

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to commercial and consumer collection
8 practices; amending s. 559.543, F.S.; providing a
9 definition; amending s. 559.544, F.S.; deleting provisions
10 requiring registration as a commercial collection agency;
11 specifying nonapplication of certain registration
12 requirements to certain persons or entities; amending s.
13 559.545, F.S.; revising requirements and procedures for
14 application for registration as a commercial collection
15 agency; authorizing the Financial Services Commission to
16 adopt rules; providing for fees; providing for amendments
17 to and changes in registrations; authorizing the Office of
18 Financial Regulation to deny registrations under certain
19 circumstances; amending s. 559.546, F.S.; providing
20 requirements and procedures for issuance of a corporate
21 surety bond; creating ss. 559.5471, 559.5473, 559.5474,
22 559.5475, 559.5476, 559.5477, and 559.5479, F.S.;

HB 1133

2005
CS

23 specifying powers and duties of the Office of Financial
24 Regulation; providing procedures; providing for
25 disposition of fees; authorizing the office to adopt
26 rules; authorizing the office to issue subpoenas;
27 providing requirements, procedures, and limitations;
28 authorizing the office to assess certain investigation
29 costs and expenses; authorizing the office to bring
30 certain actions for injunctions to restrain certain
31 violations; providing requirements and procedures;
32 authorizing the office to issue certain cease and desist
33 orders and take certain corrective actions for certain
34 violations; authorizing the office to seek orders of
35 restitution of certain funds; providing for admissibility
36 of certain documents and materials of the office as
37 evidence; requiring registrants to maintain certain
38 records; providing requirements and procedures for
39 maintaining such records; authorizing the office to adopt
40 rules; authorizing the office to revoke or suspend
41 registrations for certain activities by a registrant;
42 providing requirements and procedures for termination of a
43 registration; authorizing the office to impose
44 administrative fines; providing requirements and
45 limitations; providing guidelines for imposing
46 administrative remedies or penalties; providing
47 administrative guidelines for administrative penalties and
48 remedies; amending s. 559.55, F.S.; revising definitions;
49 providing additional definitions; amending s. 559.552,

Page 2 of 62

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1133-01-c1

HB 1133

2005
CS

50 F.S.; revising provisions specifying the relationship of
51 state and federal laws; providing construction; amending
52 s. 559.553, F.S.; deleting provisions requiring
53 registration as a consumer collection agency; specifying
54 nonapplication of certain registration requirements to
55 certain persons or entities; providing a definition;
56 amending s. 559.555, F.S.; revising requirements and
57 procedures for application for registration as a consumer
58 collection agency; authorizing the Financial Services
59 Commission to adopt rules; providing for fees; providing
60 for amendments to and changes in registrations;
61 authorizing the Office of Financial Regulation to deny
62 registrations under certain circumstances; creating s.
63 559.556, F.S.; providing requirements and procedures for
64 issuance of a corporate surety bond; amending s. 559.72,
65 F.S.; specifying prohibited activities in collecting
66 consumer debts; providing requirements for debt collectors
67 communicating with certain persons; providing prohibitions
68 and limitations; providing notification requirements;
69 prohibiting false, deceptive or misleading representations
70 by a debt collector; prohibiting unfair or unconscionable
71 means of collecting debts; requiring debt collectors to
72 provide certain notice to consumers in connection with
73 collecting a debt; specifying required information;
74 providing procedures and requirements for disputing a
75 debt; providing procedures and requirements for payments
76 on multiple debts; providing requirements for debt

HB 1133

2005
CS

77 collectors bringing legal actions on a debt; prohibiting
78 designing, compiling, and furnishing certain misleading
79 forms; providing for liability for certain violations;
80 amending s. 559.725, F.S.; revising provisions providing
81 requirements and procedures for consumer complaints;
82 creating ss. 559.726, 559.7262, 559.7263, 559.7264, and
83 559.7265, F.S.; specifying powers and duties of the Office
84 of Financial Regulation; providing procedures; providing
85 for disposition of fees; authorizing the office to adopt
86 rules; authorizing the office to issue subpoenas;
87 providing requirements, procedures, and limitations;
88 authorizing the office to assess certain investigation
89 costs and expenses; authorizing the office to bring
90 certain actions for injunctions to restrain certain
91 violations; providing requirements and procedures;
92 authorizing the office to issue certain cease and desist
93 orders and take certain corrective actions for certain
94 violations; authorizing the office to seek orders of
95 restitution of certain funds; providing for admissibility
96 of certain documents and materials of the office as
97 evidence; requiring registrants to maintain certain
98 records; providing requirements and procedures for
99 maintaining such records; authorizing the office to adopt
100 rules; amending s. 559.730, F.S.; authorizing the office
101 to revoke or suspend registrations for certain activities
102 by a registrant; providing requirements and procedures for
103 termination of a registration; authorizing the office to

Page 4 of 62

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hb1133-01-c1

HB 1133

2005
CS

104 impose administrative fines; providing requirements and
 105 limitations; creating s. 559.735, F.S.; providing
 106 guidelines for imposing administrative remedies or
 107 penalties; amending s. 559.77, F.S.; specifying
 108 application of certain provisions of law; providing for
 109 priority of application; amending s. 559.785, F.S.;
 110 increasing criminal penalties for certain activities;
 111 specifying a criminal penalty for certain activities;
 112 authorizing the office to refer certain evidence to
 113 certain agencies for certain purposes; creating s.
 114 559.786, F.S.; requiring the office to submit an annual
 115 report; specifying contents; repealing ss. 559.547 and
 116 559.563, F.S., relating to void registrations; repealing
 117 s. 559.565, F.S., relating to enforcement actions against
 118 out-of-state consumer debt collectors; providing an
 119 appropriation; providing an effective date.

120

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

122

123 Section 1. Subsection (7) is added to section 559.543,
 124 Florida Statutes, to read:

125 559.543 Definitions.--As used in this part:

126 (7) "Debtor" or "consumer" means any natural person
 127 obligated or allegedly obligated to pay any debt.

128 Section 2. Section 559.544, Florida Statutes, is amended
 129 to read:

130 559.544 ~~Registration required;~~ Exemptions.--

HB 1133

2005
CS

131 ~~(1) No person shall engage in business in this state as a~~
132 ~~commercial collection agency, as defined in this part, or~~
133 ~~continue to do business in this state as a commercial collection~~
134 ~~agency, without first registering in accordance with this part~~
135 ~~and thereafter maintaining such registration.~~

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

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

149 ~~(4) The office shall not accept any registration for any~~
150 ~~commercial collection agency as validly made and filed with the~~
151 ~~office under this section unless the registration information~~
152 ~~furnished to the office by the registrant is complete pursuant~~
153 ~~to s. 559.545 and facially demonstrates that such registrant is~~
154 ~~qualified to engage in business as a commercial collection~~
155 ~~agency, including specifically that neither the registrant nor~~
156 ~~any principal of the registrant has engaged in any unlawful~~
157 ~~collection practices, dishonest dealings, acts of moral~~

HB 1133

2005
CS

158 ~~turpitude, or other criminal acts that reflect an inability to~~
 159 ~~engage in the commercial collection agency business. The office~~
 160 ~~shall inform any person whose registration is rejected by the~~
 161 ~~office of the fact of and basis for such rejection. A~~
 162 ~~prospective registrant shall be entitled to be registered when~~
 163 ~~her or his or its registration information is complete on its~~
 164 ~~face, the applicable registration fee has been paid, and the~~
 165 ~~required evidence of current bond is furnished to the office.~~

166 ~~(5) The registration requirements of s. 559.545 do This~~
 167 ~~section shall not apply to:~~

168 ~~(1)(a)~~ A member of The Florida Bar, unless the ~~such~~ person
 169 is primarily engaged in the collection of commercial claims.
 170 "Primarily engaged in the collection of commercial claims" means
 171 that more than one-half of the person's income ~~of such person~~
 172 arises from the business of soliciting commercial claims for
 173 collection or collecting commercial claims.

174 ~~(2)(b)~~ A financial institution authorized to do business
 175 in this state or ~~and~~ any wholly owned subsidiary or an ~~and~~
 176 affiliate thereof.

177 ~~(3)(c)~~ A licensed real estate broker.

178 ~~(4)(d)~~ A title insurance company authorized to do business
 179 in this state.

180 ~~(5)(e)~~ A licensed consumer collection agency that ~~which~~ is
 181 not primarily engaged in the collection of commercial claims.
 182 "Not primarily engaged in the collection of commercial claims"
 183 means that less than one-half of the collection revenue of the
 184 ~~such~~ agency arises from the collection of commercial claims.

HB 1133

2005
CS

185 ~~(6)(f)~~ A consumer finance company or ~~and~~ any wholly owned
186 subsidiary or an ~~and~~ affiliate thereof.

187 ~~(7)(g)~~ A person licensed pursuant to chapter 520.

188 ~~(8)(h)~~ A credit grantor.

189 ~~(9)(i)~~ An out-of-state collector ~~as defined in this part.~~

190 ~~(10)(j)~~ An FDIC-insured institution or subsidiary or
191 affiliate thereof.

192 Section 3. Section 559.545, Florida Statutes, is amended
193 to read:

194 (Substantial rewording of section. See
195 s. 559.545, Florida Statutes, for current text.)

196 559.545 Registration of commercial collection agencies;
197 procedure.--

198 (1) A person may not engage in business in this state as a
199 commercial collection agency, as defined in this part, or
200 continue to do business in this state as a commercial collection
201 agency, unless the person is registered with the office
202 according to this part and thereafter maintains the
203 registration.

204 (2) A registration is not valid for any commercial
205 collection agency transacting business at any place other than
206 the place designated in the registration unless the office is
207 first notified in advance of any change of location.

208 (3) Any person who applies for registration as a
209 commercial collection agency in compliance with this part shall
210 do so on forms adopted by the commission and furnished by the
211 office. The commission may establish by rule procedures for

HB 1133

2005
CS

212 depositing fees and filing documents by electronic means
213 provided such procedures provide the office with the information
214 required by this section. The commission or office may require
215 each applicant for a commercial collection agency registration
216 to provide:

217 (a) A nonrefundable application fee in the amount of \$900.
218 All amounts collected shall be deposited to the credit of the
219 Regulatory Trust Fund of the office.

220 (b) The name of the applicant, any other names under which
221 the applicant conducts business, and the address of the
222 applicant's principal place of business and each office in this
223 state.

224 (c) The applicant's form and place of organization and, if
225 the applicant is a corporation, a copy of the articles of
226 incorporation and amendments to such articles, if a partnership,
227 a copy of the partnership agreement or, if limited liability
228 company, a copy of the articles of organization.

229 (d) Documents demonstrating that the bonding requirements
230 specified in s. 559.546 have been satisfied.

231 (e) Information and documentation necessary to make a
232 determination of the applicant's eligibility for registration.

233 (4) The applicant shall also provide information as the
234 office may require about any partner, officer, or director of
235 the applicant, any person having the same or substantially
236 similar status or performing substantially similar functions, or
237 any person directly or indirectly controlling the applicant. For
238 purposes of this section, the term "directly or indirectly

HB 1133

2005
CS

239 controlling the applicant" means possessing the power to direct
 240 or to cause the direction of the management or policies of a
 241 company, whether through ownership of stock or securities, by
 242 contract, or otherwise. Any individual or company that directly
 243 or indirectly has the right to vote 25 percent or more of the
 244 voting stock or securities of a company or is entitled to 25
 245 percent or more of its profits is presumed to control that
 246 company. The office may require information about any such
 247 applicant or person, including:

248 (a) His or her full name, current address, current
 249 telephone number, date of birth, or social security number or
 250 the federal identification number of any corporate owner.

251 (b) His or her previous 10 year educational or employment
 252 history.

253 (c) Any adverse decision, finding, injunction, suspension,
 254 prohibition, revocation, denial, or judgment by any court of
 255 competent jurisdiction or an administrative order by an
 256 administrative law judge, or by any state or federal agency or
 257 any business, professional, or occupational association
 258 involving a violation of any law, rule, or regulation relating
 259 to any business or professional licensing.

260 (d) Whether he or she committed any acts which would be
 261 grounds for denial of an application under s. 559.545(10).

262 (5) An initial application is deemed received for purposes
 263 of s. 120.60 upon receipt of the completed application form
 264 prescribed by commission rule, the nonrefundable application fee
 265 of \$900, and any other fee prescribed by law.

HB 1133

2005
CS

266 (6) Upon the filing of an application for registration and
 267 payment of all applicable fees, the office shall investigate the
 268 applicant. If the office determines that registration should be
 269 granted, the office shall register the applicant for a period
 270 not to exceed 1 year.

271 (7) The registration of each commercial collection agency
 272 expires on December 31 of the year in which the registration
 273 became effective unless the registrant has renewed its
 274 registration on or before that date. Registration may be renewed
 275 as the commission may require by rule, together with payment of
 276 the \$450 nonrefundable renewal fee and the payment of any amount
 277 lawfully due and owing to the office pursuant to any order of
 278 the office or pursuant to any agreement with the office. A
 279 commercial collection agency that has not renewed its
 280 registration by the time the registration period expires may
 281 request reactivation of its registration. The registrant shall
 282 file its request with the office on or before January 31 of the
 283 year following the year of expiration. The request must contain
 284 any information the office requires, together with the
 285 registration fee required in this section, and a nonrefundable
 286 reactivation fee in the amount of \$250. Any reactivation of
 287 registration granted by the office during the month of January
 288 is deemed effective retroactive to January 1 of that year. Any
 289 registrant that engages in business as a commercial collection
 290 agency after its registration has expired violates subsection
 291 (1), punishable as provided by ss. 559.548(1) and 559.5477(6).

HB 1133

2005
CS

292 (8) If the information contained in any application or any
 293 amendment to such application has changed, the registrant shall
 294 file an amendment on the forms prescribed by the commission
 295 correcting such information within 30 days after the change.

296 (9) A registration under this part is not transferable or
 297 assignable unless accomplished pursuant to this subsection.

298 (a) Changes in registration occasioned by changes in
 299 personnel of a partnership or in the principals, copartners,
 300 officers, or directors of any registrant or by changes of any
 301 material fact shall be reported by written amendment in such
 302 form and at such time as the commission may specify by rule. In
 303 any case in which a person or a group of persons, directly or
 304 indirectly or acting by or through one or more persons, proposes
 305 to purchase or acquire a controlling interest in a registrant,
 306 such person or group shall submit an initial application for
 307 registration as a commercial collection agency prior to such
 308 purchase or acquisition at such time and in such form as the
 309 commission may prescribe by rule.

310 (b) The commission shall adopt rules providing for waiver
 311 of the application required by this subsection when control of a
 312 registrant is to be acquired by another registrant under this
 313 chapter or when the application is otherwise unnecessary in the
 314 public interest.

315 (10) The office may deny registration if the applicant,
 316 any principal of the applicant, or any person having control of
 317 the applicant:

318 (a) Has committed any violation of s. 559.72;

HB 1133

2005
CS

319 (b) Is the subject of a pending criminal prosecution or
 320 governmental enforcement action, in any jurisdiction, until the
 321 conclusion of such criminal prosecution or enforcement action;

322 (c) Is currently subject to a pending enforcement action
 323 by any federal authority for violations of the federal Fair Debt
 324 Collection Practices Act or the Federal Trade Commission Act;

325 (d) Has been found guilty of, regardless of adjudication,
 326 or has entered a plea of nolo contendere or guilty to, any
 327 offense involving fraud, dishonest dealing, or moral turpitude;

328 (e) Has been found guilty of, regardless of adjudication,
 329 or has entered a plea of nolo contendere or guilty to, any
 330 felony;

331 (f) Has had entered against him or her, or against any
 332 business for which he or she was directly or indirectly a
 333 controlling person in the business or controlled the business,
 334 an injunction, a temporary restraining order, or a final
 335 judgment or order, including a stipulated judgment or order, an
 336 assurance of voluntary compliance, or any similar document, in
 337 any civil or administrative action involving racketeering,
 338 fraud, theft, embezzlement, fraudulent conversion, or
 339 misappropriation of property or the use of any untrue,
 340 deceptive, or misleading representation in an attempt to sell or
 341 dispose of real or personal property or the use of any unfair,
 342 unlawful, or deceptive trade practice, whether or not there is
 343 any litigation pending against the applicant;

344 (g) Is subject to or was directly or indirectly a
 345 controlling person in the business, or controlled the business,

346 with any company that is, or ever has been, subject to any
 347 injunction; temporary restraining order, including a stipulated
 348 judgment or order, an assurance of voluntary compliance, or any
 349 similar document; or any restrictive court order relating to
 350 business activity as the result of any action brought by a
 351 governmental agency, including any action affecting any license
 352 to do business or practice an occupation or trade;

353 (h) Falsified or willfully omitted any material
 354 information asked for in any application, document, or record
 355 required to be submitted under this part or the rules of the
 356 commission;

357 (i) Made a material false statement of fact in an
 358 application for registration or in response to any request or
 359 investigation by the office; or

360 (j) Has been the subject of any adverse decision, finding,
 361 injunction, suspension, prohibition, revocation, denial, or
 362 judgment by any court of competent jurisdiction or an
 363 administrative order by an administrative law judge, any state
 364 or federal agency, or any business, professional, or
 365 occupational association involving a violation of any law, rule,
 366 or regulation relating to business or professional licensing.

367 Section 4. Section 559.546, Florida Statutes, is amended
 368 to read:

369 (Substantial rewording of section. See
 370 s. 559.546, Florida Statutes, for current text.)

371 559.546 Surety bond; evidence of current and valid
 372 bond.--Pursuant to s. 559.545, the registrant shall provide to

HB 1133

2005
CS

373 | the office evidence that the registrant has been issued a
 374 | current and valid surety bond as required by this part.

375 | (1) Before the office may issue a registration, the
 376 | applicant must provide to the office a corporate surety bond
 377 | issued by a bonding company or insurance company authorized to
 378 | do business in this state.

379 | (2) The corporate surety bond shall be in the amount of
 380 | \$50,000, paid for and issued for the benefit of any credit
 381 | grantor against the registrant to secure the faithful
 382 | performance of the obligations of the registrant with respect to
 383 | the receipt, handling, and payment of funds collected by the
 384 | registrant.

385 | (3) If multiple claims are filed against the surety on any
 386 | bond in excess of the amount of the bond, the surety may pay the
 387 | full amount of the bond to the office and is not further liable
 388 | under the bond. The office shall hold the funds for distribution
 389 | to claimants and pay to each claimant the pro rata share of each
 390 | valid claim made against the funds within 6 months after the
 391 | date of the filing of the first claim against the surety.

392 | (4) A corporate surety bond filed with the office for
 393 | purposes of compliance with this section may not be canceled by
 394 | the registrant or the corporate surety except upon written
 395 | notice to the office by registered or certified mail with return
 396 | receipt requested. A cancellation shall not take effect fewer
 397 | than 30 days after receipt by the office of such written notice.

398 | (5) The corporate surety must, within 10 days after the
 399 | surety pays any claim to any claimant, give written notice to

HB 1133

2005
CS

400 the office by registered or certified mail of such payment with
 401 details sufficient to identify the claimant and the claim or
 402 judgment so paid.

403 (6) Whenever the principal sum of such bond is reduced by
 404 one or more recoveries or payments, the registrant must furnish
 405 a new or additional bond so the total or aggregate principal sum
 406 of such bonds equals the sum required by this section.

407 Alternatively, a registrant may furnish an endorsement executed
 408 by the corporate surety reinstating the bond to the required
 409 principal sum.

410 Section 5. Sections 559.5471, 559.5473, 559.5474,
 411 559.5475, 559.5476, 559.5477, and 559.5479, Florida Statutes,
 412 are created to read:

413 559.5471 Powers and duties of the Office of Financial
 414 Regulation.--

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

418 (2) The office may conduct an investigation of any person,
 419 within or outside this state, which the office believes is
 420 necessary in order to determine whether a person has violated
 421 this chapter or the rules adopted by the commission. The office
 422 may commence any such investigation when the office receives
 423 information from a complaint, the public media, an informant, or
 424 any other source that informs the office that a violation of
 425 this chapter has occurred or may occur.

HB 1133

2005
CS

426 (3) The commission may adopt rules under ss. 120.536(1)
427 and 120.54 to implement and administer this part.

428 (4) The commission may adopt a rule to:

429 (a) Require electronic submission of any form, document,
430 or fee required by this part, provided the rule reasonably
431 accommodates a person with a technological or financial
432 hardship.

433 (b) Set forth the criteria and procedures for obtaining an
434 exemption due to a technological or financial hardship.

435 (c) Accept certification of compliance with the
436 requirements of this part in lieu of requiring submission of
437 specified documents.

438 (5) All fees, charges, and fines collected by the office
439 under this part shall be deposited to the credit of the
440 Regulatory Trust Fund of the office.

441 (6) The office may:

442 (a) Issue, revoke, quash, or modify and serve subpoenas to
443 compel the attendance of witnesses and subpoenas duces tecum to
444 compel the production of all books, accounts, records, and other
445 documents and materials relevant to an investigation. The office
446 may exercise these powers even if the subject of the
447 investigation is exempt from registration.

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

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

450 (7)(a) In the event of noncompliance with a subpoena or
451 subpoena duces tecum the office issued or caused to be issued,
452 the office may petition a court of competent jurisdiction in the

HB 1133

2005
CS

453 county in which the person subpoenaed resides or has her, his,
454 or its principal place of business for an order requiring the
455 person to appear and testify and to produce the books, accounts,
456 records, and other documents that are specified in the subpoena
457 duces tecum.

458 (b) A copy of the petition shall be served upon the person
459 subpoenaed by any person authorized by this section to serve
460 subpoenas, who shall make and file with the court an affidavit
461 showing the time, place, and date of service.

462 (c) At a hearing on the petition to enforce compliance
463 with a subpoena, the person subpoenaed, or any person whose
464 interest will be substantially affected by the investigation or
465 subpoena, may appear and object to the subpoena and the granting
466 of the petition. The court may make any order that justice
467 requires in order to protect a party or other person and her or
468 his personal and property rights, including, but not limited to,
469 protection from annoyance, embarrassment, oppression, undue
470 burden, or expense.

471 (d) Failure to comply with an order granting, in whole or
472 in part, a petition to enforce a subpoena is a contempt of the
473 court.

474 (8) Witnesses are entitled to the same fees and mileage to
475 which they would be entitled by law for attending as witnesses
476 in circuit court, except that fees or mileage may not be allowed
477 for testimony of a person taken at the person's principal office
478 or residence.

HB 1133

2005
CS

479 (9) Reasonable and necessary costs incurred by the office
 480 during an investigation may be assessed against any debt
 481 collector on the basis of actual costs incurred. Assessed
 482 expenses may include, but are not limited to, expenses for
 483 interpreters; expenses for communications; expenses for legal
 484 representation; expenses for economic, legal, or other research,
 485 analysis, and testimony; and fees and expenses for witnesses.
 486 The failure to reimburse the office for its reasonable and
 487 necessary costs is a reason to deny a registrant's application
 488 or to revoke the prior approval of an application.

489 559.5473 Injunction to restrain violations; receivers.--

490 (1) The office may bring an action on behalf of the state
 491 to enjoin any person who has violated, or is about to violate,
 492 this part, any rule of the commission, or any order of the
 493 office issued under this part.

494 (2) In an injunctive proceeding, the court may issue a
 495 subpoena requiring the attendance of any witness or a subpoena
 496 duces tecum requiring the production of any book, account,
 497 record, or other documents and materials relevant to the pending
 498 case.

499 (3)(a) In addition to any procedure provided by law for
 500 enforcing a temporary restraining order or a temporary or
 501 permanent injunction, the court may, upon application of the
 502 office, impound the property, assets, and business of the
 503 registrant, including, but not limited to, the books, records,
 504 documents, and papers of the registrant. The court may appoint a
 505 receiver to administer the property. The receiver, when

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

508 (b) After appointing a receiver, the court may issue an
 509 order staying all pending suits and enjoining any further
 510 litigation affecting the receiver's custody or possession of the
 511 property, assets, and business and the court, with the consent
 512 of the chief judge of the circuit, may require that all suits be
 513 assigned to the circuit judge who appointed the receiver.

514 559.5474 Cease and desist orders; refund orders.--

515 (1) The office may issue and serve upon a person an order
 516 to cease and desist and to take corrective action whenever the
 517 office has reason to believe that a person is violating, has
 518 violated, or is about to violate this part, any rule or order of
 519 the office issued under this part, or any written agreement
 520 between the commercial collection agency and the office.

521 Procedural matters relating to the issuance and enforcement of a
 522 cease and desist order are governed by chapter 120.

523 (2) The office may seek an order of restitution from a
 524 court of competent jurisdiction for collected funds due to
 525 creditors or any sum collected from a debtor without valid proof
 526 of debt.

527 559.5475 Evidence; examiner or investigator worksheets,
 528 investigative reports, other related documents.--An official
 529 written report, sworn complaint, worksheet, or other related
 530 paper, or a certified copy thereof, compiled, prepared, drafted,
 531 or otherwise made by the financial examiner or investigator is
 532 admissible into evidence if the financial examiner or

HB 1133

2005
CS

533 investigator is available for cross examination, authenticates
 534 the worksheet, and testifies that the report, worksheet, or
 535 related document was prepared as a result of an investigation of
 536 the books and records of a registrant or other person conducted
 537 under the authority of this part.

538 559.5476 Books, accounts, and records; maintenance;
 539 investigations by the office.--

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

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

548 (3) All books, accounts, records, documents, and receipts
 549 for payments to a registrant by a debtor, and payments made to a
 550 creditor by a registrant, shall be preserved and kept available
 551 for investigation by the office for 3 years after the date of
 552 original entry. The commission shall adopt requirements by rule
 553 for maintaining the books, accounts, records, and documents
 554 retained by the registrant and for destroying the records.

555 (4) The commission shall designate by rule the minimum
 556 information that must be contained in the registrant's books,
 557 accounts, records, and documents to enable the office to
 558 determine a registrant's compliance with this part.

559 559.5477 Administrative remedies.--

HB 1133

2005
CS

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

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

565 (b) Has had a final judgment entered against the person a
 566 civil action upon the grounds of fraud, embezzlement,
 567 misrepresentation, or deceit;

568 (c) Has had any business, professional, or occupational
 569 license or registration suspended, revoked, or otherwise acted
 570 against in any jurisdiction;

571 (d) Fails to maintain the surety bond required pursuant to
 572 s. 559.546;

573 (e) Fails to maintain books and records as required by s.
 574 559.5476;

575 (f) Violates any provision of this part, any rule or order
 576 adopted pursuant to this part, or any written agreement entered
 577 into with the office;

578 (g) Paid for a registration with a check or electronic
 579 transmission of funds which failed to clear the registrant's
 580 financial institution;

581 (h) Falsified or willfully omitted any material
 582 information asked for in any application, document, or record
 583 required to be submitted under this part or the rules of the
 584 commission;

585 (i) Made a material false statement of fact in an
 586 application for registration or in response to any request or
 587 investigation by the office; or

588 (j) Has a person who directly or indirectly controls the
 589 applicant as defined in s. 559.545(4) that is subject to an
 590 action, or commits an act, specified by paragraph (a), paragraph
 591 (b), paragraph (c), paragraph (f), paragraph (h), or paragraph
 592 (i).

593 (2) A registrant may request termination of its
 594 registration by delivering written notice of its proposed
 595 termination to the office. However, the delivery of the
 596 termination notice does not affect any civil or criminal
 597 liability of the registrant or the authority of the office to
 598 enforce this part.

599 (3) The office may deny a request to terminate a
 600 registration or to withdraw an application for registration if
 601 the office believes that the registrant has committed an act
 602 that would be grounds for denial, suspension, or revocation
 603 under this part.

604 (4) Final action by the office to revoke or suspend the
 605 registration of a registrant is subject to review according to
 606 chapter 120 in the same manner as revocation of a license.

607 (5) The office may impose an administrative fine for a
 608 violation of this section or s. 559.545, s. 559.546, or s.
 609 559.5476 against an offending registrant as an administrative
 610 sanction as follows:

HB 1133

2005
CS

611 (a) For any nonwillful violation, the office may impose a
 612 fine of up to \$1,000 per violation. In no event shall such fine
 613 exceed the aggregate amount of \$10,000 for all nonwillful
 614 violations arising out of the same action; or

615 (b) For any willful violation, the office may impose a
 616 fine of up to \$2,500 per violation. In no event shall such fine
 617 exceed the aggregate amount of \$100,000 for all willful
 618 violations arising out the same action.

619
 620 Final action by the office to impose an administrative fine is
 621 subject to review in accordance with ss. 120.569 and 120.57.

622 (6) Notwithstanding any other provision of this section,
 623 the office may impose a fine not to exceed \$1,000 per day for
 624 each day that a person violates the code by engaging in the
 625 business of a commercial collection agency without being
 626 registered.

627 (7) Any administrative fine imposed under this part is
 628 payable to the office. The office shall maintain an appropriate
 629 record and deposit the fine into the Regulatory Trust Fund of
 630 the office.

631 (8) An administrative action by the office to impose
 632 revocation, suspension, or a fine must be brought within 5 years
 633 after the date of the last violation upon which the action is
 634 founded.

635 (9) The remedies under this part are in addition to
 636 remedies otherwise available for the same conduct under state or
 637 local law.

HB 1133

2005
CS

638 559.5479 Administrative guidelines.--In imposing any
 639 administrative remedy or penalty provided for in the code, the
 640 office shall take into account the appropriateness of the
 641 penalty with respect to the size of the financial resources and
 642 good faith of the person charged, the gravity of the violation,
 643 the history of previous violations, and such other matters as
 644 justice may require.

645 Section 6. Subsections (1), (7), and (8) of section
 646 559.55, Florida Statutes, are amended, and subsections (10),
 647 (11), and (12) are added to said section, to read:

648 559.55 Definitions.--The following terms shall, unless the
 649 context otherwise indicates, have the following meanings for the
 650 purpose of this part:

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

652 (a) Any obligation or alleged obligation of a consumer to
 653 pay money arising out of a transaction in which the money,
 654 property, insurance, or services which are the subject of the
 655 transaction are primarily for personal, family, or household
 656 purposes, whether or not such obligation has been reduced to
 657 judgment; or

658 (b) Any unsatisfied obligation for the payment of money
 659 arising out of a legal order for child support.

660 (7) "Consumer collection agency" means any debt collector
 661 or business entity engaged in the business of soliciting,
 662 purchasing, or collecting consumer debts in default for
 663 collection ~~or of collecting consumer debts~~, which debt collector

HB 1133

2005
CS

664 or business is not expressly exempted as set forth in s.
665 559.553 (1) ~~(4)~~.

666 (8) "Out-of-state consumer debt collector" means any
667 person whose business activities in this state involve both
668 collecting or attempting to collect consumer debt from debtors
669 located in this state by means of interstate communication
670 originating from outside this state. The term "out-of-state
671 consumer debt collector" does not include a person who solicits
672 ~~and soliciting~~ consumer debt accounts for collection from
673 creditors who have a business presence in this state. ~~For~~
674 ~~purposes of this subsection, a creditor has a business presence~~
675 ~~in this state if either the creditor or an affiliate or~~
676 ~~subsidiary of the creditor has an office in this state.~~

677 (10) "Credit grantor" means any person who offers or
678 extends credit creating a debt or to whom a debt is owed, but
679 such term does not include any person to the extent that person
680 receives an assignment or transfer of a debt in default solely
681 for the purpose of facilitating collection of such debt for
682 another.

683 (11) "Federal Trade Commission Act" means the federal
684 legislation regulating unfair or deceptive practices or acts, as
685 set forth in 15 U.S.C. ss. 41 et seq.

686 (12) "Principal of a registrant or applicant" means any
687 owner of the applicant or registrant if a partnership or sole
688 proprietorship, the corporate officers, the corporate directors
689 other than directors of a not-for-profit corporation organized

HB 1133

2005
CS

690 under chapter 617, or the Florida resident agent if a
 691 corporation is the applicant or registrant.

692 Section 7. Section 559.552, Florida Statutes, is amended
 693 to read:

694 559.552 Relationship of state and federal law.--

695 (1) Any violation of the federal Fair Debt Collection
 696 Practices Act constitutes a prohibited practice under s. 559.72.
 697 This subsection shall not be construed to create any additional
 698 civil cause of action as provided under s. 559.77(2).

699 (2) Nothing in This part ~~does not~~ shall be construed to
 700 limit or restrict the continued applicability of the federal
 701 Fair Debt Collection Practices Act to consumer collection
 702 practices in this state. This part is in addition to the
 703 requirements and regulations of the federal act. In construing
 704 this part, due consideration and great weight shall be given to
 705 interpretations of the Federal Trade Commission Act and the Fair
 706 Debt Collection Practices Act by the Federal Trade Commission.
 707 In the event of any inconsistency between any provision of this
 708 part and any provision of the federal act, the provision ~~that~~
 709 ~~which~~ is more protective of the consumer or debtor shall prevail
 710 unless the more protective interpretation conflicts with the
 711 case law opinions of the state and federal courts of this state
 712 or the opinions of the Eleventh Circuit Court of Appeals.

713 Section 8. Section 559.553, Florida Statutes, is amended
 714 to read:

HB 1133

2005
CS

715 559.553 ~~Registration of consumer collection agencies~~
716 ~~required~~; Exemptions.--The registration requirements of s.
717 559.555

718 ~~(1) After January 1, 1994, no person shall engage in~~
719 ~~business in this state as a consumer collection agency or~~
720 ~~continue to do business in this state as a consumer collection~~
721 ~~agency without first registering in accordance with this part,~~
722 ~~and thereafter maintaining a valid registration.~~

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

726 ~~(3) A prospective registrant shall be entitled to be~~
727 ~~registered when registration information is complete on its face~~
728 ~~and the applicable registration fee has been paid; however, the~~
729 ~~office may reject a registration submitted by a prospective~~
730 ~~registrant if the registrant or any principal of the registrant~~
731 ~~previously has held any professional license or state~~
732 ~~registration which was the subject of any suspension or~~
733 ~~revocation which has not been explained by the prospective~~
734 ~~registrant to the satisfaction of the office either in the~~
735 ~~registration information submitted initially or upon the~~
736 ~~subsequent written request of the office. In the event that an~~
737 ~~attempted registration is rejected by the office the prospective~~
738 ~~registrant shall be informed of the basis for rejection.~~

739 ~~(4) This section shall not apply to:~~

740 ~~(1)(a) A Any credit grantor original creditor.~~

HB 1133

2005
CS

741 (2)(b) A ~~Any~~ member of The Florida Bar, unless the person
 742 is primarily engaged in the collection of consumer debts.
 743 "Primarily engaged in the collection of consumer debts" means
 744 that more than one-half of the person's income arises from the
 745 business of soliciting consumer claims for collection or
 746 collecting consumer claims.

747 (3)(e) A ~~Any~~ financial institution authorized to do
 748 business in this state or ~~and~~ any wholly owned subsidiary or an
 749 ~~and~~ affiliate thereof.

750 (4)(d) A ~~Any~~ licensed real estate broker.

751 (5)(e) An ~~Any~~ insurance company authorized to do business
 752 in this state.

753 (6)(f) A ~~Any~~ consumer finance company or ~~and~~ any wholly
 754 owned subsidiary or an ~~and~~ affiliate thereof.

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

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

759 (9)(i) An ~~Any~~ FDIC-insured institution or subsidiary or
 760 affiliate thereof.

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

766 Section 9. Section 559.555, Florida Statutes, is amended
 767 to read:

768 (Substantial rewording of section. See
 769 s. 559.555, Florida Statutes, for current text.)
 770 559.555 Registration of consumer collection agencies;
 771 procedure.--

772 (1) A person may not engage in business in this state as a
 773 consumer collection agency, as defined in this part, or continue
 774 to do business in this state as a consumer collection agency
 775 unless the person is registered with the office according to
 776 this part and thereafter maintains the registration.

777 (2) A registration is not valid for any consumer
 778 collection agency transacting business at any place other than
 779 that designated in the registration unless the office is first
 780 notified in advance of any change of location.

781 (3) A person who applies for registration as a consumer
 782 collection agency in compliance with this part must do so on
 783 forms adopted by the commission and furnished by the office. The
 784 commission may establish by rule procedures for depositing fees
 785 and filing documents by electronic means provided such
 786 procedures provide the office with the information required by
 787 this section. The commission or office may require each
 788 applicant for a consumer collection agency registration to
 789 provide:

790 (a) A nonrefundable application fee in the amount of \$900.
 791 All amounts collected shall be deposited to the credit of the
 792 Regulatory Trust Fund of the office.

793 (b) The name of the applicant, any other names under which
 794 the applicant conducts business, and the address of the

HB 1133

2005
CS

795 applicant's principal place of business and each office in this
796 state.

797 (c) The applicant's form and place of organization and, if
798 the applicant is a corporation, a copy of the articles of
799 incorporation and amendments to such articles, if a partnership,
800 a copy of the partnership agreement, or, if limited liability
801 company, a copy of the articles of organization.

802 (d) Documents demonstrating that the bonding requirements
803 specified in s. 559.556 have been satisfied.

804 (e) Information and documentation necessary to make a
805 determination of the applicant's eligibility for registration.

806 (4) The applicant shall also provide information as the
807 office may require about any partner, officer, or director of
808 the applicant, any person having the same or substantially
809 similar status or performing substantially similar functions, or
810 any person directly or indirectly controlling the applicant. For
811 purposes of this subsection, the term "directly or indirectly
812 controlling the applicant" means possessing the power to direct
813 or to cause the direction of the management or policies of a
814 company, whether through ownership of stock or securities, by
815 contract, or otherwise. Any individual or company that directly
816 or indirectly has the right to vote 25 percent or more of the
817 voting stock or securities of a company or is entitled to 25
818 percent or more of its profits is presumed to control that
819 company. The office may require information about any such
820 applicant or person, including:

HB 1133

2005
CS

821 (a) His or her full name, current address, current
822 telephone number, date of birth, social security number, or
823 federal identification number of any corporate owner.

824 (b) His or her previous 10-year educational or employment
825 history.

826 (c) Any adverse decision, finding, injunction, suspension,
827 prohibition, revocation, denial, or judgment by any court of
828 competent jurisdiction or an administrative order by an
829 administrative law judge, by any state or federal agency, or by
830 any business, professional, or occupational association
831 involving a violation of any law, rule, or regulation relating
832 to business or professional licensing.

833 (d) His or her commission of any acts which would be
834 grounds for denial of an application under subsection (10).

835 (5) An initial application is deemed received for purposes
836 of s. 120.60 upon receipt of the completed application form
837 prescribed by commission rule, the nonrefundable application fee
838 of \$900, and any other fee prescribed by law.

839 (6) Upon the filing of an application for registration and
840 payment of all applicable fees, the office shall investigate the
841 applicant. If the office determines that registration should be
842 granted, it shall register the applicant for a period not to
843 exceed 1 year.

844 (7) The registration of each consumer collection agency
845 shall expire on December 31 of the year in which the
846 registration became effective unless the registrant has renewed
847 its registration on or before that date. A registration may be

HB 1133

2005
CS

848 renewed as the commission may require by rule, together with
849 payment of the \$450 nonrefundable renewal fee and the payment of
850 any amount lawfully due and owing to the office pursuant to any
851 order of the office or pursuant to any agreement with the
852 office. A consumer collection agency that has not renewed its
853 registration by the time the registration period expires may
854 request reactivation of its registration. The registrant must
855 file its request with the office on or before January 31 of the
856 year following the year of expiration. The request must contain
857 any information the office requires, together with the
858 registration fee required in this section and a nonrefundable
859 reactivation fee in the amount of \$250. Any reactivation of
860 registration granted by the office during the month of January
861 is deemed effective retroactive to January 1 of that year. Any
862 registrant that engages in business as a consumer collection
863 agency after its registration has expired violates subsection
864 (1), punishable as provided by ss. 559.785(1) and 559.730(6).

865 (8) If the information contained in any application or any
866 amendment to the application has changed, the registrant shall
867 file an amendment on the forms prescribed by the commission
868 correcting such information within 30 days after the change.

869 (9) A registration under this part is not transferable or
870 assignable unless accomplished pursuant to this subsection.

871 (a) Changes in registration occasioned by changes in
872 personnel of a partnership or in the principals, copartners,
873 officers, or directors of any registrant or by changes of any
874 material fact shall be reported by written amendment in such

HB 1133

2005
CS

875 form and at such time as the commission may specify by rule. In
 876 any case in which a person or a group of persons, directly or
 877 indirectly or acting by or through one or more persons, proposes
 878 to purchase or acquire a controlling interest in a registrant,
 879 such person or group shall submit an initial application for
 880 registration as a consumer collection agency prior to such
 881 purchase or acquisition at such time and in such form as the
 882 commission may prescribe by rule.

883 (b) The commission shall adopt rules providing for waiver
 884 of the application required by this subsection where control of
 885 a registrant is to be acquired by another registrant under this
 886 chapter or where the application is otherwise unnecessary in the
 887 public interest.

888 (10) The office may deny registration if the applicant,
 889 any principal of the applicant, or any person having control of
 890 the applicant:

891 (a) Has committed any violation of s. 559.72;

892 (b) Is the subject of a pending criminal prosecution or
 893 governmental enforcement action, in any jurisdiction, until the
 894 conclusion of such criminal prosecution or enforcement action;

895 (c) Is currently subject to a pending enforcement action
 896 by any federal authority for violations of the Fair Debt
 897 Collection Practices Act or the Federal Trade Commission Act;

898 (d) Has been found guilty of, regardless of adjudication,
 899 or has entered a plea of nolo contendere or guilty to, any
 900 offense involving fraud, dishonest dealing, or moral turpitude;

901 (e) Has been found guilty of, regardless of adjudication,
 902 or has entered a plea of nolo contendere or guilty to, any
 903 felony;

904 (f) Has had entered against him or her, or any business
 905 for which he or she was directly or indirectly a controlling
 906 person in the business or controlled the business, an
 907 injunction, a temporary restraining order, or a final judgment
 908 or order, including a stipulated judgment or order, an assurance
 909 of voluntary compliance, or any similar document, in any civil
 910 or administrative action involving racketeering, fraud, theft,
 911 embezzlement, fraudulent conversion, or misappropriation of
 912 property or the use of any untrue, deceptive, or misleading
 913 representation in an attempt to sell or dispose of real or
 914 personal property or the use of any unfair, unlawful, or
 915 deceptive trade practice, whether or not there is any litigation
 916 pending against the applicant;

917 (g) Is subject to or was directly or indirectly a
 918 controlling person in the business, or controlled the business,
 919 with any company that is, or ever has been, subject to any
 920 injunction, temporary restraining order, including a stipulated
 921 judgment or order, an assurance of voluntary compliance or any
 922 similar document, or any restrictive court order relating to
 923 business activity as the result of any action brought by a
 924 governmental agency, including any action affecting any license
 925 to do business or practice an occupation or trade;

926 (h) Falsified or willfully omitted any material
 927 information asked for in any application, document, or record

HB 1133

2005
CS

928 required to be submitted under this part or the rules of the
929 commission;

930 (i) Made a material false statement of fact in an
931 application for registration or in response to any request or
932 investigation by the office, the Department of Legal Affairs, or
933 the state attorney; or

934 (j) Has been the subject of any adverse decision, finding,
935 injunction, suspension, prohibition, revocation, denial, or
936 judgment by any court of competent jurisdiction or an
937 administrative order by an administrative law judge, by any
938 state or federal agency, or by any business, professional, or
939 occupational association involving a violation of any law, rule,
940 or regulation relating to business or professional licensing.

941 Section 10. Section 559.556, Florida Statutes, is created
942 to read:

943 559.556 Surety bond.--

944 (1) Before the office may issue a registration, the
945 applicant must provide to the office a corporate surety bond
946 issued by a bonding company or insurance company authorized to
947 do business in this state.

948 (2) The corporate surety bond shall be in the amount of
949 \$25,000, paid for and issued for the benefit of any credit
950 grantor against the registrant to secure the faithful
951 performance of the obligations of the registrant with respect to
952 the receipt, handling, and payment of funds collected by the
953 registrant.

HB 1133

2005
CS

954 (3) If multiple claims are filed against the surety on any
 955 bond in excess of the amount of the bond, the surety may pay the
 956 full amount of the bond to the office and is not further liable
 957 under the bond. The office shall hold the funds for distribution
 958 to claimants and pay to each claimant the pro rata share of each
 959 valid claim made against the funds within 6 months after the
 960 date of the filing of the first claim against the surety.

961 (4) A corporate surety bond filed with the office for
 962 purposes of compliance with this section may not be canceled by
 963 the registrant or the corporate surety except upon written
 964 notice to the office by registered or certified mail with return
 965 receipt requested. A cancellation shall not take effect less
 966 than 30 days after receipt by the office of such written notice.

967 (5) The corporate surety shall, within 10 days after the
 968 surety pays any claim to a claimant, give written notice to the
 969 office by registered or certified mail of such payment with
 970 details sufficient to identify the claimant and the claim or
 971 judgment so paid.

972 (6) Whenever the principal sum of such bond is reduced by
 973 one or more recoveries or payments, the registrant shall furnish
 974 a new or additional bond so that the total or aggregate
 975 principal sum of such bonds equals the sum required by this
 976 section. Alternatively, a registrant may furnish an endorsement
 977 executed by the corporate surety reinstating the bond to the
 978 required principal sum.

979 Section 11. Section 559.72, Florida Statutes, is amended
 980 to read:

HB 1133

2005
CS

981 559.72 Prohibited practices generally.--

982 (1) In collecting consumer debts, a consumer collection
983 agency may not ~~no person shall~~:

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

986 (b)(2) Use or threaten force, ~~or violence~~, or any other
987 means to harm the physical person, property, or reputation of
988 any person;

989 (c)(3) Tell a debtor who disputes a consumer debt that she
990 or he or any person employing her or him will disclose to
991 another, orally or in writing, directly or indirectly,
992 information affecting the debtor's reputation for credit
993 worthiness without also informing the debtor that the existence
994 of the dispute will also be disclosed as required by paragraph
995 (f) subsection (6);

996 (d)(4) Communicate or threaten to communicate with a
997 debtor's employer prior to obtaining final judgment against the
998 debtor, unless the debtor gives her or his permission in writing
999 to contact her or his employer or acknowledges in writing the
1000 existence of the debt after the debt has been placed for
1001 collection, but this shall not prohibit a person from telling
1002 the debtor that her or his employer will be contacted if a final
1003 judgment is obtained;

1004 (e)(5) Disclose to a person other than the debtor or her
1005 or his family information affecting the debtor's reputation,
1006 whether or not for credit worthiness, with knowledge or reason
1007 to know that the other person does not have a legitimate

HB 1133

2005
CS

1008 business need for the information or that the information is
1009 false;

1010 (f)~~(6)~~ Disclose information concerning the existence of a
1011 debt known to be reasonably disputed by the debtor without
1012 disclosing that fact. If a disclosure is made prior to such
1013 reasonable dispute having been asserted and written notice is
1014 received from the debtor that any part of the debt is disputed
1015 and if such dispute is reasonable, the person who made the
1016 original disclosure shall reveal upon the request of the debtor
1017 within 30 days the details of the dispute to each person to whom
1018 disclosure of the debt without notice of the dispute was made
1019 within the preceding 90 days;

1020 (g)~~(7)~~ Willfully communicate with the debtor or any member
1021 of her or his family with such frequency as can reasonably be
1022 expected to harass the debtor or her or his family, or willfully
1023 engage in other conduct which can reasonably be expected to
1024 abuse or harass the debtor or any member of her or his family;

1025 (h)~~(8)~~ Use profane, obscene, vulgar, or willfully abusive
1026 language in communicating with the debtor or any member of her
1027 or his family;

1028 (i)~~(9)~~ Claim, attempt, or threaten to enforce a debt when
1029 such person knows that the debt is not legitimate or assert the
1030 existence of some other legal right when such person knows that
1031 the right does not exist;

1032 (j)~~(10)~~ Use a communication which simulates in any manner
1033 legal or judicial process or which gives the appearance of being

HB 1133

2005
CS

1034 authorized, issued or approved by a government, governmental
1035 agency, or attorney at law, when it is not;

1036 ~~(k)(11)~~ Communicate with a debtor under the guise of an
1037 attorney by using the stationery of an attorney or forms or
1038 instruments which only attorneys are authorized to prepare;

1039 ~~(l)(12)~~ Orally communicate with a debtor in such a manner
1040 as to give the false impression or appearance that such person
1041 is or is associated with an attorney;

1042 ~~(m)(13)~~ Advertise or threaten to advertise for sale any
1043 debt as a means to enforce payment except under court order or
1044 when acting as an assignee for the benefit of a creditor;

1045 ~~(n)(14)~~ Publish or post, threaten to publish or post, or
1046 cause to be published or posted before the general public
1047 individual names or any list of names of debtors, commonly known
1048 as a deadbeat list, for the purpose of enforcing or attempting
1049 to enforce collection of consumer debts;

1050 ~~(o)(15)~~ Refuse to provide adequate identification of
1051 herself or himself or her or his employer or other entity whom
1052 she or he represents when requested to do so by a debtor from
1053 whom she or he is collecting or attempting to collect a consumer
1054 debt;

1055 ~~(p)(16)~~ Mail any communication to a debtor in an envelope
1056 or postcard with words typed, written, or printed on the outside
1057 of the envelope or postcard indicating that the purpose of the
1058 communication is to collect a debt or is otherwise calculated to
1059 embarrass the debtor. An example of this would be an envelope
1060 addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe";

HB 1133

2005
CS

1061 ~~(q)(17)~~ Communicate with the debtor between the hours of 9
 1062 p.m. and 8 a.m. in the debtor's time zone, at any unusual time
 1063 or place, or at a time or place that is known or should be known
 1064 to be inconvenient for the debtor without the prior consent of
 1065 the debtor;

1066 ~~(r)(18)~~ Communicate with a debtor if the person knows that
 1067 the debtor is represented by an attorney with respect to such
 1068 debt and has knowledge of, or can readily ascertain, such
 1069 attorney's name and address, unless the debtor's attorney fails
 1070 to respond within a reasonable period of time to a communication
 1071 from the person, unless the debtor's attorney consents to a
 1072 direct communication with the debtor, or unless the debtor
 1073 initiates the communication; or

1074 ~~(s)(19)~~ Cause charges to be made to any debtor for
 1075 communications by concealment of the true purpose of the
 1076 communication, including collect telephone calls and telegram
 1077 fees.

1078 (2) Any debt collector communicating with any person other
 1079 than the consumer for the purpose of acquiring location
 1080 information about the consumer:

1081 (a) Shall identify himself or herself, state that he or
 1082 she is confirming or correcting location information concerning
 1083 the consumer, and, only if expressly requested, identify his or
 1084 her employer.

1085 (b) May not:

1086 1. State that such consumer owes a debt;

HB 1133

2005
CS

1087 2. Communicate with any such person more than once unless
1088 requested to do so by such person or unless the debt collector
1089 reasonably believes that the earlier response of such person is
1090 erroneous or incomplete and that such person now has correct or
1091 complete location information; or

1092 3. Communicate by postcard.

1093 (3) Without prior consent of the consumer given directly
1094 to the debt collector or express permission of a court of
1095 competent jurisdiction, a debt collector may not communicate
1096 with a consumer in connection with the collection of any debt at
1097 the consumer's place of employment if the debt collector knows
1098 or has reason to know that the consumer's employer prohibits the
1099 consumer from receiving such communication.

1100 (4) Except as provided in subsection (2), without the
1101 prior consent of the consumer given directly to the debt
1102 collector, the express permission of a court of competent
1103 jurisdiction, or as reasonably necessary to effectuate a
1104 postjudgment remedy, a debt collector may not communicate, in
1105 connection with the collection of any debt, with any person
1106 other than a consumer, the consumer's attorney, a consumer
1107 reporting agency if otherwise permitted by law, the creditor,
1108 the creditor's attorney, or the debt collector's attorney.

1109 (5) If a consumer notifies a debt collector in writing
1110 that the consumer refuses to pay a debt or that the consumer
1111 wishes the debt collector to cease further communication with
1112 the consumer, the debt collector shall not communicate further
1113 with the consumer with respect to such debt, except to:

HB 1133

2005
CS

1114 (a) Advise the consumer that the debt collector's further
 1115 efforts are being terminated;

1116 (b) Notify the consumer that the debt collector or
 1117 creditor may invoke specified remedies which are ordinarily
 1118 invoked by such debt collector or creditor; or

1119 (c) Where applicable, notify the consumer that the debt
 1120 collector or creditor intends to invoke a specified remedy.

1121
 1122 If such notice from the consumer is made by mail, notification
 1123 shall be complete upon receipt. For the purpose of this
 1124 subsection, the term "consumer" includes the consumer's spouse,
 1125 parent if the consumer is a minor, guardian, executor, or
 1126 administrator.

1127 (6) A debt collector may not use any false, deceptive, or
 1128 misleading representation or means in connection with the
 1129 collection of any debt. Without limiting the general application
 1130 of such prohibition, the following conduct is a violation of
 1131 this subsection:

1132 (a) The false representation of:
 1133 1. The character, amount, or legal status of any debt; or
 1134 2. Any services rendered or compensation which may be
 1135 lawfully received by any debt collector for the collection of a
 1136 debt.

1137 (b) The representation or implication that nonpayment of
 1138 any debt will result in the arrest or imprisonment of any person
 1139 or the seizure, garnishment, attachment, or sale of any property

HB 1133

2005
CS

1140 or wages of any person unless such action is lawful and the debt
 1141 collector or creditor intends to take such action.

1142 (c) The false representation or implication that a sale,
 1143 referral, or other transfer of any interest in a debt shall
 1144 cause the consumer to:

- 1145 1. Lose any claim or defense to payment of the debt; or
- 1146 2. Become subject to any practice prohibited by this
 1147 subsection.

1148 (d) The false representation or implication that the
 1149 consumer committed any crime or other conduct in order to
 1150 disgrace the consumer.

1151 (e) The use of any false representation or deceptive means
 1152 to collect or attempt to collect any debt or to obtain
 1153 information concerning a consumer.

1154 (f) The failure to disclose in the initial communication
 1155 that the debt collector is attempting to collect a debt and that
 1156 any information obtained will be used for that purpose, and the
 1157 failure to disclose in subsequent communications that the
 1158 communication is from a debt collector, except this paragraph
 1159 does not apply to a formal pleading made in connection with a
 1160 legal action.

1161 (g) The false representation or implication that accounts
 1162 have been turned over to innocent purchasers for value.

1163 (h) The use of any business, company, or organization name
 1164 other than the true name of the debt collector's business,
 1165 company, or organization.

HB 1133

2005
CS

1166 (i) The false representation or implication that documents
 1167 are not legal process forms or do not require action by the
 1168 consumer.

1169 (j) The false representation or implication that a debt
 1170 collector operates or is employed by a consumer reporting
 1171 agency.

1172 (7) A debt collector may not use unfair or unconscionable
 1173 means to collect or attempt to collect any debt. Without
 1174 limiting the general application of such prohibition, the
 1175 following conduct is a violation of this section:

1176 (a) Collecting any amount, including any interest, fee,
 1177 charge, or expense incidental to the principal obligation,
 1178 unless such amount is expressly authorized by the agreement
 1179 creating the debt or permitted by law.

1180 (b) The acceptance by a debt collector from any person of
 1181 a check or other payment instrument postdated by more than 5
 1182 days unless such person is notified in writing of the debt
 1183 collector's intent to deposit such check or instrument not more
 1184 than 10 nor less than 3 business days prior to such deposit.

1185 (c) The solicitation by a debt collector of any postdated
 1186 check or postdated payment instrument for the purpose of
 1187 threatening or instituting criminal prosecution.

1188 (d) Depositing or threatening to deposit any postdated
 1189 check or other postdated payment instrument prior to the date on
 1190 such check or instrument.

1191 (e) Taking or threatening to take any nonjudicial action
 1192 to effect dispossession or disablement of property if:

HB 1133

2005
CS

- 1193 1. There is no present right to possession of the property
 1194 claimed as collateral through an enforceable security interest;
 1195 2. There is no present intention to take possession of the
 1196 property; or
 1197 3. The property is exempt by law from such dispossession
 1198 or disablement.
 1199 (f) Communicating with a consumer regarding a debt by post
 1200 card.
 1201 (8) Within 5 days after the initial communication with a
 1202 consumer in connection with the collection of any debt, a debt
 1203 collector shall, unless the following information is contained
 1204 in the initial communication or the consumer has paid the debt,
 1205 send the consumer a written notice containing:
 1206 (a) The amount of the debt.
 1207 (b) The name of the creditor to whom the debt is owed.
 1208 (c) A statement that unless the consumer, within 30 days
 1209 after receipt of the notice, disputes the validity of the debt,
 1210 or any portion thereof, the debt will be assumed to be valid by
 1211 the debt collector.
 1212 (d) A statement that if the consumer notifies the debt
 1213 collector in writing within the 30-day period that the debt, or
 1214 any portion thereof, is disputed, the debt collector will obtain
 1215 verification of the debt or a copy of the judgment against the
 1216 consumer and a copy of such verification or judgment will be
 1217 mailed to the consumer by the debt collector.
 1218 (e) A statement that, upon the consumer's written request
 1219 within the 30-day period, the debt collector will provide the

HB 1133

2005
CS

1220 consumer with the name and address of the original creditor, if
 1221 different from the current creditor.

1222 (9) If the consumer notifies the debt collector in writing
 1223 within the 30-day period described in subsection (9) that the
 1224 debt, or any portion of the debt, is disputed, or that the
 1225 consumer requests the name and address of the original creditor,
 1226 the debt collector shall cease collection of the debt, or any
 1227 disputed portion thereof, until the debt collector obtains
 1228 verification of the debt or any copy of a judgment, or the name
 1229 and address of the original creditor, and a copy of such
 1230 verification or judgment, or name and address of the original
 1231 creditor, is mailed to the consumer by the debt collector.

1232 (10) The failure of a consumer to dispute the validity of
 1233 a debt under this section may not be construed by any court as
 1234 an admission of liability by the consumer.

1235 (11) If any consumer owes multiple debts and makes any
 1236 single payment to any debt collector with respect to such debts,
 1237 such debt collector may not apply such payment to any debt which
 1238 is disputed by the consumer and, where applicable, shall apply
 1239 such payment in accordance with the consumer's directions.

1240 (12) Any debt collector who brings any legal action on a
 1241 debt against any consumer shall:

1242 (a) In the case of an action to enforce an interest in
 1243 real property securing the consumer's obligation, bring such
 1244 action only in a judicial district or similar legal entity in
 1245 which such real property is located; or

HB 1133

2005
CS

1246 (b) In the case of an action not described in paragraph
 1247 (a), bring such action only in the judicial district or similar
 1248 legal entity:

1249 1. In which such consumer signed the contract sued upon;
 1250 or

1251 2. In which such consumer resides at the commencement of
 1252 the action.

1253 (c) Nothing in this subsection shall be construed to
 1254 authorize the bringing of legal actions by debt collectors.

1255 (13) It is unlawful to design, compile, and furnish any
 1256 form knowing such form would be used to create the false belief
 1257 in a consumer that a person other than the creditor of such
 1258 consumer is participating in the collection of or in an attempt
 1259 to collect a debt such consumer allegedly owes such creditor,
 1260 when in fact such person is not participating.

1261 (14) Nothing in this section shall be construed to create
 1262 a new civil cause of action under subsections (2)-(13).

1263 Section 12. Section 559.725, Florida Statutes, is amended
 1264 to read:

1265 (Substantial rewording of section. See
 1266 s. 559.725, Florida Statutes, for current text.)

1267 559.725 Consumer complaints.--

1268 (1) Any person having reason to believe that this part has
 1269 been violated may file a written complaint with the office or
 1270 the Division of Consumer Services of the Department of Financial
 1271 Services setting forth the details of the alleged violation.

HB 1133

2005
CS

1272 (2) Any government office or agency receiving a complaint
 1273 under this section shall advise any other government office or
 1274 agency with apparent jurisdiction, including the office, the
 1275 appropriate state attorney, or the Attorney General in the case
 1276 of an out-of-state consumer debt collector, of any determination
 1277 by that agency of a violation, or possible violation, of the
 1278 requirements of this part by any consumer collection agency,
 1279 whether or not registered or exempt from registration as
 1280 required by this part.

1281 Section 13. Sections 559.726, 559.7262, 559.7263,
 1282 559.7264, and 559.7265, Florida Statutes, are created to read:

1283 559.726 Powers and duties of the Office of Financial
 1284 Regulation.--

1285 (1) Compliance with this part shall be enforced by the
 1286 office, except when enforcement is specifically assigned to
 1287 another agency.

1288 (2) The office may conduct an investigation of any person,
 1289 within or outside this state, which the office believes is
 1290 necessary in order to determine whether a person has violated
 1291 this chapter or the rules adopted by the commission. The office
 1292 may commence any such investigation when the office receives
 1293 information from a complaint, the public media, an informant, or
 1294 other source that informs the office that a violation of this
 1295 chapter has occurred or may occur.

1296 (3) The commission may adopt rules under ss. 120.536(1)
 1297 and 120.54 to implement and administer this part.

1298 (4) The commission may adopt a rule to:

HB 1133

2005
CS

1299 (a) Require electronic submission of any form, document,
 1300 or fee required by this part, provided the rule reasonably
 1301 accommodates a person with a technological or financial
 1302 hardship.

1303 (b) Set forth the criteria and procedures for obtaining an
 1304 exemption due to a technological or financial hardship.

1305 (c) Accept certification of compliance with the
 1306 requirements of this part in lieu of requiring submission of
 1307 specified documents.

1308 (5) All fees, charges, and fines collected by the office
 1309 under this part shall be deposited to the credit of the
 1310 Regulatory Trust Fund of the office.

1311 (6) The office may:

1312 (a) Issue, revoke, quash, or modify and serve subpoenas to
 1313 compel the attendance of witnesses and subpoenas duces tecum to
 1314 compel the production of all books, accounts, records, and other
 1315 documents and materials relevant to an investigation. The office
 1316 may exercise these powers even if the subject of the
 1317 investigation is exempt from registration.

1318 (b) Administer oaths and affirmations to any person.

1319 (c) Take, or cause to be taken, testimony and depositions.

1320 (7)(a) In the event of noncompliance with a subpoena or
 1321 subpoena duces tecum the office issued or caused to be issued,
 1322 the office may petition a court of competent jurisdiction in the
 1323 county in which the person subpoenaed resides or has her, his,
 1324 or its principal place of business for an order requiring the
 1325 person to appear and testify and to produce the books, accounts,

HB 1133

2005
CS

1326 records, and other documents that are specified in the subpoena
1327 duces tecum.

1328 (b) A copy of the petition shall be served upon the person
1329 subpoenaed by any person authorized by this section to serve
1330 subpoenas, who shall make and file with the court an affidavit
1331 showing the time, place, and date of service.

1332 (c) At a hearing on the petition to enforce compliance
1333 with a subpoena, the person subpoenaed, or any person whose
1334 interest will be substantially affected by the investigation or
1335 subpoena, may appear and object to the subpoena and to the
1336 granting of the petition. The court may make any order that
1337 justice requires in order to protect a party or other person and
1338 her or his personal and property rights, including, but not
1339 limited to, protection from annoyance, embarrassment,
1340 oppression, undue burden, or expense.

1341 (d) Failure to comply with an order granting, in whole or
1342 in part, a petition to enforce a subpoena is a contempt of the
1343 court.

1344 (8) Witnesses are entitled to the same fees and mileage to
1345 which they would be entitled by law for attending as witnesses
1346 in circuit court, except fees or mileage may not be allowed for
1347 testimony of a person taken at the person's principal office or
1348 residence.

1349 (9) Reasonable and necessary costs incurred by the office
1350 during an investigation may be assessed against any debt
1351 collector on the basis of actual costs incurred. Assessed
1352 expenses may include, but are not limited to, expenses for

HB 1133

2005
CS

1353 interpreters; expenses for communications; expenses for legal
 1354 representation; expenses for economic, legal, or other research;
 1355 expenses for analysis and testimony; and fees and expenses for
 1356 witnesses. The failure to reimburse the office for its
 1357 reasonable and necessary costs is a reason to deny a
 1358 registrant's application or to revoke the prior approval of an
 1359 application.

1360 559.7262 Injunction to restrain violations; receivers.--

1361 (1) The office may bring an action on behalf of the state
 1362 to enjoin any person who has violated, or who is about to
 1363 violate, this part or any rule or order of the office issued
 1364 under this part.

1365 (2) In an injunctive proceeding, the court may issue a
 1366 subpoena requiring the attendance of any witness or a subpoena
 1367 duces tecum requiring the production of any book, account,
 1368 record, or other documents and materials relevant to the pending
 1369 case.

1370 (3)(a) In addition to any procedure provided by law for
 1371 enforcing a temporary restraining order or a temporary or
 1372 permanent injunction, the court may, upon application of the
 1373 office, impound the property, assets, and business of the
 1374 registrant, including, but not limited to, the books, records,
 1375 documents, and papers of the registrant. The court may appoint a
 1376 receiver to administer the property. The receiver, when
 1377 appointed and qualified, has the powers and duties that are
 1378 conferred by the court.

HB 1133

2005
CS

1379 (b) After appointing the receiver, the court may issue an
 1380 order staying all pending suits and enjoining any further
 1381 litigation affecting the receiver's custody or possession of the
 1382 property, assets, and business, and the court, with the consent
 1383 of the chief judge of the circuit, may require that all suits be
 1384 assigned to the circuit court judge who appointed the receiver.

1385 559.7263 Cease and desist orders; refund orders.--

1386 (1) The office may issue and serve upon a person an order
 1387 to cease and desist and to take corrective action whenever the
 1388 office has reason to believe that the person is violating, has
 1389 violated, or is about to violate this part, any rule or order of
 1390 the office issued under this part, or any written agreement
 1391 between the person and the office. Procedural matters relating
 1392 to issuance and enforcement of such a cease and desist order are
 1393 governed by chapter 120.

1394 (2) The office may seek an order of restitution from a
 1395 court of competent jurisdiction for collected funds due to
 1396 creditors or any sum collected from a debtor without valid proof
 1397 of debt.

1398 559.7264 Evidence; examiner or investigator worksheets,
 1399 investigative reports, other related documents.--An official
 1400 written report, sworn complaint, worksheet, or other related
 1401 paper, or a duly certified copy thereof, compiled, prepared,
 1402 drafted, or otherwise made by the financial examiner or
 1403 investigator is admissible into evidence if the financial
 1404 examiner or investigator is available for cross examination,
 1405 authenticates the worksheet, and testifies that the report,

HB 1133

2005
CS

1406 worksheet, or related document was prepared as a result of an
 1407 investigation of the books and records of a registrant or other
 1408 person conducted under the authority of this part.

1409 559.7265 Books, accounts, and records; maintenance;
 1410 examinations by the office.--

1411 (1) Each registrant shall maintain, at its principal place
 1412 of business designated on the registration, all books, accounts,
 1413 records, and documents necessary to determine the registrant's
 1414 compliance with this part.

1415 (2) The office may authorize maintenance of records at a
 1416 location other than a principal place of business. The office
 1417 may require books, accounts, and records to be produced and
 1418 available at a reasonable and convenient location in this state.

1419 (3) All books, accounts, records, documents, and receipts
 1420 for payments to a registrant by a debtor, and payments made to a
 1421 creditor by a registrant, shall be preserved and kept available
 1422 for investigation by the department for 3 years after the date
 1423 of original entry. The commission shall adopt requirements by
 1424 rule for maintaining the books, accounts, records, and documents
 1425 retained by the registrant and for destroying the records.

1426 (4) The commission shall designate by rule the minimum
 1427 information that must be contained in the registrant's books,
 1428 accounts, records, and documents of a registrant to enable the
 1429 office to determine a registrant's compliance with this part.

1430 Section 14. Section 559.730, Florida Statutes, is amended
 1431 to read:

1432 (Substantial rewording of section. See

HB 1133

2005
CS

1433 s. 559.730, Florida Statutes, for current text.)
1434 559.730 Administrative remedies.--
1435 (1) The office may revoke or suspend the registration of
1436 any registrant under this part who:
1437 (a) Has been found guilty of, regardless of adjudication,
1438 or has entered a plea of nolo contendere or guilty to, any crime
1439 involving fraud, dishonest dealing, or moral turpitude;
1440 (b) Has had a final judgment entered against the person in
1441 a civil action upon the grounds of fraud, embezzlement,
1442 misrepresentation, or deceit;
1443 (c) Has had any business, professional, or occupational
1444 license or registration suspended, revoked, or otherwise acted
1445 against in any jurisdiction;
1446 (d) Fails to maintain the surety bond required pursuant to
1447 s. 559.556;
1448 (e) Fails to maintain books and records as required by s.
1449 559.7265;
1450 (f) Violates any provision of this part, any rule or order
1451 adopted pursuant to this part, or any written agreement entered
1452 into with the office;
1453 (g) Paid for a registration with a check or electronic
1454 transmission of funds which failed to clear the registrant's
1455 financial institution;
1456 (h) Falsified or willfully omitted any material
1457 information asked for in any application, document, or record
1458 required to be submitted under this part or the rules of the
1459 commission;

Page 55 of 62

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1133-01-c1

HB 1133

2005
CS

1460 (i) Made a material false statement of fact in an
1461 application for registration or in response to any request or
1462 investigation by the office; or

1463 (j) Employs a person, who directly or indirectly controls
1464 the applicant as defined in s. 559.555(4), who is subject to an
1465 action, or commits an act, contemplated by paragraph (a),
1466 paragraph (b), paragraph (c), paragraph (f), paragraph (h), or
1467 paragraph (i).

1468 (2) A registrant may request termination of its
1469 registration by delivering written notice of its proposed
1470 termination to the office. However, the delivery of the
1471 termination notice does not affect any civil or criminal
1472 liability of the registrant or the authority of the office to
1473 enforce this part.

1474 (3) The office may deny a request to terminate a
1475 registration or to withdraw an application for registration if
1476 the office believes that the registrant has committed an act
1477 that would be grounds for denial, suspension, or revocation
1478 under this part.

1479 (4) Final action by the office to revoke or suspend the
1480 registration of a registrant is subject to review according to
1481 chapter 120 in the same manner as revocation of a license.

1482 (5) The office may impose an administrative fine for a
1483 violation of this section or s. 559.555, s. 559.556, 559.72, or
1484 s. 559.7265 against an offending registrant or person as an
1485 administrative sanction as follows:

HB 1133

2005
CS

1486 (a) If the nonwillful violation constitutes a bona fide
 1487 error pursuant to s. 559.77(3), the office may issue a written
 1488 reprimand to the offending registrant and may require the
 1489 registrant implement additional policies and procedures to avoid
 1490 any future violations. For purposes of this section only, the
 1491 bona fide error defense shall only apply to a violation of
 1492 559.72(1)(e),(f),(p),(q), or (r), (3), (4), (5), (7)(f), (8)(b),
 1493 or (9). This subsection shall not apply if the same nonwillful
 1494 violation subject to the written reprimand recurs within 2 years
 1495 after the issuance of the written reprimand.

1496 (b) If the nonwillful violation does not constitute a bona
 1497 fide error pursuant to s 559.77(3), the office may impose a fine
 1498 of up to \$1,000 per violation. In no event shall such fine
 1499 exceed the aggregate amount of \$10,000 for all nonwillful
 1500 violations arising out of the same action; or

1501 (c) For any willful violation, the office may impose a
 1502 fine of up to \$2,500 per violation. In no event shall such fine
 1503 exceed the aggregate amount of \$100,000 for all willful
 1504 violations arising out the same action.

1505
 1506 Final action by the office to impose an administrative fine is
 1507 subject to review in accordance with ss. 120.569 and 120.57.

1508 (6) Notwithstanding any other provision of this section,
 1509 the office may impose a fine not to exceed \$1,000 per day for
 1510 each day that a person violates the code by engaging in the
 1511 business of a consumer collection agency without being
 1512 registered.

HB 1133

2005
CS

1513 (7) Any administrative fine imposed under this part shall
 1514 be payable to the office. The office shall maintain an
 1515 appropriate record and deposit the fine into the Regulatory
 1516 Trust Fund of the office.

1517 (8) An administrative action by the office to impose
 1518 revocation, suspension, or a fine must be brought within 5 years
 1519 after the date of the last violation upon which the action is
 1520 founded.

1521 (9) The remedies under this part are in addition to
 1522 remedies otherwise available for the same conduct under state or
 1523 local law.

1524 Section 15. Section 559.735, Florida Statutes, is created
 1525 to read:

1526 559.735 Administrative guidelines.--In imposing any
 1527 administrative remedy or penalty provided for in the code, the
 1528 office shall take into account the appropriateness of the
 1529 penalty with respect to the amount of financial resources and
 1530 good faith of the person charged, the gravity of the violation,
 1531 the history of previous violations, and such other matters as
 1532 justice may require.

1533 Section 16. Subsections (1), (2), and (5) of section
 1534 559.77, Florida Statutes, are amended to read:

1535 559.77 Civil remedies.--

1536 (1) A debtor may bring a civil action against a consumer
 1537 collection agency ~~person~~ violating the provisions of s.
 1538 559.72(1) in a court of competent jurisdiction of the county in
 1539 which the alleged violator resides or has his or her principal

HB 1133

2005
CS

1540 | place of business or in the county wherein the alleged violation
1541 | occurred.

1542 | (2) Upon adverse adjudication, the defendant shall be
1543 | liable for actual damages and for additional statutory damages
1544 | of up to \$1,000, together with court costs and reasonable
1545 | attorney's fees incurred by the plaintiff. In determining the
1546 | defendant's liability for any additional statutory damages, the
1547 | court shall consider the nature of the defendant's noncompliance
1548 | with s. 559.72(1), the frequency and persistence of such
1549 | noncompliance, and the extent to which such noncompliance was
1550 | intentional. In any class action lawsuit brought under this
1551 | section, the court may award additional statutory damages of up
1552 | to \$1,000 for each named plaintiff and an aggregate award of
1553 | additional statutory damages not to exceed the lesser of
1554 | \$500,000 or 1 percent of the defendant's net worth for all
1555 | remaining class members, but in no event may this aggregate
1556 | award provide an individual class member with additional
1557 | statutory damages in excess of \$1,000. The court may, in its
1558 | discretion, award punitive damages and may provide such
1559 | equitable relief as it deems necessary or proper, including
1560 | enjoining the defendant from further violations of this part. If
1561 | the court finds that the suit fails to raise a justiciable issue
1562 | of law or fact, the plaintiff shall be liable for court costs
1563 | and reasonable attorney's fees incurred by the defendant.

1564 | Nothing in this section prohibits the defendant or plaintiff
1565 | from using the procedures under s. 768.79 or Rule 1.442 of the
1566 | Florida Rules of Civil Procedure.

HB 1133

2005
CS

1567 (5) In applying and construing this section, due
 1568 consideration and great weight shall be given to the
 1569 interpretations of the Federal Trade Commission and the federal
 1570 courts relating to the federal Fair Debt Collection Practices
 1571 Act and the Federal Trade Commission Act. If there is an
 1572 inconsistency between this part and an interpretation of the
 1573 federal acts, the provision that is more protective of the
 1574 consumer or debtor shall prevail unless the more protective
 1575 interpretation conflicts with the case law opinions of the state
 1576 and federal courts of this state or the opinions of the Eleventh
 1577 Circuit Court of Appeals.

1578 Section 17. Section 559.785, Florida Statutes, is amended
 1579 to read:

1580 559.785 Criminal penalty.--

1581 (1) It ~~is shall be~~ a felony misdemeanor of the third first
 1582 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or
 1583 s. 775.084, for any person not exempt from registering as
 1584 provided in this part to:

1585 (a) Operate or solicit business as a consumer collection
 1586 agency engage in collecting consumer debts in this state without
 1587 first registering with the office; ~~or to~~

1588 (b) Register or attempt to register by means of fraud,
 1589 misrepresentation, or concealment;

1590 (c) Engage in any consumer debt collection activity after
 1591 suspension or revocation of the registrant's registration under
 1592 s. 559.730(1); or

HB 1133

2005
CS

1593 (d) Engage in any consumer debt collection activity while
 1594 under a temporary or permanent injunction issued under s.
 1595 559.78.

1596 (2) Each of the following acts constitutes a misdemeanor
 1597 of the second degree, punishable as provided in s. 775.082 or s.
 1598 775.083:

1599 (a) Relocating a business as a consumer collection agency
 1600 or operating under any name other than that designated in the
 1601 registration, unless written notification is given to the office
 1602 and to the surety or sureties on the original bond.

1603 (b) Assigning or attempting to assign a registration under
 1604 this part.

1605 (3) The office may refer evidence concerning a violation
 1606 of this part, or of any rule or order, to any criminal
 1607 prosecutorial agency that may, with or without the reference and
 1608 in addition to any other action it might commence, bring an
 1609 action against any person to enjoin, restrain, and prevent the
 1610 commission of any prohibited act or practice.

1611 Section 18. Section 559.786, Florida Statutes, is created
 1612 to read:

1613 559.786 Annual report.--The Office of Financial Regulation
 1614 shall submit a report on January 1, 2006, and biannually
 1615 thereafter, to the President of the Senate and the Speaker of
 1616 the House of Representatives containing findings and conclusions
 1617 concerning the effectiveness of the consumer and commercial
 1618 collection practices acts in preventing fraud, abuse, and other
 1619 unlawful activity associated with the collection of commercial

HB 1133

2005
CS

1620 and consumer debts. The report shall include a summary of the
 1621 type and number of complaints received by the office or the
 1622 Division of Consumer Services of the Department of Financial
 1623 Services. The summary shall identify the nature and number of
 1624 the various kinds of complaints received. The report may further
 1625 contain legislative recommendations concerning the efficacy of
 1626 the consumer and commercial practices act.

1627 Section 19. Sections 559.547, 559.563, and 559.565,
 1628 Florida Statutes, are repealed.

1629 Section 20. For the 2005-2006 fiscal year, six positions
 1630 are authorized and the sum of \$428,588 is appropriated from the
 1631 Regulatory Trust Fund to the Office of Financial Regulation for
 1632 the purpose of enforcing this act. The six positions shall
 1633 consist of five examiners and one registration analyst.

1634 Section 21. This act shall take effect July 1, 2005.