

1 office; authorizing the office to issue
2 subpoenas and exercise other powers with
3 respect to enforcing compliance with part V of
4 ch. 559, F.S.; authorizing witness fees and
5 costs; authorizing the office to assess a
6 registrant the costs of an investigation;
7 creating s. 559.5473, F.S.; authorizing the
8 office to bring an action to enjoin a violation
9 of part V of ch. 559, F.S., or of any rule of
10 the commission; authorizing the court to issue
11 injunctions, impound property, appoint a
12 receiver, or issue additional orders; creating
13 s. 559.5474, F.S.; authorizing the Office of
14 Financial Regulation to issue cease and desist
15 orders and orders of restitution; creating s.
16 559.5475, F.S.; providing for certain
17 worksheets, reports, or other related documents
18 to be admitted into evidence; creating s.
19 559.5476, F.S.; requiring that a registrant
20 maintain certain books, accounts, and records;
21 requiring that the commission specify the
22 required records by rule; creating s. 559.5477,
23 F.S.; providing administrative remedies that
24 may be invoked by the office against a
25 registrant; specifying grounds for the
26 revocation or suspension of a registration;
27 providing for administrative fines; creating s.
28 559.5479, F.S.; providing guidelines for the
29 office in imposing administrative remedies or
30 penalties; amending s. 559.55, F.S., relating
31 to consumer collection agencies; revising

1 definitions and providing additional
2 definitions; amending s. 559.552, F.S.;
3 specifying that a violation of the federal Fair
4 Debt Collection Practices Act constitutes a
5 prohibited practice under part VI of ch. 559,
6 F.S.; amending s. 559.553, F.S.; revising
7 registration requirements under part VI of ch.
8 559, F.S.; clarifying the application of
9 certain exemptions; amending s. 559.555, F.S.;
10 providing requirements for registration as a
11 consumer collection agency; requiring the
12 Financial Services Commission to adopt rules
13 governing the electronic submission of fees and
14 documents; revising application fees; requiring
15 an applicant to provide information concerning
16 partners, officers, and persons directly or
17 indirectly controlling the applicant; requiring
18 that the Office of Financial Regulation of the
19 commission investigate the applicant; providing
20 a registration period; providing for renewal of
21 a registration; prohibiting the transfer of a
22 registration; authorizing the office to deny
23 registration under specified circumstances;
24 creating s. 559.556, F.S.; requiring that a
25 registrant obtain a corporate surety bond;
26 providing requirements for cancellation of the
27 bond; amending s. 559.72, F.S.; revising
28 standards of conduct with respect to the
29 practice of collecting consumer debts;
30 prohibiting certain communications with a
31 consumer; prohibiting false, deceptive, or

1 misleading representations; prohibiting the use
2 of unfair or unconscionable means to collect or
3 attempt to collect any debt; specifying
4 procedures for communicating with a consumer in
5 connection with the collection of a debt;
6 providing that the failure of a consumer to
7 dispute the validity of a debt is not an
8 admission of liability; providing requirements
9 with respect to any legal action by a debt
10 collector; amending s. 559.725, F.S.; revising
11 requirements for consumer complaints filed with
12 the Division of Consumer Services of the
13 Department of Financial Services; creating s.
14 559.726, F.S.; specifying the powers and duties
15 of the Office of Financial Regulation with
16 respect to the regulation of a consumer
17 collection agency; authorizing the office to
18 adopt rules; requiring fees, charges, and fines
19 to be deposited into the Regulatory Trust Fund
20 of the office; authorizing the office to issue
21 subpoenas and exercise other powers with
22 respect to enforcing compliance with part VI of
23 ch. 559, F.S.; authorizing witness fees and
24 costs; authorizing the office to assess a
25 registrant the costs of an investigation;
26 creating s. 559.7262, F.S.; authorizing the
27 office to bring an action to enjoin a violation
28 of part VI of ch. 559, F.S., or any rule of the
29 commission; authorizing the court to issue
30 injunctions, impound property, appoint a
31 receiver, or issue additional orders; creating

1 s. 559.7263, F.S.; authorizing the Office of
2 Financial Regulation to issue cease and desist
3 orders and orders of restitution; creating s.
4 559.7264, F.S.; providing for certain
5 worksheets, reports, or other related documents
6 to be admitted into evidence; creating s.
7 559.7265, F.S.; requiring that a registrant
8 maintain certain books, accounts, and records;
9 requiring that the commission specify the
10 required records by rule; amending s. 559.730,
11 F.S.; revising provisions governing the
12 administrative remedies that may be invoked by
13 the office against a registrant; specifying
14 grounds for the revocation or suspension of a
15 registration; providing for administrative
16 fines; creating s. 559.735, F.S.; providing
17 guidelines for the office in imposing
18 administrative remedies or penalties; amending
19 s. 559.77, F.S., relating to civil remedies;
20 conforming provisions to changes made by the
21 act; requiring that a conflict of law be
22 interpreted so that the consumer or debtor is
23 given the most protection; amending s. 559.785,
24 F.S.; increasing the penalties imposed for
25 operating or soliciting business as a consumer
26 collection agency without registering;
27 specifying additional acts that constitute a
28 violation of law; repealing ss. 559.547,
29 559.563, and 559.565, F.S., relating to
30 registration and enforcement actions against
31 out-of-state consumer debt collectors;

1 requiring that the Office of Financial
2 Regulation of the Financial Services Commission
3 submit a biennial report to the Legislature
4 concerning the consumer and commercial
5 collection practice acts; providing an
6 appropriation and authorizing additional
7 positions; providing an effective date.
8

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

10
11 Section 1. Section 559.544, Florida Statutes, is
12 amended to read:

13 559.544 ~~Registration required;~~ Exemptions.--

14 ~~(1) No person shall engage in business in this state~~
15 ~~as a commercial collection agency, as defined in this part, or~~
16 ~~continue to do business in this state as a commercial~~
17 ~~collection agency, without first registering in accordance~~
18 ~~with this part and thereafter maintaining such registration.~~

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

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

1 ~~(4) The office shall not accept any registration for~~
2 ~~any commercial collection agency as validly made and filed~~
3 ~~with the office under this section unless the registration~~
4 ~~information furnished to the office by the registrant is~~
5 ~~complete pursuant to s. 559.545 and facially demonstrates that~~
6 ~~such registrant is qualified to engage in business as a~~
7 ~~commercial collection agency, including specifically that~~
8 ~~neither the registrant nor any principal of the registrant has~~
9 ~~engaged in any unlawful collection practices, dishonest~~
10 ~~dealings, acts of moral turpitude, or other criminal acts that~~
11 ~~reflect an inability to engage in the commercial collection~~
12 ~~agency business. The office shall inform any person whose~~
13 ~~registration is rejected by the office of the fact of and~~
14 ~~basis for such rejection. A prospective registrant shall be~~
15 ~~entitled to be registered when her or his or its registration~~
16 ~~information is complete on its face, the applicable~~
17 ~~registration fee has been paid, and the required evidence of~~
18 ~~current bond is furnished to the office.~~

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

21 ~~(1)(a) A member of The Florida Bar, unless the such~~
22 ~~person is primarily engaged in the collection of commercial~~
23 ~~claims. "Primarily engaged in the collection of commercial~~
24 ~~claims" means that more than one-half of the person's income~~
25 ~~of such person arises from the business of soliciting~~
26 ~~commercial claims for collection or collecting commercial~~
27 ~~claims.~~

28 ~~(2)(b) A financial institution authorized to do~~
29 ~~business in this state or a and any wholly owned subsidiary or~~
30 ~~an and affiliate thereof.~~

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

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

3 ~~(5)(e)~~ A licensed consumer collection agency that
4 ~~which~~ is not primarily engaged in the collection of commercial
5 claims. "Not primarily engaged in the collection of
6 commercial claims" means that less than one-half of the
7 collection revenue of the ~~such~~ agency arises from the
8 collection of commercial claims.

9 ~~(6)(f)~~ A consumer finance company or ~~and any~~ wholly
10 owned subsidiary or ~~and~~ affiliate thereof.

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

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

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

15 ~~(10)(j)~~ An FDIC-insured institution or subsidiary or
16 affiliate thereof.

17 Section 2. Section 559.545, Florida Statutes, is
18 amended to read:

19 559.545 Registration of commercial collection
20 agencies; procedure.--

21 (1) A person may not engage in business in this state
22 as a commercial collection agency as defined in this part, or
23 continue to do business in this state as a commercial
24 collection agency, unless the person is registered with the
25 office according to this part and thereafter maintains the
26 registration.

27 (2) A registration is not valid for any commercial
28 collection agency transacting business at any place other than
29 that designated in the registration unless the office is first
30 notified in advance of any change of location.

31

1 (3) ~~A Any~~ person who applies for registration wishes
2 ~~to register~~ as a commercial collection agency in compliance
3 with this part must ~~shall~~ do so on forms adopted by the
4 commission and furnished by the office. The commission may
5 establish by rule procedures for depositing fees and filing
6 documents by electronic means if such procedures provide the
7 office with the information required by this section. The
8 commission or office may require each applicant for
9 registration as a commercial collection agency to provide Any
10 ~~renewal of registration shall be made between October 1 and~~
11 ~~December 31 of each year. In registering or renewing a~~
12 ~~registration as required by this part, each commercial~~
13 ~~collection agency shall furnish to the office a registration~~
14 ~~fee, information, and surety bond, as follows:~~

15 (a)(1) A nonrefundable application fee in the amount
16 of \$900 ~~The registrant shall pay to the office a registration~~
17 ~~fee of \$500.~~ All amounts collected shall be deposited to the
18 credit of the Regulatory Trust Fund of the office.

19 (b) The name of the applicant, any other names under
20 which the applicant conducts business, and the address of the
21 applicant's principal place of business and each office in
22 this state.

23 (c) The applicant's form and place of organization. If
24 the applicant is a corporation, a copy of the articles of
25 incorporation and amendments thereto; if the applicant is a
26 partnership, a copy of the partnership agreement; or if the
27 applicant is a limited liability company, a copy of the
28 articles of organization.

29 (d) Documents demonstrating that the bonding
30 requirements specified in s. 559.546 have been satisfied.
31

1 (e) Information and documentation necessary for the
2 office to make a determination of the applicant's eligibility
3 for registration.

4 (4) The applicant must also provide information that
5 the office requires concerning any partner, officer, or
6 director of the applicant; any person having the same or
7 substantially similar status or performing substantially
8 similar functions; or any person directly or indirectly
9 controlling the applicant. As used in this section, the term
10 "person directly or indirectly controlling the applicant"
11 means possession of the power to direct or to cause the
12 direction of the management or policies of the company,
13 whether through ownership of stock or securities, by contract,
14 or otherwise. Any individual or company that directly or
15 indirectly has the right to vote 25 percent or more of the
16 voting stock or securities of a company or that is entitled to
17 25 percent or more of its profits is presumed to control that
18 company. The office may require information about any such
19 applicant or person including:

20 (a) His or her full name, current address, current
21 telephone number, date of birth, social security number, or
22 federal identification number.

23 (b) His or her previous 10-year educational or
24 employment history.

25 (c) Any adverse decision, finding, injunction,
26 suspension, prohibition, revocation, denial, or judgment by
27 any court of competent jurisdiction or an administrative order
28 by an administrative law judge, any state or federal agency,
29 or any business, professional, or occupational association
30 involving a violation of any law, rule, or regulation relating
31 to any business or professional licensing.

1 (d) His or her commission of any acts that would be
2 grounds for denial of an application under subsection (10).

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

8 (6) Upon the filing of an application for registration
9 and payment of all applicable fees, the office shall
10 investigate the applicant. If the office determines that
11 registration should be granted, it shall register the
12 applicant for a period not to exceed 1 year.

13 (7) The registration of each commercial collection
14 agency expires on December 31 of the year in which it became
15 effective unless the registrant renews its registration on or
16 before that date. Registration may be renewed as the
17 commission requires by rule, together with payment of the \$450
18 nonrefundable renewal fee and the payment of any amount
19 lawfully due and owing to the office pursuant to any order of
20 the office or pursuant to any agreement with the office. A
21 commercial collection agency that has not renewed its
22 registration by the time the registration period expires may
23 request reactivation of its registration. The registrant must
24 file its request with the office on or before January 31 of
25 the year following the year of expiration. The request must
26 contain any information the office requires, together with the
27 registration fee required in this section, and a nonrefundable
28 reactivation fee in the amount of \$250. Any reactivation of
29 registration granted by the office during the month of January
30 is deemed effective retroactive to January 1 of that year. Any
31 registrant that engages in business as a commercial collection

1 agency after its registration has expired violates subsection
2 (1), which is punishable under ss. 559.548(1) and 559.5477(6).

3 (8) If the information contained in any application or
4 any amendment to an application has changed, the registrant
5 must file an amendment on the forms prescribed by the
6 commission correcting such information within 30 days after
7 the change.

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

10 (a) Changes in registration occasioned by changes in
11 personnel of a partnership or in the principals, copartners,
12 officers, or directors of any registrant or by changes of any
13 material fact must be reported by written amendment in such
14 form and at such time as the commission specifies by rule. In
15 any case in which a person or a group of persons, directly or
16 indirectly, or acting by or through one or more persons,
17 proposes to purchase or acquire a controlling interest in a
18 registrant, such person or group must submit an initial
19 application for registration as a commercial collection agency
20 before such purchase or acquisition and at the time and in the
21 form as the commission prescribes by rule.

22 (b) The commission shall adopt rules providing for
23 waiver of the application required by this subsection if
24 control of a registrant is to be acquired by another
25 registrant under this chapter or if the application is
26 otherwise unnecessary in the public interest.

27 (10) The office may deny registration if the
28 applicant, any principal of the applicant, or any person
29 having control of the applicant:

30 (a) Has committed a violation of s. 559.72;
31

1 (b) Is the subject of a pending criminal prosecution
2 or governmental enforcement action, in any jurisdiction, until
3 the conclusion of such criminal prosecution or enforcement
4 action;

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

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

13 (e) Has been found guilty of, regardless of
14 adjudication, or has entered a plea of nolo contendere or
15 guilty to, any felony;

16 (f) Has had entered against him or her, or any
17 business for which he or she was directly or indirectly a
18 controlling person in the business or controlled the business,
19 an injunction, a temporary restraining order, or a final
20 judgment or order, including a stipulated judgment or order,
21 an assurance of voluntary compliance, or any similar document
22 in any civil or administrative action involving racketeering,
23 fraud, theft, embezzlement, fraudulent conversion, or
24 misappropriation of property; involving the use of any untrue,
25 deceptive, or misleading representation in an attempt to sell
26 or dispose of real or personal property; or involving the use
27 of any unfair, unlawful, or deceptive trade practice, whether
28 or not there is any litigation pending against the applicant;

29 (g) Is subject to or was directly or indirectly a
30 controlling person in the business, or controlled the
31 business, with any company that is, or ever has been, subject

1 to any injunction, temporary restraining order, including a
2 stipulated judgment or order, an assurance of voluntary
3 compliance, or any similar document, or any restrictive court
4 order relating to business activity as the result of any
5 action brought by a governmental agency, including any action
6 affecting any license to do business or practice an occupation
7 or trade;

8 (h) Has falsified or willfully omitted any material
9 information asked for in any application, document, or record
10 required to be submitted under this part or the rules of the
11 commission;

12 (i) Has made a material false statement of fact in an
13 application for registration or in response to any request or
14 investigation by the office; or

15 (j) Has been the subject of any adverse decision,
16 finding, injunction, suspension, prohibition, revocation,
17 denial, or judgment by any court of competent jurisdiction or
18 an administrative order by an administrative law judge, or by
19 any state or federal agency or any business, professional, or
20 occupational association involving a violation of any law,
21 rule, or regulation relating to business or professional
22 licensing.

23 ~~(2) The registrant shall provide the following~~
24 ~~information:~~

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

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

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

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

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

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

26 ~~(g) A statement clearly identifying and explaining any~~
27 ~~occasion on which any professional license or occupational~~
28 ~~license held by the registrant, any principal of the~~
29 ~~registrant, or any business entity in which any principal of~~
30 ~~the registrant was the owner of 10 percent or more of such~~
31

1 ~~business was the subject of any suspension, revocation, or~~
2 ~~other disciplinary action.~~

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

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

17 Section 3. Section 559.546, Florida Statutes, is
18 amended to read:

19 (Substantial rewording of section. See
20 s. 559.546, F.S., for present text.)

21 559.546 Surety bond.--Before the office may issue a
22 registration, the applicant must provide to the office a
23 corporate surety bond, issued by a bonding company or
24 insurance company authorized to do business in this state.

25 (1) The corporate surety bond shall be in the amount
26 of \$50,000, paid for and issued for the benefit of any credit
27 grantor against the registrant to secure the faithful
28 performance of the obligations of the registrant with respect
29 to the receipt, handling, and payment of funds collected by
30 the registrant.

31

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

9 (3) A corporate surety bond filed with the office for
10 purposes of compliance with this section may not be cancelled
11 by the registrant or the corporate surety except upon written
12 notice to the office by registered or certified mail, return
13 receipt requested. A cancellation does not take effect less
14 than 30 days after receipt by the office of such written
15 notice.

16 (4) The corporate surety must, within 10 days after it
17 pays any claim to any claimant, give written notice to the
18 office by registered or certified mail of such payment, along
19 with details sufficient to identify the claimant and the claim
20 or judgment paid.

21 (5) Whenever the principal sum of such bond is reduced
22 by one or more recoveries or payments, the registrant must
23 furnish a new or additional bond so that the total or
24 aggregate principal sum of such bonds equals the sum required
25 by this section. Alternatively, a registrant may furnish an
26 endorsement executed by the corporate surety reinstating the
27 bond to the required principal sum of the bond.

28 Section 4. Section 559.5471, Florida Statutes, is
29 created to read:

30 559.5471 Powers and duties of the Office of Financial
31 Regulation.--

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

4 (2) The office may conduct an investigation or
5 examination of any person, within or outside this state, which
6 it believes is necessary in order to determine whether a
7 person has violated this chapter or the rules adopted by the
8 commission. The office shall provide at least 15 days' advance
9 notice of any examination or investigation of a commercial
10 collection agency. However, if the office suspects that the
11 commercial collection agency has violated any provision of
12 this part or any criminal laws of this state or of the United
13 States or is engaging in an unsafe and unsound practice, the
14 office may, at any time without advance notice, conduct an
15 examination or investigation of all affairs, activities,
16 transactions, accounts, business records, and assets of any
17 commercial collection agency for the protection of the public.

18 (3) The commission may adopt rules under ss.
19 120.536(1) and 120.54 to administer this part.

20 (4) The commission may adopt a rule to require
21 electronic submission of any form, document, or fee required
22 by this part if the rule reasonably accommodates a person
23 having a technological or financial hardship. The commission
24 may adopt a rule setting forth the criteria and procedures for
25 obtaining an exemption due to a technological or financial
26 hardship. The commission may adopt a rule to accept
27 certification of compliance with the requirements of this part
28 in lieu of requiring submission of specified documents.

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

1 (6) The office may:

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

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

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

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

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

24 (c) At a hearing on the petition to enforce compliance
25 with a subpoena, the person subpoenaed, or any person whose
26 interest will be substantially affected by the investigation,
27 examination, or subpoena, may appear and object to the
28 subpoena and to the granting of the petition. The court may
29 make any order that justice requires in order to protect a
30 party or other person and her or his personal and property
31 rights, including, but not limited to, protection from

1 annoyance, embarrassment, oppression, undue burden, or
2 expense.

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

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

11 (9) Reasonable and necessary costs incurred by the
12 office during an investigation may be assessed against any
13 debt collector on the basis of actual costs incurred. Assessed
14 expenses may include, but are not limited to, expenses for
15 interpreters; expenses for communications; expenses for legal
16 representation; expenses for economic, legal, or other
17 research or analysis and testimony; and fees and expenses for
18 witnesses. The failure to reimburse the office for its
19 reasonable and necessary costs is a reason to deny a
20 registrant's application or to revoke the prior approval of an
21 application.

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

24 559.5473 Injunction to restrain violations;
25 receivers.--

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

30 (2) In an injunctive proceeding, the court may issue a
31 subpoena requiring the attendance of any witness or a subpoena

1 duces tecum requiring the production of any book, account,
2 record, or other documents and materials relevant to the
3 pending case.

4 (3)(a) In addition to any procedure provided by law
5 for enforcing a permanent injunction, the court may, upon
6 application of the office, impound the property, assets, and
7 business of the registrant, including, but not limited to, the
8 books, records, documents, and papers of the registrant. The
9 court may appoint a receiver to administer the property. The
10 receiver, when appointed and qualified, has the powers and
11 duties that are conferred upon the receiver by the court.

12 (b) After appointing a receiver, the court may issue
13 an order staying all pending suits and enjoining any further
14 litigation affecting the receiver's custody or possession of
15 the property, assets, and business, and the court, with the
16 consent of the chief judge of the circuit, may require that
17 all suits be assigned to the circuit judge who appointed the
18 receiver.

19 Section 6. Section 559.5474, Florida Statutes, is
20 created to read:

21 559.5474 Cease and desist orders; refund orders.--

22 (1) The office may issue and serve upon a person an
23 order to cease and desist and to take corrective action
24 whenever the office has reason to believe that a person is
25 violating, has violated, or is about to violate this part, any
26 rule or order of the office issued under this part, or any
27 written agreement between the commercial collection agency and
28 the office. Procedural matters relating to the issuance and
29 enforcement of a cease and desist order are governed by
30 chapter 120.

31

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

5 Section 7. Section 559.5475, Florida Statutes, is
6 created to read:

7 559.5475 Evidence; examiner's worksheets,
8 investigative reports, other related documents.--An official
9 written report, sworn complaint, worksheet, or other related
10 paper, or a certified copy thereof, compiled, prepared,
11 drafted, or otherwise made by the financial examiner is
12 admissible into evidence if the financial examiner is
13 available for cross-examination; authenticates the worksheet;
14 and testifies that the report, worksheet, or related document
15 was prepared as a result of an examination of the books and
16 records of a registrant or other person conducted under the
17 authority of this part.

18 Section 8. Section 559.5476, Florida Statutes, is
19 created to read:

20 559.5476 Books, accounts, and records; maintenance;
21 examinations by the office.--

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

26 (2) The office may authorize maintenance of records at
27 a location other than a principal place of business. The
28 office may require books, accounts, and records to be produced
29 and available at a reasonable and convenient location in this
30 state.

31

1 (3) All books, accounts, records, documents, and
2 receipts for payments to a registrant by a debtor, and
3 payments made to a creditor by a registrant, shall be
4 preserved and kept available for examination by the office for
5 3 years after the date of original entry. The commission shall
6 adopt requirements by rule for maintaining the books,
7 accounts, records, and documents retained by the registrant
8 and for destroying the records.

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

13 Section 9. Section 559.5477, Florida Statutes, is
14 created to read:

15 559.5477 Administrative remedies.--

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

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

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

25 (c) Has had any business, professional, or
26 occupational license or registration suspended, revoked, or
27 otherwise acted against in any jurisdiction;

28 (d) Fails to maintain the surety bond required
29 pursuant to s. 559.546;

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

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

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

7 (h) Falsified or willfully omitted any material
8 information asked for in any application, document, or record
9 required to be submitted under this part or the rules of the
10 commission;

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

14 (j) Has a person who directly or indirectly controls
15 the applicant, as defined in s. 559.545(4), who is subject to
16 an action, or commits an act, contemplated by paragraph (a),
17 paragraph (b), paragraph (c), paragraph (f), paragraph (h), or
18 paragraph (i).

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

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

30 (4) Final action by the office to revoke or suspend
31 the registration of a registrant is subject to review

1 according to chapter 120 in the same manner as revocation of a
2 license.

3 (5) The office may impose an administrative fine of up
4 to \$1,000 per violation of this section, s. 559.545, s.
5 559.546, or s. 559.5476. Final action by the office to impose
6 an administrative fine is subject to review in accordance with
7 ss. 120.569 and 120.57.

8 (6) Notwithstanding any other provision of this
9 section, the office may impose a fine not to exceed \$1,000 per
10 day for each day that a person violates this part by engaging
11 in the business of a commercial collection agency without
12 being registered.

13 (7) Any administrative fine imposed under this part
14 shall be payable to the office. The office shall maintain an
15 appropriate record and deposit the fine into the Regulatory
16 Trust Fund of the office.

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

21 (9) The remedies under this part are in addition to
22 remedies otherwise available for the same conduct under state
23 or local law.

24 Section 10. Section 559.5479, Florida Statutes, is
25 created to read:

26 559.5479 Administrative guidelines.--In imposing any
27 administrative remedy or penalty provided for in this part,
28 the office shall take into account the appropriateness of the
29 penalty with respect to the size of the financial resources
30 and good faith of the person charged, the gravity of the

31

1 violation, the history of previous violations, and such other
2 matters as justice requires.

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

6 559.55 Definitions.--The following terms shall, unless
7 the context otherwise indicates, have the following meanings
8 for the purpose of this part:

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

10 (a) Any obligation or alleged obligation of a consumer
11 to pay money arising out of a transaction in which the money,
12 property, insurance, or services which are the subject of the
13 transaction are primarily for personal, family, or household
14 purposes, whether or not such obligation has been reduced to
15 judgment; ~~or-~~

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

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

28 (10) "Credit grantor" means any person who offers or
29 extends credit creating a debt or to whom a debt is owed, but
30 such term does not include any person to the extent that the
31 person receives an assignment or transfer of a debt in default

1 solely for the purpose of facilitating collection of such debt
2 for another.

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

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

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

15 559.552 Relationship of state and federal law.--

16 (1) Any violation of the federal Fair Debt Collection
17 Practices Act constitutes a prohibited practice under s.
18 559.72.

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

1 Section 13. Section 559.553, Florida Statutes, is
2 amended to read:

3 559.553 ~~Registration of consumer collection agencies~~
4 ~~required; Exemptions.--~~

5 ~~(1) After January 1, 1994, no person shall engage in~~
6 ~~business in this state as a consumer collection agency or~~
7 ~~continue to do business in this state as a consumer collection~~
8 ~~agency without first registering in accordance with this part,~~
9 ~~and thereafter maintaining a valid registration.~~

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

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

27 ~~(4) The registration requirements of s. 559.555 do~~
28 ~~This section shall not apply to:~~

29 ~~(1)(a) Any credit grantor original creditor.~~

30 ~~(2)(b) Any member of The Florida Bar unless the person~~
31 ~~is primarily engaged in the collection of consumer debts. The~~

1 term "primarily engaged in the collection of consumer debts"
2 means that more than one-half of the person's income arises
3 from the business of soliciting consumer claims for collection
4 or collecting consumer claims.

5 ~~(3)(e)~~ Any financial institution authorized to do
6 business in this state or ~~and~~ any wholly owned subsidiary or
7 ~~and~~ affiliate thereof.

8 ~~(4)(d)~~ Any licensed real estate broker.

9 ~~(5)(e)~~ Any insurance company authorized to do business
10 in this state.

11 ~~(6)(f)~~ Any consumer finance company or ~~and~~ any wholly
12 owned subsidiary or ~~and~~ affiliate thereof.

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

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

17 ~~(9)(i)~~ Any FDIC-insured institution or subsidiary or
18 affiliate thereof.

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

24 Section 14. Section 559.555, Florida Statutes, is
25 amended to read:

26 (Substantial rewording of section. See
27 s. 559.555, F.S., for present text.)

28 Registration of consumer collection agencies;
29 procedure.--

30 (1) A person may not engage in business in this state
31 as a consumer collection agency, as defined in this part, or

1 continue to do business in this state as a consumer collection
2 agency, unless the person is registered with the office
3 according to this part and thereafter maintains the
4 registration.

5 (2) A registration is not valid for any consumer
6 collection agency transacting business at any place other than
7 that designated in the registration unless the office is
8 notified in advance of any change of location.

9 (3) A person who applies for registration as a
10 consumer collection agency in compliance with this part must
11 do so on forms adopted by the commission and furnished by the
12 office. The commission may establish by rule procedures for
13 depositing fees and filing documents by electronic means
14 provided such procedures provide the office with the
15 information required by this section. The commission or office
16 may require each applicant for a consumer collection agency
17 registration to provide:

18 (a) A nonrefundable application fee in the amount of
19 \$900. All amounts collected shall be deposited to the credit
20 of the Regulatory Trust Fund of the office;

21 (b) The name of the applicant, any other names under
22 which the applicant conducts business, and the address of the
23 applicant's principal place of business and each office in
24 this state;

25 (c) The applicant's form and place of organization. If
26 the applicant is a corporation, a copy of the articles of
27 incorporation and amendments thereto; if the applicant is a
28 partnership, a copy of the partnership agreement; or if the
29 applicant is a limited liability company, a copy of the
30 articles of organization;

31

1 (d) Documents demonstrating that the bonding
2 requirements specified in s. 559.556 have been satisfied; and

3 (e) Information and documentation necessary for the
4 office to make a determination of the applicant's eligibility
5 for registration.

6 (4) The applicant must also provide information as the
7 office may require about any partner, officer, or director of
8 the applicant, or any person having the same or substantially
9 similar status or performing substantially similar functions,
10 or any person directly or indirectly controlling the
11 applicant. As used in this subsection, the term "person
12 directly or indirectly controlling the applicant" means
13 possession of the power to direct or to cause the direction of
14 the management or policies of a company, whether through
15 ownership of stock or securities, by contract, or otherwise.
16 Any individual or company that directly or indirectly has the
17 right to vote 25 percent or more of the voting stock or
18 securities of a company or is entitled to 25 percent or more
19 of its profits is presumed to control that company. The office
20 may require information concerning any such applicant or
21 person including:

22 (a) His or her full name, current address, current
23 telephone number, date of birth, social security number, or
24 federal identification number.

25 (b) His or her previous 10-year educational or
26 employment history.

27 (c) Any adverse decision, finding, injunction,
28 suspension, prohibition, revocation, denial, or judgment by
29 any court of competent jurisdiction or an administrative order
30 of an administrative law judge, by any state or federal
31 agency, or any business, professional, or occupational

1 association involving a violation of any law, rule, or
2 regulation relating to business or professional licensing.

3 (d) His or her commission of any acts that would be
4 grounds for denial of an application under this subsection
5 (10).

6 (5) An initial application is deemed received for
7 purposes of s. 120.60 upon receipt of the completed
8 application form prescribed by commission rule, the
9 nonrefundable application fee of \$900, and any other fee
10 prescribed by law.

11 (6) Upon the filing of an application for registration
12 and payment of all applicable fees, the office shall
13 investigate the applicant. If the office determines that
14 registration should be granted, it shall register the
15 applicant for a period not to exceed 1 year.

16 (7) The registration of each consumer collection
17 agency expires on December 31 of the year in which it became
18 effective unless the registrant has renewed its registration
19 on or before that date. Registration may be renewed as the
20 commission may require by rule, together with payment of the
21 \$450 nonrefundable renewal fee and the payment of any amount
22 lawfully due and owing to the office pursuant to any order of
23 the office or pursuant to any agreement with the office. A
24 consumer collection agency that has not renewed its
25 registration by the time the registration period expires may
26 request reactivation of its registration. The registrant must
27 file its request with the office on or before January 31 of
28 the year following the year of expiration. The request must
29 contain any information the office requires, together with the
30 registration fee required in this section and a nonrefundable
31 reactivation fee in the amount of \$250. Any reactivation of

1 registration granted by the office during the month of January
2 is deemed effective retroactive to January 1 of that year. Any
3 registrant that engages in business as a consumer collection
4 agency after its registration has expired violates subsection
5 (1), which is punishable as provided in ss. 559.785(1) and
6 559.730(6).

7 (8) If the information contained in any application or
8 any amendment to the application has changed, the registrant
9 must file an amendment on the forms prescribed by the
10 commission correcting such information within 30 days after
11 the change.

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

14 (a) Changes in registration occasioned by changes in
15 personnel of a partnership or in the principals, copartners,
16 officers, or directors of any registrant or by changes of any
17 material fact shall be reported by written amendment in such
18 form and at such time as the commission may specify by rule.
19 In any case in which a person or a group of persons, directly
20 or indirectly, or acting by or through one or more persons,
21 proposes to purchase or acquire a controlling interest in a
22 registrant, such person or group shall submit an initial
23 application for registration as a consumer collection agency
24 before such purchase or acquisition at the time and in the
25 form that the commission prescribes by rule.

26 (b) The commission shall adopt rules providing for
27 waiver of the application required by this subsection if
28 control of a registrant is to be acquired by another
29 registrant under this chapter or if the application is
30 otherwise unnecessary in the public interest.

31

1 (10) The office may deny registration if the
2 applicant, any principal of the applicant, or any person
3 having control of the applicant:

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

5 (b) Is the subject of a pending criminal prosecution
6 or governmental enforcement action, in any jurisdiction, until
7 the conclusion of such criminal prosecution or enforcement
8 action;

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

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

17 (e) Has been found guilty of, regardless of
18 adjudication, or has entered a plea of nolo contendere or
19 guilty to, any felony;

20 (f) Has had entered against him or her, or any
21 business for which he or she was directly or indirectly a
22 controlling person in the business or controlled the business,
23 an injunction, a temporary restraining order, or a final
24 judgment or order, including a stipulated judgment or order,
25 an assurance of voluntary compliance, or any similar document
26 in any civil or administrative action involving racketeering,
27 fraud, theft, embezzlement, fraudulent conversion, or
28 misappropriation of property; involving the use of any untrue,
29 deceptive, or misleading representation in an attempt to sell
30 or dispose of real or personal property; or involving the use
31

1 of any unfair, unlawful, or deceptive trade practice, whether
2 or not there is any litigation pending against the applicant;

3 (g) Is subject to or was directly or indirectly a
4 controlling person in the business, or controlled the
5 business, with any company that is, or ever has been, subject
6 to any injunction, temporary restraining order, including a
7 stipulated judgment or order, an assurance of voluntary
8 compliance, or any similar document, or any restrictive court
9 order relating to business activity as the result of any
10 action brought by a governmental agency, including any action
11 affecting any license to do business or practice an occupation
12 or trade;

13 (h) Has falsified or willfully omitted any material
14 information asked for in any application, document, or record
15 required to be submitted under this part or the rules of the
16 commission;

17 (i) Has made a material false statement of fact in an
18 application for registration or in response to any request or
19 investigation by the office; or

20 (j) Has been the subject of any adverse decision,
21 finding, injunction, suspension, prohibition, revocation,
22 denial, or judgment by any court of competent jurisdiction or
23 an administrative order of an administrative law judge, or by
24 any state or federal agency or any business, professional, or
25 occupational association involving a violation of any law,
26 rule, or regulation relating to business or professional
27 licensing.

28 Section 15. Section 559.556, Florida Statutes, is
29 created to read:

30 559.556 Surety bond.--Before the office may issue a
31 registration, the applicant must provide to the office a

1 corporate surety bond, issued by a bonding company or
2 insurance company authorized to do business in this state.

3 (1) The corporate surety bond shall be in the amount
4 of \$25,000, paid for and issued for the benefit of any credit
5 grantor against the registrant to secure the faithful
6 performance of the obligations of the registrant with respect
7 to the receipt, handling, and payment of funds collected by
8 the registrant.

9 (2) If multiple claims are filed against the surety on
10 any bond in excess of the amount of the bond, the surety may
11 pay the full amount of the bond to the office and is not
12 further liable under the bond. The office shall hold the funds
13 for distribution to claimants and pay to each claimant the pro
14 rata share of each valid claim made against the funds within 6
15 months after the date of the filing of the first claim against
16 the surety.

17 (3) A corporate surety bond filed with the office for
18 purposes of compliance with this section may not be cancelled
19 by the registrant or the corporate surety except upon written
20 notice to the office by registered or certified mail, return
21 receipt requested. A cancellation does not take effect less
22 than 30 days after receipt by the office of such written
23 notice.

24 (4) The corporate surety must, within 10 days after it
25 pays any claim to any claimant, give written notice to the
26 office by registered or certified mail of such payment, along
27 with details sufficient to identify the claimant and the claim
28 or judgment paid.

29 (5) Whenever the principal sum of such bond is reduced
30 by one or more recoveries or payments, the registrant must
31 furnish a new or additional bond so that the total or

1 aggregate principal sum of such bonds equals the sum required
2 by this section. Alternatively, a registrant may furnish an
3 endorsement executed by the corporate surety reinstating the
4 bond to the required principal sum of the bond.

5 Section 16. Section 559.72, Florida Statutes, is
6 amended to read:

7 559.72 Standards of conduct ~~Prohibited practices~~
8 ~~generally.~~--

9 (1) In collecting consumer debts, ~~a no~~ person may not
10 ~~shall:~~

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

13 (b)(2) Use or threaten force, or violence, or any
14 other means to harm the physical person, property, or
15 reputation of any person;

16 (c)(3) Tell a debtor who disputes a consumer debt that
17 she or he or any person employing her or him will disclose to
18 another, orally or in writing, directly or indirectly,
19 information affecting the debtor's reputation for credit
20 worthiness without also informing the debtor that the
21 existence of the dispute will also be disclosed as required by
22 paragraph (f) subsection (6);

23 (d)(4) Communicate or threaten to communicate with a
24 debtor's employer prior to obtaining final judgment against
25 the debtor, unless the debtor gives her or his permission in
26 writing to contact her or his employer or acknowledges in
27 writing the existence of the debt after the debt has been
28 placed for collection, but this shall not prohibit a person
29 from telling the debtor that her or his employer will be
30 contacted if a final judgment is obtained;

31

1 ~~(e)(5)~~ Disclose to a person other than the debtor or
2 her or his family information affecting the debtor's
3 reputation, whether or not for credit worthiness, with
4 knowledge or reason to know that the other person does not
5 have a legitimate business need for the information or that
6 the information is false;

7 ~~(f)(6)~~ Disclose information concerning the existence
8 of a debt known to be reasonably disputed by the debtor
9 without disclosing that fact. If a disclosure is made prior
10 to such reasonable dispute having been asserted and written
11 notice is received from the debtor that any part of the debt
12 is disputed and if such dispute is reasonable, the person who
13 made the original disclosure shall reveal upon the request of
14 the debtor within 30 days the details of the dispute to each
15 person to whom disclosure of the debt without notice of the
16 dispute was made within the preceding 90 days;

17 ~~(g)(7)~~ Willfully communicate with the debtor or any
18 member of her or his family with such frequency as can
19 reasonably be expected to harass the debtor or her or his
20 family, or willfully engage in other conduct which can
21 reasonably be expected to abuse or harass the debtor or any
22 member of her or his family;

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

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

30 ~~(j)(10)~~ Use a communication which simulates in any
31 manner legal or judicial process or which gives the appearance

1 of being authorized, issued or approved by a government,
2 governmental agency, or attorney at law, when it is not;

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

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

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

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

18 ~~(o)(15)~~ Refuse to provide adequate identification of
19 herself or himself or her or his employer or other entity whom
20 she or he represents when requested to do so by a debtor from
21 whom she or he is collecting or attempting to collect a
22 consumer debt;

23 ~~(p)(16)~~ Mail any communication to a debtor in an
24 envelope or postcard with words typed, written, or printed on
25 the outside of the envelope or postcard indicating that the
26 purpose of the communication is to collect a debt or is
27 otherwise calculated to embarrass the debtor. An example of
28 this would be an envelope addressed to "Deadbeat, Jane Doe" or
29 "Deadbeat, John Doe";

30 ~~(q)(17)~~ Communicate with the debtor between the hours
31 of 9 p.m. and 8 a.m. in the debtor's time zone, at any unusual

1 time or place, or a time or place that is known or should be
2 known to be inconvenient for the debtor without the prior
3 consent of the debtor;

4 ~~(r)(18)~~ Communicate with a debtor if the person knows
5 that the debtor is represented by an attorney with respect to
6 such debt and has knowledge of, or can readily ascertain, such
7 attorney's name and address, unless the debtor's attorney
8 fails to respond within a reasonable period of time to a
9 communication from the person, unless the debtor's attorney
10 consents to a direct communication with the debtor, or unless
11 the debtor initiates the communication; or

12 ~~(s)(19)~~ Cause charges to be made to any debtor for
13 communications by concealment of the true purpose of the
14 communication, including collect telephone calls and telegram
15 fees.

16 (2) Any debt collector communicating with any person
17 other than the consumer for the purpose of acquiring location
18 information about the consumer must:

19 (a) Identify himself or herself, state that he or she
20 is confirming or correcting location information concerning
21 the consumer, and, only if expressly requested, identify his
22 or her employer;

23 (b) Not state that such consumer owes a debt;

24 (c) Not communicate with any such person more than
25 once unless requested to do so by such person or unless the
26 debt collector reasonably believes that the earlier response
27 of such person is erroneous or incomplete and that such person
28 now has correct or complete location information; and

29 (d) Not communicate by postcard.

30 (3) Without prior consent of the consumer given
31 directly to the debt collector or express permission of a

1 court of competent jurisdiction, a debt collector may not
2 communicate with a consumer in connection with the collection
3 of any debt at the consumer's place of employment if the debt
4 collector knows or has reason to know that the consumer's
5 employer prohibits the consumer from receiving such
6 communication.

7 (4) Except as provided in subsection (2), without the
8 prior consent of the consumer given directly to the debt
9 collector, the express permission of a court of competent
10 jurisdiction, or as reasonably necessary to effectuate a
11 postjudgment remedy, a debt collector may not communicate, in
12 connection with the collection of any debt, with any person
13 other than a consumer, his or her attorney, a consumer
14 reporting agency if otherwise permitted by law, the creditor,
15 the attorney of the creditor, or the attorney of the debt
16 collector.

17 (5) If a consumer notifies a debt collector in writing
18 that the consumer refuses to pay a debt or that the consumer
19 wishes the debt collector to cease further communication with
20 the consumer, the debt collector may not communicate further
21 with the consumer with respect to such debt, except:

22 (a) To advise the consumer that the debt collector's
23 further efforts are being terminated;

24 (b) To notify the consumer that the debt collector or
25 creditor may invoke specified remedies that are ordinarily
26 invoked by such debt collector or creditor; or

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

30
31

1 If such notice from the consumer is made by mail, notification
2 is complete upon receipt.

3 (6) As used in subsection (5), the term "consumer"
4 includes the consumer's spouse, parent of a consumer who is a
5 minor, guardian, executor, or administrator.

6 (7) A debt collector may not use any false, deceptive,
7 or misleading representation or means in connection with the
8 collection of any debt. Without limiting the general
9 application of subsection (5), the following conduct is a
10 violation of this section:

11 (a) The false representation of:

12 1. The character, amount, or legal status of any debt;

13 or

14 2. Any services rendered or compensation that may be
15 lawfully received by any debt collector for the collection of
16 a debt.

17 (b) The representation or implication that nonpayment
18 of any debt will result in the arrest or imprisonment of any
19 person or the seizure, garnishment, attachment, or sale of any
20 property or wages of any person, unless such action is lawful
21 and the debt collector or creditor intends to take such
22 action.

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

26 1. Lose any claim or defense to payment of the debt;

27 or

28 2. Become subject to any practice prohibited by this
29 section.

30
31

1 (d) The false representation or implication that the
2 consumer committed any crime or other conduct in order to
3 disgrace the consumer.

4 (e) The use of any false representation or deceptive
5 means to collect or attempt to collect any debt or to obtain
6 information concerning a consumer.

7 (f) The failure to disclose in the initial
8 communication that the debt collector is attempting to collect
9 a debt and that any information obtained will be used for that
10 purpose, and the failure to disclose in subsequent
11 communications that the communication is from a debt
12 collector, except that this paragraph does not apply to a
13 formal pleading made in connection with a legal action.

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

17 (h) The use of any business, company, or organization
18 name other than the true name of the debt collector's
19 business, company, or organization.

20 (i) The false representation or implication that
21 documents are not legal process forms or do not require action
22 by the consumer.

23 (j) The false representation or implication that a
24 debt collector operates or is employed by a consumer reporting
25 agency.

26 (8) A debt collector may not use unfair or
27 unconscionable means to collect or attempt to collect any
28 debt. Without limiting the general application of this
29 subsection, the following conduct is a violation of this
30 section:

31

1 (a) The collection of any amount, including any
2 interest, fee, charge, or expense incidental to the principal
3 obligation, unless such amount is expressly authorized by the
4 agreement creating the debt or permitted by law.

5 (b) The acceptance by a debt collector from any person
6 of a check or other payment instrument postdated by more than
7 5 days unless such person is notified in writing of the debt
8 collector's intent to deposit such check or instrument not
9 more than 10 or less than 3 business days before such deposit.

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

13 (d) Depositing or threatening to deposit any postdated
14 check or other postdated payment instrument before the date on
15 such check or instrument.

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

18 1. There is no present right to possession of the
19 property claimed as collateral through an enforceable security
20 interest;

21 2. There is no present intention to take possession of
22 the property; or

23 3. The property is exempt by law from such
24 dispossession or disablement.

25 (f) Communicating with a consumer regarding a debt by
26 postcard.

27 (g) Within 5 days after the initial communication with
28 a consumer in connection with the collection of any debt, a
29 debt collector shall, unless the following information is
30 contained in the initial communication or the consumer has
31 paid the debt, send the consumer a written notice containing:

1 (a) The amount of the debt;
2 (b) The name of the creditor to whom the debt is owed;
3 (c) A statement that unless the consumer, within 30
4 days after receipt of the notice, disputes the validity of the
5 debt, or any portion thereof, the debt will be assumed to be
6 valid by the debt collector;
7 (d) A statement that if the consumer notifies the debt
8 collector in writing within the 30-day period that the debt,
9 or any portion thereof, is disputed, the debt collector will
10 obtain verification of the debt or a copy of the judgment
11 against the consumer and a copy of such verification or
12 judgment will be mailed to the consumer by the debt collector;
13 and
14 (e) A statement that, upon the consumer's written
15 request within the 30-day period, the debt collector will
16 provide the consumer with the name and address of the original
17 creditor, if different from the current creditor.
18 (10) If the consumer notifies the debt collector in
19 writing within the 30-day period described in paragraph (9)(c)
20 that the debt, or any portion thereof, is disputed, or that
21 the consumer requests the name and address of the original
22 creditor, the debt collector shall cease collection of the
23 debt, or any disputed portion thereof, until the debt
24 collector obtains verification of the debt or any copy of a
25 judgment, or the name and address of the original creditor,
26 and a copy of such verification or judgment, or name and
27 address of the original creditor, is mailed to the consumer by
28 the debt collector.
29 (11) The failure of a consumer to dispute the validity
30 of a debt under this section may not be construed by any court
31 as an admission of liability by the consumer.

1 (12) If any consumer owes multiple debts and makes any
2 single payment to any debt collector with respect to such
3 debts, such debt collector may not apply such payment to any
4 debt that is disputed by the consumer and, if applicable,
5 shall apply such payment in accordance with the consumer's
6 directions.

7 (13) Any debt collector who brings any legal action on
8 a debt against any consumer shall:

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

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

16 1. In which such consumer signed the contract sued
17 upon; or

18 2. In which such consumer resides at the commencement
19 of the action.

20
21 This subsection does not authorize the bringing of legal
22 actions by debt collectors.

23 (14) A person may not design, compile, and furnish any
24 form knowing that such form would be used to create the false
25 belief in a consumer that a person other than the creditor of
26 such consumer is participating in the collection of, or in an
27 attempt to collect, a debt such consumer allegedly owes such
28 creditor, when in fact such person is not so participating.

29 Section 17. Section 559.725, Florida Statutes, is
30 amended to read:

31 559.725 Consumer complaints; ~~administrative duties.~~--

1 (1) Any person having reason to believe that this part
2 has been violated may file a written complaint with the office
3 or the Division of Consumer Services of the Department of
4 Financial Services setting forth the details of the alleged
5 violation shall serve as the registry for receiving and
6 maintaining records of inquiries, correspondence, and
7 complaints from consumers concerning any and all persons who
8 collect debts, including consumer collection agencies.

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

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

25 ~~(4) The division shall furnish a form to each~~
26 ~~complainant whose complaint concerns an alleged violation of~~
27 ~~s. 559.72 by a consumer collection agency. Such form may be~~
28 ~~filed with the office. The form shall identify the accused~~
29 ~~consumer collection agency and provide for the complainant's~~
30 ~~summary of the nature of the alleged violation and facts which~~
31 ~~allegedly support the complaint. The form shall include a~~

1 ~~provision for the complainant to state under oath before a~~
2 ~~notary public that the allegations therein made are true.~~

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

6 ~~(6) The office shall investigate sworn complaints by~~
7 ~~direct written communication with the complainant and the~~
8 ~~affected consumer collection agency. In addition, the office~~
9 ~~shall attempt to resolve each sworn complaint and shall record~~
10 ~~the resolution of such complaints.~~

11 ~~(7) Periodically, the office shall identify consumer~~
12 ~~collection agencies that have unresolved sworn consumer~~
13 ~~complaints from five or more different consumers within a~~
14 ~~12 month period under the provisions of this part.~~

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

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

1 ~~imposition of other administrative remedies available to the~~
2 ~~office.~~

3 ~~(10) The office shall issue a notice of intent either~~
4 ~~to revoke or suspend the registration or to impose an~~
5 ~~administrative fine when the office preliminarily determines~~
6 ~~that repeated violations of s. 559.72 by an accused registrant~~
7 ~~have occurred which would warrant more serious administrative~~
8 ~~sanctions being imposed under this part. The office shall~~
9 ~~advise each registrant of the right to require an~~
10 ~~administrative hearing under chapter 120, prior to the~~
11 ~~agency's final action on the matter as authorized by s.~~
12 ~~559.730.~~

13 ~~(2)(11)~~ Any governmental office or agency receiving a
14 complaint under this section ~~The office shall advise any other~~
15 governmental office or agency having apparent jurisdiction,
16 including the office, the appropriate state attorney, or the
17 Attorney General in the case of an out-of-state consumer debt
18 collector, of any determination by that agency ~~the office~~ of a
19 violation of the requirements of this part by any consumer
20 collection agency, whether or which is not registered or
21 exempt from registration as required by this part. ~~The office~~
22 ~~shall furnish the state attorney or Attorney General with the~~
23 ~~office's information concerning the alleged violations of such~~
24 ~~requirements.~~

25 Section 18. Section 559.726, Florida Statutes, is
26 created to read:

27 559.726 Powers and duties of the Office of Financial
28 Regulation.--

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

1 (2) The office may conduct an investigation or
2 examination of any person, within or outside this state, which
3 it believes is necessary in order to determine whether a
4 person has violated this chapter or the rules adopted by the
5 commission. The office shall provide at least 15 days' advance
6 notice of any examination or investigation of a consumer
7 collection agency. However, if the office suspects that the
8 consumer collection agency has violated any provision of this
9 part or any criminal laws of this state or of the United
10 States or is engaging in an unsafe and unsound practice, the
11 office may, at any time without advance notice, conduct an
12 examination or investigation of all affairs, activities,
13 transactions, accounts, business records, and assets of any
14 consumer collection agency for the protection of the public.

15 (3) The commission may adopt rules under ss.
16 120.536(1) and 120.54 to administer this part.

17 (4) The commission may adopt a rule to require
18 electronic submission of any form, document, or fee required
19 by this part if the rule reasonably accommodates a person
20 having a technological or financial hardship. The commission
21 may adopt a rule setting forth the criteria and procedures for
22 obtaining an exemption due to a technological or financial
23 hardship. The commission may adopt a rule to accept
24 certification of compliance with the requirements of this part
25 in lieu of requiring submission of specified documents.

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

29 (6) The office may:

30 (a) Issue, revoke, quash, or modify and serve
31 subpoenas to compel the attendance of witnesses and subpoenas

1 duces tecum to compel the production of all books, accounts,
2 records, and other documents and materials relevant to an
3 examination or investigation. The office may exercise these
4 powers even if the subject of the investigation or examination
5 is exempt from registration.

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

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

9 (7)(a) In the event of noncompliance with a subpoena
10 or subpoena duces tecum that the office has issued or caused
11 to be issued, the office may petition a court of competent
12 jurisdiction in the county where the person subpoenaed resides
13 or has her, his, or its principal place of business for an
14 order requiring the person to appear and testify and to
15 produce the books, accounts, records, and other documents that
16 are specified in the subpoena duces tecum.

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

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

31

1 (d) Failure to comply with an order granting, in whole
2 or in part, a petition to enforce a subpoena is a contempt of
3 court.

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

9 (9) Reasonable and necessary costs incurred by the
10 office during an investigation may be assessed against any
11 debt collector on the basis of actual costs incurred. Assessed
12 expenses may include, but are not limited to, expenses for
13 interpreters; expenses for communications; expenses for legal
14 representation; expenses for economic, legal, or other
15 research or analysis and testimony; and fees and expenses for
16 witnesses. The failure to reimburse the office for its
17 reasonable and necessary costs is a reason to deny a
18 registrant's application or to revoke the prior approval of an
19 application.

20 Section 19. Section 559.7262, Florida Statutes, is
21 created to read:

22 559.7262 Injunction to restrain violations;
23 receivers.--

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

28 (2) In an injunctive proceeding, the court may issue a
29 subpoena requiring the attendance of any witness or a subpoena
30 duces tecum requiring the production of any book, account,
31

1 record, or other documents and materials relevant to the
2 pending case.

3 (3)(a) In addition to any procedure provided by law
4 for enforcing a temporary restraining order or a temporary or
5 permanent injunction, the court may, upon application of the
6 office, impound the property, assets, and business of the
7 registrant, including, but not limited to, the books, records,
8 documents, and papers of the registrant. The court may appoint
9 a receiver to administer the property. The receiver, when
10 appointed and qualified, has the powers and duties that are
11 conferred upon the receiver by the court.

12 (b) After appointing a receiver, the court may issue
13 an order staying all pending suits and enjoining any further
14 litigation affecting the receiver's custody or possession of
15 the property, assets, and business, and the court, with the
16 consent of the chief judge of the circuit, may require that
17 all suits be assigned to the circuit judge who appointed the
18 receiver.

19 Section 20. Section 559.7263, Florida Statutes, is
20 created to read:

21 559.7263 Cease and desist orders; refund orders.--

22 (1) The office may issue and serve upon a person an
23 order to cease and desist and to take corrective action
24 whenever the office has reason to believe that a person is
25 violating, has violated, or is about to violate this part, any
26 rule or order of the office issued under this part, or any
27 written agreement between the person and the office.
28 Procedural matters relating to the issuance and enforcement of
29 a cease and desist order are governed by chapter 120.

30 (2) The office may seek an order of restitution from a
31 court of competent jurisdiction for collected funds due to

1 creditors or any sum collected from a debtor without valid
2 proof of debt.

3 Section 21. Section 559.7264, Florida Statutes, is
4 created to read:

5 559.7264 Evidence; examiner's worksheets,
6 investigative reports, other related documents.--An official
7 written report, sworn complaint, worksheet, or other related
8 paper, or a certified copy thereof, compiled, prepared,
9 drafted, or otherwise made by the financial examiner is
10 admissible into evidence if the financial examiner is
11 available for cross-examination; authenticates the worksheet;
12 and testifies that the report, worksheet, or related document
13 was prepared as a result of an examination of the books and
14 records of a registrant or other person conducted under the
15 authority of this part.

16 Section 22. Section 559.7265, Florida Statutes, is
17 created to read:

18 559.7265 Books, accounts, and records; maintenance;
19 examinations by the office.--

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

24 (2) The office may authorize maintenance of records at
25 a location other than a principal place of business. The
26 office may require books, accounts, and records to be produced
27 and available at a reasonable and convenient location in this
28 state.

29 (3) All books, accounts, records, documents, and
30 receipts for payments to a registrant by a debtor, and
31 payments made to a creditor by a registrant, shall be

1 preserved and kept available for examination by the office for
2 3 years after the date of original entry. The commission shall
3 adopt requirements by rule for maintaining the books,
4 accounts, records, and documents retained by the registrant
5 and for destroying the records.

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

10 Section 23. Section 559.730, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section. See
13 s. 559.730, F.S., for present text.)

14 559.730 Administrative remedies.--

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

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

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

24 (c) Has had any business, professional, or
25 occupational license or registration suspended, revoked, or
26 otherwise acted against in any jurisdiction;

27 (d) Fails to maintain the surety bond required
28 pursuant to s. 559.556;

29 (e) Fails to maintain books and records as required by
30 s. 559.7265;

31

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

4 (g) Has paid for a registration with a check or
5 electronic transmission of funds which failed to clear the
6 registrant's financial institution;

7 (h) Has falsified or willfully omitted any material
8 information asked for in any application, document, or record
9 required to be submitted under this part or the rules of the
10 commission;

11 (i) Has made a material false statement of fact in an
12 application for registration or in response to any request or
13 investigation by the office; or

14 (j) Has a person who directly or indirectly controls
15 the applicant, as defined in s. 559.555(4), who is subject to
16 an action, or commits an act, contemplated by paragraph (a),
17 paragraph (b), paragraph (c), paragraph (f), paragraph (h), or
18 paragraph (i).

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

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

30 (4) Final action by the office to revoke or suspend
31 the registration of a registrant is subject to review

1 according to chapter 120 in the same manner as revocation of a
2 license.

3 (5) The office may impose an administrative fine of up
4 to \$1,000 per violation of this section, s. 559.555, s.
5 559.556, s. 559.72, or s. 559.7265. Final action by the office
6 to impose an administrative fine is subject to review in
7 accordance with ss. 120.569 and 120.57.

8 (6) Notwithstanding any other provision of this
9 section, the office may impose a fine not to exceed \$1,000 per
10 day for each day that a person violates this part by engaging
11 in the business of a consumer collection agency without being
12 registered.

13 (7) Any administrative fine imposed under this part
14 shall be payable to the office. The office shall maintain an
15 appropriate record and deposit the fine into the Regulatory
16 Trust Fund of the office.

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

21 (9) The remedies under this part are in addition to
22 remedies otherwise available for the same conduct under state
23 or local law.

24 Section 24. Section 559.735, Florida Statutes, is
25 created to read:

26 559.735 Administrative guidelines.--In imposing any
27 administrative remedy or penalty provided for in this part,
28 the office shall take into account the appropriateness of the
29 penalty with respect to the size of the financial resources
30 and the good faith of the person charged, the gravity of the
31

1 violation, the history of previous violations, and such other
2 matters as justice requires.

3 Section 25. Subsections (1) and (5) of section 559.77,
4 Florida Statutes, are amended to read:

5 559.77 Civil remedies.--

6 (1) A debtor may bring a civil action against a person
7 violating the provisions of s. 559.72(1) ~~s. 559.72~~ in a court
8 of competent jurisdiction of the county in which the alleged
9 violator resides or has his or her principal place of business
10 or in the county wherein the alleged violation occurred.

11 (5) In applying and construing this section, due
12 consideration and great weight shall be given to the
13 interpretations of the Federal Trade Commission and the
14 federal courts relating to the federal Fair Debt Collection
15 Practices Act and the Federal Trade Commission Act. If there
16 is an inconsistency between this part and an interpretation of
17 the federal acts, the provision that is more protective of the
18 consumer or debtor shall prevail.

19 Section 26. Section 559.785, Florida Statutes, is
20 amended to read:

21 559.785 Criminal penalty.--

22 (1) It ~~is shall be~~ a felony misdemeanor of the third
23 ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
24 775.083, or s. 775.084, for any person not exempt from
25 registering as provided in this part to:

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

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

31

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

4 (d) Engage in any consumer debt collection activity
5 while under a temporary or permanent injunction issued under
6 s. 559.78.

7 (2) Each of the following acts constitutes a
8 misdemeanor of the second degree, punishable as provided in s.
9 775.082 or s. 775.083:

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

14 (b) Assigning or attempting to assign a registration
15 under this part.

16 (3) The office may refer evidence concerning a
17 violation of this part, or of any rule or order, to any
18 criminal prosecuting agency that may, with or without the
19 reference and in addition to any other action it might
20 commence, bring an action against any person to enjoin,
21 restrain, and prevent the commission of any prohibited act or
22 practice.

23 Section 27. Sections 559.547, 559.563, and 559.565,
24 Florida Statutes, are repealed.

25 Section 28. Annual report.--The Office of Financial
26 Regulation of the Financial Services Commission shall submit a
27 report on January 1, 2006, and biennially thereafter, to the
28 President of the Senate and the Speaker of the House of
29 Representatives containing findings and conclusions concerning
30 the effectiveness of the consumer and commercial collection
31 practices acts in preventing fraud, abuse, and other unlawful

