

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Hudson offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove line 436 and insert:

5  
6 Section 10. The Division of Statutory Revision is directed  
7 to redesignate the title of part II of chapter 559, Florida  
8 Statutes, consisting of ss. 559.101-559.116, as "Debt Settlement  
9 Services."

10 Section 11. Effective January 1, 2011, section 559.101,  
11 Florida Statutes, is created to read:

12 559.101 Short title.—This part may be cited as the "Debt  
13 Settlement Services Act."

14 Section 12. Effective January 1, 2011, section 559.102,  
15 Florida Statutes, is created to read:

16 559.102 Definitions.—As used in this part, the term:

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

18 (2) "Control person" means an individual, partnership,  
19 corporation, trust, or other organization that possesses the  
20 power, directly or indirectly, to direct the management or  
21 policies of a company, whether through ownership of securities,  
22 by contract, or otherwise. The term includes, but is not limited  
23 to:

24 (a) A company's executive officers, including the  
25 president, chief executive officer, chief financial officer,  
26 chief operations officer, chief legal officer, chief compliance  
27 officer, director, or other individuals having similar status or  
28 functions.

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

33 (c) For a partnership, all general partners and limited or  
34 special partners who have contributed 10 percent or more, or who  
35 have the right to receive upon dissolution 10 percent or more,  
36 of the partnership's capital.

37 (d) For a trust, each trustee.

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

42 (3) "Debt settlement organization " means a person who  
43 provides or offers to provide debt settlement services for  
44 compensation.

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45 (4) "Debt settlement services" means services, other than  
46 foreclosure-related rescue services, provided to a debtor with  
47 the expectation of obtaining the creditor's agreement to accept  
48 less than the principal amount of a debt in full satisfaction of  
49 the debt.

50 (5) "Debtor" means an individual who obtains credit, seeks  
51 a credit agreement with a creditor, or owes money to a creditor.

52 (6) "Enrolled debt" means the amount of debt at the time  
53 the contract for debt settlement services is entered but does  
54 not include any increases in the amount of debt or additional  
55 fees or penalties applied to the debt after services included in  
56 the contract are initiated.

57 (7) "Financial analysis" means the review of an  
58 individual's budget, income, expenses, and debt by the debt  
59 settlement organization in order to determine the individual's  
60 suitability for additional debt settlement services provided by  
61 the organization.

62 (8) "Office" means the Office of Financial Regulation of  
63 the Financial Services Commission.

64 (9) "Person" has the same meaning as provided in s. 1.01.

65 (10) "Service contract" means the agreement for services  
66 between a debt settlement organization and a debtor.

67 Section 13. Effective January 1, 2011, section 559.103,  
68 Florida Statutes, is created to read:

69 559.103 Powers and duties of the Office of Financial  
70 Regulation; fees.-

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

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

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

80       Section 14. Effective January 1, 2011, section 559.104,  
81 Florida Statutes, is created to read:

82       559.104 Rules.—The commission may adopt rules to  
83 administer this part, including rules that:

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

86       (2) Establish time periods during which an applicant for  
87 registration is barred from registration or a registered debt  
88 settlement organization is barred from renewal due to prior  
89 criminal convictions of, or guilty or nolo contendere pleas by,  
90 any of the applicant's or registrant's control persons,  
91 regardless of adjudication.

92       (a) The rules must provide:

93       1. Permanent bars for felonies involving money laundering,  
94 breach of trust, dishonesty, embezzlement, fraud, fraudulent  
95 conversion, misappropriation of property, racketeering, or  
96 theft;

97       2. A 15-year disqualifying period for felonies involving  
98 moral turpitude;

99       3. A 7-year disqualifying period for all other felonies;  
100 and

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

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

108 (c) The rules may provide for mitigating factors for  
109 crimes identified in subparagraph (a)2. However, the mitigation  
110 may not result in a period of disqualification less than 7  
111 years. The rule may not mitigate the disqualifying periods in  
112 subparagraphs (a)1., (a)3., and (a)4.

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

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

117 Section 15. Effective January 1, 2011, section 559.105,  
118 Florida Statutes, is created to read:

119 559.105 Exceptions.—This part does not apply to:

120 (1) A person licensed to practice law in this state who is  
121 providing debt settlement services.

122 (2) A person who engages in debt settlement services to  
123 adjust the indebtedness owed to such person.

124 (3) The following entities or their subsidiaries:

125 (a) The Federal National Mortgage Association.

126 (b) The Federal Home Loan Mortgage Corporation.

127 (c) The Florida Housing Finance Corporation created  
128 pursuant to s. 420.504.

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129 (d) Any financial institution as defined in s.  
130 655.005(1)(h).

131 (e) A consumer reporting agency as defined in the Federal  
132 Fair Credit Reporting Act, 15 U.S.C. s. 1681a.

133 Section 16. Effective January 1, 2011, section 559.106,  
134 Florida Statutes, is created to read:

135 559.106 Registration of debt settlement organization.—

136 (1) Effective April 1, 2011, each person who acts as a  
137 debt settlement organization in this state must be registered in  
138 accordance with this section. This applies to debt settlement  
139 organizations operating in this state or from another state,  
140 regardless of whether such organization is registered, licensed,  
141 or the equivalent in accordance with the laws of another state.

142 (2) In order to apply for registration, an applicant must  
143 submit:

144 (a) A completed registration application form as  
145 prescribed by commission rule which includes the name and  
146 principal business address and e-mail address of the debt  
147 settlement organization.

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

151 (c) Fingerprints for the applicant and each of the  
152 applicant's control persons in accordance with rules adopted by  
153 the commission.

154 1. The fingerprints may be submitted to the office or a  
155 vendor acting on behalf of the office.

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156 2. The office may contract with a third-party vendor to  
157 provide live-scan fingerprinting in lieu of a paper fingerprint  
158 card.

159 3. A state criminal history background check must be  
160 conducted through the Department of Law Enforcement, and a  
161 federal criminal history background check must be conducted  
162 through the Federal Bureau of Investigation.

163 4. All fingerprints submitted to the Department of Law  
164 Enforcement must be submitted electronically and entered into  
165 the statewide automated fingerprint identification system  
166 established in s. 943.05(2)(b) and available for use in  
167 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
168 annual fee to the department to participate in the system and  
169 inform the department of any person whose fingerprints are no  
170 longer required to be retained.

171 5. The costs of fingerprint processing, including the cost  
172 of retaining the fingerprints, shall be borne by the person  
173 subject to the background check.

174 6. The office is responsible for reviewing the results of  
175 the state and federal criminal history checks and determining  
176 whether the applicant meets registration requirements.

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

179 (e) Submit additional information or documentation  
180 requested by the office and required by rule concerning the  
181 applicant or a control person of the applicant. Additional  
182 information may include documentation of pending and prior  
183 disciplinary and criminal history events, including arrest

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184 reports and certified copies of charging documents, plea  
185 agreements, judgments and sentencing documents, documents  
186 relating to pretrial intervention, orders terminating probation  
187 or supervised release, final administrative agency orders, or  
188 other comparable documents that may provide the office with the  
189 appropriate information to determine eligibility for  
190 registration.

191 (3) An application is considered received for the purposes  
192 of s. 120.60 upon the office's receipt of the completed  
193 application form, all required documentation, criminal history  
194 information, the application fee, and all applicable  
195 fingerprinting processing fees.

196 (4) The office shall issue a debt settlement organization  
197 registration to each applicant who is not otherwise ineligible  
198 and who meets the requirements of this section. However, it is a  
199 ground for denial of registration if the applicant or one of the  
200 applicant's control persons:

201 (a) Has been found guilty of, regardless of adjudication,  
202 or has entered a plea of nolo contendere or guilty to, any  
203 felony, any crime involving racketeering, fraud, theft,  
204 embezzlement, fraudulent conversion, breach of trust,  
205 misappropriation of property, dishonesty, or moral turpitude;

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

207 (c) Is the subject of a pending felony criminal  
208 prosecution or a prosecution or an administrative enforcement  
209 action, in any jurisdiction, which involves fraud, racketeering,  
210 embezzlement, fraudulent conversion, misappropriation of

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211 property, theft, dishonesty, breach of trust, or any other act  
212 of moral turpitude;

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

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

219 (f) Has been the subject of any decision, finding,  
220 injunction, suspension, prohibition, revocation, denial,  
221 judgment, or other adverse action by any state or federal  
222 agency.

223 (5) A registration issued under this section expires  
224 annually on March 31, unless canceled, suspended, revoked, or  
225 otherwise terminated, and must be renewed as provided under s.  
226 559.107.

227 Section 17. Effective April 1, 2011, section 559.107,  
228 Florida Statutes, is created to read:

229 559.107 Registration renewal.—

230 (1) In order to renew a debt settlement organization  
231 registration, a debt settlement organization must submit:

232 (a) A completed registration renewal form as prescribed by  
233 commission rule.

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

236 (c) Any additional information or documentation requested  
237 by the office and required by rule concerning the registrant or  
238 control person of the registrant. Additional information may

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239 include documentation of any pending and prior disciplinary and  
240 criminal history events, including arrest reports and certified  
241 copies of charging documents, plea agreements, judgments and  
242 sentencing documents, documents relating to pretrial  
243 intervention, orders terminating probation or supervised  
244 release, final administrative agency orders, or other comparable  
245 documents that may provide the office with the appropriate  
246 information to determine eligibility for renewal of  
247 registration.

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

251 (2) The office may not renew a debt settlement  
252 organization registration unless the registrant continues to  
253 meet the minimum requirements for initial registration pursuant  
254 to s. 559.106 and adopted rule.

255 Section 18. Effective January 1, 2011, section 559.108,  
256 Florida Statutes, is created to read:

257 559.108 Financial requirements; surety bond; disclosure.—A  
258 debt settlement organization must:

259 (1) Obtain and maintain at all times insurance coverage  
260 for employee dishonesty, depositor's forgery, and computer fraud  
261 in an amount not less than the greater of \$100,000 or 10 percent  
262 of the monthly average of the aggregate of all deposits made by  
263 debtors to the organization for distribution to creditors for  
264 the 6 months immediately preceding the date of initial  
265 application for or renewal of the insurance. The deductible on

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266 such coverage may not exceed 10 percent of the face amount of  
267 the policy coverage.

268 (2) Obtain and maintain a surety bond from a surety  
269 company authorized to do business in this state. The amount and  
270 form of the bond shall be specified by rule and must be at least  
271 \$50,000 but may not exceed \$1 million. The rule must provide  
272 allowances for business volume. The bond shall be in favor of  
273 the state for the use and benefit of any debtor who suffers or  
274 sustains any loss or damage by reason of any violation of this  
275 part. Pursuant to initial registration and renewal, each  
276 applicant shall furnish to the office:

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

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

281 (c) A statement from the surety company that the bond  
282 issued by the surety company meets the requirements of this  
283 part. The liability of the surety company under any bond issued  
284 pursuant to this section may not, in the aggregate, exceed the  
285 amount of the bond regardless of the number or amount of any  
286 claims filed or which might be asserted against the surety on  
287 such bond. If multiple claims are filed which collectively  
288 exceed the amount of the bond, the surety may pay the full  
289 amount of the bond to the office and is not further liable under  
290 the bond. The office shall hold such funds for distribution to  
291 claimants and administratively determine and pay to each  
292 claimant a pro rata share of each valid claim made within 6

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293 months after the date the first claim is filed against the  
294 surety.

295 Section 19. Effective January 1, 2011, section 559.109,  
296 Florida Statutes, is created to read:

297 559.109 Maintenance of records.-

298 (1) Each registered debt settlement organization shall  
299 maintain, at the principal place of business designated on the  
300 registration, all books, accounts, records, and documents  
301 necessary to determine the registrant's compliance with this  
302 part.

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

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

311 (4) All books, accounts, records, documents, and receipts  
312 of any payment transaction must be preserved and kept available  
313 for inspection by the office for at least 5 years after the date  
314 the transaction is completed. The commission may prescribe by  
315 rule requirements for the destruction of books, accounts,  
316 records, and documents retained by the registrant after the  
317 completion of the required 5-year period.

318 Section 20. Effective January 1, 2011, section 559.111,  
319 Florida Statutes, is created to read:

320 559.111 Financial analysis; service contracts.-

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321 (1) Before a debtor signs a service contract, the debt  
322 settlement organization shall prepare, retain a copy of, and  
323 provide to the debtor a written financial analysis specific to  
324 the debtor which includes an evaluation of the debtor's income,  
325 expenses, and all debts. An additional fee may not be charged  
326 for the financial analysis.

327 (2) Based on the completed financial analysis, the debt  
328 settlement organization shall provide to the debtor, and retain  
329 a copy of, a written determination of the debtor's suitability  
330 for debt settlement services and whether the debtor can  
331 reasonably meet the requirements of the service contract,  
332 including the debtor's ability to save the amount estimated to  
333 be needed to fund the settlement of the debt.

334 (3) The service contract between the debt settlement  
335 organization and the debtor must be signed and dated by the  
336 debtor and include all of the following:

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

339  
340 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR  
341 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS  
342 MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT,  
343 INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN,  
344 OR RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

345  
346 YOUR USE OF DEBT SETTLEMENT SERVICES MAY RESULT IN  
347 LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE CREDIT

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348 RATING. YOU SHOULD CONTACT YOUR CREDITOR FOR MORE  
349 INFORMATION.

351 (b) A full and detailed description of the services to be  
352 performed by the debt settlement organization for the debtor,  
353 including the financial analysis determining the suitability of  
354 the debtor for debt settlement services, all guarantees and all  
355 promises of full or partial refunds, the estimated date or  
356 length of time by which the services are to be performed, and a  
357 copy of the Florida Debt Settlement Services Act.

358 (c) All terms and conditions of payment, including the  
359 anticipated total of all payments to be made by the debtor and  
360 the estimated amount of any payments to be made to the debt  
361 settlement organization or to any other person.

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

365 (e) A clear and conspicuous statement in boldface type, in  
366 immediate proximity to the space reserved for the debtor's  
367 signature, which states: "You, the debtor, may cancel this  
368 service contract at any time before midnight of the 5th business  
369 day after the date of signing this contract. (See the attached  
370 notice of right to cancel for further explanation of this  
371 right.)"

372 (f) A notice of right to cancel attached to the contract,  
373 in duplicate and easily detachable, which contains the following  
374 statement in at least 12-point uppercase type:

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NOTICE OF RIGHT TO CANCEL

YOU MAY CANCEL ANY CONTRACT FOR DEBT SETTLEMENT SERVICES WITHIN 5 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION.

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

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

TO: ... (name of debt settlement organization) ...

AT: ... (address) ...

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

... (Signature of Debtor) ...

... (Date) ...

... (Address) ...

... (Phone Number) ...

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

409 Section 21. Effective January 1, 2011, section 559.112,  
410 Florida Statutes, is created to read:

411 559.112 Prohibited acts.—

412 (1) A debt settlement organization may not, directly or  
413 indirectly, charge or accept from a debtor:

414 (a) Any payment for services before the execution of a  
415 written service contract.

416 (b) A fee or contribution greater than \$50 for the initial  
417 setup or initial consultation.

418 (c) A fee or contribution for debt settlement services  
419 that exceeds 40 percent of the realized savings. As used in this  
420 paragraph, the term "realized savings" means the difference  
421 between the amount of the enrolled debt and the amount paid to  
422 the creditor in discharge of the enrolled debt. However, such  
423 fee or contribution collected for debt settlement services, in  
424 the aggregate, may not exceed 20 percent of the enrolled debt.

425 (d) For a service contract requiring payment of a fee or  
426 contribution on a monthly basis, a fee or contribution for debt  
427 settlement services that exceeds 20 percent of the enrolled  
428 debt. Such fees or contributions may only be collected under  
429 this paragraph by apportioning the collection of the fees or  
430 contributions pro rata throughout at least one-half of the  
431 estimated term of the debt settlement services.

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A fee or contribution authorized under this subsection is not a part of, and may not be included in the calculation of, the total enrolled debt.

(2) A debt settlement organization may not:

(a) Advise any debtor, directly or indirectly, against contacting or communicating with her or his creditors before or during the service contract period.

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

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

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

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

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

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

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460 (h) Fail to report on a form prescribed by commission rule  
461 any change to information contained in an initial application  
462 form or any amendment to the application within 30 days after  
463 the change is effective.

464 (i) Fail to comply with any of the provisions of this  
465 part.

466 Section 22. Effective January 1, 2011, section 559.113,  
467 Florida Statutes, is created to read:

468 559.113 Debtor complaints; administrative duties.-

469 (1) The office shall receive and maintain records of  
470 correspondence and complaints from debtors concerning any person  
471 who provides debt settlement services, including any debt  
472 settlement organization.

473 (2) The office shall inform and furnish relevant  
474 information to the appropriate regulatory body if a debt  
475 settlement organization exempt from registration under this part  
476 has been named in consumer complaints alleging violations of  
477 this part.

478 (3) The office shall investigate complaints and record the  
479 resolution of such complaints.

480 (4) A debt settlement organization that provides or  
481 attempts to provide debt settlement services without first  
482 registering in accordance with this part is subject to a penalty  
483 of up to \$25,000 in addition to the other remedies provided in  
484 this part and under part II of chapter 501. The office shall  
485 advise the appropriate state attorney, or the Attorney General,  
486 of any determination by the office of a violation of this part  
487 by any debt settlement organization that is not registered as  
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488 required by this part. The office shall furnish the state  
489 attorney or Attorney General with the office's information  
490 concerning the alleged violations of such requirements. The  
491 enforcing authority is entitled to reasonable attorney's fees  
492 and costs in any action brought to enforce this part against an  
493 unregistered debt settlement organization.

494 (5) A registered debt settlement organization must provide  
495 a written response to the office within 20 days after receipt of  
496 a written request from the office for information concerning a  
497 consumer complaint. The response must address the issues and  
498 allegations raised in the complaint. The office may impose an  
499 administrative fine of up to \$2,500 per request per day upon any  
500 registrant that fails to comply with this subsection.

501 Section 23. Effective January 1, 2011, section 559.114,  
502 Florida Statutes, is created to read:

503 559.114 Subpoenas.—

504 (1) The office may:

505 (a) Issue and serve subpoenas and subpoenas duces tecum to  
506 compel the attendance of witnesses and the production of all  
507 books, accounts, records, and other documents and materials  
508 relevant to an investigation conducted by the office. The  
509 office, or its authorized representative, may administer oaths  
510 and affirmations to any person.

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

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516 (2) If there is substantial noncompliance with a subpoena  
517 or subpoena duces tecum issued by the office, the office may  
518 petition the court in the county where the person subpoenaed  
519 resides or has her or his principal place of business for an  
520 order requiring the person to appear, testify, or produce such  
521 books, accounts, records, and other documents as are specified  
522 in the subpoena or subpoena duces tecum.

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

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

534 Section 24. Effective January 1, 2011, section 559.115,  
535 Florida Statutes, is created to read:

536 559.115 Cease and desist orders.—The office may issue and  
537 serve upon any person an order to cease and desist and to take  
538 corrective action if it has reason to believe the person is  
539 violating, has violated, or is about to violate any provision of  
540 this part, any rule or order issued under this part, or any  
541 written agreement between the person and the office. All  
542 procedural matters relating to issuance and enforcement of such  
543 order are governed by the Administrative Procedure Act.

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544 Section 25. Effective January 1, 2011, section 559.116,  
545 Florida Statutes, is created to read:

546 559.116 Violations; penalties.-

547 (1) A person who violates any provision of this part  
548 commits an unfair or deceptive trade practice as defined in part  
549 II of chapter 501 and is also subject to the penalties,  
550 remedies, and enforcement actions provided therein. Further, any  
551 debtor injured by a violation of this part may bring an action  
552 for recovery of damages. Judgment shall be entered for actual  
553 damages, but in no case less than the amount paid by the debtor  
554 to the debt settlement organization plus reasonable attorney's  
555 fees and costs.

556 (2) The office may impose an administrative fine on, or  
557 revoke or suspend the registration of a registrant who has  
558 committed a violation of this part. Final action to fine,  
559 suspend, or revoke the registration of a registrant is subject  
560 to review in accordance with chapter 120.

561 (a) The office may impose suspension rather than  
562 revocation of a registration if circumstances warrant that one  
563 or the other should be imposed and the registrant demonstrates  
564 that the registrant has taken affirmative steps that can be  
565 expected to effectively eliminate the violations and that the  
566 registrant's registration has never been previously suspended.

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

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571 (3) A person who provides debt settlement services in this  
572 state without first registering with the office, or who  
573 registers or attempts to register by means of fraud,  
574 misrepresentation, or concealment, commits a felony of the third  
575 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
576 775.084.

577 Section 26. Effective January 1, 2011, paragraph (g) of  
578 subsection (1) of section 516.07, Florida Statutes, is amended  
579 to read:

580 516.07 Grounds for denial of license or for disciplinary  
581 action.—

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

586 (g) Any violation of part III of chapter 817 ~~or part II of~~  
587 ~~chapter 559 or of any rule adopted under part II of chapter 559.~~

588 Section 27. Sections 559.10, 559.11, 559.12, and 559.13,  
589 Florida Statutes, are repealed.

590 Section 28. Effective July 1, 2010, the sums of \$261,938  
591 in recurring funds and \$213,767 in nonrecurring funds are  
592 appropriated from the Regulatory Trust Fund of the Department of  
593 Financial Services to the Office of Financial Regulation, and  
594 four full-time equivalent positions with the associated salary  
595 rate of 187,707 are authorized, for the purpose of administering  
596 this act during the 2010-2011 fiscal year.

597 Section 29. Except as otherwise expressly provided in this  
598 act and except for this section, which shall take effect upon  
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599 | this act becoming a law, this act shall take effect October 1,  
600 | 2010.

601 |

602 | -----

603 |

**T I T L E   A M E N D M E N T**

604 |

Remove line 26 and insert:

605 |

federal law; providing a directive to the Division of

606 |

Statutory Revision; creating s. 559.101, F.S.; providing a

607 |

short title; creating s. 559.102, F.S.; providing

608 |

definitions; creating s. 559.103, F.S.; providing the

609 |

powers of the Office of Financial Regulation; creating s.

610 |

559.104, F.S.; authorizing the Financial Services

611 |

Commission to adopt rules; creating s. 559.105, F.S.;

612 |

providing exceptions from the applicability of provisions

613 |

regulating debt settlement services; providing an

614 |

exception for attorneys representing clients; creating s.

615 |

559.106, F.S.; requiring debt settlement organizations to

616 |

be registered with the office; providing a registration

617 |

fee; requiring background screening of applicants and

618 |

control persons; providing grounds for registration

619 |

issuance or denial; requiring annual renewal; creating s.

620 |

559.107, F.S.; requiring registration renewal; creating s.

621 |

559.108, F.S.; requiring a debt settlement organization to

622 |

obtain certain insurance coverage and a surety bond and to

623 |

provide proof of such bond to the office; creating s.

624 |

559.109, F.S.; requiring a debt settlement organization to

625 |

maintain records; creating s. 559.111, F.S.; requiring a

626 |

debt settlement organization to prepare a financial

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627 analysis for the debtor; providing for service contracts;  
628 requiring certain provisions to be included in such  
629 contracts; requiring the debt settlement organization to  
630 provide the debtor with copies of all signed documents;  
631 creating s. 559.112, F.S.; prohibiting certain acts by  
632 debt settlement organizations; providing penalties;  
633 creating s. 559.113, F.S.; providing for debtor complaints  
634 to the office; providing procedures and office duties,  
635 including administrative penalties; creating s. 559.114,  
636 F.S.; providing for the issuance of subpoenas by the  
637 office; creating s. 559.115, F.S.; authorizing the office  
638 to issue cease and desist orders; creating s. 559.116,  
639 F.S.; declaring that violations of the part are deceptive  
640 and unfair trade practices; providing administrative  
641 penalties; specifying violations that result in criminal  
642 penalties; amending s. 516.07, F.S.; conforming a cross-  
643 reference; repealing ss. 559.10, 559.11, 559.12, and  
644 559.13, F.S., relating to budget planning; providing an  
645 appropriation and authorizing additional positions;  
646 providing effective dates.