

By Senator Hays

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1                   A bill to be entitled  
2           An act relating to consumer collection practices;  
3           amending s. 559.55, F.S.; defining terms; amending s.  
4           559.553, F.S.; removing provisions relating to the  
5           revocation or suspension of a professional license  
6           which allow the Office of Financial Regulation to  
7           reject an applicant for registration; conforming a  
8           cross-reference to changes made by the act; creating  
9           s. 559.554, F.S.; providing for the powers and duties  
10          of the Financial Services Commission and the Office of  
11          Financial Regulation; creating s. 559.5541, F.S.;  
12          authorizing the office to conduct examinations and  
13          investigations; amending s. 559.555, F.S.; revising  
14          requirements for registration as a consumer collection  
15          agency; specifying a registration fee; creating s.  
16          559.5551, F.S.; requiring registrants to report,  
17          within a specified time period, a conviction of, or  
18          plea of nolo contendere to, a crime or an  
19          administrative enforcement action; requiring  
20          registrants to report, within a specified time period,  
21          a change in a control person or the form of the  
22          organization, or any other change in the information  
23          supplied in the initial application; amending s.  
24          559.565, F.S.; conforming a cross-reference to changes  
25          made by the act; amending s. 559.730, F.S.; revising  
26          the administrative remedies and penalties available to  
27          the office; requiring the commission to adopt  
28          guidelines to impose administrative penalties;  
29          providing an effective date.

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30  
31 Be It Enacted by the Legislature of the State of Florida:

32  
33 Section 1. Section 559.55, Florida Statutes, is reordered  
34 and amended to read:

35 559.55 Definitions.—The following terms shall, unless the  
36 context otherwise indicates, have the following meanings for the  
37 purpose of this part:

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

39 (6)(1) "Debt" or "consumer debt" means any obligation or  
40 alleged obligation of a consumer to pay money arising out of a  
41 transaction in which the money, property, insurance, or services  
42 that which are the subject of the transaction are primarily for  
43 personal, family, or household purposes, whether or not such  
44 obligation has been reduced to judgment.

45 (8)(2) "Debtor" or "consumer" means any natural person  
46 obligated or allegedly obligated to pay any debt.

47 (4) "Control person" means an individual, partnership,  
48 corporation, trust, or organization that possesses the power,  
49 directly or indirectly, to direct the management or policies of  
50 a company, whether through ownership of securities, by contract,  
51 or otherwise. The term includes, but is not limited to:

52 (a) A company's executive officers, including the  
53 president, chief executive officer, chief financial officer,  
54 chief operations officer, chief legal officer, chief compliance  
55 officer, director, and other individuals having similar status  
56 or functions.

57 (b) For a corporation, a shareholder who, directly or  
58 indirectly, owns 10 percent or more or that has the power to

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59 vote 10 percent or more, of a class of voting securities unless  
60 the applicant is a publicly traded company.

61 (c) For a partnership, all general partners and limited or  
62 special partners who have contributed 10 percent or more or that  
63 have the right to receive, upon dissolution, 10 percent or more  
64 of the partnership's capital.

65 (d) For a trust, each trustee.

66 (e) For a limited liability company, all elected managers  
67 and those members who have contributed 10 percent or more or  
68 that have the right to receive, upon dissolution, 10 percent or  
69 more of the partnership's capital.

70 (5)-(3) "Creditor" means a any person who offers or extends  
71 credit creating a debt or to whom a debt is owed. The term, ~~but~~  
72 does not include a any person to the extent that they receive an  
73 assignment or transfer of a debt in default solely for the  
74 purpose of facilitating collection of such debt for another.

75 (10)-(4) "Office" means the Office of Financial Regulation  
76 of the ~~Financial Services~~ commission.

77 (2)-(5) "Communication" means the conveying of information  
78 regarding a debt, directly or indirectly, to a any person  
79 through any medium.

80 (7)-(6) "Debt collector" means a any person who uses an any  
81 instrumentality of commerce within this state, whether initiated  
82 from within or outside this state, in any business the principal  
83 purpose of which is the collection of debts, or who regularly  
84 collects or attempts to collect, directly or indirectly, debts  
85 owed or due or asserted to be owed or due another. The term  
86 "debt collector" includes a any creditor who, in the process of  
87 collecting her or his own debts, uses a any name other than her

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88 or his own which would indicate that a third person is  
89 collecting or attempting to collect such debts. The term does  
90 not include:

91 (a) An ~~Any~~ officer or employee of a creditor while, in the  
92 name of the creditor, collecting debts for such creditor;

93 (b) A ~~Any~~ person while acting as a debt collector for  
94 another person, both of whom are related by common ownership or  
95 affiliated by corporate control, if the person acting as a debt  
96 collector for persons to whom it is so related or affiliated and  
97 if the principal business of such persons is not the collection  
98 of debts;

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

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

106 (e) A ~~Any~~ not-for-profit organization which, at the request  
107 of consumers, performs bona fide consumer credit counseling and  
108 assists consumers in the liquidation of their debts by receiving  
109 payments from such consumers and distributing such amounts to  
110 creditors; or

111 (f) A ~~Any~~ person collecting or attempting to collect any  
112 debt owed or due or asserted to be owed or due another to the  
113 extent that such activity is incidental to a bona fide fiduciary  
114 obligation or a bona fide escrow arrangement; concerns a debt  
115 which was originated by such person; concerns a debt which was  
116 not in default at the time it was obtained by such person; or

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117 concerns a debt obtained by such person as a secured party in a  
118 commercial credit transaction involving the creditor.

119 (3)~~(7)~~ "Consumer collection agency" means a ~~any~~ debt  
120 collector or business entity engaged in the business of  
121 soliciting consumer debts for collection or of collecting  
122 consumer debts, which debt collector or business is not  
123 expressly exempted as specified in s. 559.553(3) ~~set forth in s.~~  
124 ~~559.553(4)~~.

125 (11)~~(8)~~ "Out-of-state consumer debt collector" means a ~~any~~  
126 person whose business activities in this state involve both  
127 collecting or attempting to collect consumer debt from debtors  
128 located in this state by means of interstate communication  
129 originating from outside this state and soliciting consumer debt  
130 accounts for collection from creditors who have a business  
131 presence in this state. For purposes of this subsection, a  
132 creditor has a business presence in this state if either the  
133 creditor or an affiliate or subsidiary of the creditor has an  
134 office in this state.

135 (9) "Federal Fair Debt Collection Practices Act" or  
136 "Federal Act" means the federal legislation regulating fair debt  
137 collection practices, as specified ~~set forth~~ in Pub. L. No. 95-  
138 109, as amended and published in 15 U.S.C. ss. 1692 et seq.

139 Section 2. Section 559.553, Florida Statutes, is amended to  
140 read:

141 559.553 Registration of consumer collection agencies  
142 required; exemptions.—

143 (1) A ~~After January 1, 1994, no~~ person may not ~~shall~~ engage  
144 in business in this state as a consumer collection agency or  
145 continue to do business in this state as a consumer collection

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146 agency without first registering in accordance with this part,  
147 and thereafter maintaining a valid registration.

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

151 ~~(3) A prospective registrant shall be entitled to be~~  
152 ~~registered when registration information is complete on its face~~  
153 ~~and the applicable registration fee has been paid; however, the~~  
154 ~~office may reject a registration submitted by a prospective~~  
155 ~~registrant if the registrant or any principal of the registrant~~  
156 ~~previously has held any professional license or state~~  
157 ~~registration which was the subject of any suspension or~~  
158 ~~revocation which has not been explained by the prospective~~  
159 ~~registrant to the satisfaction of the office either in the~~  
160 ~~registration information submitted initially or upon the~~  
161 ~~subsequent written request of the office. In the event that an~~  
162 ~~attempted registration is rejected by the office the prospective~~  
163 ~~registrant shall be informed of the basis for rejection.~~

164 (3)~~(4)~~ This section does ~~shall~~ not apply to:

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

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

167 (c) A ~~Any~~ financial institution authorized to do business  
168 in this state and any wholly owned subsidiary and affiliate  
169 thereof.

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

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

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

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

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

179 (i) ~~An~~ Any FDIC-insured institution or subsidiary or  
180 affiliate thereof.

181 ~~(4)~~ ~~(5)~~ An Any out-of-state consumer debt collector as  
182 defined in s. 559.55(11) ~~s. 559.55(8)~~ who is not exempt from  
183 registration by application of subsection (3) ~~(4)~~ and who fails  
184 to register in accordance with this part shall be subject to an  
185 enforcement action by the state as specified in s. 559.565.

186 Section 3. Section 559.554, Florida Statutes, is created to  
187 read:

188 559.554 Powers and duties of the commission and office.-

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

191 (2) The commission may adopt rules to administer this part,  
192 including rules:

193 (a) Requiring electronic submission of forms, documents,  
194 and fees required by this part.

195 (b) Establishing time periods during which a consumer  
196 collection agency is barred from registration due to prior  
197 criminal convictions of, or guilty or nolo contendere pleas by,  
198 an applicant's control persons, regardless of adjudication.

199 1. The rules must provide:

200 a. A 15-year disqualifying period for felonies involving  
201 fraud, dishonesty, breach of trust, money laundering, or other  
202 acts of moral turpitude.

203 b. A 7-year disqualifying period for felonies not specified

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204 in sub-subparagraph a.

205 c. A 5-year disqualifying period for misdemeanors involving  
206 fraud, dishonesty, or other acts of moral turpitude.

207 2. The rules must provide for an additional waiting period  
208 due to dates of imprisonment or community supervision, the  
209 commitment of multiple crimes, and other factors reasonably  
210 related to the applicant's criminal history.

211 3. The rules must provide for mitigating factors for crimes  
212 identified in sub-subparagraphs 1.a.-c.

213 4. An applicant is not eligible for registration until  
214 expiration of the disqualifying period set by rule.

215 5. Section 112.011 does not apply to eligibility for  
216 registration under this part.

217 (3) All fees, charges, and fines collected pursuant to this  
218 part shall be deposited into the Regulatory Trust Fund of the  
219 office.

220 Section 4. Section 559.5541, Florida Statutes, is created  
221 to read:

222 559.5541 Examinations and investigations.-

223 (1) Notwithstanding s. 559.725(4), the office may, without  
224 advance notice, conduct examinations and investigations, within  
225 or outside this state, to determine whether a person has  
226 violated this part or related rules. For purposes of this  
227 section, the office may examine the books, accounts, records,  
228 and other documents or matters of any person subject to this  
229 part. The office may compel the production of all relevant  
230 books, records, and other documents and materials relative to an  
231 examination or investigation. Examinations may not be made more  
232 often than once during a 48-month period unless the office has



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233 reason to believe a person has violated or will violate this  
234 part or related rules.

235 (2) In order to reduce the burden on persons subject to  
236 this part, the office may conduct a joint or concurrent  
237 examination with a state or federal regulatory agency and may  
238 furnish a copy of all examinations to an appropriate regulator  
239 if the regulator agrees to abide by the confidentiality  
240 provisions in chapter 119 and this part. The office may also  
241 accept an examination from any appropriate regulator.

242 Section 5. Section 559.555, Florida Statutes, is amended to  
243 read:

244 559.555 Registration of consumer collection agencies;  
245 procedure.—

246 (1) A Any person who acts required to register as a  
247 consumer collection agency must be registered in accordance with  
248 this section. shall furnish to the office the registration fee  
249 and information as follows:

250 (2) In order to apply for a consumer collection agency  
251 registration, an applicant must:

252 (a) Submit a completed application form as prescribed by  
253 rule of the commission.

254 (b) Submit a nonrefundable application fee of \$200.  
255 Application fees may not be prorated for partial years of  
256 registration.

257 (c) Submit fingerprints for each of the applicant's control  
258 persons in accordance with rules adopted by the commission.

259 1. The fingerprints may be submitted through a third-party  
260 vendor authorized by the Department of Law Enforcement to  
261 provide live-scan fingerprinting.

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262 2. A state criminal history background check must be  
263 conducted through the Department of Law Enforcement, and a  
264 federal criminal history background check must be conducted  
265 through the Federal Bureau of Investigation.

266 3. All fingerprints submitted to the Department of Law  
267 Enforcement must be submitted electronically and entered into  
268 the statewide automated biometric identification system  
269 established in s. 943.05(2)(b) and available for use in  
270 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
271 annual fee to the Department of Law Enforcement to participate  
272 in the system and inform the Department of Law Enforcement of  
273 any person whose fingerprints are no longer required to be  
274 retained.

275 4. The costs of fingerprint processing, including the cost  
276 of retaining the fingerprints, shall be borne by the person  
277 subject to the background check.

278 5. The office is responsible for reviewing the results of  
279 the state and federal criminal history background checks and  
280 determining whether the applicant meets registration  
281 requirements.

282 (3) The office shall issue a consumer collection agency  
283 registration to each person who is not otherwise ineligible and  
284 who meets the requirements of this section. However, it is a  
285 ground for denial of registration if the applicant or one of the  
286 applicant's control persons has committed any violation  
287 specified in this part, or is the subject of a pending felony  
288 criminal prosecution or a prosecution or an administrative  
289 enforcement action, in any jurisdiction, which involves fraud,  
290 dishonesty, breach of trust, money laundering, or any other act

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291 of moral turpitude.

292 (4) A registration issued under this part is not  
293 transferable or assignable.

294 (5) A consumer collection agency shall report, on a form  
295 prescribed by rule of the commission, any change in the  
296 information contained in an initial application form, or an  
297 amendment thereto, within 30 days after the change is effective.

298 ~~(1) The registrant shall pay to the office a registration~~  
299 ~~fee in the amount of \$200. All amounts collected shall be~~  
300 ~~deposited by the office to the credit of the Regulatory Trust~~  
301 ~~Fund of the office.~~

302 ~~(2) Each registrant shall provide to the office the~~  
303 ~~business name or trade name, the current mailing address, the~~  
304 ~~current business location which constitutes its principal place~~  
305 ~~of business, and the full name of each individual who is a~~  
306 ~~principal of the registrant. "Principal of a registrant" means~~  
307 ~~the registrant's owners if a partnership or sole proprietorship,~~  
308 ~~corporate officers, corporate directors other than directors of~~  
309 ~~a not-for-profit corporation organized pursuant to chapter 617~~  
310 ~~and Florida resident agent if a corporate registrant. The~~  
311 ~~registration information shall include a statement clearly~~  
312 ~~identifying and explaining any occasion on which any~~  
313 ~~professional license or state registration held by the~~  
314 ~~registrant, by any principal of the registrant, or by any~~  
315 ~~business entity in which any principal of the registrant was the~~  
316 ~~owner of 10 percent or more of such business, was the subject of~~  
317 ~~any suspension or revocation.~~

318 (6)~~(3)~~ Renewal of registration shall be made between  
319 October 1 and December 31 of each year. There shall be no

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320 proration of the fee for any registration. In order to renew a  
321 consumer collection agency registration, a registrant must  
322 submit a nonrefundable renewal fee equal to the registration fee  
323 and a nonrefundable fee to cover the costs of further  
324 fingerprint processing and retention as set forth by commission  
325 rule.

326 (7) A consumer collection agency registrant whose initial  
327 registration is approved and issued by the office pursuant to  
328 this section before October 1, 2014, who seeks renewal of the  
329 registration must submit fingerprints for each control person  
330 for live-scan processing pursuant to paragraph (2) (c). Such  
331 fingerprints must be submitted before renewing a registration  
332 that is scheduled to expire December 31, 2014.

333 Section 6. Section 559.5551, Florida Statutes, is created  
334 to read:

335 559.5551 Requirements of registrants.—A registrant under  
336 this part shall report to the office in a manner prescribed by  
337 rule of the commission:

338 (1) A conviction of, or plea of nolo contendere to,  
339 regardless of adjudication, a crime or administrative violation  
340 that involves fraud, dishonesty, breach of trust, money  
341 laundering, or any other act of moral turpitude, in any  
342 jurisdiction, by the registrant or any control person within 30  
343 days after the date of conviction, entry of a plea of nolo  
344 contendere, or final administrative action.

345 (2) A conviction of, or plea of nolo contendere to,  
346 regardless of adjudication, a felony committed by the registrant  
347 or any control person within 30 days after the date of  
348 conviction or the date the plea of nolo contendere is entered.

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349       (3) A change to the information contained in an initial  
350 application form or an amendment to the application within 30  
351 days after the change is effective.

352       (4) An addition or subtraction of a control person or a  
353 change in the form of business organization. A control person  
354 added by a registrant is subject to this part and must submit  
355 fingerprints in accordance with s. 559.555 and the rules of the  
356 commission. The office may bring an administrative action in  
357 accordance with s. 559.730 to enforce this part if the added  
358 control person fails to meet registration requirements or comply  
359 with any other provision of this part.

360       Section 7. Section 559.565, Florida Statutes, is amended to  
361 read:

362       559.565 Enforcement action against out-of-state consumer  
363 debt collector.— The remedies of this section are cumulative to  
364 other sanctions and enforcement provisions of this part for any  
365 violation by an out-of-state consumer debt collector, as defined  
366 in s. 559.55(11) ~~s. 559.55(8)~~.

367       (1) An out-of-state consumer debt collector who collects or  
368 attempts to collect consumer debts in this state without first  
369 registering in accordance with this part is subject to an  
370 administrative fine of up to \$10,000 together with reasonable  
371 attorney fees and court costs in any successful action by the  
372 state to collect such fines.

373       (2) A ~~Any~~ person, whether or not exempt from registration  
374 under this part, who violates s. 559.72 is subject to sanctions  
375 the same as any other consumer debt collector, including  
376 imposition of an administrative fine. The registration of a duly  
377 registered out-of-state consumer debt collector is subject to

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378 revocation or suspension in the same manner as the registration  
379 of any other registrant under this part.

380 (3) In order to effectuate this section and enforce the  
381 requirements of this part as it relates to out-of-state consumer  
382 debt collectors, the Attorney General is expressly authorized to  
383 initiate such action on behalf of the state as he or she deems  
384 appropriate in any state or federal court of competent  
385 jurisdiction.

386 Section 8. Section 559.730, Florida Statutes, is amended to  
387 read:

388 559.730 Grounds for disciplinary action; administrative  
389 remedies.—

390 (1) Each of the following acts constitutes a ground for  
391 which the disciplinary actions specified in subsection (2) may  
392 be taken against a person registered or required to be  
393 registered under this part:

394 (a) Failure to disburse funds in accordance with  
395 agreements.

396 (b) Fraud, misrepresentation, deceit, negligence, or  
397 incompetence in a collection transaction.

398 (c) Commission of fraud, misrepresentation, concealment, or  
399 dishonest dealing by trick, scheme, or device; culpable  
400 negligence; breach of trust in a business transaction in any  
401 state, nation, or territory; or aiding, assisting, or conspiring  
402 with another person engaged in such misconduct and in  
403 furtherance thereof.

404 (d) Being convicted of, or entering a plea of guilty or  
405 nolo contendere to, regardless of adjudication, a felony or  
406 crime involving fraud, dishonesty, breach of trust, money

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407 laundering, or act of moral turpitude.

408 (e) Having a final judgment entered against the registrant  
409 in a civil action upon grounds of fraud, embezzlement,  
410 misrepresentation, or deceit.

411 (f) Being the subject of a decision, finding, injunction,  
412 suspension, prohibition, revocation, denial, judgment, or  
413 administrative order by a court of competent jurisdiction or an  
414 administrative law judge, or by a state or federal agency,  
415 involving a violation of a federal or state law relating to debt  
416 collection or a rule or regulation adopted under such law.

417 (g) Having a license or registration, or the equivalent, to  
418 practice a profession or occupation denied, suspended, or  
419 revoked, or otherwise acted against, including the denial of a  
420 registration or license by a registration or licensing authority  
421 of this state or another state, territory, or country.

422 (h) Acting as a consumer collection agency without a  
423 current registration issued under this part.

424 (i) A material misstatement or omission of fact on an  
425 initial or amended registration application.

426 (j) Payment to the office for a registration or permit with  
427 a check or electronic transmission of funds, which is dishonored  
428 by the applicant's or registrant's financial institution.

429 (k) Failure to comply with, or a violation of, any  
430 provision of this part, or any rule or order made or issued  
431 pursuant to this part.

432 (l) Failure to maintain, preserve, and keep available for  
433 examination all books, accounts, or other documents required by  
434 this part and the rules of the commission.

435 (m) Refusal to permit an investigation or examination of

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436 books and records, or refusal to comply with an office subpoena  
437 or subpoena duces tecum.

438 (n) Failure to timely pay a fee, charge, or fine imposed or  
439 assessed pursuant to this part and the rules of the commission.

440 (2) If the office finds a person in violation of any act  
441 specified in this section, it may enter an order imposing one or  
442 more of the following penalties:

443 (a) Issuance of a reprimand.

444 (b) Suspension of a registration, subject to reinstatement  
445 upon satisfying all reasonable conditions imposed by the office.

446 (c) Revocation of a registration.

447 (d) Denial of a registration.

448 (e) Imposition of a fine of up to \$10,000 for each count or  
449 separate offense.

450 (f) An administrative fine of up to \$1,000 per day for each  
451 day that a person engages as a consumer collection agency  
452 without a valid registration issued under this part.

453 ~~(1) The office may impose an administrative fine against,~~  
454 ~~or revoke or suspend the registration of, a registrant under~~  
455 ~~this part who has committed a violation of s. 559.72. Final~~  
456 ~~action to fine, suspend, or revoke the registration of a~~  
457 ~~registrant is subject to review in accordance with chapter 120.~~

458 (3)~~(2)~~ The office may impose suspension rather than  
459 revocation of a registration if circumstances warrant that one  
460 or the other should be imposed and the registrant demonstrates  
461 that the registrant has taken affirmative steps that can be  
462 expected to effectively eliminate the violations and that the  
463 registrant's registration has never been previously suspended.

464 (4) A consumer collection agency is subject to the



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465 disciplinary actions specified in subsection (2) for a violation  
466 of subsection (1) by a control person of the consumer collection  
467 agency.

468 (5) Pursuant to s. 120.60(6), the office may summarily  
469 suspend the registration of a consumer collection agency if the  
470 office has reason to believe that a registrant poses an  
471 immediate, serious danger to the public's health, safety, or  
472 welfare. The arrest of the registrant, or the consumer  
473 collection agency's control person, for any felony or any crime  
474 involving fraud, dishonesty, breach of trust, money laundering,  
475 or any other act of moral turpitude is deemed sufficient to  
476 constitute an immediate danger to the public's health, safety,  
477 or welfare. Any proceeding for the summary suspension of a  
478 registration must be conducted by the commissioner of the  
479 office, or designee, who shall issue the final summary order.

480 (6) The office may deny a request to terminate a  
481 registration or withdraw a registration application if the  
482 office believes that an act that would be a ground for  
483 registration denial, suspension, restriction, or revocation  
484 under this part has been committed.

485 ~~(7)(3) In addition to, or in lieu of suspension or~~  
486 ~~revocation of a registration, the office may impose an~~  
487 ~~administrative fine of up to \$10,000 per violation against a~~  
488 ~~registrant for violations of s. 559.72. The Financial Services~~  
489 ~~commission shall adopt rules establishing guidelines for~~  
490 ~~imposing administrative penalties.~~

491 ~~(8)(4)~~ This part does not preclude any person from pursuing  
492 remedies available under the Federal Fair Debt Collection  
493 Practices Act for any violation of such act.

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Section 9. This act shall take effect October 1, 2014.