

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF AGENT & AGENCY SERVICES

NOTICE OF PROPOSED RULEMAKING

RULE CHAPTER NO:	RULE CHAPTER TITLE:
69B-231, F.A.C.	Penalty Guidelines for Insurance Representatives
RULE NOS:	RULE TITLE:
69B-231.030, F.A.C.	Definitions
69B-231.080, F.A.C.	Penalties for Violation of Section 626.611
69B-231.100, F.A.C.	Penalties for Violation of Section 626.9541(1)
69B-231.110, F.A.C.	Penalties for Violation of Other Specific Provisions of the Florida Insurance Code
69B-231.160, F.A.C.	Aggravating/Mitigating Factors

PURPOSE AND EFFECT: The purpose of the proposed rule development is to update the rules that govern suspension and revocation of licenses of insurance agents, customer representatives, service representatives and adjusters. The amendments include adding new regulations adopted by the Florida Legislature and deleting laws that have been repealed. The rules are also updated by increasing penalties for violating certain laws in order to reflect the Department’s experience in dealing with the frequency and severity of these violations. The purpose of other changes is to clarify the rules.

SUMMARY: The amendment to Rule 69B-231.030, F.A.C., amends the definitions for “administrative complaint” and “count” and adds a new definition for “administrative charges.” Rule 69B-231.080, F.A.C., is amended to add new penalties for violations of Section 626.611(17), F.S. Rule 69B-231.100, F.A.C., is amended to increase the length of license suspension for violations of certain unfair and deceptive insurance practices and adds penalties for misrepresentations and false advertising of insurance policies and twisting as well as adds penalties for violations under Section 626.9541(1), F.S. Rule 69B-231.110, F.A.C., is amended to increase the length of license suspension for violations of certain other provisions of the Florida Insurance Code and adds the penalty of revocation for licensees who fail to comply with the court, pursuant to Section 631.155, F.S., regarding accounting for premiums and unearned commissions. Rule 69B-231.160 is amended to repeal the consideration of cooperation with the Department as an aggravating or mitigating factor and adds penalties for violation of any part of Sections 626.9541,

and 627.4554, F.S. in relation to the sale of a life insurance policy or annuity to a senior citizen. Further, the rule is amended to delete the term “timely” as it relates to restitution to victims.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No SERC has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 624.308, 626.207(2), 627.4554(9), F.S.

LAW IMPLEMENTED: 624.307(1), 626.308, 626.207(2), 626.611, 626.621, 626.631, 626.641, 626.681, 626.691, 626.9541, 626.9541(1), 627.4554, 631.155, F.S.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: Tuesday, March 16, 2010 @ 9:00 AM

PLACE: Room 142, Larson Building, 200 E. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathy Spencer, Division of Agent & Agency Services, Department of Financial Services, 200 E. Gaines Street, 412 Larson Building, Tallahassee, FL 32399-0319, (850) 413-5644.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

69B-231.030 Definitions.

The following definitions shall apply for purposes of this rule chapter.

(1) “Administrative complaint” means a charging document ~~refers to formal administrative charges~~ filed by the Department against a licensee. ~~The charges consist of factual allegations with citations to violations of the Insurance Code, Department rules or orders grouped together in one or more counts.~~

(2) “Administrative charges” means charges consisting of factual allegations with citations to violations of the Insurance Code, Department rules or orders grouped together in one or more counts.

(3) ~~(2)~~ A “Count” is a single allegation or multiple allegations relating ~~refers to a series of one or more~~

~~numbered paragraphs of factual allegations in an administrative complaint that are grouped together under the word “Count” followed by a Roman numeral and which are set apart from other counts in an administrative complaint, which relate to a single transaction or occurrence, and which if true, would constitute a violation of one or more provisions of the Insurance Code.~~

~~(4)~~ ~~(3)~~ “Convicted” means adjudicated guilty by a court.

~~(5)~~ ~~(4)~~ “Crimes involving moral turpitude” means each felony crime identified in ~~Rule subsection 69B-211.042 (23) and (24)~~ ~~2(21)~~, F.A.C., and each felony crime not identified in ~~Rule subsection 69B-211.042 (23) and (24)~~ ~~2(21)~~, F.A.C., that is substantially similar to a crime identified in ~~Rule subsection 69B-211.042 (23) and (24)~~ ~~2(21)~~, F.A.C.

~~(6)~~ ~~(5)~~ “Department” means the Florida Department of Financial Services.

~~(7)~~ ~~(6)~~ “Final penalty” means the penalty ~~actually~~ imposed on a licensee by the Department.

~~(8)~~ ~~(7)~~ “Penalty per count” means ~~refers to~~ the penalty to be assessed for a single count and is ~~which shall be~~ equal to the highest stated penalty in the count for all proven violations ~~proven~~.

~~(9)~~ ~~(8)~~ “Stated penalty” means the penalty set forth in Rules 69B-231.080 through 69B-231.150, F.A.C.

~~(10)~~ ~~(9)~~ “Total penalty” means ~~refers to~~ the sum of the highest stated penalties for each count.

Rulemaking Specific Authority 624.308, 626.207(2) FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621 FS. History—New 7-13-93, Amended 9-23-02, Formerly 4-231.030, Amended 8-15-06, _____

_____.

69B-231.080 Penalties for Violation of Section 626.611, F.S.

If it is found that the licensee has violated any of the following subsections of Section 626.611, F.S., for which compulsory suspension or revocation of license(s) and appointment(s) is required, the following stated penalty shall apply:

(1) through (8) No Changes.

(9) Section 626.611(9), F.S. – suspension 12 ~~9~~ months

(10) through (16) No Changes.

(17) Section 626.611(17)(a), (c) or (d), F.S. – suspension 12 months

(18) Section 626.611(17)(b), F.S. – revocation.

Rulemaking Specific Authority 624.308, 626.207(2) FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611 FS. History–New 7-13-93, Amended 9-23-02, Formerly 4-231.080, Amended 8-15-06,_____.

69B-231.100 Penalties for Violation of Section 626.621(6), F.S.

If a licensee is found to have violated subsection 626.621(6), F.S., by engaging in unfair methods of competition or in unfair or deceptive acts or practices as defined in any of the following paragraphs of subsection 626.9541(1), F.S., the following stated penalty shall apply:

(1) Section 626.9541(1)(a), F.S. – suspension 12 6 months

(2) through (11) No Changes.

(12) Section 626.9541(1)(l), F.S. – suspension 12 9 months

(13) through (28) No Changes.

(29) Section 626.9541(1)(cc), F.S. – suspension 6 months

(30) Section 626.9541(1)(ee), F.S. – suspension 12 months

(31) Section 626.9541(1)(ff), F.S. – suspension 12 months

Rulemaking Specific Authority 624.308, 626.207(2) FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.621, 626.9541(1) FS. History–New 7-13-93, Formerly 4-231.100, Amended 8-15-06,_____.

69B-231.110 Penalties for Violation of Other Specific Provisions of the Florida Insurance Code.

If the licensee is found to have violated any of the following provisions of the Insurance Code, the following stated penalty shall apply:

(1) through (4) No Changes.

(5) Section 626.536, F.S. – administrative fine of not less than \$500 for the first violation; administrative fine of not less than \$1,000 for the second violation; and suspension of 2 months for the third and subsequent violations.

(6) Section 626.541, F.S. – not less than \$500 for the first violation; administrative fine of not less than \$1,000 for the second violation; and suspension of 2 months for the third and subsequent violations.

(7) through (34) No Changes.

(35) Section 626.901(1), F.S. – suspension 12 6 months

(36) through (38) No Changes.

(39) Section 631.155, F.S. – revocation

Rulemaking Specific Authority 624.308, 626.207(2) FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621, 626.681, 626.691, 631.155, FS. History– New 7-13-93, Formerly 4-231.110, Amended 8-15-06,
_____.

69B-231.160 Aggravating/Mitigating Factors.

The Department shall consider the following aggravating and mitigating factors and apply them to the total penalty in reaching the final penalty assessed against a licensee under this rule chapter. After consideration and application of these factors, the Department shall, if warranted by the Department’s consideration of the factors, either decrease or increase the penalty to any penalty authorized by law.

(1) For penalties other than those assessed under Rule 69B-231.150, F.A.C.:

(a) through (d) No Changes.

(e) ~~R~~estitution ~~T~~imely to victims;

(f) and (g) No Changes.

(h) Financial loss to victim ~~Cooperation with the Department;~~

(i) through (l) No Changes.

(m) Violation of any part of Sections 626.9541, and 627.4554, F.S. in relation to the sale of a life insurance policy or annuity to a senior citizen; and

(n) ~~(m)~~ Other relevant factors.

(2) No Changes.

Rulemaking Specific Authority 626.308, 626.207(2), 627.4554(9), FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621, 626.631, 626.681, 626.9541, 627.4554, FS. History–New 7-13-93, Formerly 4-231.160, Amended 8-15-06,
_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barry Lanier, Chief of Investigation, Bureau of Investigation, Division of Agent & Agency Services, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:

Alex Sink, Chief of Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 8, 2010