

By Senator Aronberg

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1 A bill to be entitled
2 An act relating to financial services; amending s.
3 20.121, F.S.; revising the duties of the Division of
4 Consumer Services within the Department of Financial
5 Services relating to the Office of Insurance
6 Regulation; amending s. 520.996, F.S.; specifying that
7 complaints relating to sales and finance must be
8 submitted to the Office of Financial Regulation;
9 amending s. 537.017, F.S.; specifying that complaints
10 relating to title loans be submitted to the Office of
11 Financial Regulation; amending s. 559.55, F.S.;
12 revising definitions relating to the regulation of
13 consumer collection practices; amending s. 559.551,
14 F.S.; conforming cross-references; creating s.
15 559.5525, F.S.; providing powers for the Office of
16 Financial Regulation; amending s. 559.553, F.S.;
17 requiring consumer collection agencies to be licensed
18 instead of registered; amending s. 559.555, F.S.;
19 providing requirements for license applications;
20 requiring a license fee; providing for license
21 issuance; requiring the license to be displayed to the
22 public; limiting the effective period of the license
23 to 2 years; creating s. 559.5551, F.S.; authorizing
24 the office to disapprove the use of certain names for
25 a consumer collection agency; creating s. 559.5553,
26 F.S.; requiring a licensee to notify the agency of a
27 change of name, address, employment status, or
28 ownership; creating s. 559.5554, F.S.; providing for
29 license renewal; creating s. 559.5555, F.S.; requiring

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30 a licensee to obtain a surety bond and provide proof
31 of such bond to the office; creating s. 559.5556,
32 F.S.; authorizing the office to conduct investigations
33 of applicants for licensure; repealing s. 559.563,
34 F.S., relating to void registrations; amending s.
35 559.565, F.S.; clarifying that an out-of-state
36 consumer collection agency is subject to the same
37 sanctions and fines as an in-state licensee; expanding
38 the authority of the Attorney General to take action
39 against out-of-state consumer debt collectors;
40 providing a fine for failing to obtain licensure;
41 amending s. 559.72, F.S.; providing that a prohibited
42 act conducted by an agent, employee, or control person
43 of a consumer collection agency shall be treated as a
44 violation by the agency; creating s. 559.721, F.S.;

45 providing grounds for the denial, suspension, or
46 revocation of a license; creating s. 559.722, F.S.;

47 providing for the duration of a license suspension or
48 revocation; amending s. 559.725, F.S.; revising
49 provisions relating to consumer complaints about a
50 consumer collection agency; creating s. 559.726, F.S.;

51 providing procedures for conducting investigations,
52 including access to records; creating s. 559.727,
53 F.S.; providing procedures for removing a person from
54 the business of debt collecting; amending s. 559.730,
55 F.S.; revising provisions relating to administrative
56 remedies; increasing the maximum penalty; authorizing
57 the office to adopt rules relating to penalty
58 guidelines; deleting the 2-year limitation on bringing

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59 an administrative action; creating s. 559.731, F.S.;

60 providing for the payment of restitution; amending s.

61 559.77, F.S.; revising provisions relating to civil

62 remedies; extending the statute of limitations;

63 amending s. 559.78, F.S.; revising provisions relating

64 to injunctions; amending s. 559.785, F.S.; providing

65 criminal penalties for failure to obtain licensure;

66 creating s. 559.786, F.S.; providing that a license is

67 the property of the state and must be surrendered upon

68 request; creating s. 589.787, F.S.; providing that a

69 violation of provisions relating to consumer debt

70 collectors is a violation of the Florida Deceptive and

71 Unfair Trade Practices Act; creating s. 559.788, F.S.;

72 authorizing the office to adopt rules; providing an

73 effective date.

74

75 Be It Enacted by the Legislature of the State of Florida:

76

77 Section 1. Paragraph (h) of subsection (2) of section

78 20.121, Florida Statutes, is amended to read:

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

80 Department of Financial Services.

81 (2) DIVISIONS.—The Department of Financial Services shall

82 consist of the following divisions:

83 (h) The Division of Consumer Services.

84 1. The Division of Consumer Services shall perform the

85 following functions concerning products or services regulated by

86 the department ~~of Financial Services~~ or ~~by either office of the~~

87 Office of Insurance Regulation ~~Financial Services Commission~~:

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- 88 a. Receive inquiries and complaints from consumers.
- 89 b. Prepare and disseminate ~~such~~ information ~~as~~ the
90 department deems appropriate to inform or assist consumers.
- 91 c. Provide direct assistance and advocacy for consumers who
92 request such assistance or advocacy.
- 93 d. With respect to apparent or potential violations of law
94 or applicable rules by a person or entity licensed by the
95 department or office ~~by either office of the commission~~, report
96 ~~such~~ apparent or potential violations ~~violation~~ to the office or
97 appropriate division of the department ~~or office of the~~
98 ~~commission~~, which may take such further action as it deems
99 appropriate.
- 100 e. Designate an employee of the division as the primary
101 contact for consumers on issues relating to sinkholes.
- 102 2. Any person licensed or issued a certificate of authority
103 by the department or by the Office of Insurance Regulation shall
104 respond, in writing, to the Division of Consumer Services within
105 20 days after receipt of a written request for information from
106 the division concerning a consumer complaint. The response must
107 address the issues and allegations raised in the ~~this~~ complaint.
108 The division may, ~~in its discretion~~, impose an administrative
109 penalty for failure to comply with this subparagraph of ~~in an~~
110 ~~amount~~ up to \$2,500 per violation upon any entity licensed by
111 the department or the office ~~of Insurance Regulation~~ and \$250
112 for the first violation, \$500 for the second violation, and up
113 to \$1,000 per violation thereafter upon any individual licensed
114 by the department or the office ~~of Insurance Regulation~~.
- 115 3. The department may adopt rules to administer ~~implement~~
116 ~~the provisions of~~ this paragraph.

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

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

125 520.996 Investigations and complaints.—

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

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

136 537.017 Investigations and complaints.—

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

143 Section 4. Section 559.55, Florida Statutes, is reordered
144 and amended to read:

145 559.55 Definitions.—As used in ~~The following terms shall,~~

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146 unless the context otherwise indicates, have the following
147 meanings for the purpose of this part, the term:

148 (5)~~(1)~~ "Debt" or "consumer debt" means any obligation or
149 alleged obligation of a consumer to pay money arising out of a
150 transaction in which the money, property, insurance, or
151 services, which are the subject of the transaction, are
152 primarily for personal, family, or household purposes, whether
153 or not such obligation has been reduced to judgment.

154 (7)~~(2)~~ "Debtor" or "consumer" means any natural person
155 obligated or allegedly obligated to pay any debt.

156 (4)~~(3)~~ "Creditor" means any person who offers or extends
157 credit creating a debt or to whom a debt is owed, but does not
158 include a any person who receives ~~to the extent that they~~
159 ~~receive~~ an assignment or transfer of a debt in default solely
160 for the purpose of facilitating the collection of such debt ~~for~~
161 ~~another~~.

162 (9)~~(4)~~ "Office" means the Office of Financial Regulation of
163 the Financial Services Commission.

164 (1)~~(5)~~ "Communication" means ~~the~~ conveying ~~of~~ information
165 regarding a debt, directly or indirectly, to any person through
166 any medium.

167 (6) "Debt collector" means a any person who uses any
168 instrumentality of commerce within this state, the United States
169 mail, a common carrier, e-mail, or the Internet, whether
170 initiated from within or outside this state, in a any business
171 whose the principal purpose of which is the collection of debts,
172 or who regularly collects or attempts to collect, directly or
173 indirectly, debts ~~owed or due or~~ asserted to be owed or due to a
174 creditor, or who receives payment of any account, bill, claim,

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175 or other indebtedness on behalf of a creditor ~~another~~. The term
176 ~~"debt collector"~~ includes a any creditor who, in the process of
177 collecting her or his own debts, uses any name other than her or
178 his own which indicates ~~would indicate~~ that a third person is
179 collecting or attempting to collect such debts, and a person
180 who, directly or indirectly, engages or offers to engage in this
181 state in the business of collecting any form of indebtedness for
182 his or her own account if the indebtedness was acquired from
183 another person and was delinquent or in default at the time it
184 was acquired. The term does not include:

185 (a) An Any officer or employee of a creditor who ~~while~~, in
186 the name of the creditor, collects ~~collecting~~ debts for such
187 creditor;

188 (b) A Any person ~~while~~ acting as a debt collector for
189 another person, both of whom are related by common ownership or
190 affiliated by corporate control, if the person acting as a debt
191 collector for persons to whom it is so related or affiliated and
192 if the principal business of such persons is not the collection
193 of debts;

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

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

201 (e) A Any not-for-profit organization that ~~which~~, at the
202 request of consumers, performs bona fide consumer credit
203 counseling and assists consumers in the liquidation of their

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204 debts by receiving payments from such consumers and distributing
205 such payments ~~amounts~~ to creditors; or

206 (f) A ~~Any~~ person collecting or attempting to collect any
207 debt ~~if owed or due or asserted to be owed or due another to the~~
208 ~~extent that~~ such activity is incidental to a bona fide fiduciary
209 obligation or a bona fide escrow arrangement; concerns a debt
210 that ~~which~~ was originated by such person; concerns a debt that
211 ~~which~~ was not in default at the time it was obtained by such
212 person; or concerns a debt obtained by such person as a secured
213 party in a commercial credit transaction involving the creditor.

214 (2) ~~(7)~~ "Consumer collection agency" means a ~~any~~ debt
215 collector acting as a sole proprietor, a partnership, or joint
216 venture employing one or more debt collectors, or a business
217 entity, employing one or more debt collectors, which is engaged
218 in the business of soliciting consumer debts for collection or
219 ~~of~~ collecting consumer debts and, ~~which debt collector or~~
220 ~~business is not expressly exempted under as set forth in s.~~
221 559.553(2) ~~559.553(4)~~.

222 (3) "Control person" means an individual, partnership,
223 corporation, trust, or other organization that possesses the
224 power, directly or indirectly, to direct the management or
225 policies of a company, whether through ownership of securities,
226 by contract, or otherwise. The term includes, but is not limited
227 to:

228 (a) A company's executive officers, including the
229 president, chief executive officer, chief financial officer,
230 chief operations officer, chief legal officer, chief compliance
231 officer, director, or other individuals having similar status or
232 functions.

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

237 (c) For a partnership, all general partners and limited or
238 special partners who have contributed 10 percent or more, or who
239 have the right to receive upon dissolution, 10 percent or more
240 of the partnership's capital.

241 (d) For a trust, each trustee.

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

246 (10)-(8) "Out-of-state consumer debt collector" means any
247 person whose business activities in this state involve both
248 collecting or attempting to collect consumer debt from debtors
249 located in this state by means of interstate communication
250 originating from outside this state and soliciting consumer debt
251 accounts for collection from creditors who have a business
252 presence in this state. For purposes of this subsection, a
253 creditor has a business presence in this state if ~~either~~ the
254 creditor or an affiliate or subsidiary of the creditor has an
255 office in this state.

256 (8)-(9) "Federal Fair Debt Collection Practices Act" ~~or~~
257 ~~"Federal Act"~~ means the federal legislation regulating fair debt
258 collection practices, as set forth in Pub. L. No. 95-109, as
259 amended and published in 15 U.S.C. ss. 1692 et seq.

260 Section 5. Section 559.551, Florida Statutes, is amended to
261 read:

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262 559.551 Short title.—This part Sections 559.55-559.785 may
263 be cited as the "Florida Consumer Collection Practices Act."

264 Section 6. Section 559.5525, Florida Statutes, is created
265 to read:

266 559.5525 Office of Financial Regulation; powers.—

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

270 (2) In addition to expressly authorized investigations, the
271 office may issue subpoenas and conduct such investigations of
272 consumer debt collection matters as it deems proper in order to
273 determine whether a person has violated any provision of this
274 part or to secure information useful in the lawful
275 implementation of such provision.

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

279 Section 7. Section 559.553, Florida Statutes, is amended to
280 read:

281 559.553 Licensing Registration of consumer collection
282 agencies required; exemptions.—

283 (1) A ~~After January 1, 1994, No~~ person may not shall engage
284 in business in this state as a consumer collection agency or act
285 as, advertise, or hold themselves out as a consumer collection
286 agency continue to do business in this state as a consumer
287 collection agency without being licensed under first registering
288 in accordance with this part, and thereafter maintaining a valid
289 registration.

290 ~~(2) Each consumer collection agency doing business in this~~

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291 ~~state shall register with the office and renew such registration~~
292 ~~annually as set forth in s. 559.555.~~

293 ~~(3) A prospective registrant shall be entitled to be~~
294 ~~registered when registration information is complete on its face~~
295 ~~and the applicable registration fee has been paid; however, the~~
296 ~~office may reject a registration submitted by a prospective~~
297 ~~registrant if the registrant or any principal of the registrant~~
298 ~~previously has held any professional license or state~~
299 ~~registration which was the subject of any suspension or~~
300 ~~revocation which has not been explained by the prospective~~
301 ~~registrant to the satisfaction of the office either in the~~
302 ~~registration information submitted initially or upon the~~
303 ~~subsequent written request of the office. In the event that an~~
304 ~~attempted registration is rejected by the office the prospective~~
305 ~~registrant shall be informed of the basis for rejection.~~

306 ~~(2)-(4)~~ This section does ~~shall~~ not apply to:

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

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

309 (c) A ~~Any~~ financial institution authorized to do business
310 in this state and any wholly owned subsidiary and affiliate
311 thereof.

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

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

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

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

318 (h) An ~~Any~~ out-of-state consumer debt collector who does
319 not solicit consumer debt accounts for collection from credit

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320 grantors who have a business presence in this state.

321 (i) A depository institution; subsidiaries that are owned
322 and controlled by a depository institution and regulated by the
323 Board of Governors of the Federal Reserve System, the
324 Comptroller of the Currency, the Director of the Office of
325 Thrift Supervision, the National Credit Union Administration, or
326 the Federal Deposit Insurance Corporation; or institutions
327 regulated by the Farm Credit Administration. Depository
328 institution has the same meaning as in s. (3)(c) of the Federal
329 Deposit Insurance Act, and includes credit unions ~~Any FDIC-~~
330 ~~insured institution or subsidiary or affiliate thereof.~~

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

336 Section 8. Section 559.555, Florida Statutes, is amended to
337 read:

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

340 559.555 Licensing application and issuance.-

341 (1) A consumer collection agency seeking to be licensed
342 under this part shall submit an application to the office signed
343 by the applicant or the owner or owners of the consumer
344 collection agency, or, if incorporated, by the president and
345 secretary of the corporation. The signed application must
346 include:

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

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

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

353 (d) The address of each consumer collection agency branch
354 office and the name under which each office will conduct
355 business.

356 (e) The name of each person to be in full-time charge of
357 each consumer collection agency branch and the office to which
358 the person is assigned.

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

363 1. The applicant for licensure;

364 2. Each debt collector employed by the consumer collection
365 agency; and

366 3. All control persons.

367 (g) Such additional information as the office requires by
368 rule to ascertain the trustworthiness and competence of persons
369 required to be listed on the application and to ascertain that
370 such persons meet the requirements of this part. However, the
371 office may not require that credit or character reports be
372 submitted for such persons.

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

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

379 (a) Any of the persons required to be listed in the
380 application have held any professional license or state
381 registration that was the subject of a suspension or revocation
382 that has not been explained to the satisfaction of the office by
383 the prospective licensee in the license application or upon the
384 subsequent written request of the office.

385 (b) The applicant, any debt collector employed by the
386 agency, or control person or other person who manages or
387 controls the agency meets any of the grounds for license denial
388 provided in s. 559.721, or has committed any other criminal act
389 that makes the person unfit or untrustworthy to engage in the
390 consumer collection agency business.

391 (4) If, upon the basis of the completed application and
392 such further inquiry or investigation as may be conducted
393 pursuant to s. 559.5556, the office deems the applicant to be
394 lacking in one or more of the required qualifications for
395 licensure, the office shall deny the application and notify the
396 applicant, stating the grounds for denial. The failure of an
397 applicant to secure a license does not preclude the applicant
398 from reapplying.

399 (5) If, upon the basis of a completed application and any
400 further inquiry or investigation the office may make concerning
401 an applicant under s. 559.5556, the office is satisfied that the
402 applicant is qualified, all applicable fees have been paid, and
403 evidence of a surety bond has been provided, the office shall
404 approve the application and issue a license.

405 (6) Each license issued by the office must be in such form
406 as the office may designate and contain the licensee's name,

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407 authorization to transact business, the licensee's personal
408 identification number, the date of issuance, and any other
409 information the office deems necessary to fully identify the
410 licensee and the authority being granted. The office may, by
411 rule, require photographs of applicants as a part of the
412 licensing process. The licensee shall display the license
413 prominently in a manner that makes it clearly visible to all
414 creditors or debtors.

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

418 Section 9. Section 559.5551, Florida Statutes, is created
419 to read:

420 559.5551 Consumer collection agency names; disapproval.—The
421 office may disapprove the use of any true or fictitious name,
422 other than the bona fide natural name of an individual, by a
423 licensee on any of the following grounds:

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

426 (2) The use of the name may mislead the public in any
427 respect.

428 (3) The name states or implies that the agency is a state
429 or federal agency, charitable organization, or entity that
430 primarily provides advice and counsel rather than collects debt.
431 This subsection does not prohibit the use of the term "state" or
432 "states" in the name of the agency if such use does not imply
433 that the agency is a state agency.

434 Section 10. Section 559.5553, Florida Statutes, is created
435 to read:

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436 559.5553 Change of name, address, employment status, or
437 ownership.—

438 (1) A licensee must notify the office in writing within 30
439 days after a change in the name of the consumer collection
440 agency; a change in the residence address of any control person
441 of the licensee or debt collector employed by the licensee; a
442 change in the principal business street address, mailing
443 address, contact telephone numbers, including a business
444 telephone number, or e-mail address of the licensee; or the
445 employment or change in the employment status of a debt
446 collector employed by the licensee.

447 (2) If there is a change in the ownership or control of a
448 licensee, or if a new debt collector, partner, officer, or
449 director is employed or appointed, a set of fingerprints of the
450 new owner, control person, debt collector, partner, officer, or
451 director must be filed with the office within 30 days after the
452 change. The acquisition of 10 percent or more of the voting
453 securities of a licensee is considered a change of ownership or
454 control.

455 (3) Failure to timely provide the required notice to the
456 office shall result in a fine of up to \$500 for the first
457 offense and, for each subsequent offense, a fine of at least
458 \$1,000 or suspension or revocation of the license.

459 Section 11. Section 559.5554, Florida Statutes, is created
460 to read:

461 559.5554 License renewal.—A consumer collection agency
462 license must be renewed every 2 years by submitting a license
463 renewal request to the office in a manner determined by the
464 office by rule. The renewal request must be accompanied by a

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465 \$400 renewal fee, additional fingerprints and the related
466 processing fee, and evidence of the surety bond required under
467 s. 559.5555. The renewal fee is nonrefundable and may not be
468 prorated. Any of the grounds for denial of a debt collector
469 license application are also grounds for denial of a license
470 renewal request.

471 Section 12. Section 559.5555, Florida Statutes, is created
472 to read:

473 559.5555 Surety bond.—

474 (1) Pursuant to license application and renewal under ss.
475 559.555 and 559.5554, an applicant for licensure must obtain and
476 maintain a current surety bond for \$100,000, valid for the 2
477 years of the license, paid and issued for the use and benefit of
478 any credit grantor who suffers or sustains any loss or damage by
479 reason of any violation of the provisions of this part by the
480 licensee, or by any agent or employee of the licensee acting
481 within the scope of her or his employment, and issued to ensure
482 conformance with this part.

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

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

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

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

491 (3) The liability of the surety under any bond issued
492 pursuant to this section may not, in the aggregate, exceed the
493 amount of the bond regardless of the number or amount of any

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

502 Section 13. Section 559.5556, Florida Statutes, is created
503 to read:

504 559.5556 Investigation of license applicant.—In addition to
505 any interrogatories contained in the license application, the
506 office may propound any reasonable interrogatories to, or
507 conduct such further investigations of, an applicant for a
508 license, license renewal, or reinstatement of a license that has
509 been suspended or revoked relating to the background,
510 experience, qualifications, residence, or prospective place of
511 business of the applicant or any of the applicant's control
512 persons or debt collectors, or any other matter that the office
513 deems necessary or advisable for the protection of the public
514 and to ascertain the applicant's qualifications and fitness for
515 licensure.

516 Section 14. Section 559.563, Florida Statutes, is repealed.

517 Section 15. Section 559.565, Florida Statutes, is amended
518 to read:

519 559.565 Enforcement action against out-of-state consumer
520 debt collector.—The remedies of this section are cumulative to
521 other sanctions and enforcement provisions of this part for any
522 violation by an out-of-state consumer debt collector, ~~as defined~~

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523 ~~in s. 559.55(8).~~

524 (1) ~~An~~ Any out-of-state consumer debt collector who is not
525 exempt from licensure under s. 559.553(2) and who collects or
526 attempts to collect consumer debts in this state without first
527 obtaining a license under ~~registering in accordance with this~~
528 ~~part~~ is shall be subject to an administrative fine of up to
529 \$5,000 per violation, plus ~~not to exceed \$1,000 together with~~
530 reasonable attorney fees and court costs in any successful
531 action by the state to collect such fines.

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

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

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552 Section 16. Section 559.72, Florida Statutes, is amended to
553 read:

554 559.72 Prohibited practices ~~generally~~.—

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

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

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

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

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

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

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581 (f)~~(6)~~ Disclose information concerning the existence of a
582 debt known to be reasonably disputed by the debtor without
583 disclosing that fact. If a disclosure is made before ~~prior to~~
584 such ~~reasonable~~ dispute has ~~having~~ been asserted and written
585 notice is received from the debtor that any part of the debt is
586 disputed and if such dispute is reasonable, the person who made
587 the original disclosure must ~~shall~~ reveal upon the request of
588 the debtor within 30 days the details of the dispute to each
589 person to whom disclosure of the debt without notice of the
590 dispute was made within the preceding 90 days.†

591 (g)~~(7)~~ Willfully communicate with the debtor or any member
592 of her or his family with such frequency as can reasonably be
593 expected to harass the debtor or her or his family, or willfully
594 engage in other conduct which can reasonably be expected to
595 abuse or harass the debtor or any member of her or his family.†

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

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

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

608 (k)~~(11)~~ Communicate with a debtor under the guise of an
609 attorney by using the stationery of an attorney or forms or

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610 instruments that ~~which~~ only attorneys are authorized to
611 prepare.†

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

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

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

623 (o) ~~(15)~~ Refuse to provide adequate identification of
624 herself or himself or her or his employer or other entity whom
625 she or he represents when requested to do so by a debtor from
626 whom she or he is collecting or attempting to collect a consumer
627 debt.†

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

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

636 (r) ~~(18)~~ Communicate with a debtor if the person knows that
637 the debtor is represented by an attorney with respect to such
638 debt and has knowledge of, or can readily ascertain, such

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639 attorney's name and address, unless the debtor's attorney fails
640 to respond within a reasonable period of time to a communication
641 from the person, ~~unless~~ the debtor's attorney consents to a
642 direct communication with the debtor, or ~~unless~~ the debtor
643 initiates the communication. ~~;~~ ~~or~~

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

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

651 Section 17. Section 559.721, Florida Statutes, is created
652 to read:

653 559.721 License denial, suspension, or revocation.—The
654 office may deny, suspend, revoke, or refuse to renew the license
655 of a consumer collection agency if it finds that the license
656 application does not meet the requirements of s. 559.555, or, if
657 it finds with regard to any consumer collection agency, debt
658 collector employed by such agency, or control person or other
659 person who manages or controls the agency that any one or more
660 of the following grounds exist:

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

664 (2) Using of a license to circumvent the requirements of
665 this part.

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

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668 felony in this state or any state relating to the business of
669 consumer debt collecting.

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

673 (5) Violating any provision of the federal Fair Debt
674 Collection Practices Act.

675 (6) Committing any of the following acts that make the
676 operation of the consumer collection agency hazardous to the
677 public or other persons:

678 (a) Misappropriating, converting, or unlawfully withholding
679 moneys belonging to a debtor, creditor, beneficiary, or others
680 which were received in the conduct of business under the
681 license.

682 (b) Misrepresenting any credit contract, or engaging in
683 deception with regard to such contract, in person or by any form
684 of dissemination of information or advertising.

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

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

689 (e) Failing or refusing, upon demand, to pay over to a
690 creditor represented by the consumer collection agency any money
691 coming into the hands of the consumer collection agency which
692 belongs to the creditor.

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

696 (g) Using fraudulent or dishonest practices in conducting

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697 business related to debt collecting.

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

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

704 Section 18. Section 559.722, Florida Statutes, is created
705 to read:

706 559.722 Duration of license suspension or revocation.—

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

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

716 (b) A request for reinstatement is subject to denial and a
717 waiting period before approval on the same grounds that apply to
718 applications for licensure under s. 559.555 or s. 559.721.

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

722 (2) If a consumer collection agency license is revoked by
723 the office, the agency may not apply for another license for 2
724 years following the effective date of such revocation or, if
725 judicial review of the revocation is sought, for 2 years

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726 following the date of the final court order or decree affirming
727 the revocation.

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

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

736 (3) The office may not issue a license under this part to a
737 consumer collection agency that has had its license revoked
738 twice.

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

745 Section 19. Section 559.725, Florida Statutes, is amended
746 to read:

747 559.725 Consumer complaints; administrative duties.—

748 (1) ~~The office division of Consumer Services of the~~
749 ~~department of Financial Services shall receive and maintain~~
750 ~~serve as the registry for receiving and maintaining records of~~
751 inquiries, correspondence, and complaints from consumers
752 concerning any and all persons who collect debts, including
753 consumer collection agencies.

754 ~~(2) The division shall classify complaints by type and~~

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

764 (2)~~(3)~~ The office ~~division~~ shall inform and furnish
765 relevant information to the appropriate regulatory body of the
766 state, or The Florida Bar in the case of attorneys, if a ~~when~~
767 ~~any~~ consumer debt collector exempt from licensure ~~registration~~
768 under this part has been named in a ~~five or more~~ written
769 consumer complaint that alleges one or more ~~complaints alleging~~
770 violations of s. 559.72 ~~within a 12-month period.~~

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

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

783 (3)~~(6)~~ The office shall investigate ~~sworn~~ complaints by

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784 ~~direct written communication with the complainant and the~~
785 ~~affected consumer collection agency. In addition, the office~~
786 ~~shall attempt to resolve each sworn complaint and shall record~~
787 ~~the resolution of such complaints.~~

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

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

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

809 ~~(4)-(10)~~ The office shall issue a notice of intent either to
810 ~~revoke or suspend the registration or to impose an~~
811 ~~administrative fine against, suspend the license of, or revoke~~
812 ~~the license of a consumer collection agency if when the office~~

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813 preliminarily determines that a violation ~~repeated violations~~ of
814 s. 559.72 or s. 559.721 by an accused licensee or a control
815 person, employee, or agent of such licensee has ~~registrant have~~
816 ~~occurred which would warrant more serious administrative~~
817 ~~sanctions being imposed under this part.~~ The office shall advise
818 each licensee ~~registrant~~ of the right to require an
819 administrative hearing under chapter 120 before, ~~prior to~~ the
820 agency's final action on the matter as authorized by s. 559.730.

821 (5) ~~(11)~~ The office shall advise the appropriate state
822 attorney, or the Attorney General in the case of an out-of-state
823 consumer debt collector, of any determination by the office of a
824 violation of ~~the requirements of~~ this part by any consumer
825 collection agency that ~~which~~ is not licensed ~~registered~~ as
826 required by this part. The office shall furnish the state
827 attorney or Attorney General with the office's information
828 concerning the alleged violations of such requirements so that
829 action may be taken.

830 Section 20. Section 559.726, Florida Statutes, is created
831 to read:

832 559.726 Conducting investigations; access to records.-If
833 the office has reason to believe that a person has violated or
834 is violating any provision of this part, or upon the receipt of
835 a complaint pursuant to s. 555.725 indicating that such
836 violation may exist, the office shall investigate as it deems
837 necessary the accounts, records, documents, and transactions
838 pertaining to or affecting the consumer debt collection affairs
839 of a consumer collection agency subject to licensure under this
840 part.

841 (1) The investigation may be conducted at the offices of

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842 the person being investigated and at such other places as may be
843 required for determination of the matters under investigation.

844 (2) Every person being investigated, and their officers,
845 attorneys, employees, agents, representatives, and other control
846 persons shall make the accounts, records, documents, files,
847 information, assets, and matters in their possession or control
848 relating to the subject of the investigation freely available to
849 the office and its investigators. An agent of the person being
850 investigated who provides other products or services, or
851 maintains customer information not related to consumer debt
852 collecting, must maintain separate records relating to consumer
853 debt collecting. If records relating to consumer debt collecting
854 are maintained by an agent on premises owned or operated by a
855 third party, the agent and the third party must provide access
856 to the records by the office.

857 (3) The office and its investigators may not remove any
858 original record, account, document, file, or other property of
859 the person being investigated from the offices of such person
860 except with the prior written consent of the person or pursuant
861 to a court order. However, the office and its investigators may
862 electronically scan such material and the scanned copies may be
863 removed from the offices of such person.

864 (4) Any person who willfully obstructs the office or its
865 investigators in an investigation authorized by this part
866 commits a misdemeanor of the second degree, punishable as
867 provided in s. 775.082 or s. 775.083, and is also subject to any
868 applicable fine, denial, suspension, or revocation of a license.
869 Each instance of such violation is a separate offense.

870 Section 21. Section 559.727, Florida Statutes, is created

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871 to read:

872 559.727 Removal from business of debt collecting.-

873 (1) The office may issue and serve a complaint on a
874 consumer collection agency stating charges upon any person
875 acting for or on behalf of the consumer collection agency if the
876 office has reason to believe that such person is engaging in or
877 has engaged in a violation of this part, a violation of any rule
878 or order of the office, or an act that demonstrates a lack of
879 fitness or trustworthiness to engage in the business of debt
880 collecting. A copy of the complaint must be served on the person
881 against whom the charges are made.

882 (2) The complaint must contain a statement of facts and
883 notice of opportunity for a hearing pursuant to ss. 120.569 and
884 120.57.

885 (3) If a hearing is not requested within the time allotted
886 by ss. 120.569 and 120.57, or if a hearing is held and the
887 office finds that any of the charges in the complaint are proven
888 true, the office may enter an order removing the person or
889 restricting or prohibiting participation by the person in the
890 affairs of that particular consumer collection agency or of any
891 other consumer collection agency.

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

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

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900 (6) A person removed from office, employment, or any other
901 capacity pursuant to this section is not eligible for
902 reelection, appointment, employment, or any other official
903 position in a consumer collection agency in this state except
904 upon the written consent of the office. Such person may petition
905 the office for modification or termination of the removal,
906 restriction, or prohibition.

907 (7) Resignation or termination of a person against whom a
908 complaint has been served does not affect the office's
909 jurisdiction to proceed under this section.

910 Section 22. Section 559.730, Florida Statutes, is amended
911 to read:

912 559.730 Administrative remedies.—

913 (1) In addition to the grounds for license denial,
914 suspension, or revocation under s. 559.721, the office may
915 impose an administrative fine on, suspend the license of, or
916 revoke the license or suspend the registration of any licensee
917 registrant under this part who has engaged in repeated
918 violations which establish a clear pattern of abuse of
919 prohibited collection practices under s. 559.72. Final office
920 action to fine or suspend or revoke the license or suspend the
921 registration of any licensee is registrant shall be subject to
922 review in accordance with chapter 120 in the same manner as
923 revocation of a license. The repeated violations of the law by
924 one employee shall not be grounds for revocation or suspension
925 of the registration of the employing consumer collection agency,
926 unless the employee is also the owner of a majority interest in
927 the collection agency.

928 ~~(2) The registration of a registrant shall not be revoked~~

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929 ~~or suspended if the registrant shows by a preponderance of the~~
930 ~~evidence that the violations were not intentional and resulted~~
931 ~~from bona fide error notwithstanding the maintenance of~~
932 ~~procedures reasonably adapted to avoid any such error.~~

933 ~~(3) The office shall consider the number of complaints~~
934 ~~against the registrant in relation to the accused registrant's~~
935 ~~volume of business when determining whether suspension or~~
936 ~~revocation is the more appropriate sanction when circumstances~~
937 ~~warrant that one or the other should be imposed upon a~~
938 ~~registrant.~~

939 ~~(4) The office shall impose suspension rather than~~
940 ~~revocation when circumstances warrant that one or the other~~
941 ~~should be imposed upon a registrant and the accused registrant~~
942 ~~demonstrates that the registrant has taken affirmative steps~~
943 ~~which can be expected to effectively eliminate the repeated~~
944 ~~violations and that the registrant's registration has never~~
945 ~~previously been suspended.~~

946 ~~(2)(5) The office may impose~~ An administrative fine of up
947 to \$25,000 per violation ~~may be imposed~~ ~~\$1,000~~ against the
948 offending licensee registrant ~~as a sanction for repeated~~
949 ~~violations of the provisions of s. 559.72 when violations do not~~
950 ~~rise to the level of misconduct governed by subsection (1).~~

951 (a) Final office action to impose an administrative fine is
952 ~~shall be~~ subject to review in accordance with ss. 120.569 and
953 120.57.

954 (b) The administrative penalty may be augmented by an
955 amount equal to any commissions or profits received by, or
956 accruing to, the credit of the licensee in connection with a
957 transaction that is the ground for the imposition of the fine,

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958 suspension, or revocation.

959 (c) The office may adopt rules establishing guidelines for
960 imposing administrative penalties.

961 (3)~~(6)~~ Any administrative fine imposed under this part is
962 ~~shall be~~ payable to the office. The office shall maintain an
963 appropriate record and ~~shall~~ deposit such fine into the
964 Insurance Regulatory Trust Fund of the office.

965 (4) The office may allow the licensee up to 30 days within
966 which to pay any fine imposed. If the licensee fails to pay the
967 total fine to the office within the period allowed, the office
968 may:

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

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

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

978 (5)~~(8)~~ Nothing in This part does not ~~shall be construed to~~
979 preclude any person from pursuing remedies available under the
980 Federal Fair Debt Collection Practices Act for any violation of
981 such act, including specifically against any person who is
982 exempt from the licensing ~~registration~~ provisions of this part.

983 Section 23. Section 559.731, Florida Statutes, is created
984 to read:

985 559.731 Restitution.—If any ground exists for the
986 imposition of a fine, license suspension, or license revocation,

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987 the office may, in addition to any other penalty authorized
988 under this part, order the licensee to pay restitution to any
989 person who has been deprived of money by the licensee's
990 misappropriation, conversion, or unlawful withholding of moneys
991 belonging to a debtor, creditor, beneficiary, or other person.
992 The amount of restitution may not exceed the amount of money
993 misappropriated, converted, or unlawfully withheld. This section
994 does not limit or restrict a person's right to seek other
995 remedies as provided by law.

996 Section 24. Section 559.77, Florida Statutes, is amended to
997 read:

998 559.77 Civil remedies.—

999 (1) A debtor may bring a civil action against a person or
1000 consumer collection agency or both for violating the provisions
1001 of s. 559.72 in a court of competent jurisdiction of the county
1002 in which the alleged violator resides or has his or her
1003 principal place of business or in the county wherein the alleged
1004 violation occurred.

1005 (2) Upon adverse adjudication, the defendant is ~~shall be~~
1006 liable for actual damages and for additional statutory damages
1007 of up to \$1,000, together with court costs and reasonable
1008 attorney's fees incurred by the plaintiff. In determining the
1009 defendant's liability for any additional statutory damages, the
1010 court shall consider the nature of the defendant's noncompliance
1011 with s. 559.72 or s. 559.721, the frequency and persistence of
1012 such noncompliance, and the extent to which such noncompliance
1013 was intentional. In a ~~any~~ class action lawsuit brought under
1014 this section, the court may award additional statutory damages
1015 of up to \$1,000 for each named plaintiff and an aggregate award

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1016 of additional statutory damages up ~~not~~ to ~~exceed~~ the lesser of
1017 \$500,000 or 1 percent of the defendant's net worth for all
1018 remaining class members; however, the, ~~but in no event may this~~
1019 aggregate award may not provide an individual class member with
1020 additional statutory damages in excess of \$1,000. The court may~~7~~
1021 ~~in its discretion,~~ award punitive damages and ~~may~~ provide such
1022 equitable relief as it deems necessary or proper, including
1023 enjoining the defendant from further violations of this part. If
1024 the court finds that the suit fails to raise a justiciable issue
1025 of law or fact, the plaintiff is ~~shall be~~ liable for court costs
1026 and reasonable attorney's fees incurred by the defendant.

1027 ~~(3) A person shall not be held liable in any action brought~~
1028 ~~under this section if the person shows by a preponderance of the~~
1029 ~~evidence that the violation was not intentional and resulted~~
1030 ~~from a bona fide error, notwithstanding the maintenance of~~
1031 ~~procedures reasonably adapted to avoid any such error.~~

1032 (3) ~~(4)~~ An action brought under this section must be
1033 commenced within 5 ~~2~~ years after the date of the last violation
1034 upon which the action is founded ~~on which the alleged violation~~
1035 ~~occurred.~~

1036 (4) ~~(5)~~ In applying and construing this section, due
1037 consideration and great weight shall be given to the
1038 interpretations of the Federal Trade Commission and the federal
1039 courts relating to the federal Fair Debt Collection Practices
1040 Act.

1041 Section 25. Section 559.78, Florida Statutes, is amended to
1042 read:

1043 559.78 Judicial enforcement.—In addition to other penalties
1044 provided under ~~in~~ this part, state attorneys and their

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1045 assistants may ~~are authorized to~~ apply to the court ~~of competent~~
1046 ~~jurisdiction~~ within their respective jurisdictions, upon the
1047 sworn affidavit of any person alleging a violation of any
1048 provision of the provisions of this part. Such court shall have
1049 jurisdiction, upon hearing and for cause shown, to grant a
1050 temporary or permanent injunction restraining any person from
1051 violating any provision of this part, whether or not there
1052 exists an adequate remedy at law, ~~and such injunction,~~
1053 ~~suspension, or revocation~~ shall issue without bond.

1054 Section 26. Section 559.785, Florida Statutes, is amended
1055 to read:

1056 559.785 Criminal penalty.—It is a felony of the third ~~shall~~
1057 ~~be a misdemeanor of the first~~ degree, punishable as provided in
1058 s. 775.082, ~~or~~ s. 775.083, or s. 775.084, for any person subject
1059 to licensure under not exempt from registering as provided in
1060 this part to engage in collecting consumer debts in this state
1061 without first obtaining a license from ~~registering with the~~
1062 office, or to obtain a license ~~register~~ or attempt to obtain a
1063 license ~~register~~ by means of fraud, misrepresentation, or
1064 concealment.

1065 Section 27. Section 559.786, Florida Statutes, is created
1066 to read:

1067 559.786 Surrender of license.—All licenses issued under
1068 this part are state property and upon notice of suspension,
1069 revocation, refusal to renew, failure to renew, expiration, or
1070 other termination of the license, such license is no longer in
1071 force and effect. This section does not require the surrender of
1072 the license to the office unless surrender has been requested by
1073 the office.

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1074 Section 28. Section 589.787, Florida Statutes, is created
1075 to read:

1076 589.787 Deceptive and unfair trade practices.—A violation
1077 of this part is a violation of the Florida Deceptive and Unfair
1078 Trade Practices Act. In addition to any remedy provided under
1079 this part, violations of this part are subject to the penalties
1080 and remedies provided under part II of chapter 501.

1081 Section 29. Section 559.788, Florida Statutes, is created
1082 to read:

1083 559.788 Rules; violations.—

1084 (1) The office may adopt rules to administer this part.

1085 (2) In addition to any other penalty, willful violation of
1086 any rule adopted under this part subjects the violator to such
1087 fine, suspension, or revocation of license as applicable for a
1088 violation of the provision to which the rule relates.

1089 Section 30. This act shall take effect October 1, 2010.