

1 A bill to be entitled
2 An act relating to the Department of Financial Services;
3 amending s. 20.121, F.S.; revising the duties of the
4 Division of Consumer Services of the department relating
5 to the Office of Insurance Regulation; amending s.
6 520.996, F.S.; specifying that complaints relating to
7 sales and finance must be submitted to the Office of
8 Financial Regulation; amending s. 537.017, F.S.;
9 specifying that complaints relating to title loans be
10 submitted to the Office of Financial Regulation; repealing
11 part V of ch. 559, F.S., relating to commercial collection
12 practices; providing a directive to the Division of
13 Statutory Revision; amending s. 559.55, F.S.; revising
14 definitions relating to the regulation of consumer
15 collection practices; amending s. 559.551, F.S.;
16 conforming cross-references; creating s. 559.5525, F.S.;
17 providing powers for the Office of Financial Regulation;
18 amending s. 559.553, F.S.; requiring consumer collection
19 agencies to be licensed instead of registered; amending s.
20 559.555, F.S.; providing requirements for license
21 applications; requiring a license fee; providing for
22 license issuance; requiring the license to be displayed to
23 the public; limiting the effective period of the license
24 to 2 years; creating s. 559.5551, F.S.; authorizing the
25 office to disapprove the use of certain names for a
26 consumer collection agency; creating s. 559.5553, F.S.;
27 requiring a licensee to notify the agency of a change of
28 name, address, employment status, or ownership; creating

29 s. 559.5554, F.S.; providing for license renewal; creating
30 s. 559.5555, F.S.; requiring a licensee to obtain a surety
31 bond and provide proof of such bond to the office;
32 creating s. 559.5556, F.S.; authorizing the office to
33 conduct investigations of license applicants; repealing s.
34 559.563, F.S., relating to void registrations; amending s.
35 559.565, F.S.; clarifying that an out-of-state consumer
36 collection agency is subject to the same sanctions and
37 fines as an in-state licensee; providing a fine for
38 failing to obtain licensure; amending s. 559.72, F.S.;
39 providing that a prohibited act conducted by an agent,
40 employee, or control person of a consumer collection
41 agency shall be treated as a violation by the agency;
42 creating s. 559.721, F.S.; providing grounds for the
43 denial, suspension, or revocation of a license; creating
44 s. 559.722, F.S.; providing for the duration of a license
45 suspension or revocation; amending s. 559.725, F.S.;
46 revising provisions relating to consumer complaints about
47 a consumer collection agency; creating s. 559.726, F.S.;
48 providing procedures for conducting investigations,
49 including access to records; prohibiting willful
50 obstruction of an investigation; providing penalties;
51 creating s. 559.727, F.S.; providing procedures for
52 removing a person from the business of debt collecting;
53 amending s. 559.730, F.S.; revising provisions relating to
54 administrative remedies; increasing the maximum penalty;
55 authorizing the office to adopt rules relating to penalty
56 guidelines; creating s. 559.731, F.S.; providing for the

57 | payment of restitution; amending s. 559.77, F.S.; revising
 58 | provisions relating to civil remedies; extending the
 59 | statute of limitations; amending s. 559.78, F.S.; revising
 60 | provisions relating to injunctions; amending s. 559.785,
 61 | F.S.; providing criminal penalties for failure to obtain
 62 | licensure; creating s. 559.786, F.S.; providing that a
 63 | license is the property of the state and must be
 64 | surrendered upon office request; creating s. 559.787,
 65 | F.S.; authorizing the Attorney General to bring an action
 66 | against a consumer collection agency under the Florida
 67 | Deceptive and Unfair Trade Practices Act; creating s.
 68 | 559.788, F.S.; authorizing the office to adopt rules;
 69 | providing penalties for willful violation of such rules;
 70 | amending ss. 20.165, 205.1971, 501.604, 560.309, 560.406,
 71 | 721.11, and 832.10, F.S.; conforming cross-references;
 72 | providing an effective date.

73 |

74 | Be It Enacted by the Legislature of the State of Florida:

75 |

76 | Section 1. Paragraph (h) of subsection (2) of section
 77 | 20.121, Florida Statutes, is amended to read:

78 | 20.121 Department of Financial Services.—There is created
 79 | a Department of Financial Services.

80 | (2) DIVISIONS.—The Department of Financial Services shall
 81 | consist of the following divisions:

82 | (h) The Division of Consumer Services.

83 | 1. The Division of Consumer Services shall perform the
 84 | following functions concerning products or services regulated by

85 the department ~~of Financial Services~~ or ~~by either office of the~~
 86 Office of Insurance Regulation ~~Financial Services Commission:~~

- 87 a. Receive inquiries and complaints from consumers.
- 88 b. Prepare and disseminate ~~such~~ information ~~as~~ the
 89 department deems appropriate to inform or assist consumers.
- 90 c. Provide direct assistance and advocacy for consumers
 91 who request such assistance or advocacy.
- 92 d. With respect to apparent or potential violations of law
 93 or applicable rules by a person or entity licensed by the
 94 department or office ~~by either office of the commission~~, report
 95 ~~such~~ apparent or potential violations ~~violation~~ to the office or
 96 the appropriate division of the department ~~or office of the~~
 97 ~~commission~~, which may take such further action as it deems
 98 appropriate.
- 99 e. Designate an employee of the division as the primary
 100 contact for consumers on issues relating to sinkholes.

101 2. Any person licensed or issued a certificate of
 102 authority by the department or by the Office of Insurance
 103 Regulation shall respond, in writing, to the Division of
 104 Consumer Services within 20 days after receipt of a written
 105 request for information from the division concerning a consumer
 106 complaint. The response must address the issues and allegations
 107 raised in the ~~this~~ complaint. The division may, ~~in its~~
 108 ~~discretion~~, impose an administrative penalty for failure to
 109 comply with this subparagraph of ~~in an amount~~ up to \$2,500 per
 110 violation upon any entity licensed by the department or the
 111 office ~~of Insurance Regulation~~ and \$250 for the first violation,
 112 \$500 for the second violation, and up to \$1,000 per violation

HB 1219

2010

113 thereafter upon any individual licensed by the department or the
 114 office ~~of Insurance Regulation~~.

115 3. The department may adopt rules to administer ~~implement~~
 116 ~~the provisions of~~ this paragraph.

117 4. The powers, duties, and responsibilities expressed or
 118 granted in this paragraph do ~~shall~~ not limit the powers, duties,
 119 and responsibilities of the Department of Financial Services,
 120 the Financial Services Commission, the Office of Insurance
 121 Regulation, or the Office of Financial Regulation set forth
 122 elsewhere in the Florida Statutes.

123 Section 2. Subsection (3) of section 520.996, Florida
 124 Statutes, is amended to read:

125 520.996 Investigations and complaints.—

126 (3) Any retail buyer or owner having reason to believe
 127 that the provisions of this chapter have been violated may file
 128 ~~with the office or the Department of Financial Services a~~
 129 written complaint with the office setting forth the details of
 130 the ~~such~~ alleged violations and, ~~the office~~ upon receipt of such
 131 complaint, the office may inspect the ~~pertinent~~ books, records,
 132 letters, and contracts of the licensee and ~~of~~ the seller
 133 ~~involved,~~ relating to the ~~such specific~~ written complaint.

134 Section 3. Subsection (3) of section 537.017, Florida
 135 Statutes, is amended to read:

136 537.017 Investigations and complaints.—

137 (3) Any person having reason to believe that any provision
 138 of this chapter ~~act~~ has been violated may file ~~with the~~
 139 ~~Department of Financial Services or the office~~ a written
 140 complaint with the office setting forth the details of the ~~such~~

141 alleged violation, and the office may investigate such
 142 complaint.

143 Section 4. Part V of chapter 559, Florida Statutes,
 144 consisting of sections 559.541, 559.542, 559.543, 559.544,
 145 559.545, 559.546, 559.547, and 559.548, is repealed. The
 146 Division of Statutory Revision is requested to redesignate parts
 147 VI through XI of chapter 559, Florida Statutes, as parts V
 148 through X, respectively.

149 Section 5. Section 559.55, Florida Statutes, is reordered
 150 and amended to read:

151 559.55 Definitions.—As used in The following terms shall,
 152 unless the context otherwise indicates, have the following
 153 meanings for the purpose of this part, the term:

154 (1)(5) "Communication" means the conveying of information
 155 regarding a debt, directly or indirectly, to any person through
 156 any medium.

157 (2)(7) "Consumer collection agency" means a any debt
 158 collector acting as a sole proprietor, a partnership, or a joint
 159 venture employing one or more debt collectors, or a business
 160 entity, employing one or more debt collectors, which is engaged
 161 in the business of soliciting consumer debts for collection or
 162 of collecting consumer debts and, which debt collector or
 163 business is not expressly exempted under as set forth in s.
 164 559.553(2) 559.553(4).

165 (3) "Control person" means an individual, partnership,
 166 corporation, trust, or other organization that possesses the
 167 power, directly or indirectly, to direct the management or
 168 policies of a company, whether through ownership of securities,

169 by contract, or otherwise. The term includes, but is not limited
 170 to:

171 (a) A company's executive officers, including the
 172 president, chief executive officer, chief financial officer,
 173 chief operations officer, chief legal officer, chief compliance
 174 officer, director, or other individuals having similar status or
 175 functions.

176 (b) For a corporation, each shareholder who, directly or
 177 indirectly, owns 10 percent or more, or who has the power to
 178 vote 10 percent or more, of a class of voting securities unless
 179 the applicant is a publicly traded company.

180 (c) For a partnership, all general partners and limited or
 181 special partners who have contributed 10 percent or more, or who
 182 have the right to receive upon dissolution, 10 percent or more
 183 of the partnership's capital.

184 (d) For a trust, each trustee.

185 (e) For a limited liability company, all elected managers
 186 and those members who have contributed 10 percent or more, or
 187 who have the right to receive upon dissolution, 10 percent or
 188 more of the partnership's capital.

189 (4) (3) "Creditor" means any person who offers or extends
 190 credit creating a debt or to whom a debt is owed, but does not
 191 include a any person who receives to the extent that they
 192 receive an assignment or transfer of a debt in default solely
 193 for the purpose of facilitating the collection of such debt for
 194 another.

195 (5) (1) "Debt" or "consumer debt" means any obligation or
 196 alleged obligation of a consumer to pay money arising out of a

197 transaction in which the money, property, insurance, or
 198 services, which are the subject of the transaction, are
 199 primarily for personal, family, or household purposes, whether
 200 or not such obligation has been reduced to judgment.

201 (6) "Debt collector" means a ~~any~~ person who uses any
 202 instrumentality of commerce within this state, the United States
 203 mail, a common carrier, e-mail, or the Internet, whether
 204 initiated from within or outside this state, in a ~~any~~ business
 205 whose ~~the~~ principal purpose ~~of which~~ is the collection of debts,
 206 or who regularly collects or attempts to collect, directly or
 207 indirectly, debts ~~owed or due or~~ asserted to be owed or due to a
 208 creditor, or who receives payment of any account, bill, claim,
 209 or other indebtedness on behalf of a creditor ~~another~~. The term
 210 ~~"debt collector"~~ includes a ~~any~~ creditor who, in the process of
 211 collecting her or his own debts, uses any name other than her or
 212 his own which indicates ~~would indicate~~ that a third person is
 213 collecting or attempting to collect such debts, and a person
 214 who, directly or indirectly, engages or offers to engage in this
 215 state in the business of collecting any form of indebtedness for
 216 her or his own account if the indebtedness was acquired from
 217 another person and was delinquent or in default at the time it
 218 was acquired. The term does not include:

219 (a) An ~~Any~~ officer or employee of a creditor who ~~while~~, in
 220 the name of the creditor, collects ~~collecting~~ debts for such
 221 creditor;

222 (b) A ~~Any~~ person ~~while~~ acting as a debt collector for
 223 another person, both of whom are related by common ownership or
 224 affiliated by corporate control, if the person acting as a debt

HB 1219

2010

225 collector for persons to whom it is so related or affiliated and
 226 if the principal business of such persons is not the collection
 227 of debts;

228 (c) An ~~Any~~ officer or employee of any federal, state, or
 229 local governmental body ~~to the extent that~~ collecting or
 230 attempting to collect any debt ~~is~~ in the performance of her or
 231 his official duties;

232 (d) A ~~Any~~ person ~~while~~ serving or attempting to serve
 233 legal process on another ~~any other~~ person in connection with the
 234 judicial enforcement of a ~~any~~ debt;

235 (e) A ~~Any~~ not-for-profit organization that ~~which~~, at the
 236 request of consumers, performs bona fide consumer credit
 237 counseling and assists consumers in the liquidation of their
 238 debts by receiving payments from such consumers and distributing
 239 such payments ~~amounts~~ to creditors; or

240 (f) A ~~Any~~ person collecting or attempting to collect any
 241 debt ~~if owed or due or asserted to be owed or due another to the~~
 242 ~~extent that~~ such activity is incidental to a bona fide fiduciary
 243 obligation or a bona fide escrow arrangement; concerns a debt
 244 that ~~which~~ was originated by such person; concerns a debt that
 245 ~~which~~ was not in default at the time it was obtained by such
 246 person; or concerns a debt obtained by such person as a secured
 247 party in a commercial credit transaction involving the creditor.

248 (7) ~~(2)~~ "Debtor" or "consumer" means any natural person
 249 obligated or allegedly obligated to pay any debt.

250 (8) "Division" means the Division of Consumer Services of
 251 the Department of Financial Services.

252 (9) "Federal Fair Debt Collection Practices Act" ~~or~~

HB 1219

2010

253 ~~"Federal Act"~~ means the federal legislation regulating fair debt
 254 collection practices, as set forth in Pub. L. No. 95-109, as
 255 amended and published in 15 U.S.C. ss. 1692 et seq.

256 ~~(10)-(4)~~ "Office" means the Office of Financial Regulation
 257 of the Financial Services Commission.

258 ~~(11)-(8)~~ "Out-of-state consumer debt collector" means any
 259 person whose business activities in this state involve both
 260 collecting or attempting to collect consumer debt from debtors
 261 located in this state by means of interstate communication
 262 originating from outside this state and soliciting consumer debt
 263 accounts for collection from creditors who have a business
 264 presence in this state. For purposes of this subsection, a
 265 creditor has a business presence in this state if ~~either~~ the
 266 creditor or an affiliate or subsidiary of the creditor has an
 267 office in this state.

268 Section 6. Section 559.551, Florida Statutes, is amended
 269 to read:

270 559.551 Short title.—~~This part Sections 559.55-559.785~~ may
 271 be cited as the "Florida Consumer Collection Practices Act."

272 Section 7. Section 559.5525, Florida Statutes, is created
 273 to read:

274 559.5525 Office of Financial Regulation; powers.—

275 (1) The office shall have the powers and authority
 276 expressly conferred upon it by, or reasonably implied from, the
 277 provisions of this part.

278 (2) In addition to expressly authorized investigations,
 279 the office may issue subpoenas and conduct such investigations
 280 of consumer debt collection matters as it deems proper in order

281 to determine whether a person has violated any provision of this
 282 part or to secure information useful in the lawful
 283 implementation of such provision.

284 (3) The office may collect, propose, publish, and
 285 disseminate information relating to the subject matter of any
 286 duties imposed upon it under this part.

287 Section 8. Section 559.553, Florida Statutes, is amended
 288 to read:

289 559.553 Licensing Registration of consumer collection
 290 agencies required; exemptions.—

291 (1) ~~After January 1, 1994, A~~ No person may not shall
 292 engage in business in this state as a consumer collection agency
 293 or act as, advertise, or hold herself or himself out as a
 294 consumer collection agency ~~continue to do business in this state~~
 295 ~~as a consumer collection agency without~~ being licensed under
 296 ~~first registering in accordance with this part, and thereafter~~
 297 ~~maintaining a valid registration.~~

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

301 ~~(3) A prospective registrant shall be entitled to be~~
 302 ~~registered when registration information is complete on its face~~
 303 ~~and the applicable registration fee has been paid; however, the~~
 304 ~~office may reject a registration submitted by a prospective~~
 305 ~~registrant if the registrant or any principal of the registrant~~
 306 ~~previously has held any professional license or state~~
 307 ~~registration which was the subject of any suspension or~~
 308 ~~revocation which has not been explained by the prospective~~

309 ~~registrant to the satisfaction of the office either in the~~
 310 ~~registration information submitted initially or upon the~~
 311 ~~subsequent written request of the office. In the event that an~~
 312 ~~attempted registration is rejected by the office the prospective~~
 313 ~~registrant shall be informed of the basis for rejection.~~

314 ~~(2)-(4)~~ This section does ~~shall~~ not apply to:

315 (a) An ~~Any~~ original creditor.

316 (b) A ~~Any~~ member of The Florida Bar.

317 (c) A ~~Any~~ financial institution authorized to do business
 318 in this state and any wholly owned subsidiary and affiliate
 319 thereof.

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

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

323 (f) A ~~Any~~ consumer finance company and any wholly owned
 324 subsidiary and affiliate thereof.

325 (g) A ~~Any~~ person licensed under ~~pursuant to~~ chapter 520.

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

329 (i) A depository institution; subsidiaries that are owned
 330 and controlled by a depository institution and regulated by the
 331 Board of Governors of the Federal Reserve System, the
 332 Comptroller of the Currency, the Director of the Office of
 333 Thrift Supervision, the National Credit Union Administration, or
 334 the Federal Deposit Insurance Corporation; or institutions
 335 regulated by the Farm Credit Administration. Depository
 336 institution has the same meaning as in s. (3)(c) of the Federal

HB 1219

2010

337 Deposit Insurance Act, and includes credit unions ~~Any FDIC-~~
338 ~~insured institution or subsidiary or affiliate thereof.~~

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

344 Section 9. Section 559.555, Florida Statutes, is amended
345 to read:

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

348 559.555 Licensing application and issuance.—

349 (1) A consumer collection agency seeking to be licensed
350 under this part shall submit an application to the office signed
351 by the applicant or owner or owners of the consumer collection
352 agency, or, if incorporated, by the president and secretary of
353 the corporation. The signed application must include:

354 (a) The name and principal business address and e-mail
355 address of the consumer collection agency.

356 (b) The name and residence address of each control person
357 of the consumer collection agency.

358 (c) The name and residence address of each debt collector
359 employed by the consumer collection agency.

360 (d) The address of each consumer collection agency branch
361 office and the name under which each office will conduct
362 business.

363 (e) The name of each person to be in full-time charge of
364 each consumer collection agency branch and the office to which

HB 1219

2010

365 the person is assigned.

366 (f) The fingerprints of each of the following, which must
367 be taken by a law enforcement agency or other entity approved by
368 the office, accompanied by a fingerprint processing fee in an
369 amount necessary to cover processing costs:

370 1. The license applicant;

371 2. Each debt collector employed by the consumer collection
372 agency; and

373 3. All control persons.

374 (g) Such additional information as the office requires by
375 rule to ascertain the trustworthiness and competence of persons
376 required to be listed on the application and to ascertain that
377 such persons meet the requirements of this part. However, the
378 office may not require that credit or character reports be
379 submitted for such persons.

380 (2) Each application shall be accompanied by evidence of a
381 surety bond as prescribed in s. 559.5555 and a \$400 license fee.
382 The license fee is nonrefundable and may not be prorated. All
383 amounts collected shall be deposited to the credit of the
384 Insurance Regulatory Trust Fund.

385 (3) The office may deny a license if:

386 (a) Any of the persons required to be listed in the
387 application have held any professional license or state
388 registration that was the subject of a suspension or revocation
389 that has not been explained by the prospective licensee to the
390 satisfaction of the office in the license application or upon
391 the subsequent written request of the office.

392 (b) The applicant, any debt collector employed by the

393 applicant, or any control person or other person who manages or
394 controls the applicant's business meets any of the grounds for
395 license denial provided in s. 559.721 or has committed other
396 criminal acts that make her or him unfit or untrustworthy to
397 engage in the consumer collection agency business.

398 (4) If, upon the basis of the completed application and
399 such further inquiry or investigation as may be conducted
400 pursuant to s. 559.5556, the office deems the applicant to be
401 lacking in one or more of the required qualifications for
402 licensure, the office shall deny the application and notify the
403 applicant, stating the grounds for denial. The failure of an
404 applicant to secure a license does not preclude the applicant
405 from applying again.

406 (5) If, upon the basis of a completed application and such
407 further inquiry or investigation as the office may make
408 concerning an applicant under s. 559.5556, the office is
409 satisfied that the applicant is qualified, all applicable fees
410 have been paid, and evidence of a surety bond has been provided,
411 the office shall approve the application and issue a license.

412 (6) Each license issued by the office must be in such form
413 as the office may designate and contain the licensee's name,
414 authorization to transact business, the licensee's personal
415 identification number, the date of issuance, and any other
416 information the office deems necessary to fully identify the
417 licensee and the authority being granted. The office may, by
418 rule, require photographs of applicants as a part of the
419 licensing process. The licensee shall display the license
420 prominently in a manner that makes it clearly visible to all

HB 1219

2010

421 creditors or debtors.

422 (7) A license issued under this section remains in effect
 423 for 2 years unless canceled, suspended, revoked, or otherwise
 424 terminated, and must be renewed as provided under s. 559.5554.

425 Section 10. Section 559.5551, Florida Statutes, is created
 426 to read:

427 559.5551 Consumer collection agency names; disapproval.-

428 The office may disapprove the use of any true or fictitious
 429 name, other than the bona fide natural name of an individual, by
 430 a licensee on any of the following grounds:

431 (1) The name interferes with, or is too similar to, a name
 432 already filed and in use by another consumer collection agency.

433 (2) The use of the name may mislead the public in any
 434 respect.

435 (3) The name states or implies that the agency is a state
 436 or federal agency, charitable organization, or entity that
 437 primarily provides advice and counsel rather than collects debt.
 438 This subsection does not prohibit the use of the term "state" or
 439 "states" in the name of the agency if such use does not imply
 440 that the agency is a state agency.

441 Section 11. Section 559.5553, Florida Statutes, is created
 442 to read:

443 559.5553 Change of name, address, employment status, or
 444 ownership.-

445 (1) A licensee must notify the office in writing within 30
 446 days after a change in the name of the consumer collection
 447 agency; a change in the residence address of any control person
 448 of the licensee or debt collector employed by the licensee; a

HB 1219

2010

449 change in the principal business street address, mailing
450 address, contact telephone numbers, including a business
451 telephone number, or e-mail address of the licensee; or the
452 employment or change in the employment status of a debt
453 collector employed by the licensee.

454 (2) If there is a change in ownership or control of a
455 licensee, or if a new debt collector, partner, officer, or
456 director is employed or appointed, a set of fingerprints of the
457 new owner, control person, debt collector, partner, officer, or
458 director must be filed with the office within 30 days after the
459 change. The acquisition of 10 percent or more of the voting
460 securities of a licensee is considered a change of ownership or
461 control

462 (3) Failure to notify the office within the required time
463 period shall result in a fine of up to \$500 for the first
464 offense and a fine of at least \$1,000 or suspension or
465 revocation of the license for a subsequent offense.

466 Section 12. Section 559.5554, Florida Statutes, is created
467 to read:

468 559.5554 License renewal.—A consumer collection agency
469 license must be renewed every 2 years by submitting a license
470 renewal request to the office in a manner determined by the
471 office by rule. The renewal request must be accompanied by a
472 \$400 renewal fee, additional fingerprints and processing fee,
473 and evidence of the surety bond required under s. 559.5555. The
474 renewal fee is nonrefundable and may not be prorated. Any of the
475 grounds for denial of a debt collector license application are
476 also grounds for denial of a license renewal request.

HB 1219

2010

477 Section 13. Section 559.5555, Florida Statutes, is created
478 to read:

479 559.5555 Surety bond.-

480 (1) Pursuant to license application and renewal under ss.
481 559.555 and 559.5554, a license applicant must obtain and
482 maintain a current and valid surety bond for \$100,000, valid for
483 the 2 years of the license, paid and issued for the use and
484 benefit of any credit grantor who suffers or sustains any loss
485 or damage by reason of any violation of the provisions of this
486 part by the licensee, or by any agent or employee of the
487 licensee acting within the scope of her or his employment, and
488 issued to ensure conformance with this part.

489 (2) Pursuant to license application and license renewal,
490 each applicant shall furnish to the office:

491 (a) A copy of the surety bond issued by a surety known by
492 the applicant to be acceptable to the office.

493 (b) A statement from the surety that the premium for the
494 bond has been paid in full by the applicant.

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

497 (3) The liability of the surety under any bond issued
498 pursuant to this section may not, in the aggregate, exceed the
499 amount of the bond regardless of the number or amount of any
500 claims filed or which might be asserted against the surety on
501 such bond. If multiple claims are filed which in total exceed
502 the amount of the bond, the surety may pay the full amount of
503 the bond to the office and is not further liable under the bond.
504 The office shall hold such funds for distribution to claimants

HB 1219

2010

505 and administratively determine and pay to each claimant a pro
506 rata share of each valid claim made within 6 months after the
507 date the first claim is filed against the surety.

508 Section 14. Section 559.5556, Florida Statutes, is created
509 to read:

510 559.5556 Investigation of license applicant.—In addition
511 to those contained in the license application, the office may
512 propound any reasonable interrogatories to, or conduct such
513 further investigations of, an applicant for a license, license
514 renewal, or reinstatement of a license that has been suspended
515 or revoked relating to the background, experience,
516 qualifications, residence, or prospective place of business of
517 the applicant or any of the applicant's control persons or debt
518 collectors, or any other matter that the office deems necessary
519 or advisable for the protection of the public and to ascertain
520 the applicant's qualifications and fitness for licensure.

521 Section 15. Section 559.563, Florida Statutes, is
522 repealed.

523 Section 16. Section 559.565, Florida Statutes, is amended
524 to read:

525 559.565 Enforcement action against out-of-state consumer
526 debt collector.—The remedies of this section are cumulative to
527 other sanctions and enforcement provisions of this part for any
528 violation by an out-of-state consumer debt collector, ~~as defined~~
529 ~~in s. 559.55(8).~~

530 (1) An ~~Any~~ out-of-state consumer debt collector who is not
531 exempt from licensure under s. 559.553(2) and who collects or
532 attempts to collect consumer debts in this state without first

HB 1219

2010

533 obtaining a license under ~~registering in accordance with this~~
534 part ~~is shall be~~ subject to an administrative fine of up to
535 \$5,000 per violation plus ~~not to exceed \$1,000 together with~~
536 reasonable attorney fees and court costs in any successful
537 action by the state to collect such fines.

538 (2) Any person, whether or not exempt from licensure
539 ~~registration~~ under this part, who violates ~~the provisions of s.~~
540 559.72 ~~is shall be~~ subject to sanctions for such violations the
541 same as any other consumer debt collector, including imposition
542 of an administrative fine for each violation. An out-of-state
543 licensee employing a debt collector who violates s. 559.72 is
544 subject to sanctions for such violations, including imposition
545 of an administrative fine for each violation. A license issued
546 to an ~~The registration of a duly registered~~ out-of-state
547 consumer debt collector ~~is shall be~~ subject to revocation or
548 suspension in the same manner as the license ~~registration~~ of any
549 other consumer collection agency licensed ~~registrant~~ under this
550 part.

551 (3) In order to effectuate the provisions of this section
552 and enforce the requirements of this part as it relates to out-
553 of-state consumer debt collectors, the Attorney General is
554 expressly authorized to initiate such action on behalf of the
555 state as he or she deems appropriate in ~~any~~ federal district
556 court ~~of competent jurisdiction~~.

557 Section 17. Section 559.72, Florida Statutes, is amended
558 to read:

559 559.72 Prohibited practices ~~generally~~.—

560 (1) In collecting consumer debts, a ~~ne~~ person may not

HB 1219

2010

561 ~~shall:~~

562 (a)~~(1)~~ Simulate in any manner a law enforcement officer or
563 a representative of any governmental agency.~~†~~

564 (b)~~(2)~~ Use or threaten force or violence.~~†~~

565 (c)~~(3)~~ Tell a debtor who disputes a consumer debt that she
566 or he or any person employing her or him will disclose to
567 another, orally or in writing, directly or indirectly,
568 information affecting the debtor's reputation for credit
569 worthiness without also informing the debtor that the existence
570 of the dispute will also be disclosed as required by paragraph
571 (f). ~~subsection (6)†~~

572 (d)~~(4)~~ Communicate or threaten to communicate with a
573 debtor's employer before ~~prior to~~ obtaining final judgment
574 against the debtor, unless the debtor gives her or his
575 permission in writing to contact her or his employer or
576 acknowledges in writing the existence of the debt after the debt
577 has been placed for collection. However, ~~but~~ this does ~~shall~~ not
578 prohibit a person from telling the debtor that her or his
579 employer will be contacted if a final judgment is obtained.~~†~~

580 (e)~~(5)~~ Disclose to a person other than the debtor or her
581 or his family information affecting the debtor's reputation,
582 whether or not for credit worthiness, with knowledge or reason
583 to know that the other person does not have a legitimate
584 business need for the information or that the information is
585 false.~~†~~

586 (f)~~(6)~~ Disclose information concerning the existence of a
587 debt known to be reasonably disputed by the debtor without
588 disclosing that fact. If a disclosure is made before ~~prior to~~

HB 1219

2010

589 such ~~reasonable~~ dispute has ~~having~~ been asserted and written
590 notice is received from the debtor that any part of the debt is
591 disputed and if such dispute is reasonable, the person who made
592 the original disclosure must ~~shall~~ reveal upon the request of
593 the debtor within 30 days the details of the dispute to each
594 person to whom disclosure of the debt without notice of the
595 dispute was made within the preceding 90 days.†

596 (g) ~~(7)~~ Willfully communicate with the debtor or any member
597 of her or his family with such frequency as can reasonably be
598 expected to harass the debtor or her or his family, or willfully
599 engage in other conduct which can reasonably be expected to
600 abuse or harass the debtor or any member of her or his family.†

601 (h) ~~(8)~~ Use profane, obscene, vulgar, or willfully abusive
602 language in communicating with the debtor or any member of her
603 or his family.†

604 (i) ~~(9)~~ Claim, attempt, or threaten to enforce a debt when
605 such person knows that the debt is not legitimate or assert the
606 existence of some other legal right when such person knows that
607 the right does not exist.†

608 (j) ~~(10)~~ Use a communication that ~~which~~ simulates in any
609 manner legal or judicial process or that ~~which~~ gives the
610 appearance of being authorized, issued, or approved by a
611 government, governmental agency, or attorney at law, when it is
612 not.†

613 (k) ~~(11)~~ Communicate with a debtor under the guise of an
614 attorney by using the stationery of an attorney or forms or
615 instruments that ~~which~~ only attorneys are authorized to
616 prepare.†

617 (l)~~(12)~~ Orally communicate with a debtor in such a manner
 618 as to give the false impression or appearance that such person
 619 is or is associated with an attorney.~~†~~

620 (m)~~(13)~~ Advertise or threaten to advertise for sale any
 621 debt as a means to enforce payment except under court order or
 622 when acting as an assignee for the benefit of a creditor.~~†~~

623 (n)~~(14)~~ Publish or post, threaten to publish or post, or
 624 cause to be published or posted before the general public
 625 individual names or any list of names of debtors, commonly known
 626 as a deadbeat list, for the purpose of enforcing or attempting
 627 to enforce collection of consumer debts.~~†~~

628 (o)~~(15)~~ Refuse to provide adequate identification of
 629 herself or himself or her or his employer or other entity whom
 630 she or he represents when requested to do so by a debtor from
 631 whom she or he is collecting or attempting to collect a consumer
 632 debt.~~†~~

633 (p)~~(16)~~ Mail any communication to a debtor in an envelope
 634 or postcard with words typed, written, or printed on the outside
 635 of the envelope or postcard calculated to embarrass the debtor.
 636 An example of this would be an envelope addressed to "Deadbeat,
 637 Jane Doe" or "Deadbeat, John Doe".~~†~~

638 (q)~~(17)~~ Communicate with the debtor between the hours of 9
 639 p.m. and 8 a.m. in the debtor's time zone without the prior
 640 consent of the debtor.~~†~~

641 (r)~~(18)~~ Communicate with a debtor if the person knows that
 642 the debtor is represented by an attorney with respect to such
 643 debt and has knowledge of, or can readily ascertain, such
 644 attorney's name and address, unless the debtor's attorney fails

645 to respond within a reasonable period of time to a communication
 646 from the person, ~~unless~~ the debtor's attorney consents to a
 647 direct communication with the debtor, or ~~unless~~ the debtor
 648 initiates the communication. ~~;~~ ~~or~~

649 (s)(19) Cause a charges to be made to any debtor to be
 650 charged for communications by concealing concealment of the true
 651 purpose of the communication, including collect telephone calls
 652 and telegram fees.

653 (2) A violation of this section by a control person,
 654 employee, or agent of a consumer collection agency shall be
 655 treated as a violation by the consumer collection agency.

656 Section 18. Section 559.721, Florida Statutes, is created
 657 to read:

658 559.721 License denial, suspension, or revocation.—The
 659 office may deny, suspend, revoke, or refuse to renew the license
 660 of a consumer collection agency if it finds that the license
 661 application does not meet the requirements of s. 559.555, or, as
 662 to any consumer collection agency, debt collector employed by
 663 such agency, or control person or other person who manages or
 664 controls the agency if any one or more of the following grounds
 665 exist:

666 (1) Committing any act for which the issuance or renewal
 667 of a license could have been denied had it then existed and been
 668 known to the office.

669 (2) Using a license to circumvent the requirements of this
 670 part.

671 (3) Having been found guilty of, or entered a plea of
 672 guilty or nolo contendere to, regardless of adjudication, a

673 felony in this state or any state relating to the business of
 674 consumer debt collecting.

675 (4) Knowingly employing an individual in a managerial
 676 capacity or in a capacity dealing with the public who is under
 677 an order of suspension or revocation issued by the office.

678 (5) Violating any provision of the federal Fair Debt
 679 Collection Practices Act.

680 (6) Committing any of the following acts that make the
 681 operation of the consumer collection agency hazardous to the
 682 public or other persons:

683 (a) Misappropriation, conversion, or unlawful withholding
 684 of moneys belonging to a debtor, creditor, beneficiary, or
 685 others and received in the conduct of business under the
 686 license.

687 (b) Misrepresentation of any credit contract, or deception
 688 with regard to such contract, done in person or by any form of
 689 dissemination of information or advertising.

690 (c) Violating any provision of this part or of any other
 691 law applicable to the business of debt collecting in the course
 692 of dealing under the license.

693 (d) Violating any lawful order or rule of the office.

694 (e) Failing or refusing, upon demand, to pay over to a
 695 creditor represented by the consumer collection agency any money
 696 coming into the hands of the consumer collection agency which
 697 belongs to the creditor.

698 (f) In conducting business under the license, engaging in
 699 unfair methods of competition or in unfair or deceptive acts or
 700 practices prohibited under part VI of chapter 501.

HB 1219

2010

701 (g) Using fraudulent or dishonest practices in conducting
 702 business related to debt collecting.

703 (h) Demonstrating a lack of fitness or trustworthiness
 704 when engaged in the business of debt collecting.

705 (7) Failing to take corrective action or report a
 706 violation to the office within 30 days after a violation is
 707 known or should have been known by the licensee or one or more
 708 of the control persons acting on behalf of the licensee.

709 Section 19. Section 559.722, Florida Statutes, is created
 710 to read:

711 559.722 Duration of license suspension or revocation.—

712 (1) In its order suspending a consumer collection agency
 713 license, the office shall specify the period during which the
 714 suspension is in effect, which may not exceed 2 years or the
 715 remaining term of the license, whichever is less. The suspension
 716 of a license may be rescinded or modified by an order of the
 717 office or may be modified or reversed by a court.

718 (a) A suspended license may not be reinstated except upon
 719 the filing and approval of a request for reinstatement on a form
 720 adopted by office rule.

721 (b) A request for reinstatement is subject to denial and a
 722 waiting period before approval on the same grounds that apply to
 723 applications for licensure pursuant to s. 559.555 or s. 559.721.

724 (c) The office may not approve a request for reinstatement
 725 if it finds that the circumstances for which the license was
 726 suspended still exist or are likely to recur.

727 (2) If a consumer collection agency license is revoked by
 728 the office, the agency may not apply for another license for 2

HB 1219

2010

729 years following the effective date of such revocation or, if
730 judicial review of the revocation is sought, for 2 years
731 following the date of the final court order or decree affirming
732 the revocation.

733 (a) An applicant whose license has been revoked by the
734 office must apply and qualify for licensure in the same manner
735 as a first-time applicant, and the application may be denied on
736 the same grounds that apply to first-time applicants for
737 licensure pursuant to s. 559.555 or s. 559.721.

738 (b) The office may not grant a new license if it finds
739 that the circumstances for which the previous license was
740 revoked still exist or are likely to recur.

741 (3) If a consumer collection agency's license has been
742 revoked twice, the office may not issue a license under this
743 part to such agency.

744 (4) During the period of license suspension or revocation,
745 the former licensee may not engage in, or attempt or profess to
746 engage in, any transaction or business for which a license is
747 required under this part or, directly or indirectly, to own,
748 control, or be employed in any manner by a consumer collection
749 agency.

750 Section 20. Section 559.725, Florida Statutes, is amended
751 to read:

752 559.725 Consumer complaints; administrative duties.—

753 (1) ~~The division of Consumer Services of the department of~~
754 ~~Financial Services shall receive and maintain~~ serve as the
755 ~~registry for receiving and maintaining~~ records of inquiries,
756 correspondence, and complaints from consumers concerning any and

HB 1219

2010

757 all persons who collect debts, including consumer collection
758 agencies.

759 ~~(2) The division shall classify complaints by type and~~
760 ~~identify the number of written complaints against persons~~
761 ~~collecting or attempting to collect debts in this state,~~
762 ~~including credit grantors collecting their own debts, debt~~
763 ~~collectors generally, and, specifically, consumer collection~~
764 ~~agencies as distinguished from other persons who collect debts~~
765 ~~such as commercial debt collection agencies regulated under part~~
766 ~~V of this chapter. The division shall identify the nature and~~
767 ~~number of various kinds of written complaints, including~~
768 ~~specifically those alleging violations of s. 559.72.~~

769 (2)~~(3)~~ The division shall inform and furnish relevant
770 information to the appropriate regulatory body of the state, or
771 The Florida Bar in the case of attorneys, if a ~~when any~~ consumer
772 debt collector exempt from licensure ~~registration~~ under this
773 part has been named in a five or more written consumer complaint
774 that alleges one or more ~~complaints alleging~~ violations of s.
775 559.72 ~~within a 12-month period.~~

776 ~~(4) The division shall furnish a form to each complainant~~
777 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~
778 ~~consumer collection agency. Such form may be filed with the~~
779 ~~office. The form shall identify the accused consumer collection~~
780 ~~agency and provide for the complainant's summary of the nature~~
781 ~~of the alleged violation and facts which allegedly support the~~
782 ~~complaint. The form shall include a provision for the~~
783 ~~complainant to state under oath before a notary public that the~~
784 ~~allegations therein made are true.~~

HB 1219

2010

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

788 (3)~~(6)~~ The office shall investigate ~~sworn~~ complaints by
789 ~~direct written communication with the complainant and the~~
790 ~~affected consumer collection agency. In addition, the office~~
791 ~~shall attempt to resolve each sworn complaint and shall record~~
792 ~~the resolution of such complaints.~~

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

797 ~~(8) The office shall issue a written warning notice to the~~
798 ~~accused consumer collection agency if the office is unable to~~
799 ~~resolve all such sworn complaints and fewer than five unresolved~~
800 ~~complaints remain. Such notice shall include a statement that~~
801 ~~the warning may constitute evidence in any future investigation~~
802 ~~of similar complaints against that agency and in any future~~
803 ~~administrative determination of the imposition of other~~
804 ~~administrative remedies available to the office under this part.~~

805 ~~(9) The office may issue a written reprimand when five or~~
806 ~~more such unresolved sworn complaints against a consumer~~
807 ~~collection agency collectively fall short of constituting~~
808 ~~apparent repeated violations that warrant more serious~~
809 ~~administrative sanctions. Such reprimand shall include a~~
810 ~~statement that the reprimand may constitute evidence in any~~
811 ~~future investigation of similar complaints against that agency~~
812 ~~and in any future administrative determination of the imposition~~

HB 1219

2010

813 ~~of other administrative remedies available to the office.~~
 814 ~~(4) (10)~~ The office shall issue a notice of intent ~~either~~
 815 ~~to revoke or suspend the registration or~~ to impose an
 816 administrative fine on, suspend the license of, or revoke the
 817 license of a consumer collection agency if ~~when~~ the office
 818 preliminarily determines that a violation ~~repeated violations~~ of
 819 s. 559.72 or s. 559.721 by an accused licensee or a control
 820 person, employee, or agent of such licensee ~~registrant~~ have
 821 occurred ~~which would warrant more serious administrative~~
 822 ~~sanctions being imposed under this part.~~ The office shall advise
 823 each licensee ~~registrant~~ of the right to require an
 824 administrative hearing under chapter 120 before, ~~prior to~~ the
 825 agency's final action on the matter as authorized by s. 559.730.

826 ~~(5) (11)~~ The office shall advise the appropriate state
 827 attorney, or the Attorney General in the case of an out-of-state
 828 consumer debt collector, of any office determination ~~by the~~
 829 ~~office~~ of a violation of ~~the requirements of~~ this part by any
 830 consumer collection agency that ~~which~~ is not licensed ~~registered~~
 831 as required by this part. The office shall furnish the state
 832 attorney or Attorney General with the office's information
 833 concerning the alleged violations of such requirements so that
 834 action may be taken.

835 Section 21. Section 559.726, Florida Statutes, is created
 836 to read:

837 559.726 Conducting investigations; access to records.—If
 838 the office has reason to believe that a person has violated or
 839 is violating any provision of this part, or upon the receipt of
 840 a complaint pursuant to s. 555.725 indicating that such

HB 1219

2010

841 violation may exist, the office shall conduct such investigation
842 as it deems necessary of the accounts, records, documents, and
843 transactions pertaining to or affecting the consumer debt
844 collection affairs of a consumer collection agency subject to
845 licensure under this part.

846 (1) The investigation may be conducted at the offices of
847 the person being investigated and at such other places as may be
848 required for determination of the matters under investigation.

849 (2) Every person being investigated, and such person's
850 officers, attorneys, employees, agents, representatives, and
851 other control persons, shall make the accounts, records,
852 documents, files, information, assets, and matters in her or his
853 possession or control relating to the subject of the
854 investigation freely available to the office and its
855 investigators. An agent of the person being investigated who
856 provides other products or services, or maintains customer
857 information not related to consumer debt collecting, must
858 maintain records relating to consumer debt collecting separately
859 if necessary to give the office access to such records. If
860 records relating to consumer debt collecting are maintained by
861 an agent on premises owned or operated by a third party, the
862 agent and the third party must provide access to the records by
863 the office.

864 (3) The office and its investigators may not remove any
865 original record, account, document, file, or other property of
866 the person being investigated from the offices of such person
867 except with the written consent of the person given in advance
868 of such removal or pursuant to a court order. However, the

869 office and its investigators may electronically scan such
 870 material and the scanned copies may be removed from the offices
 871 of such person.

872 (4) Any person who willfully obstructs the office or the
 873 investigators in an investigation authorized by this part
 874 commits a misdemeanor of the second degree, which is, in
 875 addition to any applicable fine, denial, suspension, or
 876 revocation of a license, punishable as provided in s. 775.082 or
 877 s. 775.083. Each instance of such violation is a separate
 878 offense.

879 Section 22. Section 559.727, Florida Statutes, is created
 880 to read:

881 559.727 Removal from business of debt collecting.—

882 (1) The office may issue and serve a complaint on a
 883 consumer collection agency stating charges upon any person
 884 acting for or on behalf of the consumer collection agency if the
 885 office has reason to believe that such person is engaging in or
 886 has engaged in a violation of this part, a violation of any rule
 887 or order of the office, or an act that demonstrates a lack of
 888 fitness or trustworthiness to engage in the business of debt
 889 collecting. A copy of the complaint must be served on the person
 890 against whom the charges are made.

891 (2) The complaint must contain a statement of facts and
 892 notice of opportunity for a hearing pursuant to ss. 120.569 and
 893 120.57.

894 (3) If a hearing is not requested within the time allotted
 895 by ss. 120.569 and 120.57, or if a hearing is held and the
 896 office finds that any of the charges in the complaint are proven

897 true, the office may enter an order removing the person or
 898 restricting or prohibiting participation by the person in the
 899 affairs of that particular consumer collection agency or of any
 900 other consumer collection agency.

901 (4) If the consumer collection agency and person against
 902 whom charges are made fail to respond to the complaint within
 903 the time allotted by ss. 120.569 and 120.57, the failure to
 904 respond constitutes a default and justifies the entry of an
 905 order of removal, suspension, or restriction.

906 (5) A contested or default order is effective when reduced
 907 to writing and served on the licensee or the person against whom
 908 charges were made. An uncontested order is effective as agreed.

909 (6) A person removed from office, employment, or any other
 910 capacity pursuant to this section is not eligible for
 911 reelection, appointment, employment, or any other official
 912 position in a consumer collection agency in this state except
 913 upon the written consent of the office. Such person may petition
 914 the office for modification or termination of the removal,
 915 restriction, or prohibition.

916 (7) Resignation or termination of a person against whom a
 917 compliant has been served does not affect the office's
 918 jurisdiction to proceed under this section.

919 Section 23. Section 559.730, Florida Statutes, is amended
 920 to read:

921 559.730 Administrative remedies.—

922 (1) In addition to the grounds for license denial,
 923 suspension, or revocation under s. 559.721, the office may
 924 impose an administrative fine on, suspend the license of, or

HB 1219

2010

925 ~~revoke the license or suspend the registration of any licensee~~
926 ~~registrant~~ under this part who has engaged in ~~repeated~~
927 ~~violations which establish a clear pattern of abuse of~~
928 prohibited collection practices under s. 559.72. Final office
929 action to fine or suspend or revoke the license ~~or suspend the~~
930 ~~registration~~ of any licensee ~~is~~ ~~registrant shall be~~ subject to
931 review in accordance with chapter 120 ~~in the same manner as~~
932 ~~revocation of a license. The repeated violations of the law by~~
933 ~~one employee shall not be grounds for revocation or suspension~~
934 ~~of the registration of the employing consumer collection agency,~~
935 ~~unless the employee is also the owner of a majority interest in~~
936 ~~the collection agency.~~

937 ~~(2) The registration of a registrant shall not be revoked~~
938 ~~or suspended if the registrant shows by a preponderance of the~~
939 ~~evidence that the violations were not intentional and resulted~~
940 ~~from bona fide error notwithstanding the maintenance of~~
941 ~~procedures reasonably adapted to avoid any such error.~~

942 ~~(3) The office shall consider the number of complaints~~
943 ~~against the registrant in relation to the accused registrant's~~
944 ~~volume of business when determining whether suspension or~~
945 ~~revocation is the more appropriate sanction when circumstances~~
946 ~~warrant that one or the other should be imposed upon a~~
947 ~~registrant.~~

948 ~~(4) The office shall impose suspension rather than~~
949 ~~revocation when circumstances warrant that one or the other~~
950 ~~should be imposed upon a registrant and the accused registrant~~
951 ~~demonstrates that the registrant has taken affirmative steps~~
952 ~~which can be expected to effectively eliminate the repeated~~

HB 1219

2010

953 ~~violations and that the registrant's registration has never~~
954 ~~previously been suspended.~~

955 ~~(2)(5) The office may impose~~ An administrative fine of up
956 to \$5,000 per violation may be imposed ~~\$1,000~~ against the
957 offending licensee ~~registrant as a sanction for repeated~~
958 ~~violations of the provisions of s. 559.72 when violations do not~~
959 ~~rise to the level of misconduct governed by subsection (1).~~

960 (a) Final office action to impose an administrative fine
961 is shall be subject to review in accordance with ss. 120.569 and
962 120.57.

963 (b) The administrative penalty may be augmented by an
964 amount equal to any commissions or profits received by, or
965 accruing to, the credit of the licensee in connection with a
966 transaction that is the ground for the imposition of the fine,
967 suspension, or revocation.

968 (c) The office may adopt rules establishing guidelines for
969 imposing administrative penalties.

970 ~~(3)(6)~~ Any administrative fine imposed under this part is
971 ~~shall be~~ payable to the office. The office shall maintain an
972 appropriate record and ~~shall~~ deposit such fine into the
973 Insurance Regulatory Trust Fund ~~of the office.~~

974 (4) The office may allow the licensee a reasonable period
975 of up to 30 days within which to pay any fine imposed. If the
976 licensee fails to pay the total fine to the office within the
977 period allowed, the office may:

978 (a) Suspend, revoke, or refuse to issue or renew the
979 license of the consumer collection agency until the fine is paid
980 in full; and

981 (b) Impose an additional fine of \$100 per day until the
 982 fine is paid.

983 ~~(5)-(7)~~ An administrative action by the office to impose a
 984 ~~revocation, suspension, or fine, suspension, or revocation must~~
 985 ~~shall~~ be brought within 2 years after the date of the last
 986 violation upon which the action is founded.

987 ~~(6)-(8)~~ ~~Nothing in This part does not shall be construed to~~
 988 preclude any person from pursuing remedies available under the
 989 Federal Fair Debt Collection Practices Act for any violation of
 990 such act, including specifically against any person who is
 991 exempt from the licensing ~~registration~~ provisions of this part.

992 Section 24. Section 559.731, Florida Statutes, is created
 993 to read:

994 559.731 Restitution.—If any ground exists for the
 995 imposition of a fine, license suspension, or license revocation,
 996 the office may, in addition to any other penalty authorized
 997 under this part, order the licensee to pay restitution to any
 998 person who has been deprived of money by the licensee's
 999 misappropriation, conversion, or unlawful withholding of moneys
 1000 belonging to a debtor, creditor or beneficiary, or other person.
 1001 The amount of restitution may not exceed the amount of money
 1002 misappropriated, converted, or unlawfully withheld. This section
 1003 does not limit or restrict a person's right to seek other
 1004 remedies as provided by law.

1005 Section 25. Section 559.77, Florida Statutes, is amended
 1006 to read:

1007 559.77 Civil remedies.—

1008 (1) A debtor may bring a civil action against a person or

HB 1219

2010

1009 consumer collection agency or both for violating the provisions
 1010 ~~of s. 559.72 in a court of competent jurisdiction of the county~~
 1011 in which the alleged violator resides or has his or her
 1012 principal place of business or in the county wherein the alleged
 1013 violation occurred.

1014 (2) Upon adverse adjudication, the defendant is ~~shall be~~
 1015 liable for actual damages and for additional statutory damages
 1016 of up to \$1,000, together with court costs and reasonable
 1017 attorney's fees incurred by the plaintiff. In determining the
 1018 defendant's liability for any additional statutory damages, the
 1019 court shall consider the nature of the defendant's noncompliance
 1020 with s. 559.72 or s. 559.721, the frequency and persistence of
 1021 such noncompliance, and the extent to which such noncompliance
 1022 was intentional. In a ~~any~~ class action lawsuit brought under
 1023 this section, the court may award additional statutory damages
 1024 of up to \$1,000 for each named plaintiff and an aggregate award
 1025 of additional statutory damages up ~~not to exceed~~ the lesser of
 1026 \$500,000 or 1 percent of the defendant's net worth for all
 1027 remaining class members; ~~however, the, but in no event may this~~
 1028 aggregate award may not provide an individual class member with
 1029 additional statutory damages in excess of \$1,000. The court may~~7~~
 1030 ~~in its discretion,~~ award punitive damages and ~~may~~ provide such
 1031 equitable relief as it deems necessary or proper, including
 1032 enjoining the defendant from further violations of this part. If
 1033 the court finds that the suit fails to raise a justiciable issue
 1034 of law or fact, the plaintiff is ~~shall be~~ liable for court costs
 1035 and reasonable attorney's fees incurred by the defendant.

1036 ~~(3) A person shall not be held liable in any action~~

HB 1219

2010

1037 ~~brought under this section if the person shows by a~~
 1038 ~~preponderance of the evidence that the violation was not~~
 1039 ~~intentional and resulted from a bona fide error, notwithstanding~~
 1040 ~~the maintenance of procedures reasonably adapted to avoid any~~
 1041 ~~such error.~~

1042 (3)~~(4)~~ An action brought under this section must be
 1043 commenced within 5 ~~2~~ years after the date of the last violation
 1044 upon which the action is founded ~~on which the alleged violation~~
 1045 ~~occurred.~~

1046 (4)~~(5)~~ In applying and construing this section, due
 1047 consideration and great weight shall be given to the
 1048 interpretations of the Federal Trade Commission and the federal
 1049 courts relating to the federal Fair Debt Collection Practices
 1050 Act.

1051 Section 26. Section 559.78, Florida Statutes, is amended
 1052 to read:

1053 559.78 Judicial enforcement.—In addition to other
 1054 penalties provided under ~~in~~ this part, state attorneys and their
 1055 assistants may ~~are authorized to~~ apply to the court ~~of competent~~
 1056 ~~jurisdiction~~ within their respective jurisdictions, upon the
 1057 sworn affidavit of any person alleging a violation of any ~~of the~~
 1058 provisions of this part. Such court shall have jurisdiction,
 1059 upon hearing and for cause shown, to grant a temporary or
 1060 permanent injunction restraining any person from violating any
 1061 provision of this part, whether or not there exists an adequate
 1062 remedy at law, and ~~and~~ such injunction, ~~suspension, or revocation~~
 1063 shall issue without bond.

1064 Section 27. Section 559.785, Florida Statutes, is amended

HB 1219

2010

1065 to read:

1066 559.785 Criminal penalty.—It is a felony of the third
 1067 ~~shall be a misdemeanor of the first~~ degree, punishable as
 1068 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084 for any
 1069 person subject to licensure under ~~not exempt from registering as~~
 1070 ~~provided in~~ this part to engage in collecting consumer debts in
 1071 this state without first obtaining a license from ~~registering~~
 1072 ~~with~~ the office, or to obtain a license ~~register~~ or attempt to
 1073 obtain a license ~~register~~ by means of fraud, misrepresentation,
 1074 or concealment.

1075 Section 28. Section 559.786, Florida Statutes, is created
 1076 to read:

1077 559.786 Surrender of license.—All licenses issued under
 1078 this part are state property and upon notice of suspension,
 1079 revocation, refusal to renew, failure to renew, expiration, or
 1080 other termination of the license, such license is no longer in
 1081 force and effect. This section does not require the surrender of
 1082 the license to the office unless surrender has been requested by
 1083 the office.

1084 Section 29. Section 559.787, Florida Statutes, is created
 1085 to read:

1086 559.787 Authority of Attorney General.—The Attorney
 1087 General may bring an action under the Florida Deceptive and
 1088 Unfair Trade Practices Act on behalf of the state against a
 1089 consumer collection agency, an out-of-state consumer debt
 1090 collector, or a debt collector or business expressly exempted
 1091 from licensure under s. 559.553(2) if there are repeated
 1092 violations of s. 559.72 which establish a clear pattern of

HB 1219

2010

1093 abuse.

1094 Section 30. Section 559.788, Florida Statutes, is created
1095 to read:

1096 559.788 Rules; violations.—

1097 (1) The office may adopt rules to administer this part.

1098 (2) In addition to any other penalty, willful violation of
1099 any rule adopted under this part subjects the violator to such
1100 fine, suspension, or revocation of license as applicable for a
1101 violation of the provision to which the rule relates.

1102 Section 31. Paragraph (b) of subsection (9) of section
1103 20.165, Florida Statutes, is amended to read:

1104 20.165 Department of Business and Professional
1105 Regulation.—There is created a Department of Business and
1106 Professional Regulation.

1107 (9)

1108 (b) Each employee serving as a law enforcement officer for
1109 the division must meet the qualifications for employment or
1110 appointment as a law enforcement officer set forth under s.
1111 943.13 and must be certified as a law enforcement officer by the
1112 Department of Law Enforcement under chapter 943. Upon
1113 certification, the ~~each~~ law enforcement officer is subject to
1114 and has the same authority as provided for law enforcement
1115 officers generally in chapter 901 and has statewide
1116 jurisdiction. Each officer also has the same arrest authority as
1117 provided for state law enforcement officers in s. 901.15. Each
1118 officer possesses the full law enforcement powers granted to
1119 other peace officers of this state, including the authority to
1120 make arrests, carry firearms, serve court process, and seize

HB 1219

2010

1121 | contraband and the proceeds of illegal activities.

1122 | 1. The primary responsibility of each officer ~~appointed~~
 1123 | ~~under this section~~ is to investigate, enforce, and prosecute,
 1124 | throughout the state, violations and violators of parts I and II
 1125 | of chapter 210, part VI ~~part VII~~ of chapter 559, and chapters
 1126 | 561-569, and the rules adopted thereunder, as well as other
 1127 | state laws that the division, all state law enforcement
 1128 | officers, or beverage enforcement agents are specifically
 1129 | authorized to enforce.

1130 | 2. The secondary responsibility of each officer ~~appointed~~
 1131 | ~~under this section~~ is to enforce all other state laws if
 1132 | ~~provided that~~ the enforcement is incidental to exercising the
 1133 | officer's primary responsibility under ~~as provided in~~
 1134 | subparagraph 1., and the officer exercises the powers of a
 1135 | deputy sheriff~~,~~ only after consultation or coordination with the
 1136 | appropriate local sheriff's office or municipal police
 1137 | department or when the division participates in the Florida
 1138 | Mutual Aid Plan during a declared state emergency.

1139 | Section 32. Section 205.1971, Florida Statutes, is amended
 1140 | to read:

1141 | 205.1971 Sellers of travel; consumer protection.—A county
 1142 | or municipality may not issue or renew a business tax receipt to
 1143 | engage in business as a seller of travel pursuant to part X ~~XI~~
 1144 | of chapter 559 unless such business exhibits a current
 1145 | registration or letter of exemption from the Department of
 1146 | Agriculture and Consumer Services.

1147 | Section 33. Subsection (20) of section 501.604, Florida
 1148 | Statutes, is amended to read:

HB 1219

2010

1149 501.604 Exemptions.—The provisions of this part, except
1150 ss. 501.608 and 501.616(6) and (7), do not apply to:

1151 (20) A person who is registered pursuant to part X ~~XI~~ of
1152 chapter 559 and who is soliciting within the scope of the
1153 registration.

1154 Section 34. Subsection (10) of section 560.309, Florida
1155 Statutes, is amended to read:

1156 560.309 Conduct of business.—

1157 (10) If a check is returned to a licensee from a payor
1158 financial institution due to lack of funds, a closed account, or
1159 a stop-payment order, the licensee may seek collection pursuant
1160 to s. 68.065. In seeking collection, the licensee must comply
1161 with the prohibitions against harassment or abuse, false or
1162 misleading representations, and unfair practices in the Fair
1163 Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, and
1164 1692f. A violation of this subsection is a deceptive and unfair
1165 trade practice and constitutes a violation of the Deceptive and
1166 Unfair Trade Practices Act under part II of chapter 501. In
1167 addition, a licensee must comply with the applicable provisions
1168 of the Consumer Collection Practices Act under part V ~~VI~~ of
1169 chapter 559, including s. 559.77.

1170 Section 35. Subsection (2) of section 560.406, Florida
1171 Statutes, is amended to read:

1172 560.406 Worthless checks.—

1173 (2) If a check is returned to a deferred presentment
1174 provider from a payor financial institution due to insufficient
1175 funds, a closed account, or a stop-payment order, the deferred
1176 presentment provider may pursue all legally available civil

HB 1219

2010

1177 remedies to collect the check, including, but not limited to,
 1178 the imposition of all charges imposed on the deferred
 1179 presentment provider by the financial institution. In its
 1180 collection practices, a deferred presentment provider must
 1181 comply with the prohibitions against harassment or abuse, false
 1182 or misleading representations, and unfair practices that are
 1183 contained in the Fair Debt Collections Practices Act, 15 U.S.C.
 1184 ss. 1692d, 1692e, and 1692f. A violation of this act is a
 1185 deceptive and unfair trade practice and constitutes a violation
 1186 of the Deceptive and Unfair Trade Practices Act under part II of
 1187 chapter 501. In addition, a deferred presentment provider must
 1188 comply with the applicable provisions of the Consumer Collection
 1189 Practices Act under part V ~~VI~~ of chapter 559, including s.
 1190 559.77.

1191 Section 36. Paragraph (d) of subsection (3) of section
 1192 721.11, Florida Statutes, is amended to read:

1193 721.11 Advertising materials; oral statements.—

1194 (3) The term "advertising material" does not include:

1195 (d) Any audio, written, or visual publication or material
 1196 promoting ~~relating to the promotion of~~ the availability of any
 1197 accommodations or facilities, or both, for transient rental,
 1198 including an ~~any~~ arrangement governed by part X ~~XI~~ of chapter
 1199 559, if ~~so long as~~ a mandatory tour of a timeshare plan or
 1200 attendance at a mandatory sales presentation is not a term or
 1201 condition of the availability of such accommodations or
 1202 facilities, or both, and if ~~so long as~~ the failure of the ~~any~~
 1203 transient renter to take a tour of a timeshare plan or attend a
 1204 sales presentation does not result in the transient renter

HB 1219

2010

1205 receiving less than what was promised to the transient renter in
 1206 such materials.

1207 Section 37. Subsection (1) of section 832.10, Florida
 1208 Statutes, is amended to read:

1209 832.10 Alternative to bad check diversion program; fees
 1210 for collection.—

1211 (1) Before ~~Prior to~~ presenting a complaint about a
 1212 dishonored check to a state attorney, a payee on such bad check
 1213 may place or assign the debt evidenced by the bad check for
 1214 collection pursuant to this section by a private debt collector
 1215 licensed ~~registered~~ under part V ~~VI~~ of chapter 559.

1216 Section 38. This act shall take effect October 1, 2010.