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Proposed Committee Substitute by the Committee on Banking and
Insurance

A bill to be entitled

An act relating to consumer debt collection 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; amending s. 559.563, F.S.; revising provisions relating to a void registration; amending s. 559.565, F.S.; expanding the authority of the Attorney General to take action against an out-of-



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28 state consumer collection agency; creating s. 559.566,
29 F.S.; specifying how a debt collector may communicate
30 about and with a consumer; amending s. 559.715, F.S.;
31 conforming provisions to changes made by the act;
32 amending s. 559.72, F.S.; revising prohibited acts;
33 including violations of communication procedures;
34 specifying acts of harassment; adding violations
35 relating to prior criminal acts and failure to conform
36 with registration requirements; amending s. 559.725,
37 F.S.; revising provisions relating to consumer
38 complaints about a consumer collection agency;
39 creating s. 559.726, F.S.; providing for the issuance
40 of subpoenas by the office; creating s. 559.727, F.S.;
41 authorizing the office to issue cease and desist
42 orders; amending s. 559.730, F.S.; revising provisions
43 relating to administrative remedies; increasing the
44 maximum 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; providing
59 a short title; transferring, renumbering, reordering,
60 and amending s. 817.801, F.S.; revising definitions
61 relating to debt relief services; creating s. 559.103,
62 F.S.; providing the powers of the Office of Financial
63 Regulation; creating s. 559.104, F.S.; authorizing the
64 Financial Services Commission to adopt rules;
65 transferring, renumbering, and amending s. 817.803,
66 F.S.; revising provisions relating to who is not
67 subject to the Debt Relief Services Act; providing an
68 exception for attorneys representing clients; creating
69 s. 559.106, F.S.; requiring debt relief organizations
70 to be registered with the office; providing a
71 registration fee; requiring background screening of
72 applicants and control persons; providing grounds for
73 registration issuance or denial; requiring annual
74 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;
78 creating s. 559.109, F.S.; requiring a debt relief
79 organization to maintain records; creating s. 559.111,
80 F.S.; requiring a debt relief organization to prepare
81 a financial analysis for the debtor; providing for
82 service contracts; requiring certain provisions to be
83 included in such contracts; requiring the credit
84 counseling organization to provide the debtor with
85 copies of all signed documents; amending s. 817.805,



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

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. Section 559.55, Florida Statutes, is reordered
109 and amended to read:

110 559.55 Definitions.—~~As used in The following terms shall,~~
111 ~~unless the context otherwise indicates, have the following~~
112 ~~meanings for the purpose of this part, the term:~~

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

114 (7)-(1) "Debt" or "consumer debt" means any obligation or



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115 alleged obligation of a consumer to pay money arising out of a
116 transaction in which the money, property, insurance, or services
117 ~~that~~ ~~which~~ are the subject of the transaction are primarily for
118 personal, family, or household purposes, whether or not such
119 obligation has been reduced to judgment.

120 ~~(3)-(2)~~ "Debtor" ~~or~~ "Consumer" means any natural person
121 obligated or allegedly obligated to pay any debt.

122 ~~(6)-(3)~~ "Creditor" means any person who offers or extends
123 credit creating a debt or to whom a debt is owed, but does not
124 include a any person who receives ~~to the extent that they~~
125 ~~receive~~ an assignment or transfer of a debt in default solely
126 for the purpose of facilitating the collection of such debt for
127 another.

128 ~~(11)-(4)~~ "Office" means the Office of Financial Regulation
129 of the Financial Services Commission.

130 ~~(2)-(5)~~ "Communication" means ~~the~~ conveying ~~of~~ information
131 regarding a debt, directly or indirectly, to any person through
132 any medium.

133 ~~(8)-(6)~~ "Debt collector" means a any person who uses any
134 instrumentality of commerce within this state or the mails,
135 whether initiated from within or outside this state, in a any
136 business whose ~~the~~ principal purpose ~~of which~~ is the collection
137 of debts, or who regularly collects or attempts to collect,
138 directly or indirectly, debts ~~owed or due or~~ asserted to be owed
139 or due another. Notwithstanding paragraph (f), the term "~~debt~~
140 ~~collector~~" includes a any creditor who, in the process of
141 collecting her or his own debts, uses any name other than her or
142 his own which indicates ~~would indicate~~ that a third person is
143 collecting or attempting to collect such debts. The term also



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144 includes a person who uses any instrumentality of interstate
145 commerce or the mails to enforce a security interest. The term
146 does not include:

147 (a) An ~~Any~~ officer or employee of a creditor who ~~while~~, in
148 the name of the creditor, collects ~~collecting~~ debts for such
149 creditor;

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

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

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

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

168 (f) A ~~Any~~ person collecting or attempting to collect any
169 debt if ~~owed or due or asserted to be owed or due another to the~~
170 ~~extent that~~ such activity is incidental to a bona fide fiduciary
171 obligation or a bona fide escrow arrangement; concerns a debt
172 that ~~which~~ was originated by such person; concerns a debt that



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173 ~~which~~ was not in default at the time it was obtained by such
174 person; or concerns a debt obtained by such person as a secured
175 party in a commercial credit transaction involving the creditor.

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

180 (4) ~~(7)~~ "Consumer collection agency" means a any debt
181 collector or a business entity, employing one or more debt
182 collectors, which is engaged in the business of soliciting
183 consumer debts for collection or ~~of~~ collecting consumer debts,
184 ~~which debt collector or business is not expressly exempted as~~
185 ~~set forth in s. 559.553(4).~~

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

192 (a) A company's executive officers, including the
193 president, chief executive officer, chief financial officer,
194 chief operations officer, chief legal officer, chief compliance
195 officer, director, or other individuals having similar status or
196 functions.

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

201 (c) For a partnership, all general partners and limited or



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202 special partners who have contributed 10 percent or more, or who
203 have the right to receive upon dissolution 10 percent or more,
204 of the partnership's capital.

205 (d) For a trust, each trustee.

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

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

220 ~~(9)~~ ~~(9)~~ "Federal Fair Debt Collection Practices Act" ~~or~~
221 ~~"Federal Act"~~ means the federal legislation regulating fair debt
222 collection practices, ~~as set forth in Pub. L. No. 95-109, as~~
223 ~~amended and published in 15 U.S.C. ss. 1692 et seq.~~

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

227 Section 2. Section 559.551, Florida Statutes, is amended to
228 read:

229 559.551 Short title.—~~This part Sections 559.55-559.785~~ may
230 be cited as the "Florida Consumer Collection Practices Act."



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231 Section 3. Section 559.552, Florida Statutes, is amended to
232 read:

233 559.552 Relationship of state and federal law. ~~Nothing in~~
234 This part does not ~~shall be construed to~~ limit or restrict the
235 continued applicability of the federal Fair Debt Collection
236 Practices Act to consumer collection practices in this state
237 and. ~~This part~~ is in addition to the requirements and
238 regulations of the federal act. If there is ~~In the event of~~ any
239 inconsistency between ~~any provision of~~ this part and ~~any~~
240 ~~provision of~~ the federal act, the provision that ~~which~~ is more
241 protective of the consumer prevails ~~or debtor shall prevail~~.

242 Section 4. Section 559.5522, Florida Statutes, is created
243 to read:

244 559.5522 Powers and duties of the Office of Financial
245 Regulation; fees.-

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

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

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

255 Section 5. Section 559.5524, Florida Statutes, is created
256 to read:

257 559.5524 Rules.-The commission may adopt rules to
258 administer this part, including rules:

259 (1) Requiring electronic submission of any forms,



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260 documents, or fees required under this part.

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

267 (a) The rules must provide:

268 1. Permanent bars for felonies involving breach of trust,
269 dishonesty, embezzlement, fraud, fraudulent conversion,
270 misappropriation of property, racketeering, or theft;

271 2. A 15-year disqualifying period for felonies involving
272 moral turpitude;

273 3. A 7-year disqualifying period for all other felonies;
274 and

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

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

281 (c) The rules may provide for mitigating factors for crimes
282 identified in subparagraph (a)2. However, the mitigation may not
283 result in a period of disqualification less than 7 years. The
284 rule may not mitigate the disqualifying periods in subparagraphs
285 (a)1., (a)3., and (a)4.

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

288 (e) Section 112.011 is not applicable to eligibility for



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289 registration under this part.

290 Section 6. Section 559.553, Florida Statutes, is amended to
291 read:

292 559.553 Registration of consumer collection agencies
293 required; ~~exemptions.~~-

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

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

307 ~~(3) A prospective registrant shall be entitled to be~~
308 ~~registered when registration information is complete on its face~~
309 ~~and the applicable registration fee has been paid; however, the~~
310 ~~office may reject a registration submitted by a prospective~~
311 ~~registrant if the registrant or any principal of the registrant~~
312 ~~previously has held any professional license or state~~
313 ~~registration which was the subject of any suspension or~~
314 ~~revocation which has not been explained by the prospective~~
315 ~~registrant to the satisfaction of the office either in the~~
316 ~~registration information submitted initially or upon the~~
317 ~~subsequent written request of the office. In the event that an~~



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318 ~~attempted registration is rejected by the office the prospective~~
319 ~~registrant shall be informed of the basis for rejection.~~

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

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

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

323 ~~(c) Any financial institution authorized to do business in~~
324 ~~this state and any wholly owned subsidiary and affiliate~~
325 ~~thereof.~~

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

327 ~~(e) Any insurance company authorized to do business in this~~
328 ~~state.~~

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

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

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

335 ~~(i) Any FDIC-insured institution or subsidiary or affiliate~~
336 ~~thereof.~~

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

342 Section 7. Section 559.555, Florida Statutes, is amended to
343 read:

344 (Substantial rewording of section. See

345 s. 559.555, F.S., for present text.)

346 559.555 Registration of consumer collection agency.-



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347 (1) Each person who acts as a consumer collection agency
348 must be registered in accordance with this section.

349 (2) In order to apply for registration, an applicant must:

350 (a) Submit a completed registration application form as
351 prescribed by commission rule which includes:

352 1. The name and principal business address and e-mail
353 address of the consumer collection agency.

354 2. The name and residence address of each control person of
355 the consumer collection agency.

356 3. The name and residence address of each debt collector
357 employed by the consumer collection agency.

358 4. The address of each consumer collection agency branch
359 office and the name under which each office will conduct
360 business.

361 5. The name of each person in full-time charge of each
362 consumer collection agency branch and the office to which the
363 person is assigned.

364 (b) Submit a nonrefundable registration fee of \$750. The
365 registration fee is nonrefundable and may not be prorated for a
366 partial year of registration.

367 (c) Submit fingerprints for the applicant and each of the
368 applicant's control persons in accordance with rules adopted by
369 the commission.

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

372 2. The office may contract with a third-party vendor to
373 provide live-scan fingerprinting in lieu of a paper fingerprint
374 card.

375 3. A state criminal history background check must be



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376 conducted through the Department of Law Enforcement, and a
377 federal criminal history background check must be conducted
378 through the Federal Bureau of Investigation.

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

387 5. The costs of fingerprint processing, including the cost
388 of retaining the fingerprints, shall be borne by the person
389 subject to the background check.

390 6. The office is responsible for reviewing the results of
391 the state and federal criminal history checks and determining
392 whether the applicant meets registration requirements.

393 (d) Submit documentation demonstrating that the surety bond
394 requirements specified in s. 559.5554 have been satisfied.

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



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405 appropriate information to determine eligibility for
406 registration.

407 (3) An application is considered received for the purposes
408 of s. 120.60 upon the office's receipt of all documentation,
409 including the completed application form, and criminal history
410 information, as well as the registration application fee and all
411 applicable fingerprinting processing fees.

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

417 (a) Has been found guilty of, regardless of adjudication,
418 or has entered a plea of nolo contendere or guilty to, any crime
419 involving racketeering, fraud, theft, embezzlement, fraudulent
420 conversion, misappropriation of property, dishonest dealing, or
421 moral turpitude;

422 (b) Has committed any violation specified in s. 559.772;

423 (c) Is the subject of a pending felony criminal prosecution
424 or a prosecution or an administrative enforcement action, in any
425 jurisdiction, which involves fraud, dishonesty, breach of trust,
426 money laundering, or any other act of moral turpitude;

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

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

433 (f) Having been the subject of any decision, finding,



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434 injunction, suspension, prohibition, revocation, denial,
435 judgment, or other adverse action by any state or federal
436 agency.

437 (5) A registration issued under this section remains in
438 effect for 1 year, unless canceled, suspended, revoked, or
439 otherwise terminated, and must be renewed as provided under s.
440 559.5551.

441 Section 8. Section 559.5551, Florida Statutes, is created
442 to read:

443 559.5551 Registration renewal.—The registration of a
444 consumer collection agency must be renewed annually by
445 submitting a renewal form to the office in a manner determined
446 by the office by rule. The renewal requestform be accompanied by
447 a \$750 renewal fee, additional fingerprints and the related
448 processing fee, and evidence of the surety bond required under
449 s. 559.5554. The renewal fee is nonrefundable and may not be
450 prorated. Any of the grounds for denial of an initial
451 registration application are also grounds for denying a
452 registration renewal.

453 Section 9. Section 559.5554, Florida Statutes, is created
454 to read:

455 559.5554 Surety bond.—

456 (1) Pursuant to an application for registration and renewal
457 under this part, an applicant must obtain and maintain a surety
458 bond from a surety company authorized to do business in this
459 state. The amount of the bond shall be specified by rule, but
460 must be at least \$100,000. The rule must provide allowances for
461 business volume. The bond shall be in favor of the state for the
462 use and benefit of any consumer who suffers or sustains any loss



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463 or damage by reason of any violation of this part.

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

466 (a) A copy of the surety bond issued by a surety company
467 authorized to do business in this state.

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

470 (c) A statement from the surety company that the bond
471 issued by the surety company meets the requirements of this
472 part.

473 (3) The liability of the surety company under any bond
474 issued pursuant to this section may not, in the aggregate,
475 exceed the amount of the bond regardless of the number or amount
476 of any claims filed or which might be asserted against the
477 surety on such bond. If multiple claims are filed which
478 collectively exceed the amount of the bond, the surety may pay
479 the full amount of the bond to the office and is not further
480 liable under the bond. The office shall hold such funds for
481 distribution to claimants and administratively determine and pay
482 to each claimant a pro rata share of each valid claim made
483 within 6 months after the date the first claim is filed against
484 the surety.

485 Section 10. Section 559.5556, Florida Statutes, is created
486 to read:

487 559.5556 Maintenance of records.-

488 (1) Each registered consumer collection agency shall
489 maintain, at the principal place of business designated on the
490 registration, all books, accounts, records, and documents
491 necessary to determine the registrant's compliance with this



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492 part.

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

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

501 (4) All books, accounts, records, documents, and receipts
502 of any debt collection transaction must be preserved and kept
503 available for inspection by the office for at least 5 years
504 after the date the transaction is completed. The commission may
505 prescribe by rule requirements for the destruction of books,
506 accounts, records, and documents retained by the registrant
507 after the completion of the 5 years.

508 Section 11. Section 559.563, Florida Statutes, is amended
509 to read:

510 559.563 Void registration.—Any registration issued made
511 under this part based upon false identification or false
512 information, or identification not current with respect to name,
513 address, and business location, or other fact ~~that~~ ~~which~~ is
514 material to such registration, ~~is~~ ~~shall be~~ void. A Any
515 registration that is void does not create a defense to ~~made and~~
516 ~~subsequently void under this section shall not be construed as~~
517 ~~creating any defense in~~ any action by the office to impose any
518 sanction for any violation of this part.

519 Section 12. Section 559.565, Florida Statutes, is amended
520 to read:



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521 559.565 Enforcement action against an unregistered ~~against~~
522 ~~out-of-state~~ consumer collection agency debt collector.—The
523 remedies of this section are cumulative to other sanctions and
524 enforcement provisions of this part for any violation by a ~~an~~
525 ~~out-of-state~~ consumer collection agency debt collector, ~~as~~
526 ~~defined in s. 559.55(8).~~

527 (1) ~~A~~ Any out-of-state consumer collection agency that debt
528 ~~collector who~~ collects or attempts to collect consumer debts in
529 this state without first registering in accordance with this
530 part is shall be subject to an administrative fine of up to
531 \$25,000, plus ~~not to exceed \$1,000 together with~~ reasonable
532 attorney fees and court costs, in any successful action by the
533 state to collect such fines.

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

542 (3) In order to effectuate the provisions of this section
543 and enforce the requirements of this part as it relates to an
544 ~~out-of-state~~ consumer collection agency debt collectors, the
545 Attorney General is expressly authorized to initiate such action
546 on behalf of the state ~~as he or she deems appropriate~~ in any
547 state court or federal district court, as appropriate, including
548 an action for injunctive relief on behalf of consumers of
549 ~~competent jurisdiction.~~ The Attorney General may recover



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550 attorney's fees and costs resulting from such actions.

551 Section 13. Section 559.566, Florida Statutes, is created
552 to read:

553 559.566 Communication.-

554 (1) In the course of any communication by a debt collector
555 with any person other than the consumer for the purpose of
556 acquiring location information about the consumer, the debt
557 collector must:

558 (a) Identify himself or herself, state that he or she is
559 confirming or correcting location information concerning the
560 consumer, and, only if expressly requested, identify his
561 employer;

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

563 (c) Not communicate with such person more than once unless
564 requested to do so by such person or unless the debt collector
565 reasonably believes that the earlier response of such person is
566 erroneous or incomplete and that such person now has correct or
567 complete location information;

568 (d) Not communicate by post card; and

569 (e) Not use any language or symbol on any envelope or in
570 the contents of any communication effected by the mails or
571 telegram which indicates that the debt collector is in the debt
572 collection business or that the communication relates to the
573 collection of a debt.

574 (2) Without the prior consent of the consumer given
575 directly to the debt collector or pursuant to express court
576 permission, a debt collector may not communicate with a consumer
577 in connection with the collection of any debt:

578 (a) At any unusual time or place or a time or place that is



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579 known or should be known to be inconvenient to the consumer. In
580 the absence of knowledge to the contrary, a debt collector shall
581 assume that the convenient time for communicating with a
582 consumer is after 8 a.m. and before 9 p.m. local time at the
583 consumer's location;

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

591 (c) At the consumer's place of employment if the debt
592 collector knows or has reason to know that the consumer's
593 employer prohibits the consumer from receiving such
594 communication at his or her place of employment.

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

604 (4) If a consumer notifies a debt collector in writing that
605 the consumer refuses to pay a debt or that the consumer wishes
606 the debt collector to cease further communication with the
607 consumer, the debt collector may not communicate further with



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608 the consumer with respect to such debt, except to:

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

611 (b) Notify the consumer that the debt collector or creditor
612 may invoke specified remedies that are ordinarily invoked by
613 such debt collector or creditor; or

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

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

621 Section 14. Section 559.715, Florida Statutes, is amended
622 to read:

623 559.715 Assignment of consumer debts.—This part does not
624 prohibit the assignment, by a creditor, of the right to bill and
625 collect a consumer debt. However, the assignee must give the
626 consumer ~~debtor~~ written notice of such assignment within 30 days
627 after the assignment. The assignee is a real party in interest
628 and may bring an action in a court of competent jurisdiction to
629 collect a debt that has been assigned to the ~~such~~ assignee and
630 is in default.

631 Section 15. Section 559.72, Florida Statutes, is amended to
632 read:

633 559.72 Prohibited practices ~~generally~~.—

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

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



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637 (b)~~(1)~~ Simulate in any manner a law enforcement officer or
638 a representative of any governmental agency.~~†~~

639 ~~(2) Use or threaten force or violence;†~~

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

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

656 (e)~~(5)~~ Disclose to a person other than the consumer debtor
657 or her or his family information affecting the consumer's
658 ~~debtor's~~ reputation, whether or not for credit worthiness, with
659 knowledge or reason to know that the other person does not have
660 a legitimate business need for the information or that the
661 information is false.~~†~~

662 (f)~~(6)~~ Disclose information concerning the existence of a
663 debt known to be reasonably disputed by the consumer debtor
664 without disclosing that fact. If a disclosure is made before
665 ~~prior to~~ such ~~reasonable~~ dispute has having been asserted and



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666 written notice is received from the consumer debtor that any
667 part of the debt is disputed, and if such dispute is reasonable,
668 the person who made the original disclosure must ~~shall~~ reveal
669 upon the request of the consumer debtor within 30 days the
670 details of the dispute to each person to whom disclosure of the
671 debt without notice of the dispute was made within the preceding
672 90 days.

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

676 1. The use or threat of the use of violence or other
677 criminal means to harm the physical person, reputation, or
678 property of any person.

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

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

683 4. The advertisement for sale of any debt to coerce payment
684 of the debt.

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

688 6. Except as provided in s. 559.566(1), the placement of
689 telephone calls without meaningful disclosure of the caller's
690 identity.

691 ~~(7) Willfully communicate with the debtor or any member of~~
692 ~~her or his family with such frequency as can reasonably be~~
693 ~~expected to harass the debtor or her or his family, or willfully~~
694 ~~engage in other conduct which can reasonably be expected to~~



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695 ~~abuse or harass the debtor or any member of her or his family;~~
696 ~~(8) Use profane, obscene, vulgar, or willfully abusive~~
697 ~~language in communicating with the debtor or any member of her~~
698 ~~or his family;~~

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

703 ~~(i)(10)~~ Use a communication ~~that~~ ~~which~~ simulates in any
704 manner legal or judicial process or ~~that~~ ~~which~~ gives the
705 appearance of being authorized, issued, or approved by a
706 government, governmental agency, or attorney at law, when it is
707 not.

708 ~~(j)(11)~~ Communicate with a consumer debtor under the guise
709 of an attorney by using the stationery of an attorney or forms
710 or instruments ~~that~~ ~~which~~ only attorneys are authorized to
711 prepare.

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

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

718 ~~(14)~~ ~~Publish or post, threaten to publish or post, or cause~~
719 ~~to be published or posted before the general public individual~~
720 ~~names or any list of names of debtors, commonly known as a~~
721 ~~deadbeat list, for the purpose of enforcing or attempting to~~
722 ~~enforce collection of consumer debts;~~

723 ~~(l)(15)~~ Refuse to provide adequate identification of



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724 herself or himself or her or his employer or other entity whom
725 she or he represents when requested to do so by a consumer
726 ~~debtor~~ from whom she or he is collecting or attempting to
727 collect a consumer debt.†

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

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

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

744 ~~(m) (19) Cause a consumer to be charged charges to be made~~
745 ~~to any debtor for communications by concealing concealment of~~
746 ~~the true purpose of the communication, including collect~~
747 ~~telephone calls and telegram fees.~~

748 (2) In addition to subsection (1), the office may take any
749 actions permitted under s. 559.730 if the consumer collection
750 agency:

751 (a) Has been found guilty of, regardless of adjudication,
752 or has entered a plea of nolo contendere or guilty to, any crime



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753 involving racketeering, fraud, theft, embezzlement, fraudulent
754 conversion, misappropriation of property, dishonest dealing, or
755 moral turpitude.

756 (b) Fails to maintain the surety bond required pursuant to
757 s. 559.5554.

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

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

763 (e) Fails to comply with any rule or order adopted pursuant
764 to this part, or any written agreement entered into with the
765 office.

766 (f) Fails to comply with, or violates, any other provision
767 of this part.

768 (g) Pays the office any fee, fine, or other amount with a
769 check or electronic transmission of funds which fails to clear
770 the applicant's or registrant's financial institution.

771 (h) Makes a material misstatement on any application,
772 document, or record required to be submitted under this part or
773 the rules of the commission.

774 (i) Has been the subject of any decision, finding,
775 injunction, suspension, prohibition, revocation, denial,
776 judgment, or other adverse action by any state or federal
777 agency.

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

781 Section 16. Section 559.725, Florida Statutes, is amended



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782 to read:

783 559.725 Consumer complaints; administrative duties.—

784 (1) The office ~~division of Consumer Services of the~~
785 ~~department of Financial Services~~ shall receive and maintain
786 ~~serve as the registry for receiving and maintaining~~ records of
787 inquiries, correspondence, and complaints from consumers
788 concerning any and all persons who collect debts, including
789 consumer collection agencies.

790 ~~(2) The division shall classify complaints by type and~~
791 ~~identify the number of written complaints against persons~~
792 ~~collecting or attempting to collect debts in this state,~~
793 ~~including credit grantors collecting their own debts, debt~~
794 ~~collectors generally, and, specifically, consumer collection~~
795 ~~agencies as distinguished from other persons who collect debts~~
796 ~~such as commercial debt collection agencies regulated under part~~
797 ~~V of this chapter. The division shall identify the nature and~~
798 ~~number of various kinds of written complaints, including~~
799 ~~specifically those alleging violations of s. 559.72.~~

800 ~~(2)(3)~~ The office ~~division~~ shall inform and furnish
801 relevant information to the appropriate regulatory body of the
802 state or the Federal Government, or The Florida Bar in the case
803 of attorneys, if a person ~~when any consumer debt collector~~
804 ~~exempt from registration under this part~~ has been named in a
805 ~~five or more written consumer complaint~~ complaints alleging
806 violations of s. 559.72 ~~within a 12-month period.~~

807 ~~(4) The division shall furnish a form to each complainant~~
808 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~
809 ~~consumer collection agency. Such form may be filed with the~~
810 ~~office. The form shall identify the accused consumer collection~~



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811 ~~agency and provide for the complainant's summary of the nature~~
812 ~~of the alleged violation and facts which allegedly support the~~
813 ~~complaint. The form shall include a provision for the~~
814 ~~complainant to state under oath before a notary public that the~~
815 ~~allegations therein made are true.~~

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

819 ~~(3)(6) The office shall investigate sworn complaints by~~
820 ~~direct written communication with the complainant and the~~
821 ~~affected consumer collection agency. In addition, the office~~
822 ~~shall attempt to resolve each sworn complaint and shall record~~
823 ~~the resolution of such complaints.~~

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

828 ~~(8) The office shall issue a written warning notice to the~~
829 ~~accused consumer collection agency if the office is unable to~~
830 ~~resolve all such sworn complaints and fewer than five unresolved~~
831 ~~complaints remain. Such notice shall include a statement that~~
832 ~~the warning may constitute evidence in any future investigation~~
833 ~~of similar complaints against that agency and in any future~~
834 ~~administrative determination of the imposition of other~~
835 ~~administrative remedies available to the office under this part.~~

836 ~~(9) The office may issue a written reprimand when five or~~
837 ~~more such unresolved sworn complaints against a consumer~~
838 ~~collection agency collectively fall short of constituting~~
839 ~~apparent repeated violations that warrant more serious~~



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840 ~~administrative sanctions. Such reprimand shall include a~~
841 ~~statement that the reprimand may constitute evidence in any~~
842 ~~future investigation of similar complaints against that agency~~
843 ~~and in any future administrative determination of the imposition~~
844 ~~of other administrative remedies available to the office.~~

845 ~~(4)(10)~~ The office shall issue a notice of intent either to
846 ~~revoke or suspend the registration or to impose an~~
847 ~~administrative fine against, suspend the registration of, or~~
848 ~~revoke the registration of a consumer collection agency if when~~
849 ~~the office preliminarily determines that a violation repeated~~
850 ~~violations of s. 559.72 by a an accused registrant has have~~
851 ~~occurred which would warrant more serious administrative~~
852 ~~sanctions being imposed under this part. The office shall advise~~
853 ~~each registrant of the right to ~~require~~ an administrative~~
854 ~~hearing under chapter 120 ~~before, prior to~~ the agency's final~~
855 ~~action on the matter as authorized by s. 559.730.~~

856 ~~(5)(11)~~ The office shall advise the appropriate state
857 ~~attorney, or the Attorney General ~~in the case of an out-of-state~~~~
858 ~~consumer debt collector, of any determination by the office of a~~
859 ~~violation of ~~the requirements of~~ this part by any consumer~~
860 ~~collection agency that which is not registered as required by~~
861 ~~this part. The office shall furnish the state attorney or~~
862 ~~Attorney General with the office's information concerning the~~
863 ~~alleged violations of such requirements.~~

864 ~~(6)~~ A registered consumer collection agency must provide a
865 written response to the office within 20 days after receipt of a
866 written request from the office for information concerning a
867 consumer complaint. The response must address the issues and
868 allegations raised in the complaint. The office may impose an



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869 administrative fine of up to \$2,500 per request per day upon any
870 registrant that fails to comply with this subsection.

871 Section 17. Section 559.726, Florida Statutes, is created
872 to read:

873 559.726 Subpoenas.-

874 (1) The office may:

875 (a) Issue and serve subpoenas and subpoenas duces tecum to
876 compel the attendance of witnesses and the production of all
877 books, accounts, records, and other documents and materials
878 relevant to an investigation conducted by the office. The
879 office, or its authorized representative, may administer oaths
880 and affirmations to any person.

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

886 (2) If there is substantial noncompliance with a subpoena
887 or subpoena duces tecum issued by the office, the office may
888 petition the court in the county where the person subpoenaed
889 resides or has his or her principal place of business for an
890 order requiring the person to appear, testify, or produce such
891 books, accounts, records, and other documents as are specified
892 in the subpoena or subpoena duces tecum.

893 (3) The office is entitled to the summary procedure
894 provided in s. 51.011, and the court shall advance such cause on
895 its calendar. Attorney's fees and any other costs incurred by
896 the office to obtain an order granting, in whole or in part, a
897 petition for enforcement of a subpoena or subpoena duces tecum



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898 shall be taxed against the subpoenaed person, and failure to
899 comply with such order is a contempt of court.

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

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

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

913 559.727 Cease and desist orders.—The office may issue and
914 serve upon any person an order to cease and desist and to take
915 corrective action if it has reason to believe the person is
916 violating, has violated, or is about to violate any provision of
917 this part, any rule or order issued under this part, or any
918 written agreement between the person and the office. All
919 procedural matters relating to issuance and enforcement of such
920 order are governed by the Administrative Procedure Act.

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

923 559.730 Administrative remedies.—

924 (1) The office may impose an administrative fine on, or
925 revoke or suspend the registration of a ~~any~~ registrant under
926 this part who has committed a violation of ~~engaged in repeated~~



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

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

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

947 ~~(2)(4) The office may shall impose suspension rather than~~
948 ~~revocation of a registration if when circumstances warrant that~~
949 ~~one or the other should be imposed upon a registrant and the~~
950 ~~accused registrant demonstrates that the registrant has taken~~
951 ~~affirmative steps that which can be expected to effectively~~
952 ~~eliminate the ~~repeated~~ violations and that the registrant's~~
953 ~~registration has never been previously ~~been~~ suspended.~~

954 ~~(3)(5) In addition to, or in lieu of suspension or~~
955 ~~revocation of a registration, the office may impose an~~



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

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

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

972 ~~(4)(8) Nothing in This part does not shall be construed to~~
973 ~~preclude any person from pursuing remedies available under the~~
974 ~~Federal Fair Debt Collection Practices Act for any violation of~~
975 ~~such act, including specifically against any person who is~~
976 ~~exempt from the registration provisions of this part.~~

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

979 559.77 Civil remedies.-

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



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985 alleged violation occurred.

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

1008 ~~(3) A person shall not be held liable in any action brought~~
1009 ~~under this section if the person shows by a preponderance of the~~
1010 ~~evidence that the violation was not intentional and resulted~~
1011 ~~from a bona fide error, notwithstanding the maintenance of~~
1012 ~~procedures reasonably adapted to avoid any such error.~~

1013 (3)-(4) An action brought under this section must be



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1014 commenced within 5 2 years after the date of the last violation
1015 upon which the action is founded ~~on which the alleged violation~~
1016 ~~occurred.~~

1017 ~~(4)(5)~~ In applying and construing this section, due
1018 consideration and great weight shall be given to the
1019 interpretations of the Federal Trade Commission and the federal
1020 courts relating to the federal Fair Debt Collection Practices
1021 Act.

1022 Section 21. Section 559.78, Florida Statutes, is amended to
1023 read:

1024 559.78 Judicial enforcement.—In addition to other penalties
1025 provided under ~~in~~ this part, state attorneys and their
1026 assistants may ~~are authorized to~~ apply to the court ~~of competent~~
1027 ~~jurisdiction~~ within their respective jurisdictions, upon the
1028 sworn affidavit of any person alleging a violation of any ~~of the~~
1029 provisions of this part. Such court shall have jurisdiction,
1030 upon hearing and for cause shown, to grant a temporary or
1031 permanent injunction restraining any person from violating any
1032 provision of this part, whether or not there exists an adequate
1033 remedy at law, ~~and such injunction, suspension, or revocation~~
1034 shall issue without bond.

1035 Section 22. Section 559.785, Florida Statutes, is amended
1036 to read:

1037 559.785 Criminal penalty.—It is a felony of the third ~~shall~~
1038 ~~be a misdemeanor of the first~~ degree, punishable as provided in
1039 s. 775.082, ~~or~~ s. 775.083, or s. 775.084, for any person ~~not~~
1040 ~~exempt from registering as provided in this part~~ to engage in
1041 collecting consumer debts in this state without first
1042 registering with the office, or to register or attempt to



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1043 register by means of fraud, misrepresentation, or concealment.

1044 Section 23. Section 559.786, Florida Statutes, is created
1045 to read:

1046 559.786 Deceptive and unfair trade practices.—A violation
1047 of this part is a violation of the Florida Deceptive and Unfair
1048 Trade Practices Act. In addition to any remedies provided under
1049 this part, violations of this part are subject to the penalties
1050 and remedies provided under part II of chapter 501.

1051 Section 24. The Division of Statutory Revision is requested
1052 to rename part II of chapter 559, Florida Statutes, consisting
1053 of ss. 559.101-559.117, as "Debt Relief Services."

1054 Section 25. Section 559.101, Florida Statutes, is created
1055 to read:

1056 559.101 Short title.—This part may be cited as the "Debt
1057 Relief Services Act."

1058 Section 26. Section 817.801, Florida Statutes, is
1059 transferred, renumbered as 559.102, Florida Statutes, reordered,
1060 and amended to read:

1061 559.102 ~~817.801~~ Definitions.—As used in this part:

1062 (1) "Commission" means the Financial Services Commission.

1063 (2) "Control person" means an individual, partnership,
1064 corporation, trust, or other organization that possesses the
1065 power, directly or indirectly, to direct the management or
1066 policies of a company, whether through ownership of securities,
1067 by contract, or otherwise. The term includes, but is not limited
1068 to:

1069 (a) A company's executive officers, including the
1070 president, chief executive officer, chief financial officer,
1071 chief operations officer, chief legal officer, chief compliance



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1072 officer, director, or other individuals having similar status or
1073 functions.

1074 (b) For a corporation, each shareholder who, directly or
1075 indirectly, owns 10 percent or more, or who has the power to
1076 vote 10 percent or more, of a class of voting securities, unless
1077 the applicant is a publicly traded company.

1078 (c) For a partnership, all general partners and limited or
1079 special partners who have contributed 10 percent or more, or who
1080 have the right to receive upon dissolution 10 percent or more,
1081 of the partnership's capital.

1082 (d) For a trust, each trustee.

1083 (e) For a limited liability company, all elected managers
1084 and those members who have contributed 10 percent or more, or
1085 who have the right to receive upon dissolution 10 percent or
1086 more, of the partnership's capital.

1087 (6)(1) "Debt relief organization ~~Credit counseling agency~~"
1088 means a person offering to provide or ~~any organization~~ providing
1089 debt management services or credit counseling services.

1090 (3)(2) "Credit counseling services" means ~~confidential~~
1091 money management, debt reduction, and financial educational
1092 services provided to a debtor. The term does not include
1093 foreclosure-related rescue services.

1094 (4)(3) "Creditor contribution" means any sum that a
1095 creditor agrees to contribute to a debt relief organization
1096 ~~credit counseling agency~~, whether directly or by setoff against
1097 amounts otherwise payable to the creditor on behalf of debtors.

1098 (5)(4) "Debt management services" means services, other
1099 than foreclosure-related services, provided to a debtor by a
1100 debt relief ~~credit counseling~~ organization for a fee to:



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1101 (a) Effect the adjustment, compromise, settlement, interest
1102 rate reduction, modification of terms, negotiation, or discharge
1103 of any unsecured account, note, or other indebtedness of the
1104 debtor; or

1105 (b) Receive funds periodically from the debtor and disburse
1106 to a creditor any money or other thing of value in accordance
1107 with s. 559.112.

1108 (7) "Debtor" means an individual who obtains credit, seeks
1109 a credit agreement with a creditor, or owes money to a creditor.

1110 (8) "Financial analysis" means the review of an
1111 individual's budget, income, expenses, and debt by the debt
1112 relief organization in order to determine the individual's
1113 qualifications for credit counseling or debt management services
1114 provided by the organization.

1115 (9) "Financial audit report" means a report prepared in
1116 connection with a financial audit that is conducted in
1117 accordance with generally accepted auditing standards,
1118 prescribed by the American Institute of Certified Public
1119 Accountants, by a certified public accountant licensed to do
1120 business in the United States, which includes:

1121 (a) Financial statements, including notes related to the
1122 financial statements and required supplementary information,
1123 prepared in conformity with United States generally accepted
1124 accounting principles.

1125 (b) An expression of opinion regarding whether the
1126 financial statements are presented in conformity with United
1127 States generally accepted accounting principles, or an assertion
1128 that such an opinion cannot be expressed and the reasons.

1129 (10) "Office" means the Office of Financial Regulation of



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1130 the Financial Services Commission.

1131 (11)(5) "Person" has the same meaning as in s. 1.01 means
1132 any individual, corporation, partnership, trust, association, or
1133 other legal entity.

1134 Section 27. Section 559.103, Florida Statutes, is created
1135 to read:

1136 559.103 Powers and duties of the Office of Financial
1137 Regulation; fees.—

1138 (1) The office is responsible for the administration and
1139 enforcement of this part.

1140 (2) The office may conduct an investigation of any person
1141 if the office has reason to believe, upon complaint or
1142 otherwise, that any violation of this part may have been
1143 committed or is about to be committed.

1144 (3) All fees, charges, and fines collected pursuant to this
1145 part shall be deposited in the State Treasury to the credit of
1146 the Regulatory Trust Fund under the office.

1147 Section 28. Section 559.104, Florida Statutes, is created
1148 to read:

1149 559.104 Rules.—The commission may adopt rules to administer
1150 this part, including rules that:

1151 (1) Require electronic submission of any forms, documents,
1152 or fees required under this part.

1153 (2) Establish time periods during which an applicant for
1154 registration is barred from registration or a registered debt
1155 relief organization is barred from renewal due to prior criminal
1156 convictions of, or guilty or nolo contendere pleas by, any of
1157 the applicant's or registrant's control persons, regardless of
1158 adjudication.



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- 1159 (a) The rules must provide:
- 1160 1. Permanent bars for felonies involving breach of trust,
- 1161 dishonesty, embezzlement, fraud, fraudulent conversion,
- 1162 misappropriation of property, racketeering, or theft;
- 1163 2. A 15-year disqualifying period for felonies involving
- 1164 moral turpitude;
- 1165 3. A 7-year disqualifying period for all other felonies;
- 1166 and
- 1167 4. A 5-year disqualifying period for misdemeanors involving
- 1168 fraud, dishonesty, or any other act of moral turpitude.
- 1169 (b) The rules may provide for an additional waiting period
- 1170 due to dates of imprisonment or community supervision, the
- 1171 commitment of multiple crimes, and other factors reasonably
- 1172 related to the applicant's criminal history.
- 1173 (c) The rules may provide for mitigating factors for crimes
- 1174 identified in subparagraph (a)2. However, the mitigation may not
- 1175 result in a period of disqualification less than 7 years. The
- 1176 rule may not mitigate the disqualifying periods in subparagraphs
- 1177 (a)1., (a)3., and (a)4.
- 1178 (d) An applicant is not eligible for registration until the
- 1179 expiration of the disqualifying period set by rule.
- 1180 (e) Section 112.011 is not applicable to eligibility for
- 1181 registration under this part.
- 1182 Section 29. Section 817.803, Florida Statutes, is
- 1183 transferred, renumbered as section 559.105, Florida Statutes,
- 1184 and amended to read:
- 1185 559.105 817.803 Exceptions. ~~Nothing in~~ This part does not
- 1186 apply ~~applies~~ to:
- 1187 (1) A person licensed to practice law in this state who is



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1188 providing credit counseling or debt management services as an
1189 ancillary matter to her or his representation of the debtor as a
1190 client. Any Debt management or credit counseling services
1191 provided in the practice of law in this state;

1192 (2) A Any person who engages in credit counseling or debt
1193 management services ~~adjustment~~ to adjust the indebtedness owed
1194 to such person. ~~;~~ ~~or~~

1195 (3) The following entities or their subsidiaries:

1196 (a) The Federal National Mortgage Association;

1197 (b) The Federal Home Loan Mortgage Corporation;

1198 (c) The Florida Housing Finance Corporation, ~~a public~~
1199 ~~corporation~~ created in s. 420.504;

1200 (d) Any financial institution as defined under s.
1201 655.005(1)(h) ~~A bank, bank holding company, trust company,~~
1202 ~~savings and loan association, credit union, credit card bank, or~~
1203 ~~savings bank that is regulated and supervised by the Office of~~
1204 ~~the Comptroller of the Currency, the Office of Thrift~~
1205 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~
1206 ~~Corporation, the National Credit Union Administration, the~~
1207 ~~Office of Financial Regulation of the Department of Financial~~
1208 ~~Services, or any state banking regulator; or~~

1209 (e) A consumer reporting agency as defined in the Federal
1210 Fair Credit Reporting Act, 15 U.S.C. s. 1681a ~~ss. 1681-1681y,~~ as
1211 ~~it existed on April 5, 2004; or~~

1212 ~~(f) Any subsidiary or affiliate of a bank holding company,~~
1213 ~~its employees and its exclusive agents acting under written~~
1214 ~~agreement.~~

1215 Section 30. Section 559.106, Florida Statutes, is created
1216 to read:



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- 1217 559.106 Registration of debt relief organization.-
1218 (1) Each person who acts as a debt relief organization must
1219 be registered in accordance with this section.
1220 (2) In order to apply for registration, an applicant must:
1221 (a) Submit a completed registration application form as
1222 prescribed by commission rule which includes:
1223 1. The name and principal business address and e-mail
1224 address of the debt relief organization.
1225 2. The name and residence address of each control person of
1226 the debt relief organization.
1227 3. The address of each debt relief organization branch
1228 office and the name under which each office will conduct
1229 business.
1230 4. The name of each person in full-time charge of each debt
1231 relief organization branch and the office to which the person is
1232 assigned.
1233 (b) Submit a registration fee of \$1,000. The registration
1234 fee is nonrefundable and may not be prorated for a partial year
1235 of registration.
1236 (c) Submit fingerprints for the applicant and each of the
1237 applicant's control persons in accordance with rules adopted by
1238 the commission.
1239 1. The fingerprints may be submitted to the office, or a
1240 vendor acting on behalf of the office.
1241 2. The office may contract with a third-party vendor to
1242 provide live-scan fingerprinting in lieu of a paper fingerprint
1243 card.
1244 3. A state criminal history background check must be
1245 conducted through the Department of Law Enforcement, and a



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1246 federal criminal history background check must be conducted
1247 through the Federal Bureau of Investigation.

1248 4. All fingerprints submitted to the Department of Law
1249 Enforcement must be submitted electronically and entered into
1250 the statewide automated fingerprint identification system
1251 established in s. 943.05(2)(b) and available for use in
1252 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1253 annual fee to the department to participate in the system and
1254 inform the department of any person whose fingerprints are no
1255 longer required to be retained.

1256 5. The costs of fingerprint processing, including the cost
1257 of retaining the fingerprints, shall be borne by the person
1258 subject to the background check.

1259 6. The office is responsible for reviewing the results of
1260 the state and federal criminal history checks and determining
1261 whether the applicant meets registration requirements.

1262 (d) Submit documentation demonstrating that the surety bond
1263 requirements specified in s. 559.108 have been satisfied.

1264 (e) Submit additional information or documentation
1265 requested by the office and required by rule concerning the
1266 applicant or a control person of the applicant. Additional
1267 information may include documentation of pending and prior
1268 disciplinary and criminal history events, including arrest
1269 reports and certified copies of charging documents, plea
1270 agreements, judgments and sentencing documents, documents
1271 relating to pretrial intervention, orders terminating probation
1272 or supervised release, final administrative agency orders, or
1273 other comparable documents that may provide the office with the
1274 appropriate information to determine eligibility for



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1275 registration.

1276 (3) An application is considered received for the purposes
1277 of s. 120.60 upon the office's receipt of all documentation,
1278 including the completed application form, and criminal history
1279 information, as well as the registration application fee and all
1280 applicable fingerprinting processing fees.

1281 (4) The office shall issue a debt relief organization
1282 registration to each applicant who is not otherwise ineligible
1283 and who meets the requirements of this section. However, it is a
1284 ground for denial of registration if the applicant or one of the
1285 applicant's control persons:

1286 (a) Has been found guilty of, regardless of adjudication,
1287 or has entered a plea of nolo contendere or guilty to, any crime
1288 involving racketeering, fraud, theft, embezzlement, fraudulent
1289 conversion, misappropriation of property, dishonest dealing, or
1290 moral turpitude;

1291 (b) Has committed any violation specified in s. 559.113;

1292 (c) Is the subject of a pending felony criminal prosecution
1293 or a prosecution or an administrative enforcement action, in any
1294 jurisdiction, which involves fraud, dishonesty, breach of trust,
1295 money laundering, or any other act of moral turpitude;

1296 (d) Pays the office any fee, fine, or other amount with a
1297 check or electronic transmission of funds which fails to clear
1298 the applicant's financial institution;

1299 (e) Makes a material misstatement on any application,
1300 document, or record required to be submitted under this part or
1301 the rules of the commission; or

1302 (f) Having been the subject of any decision, finding,
1303 injunction, suspension, prohibition, revocation, denial,



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1304 judgment, or other adverse action by any state or federal
1305 agency.

1306 (5) A registration issued under this section remains in
1307 effect for 1 year, unless canceled, suspended, revoked, or
1308 otherwise terminated, and must be renewed as provided under s.
1309 559.107.

1310 Section 31. Section 559.107, Florida Statutes, is created
1311 to read:

1312 559.107 Registration renewal.—The registration of a debt
1313 relief organization must be renewed annually by submitting a
1314 renewal form to the office in a manner determined by the office
1315 by rule. The renewal form must be accompanied by a \$1,000
1316 renewal fee, additional fingerprints and the related processing
1317 fee, and evidence of the surety bond required under s. 559.108.
1318 The renewal fee is nonrefundable and may not be prorated. Any of
1319 the grounds for denial of an initial registration application
1320 are also grounds for denying the registration renewal.

1321 Section 32. Section 817.804, Florida Statutes, is
1322 transferred, renumbered as section 559.108, Florida Statutes,
1323 and amended to read:

1324 559.108 ~~817.804~~ Financial requirements; disclosure ~~and~~
1325 financial reporting.—

1326 (1) A debt relief organization must ~~Any person engaged in~~
1327 ~~debt management services or credit counseling services shall:~~

1328 (a) Obtain from a licensed certified public accountant an
1329 annual independent financial audit report ~~in accordance with~~
1330 ~~generally accepted auditing standards that includes shall~~
1331 ~~include all accounts of such person in which the funds of~~
1332 ~~debtors are deposited and from which payments are made to~~



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1333 creditors on behalf of debtors. A debt relief organization must
1334 submit a copy of the report to the office within 120 days after
1335 the end of the registrant's fiscal year. The commission may
1336 establish by rule the manner for filing a financial audit
1337 report.

1338 (b) Obtain and maintain at all times insurance coverage for
1339 employee dishonesty, depositor's forgery, and computer fraud.
1340 ~~The insurance coverage must be~~ in an amount not less than the
1341 greater of \$100,000 or 10 percent of the monthly average of the
1342 aggregate ~~amount~~ of all deposits made by debtors to the
1343 organization for distribution to creditors ~~with such person by~~
1344 ~~all debtors~~ for the 6 months immediately preceding the date of
1345 initial application for or renewal of the insurance. The
1346 deductible on such coverage may ~~shall~~ not exceed 10 percent of
1347 the face amount of the policy coverage.

1348 (c) Obtain and maintain a surety bond from a surety company
1349 authorized to do business in this state. The amount of the bond
1350 shall be specified by rule, but must be at least \$100,000. The
1351 rule must provide allowances for business volume. The bond shall
1352 be in favor of the state for the use and benefit of any debtor
1353 who suffers or sustains any loss or damage by reason of any
1354 violation of this part.

1355 (2) A copy of the annual financial audit report and
1356 insurance policies required by this section must ~~shall~~ be
1357 available for public inspection at each branch location of the
1358 organization. Copies shall be provided, upon written request, to
1359 any party requesting a copy for a charge that does not ~~to~~ exceed
1360 the cost of copying the ~~reproduction~~ of documents.

1361 Section 33. Section 559.109, Florida Statutes, is created



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1362 to read:

1363 559.109 Maintenance of records.-

1364 (1) Each registered debt relief organization shall
1365 maintain, at the principal place of business designated on the
1366 registration, all books, accounts, records, and documents
1367 necessary to determine the registrant's compliance with this
1368 part.

1369 (2) The office may authorize the maintenance of records at
1370 a location other than a principal place of business. The office
1371 may require books, accounts, and records to be produced and
1372 available at a reasonable and convenient location in this state.

1373 (3) The commission may prescribe by rule the minimum
1374 information to be shown in the books, accounts, records, and
1375 documents of registrants so that such records enable the office
1376 to determine the registrant's compliance with this part.

1377 (4) All books, accounts, records, documents, and receipts
1378 of any payment transaction must be preserved and kept available
1379 for inspection by the office for at least 5 years after the date
1380 the transaction is completed. The commission may prescribe by
1381 rule requirements for the destruction of books, accounts,
1382 records, and documents retained by the registrant after the
1383 completion of the 5 years.

1384 Section 34. Section 559.111, Florida Statutes, is created
1385 to read:

1386 559.111 Financial analysis; service contracts.-

1387 (1) Before a debtor signs a service contract, the debt
1388 relief organization shall prepare, retain a copy of, and provide
1389 to the debtor a written financial analysis specific to the
1390 debtor which includes an evaluation of the debtor's income,



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1391 expenses, and all debts.

1392 (2) Based on the completed financial analysis, the debt
1393 relief organization shall provide to the debtor, and retain a
1394 copy of, a written determination of the debtor's suitability for
1395 debt management services and whether the debtor can reasonably
1396 meet the requirements of the service contract, including the
1397 debtor's ability to save the amount estimated to be needed to
1398 fund the settlement of the debt.

1399 (3) The service contract between the debt relief
1400 organization and the debtor must be signed and dated by the
1401 debtor and include all of the following:

1402 (a) The following statement in at least 12-point uppercase
1403 type at the top of the service contract:

1404
1405 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
1406 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
1407 MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT,
1408 INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN,
1409 OR RESTRUCTURING OF YOUR DEBT WITH YOU FREE OF CHARGE.

1410
1411 YOUR FAILURE TO DIRECTLY CONTACT YOUR CREDITORS MAY
1412 RESULT IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE
1413 CREDIT RATING.

1414
1415 (b) A full and detailed description of the services to be
1416 performed by the debt relief organization for the debtor,
1417 including the financial analysis determining the suitability of
1418 the debtor for the debt management services, all guarantees and
1419 all promises of full or partial refunds, the estimated date or



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1420 length of time by which the services are to be performed, and a
1421 copy of the Florida Debt Relief Services Act.

1422 (c) All terms and conditions of payment, including the
1423 total of all payments to be made by the debtor and the specific
1424 amount of any payments to be made to the debt relief
1425 organization or to any other person.

1426 (d) The debt relief organization's principal business
1427 address and the name and address of its agent in the state
1428 authorized to receive service of process.

1429 (e) A clear and conspicuous statement in boldface type, in
1430 immediate proximity to the space reserved for the debtor's
1431 signature, which states: "You, the debtor, may cancel this
1432 service contract at any time before midnight of the 5th business
1433 day after the date of signing this contract. [See the attached
1434 Notice of Right to Cancel for further explanation of this
1435 right.]"

1436 (f) A Notice of Right to Cancel attached to the contract,
1437 in duplicate and easily detachable, which contains the following
1438 statement in at least 12-point uppercase type:

1439
1440 NOTICE OF RIGHT TO CANCEL

1441
1442 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR
1443 CREDIT COUNSELING SERVICES WITHIN 5 BUSINESS DAYS
1444 AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT
1445 INCURRING ANY PENALTY OR OBLIGATION.

1446
1447 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
1448 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION



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NOTICE.

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

TO: ... (name of credit counseling organization)...

AT: ... (address)...

BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
SERVICE CONTRACT, EXECUTED ON: ... (date service
contract signed)...

... (Signature of Debtor)...

... (Date)...

... (Address)...

... (Phone Number)...

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

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

559.112 ~~817.805~~ Disbursement of funds.—A debt relief
organization offering debt management services must ~~Any person~~



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1478 ~~engaged in debt management or credit counseling services shall~~
1479 disburse to the appropriate creditors all funds received from a
1480 debtor, less any fees permitted by s. 559.113 ~~817.802~~ and any
1481 creditor contributions, within 30 days after receipt of such
1482 funds. However, a creditor contribution may not reduce any sums
1483 ~~to be~~ credited to the account of a debtor making a payment to
1484 the organization ~~credit counseling agency~~ for further payment to
1485 the creditor. Further, a debt relief organization offering debt
1486 management services must ~~any person engaged in such services~~
1487 ~~shall~~ maintain a separate trust account for the receipt of any
1488 funds from debtors and the disbursement of such funds on behalf
1489 of such debtors.

1490 Section 36. Section 817.802, Florida Statutes, is
1491 transferred, renumbered as section 559.113, Florida Statutes,
1492 and amended to read:

1493 559.113 ~~817.802~~ Prohibited acts ~~Unlawful fees and costs.~~

1494 (1) A debt relief organization may not, directly or
1495 indirectly, charge or accept from a debtor:

1496 (a) Any payment for services before the execution of a
1497 written service contract. ~~It is unlawful for any person, while~~
1498 ~~engaging in debt management services or credit counseling~~
1499 ~~services, to charge or accept from a debtor residing in this~~
1500 ~~state, directly or indirectly,~~

1501 (b) A fee or contribution greater than \$50 for the initial
1502 setup or initial consultation. ~~Subsequently, the person may not~~

1503 (c) ~~Charge or accept~~ A fee or contribution ~~from a debtor~~
1504 ~~residing in this state~~ greater than \$120 per year for credit
1505 counseling services provided in addition to the initial
1506 consultation under subsection (2). ~~additional consultations or,~~



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1507 ~~alternatively, if~~

1508 (d) A fee or contribution for debt management services
1509 which exceeds as defined in s. 817.801(4) (b) are provided, the
1510 person may charge the greater of 7.5 percent of the amount paid
1511 monthly by the debtor to the organization person or \$35 per
1512 month, whichever is greater; or 7.5 percent of the total amount
1513 of debt discharged. The fee or contribution may not be collected
1514 unless:

1515 a. The debt management services result in a discharge or
1516 modification of the debt on terms more favorable to the debtor
1517 than the terms of the original agreement between the debtor and
1518 creditor;

1519 b. All debt management services as set forth in the written
1520 service contract have been completed; and

1521 3. No other payment has been received, directly or
1522 indirectly, from the debtor for debt management services. Any
1523 fees authorized under this subsection may not be a part of or
1524 included in the calculation of total debt.

1525 (2) A debt relief organization may not:

1526 (a) Advise any debtor, directly or indirectly, to not
1527 contact or communicate with his or her creditors before or
1528 during the service contract period.

1529 (b) Make or use any false or misleading representations or
1530 omit any material fact in connection with the offer, sale, or
1531 provision of services, or engage, directly or indirectly, in any
1532 fraudulent, false, misleading, unconscionable, unfair, or
1533 deceptive act or practice in connection with the offer or sale
1534 of any of the services of a debt relief organization.

1535 (c) Provide services to a debtor without executing a



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1536 service contract that complies with s. 559.111.

1537 (d) Fail to provide copies of the financial analysis, all
1538 service contracts, and any other documents the debtor is
1539 required to sign as provided under s. 559.111.

1540 (e) Fail to perform any of the terms, conditions, and
1541 obligations provided in the service contract with the debtor.

1542 (f) Fail to disclose on any offer or sale of services,
1543 including any Internet Website, the debt relief organization's
1544 name, business address, telephone number, and e-mail address, if
1545 any.

1546 (g) Fail to provide the debtor with a 5-business-day right
1547 of cancellation without the debtor incurring any penalty or
1548 obligation.

1549 (h) Fail to obtain an annual financial audit report and
1550 surety bond.

1551 (i) Fail to submit an annual financial audit report to the
1552 office.

1553 (j) Fail to comply with any of the provisions of this part.

1554 ~~(2) This section does not prohibit any person, while~~
1555 ~~engaging in debt management or credit counseling services, from~~
1556 ~~imposing upon and receiving from a debtor a reasonable and~~
1557 ~~separate charge or fee for insufficient funds transactions.~~

1558 Section 37. Section 559.114, Florida Statutes, is created
1559 to read:

1560 559.114 Debtor complaints; administrative duties.-

1561 (1) The office shall receive and maintain records of
1562 inquiries, correspondence, and complaints from debtors
1563 concerning any and all persons who provide credit counseling and
1564 debt management services, including debt relief organizations.



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1565 (2) The office shall inform and furnish relevant
1566 information to the appropriate regulatory body if a debt relief
1567 organization exempt from registration under this part has been
1568 named in consumer complaints alleging violations of this part.

1569 (3) The office shall investigate complaints and record the
1570 resolution of such complaints.

1571 (4) The office shall issue a notice of intent to impose an
1572 administrative fine against, suspend the registration of, or
1573 revoke the registration of a consumer collection agency if the
1574 office preliminarily determines that a violation of this part by
1575 a registrant has occurred. The office shall advise each
1576 registrant of the right to an administrative hearing under
1577 chapter 120 before the agency's final action on the matter as
1578 authorized by s. 559.730.

1579 (5) The office shall advise the appropriate state attorney,
1580 or the Attorney General, of any determination by the office of a
1581 violation of this part by any debt relief organization that is
1582 not registered as required by this part. The office shall
1583 furnish the state attorney or Attorney General with the office's
1584 information concerning the alleged violations of such
1585 requirements.

1586 (6) A registered debt relief organization must provide a
1587 written response to the office within 20 days after receipt of a
1588 written request from the office for information concerning a
1589 consumer complaint. The response must address the issues and
1590 allegations raised in the complaint. The office may impose an
1591 administrative fine of up to \$2,500 per request per day upon any
1592 registrant that fails to comply with this subsection.

1593 Section 38. Section 559.115, Florida Statutes, is created



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1594 to read:

1595 559.115 Subpoenas.—

1596 (1) The office may:

1597 (a) Issue and serve subpoenas and subpoenas duces tecum to
1598 compel the attendance of witnesses and the production of all
1599 books, accounts, records, and other documents and materials
1600 relevant to an investigation conducted by the office. The
1601 office, or its authorized representative, may administer oaths
1602 and affirmations to any person.

1603 (b) Seek subpoenas or subpoenas duces tecum from any court
1604 to command the appearance of witnesses and the production of
1605 books, accounts, records, and other documents or materials at a
1606 time and place named in the subpoenas, and an authorized
1607 representative of the office may serve such subpoenas.

1608 (2) If there is substantial noncompliance with a subpoena
1609 or subpoena duces tecum issued by the office, the office may
1610 petition the court in the county where the person subpoenaed
1611 resides or has his or her principal place of business for an
1612 order requiring the person to appear, testify, or produce such
1613 books, accounts, records, and other documents as are specified
1614 in the subpoena or subpoena duces tecum.

1615 (3) The office is entitled to the summary procedure
1616 provided in s. 51.011, and the court shall advance such cause on
1617 its calendar. Attorney's fees and any other costs incurred by
1618 the office to obtain an order granting, in whole or in part, a
1619 petition for enforcement of a subpoena or subpoena duces tecum
1620 shall be taxed against the subpoenaed person, and failure to
1621 comply with such order is a contempt of court.

1622 (4) The office is entitled to the summary procedure



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1623 provided in s. 51.011, and the court shall advance such cause on
1624 its calendar. Attorney's fees and any other costs incurred by
1625 the office to obtain an order granting, in whole or in part, a
1626 petition for enforcement of a subpoena or subpoena duces tecum
1627 shall be taxed against the subpoenaed person, and failure to
1628 comply with such order is a contempt of court.

1629 (5) To aid in the enforcement of this part, the office may
1630 require or permit a person to file a statement in writing, under
1631 oath or otherwise as the office determines, as to all the facts
1632 and circumstances concerning the matter to be investigated.

1633 Section 39. Section 559.116, Florida Statutes, is created
1634 to read:

1635 559.116 Cease and desist orders.—The office may issue and
1636 serve upon any person an order to cease and desist and to take
1637 corrective action if it has reason to believe the person is
1638 violating, has violated, or is about to violate any provision of
1639 this part, any rule or order issued under this part, or any
1640 written agreement between the person and the office. All
1641 procedural matters relating to issuance and enforcement of such
1642 order are governed by the Administrative Procedure Act.

1643 Section 40. Section 817.806, Florida Statutes, is
1644 transferred, renumbered as section 559.117, Florida Statutes,
1645 and amended to read:

1646 559.117 ~~817.806~~ Violations; penalties.—

1647 (1) Any person who violates any provision of this part
1648 commits an unfair or deceptive trade practice as defined in part
1649 II of chapter 501. Violators are ~~shall be~~ subject to the
1650 penalties and remedies provided therein. Further, any debtor
1651 ~~consumer~~ injured by a violation of this part may bring an action



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1652 for recovery of damages. Judgment shall be entered for actual
1653 damages, but in no case less than the amount paid by the debtor
1654 ~~consumer~~ to the debt relief organization credit counseling
1655 agency, plus reasonable attorney's fees and costs.

1656 (2) The office may impose an administrative fine on, or
1657 revoke or suspend the registration of a registrant who has
1658 committed a violation of this part. Final action to fine,
1659 suspend, or revoke the registration of a registrant is subject
1660 to review in accordance with chapter 120

1661 (a) The office may impose suspension rather than revocation
1662 of a registration if circumstances warrant that one or the other
1663 should be imposed and the registrant demonstrates that the
1664 registrant has taken affirmative steps that can be expected to
1665 effectively eliminate the violations and that the registrant's
1666 registration has never been previously suspended.

1667 (b) In addition to, or in lieu of suspension or revocation
1668 of a registration, the office may impose an administrative fine
1669 of up to \$25,000. The office shall adopt rules establishing
1670 guidelines for imposing administrative penalties.

1671 (3)-(2) It is Any person who violates any provision of this
1672 part commits a felony of the third degree, punishable as
1673 provided in s. 775.082, or s. 775.083, or s. 775.084 for any
1674 person to provide credit counseling or debt management services
1675 in this state without first registering with the office, or to
1676 register or attempt to register by means of fraud,
1677 misrepresentation, or concealment.

1678 Section 41. Sections 559.10, 559.11, 559.12, and 559.13,
1679 Florida Statutes, are repealed.

1680 Section 42. This act shall take effect January 1, 2011.