

By the Committee on Banking and Insurance; and Senator Crist

597-2156-05

1 A bill to be entitled
2 An act relating to commercial and consumer
3 collection practices; amending s. 559.543,
4 F.S.; providing a definition; amending s.
5 559.544, F.S.; deleting provisions requiring
6 registration as a commercial collection agency;
7 specifying nonapplication of certain
8 registration requirements to certain persons or
9 entities; amending s. 559.545, F.S.; revising
10 requirements and procedures for application for
11 registration as a commercial collection agency;
12 authorizing the Financial Services Commission
13 to adopt rules; providing for fees; providing
14 for amendments to and changes in registrations;
15 authorizing the Office of Financial Regulation
16 to deny registrations under certain
17 circumstances; amending s. 559.546, F.S.;
18 providing requirements and procedures for
19 issuance of a corporate surety bond; creating
20 ss. 559.5471, 559.5473, 559.5474, 559.5475,
21 559.5476, 559.5477, and 559.5479, F.S.;
22 specifying powers and duties of the Office of
23 Financial Regulation; providing procedures;
24 providing for disposition of fees; authorizing
25 the office to adopt rules; authorizing the
26 office to issue subpoenas; providing
27 requirements, procedures, and limitations;
28 authorizing the office to assess certain
29 investigation costs and expenses; authorizing
30 the office to bring certain actions for
31 injunctions to restrain certain violations;

1 providing requirements and procedures;
2 authorizing the office to issue certain cease
3 and desist orders and take certain corrective
4 actions for certain violations; authorizing the
5 office to seek orders of restitution of certain
6 funds; providing for admissibility of certain
7 documents and materials of the office as
8 evidence; requiring registrants to maintain
9 certain records; providing requirements and
10 procedures for maintaining such records;
11 authorizing the office to adopt rules;
12 authorizing the office to revoke or suspend
13 registrations for certain activities by a
14 registrant; providing requirements and
15 procedures for termination of a registration;
16 authorizing the office to impose administrative
17 fines; providing requirements and limitations;
18 providing guidelines for imposing
19 administrative remedies or penalties; providing
20 administrative guidelines for administrative
21 penalties and remedies; amending s. 559.55,
22 F.S.; revising definitions; providing
23 additional definitions; amending s. 559.552,
24 F.S.; revising provisions specifying the
25 relationship of state and federal laws;
26 providing construction; amending s. 559.553,
27 F.S.; deleting provisions requiring
28 registration as a consumer collection agency;
29 specifying nonapplication of certain
30 registration requirements to certain persons or
31 entities; providing a definition; amending s.

1 559.555, F.S.; revising requirements and
2 procedures for application for registration as
3 a consumer collection agency; authorizing the
4 Financial Services Commission to adopt rules;
5 providing for fees; providing for amendments to
6 and changes in registrations; authorizing the
7 Office of Financial Regulation to deny
8 registrations under certain circumstances;
9 creating s. 559.556, F.S.; providing
10 requirements and procedures for issuance of a
11 corporate surety bond; amending s. 559.72,
12 F.S.; specifying prohibited activities in
13 collecting consumer debts; providing
14 requirements for debt collectors communicating
15 with certain persons; providing prohibitions
16 and limitations; providing notification
17 requirements; prohibiting false, deceptive or
18 misleading representations by a debt collector;
19 prohibiting unfair or unconscionable means of
20 collecting debts; requiring debt collectors to
21 provide certain notice to consumers in
22 connection with collecting a debt; specifying
23 required information; providing procedures and
24 requirements for disputing a debt; providing
25 procedures and requirements for payments on
26 multiple debts; providing requirements for debt
27 collectors bringing legal actions on a debt;
28 prohibiting designing, compiling, and
29 furnishing certain misleading forms; providing
30 for liability for certain violations; amending
31 s. 559.725, F.S.; revising provisions providing

1 requirements and procedures for consumer
2 complaints; creating ss. 559.726, 559.7262,
3 559.7263, 559.7264, and 559.7265, F.S.;
4 specifying powers and duties of the Office of
5 Financial Regulation; providing procedures;
6 providing for disposition of fees; authorizing
7 the office to adopt rules; authorizing the
8 office to issue subpoenas; providing
9 requirements, procedures, and limitations;
10 authorizing the office to assess certain
11 investigation costs and expenses; authorizing
12 the office to bring certain actions for
13 injunctions to restrain certain violations;
14 providing requirements and procedures;
15 authorizing the office to issue certain cease
16 and desist orders and take certain corrective
17 actions for certain violations; authorizing the
18 office to seek orders of restitution of certain
19 funds; providing for admissibility of certain
20 documents and materials of the office as
21 evidence; requiring registrants to maintain
22 certain records; providing requirements and
23 procedures for maintaining such records;
24 authorizing the office to adopt rules; amending
25 s. 559.730, F.S.; authorizing the office to
26 revoke or suspend registrations for certain
27 activities by a registrant; providing
28 requirements and procedures for termination of
29 a registration; authorizing the office to
30 impose administrative fines; providing
31 requirements and limitations; creating s.

1 559.735, F.S.; providing guidelines for
2 imposing administrative remedies or penalties;
3 amending s. 559.77, F.S.; specifying
4 application of certain provisions of law;
5 providing for priority of application; amending
6 s. 559.785, F.S.; increasing criminal penalties
7 for certain activities; specifying a criminal
8 penalty for certain activities; authorizing the
9 office to refer certain evidence to certain
10 agencies for certain purposes; creating s.
11 559.786, F.S.; requiring the office to submit
12 an annual report; specifying contents;
13 repealing ss. 559.547 and 559.563, F.S.,
14 relating to void registrations; repealing s.
15 559.565, F.S., relating to enforcement actions
16 against out-of-state consumer debt collectors;
17 providing an appropriation; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (7) is added to section 559.543,
23 Florida Statutes, to read:

24 559.543 Definitions.--As used in this part:
25 (7) "Debtor" or "consumer" means any natural person
26 obligated or allegedly obligated to pay any debt.

27 Section 2. Section 559.544, Florida Statutes, is
28 amended to read:

29 559.544 ~~Registration required;~~ Exemptions.--
30 ~~(1) No person shall engage in business in this state~~
31 ~~as a commercial collection agency, as defined in this part, or~~

1 ~~continue to do business in this state as a commercial~~
2 ~~collection agency, without first registering in accordance~~
3 ~~with this part and thereafter maintaining such registration.~~

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

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

17 ~~(4) The office shall not accept any registration for~~
18 ~~any commercial collection agency as validly made and filed~~
19 ~~with the office under this section unless the registration~~
20 ~~information furnished to the office by the registrant is~~
21 ~~complete pursuant to s. 559.545 and facially demonstrates that~~
22 ~~such registrant is qualified to engage in business as a~~
23 ~~commercial collection agency, including specifically that~~
24 ~~neither the registrant nor any principal of the registrant has~~
25 ~~engaged in any unlawful collection practices, dishonest~~
26 ~~dealings, acts of moral turpitude, or other criminal acts that~~
27 ~~reflect an inability to engage in the commercial collection~~
28 ~~agency business. The office shall inform any person whose~~
29 ~~registration is rejected by the office of the fact of and~~
30 ~~basis for such rejection. A prospective registrant shall be~~
31 ~~entitled to be registered when her or his or its registration~~

1 ~~information is complete on its face, the applicable~~
2 ~~registration fee has been paid, and the required evidence of~~
3 ~~current bond is furnished to the office.~~

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

6 ~~(1)(a)~~ A member of The Florida Bar, unless the ~~such~~
7 person is primarily engaged in the collection of commercial
8 claims. "Primarily engaged in the collection of commercial
9 claims" means that more than one-half of the person's income
10 ~~of such person~~ arises from the business of soliciting
11 commercial claims for collection or collecting commercial
12 claims.

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

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

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

19 ~~(5)(e)~~ A licensed consumer collection agency that
20 ~~which~~ is not primarily engaged in the collection of commercial
21 claims. "Not primarily engaged in the collection of commercial
22 claims" means that less than one-half of the collection
23 revenue of the ~~such~~ agency arises from the collection of
24 commercial claims.

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

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

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

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

31

1 ~~(10)(j)~~ An FDIC-insured institution or subsidiary or
2 affiliate thereof.

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

5 (Substantial rewording of section. See
6 s. 559.545, Florida Statutes, for current text.)
7 559.545 Registration of commercial collection
8 agencies; procedure.--

9 (1) A person may not engage in business in this state
10 as a commercial collection agency, as defined in this part, or
11 continue to do business in this state as a commercial
12 collection agency, unless the person is registered with the
13 office according to this part and thereafter maintains the
14 registration.

15 (2) A registration is not valid for any commercial
16 collection agency transacting business at any place other than
17 the place designated in the registration unless the office is
18 first notified in advance of any change of location.

19 (3) Any person who applies for registration as a
20 commercial collection agency in compliance with this part
21 shall do so on forms adopted by the commission and furnished
22 by the office. The commission may establish by rule procedures
23 for depositing fees and filing documents by electronic means
24 provided such procedures provide the office with the
25 information required by this section. The commission or office
26 may require each applicant for a commercial collection agency
27 registration to provide:

28 (a) A nonrefundable application fee in the amount of
29 \$650. All amounts collected shall be deposited to the credit
30 of the Regulatory Trust Fund of the office.
31

1 (b) The name of the applicant, any other names under
2 which the applicant conducts business, and the address of the
3 applicant's principal place of business and each office in
4 this state.

5 (c) The applicant's form and place of organization
6 and, if the applicant is a corporation, a copy of the articles
7 of incorporation and amendments to such articles, if a
8 partnership, a copy of the partnership agreement or, if
9 limited liability company, a copy of the articles of
10 organization.

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

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

15 (4) The applicant shall also provide information as
16 the office may require about any partner, officer, or director
17 of the applicant, any person having the same or substantially
18 similar status or performing substantially similar functions,
19 or any person directly or indirectly controlling the
20 applicant. For purposes of this section, the term "directly or
21 indirectly controlling the applicant" means possessing the
22 power to direct or to cause the direction of the management or
23 policies of a company, whether through ownership of stock or
24 securities, by contract, or otherwise. Any individual or
25 company that directly or indirectly has the right to vote 25
26 percent or more of the voting stock or securities of a company
27 or is entitled to 25 percent or more of its profits is
28 presumed to control that company. The office may require
29 information about any such applicant or person, including:

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

4 (b) His or her previous 10 year educational or
5 employment history.

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

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

15 (5) An initial application is deemed received for
16 purposes of s. 120.60 upon receipt of the completed
17 application form prescribed by commission rule, the
18 nonrefundable application fee of \$650, and any other fee
19 prescribed by law.

20 (6) Upon the filing of an application for registration
21 and payment of all applicable fees, the office shall
22 investigate the applicant. If the office determines that
23 registration should be granted, the office shall register the
24 applicant for a period not to exceed 1 year.

25 (7) The registration of each commercial collection
26 agency expires on December 31 of the year in which the
27 registration became effective unless the registrant has
28 renewed its registration on or before that date. Registration
29 may be renewed as the commission may require by rule, together
30 with payment of the \$500 nonrefundable renewal fee and the
31 payment of any amount lawfully due and owing to the office

1 pursuant to any order of the office or pursuant to any
2 agreement with the office. A commercial collection agency that
3 has not renewed its registration by the time the registration
4 period expires may request reactivation of its registration.
5 The registrant shall file its request with the office on or
6 before January 31 of the year following the year of
7 expiration. The request must contain any information the
8 office requires, together with the registration fee required
9 in this section, and a nonrefundable reactivation fee in the
10 amount of \$250. Any reactivation of registration granted by
11 the office during the month of January is deemed effective
12 retroactive to January 1 of that year. Any registrant that
13 engages in business as a commercial collection agency after
14 its registration has expired violates subsection (1),
15 punishable as provided by ss. 559.548(1) and 559.5477(6).

16 (8) If the information contained in any application or
17 any amendment to such application has changed, the registrant
18 shall file an amendment on the forms prescribed by the
19 commission correcting such information within 30 days after
20 the change.

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

23 (a) Changes in registration occasioned by changes in
24 personnel of a partnership or in the principals, copartners,
25 officers, or directors of any registrant or by changes of any
26 material fact shall be reported by written amendment in such
27 form and at such time as the commission may specify by rule.
28 In any case in which a person or a group of persons, directly
29 or indirectly or acting by or through one or more persons,
30 proposes to purchase or acquire a controlling interest in a
31 registrant, such person or group shall submit an initial

1 application for registration as a commercial collection agency
2 prior to such purchase or acquisition at such time and in such
3 form as the commission may prescribe by rule.

4 (b) The commission shall adopt rules providing for
5 waiver of the application required by this subsection when
6 control of a registrant is to be acquired by another
7 registrant under this chapter or when the application is
8 otherwise unnecessary in the public interest.

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

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

13 (b) Is the subject of a pending criminal prosecution
14 or governmental enforcement action, in any jurisdiction, until
15 the conclusion of such criminal prosecution or enforcement
16 action;

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

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

25 (e) Has been found guilty of, regardless of
26 adjudication, or has entered a plea of nolo contendere or
27 guilty to, any felony;

28 (f) Has had entered against him or her, or against any
29 business for which he or she was directly or indirectly a
30 controlling person in the business or controlled the business,
31 an injunction, a temporary restraining order, or a final

1 judgment or order, including a stipulated judgment or order,
2 an assurance of voluntary compliance, or any similar document,
3 in any civil or administrative action involving racketeering,
4 fraud, theft, embezzlement, fraudulent conversion, or
5 misappropriation of property or the use of any untrue,
6 deceptive, or misleading representation in an attempt to sell
7 or dispose of real or personal property or the use of any
8 unfair, unlawful, or deceptive trade practice, whether or not
9 there is any litigation pending against the applicant;

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

20 (h) Falsified or willfully omitted any material
21 information asked for in any application, document, or record
22 required to be submitted under this part or the rules of the
23 commission;

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

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

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

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

6 (Substantial rewording of section. See

7 s. 559.546, Florida Statutes, for current text.)

8 559.546 Surety bond; evidence of current and valid
9 bond.--Pursuant to s. 559.545, the registrant shall provide to
10 the office evidence that the registrant has been issued a
11 current and valid surety bond as required by this part.

12 (1) Before the office may issue a registration, the
13 applicant must provide to the office a corporate surety bond
14 issued by a bonding company or insurance company authorized to
15 do business in this state.

16 (2) The corporate surety bond shall be in the amount
17 of \$50,000, paid for and issued for the benefit of any credit
18 grantor against the registrant to secure the faithful
19 performance of the obligations of the registrant with respect
20 to the receipt, handling, and payment of funds collected by
21 the registrant.

22 (3) If multiple claims are filed against the surety on
23 any bond in excess of the amount of the bond, the surety may
24 pay the full amount of the bond to the office and is not
25 further liable under the bond. The office shall hold the funds
26 for distribution to claimants and pay to each claimant the pro
27 rata share of each valid claim made against the funds within 6
28 months after the date of the filing of the first claim against
29 the surety.

30 (4) A corporate surety bond filed with the office for
31 purposes of compliance with this section may not be canceled

1 by the registrant or the corporate surety except upon written
2 notice to the office by registered or certified mail with
3 return receipt requested. A cancellation shall not take effect
4 fewer than 30 days after receipt by the office of such written
5 notice.

6 (5) The corporate surety must, within 10 days after
7 the surety pays any claim to any claimant, give written notice
8 to the office by registered or certified mail of such payment
9 with details sufficient to identify the claimant and the claim
10 or judgment so paid.

11 (6) Whenever the principal sum of such bond is reduced
12 by one or more recoveries or payments, the registrant must
13 furnish a new or additional bond so the total or aggregate
14 principal sum of such bonds equals the sum required by this
15 section. Alternatively, a registrant may furnish an
16 endorsement executed by the corporate surety reinstating the
17 bond to the required principal sum.

18 Section 5. Sections 559.5471, 559.5473, 559.5474,
19 559.5475, 559.5476, 559.5477, and 559.5479, Florida Statutes,
20 are created to read:

21 559.5471 Powers and duties of the Office of Financial
22 Regulation.--

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

26 (2) The office may conduct an investigation of any
27 person, within or outside this state, which the office
28 believes is necessary in order to determine whether a person
29 has violated this chapter or the rules adopted by the
30 commission. The office may commence any such investigation
31 when the office receives information from a complaint, the

1 public media, an informant, or any other source that informs
2 the office that a violation of this chapter has occurred or
3 may occur.

4 (3) The commission may adopt rules under ss.
5 120.536(1) and 120.54 to implement and administer this part.

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

7 (a) Require electronic submission of any form,
8 document, or fee required by this part, provided the rule
9 reasonably accommodates a person with a technological or
10 financial hardship.

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

14 (c) Accept certification of compliance with the
15 requirements of this part in lieu of requiring submission of
16 specified documents.

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

20 (6) The office may:

21 (a) Issue, revoke, quash, or modify and serve
22 subpoenas to compel the attendance of witnesses and subpoenas
23 duces tecum to compel the production of all books, accounts,
24 records, and other documents and materials relevant to an
25 investigation. The office may exercise these powers even if
26 the subject of the investigation is exempt from registration.

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

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

30 (7)(a) In the event of noncompliance with a subpoena
31 or subpoena duces tecum the office issued or caused to be

1 issued, the office may petition a court of competent
2 jurisdiction in the county in which the person subpoenaed
3 resides or has her, his, or its principal place of business
4 for an order requiring the person to appear and testify and to
5 produce the books, accounts, records, and other documents that
6 are specified in the subpoena duces tecum.

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

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

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

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

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

1 interpreters; expenses for communications; expenses for legal
2 representation; expenses for economic, legal, or other
3 research, analysis, and testimony; and fees and expenses for
4 witnesses. The failure to reimburse the office for its
5 reasonable and necessary costs is a reason to deny a
6 registrant's application or to revoke the prior approval of an
7 application.

8 599.5473 Injunction to restrain violations;
9 receivers.--

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

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

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

28 (b) After appointing a receiver, the court may issue
29 an order staying all pending suits and enjoining any further
30 litigation affecting the receiver's custody or possession of
31 the property, assets, and business and the court, with the

1 consent of the chief judge of the circuit, may require that
2 all suits be assigned to the circuit judge who appointed the
3 receiver.

4 599.5474 Cease and desist orders; refund orders.--

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

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

18 599.5475 Evidence; examiner or investigator
19 worksheets, investigative reports, other related
20 documents.--An official written report, sworn complaint,
21 worksheet, or other related paper, or a certified copy
22 thereof, compiled, prepared, drafted, or otherwise made by the
23 financial examiner or investigator is admissible into evidence
24 if the financial examiner or investigator is available for
25 cross examination, authenticates the worksheet, and testifies
26 that the report, worksheet, or related document was prepared
27 as a result of an investigation of the books and records of a
28 registrant or other person conducted under the authority of
29 this part.

30 599.5476 Books, accounts, and records; maintenance;
31 investigations by the office.--

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

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

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

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

22 559.5477 Administrative remedies.--

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

25 (a) Has been found guilty of, regardless of
26 adjudication, or has entered a plea of nolo contendere or
27 guilty to, any crime involving fraud, dishonest dealing, or
28 moral turpitude;

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

1 (c) Has had any business, professional, or
2 occupational license or registration suspended, revoked, or
3 otherwise acted against in any jurisdiction;

4 (d) Fails to maintain the surety bond required
5 pursuant to s. 559.546;

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

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

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

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

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

21 (j) Has a person who directly or indirectly controls
22 the applicant as defined in s. 559.545(4) that is subject to
23 an action, or commits an act, specified by paragraph (a),
24 paragraph (b), paragraph (c), paragraph (f), paragraph (h), or
25 paragraph (i).

26 (2) A registrant may request termination of its
27 registration by delivering written notice of its proposed
28 termination to the office. However, the delivery of the
29 termination notice does not affect any civil or criminal
30 liability of the registrant or the authority of the office to
31 enforce this part.

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

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

10 (5) The office may impose an administrative fine for a
11 violation of this section or s. 559.545, s. 559.546, or s.
12 559.5476 against an offending registrant as an administrative
13 sanction as follows:

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

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

22
23 Final action by the office to impose an administrative fine is
24 subject to review in accordance with ss. 120.569 and 120.57.

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

30 (7) Any administrative fine imposed under this part is
31 payable to the office. The office shall maintain an

1 appropriate record and deposit the fine into the Regulatory
2 Trust Fund of the office.

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

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

10 559.5479 Administrative guidelines.--In imposing any
11 administrative remedy or penalty provided for in the code, the
12 office shall take into account the appropriateness of the
13 penalty with respect to the size of the financial resources
14 and good faith of the person charged, the gravity of the
15 violation, the history of previous violations, and such other
16 matters as justice may require.

17 Section 6. Subsections (1), (7), and (8) of section
18 559.55, Florida Statutes, are amended, and subsections (10),
19 (11), and (12) are added to that section, to read:

20 559.55 Definitions.--The following terms shall, unless
21 the context otherwise indicates, have the following meanings
22 for the purpose of this part:

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

24 (a) Any obligation or alleged obligation of a consumer
25 to pay money arising out of a transaction in which the money,
26 property, insurance, or services which are the subject of the
27 transaction are primarily for personal, family, or household
28 purposes, whether or not such obligation has been reduced to
29 judgment; or

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

1 (7) "Consumer collection agency" means any debt
2 collector or business entity engaged in the business of
3 soliciting, purchasing, or collecting consumer debts in
4 default for collection ~~or of collecting consumer debts~~, which
5 debt collector or business is not expressly exempted as set
6 forth in s. 559.553(1)(4).

7 (8) "Out-of-state consumer debt collector" means any
8 person whose business activities in this state involve both
9 collecting or attempting to collect consumer debt from debtors
10 located in this state by means of interstate communication
11 originating from outside this state. The term "out-of-state
12 consumer debt collector" does not include a person who
13 solicits and soliciting consumer debt accounts for collection
14 from creditors who have a business presence in this state. ~~For~~
15 ~~purposes of this subsection, a creditor has a business~~
16 ~~presence in this state if either the creditor or an affiliate~~
17 ~~or subsidiary of the creditor has an office in this state.~~

18 (10) "Credit grantor" means any person who offers or
19 extends credit creating a debt or to whom a debt is owed, but
20 such term does not include any person to the extent that
21 person receives an assignment or transfer of a debt in default
22 solely for the purpose of facilitating collection of such debt
23 for another.

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

27 (12) "Principal of a registrant or applicant" means
28 any owner of the applicant or registrant if a partnership or
29 sole proprietorship, the corporate officers, the corporate
30 directors other than directors of a not-for-profit corporation
31

1 organized under chapter 617, or the Florida resident agent if
2 a corporation is the applicant or registrant.

3 Section 7. Section 559.552, Florida Statutes, is
4 amended to read:

5 559.552 Relationship of state and federal law.--

6 (1) Any violation of the federal Fair Debt Collection
7 Practices Act constitutes a prohibited practice under s.
8 559.72. This subsection shall not be construed to create any
9 additional civil cause of action as provided under s.
10 559.77(2).

11 (2) ~~Nothing in~~ This part does not ~~shall be construed~~
12 ~~to~~ limit or restrict the continued applicability of the
13 federal Fair Debt Collection Practices Act to consumer
14 collection practices in this state. This part is in addition
15 to the requirements and regulations of the federal act. In
16 construing this part, due consideration and great weight shall
17 be given to interpretations of the Federal Trade Commission
18 Act and the Fair Debt Collection Practices Act by the Federal
19 Trade Commission. In the event of any inconsistency between
20 any provision of this part and any provision of the federal
21 act, the provision that which is more protective of the
22 consumer or debtor shall prevail unless the more protective
23 interpretation conflicts with the case law opinions of the
24 state and federal courts of this state or the opinions of the
25 Eleventh Circuit Court of Appeals.

26 Section 8. Section 559.553, Florida Statutes, is
27 amended to read:

28 559.553 ~~Registration of consumer collection agencies~~
29 ~~required;~~ Exemptions.--The registration requirements of s.
30 559.555

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

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

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

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

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

25 ~~(2)(b) A Any member of The Florida Bar, unless the~~
26 ~~person is primarily engaged in the collection of consumer~~
27 ~~debts. "Primarily engaged in the collection of consumer debts"~~
28 ~~means that more than one-half of the person's income arises~~
29 ~~from the business of soliciting consumer claims for collection~~
30 ~~or collecting consumer claims.~~

1 ~~(3)(c)~~ A Any financial institution authorized to do
2 business in this state or ~~and~~ any wholly owned subsidiary or
3 an ~~and~~ affiliate thereof.

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

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

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

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

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

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

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

20 Section 9. Section 559.555, Florida Statutes, is
21 amended to read:

22 ~~(Substantial rewording of section. See~~

23 ~~s. 559.555, Florida Statutes, for current text.)~~

24 559.555 Registration of consumer collection agencies;
25 procedure.--

26 (1) A person may not engage in business in this state
27 as a consumer collection agency, as defined in this part, or
28 continue to do business in this state as a consumer collection
29 agency unless the person is registered with the office
30 according to this part and thereafter maintains the
31 registration.

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

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

14 (a) A nonrefundable application fee in the amount of
15 \$650. All amounts collected shall be deposited to the credit
16 of the Regulatory Trust Fund of the office.

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

21 (c) The applicant's form and place of organization
22 and, if the applicant is a corporation, a copy of the articles
23 of incorporation and amendments to such articles, if a
24 partnership, a copy of the partnership agreement, or, if
25 limited liability company, a copy of the articles of
26 organization.

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

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

31

1 (4) The applicant shall also provide information as
2 the office may require about any partner, officer, or director
3 of the applicant, any person having the same or substantially
4 similar status or performing substantially similar functions,
5 or any person directly or indirectly controlling the
6 applicant. For purposes of this subsection, the term "directly
7 or indirectly controlling the applicant" means possessing the
8 power to direct or to cause the direction of the management or
9 policies of a company, whether through ownership of stock or
10 securities, by contract, or otherwise. Any individual or
11 company that directly or indirectly has the right to vote 25
12 percent or more of the voting stock or securities of a company
13 or is entitled to 25 percent or more of its profits is
14 presumed to control that company. The office may require
15 information about any such applicant or person, including:
16 (a) His or her full name, current address, current
17 telephone number, date of birth, social security number, or
18 federal identification number of any corporate owner.
19 (b) His or her previous 10-year educational or
20 employment history.
21 (c) Any adverse decision, finding, injunction,
22 suspension, prohibition, revocation, denial, or judgment by
23 any court of competent jurisdiction or an administrative order
24 by an administrative law judge, by any state or federal
25 agency, or by any business, professional, or occupational
26 association involving a violation of any law, rule, or
27 regulation relating to business or professional licensing.
28 (d) His or her commission of any acts which would be
29 grounds for denial of an application under subsection (10).
30 (5) An initial application is deemed received for
31 purposes of s. 120.60 upon receipt of the completed

1 application form prescribed by commission rule, the
2 nonrefundable application fee of \$650, and any other fee
3 prescribed by law.

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

9 (7) The registration of each consumer collection
10 agency shall expire on December 31 of the year in which the
11 registration became effective unless the registrant has
12 renewed its registration on or before that date. A
13 registration may be renewed as the commission may require by
14 rule, together with payment of the \$275 nonrefundable renewal
15 fee and the payment of any amount lawfully due and owing to
16 the office pursuant to any order of the office or pursuant to
17 any agreement with the office. A consumer collection agency
18 that has not renewed its registration by the time the
19 registration period expires may request reactivation of its
20 registration. The registrant must file its request with the
21 office on or before January 31 of the year following the year
22 of expiration. The request must contain any information the
23 office requires, together with the registration fee required
24 in this section and a nonrefundable reactivation fee in the
25 amount of \$250. Any reactivation of registration granted by
26 the office during the month of January is deemed effective
27 retroactive to January 1 of that year. Any registrant that
28 engages in business as a consumer collection agency after its
29 registration has expired violates subsection (1), punishable
30 as provided by ss. 559.785(1) and 559.730(6).

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

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

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

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

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

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

29 (b) Is the subject of a pending criminal prosecution
30 or governmental enforcement action, in any jurisdiction, until
31

1 the conclusion of such criminal prosecution or enforcement
2 action;

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

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

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

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

27 (g) Is subject to or was directly or indirectly a
28 controlling person in the business, or controlled the
29 business, with any company that is, or ever has been, subject
30 to any injunction, temporary restraining order, including a
31 stipulated judgment or order, an assurance of voluntary

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

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

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

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

22 Section 10. Section 559.556, Florida Statutes, is
23 created to read:

24 559.556 Surety bond.--

25 (1) Before the office may issue a registration, the
26 applicant must provide to the office a corporate surety bond
27 issued by a bonding company or insurance company authorized to
28 do business in this state.

29 (2) The corporate surety bond shall be in the amount
30 of \$25,000, paid for and issued for the benefit of any credit
31 grantor against the registrant to secure the faithful

1 performance of the obligations of the registrant with respect
2 to the receipt, handling, and payment of funds collected by
3 the registrant.

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

12 (4) A corporate surety bond filed with the office for
13 purposes of compliance with this section may not be canceled
14 by the registrant or the corporate surety except upon written
15 notice to the office by registered or certified mail with
16 return receipt requested. A cancellation shall not take effect
17 less than 30 days after receipt by the office of such written
18 notice.

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

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

31

1 Section 11. Section 559.72, Florida Statutes, is
2 amended to read:

3 559.72 Prohibited practices generally.--

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

6 ~~(a)(1)~~ Simulate in any manner a law enforcement
7 officer or a representative of any governmental agency;

8 ~~(b)(2)~~ Use or threaten force, ~~or~~ violence, or any
9 other means to harm the physical person, property, or
10 reputation of any person;

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

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

26 ~~(e)(5)~~ Disclose to a person other than the debtor or
27 her or his family information affecting the debtor's
28 reputation, whether or not for credit worthiness, with
29 knowledge or reason to know that the other person does not
30 have a legitimate business need for the information or that
31 the information is false;

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

11 ~~(g)(7)~~ Willfully communicate with the debtor or any
12 member of her or his family with such frequency as can
13 reasonably be expected to harass the debtor or her or his
14 family, or willfully engage in other conduct which can
15 reasonably be expected to abuse or harass the debtor or any
16 member of her or his family;

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

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

24 ~~(j)(10)~~ Use a communication which simulates in any
25 manner legal or judicial process or which gives the appearance
26 of being authorized, issued or approved by a government,
27 governmental agency, or attorney at law, when it is not;

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

31

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

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

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

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

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

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

30 ~~(r)(18)~~ Communicate with a debtor if the person knows
31 that the debtor is represented by an attorney with respect to

1 such debt and has knowledge of, or can readily ascertain, such
2 attorney's name and address, unless the debtor's attorney
3 fails to respond within a reasonable period of time to a
4 communication from the person, unless the debtor's attorney
5 consents to a direct communication with the debtor, or unless
6 the debtor initiates the communication; or

7 ~~(s)(19)~~ Cause charges to be made to any debtor for
8 communications by concealment of the true purpose of the
9 communication, including collect telephone calls and telegram
10 fees.

11 (2) Any debt collector communicating with any person
12 other than the consumer for the purpose of acquiring location
13 information about the consumer:

14 (a) Shall identify himself or herself, state that he
15 or she is confirming or correcting location information
16 concerning the consumer, and, only if expressly requested,
17 identify his or her employer.

18 (b) May not:

19 1. State that such consumer owes a debt;

20 2. Communicate with any such person more than once
21 unless requested to do so by such person or unless the debt
22 collector reasonably believes that the earlier response of
23 such person is erroneous or incomplete and that such person
24 now has correct or complete location information; or

25 3. Communicate by postcard.

26 (3) Without prior consent of the consumer given
27 directly to the debt collector or express permission of a
28 court of competent jurisdiction, a debt collector may not
29 communicate with a consumer in connection with the collection
30 of any debt at the consumer's place of employment if the debt
31 collector knows or has reason to know that the consumer's

1 employer prohibits the consumer from receiving such
2 communication.

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

12 (5) If a consumer notifies a debt collector in writing
13 that the consumer refuses to pay a debt or that the consumer
14 wishes the debt collector to cease further communication with
15 the consumer, the debt collector shall not communicate further
16 with the consumer with respect to such debt, except to:

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

19 (b) Notify the consumer that the debt collector or
20 creditor may invoke specified remedies which are ordinarily
21 invoked by such debt collector or creditor; or

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

25
26 If such notice from the consumer is made by mail, notification
27 shall be complete upon receipt. For the purpose of this
28 subsection, the term "consumer" includes the consumer's
29 spouse, parent if the consumer is a minor, guardian, executor,
30 or administrator.

31

1 (6) A debt collector may not use any false, deceptive,
2 or misleading representation or means in connection with the
3 collection of any debt. Without limiting the general
4 application of such prohibition, the following conduct is a
5 violation of this subsection:

6 (a) The false representation of:

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

8 or

9 2. Any services rendered or compensation which may be
10 lawfully received by any debt collector for the collection of
11 a debt.

12 (b) The representation or implication that nonpayment
13 of any debt will result in the arrest or imprisonment of any
14 person or the seizure, garnishment, attachment, or sale of any
15 property or wages of any person unless such action is lawful
16 and the debt collector or creditor intends to take such
17 action.

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

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

22 or

23 2. Become subject to any practice prohibited by this
24 subsection.

25 (d) The false representation or implication that the
26 consumer committed any crime or other conduct in order to
27 disgrace the consumer.

28 (e) The use of any false representation or deceptive
29 means to collect or attempt to collect any debt or to obtain
30 information concerning a consumer.

31

1 (f) The failure to disclose in the initial
2 communication that the debt collector is attempting to collect
3 a debt and that any information obtained will be used for that
4 purpose, and the failure to disclose in subsequent
5 communications that the communication is from a debt
6 collector, except this paragraph does not apply to a formal
7 pleading made in connection with a legal action.

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

11 (h) The use of any business, company, or organization
12 name other than the true name of the debt collector's
13 business, company, or organization.

14 (i) The false representation or implication that
15 documents are not legal process forms or do not require action
16 by the consumer.

17 (j) The false representation or implication that a
18 debt collector operates or is employed by a consumer reporting
19 agency.

20 (7) A debt collector may not use unfair or
21 unconscionable means to collect or attempt to collect any
22 debt. Without limiting the general application of such
23 prohibition, the following conduct is a violation of this
24 section:

25 (a) Collecting any amount, including any interest,
26 fee, charge, or expense incidental to the principal
27 obligation, unless such amount is expressly authorized by the
28 agreement creating the debt or permitted by law.

29 (b) The acceptance by a debt collector from any person
30 of a check or other payment instrument postdated by more than
31 5 days unless such person is notified in writing of the debt

1 collector's intent to deposit such check or instrument not
2 more than 10 nor less than 3 business days prior to such
3 deposit.

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

7 (d) Depositing or threatening to deposit any postdated
8 check or other postdated payment instrument prior to the date
9 on such check or instrument.

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

12 1. There is no present right to possession of the
13 property claimed as collateral through an enforceable security
14 interest;

15 2. There is no present intention to take possession of
16 the property; or

17 3. The property is exempt by law from such
18 dispossession or disablement.

19 (f) Communicating with a consumer regarding a debt by
20 post card.

21 (8) Within 5 days after the initial communication with
22 a consumer in connection with the collection of any debt, a
23 debt collector shall, unless the following information is
24 contained in the initial communication or the consumer has
25 paid the debt, send the consumer a written notice containing:

26 (a) The amount of the debt.

27 (b) The name of the creditor to whom the debt is owed.

28 (c) A statement that unless the consumer, within 30
29 days after receipt of the notice, disputes the validity of the
30 debt, or any portion thereof, the debt will be assumed to be
31 valid by the debt collector.

1 (d) A statement that if the consumer notifies the debt
2 collector in writing within the 30-day period that the debt,
3 or any portion thereof, is disputed, the debt collector will
4 obtain verification of the debt or a copy of the judgment
5 against the consumer and a copy of such verification or
6 judgment will be mailed to the consumer by the debt collector.

7 (e) A statement that, upon the consumer's written
8 request within the 30-day period, the debt collector will
9 provide the consumer with the name and address of the original
10 creditor, if different from the current creditor.

11 (9) If the consumer notifies the debt collector in
12 writing within the 30-day period described in subsection (9)
13 that the debt, or any portion of the debt, is disputed, or
14 that the consumer requests the name and address of the
15 original creditor, the debt collector shall cease collection
16 of the debt, or any disputed portion thereof, until the debt
17 collector obtains verification of the debt or any copy of a
18 judgment, or the name and address of the original creditor,
19 and a copy of such verification or judgment, or name and
20 address of the original creditor, is mailed to the consumer by
21 the debt collector.

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

25 (11) If any consumer owes multiple debts and makes any
26 single payment to any debt collector with respect to such
27 debts, such debt collector may not apply such payment to any
28 debt which is disputed by the consumer and, where applicable,
29 shall apply such payment in accordance with the consumer's
30 directions.

31

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

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

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

10 1. In which such consumer signed the contract sued
11 upon; or

12 2. In which such consumer resides at the commencement
13 of the action.

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

16 (13) It is unlawful to design, compile, and furnish
17 any form knowing such form would be used to create the false
18 belief in a consumer that a person other than the creditor of
19 such consumer is participating in the collection of or in an
20 attempt to collect a debt such consumer allegedly owes such
21 creditor, when in fact such person is not participating.

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

24 Section 12. Section 559.725, Florida Statutes, is
25 amended to read:

26 (Substantial rewording of section. See
27 s. 559.725, Florida Statutes, for current text.)
28 559.725 Consumer complaints.--

29 (1) Any person having reason to believe that this part
30 has been violated may file a written complaint with the office
31 or the Division of Consumer Services of the Department of

1 Financial Services setting forth the details of the alleged
2 violation.

3 (2) Any government office or agency receiving a
4 complaint under this section shall advise any other government
5 office or agency with apparent jurisdiction, including the
6 office, the appropriate state attorney, or the Attorney
7 General in the case of an out-of-state consumer debt
8 collector, of any determination by that agency of a violation,
9 or possible violation, of the requirements of this part by any
10 consumer collection agency, whether or not registered or
11 exempt from registration as required by this part.

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

14 559.726 Powers and duties of the Office of Financial
15 Regulation.--

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

19 (2) The office may conduct an investigation of any
20 person, within or outside this state, which the office
21 believes is necessary in order to determine whether a person
22 has violated this chapter or the rules adopted by the
23 commission. The office may commence any such investigation
24 when the office receives information from a complaint, the
25 public media, an informant, or other source that informs the
26 office that a violation of this chapter has occurred or may
27 occur.

28 (3) The commission may adopt rules under ss.
29 120.536(1) and 120.54 to implement and administer this part.

30 (4) The commission may adopt a rule to:
31

1 (a) Require electronic submission of any form,
2 document, or fee required by this part, provided the rule
3 reasonably accommodates a person with a technological or
4 financial hardship.

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

8 (c) Accept certification of compliance with the
9 requirements of this part in lieu of requiring submission of
10 specified documents.

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

14 (6) The office may:

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

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

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

24 (7)(a) In the event of noncompliance with a subpoena
25 or subpoena duces tecum the office issued or caused to be
26 issued, the office may petition a court of competent
27 jurisdiction in the county in which the person subpoenaed
28 resides or has her, his, or its principal place of business
29 for an order requiring the person to appear and testify and to
30 produce the books, accounts, records, and other documents that
31 are specified in the subpoena duces tecum.

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

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

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

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

22 (9) Reasonable and necessary costs incurred by the
23 office during an investigation may be assessed against any
24 debt collector on the basis of actual costs incurred. Assessed
25 expenses may include, but are not limited to, expenses for
26 interpreters; expenses for communications; expenses for legal
27 representation; expenses for economic, legal, or other
28 research; expenses for analysis and testimony; and fees and
29 expenses for witnesses. The failure to reimburse the office
30 for its reasonable and necessary costs is a reason to deny a
31

1 registrant's application or to revoke the prior approval of an
2 application.

3 599.7262 Injunction to restrain violations;
4 receivers.--

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

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

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

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

30 599.7263 Cease and desist orders; refund orders.--
31

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

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

13 559.7264 Evidence; examiner or investigator
14 worksheets, investigative reports, other related
15 documents.--An official written report, sworn complaint,
16 worksheet, or other related paper, or a duly certified copy
17 thereof, compiled, prepared, drafted, or otherwise made by the
18 financial examiner or investigator is admissible into evidence
19 if the financial examiner or investigator is available for
20 cross examination, authenticates the worksheet, and testifies
21 that the report, worksheet, or related document was prepared
22 as a result of an investigation of the books and records of a
23 registrant or other person conducted under the authority of
24 this part.

25 559.7265 Books, accounts, and records; maintenance;
26 examinations by the office.--

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

31

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

6 (3) All books, accounts, records, documents, and
7 receipts for payments to a registrant by a debtor, and
8 payments made to a creditor by a registrant, shall be
9 preserved and kept available for investigation by the
10 department for 3 years after the date of original entry. The
11 commission shall adopt requirements by rule for maintaining
12 the books, accounts, records, and documents retained by the
13 registrant and for destroying the records.

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

18 Section 14. Section 559.730, Florida Statutes, is
19 amended to read:

20 (Substantial rewording of section. See
21 s. 559.730, Florida Statutes, for current text.)
22 559.730 Administrative remedies.--

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

25 (a) Has been found guilty of, regardless of
26 adjudication, or has entered a plea of nolo contendere or
27 guilty to, any crime involving fraud, dishonest dealing, or
28 moral turpitude;

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

1 (c) Has had any business, professional, or
2 occupational license or registration suspended, revoked, or
3 otherwise acted against in any jurisdiction;

4 (d) Fails to maintain the surety bond required
5 pursuant to s. 559.556;

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

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

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

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

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

21 (j) Employs a person, who directly or indirectly
22 controls the applicant as defined in s. 559.555(4), who is
23 subject to an action, or commits an act, contemplated by
24 paragraph (a), paragraph (b), paragraph (c), paragraph (f),
25 paragraph (h), or paragraph (i).

26 (2) A registrant may request termination of its
27 registration by delivering written notice of its proposed
28 termination to the office. However, the delivery of the
29 termination notice does not affect any civil or criminal
30 liability of the registrant or the authority of the office to
31 enforce this part.

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

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

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

14 (a) If the nonwillful violation constitutes a bona
15 fide error pursuant to s. 559.77(3), the office may issue a
16 written reprimand to the offending registrant and may require
17 the registrant implement additional policies and procedures to
18 avoid any future violations. For purposes of this section
19 only, the bona fide error defense shall only apply to a
20 violation of 559.72(1)(e), (f), (p), (q), or (r), (3), (4), (5),
21 (7)(f), (8)(b), or (9). This subsection shall not apply if the
22 same nonwillful violation subject to the written reprimand
23 recurs within 2 years after the issuance of the written
24 reprimand.

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

30 (c) For any willful violation, the office may impose a
31 fine of up to \$2,500 per violation. In no event shall such

1 fine exceed the aggregate amount of \$100,000 for all willful
2 violations arising out the same action.

3
4 Final action by the office to impose an administrative fine is
5 subject to review in accordance with ss. 120.569 and 120.57.

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

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

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

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

22 Section 15. Section 559.735, Florida Statutes, is
23 created to read:

24 559.735 Administrative guidelines.--In imposing any
25 administrative remedy or penalty provided for in the code, the
26 office shall take into account the appropriateness of the
27 penalty with respect to the amount of financial resources and
28 good faith of the person charged, the gravity of the
29 violation, the history of previous violations, and such other
30 matters as justice may require.

31

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

3 559.77 Civil remedies.--

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

10 (2) Upon adverse adjudication, the defendant shall be
11 liable for actual damages and for additional statutory damages
12 of up to \$1,000, together with court costs and reasonable
13 attorney's fees incurred by the plaintiff. In determining the
14 defendant's liability for any additional statutory damages,
15 the court shall consider the nature of the defendant's
16 noncompliance with s. 559.72(1), the frequency and persistence
17 of such noncompliance, and the extent to which such
18 noncompliance was intentional. In any class action lawsuit
19 brought under this section, the court may award additional
20 statutory damages of up to \$1,000 for each named plaintiff and
21 an aggregate award of additional statutory damages not to
22 exceed the lesser of \$500,000 or 1 percent of the defendant's
23 net worth for all remaining class members, but in no event may
24 this aggregate award provide an individual class member with
25 additional statutory damages in excess of \$1,000. The court
26 may, in its discretion, award punitive damages and may provide
27 such equitable relief as it deems necessary or proper,
28 including enjoining the defendant from further violations of
29 this part. If the court finds that the suit fails to raise a
30 justiciable issue of law or fact, the plaintiff shall be
31 liable for court costs and reasonable attorney's fees incurred

1 by the defendant. Nothing in this section prohibits the
2 defendant or plaintiff from using the procedures under s.
3 768.79 or Rule 1.442 of the Florida Rules of Civil Procedure.

4 (5) In applying and construing this section, due
5 consideration and great weight shall be given to the
6 interpretations of the Federal Trade Commission and the
7 federal courts relating to the federal Fair Debt Collection
8 Practices Act and the Federal Trade Commission Act. If there
9 is an inconsistency between this part and an interpretation of
10 the federal acts, the provision that is more protective of the
11 consumer or debtor shall prevail unless the more protective
12 interpretation conflicts with the case law opinions of the
13 state and federal courts of this state or the opinions of the
14 Eleventh Circuit Court of Appeals.

15 Section 17. Section 59.785, Florida Statutes, is
16 amended to read:

17 59.785 Criminal penalty.--

18 (1) It ~~is shall be~~ a felony misdemeanor of the third
19 ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
20 775.083, or s. 775.084, for any person not exempt from
21 registering as provided in this part to:

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

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

27 (c) Engage in any consumer debt collection activity
28 after suspension or revocation of the registrant's
29 registration under s. 59.730(1); or

1 (d) Engage in any consumer debt collection activity
2 while under a temporary or permanent injunction issued under
3 s. 559.78.

4 (2) Each of the following acts constitutes a
5 misdemeanor of the second degree, punishable as provided in s.
6 775.082 or s. 775.083:

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

11 (b) Assigning or attempting to assign a registration
12 under this part.

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

20 Section 18. Section 559.786, Florida Statutes, is
21 created to read:

22 559.786 Annual report.--The Office of Financial
23 Regulation shall submit a report on January 1, 2006, and
24 biannually thereafter, to the President of the Senate and the
25 Speaker of the House of Representatives containing findings
26 and conclusions concerning the effectiveness of the consumer
27 and commercial collection practices acts in preventing fraud,
28 abuse, and other unlawful activity associated with the
29 collection of commercial and consumer debts. The report shall
30 include a summary of the type and number of complaints
31 received by the office or the Division of Consumer Services of

1 the Department of Financial Services. The summary shall
2 identify the nature and number of the various kinds of
3 complaints received. The report may further contain
4 legislative recommendations concerning the efficacy of the
5 consumer and commercial practices act.

6 Section 19. Sections 559.547, 559.563, and 559.565,
7 Florida Statutes, are repealed.

8 Section 20. For the 2005-2006 fiscal year, five
9 positions are authorized and the sum of \$366,614 is
10 appropriated from the Regulatory Trust Fund to the Office of
11 Financial Regulation for the purpose of enforcing this act.
12 The five positions shall consist of four examiners and one
13 registration analyst.

14 Section 21. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1984

4 The committee substitute provides the following changes:

- 5 o Sets application fees for both commercial and consumer
6 collection agencies at \$650. Sets renewal fees at \$275
7 for consumer collection agencies. Restores renewal fees
8 to \$500 for commercial collection agencies. Reduces
9 additional positions authorized from 6 to 5 and makes a
10 corresponding reduction in appropriations.
- 11 o Provides for a tiered administrative fine structure for
12 willful vs. non-willful violations.
 - 13 * Non-willful violation: maximum \$1,000 fine up to
14 \$10,000
 - 15 * Willful violation: maximum \$2,500 fine up to
16 \$100,000.
- 17 o Clarifies that the proposed incorporation of violations
18 in Florida law of violations that mirror the Federal Fair
19 Debt Collection Practices Act do not create any new civil
20 causes of action.
- 21 o Provides that nothing shall prohibit a plaintiff or a
22 defendant from utilizing the offer of judgment
23 mechanisms.
- 24 o Clarifies that precedence will be given to the 11th
25 Circuit Court of Appeals in the event of a conflict in
26 federal case law.
- 27 o Adds definitions of "debtor" and "consumer" to the
28 commercial collection agency act in conformity with the
29 consumer act definitions.
- 30 o Removes references to examinations and removes 15 day
31 notice requirement for certain investigations.
- o Clarifies that an examiner's or investigator's work
papers are admissible into evidence under certain
circumstances.
- o Incorporates debt purchasers into the definition of
"consumer collection agency."
- o Changes "person" to "consumer collection agency" in s.
559.72, F.S., (regarding prohibited practices).