

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF INSURANCE AGENT & AGENCY SERVICES

NOTICE OF PROPOSED RULE DEVELOPMENT

RULE CHAPTER:	RULE CHAPTER TITLE:
69B-231	Penalty Guidelines for Insurance Representatives
RULE:	RULE TITLE:
69B-231.010	Purpose
69B-231.020	Scope
69B-231.030	Definitions
69B-231.040	Calculating Penalty
69B-231.070	Prosecutorial Discretion
69B-231.100	Penalties for Violation of Subsection 626.9541(1)
69B-231.110	Penalties for Violation of Other Specific Provisions of the Florida Insurance Code
<u>69B-231.115</u>	<u>Penalties for Violation of Section 626.9957, Florida Statutes</u>
69B-231.120	Penalties for Violation of Other Insurance Code Provisions
69B-231.130	Penalties for Violation of Department Rules
69B-231.140	Penalties for Violation of Department Orders
69B-231.150	Criminal Proceedings
69B-231.160	Aggravating/Mitigating Factors

PURPOSE AND EFFECT: The rule amendment provides penalties for violations of section 626.9957, F.S., regarding the conduct of health insurance navigators. “Navigator” is a new category of insurance professional created by Ch. 2013-101, Laws of Florida to help health insurance consumers to understand the options available under the Patient Protection and Affordable Care Act. Additionally, “section” is replaced with “subsection” to conform to the present convention.

The new penalties are listed in Rule 69B-231.115, F.A.C., and are analogous to penalties for similar violations by other insurance licensees.

SUBJECT AREA TO BE ADDRESSED: Penalties for violation of provisions found in section 626.9957, F.S.

RULEMAKING AUTHORITY: 624.308, 626.9957(12), 626.9958, F.S.

LAW IMPLEMENTED: 624.307(1), 624.308, 624.308(2), 626.207(2), 626.611, 626.621, 626.631, 626.631(1), 626.641, 626.681, 626.691, 626.9521, 626.9541(1), 626.9561, 626.9571, 626.9581, 626.9954, 626.9957, 626.9957(4)(a), (b), (g), 627.9957(4)(g), 631.155, F.S.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

DATE AND TIME: Wednesday, January 22, 2014 @ 10:00 AM

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Barry Lanier, Chief, Bureau of Investigation, Division of Insurance Agent & Agency Services, Department of Financial Services, 200 E. Gaines Street, Room 416A, Larson Building, Tallahassee, FL 32399-0320, (850) 413-5601 or Barry.Lanier@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 PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69B-231.010 Purpose.

The purpose of this rule chapter is to implement the Department's duty under ~~subsections~~Sections 624.307(1), ~~and~~ 626.207(2), ~~and section 626.9954~~, F.S., to enforce ~~sections~~Sections 626.611, 626.621, 626.631, 626.641, 626.681, ~~and~~ 626.691, ~~and 626.9954~~, F.S., by establishing standards for penalties described in those statutory sections, and interpreting provisions in those sections as they relate to penalties imposed upon licensees specified in Rule 69B-231.020, F.A.C.

Rulemaking Specific Authority 624.308, 626.9957(12), 626.9958, 626.207(2) FS. Law Implemented 624.307(1), 624.308(2), 626.207(2) 626.9957 FS. History—New 7-13-93, Amended 9-23-02, Formerly 4-231.010, Amended 8-15-06, _____.

69B-231.020 Scope.

(1) This rule chapter shall apply to all resident and nonresident insurance agents, customer representatives, adjusters, navigators, and service representatives licensed under Chapter 626, F.S., who are subject to discipline under ~~sections~~Sections 626.611 and 626.621, F.S.

(2) No Change.

Rulemaking Specific Authority 624.308, ~~626.9957(12), 626.9958~~626.207(2) FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.9957 FS. History—New 7-13-93, Amended 8-15-00, 9-23-02, Formerly 4-231.020, Amended 8-15-06, _____.

69B-231.030 Definitions.

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

(1) through (7) No Change.

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

(8) “License” shall have the meaning set forth in subsection 120.52(10), Florida Statutes which includes registrations.

(9) “Licensee” means one who holds a license.

(8) through (10) No Change.

Rulemaking Authority 624.308, ~~626.9957(12), 626.9958~~626.207(2) FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.9957 FS. History—New 7-13-93, Amended 9-23-02, Formerly 4-231.030, Amended 8-15-06, 8-12-10, _____.

69B-231.040 Calculating Penalty.

(1) Penalty Per Count.

(a) The Department is authorized to find that multiple grounds exist under ~~sections~~Sections 626.611, ~~and~~ 626.621 and 626.9957, F.S., for disciplinary action against the licensee based upon a single count in an administrative complaint based upon a single act of misconduct by a licensee. However, for the purpose of this rule chapter, only the violation specifying the highest stated penalty will be considered for that count. The highest stated penalty thus established for each count is referred to as the “penalty per count”.

(b) No Change

(2) No Change

(3) Final Penalty.

(a) No Change

(b) The Department may convert the total penalty to an administrative fine and probation if the licensee has not previously been subjected to an administrative penalty and the current action does not involve a violation of ~~section~~Section 626.611, F.S.;

(c) and (d) No Change

Rulemaking Specific Authority 624.308, ~~626.9957(12), 626.9958~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.641, 626.681, 626.691, 626.9957 FS. History–New 7-13-93, Formerly 4-231.040, Amended 8-15-06,_____.

69B-231.070 Prosecutorial Discretion.

(1) and (2) No Change

(3) Cease and Desist Actions. This rule chapter shall not preclude the Department from initiating an administrative action against licensed or unlicensed individuals for the purpose of imposing cease and desist and penalty orders authorized by ~~section~~Section 626.9581, F.S.

(4) No Change

Rulemaking Specific Authority 624.308, ~~626.9957(12), 626.9958~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621, 626.681, 626.691, 626.9521, 626.9561, 626.9571, 626.9581, 626.9957 FS. History–New 7-13-93, Formerly 4-231.070, Amended 8-15-06,_____.

69B-231.100 Penalties for Violation of Subsection~~Section~~ 626.621(6) , or Section 626.9541, F.S.

If a licensee is found to have violated ~~subsection~~Section 626.621(6), or section 626.9541, 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~~Section 626.9541(1), F.S., the following stated penalty shall apply:

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

(2) ~~Paragraph~~Section 626.9541(1)(b), F.S. – suspension 6 months

(3) ~~Paragraph~~Section 626.9541(1)(c), F.S. – suspension 3 months

(4) ~~Paragraph~~Section 626.9541(1)(d), F.S. – suspension 3 months

(5) ~~Paragraph~~Section 626.9541(1)(e), F.S. – suspension 6 months; except that the penalty for a violation of ~~subparagraph~~Section 626.9541(1)(e)1., F.S., shall be a suspension of 12 months.

- (6) ~~Paragraph~~Section 626.9541(1)(f), F.S. – suspension 3 months
- (7) ~~Paragraph~~Section 626.9541(1)(g), F.S. – suspension 6 months
- (8) ~~Paragraph~~Section 626.9541(1)(h), F.S. – suspension 6 months
- (9) ~~Paragraph~~Section 626.9541(1)(i), F.S. – suspension 6 months
- (10) ~~Paragraph~~Section 626.9541(1)(j), F.S. – suspension 3 months
- (11) ~~Paragraph~~Section 626.9541(1)(k), F.S. – suspension 9 months
- (12) ~~Paragraph~~Section 626.9541(1)(l), F.S. – suspension 12 months
- (13) ~~Paragraph~~Section 626.9541(1)(m), F.S. – suspension 3 months
- (14) ~~Paragraph~~Section 626.9541(1)(n), F.S. – suspension 6 months
- (15) ~~Paragraph~~Section 626.9541(1)(o), F.S. – suspension 6 months
- (16) ~~Paragraph~~Section 626.9541(1)(p), F.S. – suspension 3 months
- (17) ~~Paragraph~~Section 626.9541(1)(q), F.S. – suspension 3 months
- (18) ~~Paragraph~~Section 626.9541(1)(r), F.S. – suspension 3 months
- (19) ~~Paragraph~~Section 626.9541(1)(s), F.S. – suspension 3 months
- (20) ~~Paragraph~~Section 626.9541(1)(t), F.S. – suspension 3 months
- (21) ~~Paragraph~~Section 626.9541(1)(u), F.S. – suspension 9 months
- (22) ~~Paragraph~~Section 626.9541(1)(v), F.S. – suspension 3 months
- (23) ~~Paragraph~~Section 626.9541(1)(w), F.S. – suspension 6 months
- (24) ~~Paragraph~~Section 626.9541(1)(X), F.S. – suspension 6 months
- (25) ~~Paragraph~~Section 626.9541(1)(y), F.S. – suspension 6 months
- (26) ~~Paragraph~~Section 626.9541(1)(z), F.S. – suspension 6 months
- (27) ~~Paragraph~~Section 626.9541(1)(aa), F.S. – suspension 9 months
- (28) ~~Paragraph~~Section 626.9541(1)(bb), F.S. – suspension 3 months
- (29) ~~Paragraph~~Section 626.9541(1)(cc), F.S. – suspension 6 months
- (30) ~~Paragraph~~Section 626.9541(1)(ee), F.S. – suspension 12 months
- (31) ~~Paragraph~~Section 626.9541(1)(ff), F.S. – suspension 12 months.

Rulemaking Authority 624.308, ~~626.9957(12)~~, ~~626.9958~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.621, 626.9541(1), 626.9957(4)(a) FS. History–New 7-13-93, Formerly 4-231.100, Amended 8-15-

06, 8-12-10, _____.

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) ~~Subsection~~~~Section~~ 624.318(2), F.S. – suspension 3 months
- (2) ~~Subsection~~~~Section~~ 626.112(2), F.S. – suspension 3 months
- (3) ~~Subsection~~~~Section~~ 626.342(1), F.S. – suspension 3 months
- (4) through (7) No Change
- (8) ~~Subsection~~~~Section~~ 626.561(1), F.S. – suspension 9 months
- (9) ~~Subsection~~~~Section~~ 626.561(2), F.S. – suspension 3 months
- (10) through (12) No Change
- (13) ~~Subsection~~~~Section~~ 626.601(2), F.S. – suspension 3 months
- (14) ~~Subsection~~~~Section~~ 626.631(1), F.S. – revocation
- (15) ~~Subsection~~~~Section~~ 626.641(4), F.S. – revocation
- (16) No Change
- (17) ~~Subsection~~~~Section~~ 626.741(3), F.S. – suspension 3 months
- (18) ~~Subsection~~~~Section~~ 626.741(4), F.S. – suspension 6 months
- (19) through (23) No Change
- (24) ~~Subsection~~~~Section~~ 626.792(3), F.S. – suspension 3 months
- (25) ~~Subsection~~~~Section~~ 626.792(6), F.S. – revocation
- (26) through (29) No Change
- (30) ~~Subsection~~~~Section~~ 626.835(3), F.S. – suspension 3 months
- (31) ~~Subsection~~~~Section~~ 626.835(6), F.S. – revocation
- (32) through (34) No Change
- (35) ~~Subsection~~~~Section~~ 626.901(1), F.S. – suspension 12 months
- (36) ~~Subsection~~~~Section~~ 626.901(2), F.S. – suspension 12 months
- (37) through (39) No Change

Rulemaking Authority 624.308, ~~626.9957(12)~~, ~~626.9958~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.681, 626.691, 626.9957(4)(a), 631.155, FS. History– New 7-13-93, Formerly 4-231.110, Amended 8-15-06, 8-12-10, _____.

69B-231.115 Penalties for Violation of Section 626.9957, Florida Statutes.

If it is found that the navigator has violated any of the following subsections of section 626.9957, F.S., the following stated penalty shall apply:

(1) Paragraph 626.9957 (2)(a), F.S. – suspension 6 months

(2) Paragraph 626.9957(2)(b), F.S. – suspension 6 months

(3) Paragraph 626. 9957(3)(a) F.S. – suspension 6 months

(4) Paragraph 626. 9957(3)(b) F.S. – suspension 6 months

(5) Paragraph 626. 9957(3)(c) F.S. – suspension 6 months

(6) Paragraph 626. 9957(4)(c) F.S. – suspension 6 months

(7) Paragraph 626. 9957(4)(d) F.S. – revocation

(8) Paragraph 626. 9957(4)(e) F.S. – suspension 6 months

(a) Suspension 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and Department licensing rules applicable to the application at the time the Department issued the license, and the documentation in the applicant’s file at the time the Department issued the license,

(b) Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and Department licensing rules applicable to the application at the time the Department issued the license.

(9) Paragraph 626. 9957(4)(f) F.S. – revocation

(10) Paragraph 626. 9957(4)(g) F.S. – see Rule 69B-231.150

(11) Paragraph 626. 9957(4)(h) F.S. – revocation

(12) Paragraph 626. 9957(4)(i) F.S. – suspension 6 months

(13) Paragraph 626. 9957(4)(j) F.S. – revocation

69B-231.120 Penalties for Violation of Other Insurance Code Provisions.

If the licensee is found to have violated a provision of the Insurance Code, the stated penalty, unless otherwise prescribed in these rules or in the code provision violated, shall be a six (6) month suspension if the violation was willful, or shall be a three (3) month suspension if the violation was nonwillful.

Rulemaking Specific Authority 624.308, ~~626.9957(12)~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.9957(4)(a) FS. History—New 7-13-93, Formerly 4-231.120, Amended 8-15-06, _____.

69B-231.130 Penalties for Violation of Department Rules.

If the licensee is found to have violated a Department rule, the stated penalty, unless otherwise prescribed in these rules or in the specific rule violated, shall be a six (6) month suspension if the violation was willful, or shall be a three (3) month suspension if the violation was nonwillful.

Rulemaking Specific Authority 624.308, ~~626.9957(12)~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621 626.9957(4)(b) FS. History—New 7-13-93, Formerly 4-231.130, Amended 8-15-06, _____.

69B-231.140 Penalties for Violation of Department Orders.

If a licensee is found to have violated a Department order, the stated penalty shall be a six (6) month suspension if the violation was willful, or shall be a three (3) month suspension if the violation was nonwillful, unless the penalty is prescribed in the order itself; except that if a licensee or an affiliated party transacts insurance in violation of an order of suspension, the penalty shall be revocation of license(s) and appointment(s) if the violation was willful, or shall be an additional suspension of three (3) months if the violation was nonwillful.

Rulemaking Specific Authority 624.308, ~~626.9957(12)~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.9957(4)(b) FS. History—New 7-13-93, Formerly 4-231.140, Amended 8-15-06, _____.

69B-231.150 Criminal Proceedings.

(1) through (4) No Change

Rulemaking Specific Authority 624.308, ~~626.9957(12), 626.9958~~~~626.207(2)~~ FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.631, 626.631(1), ~~626.9954, 626.9957(4)(g)~~ FS. History—New 7-13-93, Amended 9-23-02, Formerly 4-231.150, 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 (l) No Change.

(m) Violation of any part of ~~sections~~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) No Change.

(2) For penalties assessed under Rule 69B-231.150, F.A.C., for violations of ~~subsections~~Sections 626.611(14) and 626.621(8), F.S.:

(a) through (i) No Change

Rulemaking Authority 626.308, ~~626.9957(12), 626.9958~~~~626.207(2)~~, 627.4554(9) FS. Law Implemented 624.307(1), 624.308(2), 626.207(2), 626.611, 626.621, 626.631, 626.681, 626.9541, 627.4554, ~~626.9954, 627.9957(4)(g)~~ FS. History—New 7-13-93, Formerly 4-231.160, Amended 8-15-06, 8-12-10, _____.