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CS/CS/HB 413, Engrossed 1

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1
2 An act relating to consumer collection practices;
3 amending s. 559.55, F.S.; reordering and revising
4 definitions; amending s. 559.553, F.S.; deleting a
5 provision entitling prospective consumer collection
6 agency registrants to registration when specified
7 conditions are met; creating s. 559.554, F.S.;
8 providing powers and duties of the Office of Financial
9 Regulation and the Financial Services Commission;
10 authorizing the commission to adopt rules; requiring
11 fees, charges, and fines to be deposited in a
12 specified trust fund; creating s. 559.5541, F.S.;
13 authorizing the office to make investigations or
14 examinations to determine violations of specified
15 provisions; amending s. 559.555, F.S.; revising
16 registration procedures and application requirements
17 for consumer collection agencies; requiring applicants
18 and certain registrants to submit fingerprints;
19 providing that registrations are not transferable or
20 assignable; requiring consumer collection agencies to
21 report changes in specified information within a
22 specified period; providing registration renewal and
23 fingerprint retention fees; providing for
24 applicability to registration renewals for registrants
25 initially registered before a specified date; creating
26 s. 559.5551, F.S.; providing notification requirements

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 for consumer collection agencies; authorizing the
28 office to bring an administrative action under certain
29 circumstances; amending s. 559.565, F.S.; conforming a
30 cross-reference; amending s. 559.730, F.S.; providing
31 grounds for disciplinary action; providing penalties;
32 providing grounds for an immediate suspension of a
33 consumer collection agency registration; providing
34 grounds to deny a request to terminate a registration
35 and to withdraw a registration application; providing
36 an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 559.55, Florida Statutes, is reordered
41 and amended to read:

42 559.55 Definitions.—The following terms shall, unless the
43 context otherwise indicates, have the following meanings for the
44 purpose of this part:

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

46 (2)~~(5)~~ "Communication" means the conveying of information
47 regarding a debt directly or indirectly to any person through
48 any medium.

49 (3)~~(7)~~ "Consumer collection agency" means any debt
50 collector or business entity engaged in the business of
51 soliciting consumer debts for collection or of collecting
52 consumer debts, which debt collector or business is not



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53 expressly exempted as set forth in s. 559.553(3) ~~559.553(4)~~.

54 (4) "Control person" means an individual, partnership,
55 corporation, trust, or other organization that possesses the
56 power, directly or indirectly, to direct the management or
57 policies of a company, whether through ownership of securities,
58 by contract, or otherwise. The term includes, but is not limited
59 to:

60 (a) A company's executive officers, including the
61 president, chief executive officer, chief financial officer,
62 chief operations officer, chief legal officer, chief compliance
63 officer, director, and other individuals having similar status
64 or functions.

65 (b) For a corporation, a shareholder who, directly or
66 indirectly, owns 10 percent or more or that has the power to
67 vote 10 percent or more, of a class of voting securities unless
68 the applicant is a publicly traded company.

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

73 (d) For a trust, each trustee.

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

78 (5)~~(3)~~ "Creditor" means any person who offers or extends



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79 credit creating a debt or to whom a debt is owed, but does not
80 include any person to the extent that they receive an assignment
81 or transfer of a debt in default solely for the purpose of
82 facilitating collection of such debt for another.

83 (6)~~(1)~~ "Debt" or "consumer debt" means any obligation or
84 alleged obligation of a consumer to pay money arising out of a
85 transaction in which the money, property, insurance, or services
86 which are the subject of the transaction are primarily for
87 personal, family, or household purposes, whether or not such
88 obligation has been reduced to judgment.

89 (7)~~(6)~~ "Debt collector" means any person who uses any
90 instrumentality of commerce within this state, whether initiated
91 from within or outside this state, in any business the principal
92 purpose of which is the collection of debts, or who regularly
93 collects or attempts to collect, directly or indirectly, debts
94 owed or due or asserted to be owed or due another. The term
95 "debt collector" includes any creditor who, in the process of
96 collecting her or his own debts, uses any name other than her or
97 his own which would indicate that a third person is collecting
98 or attempting to collect such debts. The term does not include:

99 (a) Any officer or employee of a creditor while, in the
100 name of the creditor, collecting debts for such creditor;

101 (b) Any person while acting as a debt collector for
102 another person, both of whom are related by common ownership or
103 affiliated by corporate control, if the person acting as a debt
104 collector for persons to whom it is so related or affiliated and



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105 if the principal business of such persons is not the collection
106 of debts;

107 (c) Any officer or employee of any federal, state, or
108 local governmental body to the extent that collecting or
109 attempting to collect any debt is in the performance of her or
110 his official duties;

111 (d) Any person while serving or attempting to serve legal
112 process on any other person in connection with the judicial
113 enforcement of any debt;

114 (e) Any not-for-profit organization which, at the request
115 of consumers, performs bona fide consumer credit counseling and
116 assists consumers in the liquidation of their debts by receiving
117 payments from such consumers and distributing such amounts to
118 creditors; or

119 (f) Any person collecting or attempting to collect any
120 debt owed or due or asserted to be owed or due another to the
121 extent that such activity is incidental to a bona fide fiduciary
122 obligation or a bona fide escrow arrangement; concerns a debt
123 which was originated by such person; concerns a debt which was
124 not in default at the time it was obtained by such person; or
125 concerns a debt obtained by such person as a secured party in a
126 commercial credit transaction involving the creditor.

127 (8)~~(2)~~ "Debtor" or "consumer" means any natural person
128 obligated or allegedly obligated to pay any debt.

129 (9) "Federal Fair Debt Collection Practices Act" or
130 "Federal Act" means the federal legislation regulating fair debt



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131 collection practices, as set forth in Pub. L. No. 95-109, as
132 amended and published in 15 U.S.C. ss. 1692 et seq.

133 ~~(10)(4)~~ "Office" means the Office of Financial Regulation
134 of the ~~Financial Services~~ commission.

135 ~~(11)(8)~~ "Out-of-state consumer debt collector" means any
136 person whose business activities in this state involve both
137 collecting or attempting to collect consumer debt from debtors
138 located in this state by means of interstate communication
139 originating from outside this state and soliciting consumer debt
140 accounts for collection from creditors who have a business
141 presence in this state. For purposes of this subsection, a
142 creditor has a business presence in this state if either the
143 creditor or an affiliate or subsidiary of the creditor has an
144 office in this state.

145 Section 2. Section 559.553, Florida Statutes, is amended
146 to read:

147 559.553 Registration of consumer collection agencies
148 required; exemptions.—

149 (1) A ~~After January 1, 1994, no person may not shall~~
150 engage in business in this state as a consumer collection agency
151 or continue to do business in this state as a consumer
152 collection agency without first registering in accordance with
153 this part, and thereafter maintaining a valid registration.

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



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

170 ~~(3)(4)~~ This section does ~~shall~~ not apply to:

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

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

173 (c) A ~~Any~~ financial institution authorized to do business
174 in this state and any wholly owned subsidiary and affiliate
175 thereof.

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

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

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

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

182 (h) An ~~Any~~ out-of-state consumer debt collector who does



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183 not solicit consumer debt accounts for collection from credit
184 grantors who have a business presence in this state.

185 (i) An ~~Any~~ FDIC-insured institution or subsidiary or
186 affiliate thereof.

187 ~~(4)-(5)~~ An ~~Any~~ out-of-state consumer debt collector as
188 defined in s. 559.55(11) ~~559.55(8)~~ who is not exempt from
189 registration by application of subsection (3) ~~(4)~~ and who fails
190 to register in accordance with this part shall be subject to an
191 enforcement action by the state as specified in s. 559.565.

192 Section 3. Section 559.554, Florida Statutes, is created
193 to read:

194 559.554 Powers and duties of the commission and office.-

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

197 (2) The commission may adopt rules to administer this
198 part, including rules:

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

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

205 1. The rules must provide:

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



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209 b. A 7-year disqualifying period for all other felonies.

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

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

216 3. The rules must provide for mitigating factors for
217 crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.

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

220 5. Section 112.011 does not apply to eligibility for
221 registration under this part.

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

225 Section 4. Section 559.5541, Florida Statutes, is created
226 to read:

227 559.5541 Examinations and investigations.-

228 (1) Notwithstanding s. 559.725(4), the office may, without
229 advance notice, conduct examinations and investigations, within
230 or outside this state, to determine whether a person has
231 violated this part or related rules. For purposes of this
232 section, the office may examine the books, accounts, records,
233 and other documents or matters of any person subject to this
234 part. The office may compel the production of all relevant



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235 books, records, and other documents and materials relative to an
236 examination or investigation. Examinations may not be made more
237 often than once during a 48-month period unless the office has
238 reason to believe a person has violated or will violate this
239 part or related rules.

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

247 Section 5. Section 559.555, Florida Statutes, is amended
248 to read:

249 559.555 Registration of consumer collection agencies;
250 procedure.—

251 (1) A ~~Any person who acts~~ required to register as a
252 consumer collection agency ~~must be registered in accordance with~~
253 this section. ~~shall furnish to the office the registration fee~~
254 and information as follows:

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

257 (a) Submit a completed application form as prescribed by
258 rule of the commission.

259 (b) Submit a nonrefundable application fee of \$200.
260 Application fees may not be prorated for partial years of



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261 registration.

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

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

268 2. A state criminal history background check must be
269 conducted through the Department of Law Enforcement, and a
270 national criminal history background check must be conducted
271 through the Federal Bureau of Investigation.

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

281 4. The costs of fingerprint processing, including the cost
282 of retaining the fingerprints, shall be borne by the person
283 subject to the background check.

284 5. The office is responsible for reviewing the results of
285 the state and national criminal history background checks and
286 determining whether the applicant meets registration



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287 requirements.

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

298 (4) A registration issued under this part is not
299 transferable or assignable.

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

304 ~~(1) The registrant shall pay to the office a registration~~
305 ~~fee in the amount of \$200. All amounts collected shall be~~
306 ~~deposited by the office to the credit of the Regulatory Trust~~
307 ~~Fund of the office.~~

308 ~~(2) Each registrant shall provide to the office the~~
309 ~~business name or trade name, the current mailing address, the~~
310 ~~current business location which constitutes its principal place~~
311 ~~of business, and the full name of each individual who is a~~
312 ~~principal of the registrant. "Principal of a registrant" means~~



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313 ~~the registrant's owners if a partnership or sole proprietorship,~~
314 ~~corporate officers, corporate directors other than directors of~~
315 ~~a not-for-profit corporation organized pursuant to chapter 617~~
316 ~~and Florida resident agent if a corporate registrant. The~~
317 ~~registration information shall include a statement clearly~~
318 ~~identifying and explaining any occasion on which any~~
319 ~~professional license or state registration held by the~~
320 ~~registrant, by any principal of the registrant, or by any~~
321 ~~business entity in which any principal of the registrant was the~~
322 ~~owner of 10 percent or more of such business, was the subject of~~
323 ~~any suspension or revocation.~~

324 (6)~~(3)~~ Renewal of registration shall be made between
325 October 1 and December 31 of each year. There shall be no
326 proration of the fee for any registration. In order to renew a
327 consumer collection agency registration, a registrant must
328 submit a nonrefundable renewal fee equal to the registration fee
329 and a nonrefundable fee to cover the costs of further
330 fingerprint processing and retention as set forth by commission
331 rule.

332 (7) A consumer collection agency registrant whose initial
333 registration was approved and issued by the office pursuant to
334 this section before October 1, 2014, and who seeks renewal of
335 the registration must submit fingerprints for each control
336 person for live-scan processing as described in paragraph
337 (2) (c). The fingerprints must be submitted before renewing a
338 registration that is scheduled to expire on December 31, 2014.



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339 Section 6. Section 559.5551, Florida Statutes, is created
340 to read:

341 559.5551 Requirements of registrants.—A registrant under
342 this part shall report to the office in a manner prescribed by
343 rule of the commission:

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

351 (2) A conviction of, or plea of nolo contendere to,
352 regardless of adjudication, a felony committed by the registrant
353 or any control person within 30 days after the date of
354 conviction or the date the plea of nolo contendere is entered.

355 (3) A change to the information contained in an initial
356 application form or an amendment to the application within 30
357 days after the change is effective.

358 (4) An addition or subtraction of a control person or a
359 change in the form of business organization. A control person
360 added by a registrant is subject to this part and must submit
361 fingerprints in accordance with s. 559.555 and the rules of the
362 commission. The office may bring an administrative action in
363 accordance with s. 559.730 to enforce this part if the added
364 control person fails to meet registration requirements or comply



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365 with any other provision of this part.

366 Section 7. Section 559.565, Florida Statutes, is amended
367 to read:

368 559.565 Enforcement action against out-of-state consumer
369 debt collector.— The remedies of this section are cumulative to
370 other sanctions and enforcement provisions of this part for any
371 violation by an out-of-state consumer debt collector, as defined
372 in s. 559.55(11) ~~559.55(8)~~.

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

379 (2) A ~~Any~~ person, whether or not exempt from registration
380 under this part, who violates s. 559.72 is subject to sanctions
381 the same as any other consumer debt collector, including
382 imposition of an administrative fine. The registration of a duly
383 registered out-of-state consumer debt collector is subject to
384 revocation or suspension in the same manner as the registration
385 of any other registrant under this part.

386 (3) In order to effectuate this section and enforce the
387 requirements of this part as it relates to out-of-state consumer
388 debt collectors, the Attorney General is expressly authorized to
389 initiate such action on behalf of the state as he or she deems
390 appropriate in any state or federal court of competent



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391 jurisdiction.

392 Section 8. Section 559.730, Florida Statutes, is amended
393 to read:

394 559.730 Grounds for disciplinary action; administrative
395 remedies.—

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

400 (a) Failure to disburse funds in accordance with
401 agreements.

402 (b) Fraud, misrepresentation, deceit, negligence, or
403 incompetence in a collection transaction.

404 (c) Commission of fraud, misrepresentation, concealment,
405 or dishonest dealing by trick, scheme, or device; culpable
406 negligence; breach of trust in a business transaction in any
407 state, nation, or territory; or aiding, assisting, or conspiring
408 with another person engaged in such misconduct and in
409 furtherance thereof.

410 (d) Being convicted of, or entering a plea of guilty or
411 nolo contendere to, regardless of adjudication, a felony or
412 crime involving fraud, dishonesty, breach of trust, money
413 laundering, or act of moral turpitude.

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



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417 (f) Being the subject of a decision, finding, injunction,
418 suspension, prohibition, revocation, denial, judgment, or
419 administrative order by a court of competent jurisdiction or an
420 administrative law judge, or by a state or federal agency,
421 involving a violation of a federal or state law relating to debt
422 collection or a rule or regulation adopted under such law.

423 (g) Having a license or registration, or the equivalent,
424 to practice a profession or occupation denied, suspended, or
425 revoked, or otherwise acted against, including the denial of a
426 registration or license by a registration or licensing authority
427 of this state or another state, territory, or country.

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

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

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

436 (k) Failure to comply with, or a violation of, any
437 provision of this part, or any rule or order made or issued
438 pursuant to this part.

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

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



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443 books and records, or refusal to comply with an office subpoena
444 or subpoena duces tecum.

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

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

451 (a) Issuance of a reprimand.

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

454 (c) Revocation of a registration.

455 (d) Denial of a registration.

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

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

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

466 (3)(2) The office may impose suspension rather than
467 revocation of a registration if circumstances warrant that one
468 or the other should be imposed and the registrant demonstrates



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469 that the registrant has taken affirmative steps that can be
470 expected to effectively eliminate the violations and that the
471 registrant's registration has never been previously suspended.

472 (4) A consumer collection agency is subject to the
473 disciplinary actions specified in subsection (2) for a violation
474 of subsection (1) by a control person of the consumer collection
475 agency.

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

488 (6) The office may deny a request to terminate a
489 registration or withdraw a registration application if the
490 office believes that an act that would be a ground for
491 registration denial, suspension, restriction, or revocation
492 under this part has been committed.

493 ~~(7) (3) In addition to, or in lieu of suspension or~~
494 ~~revocation of a registration, the office may impose an~~



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495 ~~administrative fine of up to \$10,000 per violation against a~~
496 ~~registrant for violations of s. 559.72. The Financial Services~~
497 commission shall adopt rules establishing guidelines for
498 imposing administrative penalties.

499 (8)~~(4)~~ This part does not preclude any person from
500 pursuing remedies available under the Federal Fair Debt
501 Collection Practices Act for any violation of such act.

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