

## CHAPTER 2014-116

### Committee Substitute for Committee Substitute for House Bill No. 413

An act relating to consumer collection practices; amending s. 559.55, F.S.; reordering and revising definitions; amending s. 559.553, F.S.; deleting a provision entitling prospective consumer collection agency registrants to registration when specified conditions are met; creating s. 559.554, F.S.; providing powers and duties of the Office of Financial Regulation and the Financial Services Commission; authorizing the commission to adopt rules; requiring fees, charges, and fines to be deposited in a specified trust fund; creating s. 559.5541, F.S.; authorizing the office to make investigations or examinations to determine violations of specified provisions; amending s. 559.555, F.S.; revising registration procedures and application requirements for consumer collection agencies; requiring applicants and certain registrants to submit fingerprints; providing that registrations are not transferable or assignable; requiring consumer collection agencies to report changes in specified information within a specified period; providing registration renewal and fingerprint retention fees; providing for applicability to registration renewals for registrants initially registered before a specified date; creating s. 559.5551, F.S.; providing notification requirements for consumer collection agencies; authorizing the office to bring an administrative action under certain circumstances; amending s. 559.565, F.S.; conforming a cross-reference; amending s. 559.730, F.S.; providing grounds for disciplinary action; providing penalties; providing grounds for an immediate suspension of a consumer collection agency registration; providing grounds to deny a request to terminate a registration and to withdraw a registration application; providing an effective date.

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

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

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

(1) “Commission” means the Financial Services Commission.

~~(2)(5)~~ “Communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

~~(3)(7)~~ “Consumer collection agency” means any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted as set forth in s. ~~559.553(3)~~ 559.553(4).

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

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

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

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

(d) For a trust, each trustee.

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

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

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

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

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

(b) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if

the person acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;

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

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

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

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

~~(8)(2)~~ “Debtor” or “consumer” means any natural person obligated or allegedly obligated to pay any debt.

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

~~(10)(4)~~ “Office” means the Office of Financial Regulation of the ~~Financial Services~~ commission.

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

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

559.553 Registration of consumer collection agencies required; exemptions.—

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

state as a consumer collection agency without first registering in accordance with this part, and thereafter maintaining a valid registration.

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

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

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

- (a) An ~~Any~~ original creditor.
- (b) A ~~Any~~ member of The Florida Bar.
- (c) A ~~Any~~ financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.
- (d) A ~~Any~~ licensed real estate broker.
- (e) An ~~Any~~ insurance company authorized to do business in this state.
- (f) A ~~Any~~ consumer finance company and any wholly owned subsidiary and affiliate thereof.
- (g) A ~~Any~~ person licensed pursuant to chapter 520.
- (h) An ~~Any~~ out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state.
- (i) An ~~Any~~ FDIC-insured institution or subsidiary or affiliate thereof.

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

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

559.554 Powers and duties of the commission and office.—

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

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

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

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

1. The rules must provide:

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

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

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

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

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

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

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

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

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

559.5541 Examinations and investigations.—

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

Examinations may not be made more often than once during a 48-month period unless the office has reason to believe a person has violated or will violate this part or related rules.

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

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

559.555 Registration of consumer collection agencies; procedure.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A consumer collection agency registrant whose initial registration was approved and issued by the office pursuant to this section before October 1, 2014, and who seeks renewal of the registration must submit fingerprints for each control person for live-scan processing as described in paragraph

(2)(c). The fingerprints must be submitted before renewing a registration that is scheduled to expire on December 31, 2014.

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

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

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

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

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

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

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

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

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

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

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

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

559.730 Grounds for disciplinary action; administrative remedies.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office subpoena or subpoena duces tecum.

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

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

(a) Issuance of a reprimand.

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

(c) Revocation of a registration.

(d) Denial of a registration.

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.