

DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF AGENT AND AGENCY SERVICES

NOTICE OF PROPOSED RULEMAKING

RULE:

69B-211.041, F.A.C.

69B-211.042, F.A.C.

RULE TITLE:

Definitions.

Effect of Law Enforcement Records on Applications for Licensure.

PURPOSE AND EFFECT: In the 2011 Legislative Session, Section 626.207, F.S. was amended to change the way that the criminal history of an applicant affects an application for insurance agent licensure. This rule amendment conforms the Department's rule to the revised statute.

SUMMARY: In Section 69B-211.041, F.A.C. several definitions are deleted because they are no longer needed based on the rewrite to Section 69B-211.042, F.A.C. Other definitions are revised to provide simplicity and clarity. Rule Section 69B-211.042, F.A.C. is amended to delete language that is inconsistent with Section 626.207, F.S. as amended. Subsection (1) establishes the process for submission of documentation related to the applicant's law enforcement record. Subsection (2) addresses the effect of failure to fully disclose a Law Enforcement Record. Subsection (3) establishes disqualification periods based on the nature of the crime in a record. Subsection (4) provides increased disqualification periods where an applicant has a record of multiple crimes. Subsection (5) identifies mitigating factors used to reduce disqualifying periods. Subsection (6) identifies aggravating factors used to increase disqualification periods. Subsection (7) prohibits collateral attack of criminal proceedings. Subsection (8) provides that the pendency of a criminal appeal does not affect the consideration of a criminal record for licensure. Subsection (9) provides that the Department will not grant a license to a person in a pre-trial intervention program. Subsection (10) addresses the effect of sealing or expunging of criminal records. Subsection (11) addresses the effect of a pardon. Subsection (12) clarifies the effect of varying terminology found in the law enforcement record documentation. Subsection (13) prohibits licensure of applicants imprisoned, under arrest, in custody, under supervision, or serving a sentence. Subsection (14) provides that passage of a disqualification period does not create an entitlement to a license. Subsection (15) addresses how foreign law enforcement records affect a licensure application. The existing crime classification system is being removed to conform to revisions to Section 626.207, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The economic analysis conducted by the Agency has determined that the estimated regulatory costs will be negligible.

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, F.S.

LAW IMPLEMENTED: 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.207, 626.211, 626.291, 626.601, 626.611(7), (14), 626.621(8), 626.631, 626.641, 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: Wednesday, June 13, 2012 @ 9:30 AM

PLACE: 116 Larson Building, 200 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Matt Tamplin, Bureau Chief, Bureau of Licensing, Division of Insurance Agent & Agency Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0320, 850-413-5460 or Matt.Tamplin@myfloridacfo.com

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-211.041 Definitions.

For purposes of this rule part, the following definitions shall apply:

(1) “Application” or “Application Process” refers to an application for licensure procedurally processed under Chapter 626, Florida Statutes. An Application is not deemed completed until so designated by the Department. The application remains open and the application process continues from the time the application is submitted online until the time the Department issues the license or issues a notice of denial of the application. Failure to comply with Department requests for information related to the application will result in the termination of the application process. If the application process is terminated for failure to timely provide the Department with requested documentation, the applicant must submit a new application.

(2) “Charge” or “charges” refers to the official allegations contained in the official document setting out the crimes that an applicant is alleged to have committed, in any criminal proceeding, whether styled including an “Information,” “Indictment,” or otherwise, which document that specifies the charges against an official allegations against the defendant applicant.

(3) ~~“Crime of Moral Turpitude”~~ refers to each felony crime identified in subsection 69B-211.042(21), F.A.C.

(4) ~~“Criminal record,”~~ for purposes of this rule part, includes any felony charge filed against the applicant in the courts of any state or federal district or territory, or other country, on any subject matter whether related to insurance or not, concerning which charge the applicant was found guilty, or pled guilty, or pled nolo contendere, regardless of whether or not there was an adjudication by the court, and regardless of whether the matter is under appeal by the applicant. The phrase includes such charges even where the crime was subsequently pardoned or civil rights have been restored. The phrase does not include criminal convictions which were finally reversed or vacated on appeal; nor does it include charges of which the applicant was found not guilty, or which were finally dismissed; nor does it include matters as to which at time of application an order of sealing or expungement has been issued by a court of competent jurisdiction.

(3)(5) ~~“Felony”~~ means and includes any crime of any type, whether or not related to insurance, which crime is designated as a “felony” by statute in the jurisdiction state of prosecution, or designated as a “felony” in the charges, or which crime is punishable under the law of the prosecuting jurisdiction by imprisonment of more than one year regardless of how classified in the charges or statutes. If a crime is a felony in the jurisdiction state of prosecution, it shall be treated as a felony under this rule part notwithstanding that the same activity is not a felony in Florida. If a crime is considered a misdemeanor in the jurisdiction of prosecution, it shall be treated as a misdemeanor under this rule notwithstanding that the same activity is a felony in Florida. The term “felony” includes felonies of all degrees.

(6) ~~“Insurance related misdemeanor”~~ means and includes any misdemeanor charges which allege violation of any part of the insurance regulatory laws of Florida or any other state or the federal government; or which allege any criminal conduct involving any aspect of insurance, such as crimes in the nature of misapplication or theft of premium money or claims payment money, or dishonesty in any aspect of insurance claims practice.

(4)(7) ~~“Law Enforcement Record,”~~ for purposes of this rule part, includes the following:

(a) Any criminal charge filed against the applicant in the courts of any state or federal district or territory, or other country, for which the applicant pled guilty or no contest, regardless of whether or not there was an adjudication of guilt by the court, or for which the applicant was found guilty, and regardless of whether the matter is under appeal by the applicant; and The applicant’s criminal record as defined in this rule part;

(b) Criminal charges that were subsequently pardoned or for which civil rights have been restored. The phrase does not include criminal charges which, at the time of the application, are under an order to seal or expunge by a court of competent jurisdiction; and Any pre-trial intervention program the applicant is participating in at the time of application, or was participating in at any time in the 12 months next preceding the time of application; and

(c) All criminal charges against the applicant, whether by information or other charging document even where no formal determination of disposition has been made. All pending criminal charges against the applicant as of the time of application. The phrase “pending criminal charges” includes all criminal charges against the applicant, whether by information or other charging document filed in court, or by indictment, under the jurisdiction of any state or the federal government or any other country, concerning which charges there has at the time of application been no finding of guilty or not guilty, nor dismissal of charges, nor formal statement of nolle prosequere by the prosecuting authority; and

(d) All arrests on any misdemeanor or felony charge of any type whether or not related to insurance, which arrests were made by law enforcement authorities in any state or by federal authorities, or by law enforcement authorities in another country, and which arrest occurred within the 12 months next preceding the time of

~~application, and regardless of whether there have been or will be any subsequent criminal proceedings connected therewith.~~

~~(5)(8) “Misdemeanor” means and includes any crime of any type, whether or not related to insurance, which crime is designated as a “misdemeanor” by statute in the jurisdiction state of prosecution, or is so designated in the charges, or is punishable under the law of the prosecuting jurisdiction by imprisonment of one year or less. The term includes misdemeanors of all degrees.~~

~~(6)(9) “Pre-trial Intervention” refers to a program operated under Section 948.08, Florida Statutes, or a similar program in the State of Florida or any other jurisdiction another state.~~

~~(10) “Time of application” is the date an application is received by the Department or received on behalf of the Department by sources utilized by the Department in its licensure process.~~

~~(11) “Trigger Date” is the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime; or, where that date is not ascertainable, the date of the charges or indictment.~~

~~(12) “True Copy” or “Certified true copy” means a copy of a court or government agency paper which bears an original certification of the clerk or other official of the court or agency to the effect that the paper(s) are accurate copies of records of the court or agency.~~

~~*Rulemaking Specific Authority 624.308, 626.207 FS. Law Implemented 112.011, 624.307(1), 626.161, 626.171, 626.201, 626.207, 626.211, 626.291, 626.601, 626.611(7), (14), 626.621(8), 626.631, 626.641 FS. History—New 10-17-02, Formerly 4-211.041, Amended _____.*~~

69B-211.042 Effect of Law Enforcement Records on Applications for Licensure.

(1) Law Enforcement Records and Required Documentation. The Department uses Law Enforcement Records to determine whether an applicant is subject to the permanent bar or disqualifying periods set forth in Section 626.207, F.S. or otherwise qualifies for licensure under the Florida Insurance Code, including determining whether an applicant is fit and trustworthy pursuant to Section 626.611(7), F.S.

(a) As provided by statute and upon the Department’s request, an applicant for licensure is required to disclose the applicant’s Law Enforcement Record. During the application process, which process continues up to the time of the issuance of a license or the denial of the application, the applicant is required to accurately and truthfully answer questions about the applicant’s Law Enforcement Record. The applicant is responsible for the accuracy of all information contained in any application submitted by the applicant or submitted by another person on the applicant’s behalf, including documents or information submitted during the application process related to the Law Enforcement Record.

(b) As provided by statute, an applicant must provide the Department with fingerprints and permit the Department to obtain the applicant’s Law Enforcement Record from the Florida Department of Law Enforcement and/or the Federal Bureau of Investigation. The Department shall not process an application when fingerprints are required until the Department receives readable and properly executed fingerprints. Applications are incomplete until fingerprints are received.

(c) At the direction of the Department, as a part of the application process, and in addition to the application, the following documentation is required to be submitted by the applicant:

1. A copy of the police arrest affidavit or arrest report or similar document for all arrests.
2. A certified true copy of the charging document, such as an information, indictment, or ticket.
3. A certified true copy of the plea, judgment, and sentence.

4. A certified true copy of the order of entry into pre-trial intervention, where applicable, and the order of termination of pre-trial intervention showing dismissal of the charges.

(d) If during the application process the Department requests that an applicant submit documentation related to the applicant’s Law Enforcement Record but that documentation cannot be obtained because the document no longer exists, the applicant shall supply a certified or sworn statement, signed by a representative of the agency that would have been the custodian of such documentation, indicating that documentation of such matter does not exist or that the record was lost, damaged or destroyed, or otherwise indicating why the documentation cannot be produced. All requested documentation must be legible.

(e) The requirements set forth in (a) through (d) above continue throughout the application process and apply to all types of applications including initial applications, applications for additional licenses and applications for reinstatement of a previously suspended license.

~~General Policy Regarding Conduct Prior to Licensure. The Department is concerned with the law enforcement record of applicants for the purpose of ascertaining from those records whether the person would represent a significant threat to the public welfare if licensed under Chapter 626, Florida Statutes. It is no part of the~~

Department's responsibilities, and the Department does not attempt, to "penalize", "discipline", or "punish" any person concerning any conduct prior to licensure.

(2) ~~Duty to Disclose Law Enforcement Record.~~ Every applicant shall disclose in writing to the Department the applicant's entire law enforcement record on every application for licensure, as required therein, whether for initial, additional, or reinstatement of licensure. This duty shall apply even though the material was disclosed to the Department on a previous application submitted by the applicant.

(3) ~~Policy Specifically Concerning Effect of Criminal Records.~~

(a) ~~The Department interprets Sections 626.611(14) and 626.621(8), Florida Statutes, which subsections relate to criminal records, as applying to license application proceedings. The Department interprets those statutes as not limiting consideration of criminal records to those crimes of a business related nature or committed in a business context. More specifically, it is the Department's interpretation that these statutes include crimes committed in a non-business setting, and that such crimes are not necessarily regarded as less serious in the license application context than are crimes related to business or committed in a business context.~~

(b) ~~Fingerprint delays.~~ The Department shall not delay licensure due to processing of fingerprint cards; provided, however, that the Department interprets Section 626.211(1), Florida Statutes, to mean that Department delays based on the applicant's failure to supply the Department with a properly executed and readable fingerprint card are not delays such as are prohibited by that statute. The Department shall not process an application for which fingerprints are required, except upon receipt of a readable and properly executed fingerprint card.

(c) ~~General Procedure.~~ The applicant shall supply the Department with required documentation, as specified in this rule, as to all matters appearing on the law enforcement record or shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The application shall be addressed as set forth in Rule 69B-211.0035, F.A.C. All documentation shall be completely legible. Required documentation includes:

1. ~~For arrests, the police arrest affidavit or arrest report or similar document (need not be certified true copy).~~
2. ~~The charges (certified true copy).~~
3. ~~Plea, judgment, and sentence (certified true copy).~~
4. ~~Order of entry into pre trial intervention, and where applicable the order of termination of pre trial intervention showing dismissal of charges (all certified true copies).~~

~~(2)(4) Effect of Failure to Fully Disclose Law Enforcement Record~~ Truthfully Answer on Application Questions Regarding Applicant's Law Enforcement Record.

(a) ~~The Department finds that The existence of an applicant's all matters that are part of an applicant's Law Enforcement Record is considered are material elements of the application and the application process, and the failure to finds that the omission of accurately and truthfully answer application questions or Department requests regarding any part of the Law Enforcement Record required to be disclosed on the application is considered a material misrepresentation or material misstatement under Section 626.611(2), F.S in and of itself. The applicant shall have violated Section 626.611(2) or 626.621(1), Florida Statutes, if the applicant fails to provide the Department with the documentation required by this rule.~~

(b)1. ~~If an applicant fails to fully and properly accurately and truthfully answer disclose Department questions about the applicant's the existence of Law Enforcement Records, as required by the application, the application may will be denied and a disqualifying period and/or fine and/or other legally permissible punishment may waiting period will be imposed before the applicant may reapply for or be granted any license. This includes answering any application question about the existence of Law Enforcement Records in the negative when an affirmative answer was appropriate. The disqualifying period may be up to one year. This disqualifying period shall begin the later of: (1) the date of the initial application or (2) the end of any applicable disqualifying period. The Mitigating Factors in Section 7, below, may not be used to reduce the amount of the disqualifying period for failure to disclose.~~

2. ~~If the Department discovers that an the applicant's failed failure to accurately and truthfully answer any question relating to Law Enforcement Records disclose only after a license has been granted, the Department shall will suspend or revoke each license currently held by the licensee pursuant to Section 626.611, F.S applicant.~~

3. ~~The waiting period shall begin on the later of:~~

- a. ~~The date that the Department issues a letter or notice of denial of the application, or~~
- b. ~~The date that a previously imposed waiting period expires.~~

4. ~~Waiting periods shall be calculated as follows:~~

- a. ~~Class A or B crime omitted, where the trigger date was more than 10 years before time of application, add 1~~

year. If the trigger date was 10 years prior, or less than 10 years prior, to the time of application, add 2 years.

b. Class C crime omitted, add 1 year.

c. Omission of any arrest, pending criminal charges, pre-trial intervention, or other part of the law enforcement record required to be disclosed on the application, add 1 year.

(e) An applicant whose application is denied under this subsection shall resubmit another application and applicable fee as set forth in Section 624.501, Florida Statutes, on the application form respective to the type and class of license sought.

(d) After the waiting period has elapsed, the Department shall consider the application if it is resubmitted in good form with applicable fees, and licensure shall be granted if the licensee then meets all the requirements and criteria for licensure as set out in the then applicable rules and statutes.

(e) Formal Record to be Made. The Department finds that submission of an application that is inaccurate as to law enforcement history is a matter of such weight that a formal record of the application shall be made and preserved by Department order for reference and consideration should the applicant subsequently become licensed and violate any portion of the insurance code. To this end, applicants are required to execute a settlement acknowledging the inaccuracy as a prerequisite to becoming licensed after all waiting periods have elapsed and the applicant is otherwise eligible for licensure.

(3)(5) Classification of and Treatment of Certain Felony and Misdemeanor Crimes.

(a) Application for licensure shall not be denied or subjected to a disqualifying period delayed based solely on the fact that an applicant was found guilty of, or pled guilty or nolo contendere to, a misdemeanor, unless the misdemeanor is directly related to the financial services business as defined in Section 626.207, F.S. an insurance-related misdemeanor or a misdemeanor involving breach of trust or dishonesty; provided further, that repeated misdemeanors, or a misdemeanor in combination with other conduct shall merit denial of licensure if they reflect on an applicant's character, fitness, or trustworthiness to engage in the business of insurance.

(b) A crime is directly related to the financial services business as defined in Section 626.207(1), F.S., if a financial services business, a financial services business relationship, a financial services business resource, or a transaction relating to or involving a financial services business, was used in the furtherance of the crime. The Department finds that an insurance related misdemeanor or a misdemeanor involving breach of trust or dishonesty demonstrates a lack of fitness or trustworthiness to be licensed to engage in the business of insurance and constitutes grounds for denial of licensure, pursuant to Section 626.611(7), Florida Statutes. The Department finds that the waiting period necessary to overcome the demonstrated lack of fitness and trustworthiness is equivalent to the waiting period imposed for a class "A" felony, and therefore, an applicant whose law enforcement record includes such a misdemeanor is subject to the same waiting period as a class "A" crime.

(c) For the purposes of this rule, the seven year disqualifying period in Section 626.207(4)(c), F.S. applies to all felony cases involving the passing or uttering of a worthless bank check, or obtaining property in return for a worthless bank check or any other check-related felony where the check or property involved is worth \$500 or less. The Department shall not impose any waiting period pursuant to this rule where the only crime in an applicant's law enforcement record is a single misdemeanor crime that results from the applicant's passing of a worthless check, or obtaining property in return for a worthless check, and the amount of the check or checks involved in the single misdemeanor crime is \$500 or less. However, this subparagraph shall not apply where a misdemeanor crime resulting from the applicant's passing of a worthless check, or obtaining property in return for a worthless check is not the only crime in an applicant's law enforcement record.

(6) Probation. The Department shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving a probationary term on any felony crime, or any misdemeanor crime, except for those crimes specified in Chapter 316, Florida Statutes, which are not punishable by imprisonment. The Department shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(7) Classification of Felony Crimes.

(a) The Department makes a general classification of felony crimes into three classes: A, B and C, as listed in subsections (21), (22) and (23) of this rule. The lists refer only to such crimes when they are felonies, since certain of the crimes could be misdemeanors in some jurisdictions and felonies in other jurisdictions.

(b) These classifications reflect the Department's evaluation of various crimes in terms of moral turpitude, and of the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by someone who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included

crimes to crimes bearing the exact name or description stated.

(d) The lists are not all inclusive. Where a particular crime involved in an application is not listed in this rule, the Department has the authority to analogize the crime to the most similar crime that is listed. No inference is to be drawn from the absence of any crime from this list, to the effect that said crime is not grounds for adverse action under this rule.

(e) In evaluating law enforcement records, the Department shall use the highest classification into which the crime fits, where "A" is the highest classification.

(f) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(8) Required Waiting Periods for a Single Felony Crime. The Department finds it necessary for an applicant whose law enforcement record includes a single felony crime to wait the time period specified below (subject to the mitigating factors set forth elsewhere in this rule) before licensure. All waiting periods run from the trigger date.

(a) Class A Crime. The applicant will not be granted licensure until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted licensure until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(d) The Department shall not impose any waiting period pursuant to this rule where the only crime in an applicant's law enforcement record is a single felony crime that results from the applicant's passing of a worthless check, or obtaining property in return for a worthless check, and the amount of the check or checks involved in the single felony crime is \$500 or less. However, this subparagraph shall not apply where a felony crime resulting from the applicant's passing of a worthless check, or obtaining property in return for a worthless check is not the only crime in an applicant's law enforcement record.

(4)(9) Applicants With Multiple Crimes.

(a) Where an applicant has more than one crime subject to a disqualifying period, an additional disqualifying period for each of those additional crimes shall be added to the disqualifying period. For each additional crime that is subject to a disqualifying period the Department shall add:

1. Five years to the disqualifying period for each additional felony involving moral turpitude but not subject to the permanent bar in Section 626.207(3), F.S.;

2. Two years to the disqualifying period for each additional felony not involving moral turpitude and not subject to the permanent bar in Section 626.207(3), F.S.; and

3. Two years to the disqualifying period for each additional misdemeanor directly related to a financial services business.

The Department construes Sections 626.611 and 626.621, Florida Statutes, to require that an applicant whose law enforcement record includes multiple felony crimes wait longer than those whose law enforcement record includes only a single felony crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Department finds it necessary that a longer waiting period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one felony or to a felony and one or more misdemeanors, or to a combination of misdemeanors and felonies, the Department shall add 5 years to the waiting period for each additional felony or insurance related misdemeanor, or misdemeanor involving a breach of trust or dishonesty, and one year each for all other misdemeanors.

(b) The additional disqualifying periods shall be added to the disqualifying basic waiting period for the one most serious crime, and the combined total disqualifying waiting period will then runs from the trigger date of the applicant's final release from supervision for the most recent misdemeanor or felony crime that would be subject to a disqualifying period under Section 626.207(4).

(c) Classification as "Single Crime" versus "Multiple Crimes." Multiple crimes criminal charges arising out of the same act, or related acts, performed over a relatively short period of time and in a concerted course of conduct, and crimes committed in one transaction, episode, or course of conduct are treated by the Department as one crime for application of this rule. The most serious crime will be used as the basis for the disqualifying period. For the crimes to be considered a single crime, the applicant must have pled to or been convicted of such crimes on the same date and the judgment and sentence for those crimes must have been imposed concurrently The Department will generally process the one most serious of the charges as if it were the only crime. However, charges describing separate but similar acts are treated as multiple crimes.

(5)(10) Mitigating Factors.

(a) If applicable, the Mitigating Factors listed below may be used to shorten the total disqualifying period only when the fifteen year disqualifying period established in Section 626.207(4)(a) is applicable. Where more than one

mitigating factor is present the applicant is entitled to add all applicable years of mitigation together and deduct that number from the total disqualifying period only when the fifteen year disqualifying period is applicable; however, the fifteen year disqualifying period may not be reduced to less than seven years. Mitigating Factors cannot be used to reduce the seven year disqualifying periods established by Section 626.207 (4)(b) or (c). Mitigating Factors may not be used to reduce the amount of the disqualifying period for failure to answer questions accurately and truthfully established in subparagraph (2)(b)1. The following Mitigating Factors may apply. ~~The usual waiting period specified above shall be shortened upon proof of one or more of the following as are pertinent. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual waiting period, provided that an applicant shall not be permitted an aggregate mitigation of more than 4 years for the following factors:~~

1. ~~One year is deducted if the applicant was age twenty-one or younger when the felony crime was committed and if there are no felony crimes on the applicant's law enforcement record after reaching the age of twenty-two probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as an agent or other insurance representative.~~

2. ~~One year is deducted if the applicant furnishes proof that the applicant was addicted to drugs, suffering from active alcoholism, or suffering from a psychiatric disorder, at the time of the crime and the applicant furnishes a letter from a medical doctor, psychologist, or therapist, who is licensed by a duly constituted state licensing body, that states that the licensed person has examined or treated the applicant and that in his or her professional opinion the condition is currently in remission and has been in remission for at least the previous 12 months. restitution or settlement has been made for all crimes wherein restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.~~

3. ~~One year is deducted if the applicant provides letters of recommendation from three or more persons who are not relatives of the applicant and who have known the applicant for at least the five years immediately preceding the application was under age 21 when the crime was committed, if there is only one crime on the applicant's law enforcement record. This mitigating factor shall not be applicable to an applicant who qualifies for 3 years of mitigation pursuant to mitigating factor 4 immediately below.~~

4. ~~One year is deducted for each associate degree, bachelor's degree, master's degree or other higher education degree earned by an applicant from an accredited institution of higher learning subsequent to the commission of the crime which is the basis for the disqualifying period. Three years are deducted if the applicant was under age 21 when the crime was committed, if there is only one crime on the applicant's law enforcement record, and if that single crime is not insurance related and does not involve moral turpitude or a breach of trust or dishonesty.~~

5. ~~One year is deducted if the applicant has performed 180 or more hours of volunteer work for a charitable organization within the three years immediately preceding the application, as evidenced by a letter signed by an official of the charitable organization where the volunteer hours were performed. furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.~~

6. ~~One year is deducted if the applicant has held one or more professional licenses from any jurisdiction or professional licensing organization for at least one year within the five years immediately preceding application and subsequent to the commission of the crime which is the basis for the disqualifying period, and only if the applicant held the license during that time period without administrative action being taken. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the waiting period before licensure is allowed based on the standard in Section 626.207, Florida Statutes.~~

7. ~~One year is deducted if the applicant has been employed at least 40 hours per week for a continuous two year period within the five years immediately preceding the application.~~

8. ~~One year is deducted if the applicant has served at least one year in the United States Armed Forces, active or reserves, subsequent to the commission of the crime which is the basis for the disqualifying period and provided any discharge was without an Other Than Honorable Discharge designation.~~

~~(b) The burden is on upon the applicant to establish these Mitigating Ffactors. Any of Where the Mmitigating Ffactors above that involve a state or relates to or requires evidence of governmental agency, a university or school, or a court action, it must be established by providing proved by a certified true copy of the document proving that~~

Mitigating Factor agency or court document.

(6)(11) Aggravating Factors.

(a) The following Aggravating Factors apply:

1. Two years are added to the disqualifying period if the applicant's Law Enforcement Record indicates that a crime that is the basis of the disqualifying period victimized a natural person who was over age 65 at the time the crime was committed;

2. One year is added to the disqualifying period if the applicant was found by the court to have violated probation for the crime or crimes used to establish the disqualifying period and the violation was not a technical violation;

3. One year is added to the disqualifying period if the applicant was found to have committed a crime involving aggravated violence in which bodily injury resulted;

4. One year is added to the disqualifying period if any regulatory action was taken against the applicant by any regulatory authority that resulted in a penalty being imposed and was not based on failure to change an address or failure to report an administrative action;

5. One year is added to the disqualifying period and in addition to Subsection (4) above if any regulatory action was taken against the applicant by any regulating authority for an action by the applicant that caused consumers or clients financial harm or loss in an amount over \$10,000;

6. One year is added to the disqualifying period if the applicant's Law Enforcement Record contains a crime that caused financial harm to any person in an amount over \$10,000.

(b) The burden is on the applicant to rebut evidence of any and all Aggravating Factors used by the Department to deny the application.

Circumstances Not Constituting Mitigation. The Department finds that no mitigating weight exists in the provisions of Sections 626.611 and 626.621, Florida Statutes, and none will be given, for the following factors:

(a) Type of Plea. The Department draws no distinction among types of pleas; i.e., found guilty; pled guilty; pled nolo contendere.

(7)(b) Collateral Attack on Criminal Proceedings. The Department will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or nolo contendere. Thus the Department will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Department finds that subjective factors involving state of mind, generally have no mitigating weight.

(8)(12) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Department interprets the statutory grounds for denial of licensure exist as arising immediately upon an entry of judgment a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be or is being taken. The Department will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Department's adverse action.

(b) If on appeal the judgment conviction is reversed, and the judgment was the basis for the Department's denial of an application, then the applicant may reapply for licensure after providing proof of the reversal. Department shall immediately drop the said crime as grounds for denial of license, but shall, if supported by clear and convincing evidence, notwithstanding the reversal, consider the acts alleged in the criminal proceeding as reflecting on an applicant's character, trustworthiness, and fitness for licensure. If the conviction is later reinstated, the Department shall again count the "crime" itself as grounds for denial of licensure.

(13) General Policy Regarding Law Enforcement Matters Not Resulting in a Finding or Plea of Guilt or Nolo Contendere.

(a) Fitness and Trustworthiness. The Department interprets Section 626.611(7), Florida Statutes, relating to demonstrated lack of fitness or trustworthiness, as being applicable to license application proceedings. Furthermore, the Department interprets said section as not limiting the evidence demonstrating the unfitness or untrustworthiness to evidence arising in an insurance context.

(b) Character. The Department interprets Section 626.171(2)(f), Florida Statutes, as imposing upon the Department a duty to evaluate the "character" of an applicant, and to deny licensure to an applicant who has serious flaws as to such character. The Department interprets "character" to mean the applicant's demonstrated adherence to commonly accepted norms and standards of conduct in society.

(c) Charges Acquitted, Dismissed: General Policy. The Department finds that it is authorized by Section 626.611(7), Florida Statutes, to inquire into the facts underlying any criminal charge of which the applicant was

acquitted or which was dismissed in appropriate cases, to deny licensure where such facts in context show a lack of fitness, trustworthiness, or character. A dismissal or acquittal might reflect true innocence, procedural problems peculiar to the criminal justice system, or the extremely high standard of proof in criminal proceedings. Evidence insufficient to support a finding of criminal guilt might be sufficient to support administrative action because of the differing burdens of proof and evidentiary and procedural rules for administrative proceedings versus criminal proceedings.

~~(d) Arrests, Pending Charges, and Pre-trial Interventions: General Policy.~~

~~1. The Department finds that information as to arrests and pre-trial interventions occurring within 12 months of time of application and all pending criminal charges as of time of application to be necessary and pertinent disclosures on the application, pursuant to Section 626.171(2)(f), Florida Statutes. The Department finds that such matters often supply particularly timely evidence of an applicant's current character, fitness, and trustworthiness, and in some instances reveal criminal court proceedings underway which have not yet reached final disposition in the criminal justice system.~~

~~2. The Department shall not draw any adverse inference against the applicant solely on the basis that the applicant was arrested, or is the subject of pending criminal charges. However, the Department is authorized to inquire into the facts underlying the arrest or pending criminal charges, and where it is shown that a serious impropriety was committed by the applicant, the Department shall deny licensure where such facts in context show a lack of fitness, trustworthiness, or character.~~

~~(9)(14) Pre-Trial Intervention: Specific Policy. The Department will not grant licensure to any person who at the time of the application is participating in a pre-trial intervention program for any crime that could be used as the basis of denial pursuant to Section 626.207, F.S.~~

~~(a) It is the Department's interpretation of Section 948.08, Florida Statutes, relating to Pre-trial Intervention, that same, and similar programs in other states, are a matter of legislative grace to save persons who are guilty of a non-violent, first time felony from incurring a criminal record; and that entry into Pre-trial Intervention is conclusive evidence that the criminal charges involved were meritorious, even though ultimately dismissed after the successful conclusion of the pre-trial intervention.~~

~~(b) The Department will not grant licensure to any person who at time of application is participating in a pre-trial intervention program. The Department finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure will be considered.~~

~~(c) The Department shall generally not deny licensure to an applicant where the only law enforcement record consists of a successfully completed pre-trial intervention. However, where the law enforcement record includes matters in addition to the pre-trial intervention whether previous or subsequent, the Department will consider adverse to the applicant the matters involved in the pre-trial intervention, because those matters reflect on the applicant's character, fitness, or trustworthiness.~~

~~(10)(15) Effect of an Order Sealing or Expunging of Criminal Records.~~

~~(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding; when the record of such which has been legally and properly expunged or sealed by order of a court of competent jurisdiction or by operation of law in the jurisdiction in which the arrest or criminal proceeding took place prior to the time of application; and such denial or failure to disclose is not grounds for adverse action by the Department.~~

~~(b) The denial or failure to disclose such arrest or criminal proceeding is not grounds for adverse action by the Department, even if the information had been previously revealed to the Department in another or previous application. 1. The Department interprets the legislative intent in allowing a matter to be sealed or expunged to be that the matter thus sealed or expunged not be permitted to be held against the subject as a "crime" per se, and that the matter not be permitted to be proved against the subject by reference to the court's findings or verdict.~~

~~2. However, the Department shall consider the facts underlying a sealed or expunged criminal record against the applicant as they reflect on fitness, character, or trustworthiness, if the facts are provable by the Department independent of use of the court record. The Department is permitted to use the same or different evidence as was used in the court proceeding. As a practical matter, due to Department resource limitations and the difficulty of establishing such matters independent of the court record, the Department does not generally attempt to pursue or follow up on matters that are part of a sealed or expunged court record, except in unusual circumstances, which include:~~

~~a. There appears to be more than one sealed or expunged case involving the applicant.~~

~~b. The order of sealing or expungement appears to the Department to have been obtained by misleading the court.~~

~~c. The crime was particularly pertinent to the practice of insurance.~~
~~d. Any member of the public, including the victim of the crime, upon learning of the application for license, asks that the Department further consider the matter.~~

~~e. The applicant failed to reveal the matter in his or her application and the matter was not then sealed or expunged, having been sealed or expunged subsequent to the application's being submitted.~~

~~(c) The Department will not withhold or stay the issuance of a denial of a license application pending action on requests for sealing or expunging criminal records. Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application. In such situations the Department policy is as follows:~~

~~1. If the applicant properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Department will cease to consider the matter as a "crime" per se, and will further pursue the matter only under the unusual conditions described above.~~

~~2. If the applicant did not reveal the matter on the application, the Department will, if the Department finds that the applicant would pose an undue threat to the public welfare if licensed, take one of the following courses of action, depending on Department resources available: petitioning the court to re-open the record in view of the false application; or denying the application or seeking revocation on the ground that the failure to reveal the matter shows deceit and reflects adversely on the character, fitness, or trustworthiness of the applicant.~~

~~(d) Sealing or Expunging Department Records.~~

~~1. It is the Department's interpretation of Florida statutes regarding sealing or expunging records that the Department is only required to expunge its records of references to the subject criminal proceedings upon receipt of a copy of the Court's Order of Sealing or Expunction of such records.~~

~~2. The Department interprets a Court's Order of Sealing or Expunction only to apply to references to the court proceedings and copies of court records relating to those proceedings in the Department's possession, and not to apply to references in the Department's records to the underlying matter where those references appear in the Department's records via evidence other than the court proceedings or record.~~

~~3. Where the Department seals or expunges its records, the following procedures are used by the Department as to microfilm records. It is Department policy not to physically delete or mask documents from microfilm records. Instead, the Department deletes reference to the documents from the microfilm index, thus effectively eliminating the records. It is Department policy that this satisfies a sealing or expungement order unless otherwise expressly directed by a court. The Department's licensure records generally exist only on hundreds of rolls of microfilm, with thousands of documents covering thousands of licensees, per microfilm roll. The Department does not have the equipment to edit and splice the microfilm, and in any event splicing the film would shorten the life and dependability of the film, endangering the only records relating to thousands of licensees. It is not feasible to expunge certain documents on a roll, by printing all the documents on the roll, then deleting those to be expunged, and then re-microfilming the remainder; same is not feasible both because the quality of the re-microfilmed material would be so poor as to render much of it unreadable when subsequently printed out, and the Department does not have the resources to perform this task.~~

~~(11)(16) Disclosure and Effect of a Pardon.~~

~~(a) Pardoned crimes must be reported on the application as part of the Law Enforcement Record. However, The applicant shall clearly indicate that a pardon has been granted for the crime, and provide attach supporting documentation paperwork. The burden of proof shall be on the applicant to prove the pardon by certified true copy of the pardon and related documents.~~

~~(b) A pardoned crime generally will not be considered against the applicant by the Department.~~

~~(c) However, this general policy is subject to the following exceptions, in which case the pardoned crime will not be ignored by the Department:~~

~~1. The applicant has subsequently been found guilty, or pled guilty or nolo contendere, to any felony or misdemeanor regardless of adjudication; or~~

~~2. The pardoned crime directly involved the business of insurance.~~

~~(d) If a pardoned crime falls within either of the two exceptions contained in sub-subparagraphs 11 (c) 1 or 2 above, the Department may apply the disqualifying periods set out in Section 626.207, F.S. When any crime falls within either of these two exceptions, the Department shall apply the usual waiting periods and mitigating factors set out in this rule unless the Department finds that the applicant would still pose a threat to the public welfare if licensed.~~

~~(e) The Department will not withhold or stay denial of a license application pending action on requests for a pardon.~~

~~(17) Effect of Loss or Restoration of Civil Rights.~~

~~(a) A crime as to which civil rights have been restored remains part of the law enforcement record and must be revealed on the application.~~

~~(b)1. A person who has been convicted of a felony shall not be eligible for licensure until such person has received a restoration of civil rights.~~

~~2. Restoration of civil rights does not create any right to be granted a license.~~

~~3. After a person receives restoration of civil rights, the person may apply for a license and have the application reviewed in the same manner as applicants who never lost their civil rights.~~

~~4. The applicant must meet the standard qualifications required by applicable statutes and rules for the license sought.~~

~~(c)1. An applicant will not be disqualified for licensure solely because of a prior conviction if the applicant has received a restoration of civil rights.~~

~~2. The Department shall take into account and rely upon the circumstances surrounding a prior conviction in determining an applicant's fitness and trustworthiness to engage in the business of insurance.~~

~~3. If the Department denies an application based upon the circumstances surrounding a prior conviction, the Department will apply the waiting periods and mitigating factors set forth in Rule Chapter 69B-211, F.A.C., that are applicable to the crime for which the applicant was convicted.~~

~~(d) The Department will recognize restoration of civil rights by other states or the federal government when evidenced by a certified true copy of the court or administrative order restoring the rights, or other evidence that civil rights were restored by operation of law.~~

~~(e) The burden is upon the applicant to prove restoration of civil rights.~~

~~(12)(18) Effect of Varying Terminology.~~

~~(a) For purposes of this rule, if the jurisdiction in which the applicant was prosecuted does not define or categorize felony crimes as they are defined or categorized in Florida as capital, first degree, second degree, or third degree felonies, the Department may analogize the crime to the most similar crime under Florida laws by using the elements of that crime as defined in the statute of the jurisdiction in which the applicant was prosecuted and matching those elements to the most similar Florida Statute.~~

~~(b)(a) With regard to the following six subparagraphs, the Department treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:~~

~~1. Adjudicated guilty; convicted.~~

~~2. Found guilty; entered a finding of guilt.~~

~~3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.~~

~~4. Nolo contendere; no contest; did not contest; did not deny; no denial.~~

~~5. Adjudication of guilt withheld; Adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.~~

~~6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.~~

~~(b) When necessary, in all other instances the Department will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.~~

~~(13)(19) Imprisoned Persons. Notwithstanding any provision to the contrary in this rule, the Department shall not license any applicant under Chapter 626, Florida Statutes, while the applicant is imprisoned, under arrest, in custody, under supervision, or serving a sentence, for any crime. ~~Further, the Department shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or 1 year from release. The Department finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least one year on good behavior, before licensure can safely be granted without undue risk to the public welfare.~~~~

~~(14)(20) Effect of Disqualifying Waiting Periods. The disqualifying waiting periods applied pursuant to Section 626.207, F.S. or established in this rule do not give an applicant a right to licensure after any set period of time ~~if the Department finds additional evidence that the applicant still possesses a criminal propensity which poses an undue threat to the public welfare.~~ After the disqualifying period, an applicant may re-apply for licensure and the law in effect at the time will apply to that application.~~

~~(15)(24) Foreign Law Enforcement Records. In the event that a law enforcement record includes convictions, charges, or arrests outside the United States, the Department shall consider the following factors to reduce, eliminate, or apply a disqualifying period or to determine if the permanent bar under Section 626.207(3), F.S. is applicable waiting period:~~

~~(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state~~

within the United States; and

(b) The degree of penalty associated with the same or similar crimes in the United States; ~~and~~

(c) ~~The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.~~

~~(21) Class "A" Crimes include all those listed in this subsection, where such crimes are felonies, and all are of equal weight notwithstanding from which subparagraph they are drawn. The Department finds that each felony crime listed in this subsection is a crime of moral turpitude.~~

~~(a) Submitting false insurance claims or applications.~~

~~(b) Crimes relating to workers' compensation insurance.~~

~~(c) Theft or other dishonest dealings with premiums or claims money.~~

~~(d) Making false reports to insurance regulatory officials.~~

~~(e) Grand theft or embezzlement from an insurance company or agency.~~

~~(f) Armed robbery (face to face theft by threat of force or force).~~

~~(g) Extortion.~~

~~(h) Bribery.~~

~~(i) Misuse of public office.~~

~~(j) Obstructing justice.~~

~~(k) Treason against the United States, or a state, district, or territory thereof.~~

~~(l) Abuse of elderly or disabled persons.~~

~~(m) Altering public documents.~~

~~(n) Forgery.~~

~~(o) Perjury.~~

~~(p) Racketeering.~~

~~(q) Witness tampering.~~

~~(r) Child abuse.~~

~~(s) Grand theft.~~

~~(t) Larceny.~~

~~(u) Burglary.~~

~~(v) Breaking and entering.~~

~~(w) Fraud.~~

~~(x) Embezzlement.~~

~~(y) Tax evasion.~~

~~(z) Defrauding an innkeeper.~~

~~(aa) Passing worthless check(s) with intent to defraud.~~

~~(bb) Failure to pay tax.~~

~~(cc) Buying, receiving, concealing, or possessing stolen property.~~

~~(dd) Fraudulent obtaining of food stamps or other welfare fraud.~~

~~(ee) Shoplifting.~~

~~(ff) Adulteration or poisoning of drugs or food.~~

~~(gg) Illegal possession of a firearm.~~

~~(hh) Impersonating or attempting to impersonate a law enforcement officer.~~

~~(ii) Robbery.~~

~~(jj) Unlawful possession of a postal key.~~

~~(kk) Securities fraud.~~

~~(ll) Sale of unregistered securities.~~

~~(mm) Sale of securities by an unregistered dealer.~~

~~(nn) Postal fraud.~~

~~(oo) Obtaining controlled substance by fraud.~~

~~(pp) Not paying required tax as a transferee of a controlled substance.~~

~~(qq) Uttering a forged check.~~

~~(rr) Forgery of a deed.~~

~~(ss) Defrauding the government.~~

~~(tt) Criminal possession of a forged instrument.~~

~~(uu) Credit card fraud.~~

~~(vv) Conspiracy.~~

- (ww) Carrying a concealed weapon/firearm.
- (xx) Murder in all degrees.
- (yy) Aggravated Assault (e.g., as with a deadly weapon).
- (zz) Aggravated Battery (e.g., as with a deadly weapon).
- (aaa) Rape.
- (bbb) Sexually molesting any minor.
- (ccc) Sexual battery.
- (ddd) Arson.
- (eee) Aircraft piracy/hijacking.
- (fff) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.
- (ggg) Deriving income from another person's prostitution activities.
- (hhh) Running a gambling establishment.
- (iii) Unlawful placing, throwing, or discharging a bomb.
- (jjj) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.
- (kkk) Kidnapping.
- (lll) Incest.
- (22) Class "B" Crimes include the following felony crimes:
 - (a) Manslaughter.
 - (b) Simple Assault.
 - (c) Simple Battery.
 - (d) Gambling.
 - (e) Possession of burglary tools.
 - (f) Resisting arrest with violence.
 - (g) Damage to Property.
 - (h) Criminal mischief.
 - (i) Passing worthless check(s) without intent to defraud.
- (23) Class "C" Crimes include the following felony crimes:
 - (a) Public drunkenness.
 - (b) Driving under the influence.
 - (c) Trespassing.
 - (d) Resisting arrest without force.
 - (e) Disorderly conduct.
 - (f) Solicitation of prostitution.
 - (g) Prostitution.
 - (h) Obscenity.
 - (i) Bigamy.
 - (j) Sale of fireworks.
 - (k) Criminal trespass.
 - (l) Cruelty to animals.
 - (m) Personal use of controlled substances (illegal drugs).
 - (n) Possession of controlled substances (illegal drugs) for personal use.
 - (o) Possession of drug paraphernalia for personal use.
 - (p) Domestic disturbance not involving violence.
 - (q) Violation of fish and game laws.
 - (r) Crimes of civil disobedience relating to matters of conscience (e.g., burning of draft cards; nonviolent resisting of arrest at protests).
 - (s) Illegal possession of weapon.
 - (t) Fleeing arrest or fleeing a law enforcement officer.
 - (u) Escape.

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:
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