

69V-180.090 Consumer Collection Agency
Records Retention and Destruction
69V-180.100 Guidelines for Imposing
Administrative Penalties

NOTICE OF PUBLIC HEARING

The Financial Services Commission, Office of Financial Regulation, announces a hearing regarding the above rule, as noticed in Vol. 37, No. 26, July 1, 2011 Florida Administrative Weekly.

DATE AND TIME: September 20, 2011, 9:00 a.m., during a regular meeting of the Financial Services Commission

PLACE: Cabinet Meeting Room, Lower Level, The Capitol, Tallahassee, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: This is the Final Public Hearing on the adoption of Rules 69V-180.040, .080, .090, and .100, F.A.C., relating to consumer debt collection. A notice of change for Rules 69V-180.080 and 69V-180.100, F.A.C., is published in this edition of the Florida Administrative Weekly to address comments from the staff of the Joint Administrative Procedures Committee and industry representatives.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Andrea Moreland, Office of Financial Regulation, at (850)410-9601, email: andrea.moreland@flofr.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

DEPARTMENT OF FINANCIAL SERVICES

Finance

RULE NOS.: **RULE TITLES:**
69V-180.080 Consumer Collection Agency
Records
69V-180.100 Guidelines for Imposing
Administrative Penalties

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 37, No. 26, July 1, 2011 issue of the Florida Administrative Weekly.

The proposed rules have been changed to address comments from the staff of the Joint Administrative Procedures Committee; ACA International; Encore Capital Group, Inc.; and DBA International. Subsection (4) and paragraphs (d) and (e) of Subsection (9) of Rule 69V-180.080, F.A.C., are amended to clarify records requirements. The introductory paragraph of Rule 69V-180.100, F.A.C., and the heading of the chart that contains the guidelines for imposing administrative penalties are amended to clarify that the description of the

violations provided in the guidelines are a summary of the statutory violations and are provided solely for the purpose of ease of reference. The changes are as follows:

69V-180.080 Consumer Collection Agency Records.

(1) through (3) No change.

(4) A record of receiving cash payments made to the registrant from a debtor. The records shall include:

(a) Name of the registrant;

(b) Name of debtor;

(c) Date and amount of payment received; and

(d) The balance within the records after payment.

(9) Basic information about the debt including, at the minimum:

(d) The amount of the debt at the time of charge-off or at the time of receipt of the debt by the registrant for purposes of collection and an itemization of all interest, fees, or charges added to it by the registrant;

(e) If the debt collector is a debt buyer or is an assignee holding title to the debt, the debt buyer's or assignee's bill of sale or other written document executed by the debt buyer or assignee that contains when and from whom the debt was acquired.

69V-180.100 Guidelines for Imposing Administrative Penalties.

Pursuant to Section 559.730(3), F.S., listed below are guidelines applicable to each ground for disciplinary action that may be imposed by the Office against a person for a violation of Part VI, Chapter 559, F.S. In determining an appropriate penalty within the range of penalties prescribed in this rule for each occurrence as based upon the violation, the Office shall consider the circumstances set forth in subsection (25). The third column of the guidelines provides a summary of the statutory violations solely for the purpose of ease of reference. Persons subject to the rule should review the full text of the Florida Statute cited in the second column of the guidelines for the complete description of the violation.

	Statute	Violation Description Summary	1st Occurrence	2nd Occurrence	3rd & Subsequent Occurrences
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**Section IV
Emergency Rules**

DEPARTMENT OF STATE

Division of Elections

RULE NO.: 1SER11-02
RULE TITLE: Third-Party Voter Registration Organizations

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Pursuant to Section 120.54(4)(b), Florida Statutes, and its provisions regarding chapters in the Florida Election, this emergency rule is a rule pertaining to the public health, safety, and welfare as it involves the interpretation and implementation of the requirements of Chapters 97-102 and 105 of the Election Code. On May 19, 2011, House Bill 1355 was signed into law and became effective immediately. While regular rulemaking has been ongoing for Rule 1S-2.042, F.A.C., since the enactment of HB1355, this emergency rule is necessary to replace what Emergency Rule 1SER11-01 implemented in response to the law changes until Rule 1S-2.042 is finally adopted. This emergency rule is not a renewal of Rule 1SER11-01. Changes have been made in the rule and its incorporated forms based upon comments received at a workshop held for Rule 1S-2.042, F.A.C. This emergency rule is identical to the contents of Proposed Rule 1S-2.042, F.A.C., which was noticed on July 15, 2011. This emergency rule ensures uniformity across the state in the statutory-mandated procedures for voter registration applications provided to and received from third-party voter registrations organizations. House Bill 1355 amended the requirements for the registration of third-party voter registrations organizations; instituted new requirements for an accounting of voter registration forms provided to and received from third-party voter registrations organizations; deleted quarterly reports by the organizations; and revised the enforcement provisions for violations of the statute. The emergency rule implements the statutory requirement for registration in an electronic format, adopts forms for use by organizations and supervisors of elections to account for an organization's voter registration applications, and removes now outdated language from existing Rule 1S-2.042, F.A.C. The emergency rule will provide third-party voter registration organizations and supervisors of elections the direction they need until Rule 1S-2.042, F.A.C., completes its rulemaking process. Absent this emergency rule, an adverse effect will exist on the conduct of the voter registration process because the registration process by third-party voter registration organizations will not be as mandated by Florida law. For the foregoing reasons, the Department of State finds that the adoption of this emergency rule is necessary to prevent an immediate danger to the public health, safety, and welfare.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Division of Elections is aware of the rulemaking procedures prescribed by Section 120.54, Florida Statutes. That process requires advance notice to the public of intended rules and the opportunity to submit comments on the intended rule, prior to the agency's adoption of the rule. The time period for general rulemaking prevents the timely amendment and adoption of Rule 1S-2.042, F.A.C., so that statutorily-mandated rules can apply to ongoing registration activities conducted by third-party voter

registration organizations pending the normal rulemaking process. In the interim, the provisions of this emergency rule, which adopts the text of Proposed Rule 1S-2.042, F.A.C., based upon comments received at Rule 1S-2.042's rule development workshop, will ensure that the Division of Elections, supervisors of elections, and organizations will be able to comply with the requirements of law. The Department of State has filed Notice of Proposed Rule for Rule 1S-2.042, F.A.C.; however, a prior interim measure, Rule 1SER11-01, will expire before Rule 1S-2.042, F.A.C., can be adopted. This emergency rule does not renew Rule 1SER11-01 as it contains significant changes to the rule and its incorporated forms; however, this emergency rule is necessary as a temporary measure to ensure compliance with current law until Rule 1S-2.042, F.A.C., is adopted.

SUMMARY: This emergency rule implements the statutory requirement for registration in an electronic format, adopts forms for use by organizations and supervisors of elections to account for an organization's voter registration applications, and removes now outdated language from existing Rule 1S-2.042, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Gary J. Holland, Assistant General Counsel, Florida Department of State, 500 S. Bronough Street, Tallahassee, Florida 32399, gjholland@dos.state.fl.us, (850)245-6536

THE FULL TEXT OF THE EMERGENCY RULE IS:

1SER11-02 (1S-2.042) Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division's webpage at: <http://election.dos.state.fl.us/forms/index.shtml>:

(a) Form DS-DE 119 (eff. 06/2011 ~~05/2010~~), entitled "Third-Party Voter Registration Organization Registration Form."

(b) Form DS-DE 120 (eff. 06/2011 ~~05/2010~~), entitled "~~Quarterly Report Form for Organized Voter Registration Drives~~ by Third-Party Voter Registration Organization Registration Agent's Sworn Statement."

(c) Form DS-DE 121 (eff. 06/2011 ~~05/2010~~), entitled "Form for Complaint Against Third-Party Voter Registration Organization."

(d) Form DS-DE 123 (eff. 06/2011), entitled "Third-Party Voter Registration Organization's Accounting of Voter Registration Applications."

(e) Form DS-DE 124 (eff. 06/2011), entitled "Supervisor of Elections' Accounting of Third-Party Voter Registration Organization's Voter Registration Applications."

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) “Affiliate organization” of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) “Engaging in any voter registration activities” means that the organization is soliciting for collection or collecting voter registration applications from Florida voter registration applicants.

(c)(b) “Force majeure” means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(d)(e) “Impossibility of performance” means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(e)(f) “Registration agent” means any individual who is employed by or volunteers for a third-party voter registration organization and who solicits for collection or who collects voter registration applications from Florida voter registration applicants on behalf of the organization. ~~“Organized voter registration drive” means any voter registration activity that is coordinated with, or directed by, a third-party voter registration organization and where one or more persons solicit or collect voter registration applications on behalf of the third-party voter registration organization.~~

(3) Registration.

(a) Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter “organization”) shall complete and file Form DS-DE 119 with the Division. The organization must submit the form as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmit the form to the Division’s facsimile machine at (850)245-6291 prior to conducting any voter registration activities. An affiliate organization which solicits for collection or collects voter registration applications from Florida voter registration applicants must file a Form DS-DE 119 even if its affiliated organization has filed a Form DS-DE 119. An ~~third-party voter registration~~ organization shall also use Form DS-DE 119 to update or terminate ~~withdraw~~ its registration.

(b) Upon receipt of an organization’s initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with “3P.” An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

(c) A registration agent must complete, sign, and date Form DS-DE 120 before beginning his or her duties for the organization and the organization must ensure the form is submitted to the Division within 10 days after the form is signed. Form DS-DE 120 may be submitted to the Division when the organization submits its initial Form DS-DE 119. For any addition to the list of its registration agents or change in information about a registration agent other than termination of a registration agent, the organization shall submit an updated Form DS-DE 119. For permissible means of notifying the Division of the termination of a registration agent, see paragraph (6)(b).

(d) A registration agent may be a registration agent for one or more organizations, but each organization must ensure that the registration agent submits a separate Form DS-DE 120 for its organization.

(e) An organization shall submit any change in information previously submitted to the Division within 10 days following the change. A change is not considered filed until the Division receives the change.

(f) Except as otherwise provided in paragraph (6)(b), any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the Form DS-DE 119 used to initially register an organization.

(4) Voter Registration Applications Provided to and Used by Third-Party Voter Registration Organizations Drive Quarterly Report.

(a) All voter registration applications provided by the Division and each supervisor of elections to an organization shall include the third-party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

(b) The registration agent or the organization shall print the date and time that the voter registration applicant completed the application in a conspicuous space on the bottom portion of the reverse side of the voter registration application it collects from a voter registration applicant in a manner that does not obscure any other entry. The date and time printed by the registration agent or the organization shall be in the following numerical format: MM/DD/YY; hh:mm am/pm. For example, if the voter registration applicant completed the application on May 15, 2014 at 1:30 p.m., the entry on the bottom portion of the reverse side of the application shall be: 5/15/14; 1:30 p.m. The entry for an

application completed on October 11, 2014 at 11:30 a.m., would be printed as 10/11/14; 11:30am on the bottom portion of the reverse side of the application.

(c) Each organization shall ensure that its assigned organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(d) Delivery of the voter registration application by the organization to the Division or a supervisor of elections may be accomplished by in-person delivery or mail.

(5) Monthly Report by Organizations.

(a) By the 10th day of each month, each organization shall submit to the Division a Form DS-DE 123 to account for the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month. If the organization had no voter registration activity in the preceding month, the organization shall still submit Form DS-DE 123 reflecting that it did not provide voter registration applications to, or receive any from, its registration agents.

(b) Form DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at (850)245-6291.

(6) Termination of Organization and Registration Agent.

(a) If an organization terminates its status as a third-party voter registration organization, the organization shall submit within 10 days a Form DS-DE 119 reflecting its termination and also a Form DS-DE 123 to report its final accounting of voter registration application forms provided to the organization by the Division or any supervisor of elections. All such voter registration applications remaining in the organization's possession should be returned either to the Division or a supervisor of elections within 10 days of filing Form DS-DE 123. The address for the Division is Bureau of Voter Registration Services, Division of Elections, R. A. Gray Building, Room 316, Tallahassee, Florida 32399-0250. The address for the applicable supervisor of elections may be obtained by telephoning (850)245-6200 or found on the Internet at http://election.dos.state.fl.us/SOE/supervisor_elections.shtml.

(b) If a registration agent's employment with, or volunteer services for, an organization is terminated, the organization shall file notice of the terminated status of a registration agent by submitting an updated Form DS-DE 119 or by sending a notification of the termination by email to 3PVRO@dos.state.fl.us or by transmitting the notification to the Division's facsimile machine at (850)245-6291. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the registration agent being terminated.

(c) Forms DS-DE 119 and DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at (850)245-6291.

(7) Processing of Voter Registration Applications from an Organization by the Division and Supervisors of Elections.

(a) For each non-blank registration application that an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date and time of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries. For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered by the organization by in-person delivery or, if mailed, the date of delivery shall be the date of a clear postmark, if one is present on the mailing envelope. If a postmark is not present or unclear, the date of delivery to the Division or a supervisor of elections is the actual date of receipt. If the date of delivery is the mail postmark, the applicable 48-hour period for the determination of fines pursuant to Section 97.0575, F.S., shall be based upon whether the postmark is within two days of the date when the applicant completed the voter registration application, unless the organization provides documentation at the time of mailing the application that the date the applicant completed the application was on an earlier date than when the applicant delivered the application to the organization. For a determination of a fine based upon the application being received by mail after the book closing date, a clear postmark on or before the date of book closing will excuse the fine. If an organization delivers more than one application at the same time, those applications shall bear the same date and time of delivery regardless of when the applications are processed.

(b) An organization's untimely delivery of a voter registration application does not affect the validity of the application. Such application must be processed regardless of the timeliness of its delivery.

(c) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on Form DS-DE 124 by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. Supervisors of Elections are not required to submit Form DS-DE 124 when they did not provide any voter registration applications to, or receive any from, an organization on the preceding business day.

(d) Form DS-DE 124 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at (850)245-6291.

~~Voter Registration Drive Quarterly Report. A third-party voter registration organization shall use Form DS-DE 120 to file quarterly reports with the Division as required by Section 97.0575(1), F.S. The quarterly reports shall be filed no later than April 15, July 15, October 15, and January 15 to cover the preceding calendar quarter, respectively. If a due date falls on a Saturday, Sunday, or legal holiday, the report is due on the next day which is not a Saturday, Sunday, or legal holiday.~~

~~(8)(5) Complaints and Fines.~~

~~(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.~~

~~(b) Any other person, except supervisors of elections or their staff, may report allegations of elections fraud, which includes irregularities or fraud involving voter registration; by filing an elections fraud written complaint with the Division, using Form DS-DE 34, entitled "Elections Fraud Complaint," incorporated by reference in See Rule 1S-2.025, F.A.C.~~

~~(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.state.fl.us or by transmitting the explanatory statement and documentation to the Division's facsimile machine at (850)245-6291. Fines. If the Division determines that a fine should be imposed on a third party voter registration organization, the Division shall serve an administrative complaint pursuant to Rule 28 106.2015, F.A.C., upon the third party voter registration organization by personal delivery or certified mail, return receipt requested. A third party voter registration organization upon which the Division serves an administrative complaint may request a hearing in accordance with Sections 120.569 and 120.57, F.S., and subsection 28 106.2015(5), F.A.C.~~

~~(9) This emergency rule is effective on August 19, 2011.~~

~~Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) (4), (8) FS. Law Implemented 97.012(1), (2), (15), (37) (36), 97.053, 97.0575 FS. History—New 2-26-09, Amended, 5-31-10, 8-19-11.~~

~~THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.~~

~~EFFECTIVE DATE: August 19, 2011~~

Section V

Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE IS HEREBY GIVEN that on July 22, 2011, the Department of Community Affairs received a petition for waiver from the City of Marianna. It has been assigned number DCA11-WAI-155.

THE NATURE OF RULE FROM WHICH VARIANCE OR WAIVER IS SOUGHT: Subsection 9B-43.0031(29), F.A.C., provides the definition of time; Paragraph 9B-43.0041(2)(b), F.A.C., prohibiting a local government with an open subgrant from filing another application; Paragraph 9B-43.0041(2)(d), F.A.C., states that eligible local governments with an open Economic Development subgrant whose activities and expenditures are on schedule and on time as of the opening of the funding cycle can apply for CDBG subgrant.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Paula P. Ford, Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100.

NOTICE IS HEREBY GIVEN that on August 9, 2011, the Department of Community Affairs, received a petition for waiver (emergency) from Martha Harrell Chumbler on behalf of Modular Space Corporation. It was assigned the number DCA11-WAI-162.

THE RULE NUMBER AND NATURE OF THE RULE FROM WHICH A WAIVER IS SOUGHT: Rule 9B-1.030, F.A.C. This rule governs responsibility for affixing insignia to existing factory built schools and the conditions therefore.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Paula P. Ford, Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, e-mail: paula.ford@dca.state.fl.us.

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on August 1, 2011, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from the Graceville Police Department on behalf of eight current and former officers. Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule and supervised by a CJSTC-certified firearms instructor. The petition supports the requested waiver by stating that the eight officers did successfully complete the course of fire, however, the instructor was not an active CJSTC-certified firearms instructor at the time of the requalifications for the 2006-2008