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Proposed Committee Substitute by the Committee on Banking and  
Insurance

A bill to be entitled

An act relating to consumer credit protection;  
reordering and amending s. 559.55, F.S.; revising  
definitions relating to the regulation of debt  
collection practices; amending s. 559.551, F.S.;  
conforming cross-references; amending s. 559.552,  
F.S.; revising provisions relating to the relationship  
between state and federal law; creating s. 559.5522,  
F.S.; providing the powers of the Office of Financial  
Regulation; creating s. 559.5524, F.S.; authorizing  
the Financial Services Commission to adopt rules;  
amending s. 559.553, F.S.; deleting all exemptions  
from registration as a consumer collection agency;  
amending s. 559.555, F.S.; revising procedures for  
registering as a consumer collection agency;  
increasing the registration fee; requiring background  
screening of applicants and control persons; providing  
grounds for registration issuance or denial; requiring  
annual renewal; creating s. 559.5551, F.S.; providing  
for registration renewal; creating s. 559.5554, F.S.;  
requiring a licensee to obtain a surety bond and  
provide proof of such bond to the office; creating s.  
559.5556, F.S.; requiring a consumer collection agency  
to maintain records; repealing s. 559.563, F.S.,  
relating to void registrations; amending s. 559.565,  
F.S.; expanding the authority of the Attorney General  
to take action against an out-of-state consumer



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28 collection agency; creating s. 559.566, F.S.;

29 specifying how a debt collector may communicate with a

30 consumer; amending s. 559.715, F.S.; conforming

31 provisions to changes made by the act; amending s.

32 559.72, F.S.; revising prohibited acts, including

33 violations of communication procedures; specifying

34 acts of harassment; adding violations relating to

35 prior criminal acts and failure to conform with

36 registration requirements; amending s. 559.725, F.S.;

37 revising provisions relating to consumer complaints

38 about a consumer collection agency; creating s.

39 559.726, F.S.; providing for the issuance of subpoenas

40 by the office; creating s. 559.727, F.S.; authorizing

41 the office to issue cease and desist orders; amending

42 s. 559.730, F.S.; revising provisions relating to

43 administrative remedies; increasing the maximum

44 penalty; authorizing the office to adopt rules

45 relating to penalty guidelines; deleting the 2-year

46 limitation on bringing an administrative action;

47 amending s. 559.77, F.S.; revising provisions relating

48 to civil remedies; deleting a provision that provides

49 protection from liability for bona fide errors;

50 extending the statute of limitations; amending s.

51 559.78, F.S.; revising provisions relating to judicial

52 enforcement; amending s. 559.785, F.S.; providing

53 criminal penalties for failure to obtain licensure;

54 creating s. 559.786, F.S.; providing that a violation

55 of provisions relating to debt collectors is a

56 violation of the Florida Deceptive and Unfair Trade



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57 Practices Act; providing a directive to the Division  
58 of Statutory Revision; creating s. 559.101, F.S.;  
59 providing a short title; transferring, renumbering,  
60 reordering, and amending s. 817.801, F.S.; revising  
61 definitions relating to debt relief services; creating  
62 s. 559.103, F.S.; providing the powers of the Office  
63 of Financial Regulation; creating s. 559.104, F.S.;  
64 authorizing the Financial Services Commission to adopt  
65 rules; transferring, renumbering, and amending s.  
66 817.803, F.S.; revising provisions relating to who is  
67 not subject to the Debt Relief Services Act; providing  
68 an exception for attorneys representing clients;  
69 creating s. 559.106, F.S.; requiring debt relief  
70 organizations to be registered with the office;  
71 providing a registration fee; requiring background  
72 screening of applicants and control persons; providing  
73 grounds for registration issuance or denial; requiring  
74 annual renewal; creating s. 559.107, F.S.; requiring  
75 registration renewal; transferring, renumbering, and  
76 amending s. 817.804, F.S.; requiring a credit  
77 counseling organization to obtain a surety bond and to  
78 provide proof of such bond to the office; creating s.  
79 559.109, F.S.; requiring a debt relief organization to  
80 maintain records; creating s. 559.111, F.S.; requiring  
81 a debt relief organization to prepare a financial  
82 analysis for the debtor; providing for service  
83 contracts; requiring certain provisions to be included  
84 in such contracts; requiring the credit counseling  
85 organization to provide the debtor with copies of all



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86 signed documents; transferring, renumbering, and  
87 amending s. 817.805, F.S.; conforming terms to changes  
88 made by the act; transferring, renumbering, and  
89 amending s. 817.802, F.S.; prohibiting a debt relief  
90 organization from engaging in certain additional  
91 specified acts; deleting a provision that allows the  
92 organization to collect a fee for insufficient fund  
93 transactions; creating s. 559.114, F.S.; providing for  
94 debtor complaints to the office; providing procedures  
95 and office duties; creating s. 559.115, F.S.;;  
96 providing for the issuance of subpoenas by the office;  
97 creating s. 559.116, F.S.; authorizing the office to  
98 issue cease and desist orders; transferring,  
99 renumbering, and amending s. 817.806, F.S.; conforming  
100 terms to changes made by the act; providing  
101 administrative penalties; specifying violations that  
102 result in criminal penalties; repealing 559.10,  
103 559.11, 559.12, and 559.13, F.S., relating to obsolete  
104 provisions concerning budget planning; amending s.  
105 516.07, F.S.; conforming a cross-reference; delaying  
106 the expiration of certain current registrations of  
107 consumer collection agencies; providing effective  
108 dates.

109  
110 Be It Enacted by the Legislature of the State of Florida:

111  
112 Section 1. Section 559.55, Florida Statutes, is reordered  
113 and amended to read:

114 559.55 Definitions. ~~As used in The following terms shall,~~



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115 ~~unless the context otherwise indicates, have the following~~  
116 ~~meanings for the purpose of this part, the term:~~

117 (1) "Commission" means the Financial Services Commission.

118 ~~(7)(1)~~ "Debt" ~~or "consumer debt"~~ means any obligation or  
119 alleged obligation of a consumer to pay money arising out of a  
120 transaction in which the money, property, insurance, or services  
121 ~~that which~~ are the subject of the transaction are primarily for  
122 personal, family, or household purposes, whether or not such  
123 obligation has been reduced to judgment.

124 ~~(3)(2)~~ "Debtor" ~~or "Consumer"~~ means any natural person  
125 obligated or allegedly obligated to pay any debt.

126 ~~(6)(3)~~ "Creditor" means any person who offers or extends  
127 credit creating a debt or to whom a debt is owed, but does not  
128 include a any person who receives ~~to the extent that they~~  
129 ~~receive~~ an assignment or transfer of a debt in default solely  
130 for the purpose of facilitating the collection of such debt for  
131 another.

132 ~~(11)(4)~~ "Office" means the Office of Financial Regulation  
133 of the Financial Services Commission.

134 ~~(2)(5)~~ "Communication" means ~~the~~ conveying ~~of~~ information  
135 regarding a debt, directly or indirectly, to any person through  
136 any medium.

137 ~~(8)(6)~~ "Debt collector" means a any person who uses any  
138 instrumentality of commerce within this state or the mails,  
139 whether initiated from within or outside this state, in a any  
140 business whose ~~the~~ principal purpose ~~of which~~ is the collection  
141 of debts, or who regularly collects or attempts to collect,  
142 directly or indirectly, debts ~~owed or due or~~ asserted to be owed  
143 or due another. Notwithstanding paragraph (f), the term ~~"debt~~



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144 ~~collector~~" includes a any creditor who, in the process of  
145 collecting her or his own debts, uses any name other than her or  
146 his own which indicates ~~would indicate~~ that a third person is  
147 collecting or attempting to collect such debts. The term also  
148 includes a person who uses any instrumentality of interstate  
149 commerce or the mails to enforce a security interest. The term  
150 does not include:

151 (a) An Any officer or employee of a creditor who ~~while~~, in  
152 the name of the creditor, collects ~~collecting~~ debts for such  
153 creditor;

154 (b) A Any person ~~while~~ acting as a debt collector for  
155 another person, both of whom are related by common ownership or  
156 affiliated by corporate control, if the person acting as a debt  
157 collector for persons to whom it is so related or affiliated and  
158 if the principal business of such persons is not the collection  
159 of debts;

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

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

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

172 (f) A Any person collecting or attempting to collect any



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173 debt ~~if owed or due or asserted to be owed or due another to the~~  
174 ~~extent that~~ such activity is incidental to a bona fide fiduciary  
175 obligation or a bona fide escrow arrangement; concerns a debt  
176 ~~that~~ ~~which~~ was originated by such person; concerns a debt ~~that~~  
177 ~~which~~ was not in default at the time it was obtained by such  
178 person; or concerns a debt obtained by such person as a secured  
179 party in a commercial credit transaction involving the creditor.

180 (g) An attorney licensed to practice law in this state who  
181 is collecting a debt asserted to be owed or due another as an  
182 ancillary matter to her or his representation of the debt  
183 collector as a client.

184 (4)(7) "Consumer collection agency" means a ~~any~~ debt  
185 collector or a business entity, employing one or more debt  
186 collectors, which is engaged in the business of soliciting  
187 consumer debts for collection or ~~of~~ collecting consumer debts,  
188 ~~which debt collector or business is not expressly exempted as~~  
189 ~~set forth in s. 559.553(4).~~

190 (5) "Control person" means an individual, partnership,  
191 corporation, trust, or other organization that possesses the  
192 power, directly or indirectly, to direct the management or  
193 policies of a company, whether through ownership of securities,  
194 by contract, or otherwise. The term includes, but is not limited  
195 to:

196 (a) A company's executive officers, including the  
197 president, chief executive officer, chief financial officer,  
198 chief operations officer, chief legal officer, chief compliance  
199 officer, director, or other individuals having similar status or  
200 functions.

201 (b) For a corporation, each shareholder who, directly or



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202 indirectly, owns 10 percent or more, or who has the power to  
203 vote 10 percent or more, of a class of voting securities unless  
204 the applicant is a publicly traded company.

205 (c) For a partnership, all general partners and limited or  
206 special partners who have contributed 10 percent or more, or who  
207 have the right to receive upon dissolution 10 percent or more,  
208 of the partnership's capital.

209 (d) For a trust, each trustee.

210 (e) For a limited liability company, all managing members  
211 and those members who have contributed 10 percent or more, or  
212 who have the right to receive upon dissolution 10 percent or  
213 more, of the partnership's capital.

214 ~~(8) "Out of state consumer debt collector" means any person~~  
215 ~~whose business activities in this state involve both collecting~~  
216 ~~or attempting to collect consumer debt from debtors located in~~  
217 ~~this state by means of interstate communication originating from~~  
218 ~~outside this state and soliciting consumer debt accounts for~~  
219 ~~collection from creditors who have a business presence in this~~  
220 ~~state. For purposes of this subsection, a creditor has a~~  
221 ~~business presence in this state if either the creditor or an~~  
222 ~~affiliate or subsidiary of the creditor has an office in this~~  
223 ~~state.~~

224 (9) "Federal Fair Debt Collection Practices Act" ~~or~~  
225 ~~"Federal Act"~~ means the federal legislation regulating fair debt  
226 collection practices, ~~as set forth in Pub. L. No. 95-109, as~~  
227 ~~amended and published in 15 U.S.C. ss. 1692 et seq.~~

228 (10) "Location information" means a consumer's place of  
229 residence and his or her telephone number, or the consumer's  
230 place of employment.





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231 Section 2. Section 559.551, Florida Statutes, is amended to  
232 read:

233 559.551 Short title.—~~This part Sections 559.55-559.785~~ may  
234 be cited as the "Florida Consumer Collection Practices Act."

235 Section 3. Section 559.552, Florida Statutes, is amended to  
236 read:

237 559.552 Relationship of state and federal law.—~~Nothing in~~  
238 ~~This part does not shall be construed to~~ limit or restrict the  
239 continued applicability of the federal Fair Debt Collection  
240 Practices Act to consumer collection practices in this state  
241 ~~and. This part~~ is in addition to the requirements and  
242 regulations of the federal act. ~~If there is In the event of~~ any  
243 inconsistency between ~~any provision of~~ this part and any  
244 ~~provision of~~ the federal act, the provision ~~that which~~ is more  
245 protective of the consumer ~~prevails or debtor shall prevail.~~

246 Section 4. Section 559.5522, Florida Statutes, is created  
247 to read:

248 559.5522 Powers and duties of the Office of Financial  
249 Regulation; fees.—

250 (1) The office is responsible for the administration and  
251 enforcement of this part.

252 (2) The office may conduct an investigation of any person  
253 if the office has reason to believe, upon complaint or  
254 otherwise, that any violation of this part may have been  
255 committed or is about to be committed.

256 (3) All fees, charges, and fines collected pursuant to this  
257 part shall be deposited in the State Treasury to the credit of  
258 the Regulatory Trust Fund under the office.

259 Section 5. Section 559.5524, Florida Statutes, is created



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260 to read:

261 599.5524 Rules.—The commission may adopt rules to  
262 administer this part, including rules:

263 (1) Requiring electronic submission of any forms,  
264 documents, or fees required under this part.

265 (2) Establishing time periods during which an applicant for  
266 registration is barred from registration or a registered  
267 consumer collection agency is barred from renewal due to prior  
268 criminal convictions of, or guilty or nolo contendere pleas by,  
269 any of the applicant's or registrant's control persons,  
270 regardless of adjudication.

271 (a) The rules must provide:

272 1. Permanent bars for felonies involving money laundering,  
273 breach of trust, dishonesty, embezzlement, fraud, fraudulent  
274 conversion, misappropriation of property, racketeering, or  
275 theft;

276 2. A 15-year disqualifying period for felonies involving  
277 moral turpitude;

278 3. A 7-year disqualifying period for all other felonies;  
279 and

280 4. A 5-year disqualifying period for misdemeanors involving  
281 fraud, dishonesty, or any other act of moral turpitude.

282 (b) The rules may provide for an additional waiting period  
283 due to dates of imprisonment or community supervision, the  
284 commitment of multiple crimes, and other factors reasonably  
285 related to the applicant's criminal history.

286 (c) The rules may provide for mitigating factors for crimes  
287 identified in subparagraph (a)2. However, the mitigation may not  
288 result in a period of disqualification less than 7 years. The



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289 rule may not mitigate the disqualifying periods in subparagraphs  
290 (a)1., (a)3., and (a)4.

291 (d) An applicant is not eligible for registration until the  
292 expiration of the disqualifying period set by rule.

293 (e) Section 112.011 is not applicable to eligibility for  
294 registration under this part.

295 Section 6. Section 559.553, Florida Statutes, is amended to  
296 read:

297 559.553 Registration of consumer collection agencies  
298 required; ~~exemptions.~~-

299 ~~(1) A~~ After January 1, 1994, No person may not shall engage  
300 in business in this state as a consumer collection agency or act  
301 as, advertise, or hold themselves out as a consumer collection  
302 agency continue to do business in this state as a consumer  
303 collection agency without first registering in accordance with  
304 this part, and thereafter maintaining a valid registration. This  
305 applies to a consumer collection agency operating in this state  
306 or from another state, regardless of whether such agency is  
307 registered, licensed, or the equivalent in accordance with the  
308 laws of another state.

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

312 ~~(3) A prospective registrant shall be entitled to be~~  
313 ~~registered when registration information is complete on its face~~  
314 ~~and the applicable registration fee has been paid; however, the~~  
315 ~~office may reject a registration submitted by a prospective~~  
316 ~~registrant if the registrant or any principal of the registrant~~  
317 ~~previously has held any professional license or state~~



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318 ~~registration which was the subject of any suspension or~~  
319 ~~revocation which has not been explained by the prospective~~  
320 ~~registrant to the satisfaction of the office either in the~~  
321 ~~registration information submitted initially or upon the~~  
322 ~~subsequent written request of the office. In the event that an~~  
323 ~~attempted registration is rejected by the office the prospective~~  
324 ~~registrant shall be informed of the basis for rejection.~~

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

326 ~~(a) Any original creditor.~~

327 ~~(b) Any member of The Florida Bar.~~

328 ~~(c) Any financial institution authorized to do business in~~  
329 ~~this state and any wholly owned subsidiary and affiliate~~  
330 ~~thereof.~~

331 ~~(d) Any licensed real estate broker.~~

332 ~~(e) Any insurance company authorized to do business in this~~  
333 ~~state.~~

334 ~~(f) Any consumer finance company and any wholly owned~~  
335 ~~subsidiary and affiliate thereof.~~

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

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

340 ~~(i) Any FDIC-insured institution or subsidiary or affiliate~~  
341 ~~thereof.~~

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



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347 Section 7. Section 559.555, Florida Statutes, is amended to  
348 read:

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

351 559.555 Registration of consumer collection agency.-

352 (1) Effective April 1, 2011, each person who acts as a  
353 consumer collection agency must be registered in accordance with  
354 this section.

355 (2) In order to apply for registration, an applicant must  
356 submit:

357 (a) A completed registration application form as prescribed  
358 by commission rule which includes the name and principal  
359 business address and e-mail address of the consumer collection  
360 agency.

361 (b) A nonrefundable registration fee of \$750. The  
362 registration fee is nonrefundable and may not be prorated for a  
363 partial year of registration.

364 (c) Fingerprints for the applicant and each of the  
365 applicant's control persons in accordance with rules adopted by  
366 the commission.

367 1. The fingerprints may be submitted to the office, or a  
368 vendor acting on behalf of the office.

369 2. The office may contract with a third-party vendor to  
370 provide live-scan fingerprinting in lieu of a paper fingerprint  
371 card.

372 3. A state criminal history background check must be  
373 conducted through the Department of Law Enforcement, and a  
374 federal criminal history background check must be conducted  
375 through the Federal Bureau of Investigation.



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376       4. All fingerprints submitted to the Department of Law  
377 Enforcement must be submitted electronically and entered into  
378 the statewide automated fingerprint identification system  
379 established in s. 943.05(2)(b) and available for use in  
380 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
381 annual fee to the department to participate in the system and  
382 inform the department of any person whose fingerprints are no  
383 longer required to be retained.

384       5. The costs of fingerprint processing, including the cost  
385 of retaining the fingerprints, shall be borne by the person  
386 subject to the background check.

387       6. The office is responsible for reviewing the results of  
388 the state and federal criminal history checks and determining  
389 whether the applicant meets registration requirements.

390       (d) Documentation demonstrating that the surety bond  
391 requirements specified in s. 559.5554 have been satisfied.

392       (e) Additional information or documentation requested by  
393 the office and required by rule concerning the applicant or a  
394 control person of the applicant. Additional information may  
395 include documentation of pending and prior disciplinary and  
396 criminal history events, including arrest reports and certified  
397 copies of charging documents, plea agreements, judgments and  
398 sentencing documents, documents relating to pretrial  
399 intervention, orders terminating probation or supervised  
400 release, final administrative agency orders, or other comparable  
401 documents that may provide the office with the appropriate  
402 information to determine eligibility for registration.

403       (3) An application is considered received for the purposes  
404 of s. 120.60 upon the office's receipt of the completed



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405 application form, required documentation, criminal history  
406 information, the registration application fee, and all  
407 applicable fingerprinting processing fees.

408 (4) The office shall issue a consumer collection agency  
409 registration to each applicant who is not otherwise ineligible  
410 and who meets the requirements of this section. However, it is a  
411 ground for denial of registration if the applicant or one of the  
412 applicant's control persons:

413 (a) Has been found guilty of, regardless of adjudication,  
414 or has entered a plea of nolo contendere or guilty to, any  
415 felony, any crime involving racketeering, fraud, theft,  
416 embezzlement, fraudulent conversion, misappropriation of  
417 property, breach of trust, dishonesty, or any other act of moral  
418 turpitude;

419 (b) Has committed any violation specified in s. 559.72;

420 (c) Is the subject of a pending felony criminal prosecution  
421 or a prosecution or an administrative enforcement action, in any  
422 jurisdiction, which involves racketeering, fraud, embezzlement,  
423 fraudulent conversion, misappropriation of property, theft,  
424 dishonesty, breach of trust, or any other act of moral  
425 turpitude;

426 (d) Pays the office any fee, fine, or other amount with a  
427 check or electronic transmission of funds which fails to clear  
428 the applicant's financial institution;

429 (e) Makes a material misstatement on any form, document, or  
430 record required to be submitted under this part or the rules of  
431 the commission; or

432 (f) Has been the subject of any decision, finding,  
433 injunction, suspension, prohibition, revocation, denial,



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434 judgment, or other adverse action by any state or federal  
435 agency.

436 (5) A registration issued under this section expires  
437 annually on March 31 unless canceled, suspended, revoked, or  
438 otherwise terminated, and must be renewed as provided under s.  
439 559.5551.

440 Section 8. Effective April 1, 2011, section 559.5551,  
441 Florida Statutes, is created to read:

442 559.5551 Registration renewal.—

443 (1) To renew a consumer collection agency registration, the  
444 agency must submit:

445 (a) A completed registration renewal form as prescribed by  
446 commission rule.

447 (b) Fingerprints in accordance with s. 559.555 for any new  
448 control persons who have not previously been screened.

449 (c) Any additional information or documentation requested  
450 by the office and required by rule concerning the registrant or  
451 control person of the registrant. Additional information may  
452 include documentation of any pending and prior disciplinary and  
453 criminal history events, including arrest reports and certified  
454 copies of charging documents, plea agreements, judgments and  
455 sentencing documents, documents relating to pretrial  
456 intervention, orders terminating probation or supervised  
457 release, final administrative agency orders, or other comparable  
458 documents that may provide the office with the appropriate  
459 information to determine edibility for renewal of registration.

460 (d) A nonrefundable renewal fee of \$750 and nonrefundable  
461 fee to cover the cost of further fingerprint processing and  
462 retention as set forth in commission rule.





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463       (2) The office may not renew a consumer collection agency  
464 registration unless the registrant continues to meet the minimum  
465 requirements for initial registration under s. 559.555 and  
466 adopted rule.

467       Section 9. Section 559.5554, Florida Statutes, is created  
468 to read:

469       559.5554 Surety bond.-

470       (1) Pursuant to an application for registration and renewal  
471 under this part, an applicant must obtain and maintain a surety  
472 bond from a surety company authorized to do business in this  
473 state. The amount and form of the bond shall be specified by  
474 rule and must be at least \$100,000 but may not exceed \$1  
475 million. The rule must provide allowances for business volume.  
476 The bond shall be in favor of the state for the use and benefit  
477 of any consumer who suffers or sustains any loss or damage by  
478 reason of any violation of this part.

479       (2) Pursuant to initial registration and renewal, each  
480 applicant shall furnish to the office:

481       (a) The original executed surety bond issued by a surety  
482 company authorized to do business in this state.

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

485       (c) A statement from the surety company that the bond  
486 issued by the surety company meets the requirements of this  
487 part.

488       (3) The liability of the surety company under any bond  
489 issued pursuant to this section may not, in the aggregate,  
490 exceed the amount of the bond regardless of the number or amount  
491 of any claims filed or which might be asserted against the



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492 surety on such bond. If multiple claims are filed which  
493 collectively exceed the amount of the bond, the surety may pay  
494 the full amount of the bond to the office and is not further  
495 liable under the bond. The office shall hold such funds for  
496 distribution to claimants and administratively determine and pay  
497 to each claimant a pro rata share of each valid claim made  
498 within 6 months after the date the first claim is filed against  
499 the surety.

500 Section 10. Section 559.5556, Florida Statutes, is created  
501 to read:

502 559.5556 Maintenance of records.-

503 (1) Each registered consumer collection agency shall  
504 maintain, at the principal place of business designated on the  
505 registration, all books, accounts, records, and documents  
506 necessary to determine the registrant's compliance with this  
507 part.

508 (2) The office may authorize the maintenance of records at  
509 a location other than a principal place of business. The office  
510 may require books, accounts, and records to be produced and  
511 available at a reasonable and convenient location in this state.

512 (3) The commission may prescribe by rule the minimum  
513 information to be shown in the books, accounts, records, and  
514 documents of registrants so that such records enable the office  
515 to determine the registrant's compliance with this part.

516 (4) All books, accounts, records, documents, and receipts  
517 of any debt collection transaction must be preserved and kept  
518 available for inspection by the office for at least 5 years  
519 after the date the transaction is completed. The commission may  
520 prescribe by rule requirements for the destruction of books,



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521 accounts, records, and documents retained by the registrant  
522 after the completion of the 5 years.

523 Section 11. Section 559.563, Florida Statutes, is repealed.

524 Section 12. Section 559.565, Florida Statutes, is amended  
525 to read:

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

532 (1) A ~~Any out-of-state~~ consumer collection agency that is  
533 required to be registered and that ~~debt collector who~~ collects  
534 or attempts to collect consumer debts ~~in this state~~ without  
535 first registering in accordance with this part is ~~shall be~~  
536 subject to an administrative fine of up to \$25,000, plus ~~not to~~  
537 ~~exceed \$1,000 together with~~ reasonable attorney fees and court  
538 costs, in any successful action by the state to collect such  
539 finest.

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

548 (3) In order to effectuate the provisions of this section  
549 and enforce the requirements of this part as it relates to an



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550 out-of-state consumer collection agency debt collectors, the  
551 Attorney General is expressly authorized to initiate such action  
552 on behalf of the state ~~as he or she deems appropriate~~ in any  
553 state court or federal district court, as appropriate, including  
554 an action for injunctive relief on behalf of consumers of  
555 ~~competent jurisdiction~~. The Attorney General may recover  
556 attorney's fees and costs resulting from such actions.

557 Section 13. Section 559.566, Florida Statutes, is created  
558 to read:

559 559.566 Communication.-

560 (1) In the course of any communication by a debt collector  
561 with any person other than the consumer for the purpose of  
562 acquiring location information about the consumer, the debt  
563 collector must:

564 (a) Identify himself or herself, state that he or she is  
565 confirming or correcting location information concerning the  
566 consumer, and, only if expressly requested, identify his or her  
567 employer;

568 (b) Not state that such consumer owes any debt;

569 (c) Not communicate with such person more than once unless  
570 requested to do so by such person or unless the debt collector  
571 reasonably believes that the earlier response of such person is  
572 erroneous or incomplete and that such person now has correct or  
573 complete location information;

574 (d) Not communicate by post card; and

575 (e) Not use any language or symbol on any envelope or in  
576 the contents of any communication effected by the mails or  
577 telegram which indicates that the debt collector is in the debt  
578 collection business or that the communication relates to the



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579 collection of a debt.

580 (2) Without the prior consent of the consumer given  
581 directly to the debt collector or pursuant to express court  
582 permission, a debt collector may not communicate with a consumer  
583 in connection with the collection of any debt:

584 (a) At any unusual time or place or a time or place that is  
585 known or should be known to be inconvenient to the consumer. In  
586 the absence of knowledge to the contrary, a debt collector shall  
587 assume that the convenient time for communicating with a  
588 consumer is after 8 a.m. and before 9 p.m. local time at the  
589 consumer's location;

590 (b) If the debt collector knows the consumer is represented  
591 by an attorney with respect to such debt and has knowledge of,  
592 or can readily ascertain, such attorney's name and address;  
593 however, the debt collector may communicate with the consumer if  
594 the attorney fails to respond within a reasonable period of time  
595 to a communication from the debt collector or the attorney  
596 consents to direct communication with the consumer; or

597 (c) At the consumer's place of employment if the debt  
598 collector knows or has reason to know that the consumer's  
599 employer prohibits the consumer from receiving such  
600 communication at his or her place of employment.

601 (3) Except as provided in subsection (1), without the prior  
602 consent of the consumer given directly to the debt collector,  
603 pursuant to express court permission, or as reasonably necessary  
604 to effectuate a postjudgment judicial remedy, a debt collector  
605 may not communicate with any person other than a consumer, his  
606 or her attorney, a consumer reporting agency if otherwise  
607 permitted by law, the creditor, the attorney of the creditor, or



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608 the attorney of the debt collector in connection with the  
609 collection of a debt.

610 (4) If a consumer notifies a debt collector in writing that  
611 the consumer refuses to pay a debt or that the consumer wishes  
612 the debt collector to cease further communication with the  
613 consumer, the debt collector may not communicate further with  
614 the consumer with respect to such debt, except to:

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

617 (b) Notify the consumer that the debt collector or creditor  
618 may invoke specified remedies that are ordinarily invoked by  
619 such debt collector or creditor; or

620 (c) Notify the consumer that the debt collector or creditor  
621 intends to invoke a specified remedy, where applicable. If such  
622 notice from the consumer is made by mail, notification is  
623 complete upon receipt.

624 (5) For the purpose of this section, the term "consumer"  
625 includes the consumer's spouse, guardian, executor, or  
626 administrator, or, if the consumer is a minor, a parent.

627 Section 14. Section 559.715, Florida Statutes, is amended  
628 to read:

629 559.715 Assignment of consumer debts.—This part does not  
630 prohibit the assignment, by a creditor, of the right to bill and  
631 collect a consumer debt. However, the assignee must give the  
632 consumer ~~debtor~~ written notice of such assignment within 30 days  
633 after the assignment. The assignee is a real party in interest  
634 and may bring an action in a court of competent jurisdiction to  
635 collect a debt that has been assigned to the ~~such~~ assignee and  
636 is in default.



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637 Section 15. Section 559.72, Florida Statutes, is amended to  
638 read:

639 559.72 Prohibited practices ~~generally.~~-

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

642 (a) Violate the communication requirements of s. 559.566.

643 (b) ~~(1)~~ Simulate in any manner a law enforcement officer or  
644 a representative of any governmental agency.~~;~~

645 ~~(2) Use or threaten force or violence;~~

646 (c) ~~(3)~~ Tell a consumer debtor who disputes a consumer debt  
647 that she or he or any person employing her or him will disclose  
648 to another, orally or in writing, directly or indirectly,  
649 information affecting the consumer's debtor's reputation for  
650 credit worthiness without also informing the consumer debtor  
651 that the existence of the dispute will also be disclosed as  
652 required by paragraph (f). ~~subsection (6);~~

653 (d) ~~(4)~~ Communicate or threaten to communicate with a  
654 consumer's debtor's employer before ~~prior to~~ obtaining final  
655 judgment against the consumer debtor, unless the consumer debtor  
656 gives her or his permission in writing to contact her or his  
657 employer or acknowledges in writing the existence of the debt  
658 after the debt has been placed for collection. However, but this  
659 does shall not prohibit a person from telling the consumer  
660 ~~debtor~~ that her or his employer will be contacted if a final  
661 judgment is obtained.~~;~~

662 (e) ~~(5)~~ Disclose to a person other than the consumer debtor  
663 or her or his family information affecting the consumer's  
664 ~~debtor's~~ reputation, whether or not for credit worthiness, with  
665 knowledge or reason to know that the other person does not have



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666 a legitimate business need for the information or that the  
667 information is false.~~†~~

668 ~~(f)(6)~~ Disclose information concerning the existence of a  
669 debt known to be reasonably disputed by the ~~consumer debtor~~  
670 without disclosing that fact. If a disclosure is made ~~before~~  
671 ~~prior to~~ such ~~reasonable~~ dispute ~~has~~ ~~having~~ been asserted and  
672 written notice is received from the ~~consumer debtor~~ that any  
673 part of the debt is disputed, and if such dispute is reasonable,  
674 the person who made the original disclosure ~~must~~ ~~shall~~ reveal  
675 upon the request of the ~~consumer debtor~~ within 30 days the  
676 details of the dispute to each person to whom disclosure of the  
677 debt without notice of the dispute was made within the preceding  
678 90 days.~~†~~

679 (g) Engage in any conduct the natural consequence of which  
680 is to harass, oppress, or abuse any person in connection with  
681 the collection of a debt, which includes, but is not limited to:

682 1. The use or threat of the use of violence or other  
683 criminal means to harm the physical person, reputation, or  
684 property of any person.

685 2. The use of obscene or profane language or language the  
686 natural consequence of which is to abuse the hearer or reader.

687 3. The publication of a list of consumers who allegedly  
688 refuse to pay debts, except to a consumer reporting agency.

689 4. The advertisement for sale of any debt to coerce payment  
690 of the debt.

691 5. Causing a telephone to ring or engaging any person in  
692 telephone conversation repeatedly or continuously with intent to  
693 annoy, abuse, or harass any person at the called number.

694 6. Except as provided in s. 559.566(1), the placement of





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695 telephone calls without meaningful disclosure of the caller's  
696 identity.

697 ~~(7) Willfully communicate with the debtor or any member of~~  
698 ~~her or his family with such frequency as can reasonably be~~  
699 ~~expected to harass the debtor or her or his family, or willfully~~  
700 ~~engage in other conduct which can reasonably be expected to~~  
701 ~~abuse or harass the debtor or any member of her or his family;~~

702 ~~(8) Use profane, obscene, vulgar, or willfully abusive~~  
703 ~~language in communicating with the debtor or any member of her~~  
704 ~~or his family;~~

705 ~~(h)(9) Claim, attempt, or threaten to enforce a debt when~~  
706 ~~such person knows that the debt is not legitimate, or assert the~~  
707 ~~existence of some other legal right when such person knows that~~  
708 ~~the right does not exist.~~

709 ~~(i)(10) Use a communication that which simulates in any~~  
710 ~~manner legal or judicial process or that which gives the~~  
711 ~~appearance of being authorized, issued, or approved by a~~  
712 ~~government, governmental agency, or attorney at law, when it is~~  
713 ~~not.~~

714 ~~(j)(11) Communicate with a consumer debtor under the guise~~  
715 ~~of an attorney by using the stationery of an attorney or forms~~  
716 ~~or instruments that which only attorneys are authorized to~~  
717 ~~prepare.~~

718 ~~(k)(12) Orally communicate with a consumer debtor in such a~~  
719 ~~manner as to give the false impression or appearance that such~~  
720 ~~person is or is associated with an attorney.~~

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



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724 ~~(14) Publish or post, threaten to publish or post, or cause~~  
725 ~~to be published or posted before the general public individual~~  
726 ~~names or any list of names of debtors, commonly known as a~~  
727 ~~deadbeat list, for the purpose of enforcing or attempting to~~  
728 ~~enforce collection of consumer debts;~~

729 ~~(1)~~~~(15)~~ Refuse to provide adequate identification of  
730 herself or himself or her or his employer or other entity whom  
731 she or he represents when requested to do so by a consumer  
732 ~~debtor~~ from whom she or he is collecting or attempting to  
733 collect a consumer debt.†

734 ~~(16) Mail any communication to a debtor in an envelope or~~  
735 ~~postcard with words typed, written, or printed on the outside of~~  
736 ~~the envelope or postcard calculated to embarrass the debtor. An~~  
737 ~~example of this would be an envelope addressed to "Deadbeat,~~  
738 ~~Jane Doe" or "Deadbeat, John Doe";~~

739 ~~(17) Communicate with the debtor between the hours of 9~~  
740 ~~p.m. and 8 a.m. in the debtor's time zone without the prior~~  
741 ~~consent of the debtor;~~

742 ~~(18) Communicate with a debtor if the person knows that the~~  
743 ~~debtor is represented by an attorney with respect to such debt~~  
744 ~~and has knowledge of, or can readily ascertain, such attorney's~~  
745 ~~name and address, unless the debtor's attorney fails to respond~~  
746 ~~within a reasonable period of time to a communication from the~~  
747 ~~person, unless the debtor's attorney consents to a direct~~  
748 ~~communication with the debtor, or unless the debtor initiates~~  
749 ~~the communication; or~~

750 ~~(m)~~~~(19)~~ Cause a consumer to be charged ~~charges to be made~~  
751 ~~to any debtor~~ for communications by concealing ~~concealment of~~  
752 ~~the true purpose of the communication, including collect~~



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753 telephone calls and telegram fees.

754 (2) The office may take any actions permitted under s.  
755 559.730 if the consumer collection agency:

756 (a) Has been found guilty of, regardless of adjudication,  
757 or has entered a plea of nolo contendere or guilty to, any  
758 felony, any crime involving racketeering, fraud, breach of  
759 trust, theft, embezzlement, fraudulent conversion,  
760 misappropriation of property, dishonesty, or any other acts of  
761 moral turpitude.

762 (b) Fails to maintain the surety bond required pursuant to  
763 s. 559.5554.

764 (c) Fails to maintain books, records, or other documents  
765 required by this part and the rules of the commission.

766 (d) Fails to permit an investigation of books and records  
767 by the office, or fails to comply with an office subpoena or  
768 subpoena duces tecum.

769 (e) Fails to report on a form prescribed by commission rule  
770 any change to information contained in any initial application  
771 form or any amendment to the application within 30 days after  
772 the change is effective.

773 (f) Fails to comply with any rule or order adopted pursuant  
774 to this part, or any written agreement entered into with the  
775 office.

776 (g) Fails to comply with, or violates, any other provision  
777 of this part.

778 (h) Pays the office any fee, fine, or other amount with a  
779 check or electronic transmission of funds which fails to clear  
780 the applicant's or registrant's financial institution.

781 (i) Makes a material misstatement on any form, document, or



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782 record required to be submitted under this part or the rules of  
783 the commission.

784 (j) Has been the subject of any decision, finding,  
785 injunction, suspension, prohibition, revocation, denial,  
786 judgment, or other adverse action by any state or federal  
787 agency.

788 (3) A violation of this section by a control person,  
789 employee, or agent of a consumer collection agency shall be  
790 treated as a violation by the consumer collection agency.

791 Section 16. Section 559.725, Florida Statutes, is amended  
792 to read:

793 559.725 Consumer complaints; administrative duties.—

794 (1) ~~The office division of Consumer Services of the~~  
795 ~~department of Financial Services shall receive and maintain~~  
796 ~~serve as the registry for receiving and maintaining records of~~  
797 ~~inquiries, correspondence, and complaints from consumers~~  
798 ~~concerning any and all persons who collect debts, including~~  
799 ~~consumer collection agencies.~~

800 ~~(2) The division shall classify complaints by type and~~  
801 ~~identify the number of written complaints against persons~~  
802 ~~collecting or attempting to collect debts in this state,~~  
803 ~~including credit grantors collecting their own debts, debt~~  
804 ~~collectors generally, and, specifically, consumer collection~~  
805 ~~agencies as distinguished from other persons who collect debts~~  
806 ~~such as commercial debt collection agencies regulated under part~~  
807 ~~V of this chapter. The division shall identify the nature and~~  
808 ~~number of various kinds of written complaints, including~~  
809 ~~specifically those alleging violations of s. 559.72.~~

810 ~~(2)(3)~~ The office division shall inform and furnish



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811 relevant information to the appropriate regulatory body of the  
812 state or the Federal Government, or The Florida Bar in the case  
813 of attorneys, if a person ~~when any consumer debt collector~~  
814 ~~exempt from registration under this part~~ has been named in a  
815 ~~five or more written~~ consumer complaint ~~complaints~~ alleging  
816 violations of s. 559.72 ~~within a 12-month period~~.

817 ~~(4) The division shall furnish a form to each complainant~~  
818 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~  
819 ~~consumer collection agency. Such form may be filed with the~~  
820 ~~office. The form shall identify the accused consumer collection~~  
821 ~~agency and provide for the complainant's summary of the nature~~  
822 ~~of the alleged violation and facts which allegedly support the~~  
823 ~~complaint. The form shall include a provision for the~~  
824 ~~complainant to state under oath before a notary public that the~~  
825 ~~allegations therein made are true.~~

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

829 ~~(3)-(6)~~ The office shall investigate ~~sworn~~ complaints by  
830 ~~direct written communication with the complainant and the~~  
831 ~~affected consumer collection agency. In addition, the office~~  
832 ~~shall attempt to resolve each sworn complaint and shall record~~  
833 ~~the resolution of such complaints.~~

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

838 ~~(8) The office shall issue a written warning notice to the~~  
839 ~~accused consumer collection agency if the office is unable to~~



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840 ~~resolve all such sworn complaints and fewer than five unresolved~~  
841 ~~complaints remain. Such notice shall include a statement that~~  
842 ~~the warning may constitute evidence in any future investigation~~  
843 ~~of similar complaints against that agency and in any future~~  
844 ~~administrative determination of the imposition of other~~  
845 ~~administrative remedies available to the office under this part.~~

846 ~~(9) The office may issue a written reprimand when five or~~  
847 ~~more such unresolved sworn complaints against a consumer~~  
848 ~~collection agency collectively fall short of constituting~~  
849 ~~apparent repeated violations that warrant more serious~~  
850 ~~administrative sanctions. Such reprimand shall include a~~  
851 ~~statement that the reprimand may constitute evidence in any~~  
852 ~~future investigation of similar complaints against that agency~~  
853 ~~and in any future administrative determination of the imposition~~  
854 ~~of other administrative remedies available to the office.~~

855 ~~(10) The office shall issue a notice of intent either to~~  
856 ~~revoke or suspend the registration or to impose an~~  
857 ~~administrative fine when the office preliminarily determines~~  
858 ~~that repeated violations of s. 559.72 by an accused registrant~~  
859 ~~have occurred which would warrant more serious administrative~~  
860 ~~sanctions being imposed under this part. The office shall advise~~  
861 ~~each registrant of the right to require an administrative~~  
862 ~~hearing under chapter 120, prior to the agency's final action on~~  
863 ~~the matter as authorized by s. 559.730.~~

864 ~~(4)(11)~~ The office shall advise the appropriate state  
865 attorney, or the Attorney General in the case of an out-of-state  
866 consumer debt collector, of any determination by the office of a  
867 violation of the requirements of this part by any consumer  
868 collection agency that ~~which~~ is not registered as required by



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869 this part. The office shall furnish the state attorney or  
870 Attorney General with the office's information concerning the  
871 alleged violations of such requirements.

872 (5) A registered consumer collection agency must provide a  
873 written response to the office within 20 days after receipt of a  
874 written request from the office for information concerning a  
875 consumer complaint. The response must address the issues and  
876 allegations raised in the complaint. The office may impose an  
877 administrative fine of up to \$2,500 per request per day upon any  
878 registrant that fails to comply with this subsection.

879 Section 17. Section 559.726, Florida Statutes, is created  
880 to read:

881 559.726 Subpoenas.—

882 (1) The office may:

883 (a) Issue and serve subpoenas and subpoenas duces tecum to  
884 compel the attendance of witnesses and the production of all  
885 books, accounts, records, and other documents and materials  
886 relevant to an investigation conducted by the office. The  
887 office, or its authorized representative, may administer oaths  
888 and affirmations to any person.

889 (b) Seek subpoenas or subpoenas duces tecum from any court  
890 to command the appearance of witnesses and the production of  
891 books, accounts, records, and other documents or materials at a  
892 time and place named in the subpoenas, and an authorized  
893 representative of the office may serve such subpoenas.

894 (2) If there is substantial noncompliance with a subpoena  
895 or subpoena duces tecum issued by the office, the office may  
896 petition the court in the county where the person subpoenaed  
897 resides or has his or her principal place of business for an



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898 order requiring the person to appear, testify, or produce such  
899 books, accounts, records, and other documents as are specified  
900 in the subpoena or subpoena duces tecum.

901 (3) The office is entitled to the summary procedure  
902 provided in s. 51.011, and the court shall advance such cause on  
903 its calendar. Attorney's fees and any other costs incurred by  
904 the office to obtain an order granting, in whole or in part, a  
905 petition for enforcement of a subpoena or subpoena duces tecum  
906 shall be taxed against the subpoenaed person, and failure to  
907 comply with such order is a contempt of court.

908 (4) To aid in the enforcement of this part, the office may  
909 require or permit a person to file a statement in writing, under  
910 oath, or otherwise as the office determines, as to all the facts  
911 and circumstances concerning the matter to be investigated.

912 Section 18. Section 559.727, Florida Statutes, is created  
913 to read:

914 559.727 Cease and desist orders.—The office may issue and  
915 serve upon any person an order to cease and desist and to take  
916 corrective action if it has reason to believe the person is  
917 violating, has violated, or is about to violate any provision of  
918 this part, any rule or order issued under this part, or any  
919 written agreement between the person and the office. All  
920 procedural matters relating to issuance and enforcement of such  
921 order are governed by the Administrative Procedure Act.

922 Section 19. Section 559.730, Florida Statutes, is amended  
923 to read:

924 559.730 Administrative remedies.—

925 (1) The office may impose an administrative fine on, or  
926 revoke or suspend the registration of a ~~any~~ registrant under





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927 this part who has committed a violation of ~~engaged in repeated~~  
928 ~~violations which establish a clear pattern of abuse of~~  
929 ~~prohibited collection practices under s. 559.72. Final office~~  
930 action to fine, suspend, or revoke ~~or suspend~~ the registration  
931 of a any registrant is ~~shall be~~ subject to review in accordance  
932 with chapter 120 ~~in the same manner as revocation of a license.~~  
933 ~~The repeated violations of the law by one employee shall not be~~  
934 ~~grounds for revocation or suspension of the registration of the~~  
935 ~~employing consumer collection agency, unless the employee is~~  
936 ~~also the owner of a majority interest in 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 ~~(2)(4)~~ The office may ~~shall~~ impose suspension rather than  
949 revocation of a registration if ~~when~~ circumstances warrant that  
950 one or the other should be imposed ~~upon a registrant~~ and the  
951 ~~accused~~ registrant demonstrates that the registrant has taken  
952 affirmative steps that ~~which~~ can be expected to effectively  
953 eliminate the ~~repeated~~ violations and that the registrant's  
954 registration has never been previously ~~been~~ suspended.

955 ~~(3)(5)~~ In addition to, or in lieu of suspension or



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956 revocation of a registration, the office may impose an  
957 administrative fine of up to \$25,000 per violation ~~\$1,000~~  
958 against a ~~the~~ offending registrant as a sanction for repeated  
959 violations of ~~the provisions of s. 559.72 when violations do not~~  
960 ~~rise to the level of misconduct governed by subsection (1).~~ The  
961 office shall adopt rules establishing guidelines for imposing  
962 administrative penalties. ~~Final office action to impose an~~  
963 ~~administrative fine shall be subject to review in accordance~~  
964 ~~with ss. 120.569 and 120.57.~~

965 ~~(6) Any administrative fine imposed under this part shall~~  
966 ~~be payable to the office. The office shall maintain an~~  
967 ~~appropriate record and shall deposit such fine into the~~  
968 ~~Regulatory Trust Fund of the office.~~

969 ~~(7) An administrative action by the office to impose~~  
970 ~~revocation, suspension, or fine shall be brought within 2 years~~  
971 ~~after the date of the last violation upon which the action is~~  
972 ~~founded.~~

973 ~~(4)(8) Nothing in This part does not shall be construed to~~  
974 ~~preclude any person from pursuing remedies available under the~~  
975 ~~Federal Fair Debt Collection Practices Act for any violation of~~  
976 ~~such act, including specifically against any person who is~~  
977 ~~exempt from the registration provisions of this part.~~

978 Section 20. Section 559.77, Florida Statutes, is amended to  
979 read:

980 559.77 Civil remedies.-

981 (1) A consumer debtor may bring a civil action against a  
982 person or consumer collection agency, or both, for violating the  
983 ~~provisions of s. 559.72 in a court of competent jurisdiction of~~  
984 ~~the county in which the alleged violator resides or has his or~~



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985 her principal place of business or in the county wherein the  
986 alleged violation occurred.

987 (2) Upon adverse adjudication, the defendant is ~~shall be~~  
988 liable for actual damages and for additional statutory damages  
989 of up to \$1,000, together with court costs and reasonable  
990 attorney's fees incurred by the plaintiff. In determining the  
991 defendant's liability for any additional statutory damages, the  
992 court shall consider the nature of the defendant's noncompliance  
993 with s. 559.72, the frequency and persistence of such  
994 noncompliance, and the extent to which such noncompliance was  
995 intentional. In a ~~any~~ class action lawsuit brought under this  
996 section, the court may award additional statutory damages of up  
997 to \$1,000 for each named plaintiff and an aggregate award of  
998 additional statutory damages up ~~not~~ to ~~exceed~~ the lesser of  
999 \$500,000 or 1 percent of the defendant's net worth for all  
1000 remaining class members; ~~however, the, but in no event may this~~  
1001 aggregate award may not provide an individual class member with  
1002 additional statutory damages in excess of \$1,000. The court may~~,~~  
1003 ~~in its discretion,~~ award punitive damages and ~~may~~ provide such  
1004 equitable relief as it deems necessary or proper, including  
1005 enjoining the defendant from further violations of this part. If  
1006 the court finds that the suit fails to raise a justiciable issue  
1007 of law or fact, the plaintiff is ~~shall be~~ liable for court costs  
1008 and reasonable attorney's fees incurred by the defendant.

1009 ~~(3) A person shall not be held liable in any action brought~~  
1010 ~~under this section if the person shows by a preponderance of the~~  
1011 ~~evidence that the violation was not intentional and resulted~~  
1012 ~~from a bona fide error, notwithstanding the maintenance of~~  
1013 ~~procedures reasonably adapted to avoid any such error.~~



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1014        ~~(3)-(4)~~ An action brought under this section must be  
1015 commenced within 5 2 years after the date of the last violation  
1016 upon which the action is founded ~~on which the alleged violation~~  
1017 ~~occurred.~~

1018        ~~(4)-(5)~~ In applying and construing this section, due  
1019 consideration and great weight shall be given to the  
1020 interpretations of the Federal Trade Commission and the federal  
1021 courts relating to the federal Fair Debt Collection Practices  
1022 Act.

1023        Section 21. Section 559.78, Florida Statutes, is amended to  
1024 read:

1025        559.78 Judicial enforcement.—In addition to other penalties  
1026 provided under ~~in~~ this part, state attorneys and their  
1027 assistants may ~~are authorized to~~ apply to the court ~~of competent~~  
1028 ~~jurisdiction~~ within their respective jurisdictions, upon the  
1029 sworn affidavit of any person alleging a violation of any ~~of the~~  
1030 provisions of this part. Such court shall have jurisdiction,  
1031 upon hearing and for cause shown, to grant a temporary or  
1032 permanent injunction restraining any person from violating any  
1033 provision of this part, whether or not there exists an adequate  
1034 remedy at law, ~~and such injunction, suspension, or revocation~~  
1035 shall issue without bond.

1036        Section 22. Section 559.785, Florida Statutes, is amended  
1037 to read:

1038        559.785 Criminal penalty.—It is a felony of the third ~~shall~~  
1039 ~~be a misdemeanor of the first~~ degree, punishable as provided in  
1040 s. 775.082, ~~or~~ s. 775.083, or s. 775.084, for any person ~~not~~  
1041 ~~exempt from registering as provided in this part~~ to engage in  
1042 collecting consumer debts in this state without first



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1043 registering with the office, or to register or attempt to  
1044 register by means of fraud, misrepresentation, or concealment.

1045 Section 23. Section 559.786, Florida Statutes, is created  
1046 to read:

1047 559.786 Deceptive and unfair trade practices.—A violation  
1048 of this part is a violation of the Florida Deceptive and Unfair  
1049 Trade Practices Act. In addition to any remedies provided under  
1050 this part, violations of this part are subject to the penalties  
1051 and remedies provided under part II of chapter 501.

1052 Section 24. The Division of Statutory Revision is requested  
1053 to rename part II of chapter 559, Florida Statutes, consisting  
1054 of ss. 559.101-559.117, as “Debt Relief Services.”

1055 Section 25. Section 559.101, Florida Statutes, is created  
1056 to read:

1057 559.101 Short title.—This part may be cited as the “Debt  
1058 Relief Services Act.”

1059 Section 26. Section 817.801, Florida Statutes, is  
1060 transferred, renumbered as 559.102, Florida Statutes, reordered,  
1061 and amended to read:

1062 559.102 ~~817.801~~ Definitions.—As used in this part:

1063 (1) “Commission” means the Financial Services Commission.

1064 (2) “Control person” means an individual, partnership,  
1065 corporation, trust, or other organization that possesses the  
1066 power, directly or indirectly, to direct the management or  
1067 policies of a company, whether through ownership of securities,  
1068 by contract, or otherwise. The term includes, but is not limited  
1069 to:

1070 (a) A company’s executive officers, including the  
1071 president, chief executive officer, chief financial officer,



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1072 chief operations officer, chief legal officer, chief compliance  
1073 officer, director, or other individuals having similar status or  
1074 functions.

1075 (b) For a corporation, each shareholder who, directly or  
1076 indirectly, owns 10 percent or more, or who has the power to  
1077 vote 10 percent or more, of a class of voting securities, unless  
1078 the applicant is a publicly traded company.

1079 (c) For a partnership, all general partners and limited or  
1080 special partners who have contributed 10 percent or more, or who  
1081 have the right to receive upon dissolution 10 percent or more,  
1082 of the partnership's capital.

1083 (d) For a trust, each trustee.

1084 (e) For a limited liability company, all managing members  
1085 and those members who have contributed 10 percent or more, or  
1086 who have the right to receive upon dissolution 10 percent or  
1087 more, of the partnership's capital.

1088 (6)-(1) "Debt relief organization ~~Credit counseling agency~~"  
1089 means a person offering to provide or ~~any organization~~ providing  
1090 debt management services or credit counseling services for  
1091 compensation.

1092 (3)-(2) "Credit counseling services" means ~~confidential~~  
1093 money management, debt reduction, financial analysis, and  
1094 financial educational services provided to a debtor. The term  
1095 does not include foreclosure-related rescue services.

1096 (4)-(3) "Creditor contribution" means any sum that a  
1097 creditor agrees to contribute to a debt relief organization  
1098 ~~credit counseling agency~~, whether directly or by setoff against  
1099 amounts otherwise payable to the creditor on behalf of debtors.

1100 (5)-(4) "Debt management services" means services, other



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1101 than foreclosure-related rescue services, provided to a debtor  
1102 by a debt relief ~~credit counseling~~ organization ~~for a fee~~ to:

1103 (a) Effect the adjustment, compromise, settlement, interest  
1104 rate reduction, modification of terms, negotiation, or discharge  
1105 of any unsecured account, note, or other indebtedness of the  
1106 debtor; or

1107 (b) Receive funds periodically from the debtor and disburse  
1108 to a creditor any money or other thing of value.

1109 (7) "Debtor" means an individual who obtains credit, seeks  
1110 a credit agreement with a creditor, or owes money to a creditor.

1111 (8) "Enrolled debt" means the amount of debt at the time  
1112 the contract for debt management services is entered but does  
1113 not include any increases in the amount of debt or additional  
1114 fees or penalties applied to the debt after services included in  
1115 the contract are initiated.

1116 (9) "Financial analysis" means the review of an  
1117 individual's budget, income, expenses, and debt by the debt  
1118 relief organization in order to determine the individual's  
1119 suitability for additional credit counseling or debt management  
1120 services provided by the organization.

1121 (10) "Financial audit report" means a report prepared in  
1122 connection with a financial audit that is conducted in  
1123 accordance with generally accepted auditing standards,  
1124 prescribed by the American Institute of Certified Public  
1125 Accountants, by a certified public accountant licensed to do  
1126 business in the United States, which includes:

1127 (a) Financial statements, including notes related to the  
1128 financial statements and required supplementary information,  
1129 prepared in conformity with United States generally accepted



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1130 accounting principles.

1131 (b) An expression of opinion regarding whether the  
1132 financial statements are presented in conformity with United  
1133 States generally accepted accounting principles, or an assertion  
1134 that such an opinion cannot be expressed and the reasons.

1135 (11) "Office" means the Office of Financial Regulation of  
1136 the Financial Services Commission.

1137 (12)-(5) "Person" has the same meaning as in s. 1.01 means  
1138 any individual, corporation, partnership, trust, association, or  
1139 other legal entity.

1140 (13) "Service contract" means the agreement for services  
1141 between a debt relief organization and a debtor.

1142 Section 27. Section 559.103, Florida Statutes, is created  
1143 to read:

1144 559.103 Powers and duties of the Office of Financial  
1145 Regulation; fees.-

1146 (1) The office is responsible for the administration and  
1147 enforcement of this part.

1148 (2) The office may conduct an investigation of any person  
1149 if the office has reason to believe, upon complaint or  
1150 otherwise, that any violation of this part may have been  
1151 committed or is about to be committed.

1152 (3) All fees, charges, and fines collected pursuant to this  
1153 part shall be deposited in the State Treasury to the credit of  
1154 the Regulatory Trust Fund under the office.

1155 Section 28. Section 559.104, Florida Statutes, is created  
1156 to read:

1157 559.104 Rules.-The commission may adopt rules to administer  
1158 this part, including rules that:





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1159       (1) Require electronic submission of any forms, documents,  
1160 or fees required under this part.

1161       (2) Establish time periods during which an applicant for  
1162 registration is barred from registration or a registered debt  
1163 relief organization is barred from renewal due to prior criminal  
1164 convictions of, or guilty or nolo contendere pleas by, any of  
1165 the applicant's or registrant's control persons, regardless of  
1166 adjudication.

1167       (a) The rules must provide:

1168       1. Permanent bars for felonies involving money laundering,  
1169 breach of trust, dishonesty, embezzlement, fraud, fraudulent  
1170 conversion, misappropriation of property, racketeering, or  
1171 theft;

1172       2. A 15-year disqualifying period for felonies involving  
1173 moral turpitude;

1174       3. A 7-year disqualifying period for all other felonies;  
1175 and

1176       4. A 5-year disqualifying period for misdemeanors involving  
1177 fraud, dishonesty, or any other act of moral turpitude.

1178       (b) The rules may provide for an additional waiting period  
1179 due to dates of imprisonment or community supervision, the  
1180 commitment of multiple crimes, and other factors reasonably  
1181 related to the applicant's criminal history.

1182       (c) The rules may provide for mitigating factors for crimes  
1183 identified in subparagraph (a)2. However, the mitigation may not  
1184 result in a period of disqualification less than 7 years. The  
1185 rule may not mitigate the disqualifying periods in subparagraphs  
1186 (a)1., (a)3., and (a)4.

1187       (d) An applicant is not eligible for registration until the



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1188 expiration of the disqualifying period set by rule.

1189 (e) Section 112.011 is not applicable to eligibility for  
1190 registration under this part.

1191 Section 29. Section 817.803, Florida Statutes, is  
1192 transferred, renumbered as section 559.105, Florida Statutes,  
1193 and amended to read:

1194 559.105 ~~817.803~~ Exceptions. Nothing in This part does not  
1195 apply ~~applies~~ to:

1196 (1) A person licensed to practice law in this state who is  
1197 providing credit counseling or debt management services as an  
1198 ancillary matter to her or his representation of the debtor as a  
1199 client. ~~Any Debt management or credit counseling services~~  
1200 ~~provided in the practice of law in this state;~~

1201 (2) A ~~Any~~ person who engages in credit counseling or debt  
1202 management services ~~adjustment~~ to adjust the indebtedness owed  
1203 to such person. ~~;~~ ~~or~~

1204 (3) The following entities or their subsidiaries:

1205 (a) The Federal National Mortgage Association;

1206 (b) The Federal Home Loan Mortgage Corporation;

1207 (c) The Florida Housing Finance Corporation, ~~a public~~  
1208 ~~corporation~~ created in s. 420.504;

1209 (d) Any financial institution as defined under s.  
1210 655.005(1)(h) ~~A bank, bank holding company, trust company,~~  
1211 ~~savings and loan association, credit union, credit card bank, or~~  
1212 ~~savings bank that is regulated and supervised by the Office of~~  
1213 ~~the Comptroller of the Currency, the Office of Thrift~~  
1214 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~  
1215 ~~Corporation, the National Credit Union Administration, the~~  
1216 ~~Office of Financial Regulation of the Department of Financial~~



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1217 ~~Services, or any state banking regulator; or~~

1218 (e) A consumer reporting agency as defined in the Federal  
1219 Fair Credit Reporting Act, 15 U.S.C. s. 1681a ~~ss. 1681-1681y~~, as  
1220 ~~it existed on April 5, 2004; or~~

1221 ~~(f) Any subsidiary or affiliate of a bank holding company,~~  
1222 ~~its employees and its exclusive agents acting under written~~  
1223 ~~agreement.~~

1224 Section 30. Section 559.106, Florida Statutes, is created  
1225 to read:

1226 559.106 Registration of debt relief organization.—

1227 (1) Effective April 1, 2011, each person who acts as a debt  
1228 relief organization in this state must be registered in  
1229 accordance with this section. This applies to debt relief  
1230 organizations operating in this state or from another state,  
1231 regardless of whether such organization is registered, licensed,  
1232 or the equivalent in accordance with the laws of another state.

1233 (2) In order to apply for registration, an applicant must  
1234 submit:

1235 (a) A completed registration application form as prescribed  
1236 by commission rule which includes the name and principal  
1237 business address and e-mail address of the debt relief  
1238 organization.

1239 (b) A registration fee of \$1,000. The registration fee is  
1240 nonrefundable and may not be prorated for a partial year of  
1241 registration.

1242 (c) Fingerprints for the applicant and each of the  
1243 applicant's control persons in accordance with rules adopted by  
1244 the commission.

1245 1. The fingerprints may be submitted to the office, or a



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1246 vendor acting on behalf of the office.

1247 2. The office may contract with a third-party vendor to  
1248 provide live-scan fingerprinting in lieu of a paper fingerprint  
1249 card.

1250 3. A state criminal history background check must be  
1251 conducted through the Department of Law Enforcement, and a  
1252 federal criminal history background check must be conducted  
1253 through the Federal Bureau of Investigation.

1254 4. All fingerprints submitted to the Department of Law  
1255 Enforcement must be submitted electronically and entered into  
1256 the statewide automated fingerprint identification system  
1257 established in s. 943.05(2) (b) and available for use in  
1258 accordance with s. 943.05(2) (g) and (h). The office shall pay an  
1259 annual fee to the department to participate in the system and  
1260 inform the department of any person whose fingerprints are no  
1261 longer required to be retained.

1262 5. The costs of fingerprint processing, including the cost  
1263 of retaining the fingerprints, shall be borne by the person  
1264 subject to the background check.

1265 6. The office is responsible for reviewing the results of  
1266 the state and federal criminal history checks and determining  
1267 whether the applicant meets registration requirements.

1268 (d) Submit documentation demonstrating that the surety bond  
1269 requirements specified in s. 559.108 have been satisfied.

1270 (e) Submit additional information or documentation  
1271 requested by the office and required by rule concerning the  
1272 applicant or a control person of the applicant. Additional  
1273 information may include documentation of pending and prior  
1274 disciplinary and criminal history events, including arrest



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1275 reports and certified copies of charging documents, plea  
1276 agreements, judgments and sentencing documents, documents  
1277 relating to pretrial intervention, orders terminating probation  
1278 or supervised release, final administrative agency orders, or  
1279 other comparable documents that may provide the office with the  
1280 appropriate information to determine eligibility for  
1281 registration.

1282 (3) An application is considered received for the purposes  
1283 of s. 120.60 upon the office's receipt of the completed  
1284 application form, all required documentation, criminal history  
1285 information, the application fee, and all applicable  
1286 fingerprinting processing fees.

1287 (4) The office shall issue a debt relief organization  
1288 registration to each applicant who is not otherwise ineligible  
1289 and who meets the requirements of this section. However, it is a  
1290 ground for denial of registration if the applicant or one of the  
1291 applicant's control persons:

1292 (a) Has been found guilty of, regardless of adjudication,  
1293 or has entered a plea of nolo contendere or guilty to, any  
1294 felony, any crime involving racketeering, fraud, theft,  
1295 embezzlement, fraudulent conversion, breach of trust,  
1296 misappropriation of property, dishonesty, or moral turpitude;

1297 (b) Has committed any violation specified in s. 559.113;

1298 (c) Is the subject of a pending felony criminal prosecution  
1299 or a prosecution or an administrative enforcement action, in any  
1300 jurisdiction, which involves fraud, racketeering, embezzlement,  
1301 fraudulent conversion, misappropriation of property, theft,  
1302 dishonesty, breach of trust, or any other act of moral  
1303 turpitude;



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1304       (d) Pays the office any fee, fine, or other amount with a  
1305 check or electronic transmission of funds which fails to clear  
1306 the applicant's financial institution;

1307       (e) Makes a material misstatement on any application,  
1308 document, or record required to be submitted under this part or  
1309 the rules of the commission; or

1310       (f) Has been the subject of any decision, finding,  
1311 injunction, suspension, prohibition, revocation, denial,  
1312 judgment, or other adverse action by any state or federal  
1313 agency.

1314       (5) A registration issued under this section expires  
1315 annually on March 31 unless canceled, suspended, revoked, or  
1316 otherwise terminated, and must be renewed as provided under s.  
1317 559.5551.

1318       Section 31. Effective April 1, 2011, section 559.107,  
1319 Florida Statutes, is created to read:

1320       559.107 Registration renewal.-

1321       (1) In order to renew a debt relief organization  
1322 registration, a debt relief organization must submit:

1323       (a) A completed registration renewal form as prescribed by  
1324 commission rule.

1325       (b) Fingerprints, in accordance with s. 559.106, for any  
1326 new control persons who have not been screened.

1327       (c) Any additional information or documentation requested  
1328 by the office and required by rule concerning the registrant or  
1329 control person of the registrant. Additional information may  
1330 include documentation of any pending and prior disciplinary and  
1331 criminal history events, including arrest reports and certified  
1332 copies of charging documents, plea agreements, judgments and



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1333 sentencing documents, documents relating to pretrial  
1334 intervention, orders terminating probation or supervised  
1335 release, final administrative agency orders, or other comparable  
1336 documents that may provide the office with the appropriate  
1337 information to determine eligibility for renewal of  
1338 registration.

1339 (d) A nonrefundable renewal fee of \$750 and nonrefundable  
1340 fees to cover the cost of further fingerprint processing and  
1341 retention as set forth in commission rule.

1342 (2) The office may not renew a debt relief organization  
1343 registration unless the registrant continues to meet the minimum  
1344 requirements for initial registration pursuant to s. 559.106 and  
1345 adopted rule.

1346 Section 32. Section 817.804, Florida Statutes, is  
1347 transferred, renumbered as section 559.108, Florida Statutes,  
1348 and amended to read:

1349 559.108 817.804 Financial requirements; surety bond;  
1350 disclosure and financial reporting.-

1351 (1) A debt relief organization must ~~Any person engaged in~~  
1352 ~~debt management services or credit counseling services shall:~~

1353 (a) Obtain from a licensed certified public accountant an  
1354 annual independent financial audit report in accordance with  
1355 ~~generally accepted auditing standards that includes shall~~  
1356 ~~include all accounts of such person~~ in which the funds of  
1357 debtors are deposited and from which payments are made to  
1358 creditors on behalf of debtors. A debt relief organization must  
1359 submit a copy of the report to the office within 120 days after  
1360 the end of the registrant's fiscal year. The commission may  
1361 establish by rule the manner for filing a financial audit



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1362 report.

1363 (b) Obtain and maintain at all times insurance coverage for  
1364 employee dishonesty, depositor's forgery, and computer fraud.  
1365 ~~The insurance coverage must be~~ in an amount not less than the  
1366 greater of \$100,000 or 10 percent of the monthly average of the  
1367 aggregate ~~amount~~ of all deposits made by debtors to the  
1368 organization for distribution to creditors ~~with such person by~~  
1369 ~~all debtors~~ for the 6 months immediately preceding the date of  
1370 initial application for or renewal of the insurance. The  
1371 deductible on such coverage may ~~shall~~ not exceed 10 percent of  
1372 the face amount of the policy coverage.

1373 (c) Obtain and maintain a surety bond from a surety company  
1374 authorized to do business in this state. The amount and form of  
1375 the bond shall be specified by rule and must be at least  
1376 \$100,000 but may not exceed \$1 million. The rule must provide  
1377 allowances for business volume. The bond shall be in favor of  
1378 the state for the use and benefit of any debtor who suffers or  
1379 sustains any loss or damage by reason of any violation of this  
1380 part. Pursuant to initial registration and renewal, each  
1381 applicant shall furnish to the office:

1382 1. The original executed surety bond issued by a surety  
1383 company authorized to do business in this state.

1384 2. A statement from the surety company that the premium for  
1385 the bond has been paid in full by the applicant.

1386 3. A statement from the surety company that the bond issued  
1387 by the surety company meets the requirements of this part. The  
1388 liability of the surety company under any bond issued pursuant  
1389 to this section may not, in the aggregate, exceed the amount of  
1390 the bond regardless of the number or amount of any claims filed





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1391 or which might be asserted against the surety on such bond. If  
1392 multiple claims are filed which collectively exceed the amount  
1393 of the bond, the surety may pay the full amount of the bond to  
1394 the office and is not further liable under the bond. The office  
1395 shall hold such funds for distribution to claimants and  
1396 administratively determine and pay to each claimant a pro rata  
1397 share of each valid claim made within 6 months after the date  
1398 the first claim is filed against the surety.

1399 (2) A copy of the annual financial audit report and  
1400 insurance policies required by this section must shall be  
1401 available for public inspection at each branch location of the  
1402 organization. Copies shall be provided, upon written request, to  
1403 any party requesting a copy for a charge that does not ~~to~~ exceed  
1404 the cost of copying the ~~reproduction~~ of documents.

1405 Section 33. Section 559.109, Florida Statutes, is created  
1406 to read:

1407 559.109 Maintenance of records.-

1408 (1) Each registered debt relief organization shall  
1409 maintain, at the principal place of business designated on the  
1410 registration, all books, accounts, records, and documents  
1411 necessary to determine the registrant's compliance with this  
1412 part.

1413 (2) The office may authorize the maintenance of records at  
1414 a location other than a principal place of business. The office  
1415 may require books, accounts, and records to be produced and  
1416 available at a reasonable and convenient location in this state.

1417 (3) The commission may prescribe by rule the minimum  
1418 information to be shown in the books, accounts, records, and  
1419 documents of registrants so that such records enable the office



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1420 to determine the registrant's compliance with this part.

1421 (4) All books, accounts, records, documents, and receipts  
1422 of any payment transaction must be preserved and kept available  
1423 for inspection by the office for at least 5 years after the date  
1424 the transaction is completed. The commission may prescribe by  
1425 rule requirements for the destruction of books, accounts,  
1426 records, and documents retained by the registrant after the  
1427 completion of the 5 years.

1428 Section 34. Section 559.111, Florida Statutes, is created  
1429 to read:

1430 559.111 Financial analysis; service contracts.-

1431 (1) Before a debtor signs a service contract, the debt  
1432 relief organization shall prepare, retain a copy of, and provide  
1433 to the debtor a written financial analysis specific to the  
1434 debtor which includes an evaluation of the debtor's income,  
1435 expenses, and all debts. An additional fee may not be charged  
1436 for the financial analysis.

1437 (2) Based on the completed financial analysis, the debt  
1438 relief organization shall provide to the debtor, and retain a  
1439 copy of, a written determination of the debtor's suitability for  
1440 debt management services and whether the debtor can reasonably  
1441 meet the requirements of the service contract, including the  
1442 debtor's ability to save the amount estimated to be needed to  
1443 fund the settlement of the debt.

1444 (3) The service contract between the debt relief  
1445 organization and the debtor must be signed and dated by the  
1446 debtor and include all of the following:

1447 (a) The following statement in at least 12-point uppercase  
1448 type at the top of the service contract:



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IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT, INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN, OR RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

YOUR USE OF DEBT MANAGEMENT SERVICES MAY RESULT IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE CREDIT RATING. YOU SHOULD CONTACT YOUR CREDITOR FOR MORE INFORMATION.

(b) A full and detailed description of the services to be performed by the debt relief organization for the debtor, including the financial analysis determining the suitability of the debtor for the debt management services, all guarantees and all promises of full or partial refunds, the estimated date or length of time by which the services are to be performed, and a copy of the Florida Debt Relief Services Act.

(c) All terms and conditions of payment, including the total of all payments to be made by the debtor and the specific amount of any payments to be made to the debt relief organization or to any other person.

(d) The debt relief organization's principal business address and the name and address of its agent in the state authorized to receive service of process.

(e) A clear and conspicuous statement in boldface type, in immediate proximity to the space reserved for the debtor's signature, which states: "You, the debtor, may cancel this



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1478 service contract at any time before midnight of the 5th business  
1479 day after the date of signing this contract. [See the attached  
1480 Notice of Right to Cancel for further explanation of this  
1481 right.]”

1482 (f) A Notice of Right to Cancel attached to the contract,  
1483 in duplicate and easily detachable, which contains the following  
1484 statement in at least 12-point uppercase type:

1485  
1486 NOTICE OF RIGHT TO CANCEL

1487  
1488 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR  
1489 CREDIT COUNSELING SERVICES WITHIN 5 BUSINESS DAYS  
1490 AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT  
1491 INCURRING ANY PENALTY OR OBLIGATION.

1492  
1493 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
1494 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION  
1495 NOTICE.

1496  
1497 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND  
1498 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER  
1499 WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO  
1500 CANCEL YOUR CONTRACT.

1501  
1502 TO: ...(name of credit counseling organization)...  
1503 AT: ...(address)...

1504  
1505 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY  
1506 SERVICE CONTRACT, EXECUTED ON: ...(date service



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1507 contract signed)...

1508

1509 ...(Signature of Debtor)...

1510 ...(Date)...

1511 ...(Address)...

1512 ...(Phone Number)...

1513

1514 (4) The debt relief organization must provide the debtor,  
1515 at the time the documents are signed, with a copy of the  
1516 completed service contract as described in subsection (3) and  
1517 all other documents the organization requires the debtor to  
1518 sign.

1519 Section 35. Section 817.805, Florida Statutes, is  
1520 transferred, renumbered as section 559.112, Florida Statutes,  
1521 and amended to read:

1522 559.112 ~~817.805~~ Disbursement of funds.—A debt relief  
1523 organization offering debt management services that include  
1524 disbursement to a creditor must ~~Any person engaged in debt~~  
1525 ~~management or credit counseling services shall~~ disburse to the  
1526 appropriate creditors all funds received from a debtor, less any  
1527 fees permitted by s. 559.113 ~~817.802~~ and any creditor  
1528 contributions, within 30 days after receipt of such funds.

1529 However, a creditor contribution may not reduce any sums ~~to be~~  
1530 credited to the account of a debtor making a payment to the  
1531 organization ~~credit counseling agency~~ for further payment to the  
1532 creditor. Further, a debt relief organization offering debt  
1533 management services must ~~any person engaged in such services~~  
1534 ~~shall~~ maintain a separate trust account for the receipt of any  
1535 funds from debtors and the disbursement of such funds on behalf



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1536 of such debtors.

1537 Section 36. Section 817.802, Florida Statutes, is  
1538 transferred, renumbered as section 559.113, Florida Statutes,  
1539 and amended to read:

1540 559.113 ~~817.802~~ Prohibited acts ~~Unlawful fees and costs.~~

1541 (1) A debt relief organization may not, directly or  
1542 indirectly, charge or accept from a debtor:

1543 (a) Any payment for services before the execution of a  
1544 written service contract. It is unlawful for any person, while  
1545 engaging in debt management services or credit counseling  
1546 services, to charge or accept from a debtor residing in this  
1547 state, directly or indirectly,

1548 (b) A fee or contribution greater than \$50 for the initial  
1549 setup or initial consultation. Subsequently, the person may not  
1550 charge or accept

1551 (c) A fee or contribution from a debtor residing in this  
1552 state greater than \$120 per year for credit counseling services  
1553 provided in addition to the initial consultation under  
1554 subsection (2). additional consultations or, alternatively, if

1555 (d) A fee or contribution for debt management services  
1556 which exceeds as defined in s. 817.801(4)(b) are provided, the  
1557 person may charge the greater of 7.5 percent of the amount paid  
1558 monthly by the debtor to the organization for disbursement to a  
1559 creditor person or \$35 per month, whichever is greater, or 7.5  
1560 percent of the enrolled debt.

1561 (e) A maximum fee of 7.5 percent of the enrolled debt  
1562 unless:

1563 1. The debt management services result in a settlement,  
1564 discharge, or modification of the debt on terms more favorable



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1565 to the debtor than the terms of the original agreement between  
1566 the debtor and creditor; and

1567 2. All debt management services as set forth in the written  
1568 service contract have been completed.

1569 (f) Any fee or contribution for debt management services,  
1570 unless no other payment has been received, directly or  
1571 indirectly, from the debtor for debt management services. Fees  
1572 authorized under this subsection may not be a part of or  
1573 included in the calculation of total enrolled debt.

1574 (2) A debt relief organization may not:

1575 (a) Advise any debtor, directly or indirectly, to not  
1576 contact or communicate with his or her creditors before or  
1577 during the service contract period.

1578 (b) Make or use any false or misleading representations or  
1579 omit any material fact in connection with the offer, sale, or  
1580 provision of services, or engage, directly or indirectly, in any  
1581 fraudulent, false, misleading, unconscionable, unfair, or  
1582 deceptive act or practice in connection with the offer or sale  
1583 of any of the services of a debt relief organization.

1584 (c) Provide services to a debtor without executing a  
1585 service contract that complies with s. 559.111.

1586 (d) Fail to provide copies of the financial analysis, all  
1587 service contracts, and any other documents the debtor is  
1588 required to sign as provided under s. 559.111.

1589 (e) Fail to perform any of the terms, conditions, and  
1590 obligations provided in the service contract with the debtor.

1591 (f) Fail to disclose on any offer or sale of services,  
1592 including any Internet website, the debt relief organization's  
1593 name, business address, telephone number, and e-mail address, if



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- 1594 any.
- 1595 (g) Fail to provide the debtor with a 5-business-day right
- 1596 of cancellation without the debtor incurring any penalty or
- 1597 obligation.
- 1598 (h) Fail to obtain an annual financial audit report and
- 1599 surety bond.
- 1600 (i) Fail to submit an annual financial audit report to the
- 1601 office.
- 1602 (j) Fail to report on a form prescribed by commission rule
- 1603 any change to information contained in an initial application
- 1604 form or any amendment to the application within 30 days after
- 1605 the change is effective.
- 1606 (k) Fail to comply with any of the provisions of this part.
- 1607 ~~(2) This section does not prohibit any person, while~~
- 1608 ~~engaging in debt management or credit counseling services, from~~
- 1609 ~~imposing upon and receiving from a debtor a reasonable and~~
- 1610 ~~separate charge or fee for insufficient funds transactions.~~
- 1611 Section 37. Section 559.114, Florida Statutes, is created
- 1612 to read:
- 1613 559.114 Debtor complaints; administrative duties.—
- 1614 (1) The office shall receive and maintain records of
- 1615 correspondence and complaints from debtors concerning any and
- 1616 all persons who provide credit counseling and debt management
- 1617 services, including debt relief organizations.
- 1618 (2) The office shall inform and furnish relevant
- 1619 information to the appropriate regulatory body if a debt relief
- 1620 organization exempt from registration under this part has been
- 1621 named in consumer complaints alleging violations of this part.
- 1622 (3) The office shall investigate complaints and record the





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1623 resolution of such complaints.

1624 (4) A debt relief organization that provides or attempts to  
1625 provide debt management services without first registering in  
1626 accordance with this part is subject to a penalty of up to  
1627 \$25,000 in addition to the other remedies provided in this part  
1628 and under part II of chapter 501. The office shall advise the  
1629 appropriate state attorney, or the Attorney General, of any  
1630 determination by the office of a violation of this part by any  
1631 debt relief organization that is not registered as required by  
1632 this part. The office shall furnish the state attorney or  
1633 Attorney General with the office's information concerning the  
1634 alleged violations of such requirements. The enforcing authority  
1635 is entitled to reasonable attorneys fees and costs in any action  
1636 brought to enforce this part against an unregistered debt relief  
1637 organization.

1638 (5) A registered debt relief organization must provide a  
1639 written response to the office within 20 days after receipt of a  
1640 written request from the office for information concerning a  
1641 consumer complaint. The response must address the issues and  
1642 allegations raised in the complaint. The office may impose an  
1643 administrative fine of up to \$2,500 per request per day upon any  
1644 registrant that fails to comply with this subsection.

1645 Section 38. Section 559.115, Florida Statutes, is created  
1646 to read:

1647 559.115 Subpoenas.—

1648 (1) The office may:

1649 (a) Issue and serve subpoenas and subpoenas duces tecum to  
1650 compel the attendance of witnesses and the production of all  
1651 books, accounts, records, and other documents and materials



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1652 relevant to an investigation conducted by the office. The  
1653 office, or its authorized representative, may administer oaths  
1654 and affirmations to any person.

1655 (b) Seek subpoenas or subpoenas duces tecum from any court  
1656 to command the appearance of witnesses and the production of  
1657 books, accounts, records, and other documents or materials at a  
1658 time and place named in the subpoenas, and an authorized  
1659 representative of the office may serve such subpoenas.

1660 (2) If there is substantial noncompliance with a subpoena  
1661 or subpoena duces tecum issued by the office, the office may  
1662 petition the court in the county where the person subpoenaed  
1663 resides or has his or her principal place of business for an  
1664 order requiring the person to appear, testify, or produce such  
1665 books, accounts, records, and other documents as are specified  
1666 in the subpoena or subpoena duces tecum.

1667 (3) The office is entitled to the summary procedure  
1668 provided in s. 51.011, and the court shall advance such cause on  
1669 its calendar. Attorney's fees and any other costs incurred by  
1670 the office to obtain an order granting, in whole or in part, a  
1671 petition for enforcement of a subpoena or subpoena duces tecum  
1672 shall be taxed against the subpoenaed person, and failure to  
1673 comply with such order is a contempt of court.

1674 (4) To aid in the enforcement of this part, the office may  
1675 require or permit a person to file a statement in writing, under  
1676 oath or otherwise as the office determines, as to all the facts  
1677 and circumstances concerning the matter to be investigated.

1678 Section 39. Section 559.116, Florida Statutes, is created  
1679 to read:

1680 559.116 Cease and desist orders.—The office may issue and



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1681 serve upon any person an order to cease and desist and to take  
1682 corrective action if it has reason to believe the person is  
1683 violating, has violated, or is about to violate any provision of  
1684 this part, any rule or order issued under this part, or any  
1685 written agreement between the person and the office. All  
1686 procedural matters relating to issuance and enforcement of such  
1687 order are governed by the Administrative Procedure Act.

1688 Section 40. Section 817.806, Florida Statutes, is  
1689 transferred, renumbered as section 559.117, Florida Statutes,  
1690 and amended to read:

1691 559.117 ~~817.806~~ Violations; penalties.-

1692 (1) Any person who violates any provision of this part  
1693 commits an unfair or deceptive trade practice as defined in part  
1694 II of chapter 501, ~~and~~ violators are also shall be subject to  
1695 the penalties, ~~and~~ remedies, and enforcement actions provided  
1696 therein. Further, any debtor consumer injured by a violation of  
1697 this part may bring an action for recovery of damages. Judgment  
1698 shall be entered for actual damages, but in no case less than  
1699 the amount paid by the debtor consumer to the debt relief  
1700 organization credit counseling agency, plus reasonable  
1701 attorney's fees and costs.

1702 (2) The office may impose an administrative fine on, or  
1703 revoke or suspend the registration of a registrant who has  
1704 committed a violation of this part. Final action to fine,  
1705 suspend, or revoke the registration of a registrant is subject  
1706 to review in accordance with chapter 120.

1707 (a) The office may impose suspension rather than revocation  
1708 of a registration if circumstances warrant that one or the other  
1709 should be imposed and the registrant demonstrates that the



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1710 registrant has taken affirmative steps that can be expected to  
1711 effectively eliminate the violations and that the registrant's  
1712 registration has never been previously suspended.

1713 (b) In addition to, or in lieu of suspension or revocation  
1714 of a registration, the office may impose an administrative fine  
1715 of up to \$25,000 per violation. The office shall adopt rules  
1716 establishing guidelines for imposing administrative penalties.

1717 (3)(2) It is Any person who violates any provision of this  
1718 part commits a felony of the third degree, punishable as  
1719 provided in s. 775.082, or s. 775.083, or s. 775.084 for any  
1720 person to provide debt management services in this state without  
1721 first registering with the office, or to register or attempt to  
1722 register by means of fraud, misrepresentation, or concealment.

1723 Section 41. Sections 559.10, 559.11, 559.12, and 559.13,  
1724 Florida Statutes, are repealed.

1725 Section 42. Paragraph (g) of subsection (1) of section  
1726 516.07, Florida Statutes, is amended to read:

1727 516.07 Grounds for denial of license or for disciplinary  
1728 action.-

1729 (1) The following acts are violations of this chapter and  
1730 constitute grounds for denial of an application for a license to  
1731 make consumer finance loans and grounds for any of the  
1732 disciplinary actions specified in subsection (2):

1733 (g) Any violation of part III of chapter 817 or part II of  
1734 chapter 559 or of any rule adopted under part II of chapter 559.

1735 Section 43. Effective October 1, 2010, notwithstanding s.  
1736 559.555(3), Florida Statutes, or any other provision of this  
1737 act, all current registrations of consumer collection agencies  
1738 issued by the Office of Financial Regulation which are due to



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1739 expire between October 1 and December 31, 2010, shall expire  
1740 March 31, 2011.

1741 Section 44. Except as otherwise expressly provided in this  
1742 act and except for this section, which shall take effect October  
1743 1, 2010, this act shall take effect January 1, 2011.