



519252

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2010	.	
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The Committee on Commerce (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 559.5556, Florida Statutes, is created  
to read:

559.5556 Maintenance of records.-

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

(2) The office may authorize the maintenance of records at



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14 a location other than a principal place of business. The office  
15 may require books, accounts, and records to be produced and  
16 available at a reasonable and convenient location in this state.

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

21 (4) All books, accounts, records, documents, and receipts  
22 of any debt collection transaction must be preserved and kept  
23 available for inspection by the office for at least 3 years  
24 after the date the transaction is completed. The commission may  
25 prescribe by rule requirements for the destruction of books,  
26 accounts, records, and documents retained by the registrant  
27 after the completion of the 3 years.

28 Section 2. Section 559.565, Florida Statutes, is amended to  
29 read:

30 559.565 Enforcement action against out-of-state consumer  
31 debt collector.— The remedies of this section are cumulative to  
32 other sanctions and enforcement provisions of this part for any  
33 violation by an out-of-state consumer debt collector, as defined  
34 in s. 559.55(8).

35 (1) An ~~Any~~ out-of-state consumer debt collector who  
36 collects or attempts to collect consumer debts in this state  
37 without first registering in accordance with this part ~~is shall~~  
38 ~~be~~ subject to an administrative fine of up to \$10,000 ~~not to~~  
39 ~~exceed \$1,000~~ together with reasonable attorney fees and court  
40 costs in any successful action by the state to collect such  
41 fines.

42 (2) Any person, whether or not exempt from registration



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43 under this part, who violates ~~the provisions of~~ s. 559.72 is  
44 ~~shall be~~ subject to sanctions ~~for such violations~~ the same as  
45 any other consumer debt collector, including imposition of an  
46 administrative fine. The registration of a duly registered out-  
47 of-state consumer debt collector is ~~shall be~~ subject to  
48 revocation or suspension in the same manner as the registration  
49 of any other registrant under this part.

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

56 Section 3. Section 559.715, Florida Statutes, is amended to  
57 read:

58 559.715 Assignment of consumer debts.—This part does not  
59 prohibit the assignment, by a creditor, of the right to bill and  
60 collect a consumer debt. However, the assignee must give the  
61 debtor written notice of such assignment at least within 30 days  
62 before any action to collect the debt ~~after the assignment~~. The  
63 assignee is a real party in interest and may bring an action ~~in~~  
64 ~~a court of competent jurisdiction~~ to collect a debt that has  
65 been assigned to the ~~such~~ assignee and is in default.

66 Section 4. Section 559.72, Florida Statutes, is amended to  
67 read:

68 559.72 Prohibited practices generally.—In collecting  
69 consumer debts, no person shall:

70 (1) Simulate in any manner a law enforcement officer or a  
71 representative of any governmental agency.†



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72 (2) Use or threaten force or violence.†

73 (3) Tell a debtor who disputes a consumer debt that she or  
74 he or any person employing her or him will disclose to another,  
75 orally or in writing, directly or indirectly, information  
76 affecting the debtor's reputation for credit worthiness without  
77 also informing the debtor that the existence of the dispute will  
78 also be disclosed as required by subsection (6).†

79 (4) Communicate or threaten to communicate with a debtor's  
80 employer before ~~prior to~~ obtaining final judgment against the  
81 debtor, unless the debtor gives her or his permission in writing  
82 to contact her or his employer or acknowledges in writing the  
83 existence of the debt after the debt has been placed for  
84 collection. However, ~~but~~ this does ~~shall~~ not prohibit a person  
85 from telling the debtor that her or his employer will be  
86 contacted if a final judgment is obtained.†

87 (5) Disclose to a person other than the debtor or her or  
88 his family information affecting the debtor's reputation,  
89 whether or not for credit worthiness, with knowledge or reason  
90 to know that the other person does not have a legitimate  
91 business need for the information or that the information is  
92 false.†

93 (6) Disclose information concerning the existence of a debt  
94 known to be reasonably disputed by the debtor without disclosing  
95 that fact. If a disclosure is made before ~~prior to~~ such  
96 ~~reasonable~~ dispute has ~~having~~ been asserted and written notice  
97 is received from the debtor that any part of the debt is  
98 disputed, and if such dispute is reasonable, the person who made  
99 the original disclosure must ~~shall~~ reveal upon the request of  
100 the debtor within 30 days the details of the dispute to each



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101 person to whom disclosure of the debt without notice of the  
102 dispute was made within the preceding 90 days.†

103 (7) Willfully communicate with the debtor or any member of  
104 her or his family with such frequency as can reasonably be  
105 expected to harass the debtor or her or his family, or willfully  
106 engage in other conduct which can reasonably be expected to  
107 abuse or harass the debtor or any member of her or his family.†

108 (8) Use profane, obscene, vulgar, or willfully abusive  
109 language in communicating with the debtor or any member of her  
110 or his family.†

111 (9) Claim, attempt, or threaten to enforce a debt when such  
112 person knows that the debt is not legitimate, or assert the  
113 existence of some other legal right when such person knows that  
114 the right does not exist.†

115 (10) Use a communication that ~~which~~ simulates in any manner  
116 legal or judicial process or that ~~which~~ gives the appearance of  
117 being authorized, issued, or approved by a government,  
118 governmental agency, or attorney at law, when it is not.†

119 (11) Communicate with a debtor under the guise of an  
120 attorney by using the stationery of an attorney or forms or  
121 instruments that ~~which~~ only attorneys are authorized to  
122 prepare.†

123 (12) Orally communicate with a debtor in ~~such~~ a manner that  
124 gives as to give the false impression or appearance that such  
125 person is or is associated with an attorney.†

126 (13) Advertise or threaten to advertise for sale any debt  
127 as a means to enforce payment except under court order or when  
128 acting as an assignee for the benefit of a creditor.†

129 (14) Publish or post, threaten to publish or post, or cause



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130 to be published or posted before the general public individual  
131 names or any list of names of debtors, commonly known as a  
132 deadbeat list, for the purpose of enforcing or attempting to  
133 enforce collection of consumer debts.~~†~~

134 (15) Refuse to provide adequate identification of herself  
135 or himself or her or his employer or other entity whom she or he  
136 represents if ~~when~~ requested to do so by a debtor from whom she  
137 or he is collecting or attempting to collect a consumer debt.~~†~~

138 (16) Mail any communication to a debtor in an envelope or  
139 postcard with words typed, written, or printed on the outside of  
140 the envelope or postcard calculated to embarrass the debtor. An  
141 example of this would be an envelope addressed to "Deadbeat,  
142 Jane Doe" or "Deadbeat, John Doe."~~†~~

143 (17) Communicate with the debtor between the hours of 9  
144 p.m. and 8 a.m. in the debtor's time zone without the prior  
145 consent of the debtor.~~†~~

146 (a) The person may presume that the time a telephone call  
147 is received conforms to the local time zone assigned to the area  
148 code of the number called, unless the person reasonably believe  
149 that the debtor's telephone is located in a different time zone.

150 (b) If, such as with toll-free numbers, an area code is not  
151 assigned to a specific geographic area, the person may presume  
152 that the time a telephone call is received conforms to the local  
153 time zone of the debtor's last known place of residence, unless  
154 the person reasonably believes that the debtor's telephone is  
155 located in a different time zone.

156 (18) Communicate with a debtor if the person knows that the  
157 debtor is represented by an attorney with respect to such debt  
158 and has knowledge of, or can readily ascertain, such attorney's



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159 name and address, unless the debtor's attorney fails to respond  
160 within 30 days ~~a reasonable period of time~~ to a communication  
161 from the person, unless the debtor's attorney consents to a  
162 direct communication with the debtor, or unless the debtor  
163 initiates the communication. ~~;~~ ~~or~~

164 (19) Cause a ~~charges to be made to any~~ debtor to be charged  
165 for communications by concealing ~~concealment of~~ the true purpose  
166 of the communication, including collect telephone calls and  
167 telegram fees.

168 Section 5. Section 559.725, Florida Statutes, is amended to  
169 read:

170 559.725 Consumer complaints; administrative duties.—

171 (1) The office ~~Division of Consumer Services of the~~  
172 ~~Department of Financial Services~~ shall receive and maintain  
173 ~~serve as the registry for receiving and maintaining~~ records of  
174 ~~inquiries,~~ correspondence, and complaints from consumers  
175 concerning any and all persons who collect debts, including  
176 consumer collection agencies.

177 ~~(2) The division shall classify complaints by type and~~  
178 ~~identify the number of written complaints against persons~~  
179 ~~collecting or attempting to collect debts in this state,~~  
180 ~~including credit grantors collecting their own debts, debt~~  
181 ~~collectors generally, and, specifically, consumer collection~~  
182 ~~agencies as distinguished from other persons who collect debts~~  
183 ~~such as commercial debt collection agencies regulated under part~~  
184 ~~V of this chapter. The division shall identify the nature and~~  
185 ~~number of various kinds of written complaints, including~~  
186 ~~specifically those alleging violations of s. 559.72.~~

187 (2) ~~(3)~~ The office ~~division~~ shall inform and furnish



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188 relevant information to the appropriate regulatory body of the  
189 state or the Federal Government, or The Florida Bar in the case  
190 of attorneys, if a person ~~when any consumer debt collector~~  
191 ~~exempt from registration under this part~~ has been named in a  
192 ~~five or more written consumer complaint~~ complaints alleging  
193 violations of s. 559.72 ~~within a 12-month period~~. The Attorney  
194 General may take action against any person in violation of this  
195 part.

196 ~~(4) The division shall furnish a form to each complainant~~  
197 ~~whose complaint concerns an alleged violation of s. 559.72 by a~~  
198 ~~consumer collection agency. Such form may be filed with the~~  
199 ~~office. The form shall identify the accused consumer collection~~  
200 ~~agency and provide for the complainant's summary of the nature~~  
201 ~~of the alleged violation and facts which allegedly support the~~  
202 ~~complaint. The form shall include a provision for the~~  
203 ~~complainant to state under oath before a notary public that the~~  
204 ~~allegations therein made are true.~~

205 ~~(3)-(5)~~ The complainant, subject to penalty of perjury as  
206 provided in s. 837.06, shall certify on a form approved by the  
207 Financial Services Commission a summary of the nature of the  
208 alleged violation and the facts that allegedly support the  
209 complaint, and shall submit the form to the office. Upon receipt  
210 ~~of such sworn complaint, the office shall promptly furnish a~~  
211 ~~copy of the sworn complaint to the accused consumer collection~~  
212 ~~agency.~~

213 ~~(4)-(6)~~ The office shall investigate ~~sworn~~ complaints by  
214 ~~direct written communication with the complainant and the~~  
215 ~~affected consumer collection agency. In addition, the office~~  
216 ~~shall attempt to resolve each sworn complaint and shall record~~





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217 the resolution of such complaints.

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

222 ~~(8) The office shall issue a written warning notice to the~~  
223 ~~accused consumer collection agency if the office is unable to~~  
224 ~~resolve all such sworn complaints and fewer than five unresolved~~  
225 ~~complaints remain. Such notice shall include a statement that~~  
226 ~~the warning may constitute evidence in any future investigation~~  
227 ~~of similar complaints against that agency and in any future~~  
228 ~~administrative determination of the imposition of other~~  
229 ~~administrative remedies available to the office under this part.~~

230 ~~(9) The office may issue a written reprimand when five or~~  
231 ~~more such unresolved sworn complaints against a consumer~~  
232 ~~collection agency collectively fall short of constituting~~  
233 ~~apparent repeated violations that warrant more serious~~  
234 ~~administrative sanctions. Such reprimand shall include a~~  
235 ~~statement that the reprimand may constitute evidence in any~~  
236 ~~future investigation of similar complaints against that agency~~  
237 ~~and in any future administrative determination of the imposition~~  
238 ~~of other administrative remedies available to the office.~~

239 ~~(10) The office shall issue a notice of intent either to~~  
240 ~~revoke or suspend the registration or to impose an~~  
241 ~~administrative fine when the office preliminarily determines~~  
242 ~~that repeated violations of s. 559.72 by an accused registrant~~  
243 ~~have occurred which would warrant more serious administrative~~  
244 ~~sanctions being imposed under this part. The office shall advise~~  
245 ~~each registrant of the right to require an administrative~~



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246 ~~hearing under chapter 120, prior to the agency's final action on~~  
247 ~~the matter as authorized by s. 559.730.~~

248 (5) ~~(11)~~ The office shall advise the appropriate state  
249 attorney, or the Attorney General in the case of an out-of-state  
250 consumer debt collector, of any determination by the office of a  
251 violation of the requirements of this part by any consumer  
252 collection agency that which is not registered as required by  
253 this part. The office shall furnish the state attorney or  
254 Attorney General with the office's information concerning the  
255 alleged violations of such requirements.

256 (6) A registered consumer collection agency must provide a  
257 written response to the office within 45 days after receipt of a  
258 written request from the office for information concerning a  
259 consumer complaint. The response must address the issues and  
260 allegations raised in the complaint. The office may impose an  
261 administrative fine of up to \$250 per request per day upon any  
262 registrant that fails to comply with this subsection.

263 Section 6. Section 559.726, Florida Statutes, is created to  
264 read:

265 559.726 Subpoenas.—

266 (1) The office may:

267 (a) Issue and serve subpoenas and subpoenas duces tecum to  
268 compel the attendance of witnesses and the production of all  
269 books, accounts, records, and other documents and materials  
270 relevant to an investigation conducted by the office. The  
271 office, or its authorized representative, may administer oaths  
272 and affirmations to any person.

273 (b) Seek subpoenas or subpoenas duces tecum from any court  
274 to command the appearance of witnesses and the production of



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275 books, accounts, records, and other documents or materials at a  
276 time and place named in the subpoenas, and an authorized  
277 representative of the office may serve such subpoenas.

278 (2) If there is substantial noncompliance with a subpoena  
279 or subpoena duces tecum issued by the office, the office may  
280 petition the court in the county where the person subpoenaed  
281 resides or has his or her principal place of business for an  
282 order requiring the person to appear, testify, or produce such  
283 books, accounts, records, and other documents as are specified  
284 in the subpoena or subpoena duces tecum.

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

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

296 Section 7. Section 559.727, Florida Statutes, is created to  
297 read:

298 559.727 Cease and desist orders.—The office may issue and  
299 serve upon any person an order to cease and desist and to take  
300 corrective action if it has reason to believe the person is  
301 violating, has violated, or is about to violate any provision of  
302 this part, any rule or order issued under this part, or any  
303 written agreement between the person and the office. All



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304 procedural matters relating to issuance and enforcement of such  
305 order are governed by chapter 120.

306 Section 8. Section 559.730(5), Florida Statutes, is amended  
307 to read:

308 559.730 Administrative remedies.—

309 (1) The office may impose an administrative fine against,  
310 or revoke or suspend the registration of, a any registrant under  
311 this part who has committed a violation of ~~engaged in repeated~~  
312 ~~violations which establish a clear pattern of abuse of~~  
313 ~~prohibited collection practices under s. 559.72. Final office~~  
314 action to fine, suspend, or revoke ~~or suspend~~ the registration  
315 of a any registrant is shall be subject to review in accordance  
316 with chapter 120 ~~in the same manner as revocation of a license.~~  
317 ~~The repeated violations of the law by one employee shall not be~~  
318 ~~grounds for revocation or suspension of the registration of the~~  
319 ~~employing consumer collection agency, unless the employee is~~  
320 ~~also the owner of a majority interest in the collection agency.~~

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

326 ~~(3) The office shall consider the number of complaints~~  
327 ~~against the registrant in relation to the accused registrant's~~  
328 ~~volume of business when determining whether suspension or~~  
329 ~~revocation is the more appropriate sanction when circumstances~~  
330 ~~warrant that one or the other should be imposed upon a~~  
331 ~~registrant.~~

332 (2)(4) The office may shall impose suspension rather than



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333 ~~revocation of a registration if when~~ circumstances warrant that  
334 one or the other should be imposed ~~upon a registrant~~ and the  
335 ~~accused~~ registrant demonstrates that the registrant has taken  
336 affirmative steps that ~~which~~ can be expected to effectively  
337 eliminate the ~~repeated~~ violations and that the registrant's  
338 registration has never been previously ~~been~~ suspended.

339 (3)-(5) In addition to, or in lieu of suspension or  
340 revocation of a registration, the office may impose an  
341 administrative fine of up to \$10,000 per violation ~~\$1,000~~  
342 against a ~~the offending~~ registrant as ~~a sanction~~ for repeated  
343 violations of ~~the provisions of s. 559.72 when violations do not~~  
344 ~~rise to the level of misconduct governed by subsection (1).~~ The  
345 office shall adopt rules establishing guidelines for imposing  
346 administrative penalties. ~~Final office action to impose an~~  
347 ~~administrative fine shall be subject to review in accordance~~  
348 ~~with ss. 120.569 and 120.57.~~

349 ~~(6) Any administrative fine imposed under this part shall~~  
350 ~~be payable to the office. The office shall maintain an~~  
351 ~~appropriate record and shall deposit such fine into the~~  
352 ~~Regulatory Trust Fund of the office.~~

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

357 (4)-(8) Nothing in This part does not shall be construed to  
358 preclude any person from pursuing remedies available under the  
359 Federal Fair Debt Collection Practices Act for any violation of  
360 such act, ~~including specifically against any person who is~~  
361 ~~exempt from the registration provisions of this part.~~



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362 Section 9. Section 559.77, Florida Statutes, is amended to  
363 read:

364 559.77 Civil remedies.—

365 (1) A debtor may bring a civil action against a person  
366 violating the provisions of s. 559.72 in ~~a court of competent~~  
367 ~~jurisdiction of~~ the county in which the alleged violator resides  
368 or has his or her principal place of business or in the county  
369 where ~~wherein~~ the alleged violation occurred.

370 (2) Any person who fails to comply with any provision of s.  
371 559.72 is ~~Upon adverse adjudication, the defendant shall be~~  
372 liable for actual damages and for additional statutory damages  
373 as the court may allow, but not exceeding ~~of up to~~ \$1,000,  
374 together with court costs and reasonable attorney's fees  
375 incurred by the plaintiff. In determining the defendant's  
376 liability for any additional statutory damages, the court shall  
377 consider the nature of the defendant's noncompliance with s.  
378 559.72, the frequency and persistence of the ~~such~~ noncompliance,  
379 and the extent to which the ~~such~~ noncompliance was intentional.  
380 In a ~~any~~ class action lawsuit brought under this section, the  
381 court may award additional statutory damages of up to \$1,000 for  
382 each named plaintiff and an aggregate award of additional  
383 statutory damages up not ~~to exceed~~ the lesser of \$500,000 or 1  
384 percent of the defendant's net worth for all remaining class  
385 members; however, the ~~but in no event may this~~ aggregate award  
386 may not provide an individual class member with additional  
387 statutory damages in excess of \$1,000. The court may, ~~in its~~  
388 ~~discretion,~~ award punitive damages and may provide such  
389 equitable relief as it deems necessary or proper, including  
390 enjoining the defendant from further violations of this part. If



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391 the court finds that the suit fails to raise a justiciable issue  
392 of law or fact, the plaintiff is ~~shall be~~ liable for court costs  
393 and reasonable attorney's fees incurred by the defendant.

394 (3) A person may ~~shall~~ not be held liable in any action  
395 brought under this section if the person shows by a  
396 preponderance of the evidence that the violation was not  
397 intentional and resulted from a bona fide error, notwithstanding  
398 the maintenance of procedures reasonably adapted to avoid ~~any~~  
399 such error.

400 (4) An action brought under this section must be commenced  
401 within 2 years after the date ~~on which~~ the alleged violation  
402 occurred.

403 (5) In applying and construing this section, due  
404 consideration and great weight shall be given to the  
405 interpretations of the Federal Trade Commission and the federal  
406 courts relating to the federal Fair Debt Collection Practices  
407 Act.

408 Section 10. This act shall take effect October 1, 2010.

410 ===== T I T L E A M E N D M E N T =====

411 And the title is amended as follows:

412 Delete everything before the enacting clause  
413 and insert:

414 A bill to be entitled  
415 An act relating to consumer debt collection; creating  
416 s. 559.5556, F.S.; requiring a consumer debt  
417 collection agency to maintain records; amending s.  
418 559.565, F.S.; increasing the administrative fine  
419 imposed against an out-of-state consumer debt



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420 collector that fails to register as required; revising  
421 provisions relating to authorized activities of the  
422 Attorney General; amending s. 559.715, F.S.; revising  
423 requirements for providing written notice of the  
424 assignment of debt; amending s. 559.72, F.S.; revising  
425 prohibited acts with respect to consumer debt  
426 collection; revising provisions governing violations  
427 of communication procedures; amending s. 559.725,  
428 F.S.; revising provisions relating to consumer  
429 complaints about a consumer collection agency;  
430 authorizing the Attorney General to take action  
431 against a person for violations involving debt  
432 collection; creating s. 669.726, F.S.; providing for  
433 the issuance of subpoenas by the Office of Financial  
434 Regulation; creating s. 559.727, F.S.; authorizing the  
435 office to issue cease and desist orders; amending s.  
436 559.730, F.S.; revising provisions relating to  
437 administrative remedies; increasing the maximum  
438 penalty; authorizing the Office of Financial  
439 Regulation to adopt rules relating to penalty  
440 guidelines; amending s. 559.77, F.S., relating to  
441 civil remedies; conforming provisions to federal law;  
442 providing an effective date.