

**AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

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September 20, 2011

MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam Putnam

Contact: Andrea Moreland (OFR)
(850) 410-9601

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
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| 1. | The Office requests approval of the minutes of the June 16, 2011, and August 2, 2011, meetings. | |
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(ATTACHMENT 1)

FOR APPROVAL

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| 2. | The Office requests approval to file for final adoption amendments to Rule Chapter 69V-180, relating to consumer debt collection agencies. The proposed rules set forth books and records requirements, establish guidelines for imposing administrative penalties, adopt a revised complaint form, and set forth standards for disposal of records. | |
|----|--|--|

Rule 69V-180.040: Consumer Collection Agency Complaint Form and Procedures
Rule 69V-180.080: Consumer Collection Agency Records
Rule 69V-180.090: Consumer Collection Agency Records Destruction
Rule 69V-180.100: Guidelines for Imposing Administrative Penalties

(ATTACHMENT 2)

APPROVAL FOR FINAL ADOPTION

ATTACHMENT 1

**Financial Services Commission
Office of Financial Regulation
Meeting Minutes
June 16, 2011**

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

DIVISION OF BOND FINANCE
FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION
FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
DEPARTMENT OF REVENUE
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, June 16,
2011, commencing at approximately 9:08 a.m.

Reported by:

MARY ALLEN NEEL
Registered Professional Reporter
Florida Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E X

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DIVISION OF BOND FINANCE
(Presented by BEN WATKINS)

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2	Approved	11

FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION
(Presented by ANDREA MORELAND)

ITEM	ACTION	PAGE
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INDEX CONTINUEDFINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
(Presented by BELINDA MILLER)

ITEM	ACTION	PAGE
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DEPARTMENT OF REVENUE
(Presented by LISA VICKERS)

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DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
(Presented by JULIE JONES)

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FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
(Presented by PHILLIP MILLER)

ITEM	ACTION	PAGE
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BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
(Presented by BOB BALLARD)

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1 GOVERNOR SCOTT: All right. The next agenda
2 is the Financial Services Commission, Office of
3 Financial Regulation, presented by Andrea Moreland.

4 Good morning.

5 MS. MORELAND: Good morning, Governor and
6 members of the Cabinet.

7 The Office has two items for your
8 consideration this morning. Item Number 1 is a
9 request for approval of the meeting minutes for the
10 February 1, 2011 meeting.

11 GOVERNOR SCOTT: Is there a motion on Item 1?

12 CFO ATWATER: So moved.

13 GOVERNOR SCOTT: Second?

14 ATTORNEY GENERAL BONDI: Second.

15 GOVERNOR SCOTT: Moved and seconded. Show
16 Item 1 approved without objection.

17 MS. MORELAND: Item Number 2, the Office
18 requests approval to publish a notice of proposed
19 rule for Rule Chapter 69V-180 relating to consumer
20 debt collection. The proposed rules revise the
21 consumer complaint form to conform to statutory
22 requirements, sets forth books and records
23 requirements, and establishes guidelines for
24 imposing administrative penalties.

25 GOVERNOR SCOTT: Is there a motion on Item 2?

1 CFO ATWATER: So moved.

2 GOVERNOR SCOTT: Is there a second?

3 ATTORNEY GENERAL BONDI: Second.

4 GOVERNOR SCOTT: Moved and seconded. Show

5 Item 2 approved without objection.

6 MS. MORELAND: Thank you.

7 GOVERNOR SCOTT: Thank you very much.

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**Financial Services Commission
Office of Financial Regulation
Meeting Minutes
August 2, 2011**

THE CABINET
STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION
DIVISION OF BOND FINANCE
FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION
FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
DEPARTMENT OF VETERANS' AFFAIRS
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
ADMINISTRATION COMMISSION
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Tuesday, August 2,
2011, commencing at approximately 9:04 a.m.

Reported by:

MARY ALLEN NEEL
Registered Professional Reporter
Florida Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

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I N D E X

RE: Commissioner of the Office of Financial Regulation

ITEM	ACTION	PAGE
VOTE	Approved	8

STATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	13
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4	Approved	14
5	Approved	15
6	Approved	15
7	Approved	16
8	Approved	18
9	Approved	19

DIVISION OF BOND FINANCE
(Presented by BEN WATKINS)

ITEM	ACTION	PAGE
1	Approved	26
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3	Approved	28
4	Approved	29
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FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION
(Presented by TOM CARDWELL)

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(Presented by KEVIN McCARTY)

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DEPARTMENT OF VETERANS' AFFAIRS
(Presented by JIM BRODIE)

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DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
(Presented by JULIE JONES)

ITEM	ACTION	PAGE
1	Approved	69
2	Approved	70

ADMINISTRATION COMMISSION
(Presented by PHILLIP MILLER)

ITEM	ACTION	PAGE
1	Approved	79

FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
(Presented by PHILLIP MILLER)

ITEM	ACTION	PAGE
1	Approved	80
2	Approved	81
3	Approved	108

P R O C E E D I N G S

(The agenda items began at 9:05 a.m.)

GOVERNOR SCOTT: This morning I would like to ask that we vote -- first we're going to talk about the Commissioner of the Office of Financial Regulation. This morning I would like to ask that we vote to appoint a new Commissioner of the Office of Financial Regulation.

We have an exceptional candidate to serve in this position, someone I've known for quite a while. And if anybody says anything, the thing they would say most nice about him is his wife. So anybody that knows Tom really knows Ann. He's got a wonderful -- Ann, you might stand up. Not only is she a wonderful person, but if you ever get invited to her house -- (applause). Her meals are unbelievable. She's a very good chef, cook.

But Mr. Tom Grady comes to us with more than 20 years of law experience focused in the areas of securities, investments, and financial industry regulation, litigation, arbitration, and mediation. Tom is widely sought as a lecturer and securities expert and has been active in securities organizations aimed at educating and safeguarding the public as well as raising the standards of

1 professionalism within the financial services
2 industry.

3 Tom also served in the House of
4 Representatives from 2008 to 2010. It's too bad he
5 didn't run for re-election, but it's good for us
6 that he didn't so he could take this job.

7 So would any of the Cabinet members also like
8 to make remarks?

9 Do you want to go first?

10 ATTORNEY GENERAL BONDI: I talked to Mr. Grady
11 this morning, Representative Grady. And thank you
12 for your service, and thank you for having a
13 wonderful wife.

14 COMMISSIONER PUTNAM: Governor, I think this
15 is an outstanding selection, his expertise in the
16 law and financial services, his stellar reputation
17 with the legislative branch. We're very excited
18 about the wisdom and character that Tom brings to
19 this position. And he's certainly well positioned
20 to fill the shoes of another great man who has
21 served the State so well.

22 Mr. Cardwell, we appreciate all of your
23 service, and we look forward, Mr. Grady, to your
24 outstanding and continued service to the people of
25 Florida.

1 CFO ATWATER: Thank you, Governor. I too have
2 all my notes on Ann, so I'll keep after Tom today.

3 GOVERNOR SCOTT: Boy, it's a good thing Ann
4 was around or Tom wouldn't get this job.

5 CFO ATWATER: Governor, I think this is really
6 an extraordinary choice. We have in Tom Grady,
7 Representative Grady an individual who has such an
8 extraordinary intellect and a bias for action. He
9 has a strong sense of how the securities business
10 and the financial service businesses work and the
11 ability to work with the policymakers, who he knows
12 personally, and he knows the process, where it's
13 necessary to adjust and modify policy that will
14 create an environment for greater successes for all
15 Floridians and job creation and capital formation
16 and the attraction of capital to Florida.

17 This is one of those moments where I think we
18 see an individual who has been so successful in the
19 private sector that we find it a wonderful moment
20 that he is willing to accept the invitation to
21 return to public service yet again.

22 And so with that, Governor, I would like to
23 move the appointment of Representative Tom Grady as
24 the new director of the Office of Financial
25 Regulation effective August 29, 2011.

1 GOVERNOR SCOTT: All right. Thank you. All
2 in favor say aye.

3 (Simultaneous affirmative responses.)

4 GOVERNOR SCOTT: Any opposed?

5 The motion is approved by unanimous consent.

6 Tom, would you like to say a few words?

7 MR. GRADY: Well, thank you, Governor.

8 Perhaps my wife should come and say a few words.

9 GOVERNOR SCOTT: Okay. Ann, would you like to
10 say something?

11 MR. GRADY: She's generally the most
12 interesting of the two of us. But I'm humbled and
13 thrilled to be back in Tallahassee to serve this
14 Cabinet at this time and in this particular office.

15 I'm not sure I can give you a perfect segue
16 for why I thought of this, but driving in this
17 morning, I thought of Malcolm Forbes' plane on the
18 tarmac in Asheville, North Carolina. If any of you
19 remember what his plane was like, it's a big
20 Boeing. Planes might not be politically correct in
21 some circles these days, but it's a big Boeing, and
22 it's green and it's gold, and it has a big name on
23 it that says "The Capitalist Tool."

24 And I love capitalism. I am passionate about
25 free markets and free people. And capital goes

1 where capital is treated well, and I think the
2 mandate of this board will be to treat capital well
3 in the State of Florida.

4 But what I have learned in my career is that
5 we also need to balance the desire to attract
6 capital and to treat it well with the necessity to
7 have full disclosure, transparency, and
8 accountability for that capital and for the debt
9 markets and for related lending and banking and
10 money transmitter and other issues, which is, of
11 course, where the Office of Financial Regulation
12 comes into play.

13 So I'm very excited to get my mandate from you
14 to march forward to make capitalism in the State of
15 Florida a better reality. Capital goes where it's
16 well treated, and jobs follow. I understand from
17 some sources that jobs are important to one or more
18 of the members of this board, and I'm looking
19 forward to --

20 GOVERNOR SCOTT: We all ran on it.

21 MR. GRADY: I'm looking forward to the
22 opportunity to do that. So with Tom Cardwell, I
23 would simply like to say: Let's get to work.

24 GOVERNOR SCOTT: Thank you, Tom.

25 (Applause.)

1 GOVERNOR SCOTT: So we all expect some dinners
2 at Ann's house.

3 I would also like to take a moment to thank
4 Tom Cardwell for his dedication and leadership as
5 the Commissioner since 2009. We appreciate your
6 public service to our state, and we wish you much
7 success in your future endeavors.

8 Would you like to come up and say a few words?

9 MR. CARDWELL: Thank you, Governor and members
10 of the Cabinet. Time really goes by quickly,
11 particularly when you're having fun. This has been
12 one of the finest opportunities of my career to
13 serve here. It has been such a pleasure to work
14 with the people of the agency and with the Cabinet.
15 It is with really a great deal of regret that I
16 leave, but my wife, Kathy, has explained to me why
17 I need to come home, so that takes me back.

18 And I want to say that I heartily endorse Tom
19 Grady. I have known him for a long time. I think
20 he has all of the credentials, all of the talent,
21 all of the leadership, and all of the intellect
22 that it will take to put Florida in the forefront
23 of the very important areas for which he will have
24 the responsibility for regulation.

25 So, Tom, frankly, it is a great relief and

1 pleasure for me to have you to take the mantle.

2 MR. GRADY: Thank you.

3 GOVERNOR SCOTT: Well, thank you very much,
4 and thank you very much for your service.

5 (Applause.)

6 GOVERNOR SCOTT: Ann, would you like to come
7 up for a picture and bring Tom?

8 (Off the record for photography.)

9 ATTORNEY GENERAL BONDI: I would also just
10 like to acknowledge that two days ago the youngest
11 member of the Cabinet had a birthday, Commissioner
12 Putnam, and we all want to remind him he's catching
13 up to us. Happy birthday.

14 (Applause.)

15 GOVERNOR SCOTT: I think we all ought to sing
16 "Happy birthday to you." Does anybody sing?

17 ATTORNEY GENERAL BONDI: No.

18 GOVERNOR SCOTT: We should have invited
19 somebody that could sing.

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1 GOVERNOR SCOTT: All right. The next agenda
2 is the Financial Services Commission, Office of
3 Financial Regulation, presented by Tom Cardwell.

4 CFO ATWATER: Governor, I think I'm going to
5 chip in on this one.

6 GOVERNOR SCOTT: Oh, that's right. You're
7 going to go through that. I'm sorry.

8 CFO ATWATER: And we're going to come back to
9 Commissioner Cardwell in just a minute, and we're
10 going to be as brief as we can on this
11 presentation. But you extended the invitation to
12 all of us, Governor, to be sure we might share, by
13 sharing in the Cabinet and sharing with the public,
14 the challenges that certain agencies are facing,
15 which frankly means the consumers are facing. And
16 this is an area we're going to talk about briefly
17 today, is workers' compensation fraud schemes that
18 take place. And being that we oversee the Office
19 of Financial Regulation, I thought this was an
20 appropriate place for all of us as Cabinet members
21 to be able to hear this.

22 What we have taking place is the marketplace
23 is that anytime that fraud exists, that means the
24 honest players that are out there, the general
25 contractors, the subcontractors, especially the

1 trades, that are really doing it right are having
2 to pay more for their coverage.

3 Regrettably, those honest players are finding
4 themselves, because of the pervasiveness now of
5 this fraud that is taking place within these
6 schemes in the workers' comp world, they're finding
7 it harder and harder to win bids, because the
8 players who are cheating and are acting
9 fraudulently are undercutting them.

10 And as importantly, people who are working on
11 worksites in Florida believe that they're being
12 covered, and in fact, tragically, there are
13 occasions that arise when they realize only too
14 late that it was a fraudulent scheme, and now
15 they're left to get by.

16 I really wish to compliment Attorney General
17 Bondi. They have been working every case that we
18 could send them as aggressively as they can. And I
19 think we all agree that in some of these cases,
20 we're constantly chasing, and if we could get ahead
21 of the curve and try to break this down.

22 So there are, unfortunately, bad players
23 within the cash -- what's commonly referred to as
24 the money services business or the check cashing
25 business that are participating now. They're not

1 just being caught off guard or caught and surprised
2 or caught in the loop. They're participating.

3 And so if you wouldn't mind, I was going to
4 ask for -- Colonel John Askins, who is over the
5 Division of Insurance Fraud, he's going to share
6 some thoughts, and then our bureau chief, Major
7 Jeff Branch, is going to more explicitly explain
8 the scheme and how it works. And we will be as
9 quick as possible. And Commissioner Cardwell, who
10 has worked hard on this, and I want to thank him as
11 well, and then maybe Commissioner-designate Grady
12 might want to offer some comments as well.

13 ATTORNEY GENERAL BONDI: And, CFO, you're
14 right. These guys are getting more sophisticated
15 in the crimes they're committing as well by setting
16 up these shell companies.

17 MR. ASKINS: Yes, sir. CFO Atwater, thank so
18 much, sir, and Governor Scott and Commissioner
19 Putnam. And I also want to thank you, Attorney
20 General Bondi, for all the help you have given us,
21 and it has been substantial.

22 Obviously, at the Division of Insurance Fraud,
23 we have a lot on our plate with PIP fraud and
24 property insurance fraud, but this is very high on
25 our radar screen because of what the CFO said, that

1 there's an uneven playing field out there. The
2 honest contractors are paying much more in premiums
3 because of this fraud.

4 Jeff Branch is our number one expert, Major
5 Jeff Branch. He's a former police officer with the
6 Boynton Beach Police Department. He came to us in
7 1999. Jeff has been in the belly of this. He
8 knows it backwards and forwards. He has executed a
9 lot of search warrants, arrest warrants, unraveled
10 major multi-million-dollar fraud schemes in
11 conjunction with your office, Attorney General
12 Bondi.

13 So I'm going to turn it over to Major Jeff
14 Branch. Thank you.

15 MR. BRANCH: Thank you, John. Good morning.

16 I'm here today to highlight a growing crime
17 trend that has already diverted approximately
18 \$1 billion from Florida's economy and which has
19 created an uneven playing field for businesses,
20 particularly in the construction industry. This
21 scheme funnels industry payroll through minimally
22 insured shell companies, preventing detection by
23 federal and state authorities. As far as our
24 investigative team can tell, at least \$200 million
25 in workers' compensation premiums have been

1 illegally avoided. Further, these moneys were not
2 assessed any state taxes, such as unemployment
3 compensation taxes, which is designed to help
4 people --

5 GOVERNOR SCOTT: Could you say the number
6 again? How much money was that?

7 MR. BRANCH: \$200 million in workers'
8 compensation premiums.

9 GOVERNOR SCOTT: Okay.

10 MR. BRANCH: Such unemployment compensation
11 tax is designed to help people who are struggling
12 in this economy, thus far resulting in a loss of
13 revenue to the State of approximately \$27 million.

14 Organized criminal enterprises set up shell or
15 fake companies by incorporating and then obtaining
16 minimal workers' compensation insurance policies.
17 They then make their name, and more importantly,
18 their workers' compensation policy, available to
19 uninsured subcontractors who choose not to purchase
20 a policy of their own.

21 These individuals are fraudulently using the
22 shell company's fraudulently obtained insurance
23 policy, which is illegal. Then third party
24 business-to-business checks for construction work
25 done by the uninsured subcontractors are made

1 payable to these shell companies, which are
2 negotiated at nontraditional money service
3 businesses or check cashing stores whose owners
4 have chosen to participate in this crime.

5 Both the shell company facilitator and the
6 money service business owners reap the rewards of
7 fees associated with these high dollar
8 transactions. The remainder of the cash goes back
9 to the uninsured subcontractor, who pays his labor
10 force in cash, avoiding the assessment of any
11 workers' compensation premiums or applicable taxes.

12 As a result of this scheme, workers are
13 sometimes left uncovered and rack up emergency room
14 bills, many of which are never paid, while
15 insurance carriers struggle to determine who, if
16 anyone, is liable for any injuries which may occur.
17 Many of these workers were under the false
18 impression that their employer had secured the
19 appropriate insurance coverage in the event of an
20 injury.

21 Further, legitimate contractors, who in turn
22 use legitimate subcontractors, cannot compete.
23 While the good contractors and subcontractors are
24 paying the necessary workers' compensation
25 insurance coverage, they're competing against

1 others in the industry that avoid this expense
2 altogether. Therefore, in order to compete with
3 the fraudsters, they're faced with the choice of
4 cheating as well or watching their bottom line
5 dwindle to the point where they may be put out of
6 business.

7 What's more is that the pool of workers
8 covered by -- as the pool of workers covered by
9 insurance dwindles, upward pressure is put on the
10 premiums of those who purchase coverage. In
11 essence, it's a double blow to the contractors,
12 subcontractors, and others who are playing by the
13 rules. What it all adds up to is lost revenue for
14 the State, and these are businesses and citizens as
15 victims.

16 Currently, our law enforcement team is doing
17 everything it can to fight this problem, but we
18 believe it's going to take more. Fighting this
19 fraud necessitates a collaborative effort of all
20 affected parties to initiate change to stop another
21 billion dollars from being diverted from the
22 economy in Florida.

23 I know you all have been supplied some backup
24 information, but if anybody has any questions at
25 this point, I'll be happy to answer them.

1 CFO ATWATER: First, Major, thank you for what
2 you're doing. And also, I know that we had asked
3 him to join us today, Representative Dan Davis,
4 Daniel Davis from Jacksonville. I don't know if he
5 was able to make it or -- he was not able to make
6 it? He has been all over this as well.

7 And the suggestions have come up, and I want
8 everyone to know this as well. There are some rock
9 solid money service players, industry players in
10 Florida that are not participating in this, and
11 maybe if you could speak to that. You've gone
12 in -- when we go in in the aftermath of this to
13 look at the documentation, it usually excludes
14 certain players that are in the industry, I take
15 it. Again, that's what you've assured me. There
16 really -- I don't want everyone to be hit with the
17 same brush here. There are people who are doing it
18 right, and then there are players who are actually
19 participating.

20 MR. BRANCH: Absolutely, without question. As
21 in any business, there are perfectly legitimate
22 business operators that are serving a very
23 important purpose in the state. There are other
24 unscrupulous business owners who in fact have
25 chosen -- this is not a mistake. They've actually

1 chosen as part of their business plan to engage in
2 this type of activity because it's very lucrative.

3 ATTORNEY GENERAL BONDI: I have something when
4 you finish.

5 CFO ATWATER: I just would -- I wanted,
6 obviously, our team to be aware. And again, I want
7 to thank Commissioner Cardwell for his efforts on
8 this, because at some point -- again, as we know
9 with the upcoming session the effort to work on
10 solutions to the PIP fraud that's going on in
11 Florida, we're looking to bring together a work
12 group that could include the industry players who
13 can help guide us in what statutorily might need to
14 change, whether it's in the regulatory environment,
15 what can change.

16 But it's going to take a collection of
17 partners to come together from the trade
18 industries, the GC industry, again, those who are
19 the necessary vehicle for this fraud to take place,
20 which is a money service center, and be willing to
21 sit down and say, "Look, we will agree to these."
22 We can't allow this ripoff to continue. Too many
23 honest players can't get work, and honest workers
24 are out there without coverage, and it's just so
25 pervasive.

1 So I just want to say that any suggestions
2 that anyone might have about inclusion within that
3 work group, we would be very receptive so that when
4 we went back to our Legislature, which would be
5 obviously starting early in the fall, we could be
6 offering suggestions or trying to avoid the crash
7 at the end by not having everybody involved early.
8 But clearly, something has to happen.

9 ATTORNEY GENERAL BONDI: And, Governor and
10 Commissioner, just to review, I've read the -- if
11 anybody is interested, I have the entire grand jury
12 report on this issue from 2008.

13 And thank you for all of your hard work that
14 you're doing. The way these cases go through the
15 system -- and, CFO, thank you -- they come from
16 your office to prosecutors, and I know you're
17 dealing with 20 state attorneys throughout the
18 state.

19 My office, we only have multi-jurisdiction, of
20 course, if it's multiple counties involved. But
21 what I've done is, I've discussed this at length
22 with Nick Cox, my statewide prosecutor. And since
23 I've been in office, I think more than ever, we
24 have been cross-designated, which makes me very
25 proud, in a lot of state cases that are

1 complicated, and we've been working well with the
2 state attorneys.

3 So I would like to offer to you a statewide
4 prosecutor to work with you and help facilitate
5 communication, because, of course, these cases come
6 from you to the state attorneys. And we would be
7 more than happy to offer a statewide prosecutor.
8 And it may be my appointed one, Nick Cox himself,
9 because we've talked about this issue.

10 This is a tremendous problem in our state.
11 These guys are sophisticated. These are
12 complicated cases. And we would be glad to help in
13 any way we can. Whether or not we actually have
14 the ability to prosecute the case, we can direct
15 you to the appropriate person and perhaps get
16 cross-designated.

17 MR. ASKINS: Thank you very much.

18 MR. BRANCH: And I'll add that your office,
19 the Office of Statewide Prosecution, has been at
20 the forefront of prosecuting these very cases, and
21 we really have a template as part of working with
22 your office in putting this together.

23 CFO ATWATER: Governor, that's really -- I
24 wanted to start off by thanking General Bondi. I
25 need to finish by thanking General Bondi. The

1 seriousness with which they have taken this, when
2 there are so many higher profile matters, that you
3 have really given this so much support and
4 attention, and the support that you've offered
5 really has been invaluable. We're excited about
6 trying to bring some solutions to cutting off this
7 scheme without harming, again, the business models
8 of the honest player that's out there, that
9 unfortunately part of their industry is
10 participating in.

11 ATTORNEY GENERAL BONDI: But it's so
12 frustrating being a prosecutor, because you look at
13 these schemes, and they're always trying to beat
14 the system, and they're always coming up with new
15 ways to beat you. But you've been on top of them.
16 Thank you.

17 GOVERNOR SCOTT: And, CFO, we need to tell
18 people they can get this out of your office; right?

19 CFO ATWATER: We do. And we were thinking
20 that we would have the technology nailed today, so
21 our apology. It's just how the scheme works. And
22 thank you for the suggestion, Governor. I've asked
23 our team to go make copies for the press, and
24 anything else about it that we've covered today so
25 that the press could have seen it and held that in

1 their hand.

2 GOVERNOR SCOTT: But if anybody wants to see
3 it, they can get a copy out of your office?

4 CFO ATWATER: We have it in our office, right.
5 Thank you, Governor.

6 And I know -- again, if Commissioner Cardwell
7 might offer us some wisdom in going after --

8 MR. CARDWELL: Wisdom and hard work. This is
9 a serious problem. Our staffs, between your
10 office, CFO Atwater, and ours have been working on
11 this very hard. There is a great amount of
12 cooperation. A series of new ideas are being
13 developed to work on this.

14 I can assure you personally that in the
15 remaining balance of my tenure, this will have my
16 maximum attention, and I will certainly thoroughly
17 brief Commissioner Grady on the issues and on the
18 background and get him fully up to speed to deal
19 with it.

20 And at the end of it, this is the type of
21 problem that will require a cooperative effort from
22 everybody to do it, from the regulators, from the
23 legislative branch, from law enforcement, and I
24 think from industry. So I think your idea of
25 putting together a work group to address it is

1 really the only way that you're going to
2 comprehensively do it, because as Attorney General
3 Bondi has said, these people are very talented at
4 finding ways and crevices within the system, and it
5 is only by working together that we will address
6 this thoroughly. And so as I say, it has my full
7 attention, and I'm sure Commissioner Grady's.

8 GOVERNOR SCOTT: Thank very much. CFO
9 Atwater, thank you very much for organizing this
10 and getting the information out.

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ATTACHMENT 2

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

AGENDA ITEM #2

A. Action Requested

The Office requests permission to file for final adoption with the Department of State amendments to Rule Chapter 69V-180, Florida Administrative Code. The proposed rules set forth books and records requirements, establish guidelines for imposing administrative penalties, adopt a revised complaint form, and set forth standards for disposal of records.

B. Statement of Justification

Section 559.5556(1), F.S., requires each registered consumer collection agency to maintain books and records necessary to determine a registrant's compliance with Part VI of Chapter 559, F.S. Section 559.5556(3), F.S., authorizes the Financial Services Commission to prescribe by rule the minimum information to be shown in the books and records. Proposed Rule 69V-180.080 implements this provision.

Section 559.5556(4), F.S., requires registrants to maintain books and records for at least 3 years after the date that the transaction is completed. This subsection also authorizes the Financial Services Commission to prescribe by rule the requirements for the destruction of books and records. Proposed Rule 69V-180.090 implements this provision.

Section 559.730(3), F.S., requires the Financial Services Commission to adopt rules establishing guidelines for imposing administrative penalties. Proposed Rule 69V-180.100 implements this statutory requirement.

Section 559.725(3), F.S., provides that if a person wishes to file a complaint against a consumer debt collection agency, he or she must certify on a form approved by the Financial Services

Commission and subject to the penalties of perjury under s. 837.06, F.S., a summary of the nature of the alleged violation and the facts that allegedly support the complaint. The statute provides that the complaint must be filed with the Office. The proposed changes to Rule 69V.180.040, F.A.C., reflect these provisions.

C. Summary of Rule Amendments

1. **Proposed Rule 69V-180.80 - Consumer Collection Agency Records:** The proposed rule requires consumer collection agencies to maintain minimum information in their books and records so that the Office of Financial Regulation may determine compliance with Part VI of Chapter 559, F.S. Minimum information required by the rule includes, but is not limited to, basic information about the debt, the debtor's account activity, and copies of correspondence sent to the debtor.

2. **Proposed Rule 69V-180.100 - Guidelines for Imposing Administrative Penalties:** Part VI of Chapter 559, F.S., the Florida Consumer Collection Practices Act, authorizes the Office to impose administrative penalties for violations of the act. Last year, statutory fines were increased from a maximum of \$1,000 per violation to 10,000 per violation. The proposed rule sets forth guidelines for imposing administrative penalties. The level of sanction imposed for each violation is reflected in the guidelines. The Office will consider a list of circumstances provided in the rule for determining whether a deviation from the range of sanctions specified in the rule is warranted. Circumstances that will be considered by the Office include, but are not limited to, the degree of harm to the public, the disciplinary history of the person, whether the person attempted to conceal the violation, and relevant case specific circumstances.

3. **Proposed Amendments to Rule 69V-180.040 - Consumer Collection Agency Complaint Form and Procedures:** Pursuant to s. 559.725(3), F.S., consumers must certify on a form approved by the Financial Services Commission a summary of the nature of the alleged violation and the facts that allegedly support the consumer's complaint against the consumer collection agency. If the consumer knowingly submits a false statement to the Office, the consumer is subject to the penalty of perjury pursuant to s. 837.06, F.S., which is punishable as a misdemeanor of the

second degree. The rule incorporates by reference a complaint form that reflects these provisions.

4. Proposed Rule 69V-180.090 - Consumer Collection Agency Records Retention and Destruction: Section 559.5556(4), F.S., requires all books and records of any debt collection transaction be preserved by the registrant and kept available for inspection by the Office for at least three years after the date the transaction is completed. The rule clarifies that the transaction is complete when the consumer satisfies the debt or the registrant ceases collection efforts.

Section 559.5556(4), F.S., also provides that the Commission may prescribe by rule requirements for the destruction of books and records once the three years has elapsed. The rule adopts the guidance provided in 16 C.F.R. Part 682 (2011) for proper destruction procedures, which include:

- The burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.
- The destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
- After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of consumer information in a manner consistent with the rule.

D. Procedural History

On October 22, 2010, a Notice of Rule Development was published in the Florida Administrative Weekly (FAW) for Rule Chapter 69V-180, F.A.C., relating to debt collection, to advise the public of the development of changes to the rule chapter, and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office; however, the Office did receive comments from the Florida Collectors Association.

On June 16, 2011, the Financial Services Commission approved proposed rule amendments to Rule Chapter 69V-180 for publication in the FAW. On July 1, 2011, the Notice of Proposed Rulemaking was published in the FAW. In response to the notice, the Office received written comments from

DBA International, Encore Capital Group, Inc. (including its wholly-owned subsidiary Midland Credit Management, Inc.) and ACA International. The Office also received comments from the staff of the Joint Administrative Procedures Committee. In response to the comments, the Office amended the proposed rules and filed a Notice of Change, which was published in the August 19, 2011, edition of the Florida Administrative Weekly. The proposed changes address the issues raised by the various industry groups and the staff of the Joint Administrative Procedures Committee.

The Office filed a Notice of Final Hearing for Rule Chapter 69V-180, which was published in the August 19, 2011, edition of the FAW. The final hearing for the rules is noticed for the Financial Services Commission meeting to be held on September 20, 2011, at the regularly scheduled cabinet meeting in Tallahassee.

THE FULL TEXT OF THE PROPOSED RULE:

69V-180.040 Consumer Collection Agency Complaint Form and Procedures.

Each consumer desiring to file a complaint against a consumer collection agency shall submit to the Office of Financial Regulation a completed complaint form, Form OFR-CCA-103, effective _____, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00310> 2-15-94, which is hereby incorporated by reference ~~and available by mail from the Office of Financial Regulation of Agriculture and Consumer Services, Division of Consumer Services, Mayo Building, Tallahassee, Florida 32399-0800.~~ Such form shall be filed with the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida ~~32399-0376~~ 32399-0375. Rulemaking Specific Authority ~~559.725(3) 17-29 FS.~~ Law Implemented ~~559.72, 559.725(3) 559.725 FS.~~ History—New 2-15-94, Formerly 3D-180.040, Amended _____.

69V-180.080 Consumer Collection Agency Records.

A registrant shall, at a minimum, maintain all records specified in this rule. Records shall be kept current to within one week of the current date. Computerized records that contain the equivalent of the information required to be maintained by this rule are acceptable. The following records shall be maintained:

- (1) A copy of the contract or agreement that the registrant will use with its creditors.
- (2) Records relating to the referrals made by a creditor to the registrant, identifying the name of the debtors, and the amount of the debt owed by each.
- (3) The debtor's account of activity disclosing the following:
 - (a) The name and address of the debtor;
 - (b) The date that the account was referred or acquired and the account number;
 - (c) The actual amount of the claim submitted by the creditor;
 - (d) The name and address of the creditor or a means of identifying this information by code or account number; and
 - (e) A record of payments made by the debtor, including the date received and the amount and balance owing;
 - (f) A record of outbound contacts or attempted contacts by the registrant with the debtor including:
 1. The full name of the debtor;
 2. The date and time the contact was placed or received;
 3. The phone number dialed if placing an outgoing phone call;
 4. The disposition of the phone call;
 5. The name of the person (or alias name of the person) making or attempting to make contact.
- (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.
 - (5) Documentation recording the dates and amounts of remittances by the registrant to the creditor.
 - (6) All form letters and stationery used by a registrant shall be maintained in a file and made available at all times for review by the Office of Financial Regulation.
 - (7) The name of the financial institution or institutions where the registrant's accounts will be maintained, and the identifying numbers assigned by the financial institutions to the accounts.
 - (8) All written agreements executed between the registrant and the debtor after the account has been received from the creditor.
 - (9) Basic information about the debt including, at the minimum:
 - (a) Documentation of the debt provided by the creditor;
 - (b) The date the debt was incurred and the date of the last payment;
 - (c) The identity of the original creditor as known to the debtors;
 - (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.
 - (10) A copy of all letters, emails, and correspondence, written or electronically sent to a debtor.
 - (11) All phone numbers used by a registrant shall be disclosed and maintained in a file and made available at all times for review by the Office of Financial Regulation.
- Rulemaking Authority 559.5556 FS. Law Implemented 559.5556 History–New_____.

69V-180.090 Consumer Collection Agency Records Retention and Destruction.

- (1) All books, accounts, records, documents, and receipts must be maintained for at least 3 years from the date the consumer satisfied the debt being collected or the registrant has ceased collection efforts from the consumer.
- (2) A registrant must have written policies and procedures for the secure handling of all consumer documents and information received in the course of collecting a debt from a consumer. Such procedures must include, at a minimum, the following steps, as appropriate:
 - (a) A secure method of destroying consumer information, such as those prescribed in 16 C.F.R. Part 682 (2011), which relates to disposal of consumer report information and records under section 216 of the Fair and Accurate Credit Transactions Act of 2003. Federal regulation 16 C.F.R. Part 682 (2011), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-00311>, is incorporated by reference in this rule.
 - (b) Maintaining records of the destruction including which records were destroyed, when were the records destroyed, where were the records destroyed, and who destroyed the records.

Rulemaking Authority 559.5556 FS. Law Implemented 559.5556 FS. History–New_____.

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.

	<u>Statute</u>	<u>Violation Description Summary</u>	<u>1st Occurrence</u>	<u>2nd Occurrence</u>	<u>3rd & Subsequent Occurrences</u>
(1)	<u>559.565(1)</u>	<u>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.</u>	<u>Fine: B Cease and Desist</u>	<u>Fine: C Cease and Desist</u>	
(2)	<u>559.72(1)</u>	<u>Simulate in any manner a law enforcement officer or a representative of any governmental agency.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(3)	<u>559.72(2)</u>	<u>Use or threaten force or violence.</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>	
(4)	<u>559.72(3)</u>	<u>Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(5)	<u>559.72(4)</u>	<u>Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(6)	<u>559.72(5)</u>	<u>Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(7)	<u>559.72(6)</u>	<u>Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact or failed to notify within 30 days the details of the dispute to each person to whom disclosure was made.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(8)	<u>559.72(7)</u>	<u>Willfully communicate with the debtor or</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u>

		<u>any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.</u>			<u>Revocation</u>
(9)	559.72(8)	<u>Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(10)	559.72(9)	<u>Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate or assert the existence of some other legal right when such person knows that the right does not exist.</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>	
(11)	559.72(10)	<u>Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued or approved by a government, governmental agency, or attorney at law, when it is not.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(12)	559.72(11)	<u>Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.</u>	<u>Fine: B</u>	<u>Fine: C</u>	<u>Fine: C</u> <u>Revocation</u>
(13)	559.72(12)	<u>Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(14)	559.72(13)	<u>Advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>	
(15)	559.72(13)	<u>Threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(16)	559.72(14)	<u>Publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>	
(17)	559.72(14)	<u>Threaten to publish or post before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>
(18)	559.72(15)	<u>Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>

		<u>requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.</u>			
(19)	559.72(16)	<u>Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor.</u>	<u>Fine: B</u>	<u>Fine: C</u>	<u>Fine: C Revocation</u>
(20)	559.72(17)	<u>Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(21)	559.72(18)	<u>Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(22)	559.72(19)	<u>Cause a debtor to be charged for communications by concealing the true purpose of the communication.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Revocation</u>
(23)	559.725(6)	<u>Failure to provide a written response to a consumer complaint within 45 days of written request.</u>	<u>\$150 per day</u>	<u>\$200 per day</u>	<u>\$250 per day</u>

(24) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a person, or revocation of a person or any combination thereof;

(b) The Office may impose a cease and desist order, a suspension, or both in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances; and

(c) The Office will consider the person's disciplinary history for the past five years in determining an appropriate penalty, and may impose a more severe penalty when the disciplinary history includes past violations.

(25) In accordance with Section 559.730, F.S., the Office shall consider the following circumstances in determining an appropriate penalty within the range of penalties prescribed in this rule for each violation. The Office also shall consider these circumstances when determining whether a deviation from the range of sanctions prescribed in the disciplinary guidelines is warranted:

(a) The degree of harm to the public;

(b) The disciplinary history of the person;

(c) Whether the person detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;

(d) Whether the person's violation was the result of willful misconduct or recklessness;

(e) Whether at the time of the violation, the person had developed and implemented reasonable supervisory, operational or technical procedures, or controls to avoid the violation;

(f) Whether the person attempted to conceal the violation or mislead or deceive the Office;

(g) The length of time over which the person engaged in the violations; and

(h) Other relevant, case-specific circumstances.

(26) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by Section 559.730, F.S.

(27) The ranges for administrative fines imposed by this rule are \$1,000 to \$3,500 for an "A" level fine; \$3,500 to \$7,500 for a "B" level fine; and \$7,500 to \$10,000 for a "C" level fine.

(28) A previous "occurrence" is the same or similar misconduct which was the subject of a Final Order entered by the Office prior to the acts or omissions which are the subject of the current action by the Office.

Rulemaking Authority 559.730(3) FS. Law Implemented 559.5556, 559.565(1), 559.72, 559.725(6), 559.730 FS. History—New _____.

MATERIALS INCORPORATED BY REFERENCE

- **Complaint Form, Form OFR-CCA-103**
- **16 C.F.R. Part 682 (2011)**



Florida Consumer Collection Practices Act

COMPLAINT FORM

We welcome hearing from you because your complaint may be the one that alerts us to fraud or an unfair practice in the financial industry that needs to be changed. Often it is only through complaints from concerned and responsible citizens that the Office of Financial Regulation becomes aware of unlawful activity. Your complaint will be analyzed, entered into a database and may help OFR detect a pattern of wrong-doing which may indicate the need for formal investigation or action by OFR to protect the broad public interest.

Under Florida law, OFR is charged with enforcing financial regulations and does not intervene on behalf of individuals or mediate private disputes. If your purpose in filing a complaint is to recover money or property, we suggest that you consider arbitration, mediation or the courts. Private rights of action pursuant to arbitration and civil proceedings may have certain filing timeframes. You should consider consulting legal counsel prior to or concurrent with our review. Private causes of action effectively deter abuses and complement the regulatory actions of OFR as well as other regulatory bodies.

Please Read and Sign: To the best of my recollection, the events described in the following complaint are true. I am filing this complaint to notify OFR of these activities. I understand that a copy of this complaint may be provided to the company against whom I am complaining and that my records within that company may be reviewed by OFR or other agencies which may have jurisdiction in this matter. Under penalty of perjury pursuant to Section 837.06, Florida Statutes, I declare the following facts are true, correct, and complete. Section 837.06, Florida Statutes, states: Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Date

Signature

Please send completed form to: Office of Financial Regulation
Division of Finance
Consumer Assistance Group
200 E. Gaines Street
Tallahassee, FL 32399-0381
Tel: (850) 410-9800
Fax: (850) 410-9300

Code of Federal Regulations

Title 16 - Commercial Practices

Volume: 1

Date: 2011-01-01

Original Date: 2011-01-01

Title: PART 682 - DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS

Context: Title 16 - Commercial Practices. CHAPTER I - FEDERAL TRADE COMMISSION.
SUBCHAPTER F - THE FAIR CREDIT REPORTING ACT.

Pt. 682

PART 682—DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS

Sec.

682.1 Definitions.

682.2 Purpose and scope.

682.3 Proper disposal of consumer information.

682.4 Relation to other laws.

682.5 Effective date.

Authority: Pub. L. 108-159, sec. 216.

Source: 69 FR 68697, Nov. 24, 2004, unless otherwise noted

§ 682.1 Definitions.

(a) *In general.* Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) "*Consumer information*" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(c) "*Dispose,*" "*disposing,*" or "*disposal*" means:

(1) The discarding or abandonment of consumer information, or

(2) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

§ 682.2 Purpose and scope.

(a) *Purpose.* This part ("rule") implements section 216 of the Fair and Accurate Credit Transactions Act of 2003, which is designed to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.

(b) *Scope.* This rule applies to any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information.

§ 682.3 Proper disposal of consumer information.

(a) *Standard.* Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(b) *Examples.* Reasonable measures to protect against unauthorized access to or use of consumer information in connection with its disposal include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with the rule in this part.

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.

(3) After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule. In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.

(4) For persons or entities who maintain or otherwise possess consumer information through their provision of services directly to a person subject to this part, implementing and monitoring compliance with policies and procedures that protect against unauthorized or unintentional disposal of consumer information, and disposing of such information in accordance with examples (b)(1) and (2) of this section.

(5) For persons subject to the Gramm-Leach-Bliley Act, 15 U.S.C. 6081 et seq., and the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314 ("Safeguards Rule"), incorporating the proper disposal of consumer information as required by this rule into the information security program required by the Safeguards Rule.

§ 682.4 Relation to other laws.

Nothing in the rule in this part shall be construed:

(a) To require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

(b) To alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

§ 682.5 Effective date.

The rule in this part is effective on June 1, 2005.