requirement. If multiple claims are filed against the surety bond and in excess of the bond amount, the surety may pay the full amount liable under the bond. The office will then distribute pro rata amounts to the claimants within six months after the first claim is filed. Any cancellation of the surety bond by the registrant or the corporate surety must be done in writing to the office by registered or certified mail. A cancellation will not take effect less than 30 days after receipt by the office of the written notice. Within 10 days after the surety pays any claim, the corporate surety

must give written notice to the office of the payment with specific details. When the principle sum of a bond is reduced by one or more payments, the registrant must furnish a new bond so the total sum of the bonds equals \$25,000. Alternatively, a registrant may furnish an endorsement executed by the corporate surety reinstating the bond to the required sum.

Prohibited Practices (Section 11)

The bill amends practices that are prohibited for consumer collection agencies.

A consumer collection agency may not use force, violence, or any other means to harm the physical person, property, or reputation of any person. A person may not mail any communication to a debtor indicating that the purpose of the communication is to collect debt, or to otherwise embarrass the debtor. A person collecting debt may not communicate with a debtor between the hours of 9 p.m. and 8 a.m. or at any inconvenient time for the debtor.

When communicating with a person other than the consumer, a debt collector may not: state that the consumer owes a debt; communicate with any such person more than once; or communicate by postcard. Without prior consent of the consumer or permission of a court, a collection agency may not communicate with a debtor at the debtor's place of business. A collector may not, without prior consent or notwithstanding other provisions of law, communicate with anyone other than the consumer, the consumer's attorney, the creditor, the creditor's attorney, or the debt collector's attorney concerning the collection of debt.

If a consumer notifies a collector in writing that the consumer refuses to pay the debt, the debt collector shall not communicate with the consumer with respect to such debt, other than to: advise the consumer that the debt collector's further collection efforts are being terminated; notify the consumer that the debt collector may invoke specified remedies; or notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

A debt collector may not use unfair means to collect any debt, including: collecting any amount unless the amount authorized by the agreement or permitted by law; accepting of any check or other payment that is postdated by more than five days; soliciting by a debt collector of any postdated check or postdated payment for the purpose of threatened criminal prosecution; threatening to deposit a postdated check prior to the date on the check; threatening to take on nonjudicial action to effect dispossession of property if there is no present right to possession of property, there is no intention to take possession of property, or the property is exempt from possession; or communicating with a consumer regarding debt by any postcard.

Within five days after the initial communication with the consumer, the collector shall send the consumer written notice containing: the amount of debt; the name of the creditor to whom the debt is owed; a statement that the debt will be assumed valid by the debt collector; a statement that if the consumer notifies the collector within 30 days that the debt is disputed, the collector will obtain verification of the debt and mail a copy of such verification to the consumer; and a statement containing the name and address of the original collector.

If the consumer notifies the collector within 30 days that the debt is disputed, the debt collector shall cease the collection of any debt until the collector obtains verification of the debt. The failure of a consumer to dispute the validity of the debt will not be construed as an admission of liability. If a consumer owes multiple debts and makes a single payment, the collect will follow instructions as to application of the payment.

The bill provides that it is unlawful to design any form knowing the form would be used to create false belief in a consumer that a person other than the creditor is participating in the collection of a debt such consumer allegedly owes a creditor, when in fact the person is not participating. The bill provides that nothing in the section providing prohibited practices will be construed to create a new civil cause of action.

Consumer Complaints (Section 12)

The bill substantially rewords s. 559.725, F.S., relating to consumer complaints.

Any person who has a reason to believe that the law has been violated may file a written complaint with details of the alleged violation. Any government agency receiving a complaint shall advise any other government agency or office of any possible violation by any consumer collection agency.

Powers and Duties of the Office of Financial Regulation (Section 13)

The office will enforce compliance with the regulation of consumer and commercial collection agencies, except when enforcement is specifically designated to another agency.

The office is permitted to conduct an investigation of any person, in or out of the state, which may be necessary to determine if someone has violated ch. 559, F.S., or any commission rules. The office may commence any such investigation when the office receives information from a complaint, the public media, an informant, or other source that informs the office that a violation has occurred.

The commission may adopt rules: requiring electronic submission of any form, document, or fee required by this part, provided the rule reasonably accommodates a person with a technological or financial hardship; setting forth the criteria and procedures for obtaining an exemption due to a technological or financial hardship; accepting certification of compliance with the requirements of this part in lieu of requiring submission of specified documents.

The bill provides the office with authority to issue, revoke, quash, or modify and serve subpoenas for purposes of investigations, administer oaths, and take testimony and depositions. In the event of noncompliance with a subpoena, the office may petition a court for an order requiring the person to appear and testify. The court may make an order that justice requires protect any party involved. Reasonable costs incurred by the office during an investigation may be assessed against any debt collector on the basis of actual costs incurred.

Violations (Section 13)

The office may bring an action on behalf of the state against anyone violating any rule of the commission or any order of the office. The court may issue a subpoena requiring the attendance of any witness or a subpoena duces tecum requiring any documents to be produced relating to any investigation.

Cease and Desist Orders (Section 13)

The office may issue and serve upon a person an order to cease and desist. Procedural matters relating to the issuance and enforcement of a cease and desist order are governed by chapter 120, F.S. The office may seek restitution for collected funds due to creditors without valid proof of debt.

Evidence, Examiner's Worksheets, Investigative Reports, Other Related Documents (Section 13)

Any official document or report is admissible into evidence if the financial examiner is available for cross-examination and testifies that the related document was prepared as a result of an examination conducted under the authority of the office.

Books, Accounts, and Records (Section 13)

Each registrant must maintain books and records to prove compliance with the regulations provided and the office may authorize maintenance of records at another location in the state. All books,

accounts and records for payments to a registrant by a debtor and payments made to a creditor by a registrant are to be kept and made available to the office for three years after original entry. The commission is given rule making authority to adopt requirements for maintenance of books, accounts, records, and documents retained by the registrant and also for any destruction of records.

Administrative Remedies (Section 14)

The office may revoke a registration of a registrant who:

- Has been found guilty of or entered a plea of nolo contendere or plead guilty to any crime involving fraud, dishonest dealing, or moral turpitude.
- Has had a final judgment entered against them in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit.
- Has had any business related license suspended or revoked in any jurisdiction.
- Fails to maintain the required surety bond.
- Violates any provision provided in chapter 559, F.S.
- Pays with a check or electronic transmission that fails to clear the financial institution.
- Falsifies or willfully omitted any material asked for in any application under the rules of the commission.
- Makes a false statement of fact in an application of registration.
- Employs a person who may directly or indirectly control the applicant who commits an act against provisions set out in s. 559.5477, F.S.

A registrant may request termination of its registration by written notice to the office, however the termination notice does not affect any civil or criminal liability of the registrant. The office may deny a request to terminate an registration if the office determines the registrant has committed an act that would be grounds for denial. Final action for to revoke or suspend a registration is subject to chapter 120, F.S., in the same manner as revocation of a license. The office may impose an administrative fine per violation of ss. 559.555,⁷ 559.556,⁸ 559.72,⁹ or 559.7265,¹⁰ F.S., against an offending registrant as an administrative action. If the nonwillful violation constitutes a bona fide error then the office may issue a written reprimand to the offending registrant and may require the registrant implement additional policies and procedures to avoid any future violations. This does not apply if the same nonwillful violation subject to the written reprimand recurs within two years after the issuance of the written reprimand. If the nonwillful violation does not constitute a bona fide error, the office may impose a fine of up to \$1,000 per violation. The fine shall not exceed \$10,000 for all nonwillful violations arising out of the same action. For any willful violation, the office may impose a fine of up to \$2,500 per violation. In no event will the fine exceed \$100,000 for all willful violations arising out of the same action. The office may impose a fine of not more than \$1,000 per day, each day that a person violates this code by engaging in the business of a consumer collection agency without being registered. Any administrative fine imposed is due to the office and will be deposited to the Regulatory Trust Fund.

A revocation, suspension, or fine must be brought within five years after the date of the last violation for which the action is founded. The remedies provided are in addition to any remedies available under state or local law.

Civil Remedies (Section 16)

The bill provides that when applying the law, due consideration will be given to the interpretations of the Federal Trade Commission, the federal courts, the Fair Debt Collection Practices Act and the Federal Trade Commission Act. If there is an inconsistency between state law and interpretation of the federal acts, the provision that is more protective of the consumer will prevail unless the more protective

⁷ Registration of consumer collection agencies

⁸ Surety bond for consumer collection agencies

⁹ Prohibited practices

¹⁰ Books, accounts, records, maintenance; examinations by the office

interpretation conflicts with the case law opinions of the state and federal courts of this state or the opinions of the Eleventh Circuit Court of Appeals.

Criminal Penalties (Section 17)

The bill states that it is a misdemeanor of the first degree for any person not exempt from registration as a consumer collection agency to: operate or solicit business as a consumer collection agency in this state; engage in any consumer debt collection activity after suspension or revocation of the registrant's registration; or engage in any consumer debt collection activity while under a temporary or permanent injunction.

The bill creates two new second degree misdemeanor crimes: relocating a business as a consumer collection agency or operating under any name other than that designated in the registration unless written notification is given to the office and to the surety or sureties on the original bond; and attempting to assign a registration.

The office may refer evidence concerning a violation of any rule or order to any criminal agency bringing an action against any person to enjoin, restrain, and prevent the commission of any prohibited act or practice.

Annual Report (Section 18)

The bill requires the office to submit a report on January 1, 2006, and biannually thereafter, to the President of the Senate and Speaker of the House containing conclusions concerning the effectiveness of the consumer and commercial collection practices acts in preventing fraud, abuse, and other unlawful activity. The report shall include a summary of the complaints received by the office or the Division of Consumer Services of the Department of Financial Services. The summary is to identify the nature and number of various kinds of complaints received. The report may contain legislative recommendations concerning the act.

Repeals (Section 19)

The bill repeals the following sections:

Section 559.547 F.S., relating to registration of commercial collection agencies. The bill creates a new section providing for registration of commercial collection agencies.

Section 559.563, F.S., relating to registration for consumer collection agencies. The bill creates a new section providing for registration of consumer collection agencies.

Section 559.565, F.S., relating to enforcement action against out-of-state consumer debt collectors. The bill creates a new section governing out-of-state consumer collection agencies.

Section 20

Authorizes six positions and appropriates \$428,588 from the Regulatory Trust Fund to the Office of Financial Regulation. The six positions consist of five examiners and one registration analyst.

Section 21

The bill will take effect on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 559.543, F.S., relating to definitions of "debtor" and "consumer."

Section 2. Amends s. 559.544, F.S., relating to registration of a commercial collection agency.

Section 3. Amends s. 559.545, F.S., relating to requirements for registration as a commercial collection agency.

Section 4. Amends s. 559.546, F.S., relating to requirements for a surety bond.

Section 5. Creates ss. 559.5471, 559.5473, 559.5474, 559.5475, 559.5476, 559.5477, and 559.5479, F.S., specifying powers and duties of the Office of Financial Regulation.

Section 6. Amends s. 559.55, F.S., relating to definitions.

Section 7. Amends s. 559.552, F.S., providing that a violation of the Federal Fair Debt Collection Practices Act is a prohibited practice.

Section 8. Amends s. 559.553, F.S., providing exemptions from registration requirements.

Section 9. Amends s. 559.555, F.S., relating to registration of consumer collection agencies.

Section 10. Creates s. 559.556, F.S., relating to surety bonds.

Section 11. Amends s. 559.72, F.S., relating to standards of conduct for consumer collection agencies in the collection of debts.

Section 12. Amends s. 559.725, F.S., relating to consumer complaints.

Section 13. Creates ss. 559.726, 559.7262, 559.7263, 559.7264, and 559.7265, F.S. Section 559.726 provides the powers and duties of the Office of Financial Regulation; Section 559.7262, F.S., provides that the office may seek an injunction against any person who has, or is about to violate any rule or order; Section 559.7263, F.S., provides that the office may issue cease and desist orders; Section 559.7264, F.S., provides that examiners' worksheet, sworn complaint, official written report, of related paper, or a certified copy of such, is admissible into evidence under certain conditions; Section 559.7265, F.S., provides that a registrant shall maintain all necessary books and records to determine compliance with this part.

Section 14. Amends s. 559.730, F.S., relating to administrative remedies.

Section 15. Creates s. 559.735, F.S., providing administrative guidelines for imposing any administrative remedy or penalty.

Section 16. Amends s. 559.77, F.S., relating to civil remedies.

Section 17. Amends s. 559.785, F.S., increasing the criminal penalty for certain violations to a third degree felony.

Section 18. Creates s. 559.786, F.S., relating to a reporting requirement.

Section 19. Repeals ss. 559.547, 559.563, and 559.565, F.S., relating to commercial and consumer collection agencies' voided registrations. The bill provides new language for these sections.

Section 20. Authorizes six positions and an appropriation for fiscal year 2005-2006.

Section 21. Provides that the act shall take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Recurring:		
Application and Renewal Fees		
Regulatory Trust Fund	\$ 418,150	\$ 418,150

Also, the Office of Financial Regulation expects some increase in revenue due to fines from enforcement actions but is unable to project the amount.

2. Expenditures:

Recurring:		
Salaries and Benefits (6 FTE)	\$ 229,330	\$ 279,208
Expenses *	<u>149,380</u>	<u>149,380</u>
Total – recurring	\$ 378,710	\$ 428,588
 Non-Recurring Costs		
Expense	\$ 39,078	
Operating Capital Outlay	<u>10,800</u>	
Total – non-recurring	\$ 49,878	
 Total Expenditures:		
Regulatory Trust Fund	\$ 428,588	\$ 428,588

*Includes \$80,000 for criminal records check and \$50,000 for travel for examiners.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Financial Regulation provided the following statement:

The fiscal impact on the private sector is difficult to project. All firms licensed or applying for licensure will have to obtain and maintain a surety bond. The cost of the surety bond will largely be driven by the financial condition of the company. If the entity's financial strength is good, their collateral requirement could range from 0 to a small percentage of the bond amount. If the entity's financial strength is weak, their collateral requirement could be up to 100% of the bond amount. In either case, there is an annual premium that generally runs in the 3-5% range of the bond amount.

The collection companies will experience an increase in new application fees to \$900 each, an increase of \$700 for consumer collection companies and \$400 for commercial collection companies (fees are currently \$200 and \$500 respectively). Renewals will change to \$450 for both types, an increase of \$250 for consumer collection and a decrease of \$50 for commercial collection companies. This represents the increased revenue to the state identified above as \$418,150.

D. FISCAL COMMENTS:

The Office of Financial Regulation provided the following statement:

Passage of the bill will place additional requirements on applicants at the time of licensure and renewal, such as disclosure of information relating to the entity's and affiliated individuals background. The additional information must be reviewed by staff to determine if it contains any negative findings. This will create a significant workload for the registration staff. Additionally, there are currently no resources to determine on-going compliance with regulations or to assist consumers with issues related to the industry.

Projected Increase in Revenue

Fees	Current		Proposed	
	New Application	Renewal	New Application	Renewal
Consumer Collections	\$ 200	\$ 200	\$ 900	\$ 450
Commercial Collections	\$ 500	\$ 500	\$ 900	\$ 450

Fees	New**	Renewal**	Fee Increase	Total New Revenue
Consumer Collections	287		\$ 700	\$ 200,900
Consumer Collections		751	\$ 250	\$ 187,750
Reactivation		71	\$ 250	\$ 17,750
Commercial Collections	39		\$ 400	\$ 15,600
Commercial Collections		77	(\$ 50)	<u>(\$ 3,850)</u>
Total Revenue Increase				\$ 418,150

** Numbers are based on actual FY 2003-04

During 2000-2003 an average of 71 companies failed to renew their registration and then submitted a new application for registration. There is no provision to allow late renewal or reactivation under the current statute. Under the proposed language, these firms could reactivate by paying the renewal fee of \$450 plus a reactivation fee of \$250.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Financial Services Commission may adopt rules for purposes of.

- Adopting forms for commercial and consumer collection agency registration.
- Requiring a renewal of registration.
- Providing written amendment forms for changes of registration.
- Establishing procedures for depositing fees and filing documents by electronic means.
- Providing for waiver of an application when control of a registrant is to be acquired by another registrant.

- Accepting certification of compliance with the requirements of commercial and consumer collection agency regulations.
- Designating the minimum information that must be contained in the registrant's books, accounts, records, and documents.
- Setting forth criteria and procedures for obtaining an exemption due to technological or financial hardship.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2005, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment:

- Removes references to examinations and clarifies conditions for the commencement of investigations.
- Provides for a tiered administrative fine structure for willful vs. non-willful violations.
- Incorporates debt purchasers into the definition of "consumer collection agency".
- Clarifies that the proposed incorporation of violations in Florida law of violations that mirror the Federal Fair Debt Collection Practices Act do not create any new civil causes of action.
- Restores criminal penalties for violations to the current level of a 1st degree misdemeanor.
- Makes other clarifying and conforming changes.