

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF INSURANCE AGENT & AGENCY SERVICES

NOTICE OF PROPOSED RULE DEVELOPMENT

RULE:

RULE TITLE:

69B-231.150

Criminal Proceedings

PURPOSE AND EFFECT: The revisions in the proposed amendment are intended to conform Rule 69B-231.150, F.A.C. relating to administrative license actions based on criminal proceedings to changes already made to Rule 69B-211.042, F.A.C. Subsections (1) and (2) are amended to clarify what is meant by the terms “felony” and “revocation”. Also, the word “immediate” is removed to better reflect the administrative process requirements which exist. Subsection (3) is deleted to remove standards which are in conflict with statutory changes. A new Subsection (3) is added to conform the penalty scheme with Section 626.207, F.S., and Rule 69B-211.042, F.A.C. Subsection (4) incorporates definitions from Section 626.207, F.S. Subsection (5) adds qualifications for administrative actions based on criminal proceedings outside the United States.

SUBJECT AREA TO BE ADDRESSED: Administrative actions against Department of Financial Services licensees based on criminal proceedings.

RULEMAKING AUTHORITY: 624.308, 626.207(8), F.S.

LAW IMPLEMENTED: 624.307(1), 624.308, 626.207, 626.611, 626.621, 626.631, 626.641, 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: Tuesday, April 30, 2013 @ 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) 413-5600 or [Barry.Lanier@myfloridacfo.com](mailto: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-231.150 Criminal Proceedings.**

(1) If a licensee is convicted by a court of a violation of the Insurance Code or a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country (regardless of whether or not such felony is related to the financial services business an insurance license), the penalty shall be ~~immediate~~ revocation of all licenses and appointments held by the licensee as well as revocation of the licensee's eligibility for licensure.

(2) If a licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, such as a first degree felony, a capital felony, a felony involving money laundering, fraud or embezzlement, a felony directly related to the financial services business which is a crime involving moral turpitude and is a crime involving breach of trust or dishonesty, the penalty shall be revocation of all licenses and appointments held by the licensee as well as revocation of the licensee's eligibility for licensure.

~~(3) If a licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, which is a crime involving moral turpitude or is a crime involving breach of trust or dishonesty, the penalties are as follows:~~

~~(a) If the conduct directly relates to activities involving the business of insurance, the penalty shall be revocation.~~

~~(b) If the conduct indirectly relates to the business of insurance or involves dishonesty or breach of trust, such as theft of money or property, or mishandling or misappropriation of money, the penalty shall be a 12-month suspension.~~

~~(c) If the conduct is not related to the business of insurance and does not involve dishonesty or breach of trust, the penalty shall be a 6-month suspension.~~

~~(4) If a licensee is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a~~

~~felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States of America or of any state thereof or under the law of any other country, which is not a crime involving moral turpitude and is not a crime involving breach of trust or dishonesty, the penalties are as follows:~~

~~(a) If the conduct directly relates to the business of insurance, the penalty shall be a 24-month suspension.~~

~~(b) If the conduct indirectly relates to the business of insurance such as theft of money or property, or mishandling or misappropriation of money, the penalty shall be a 12-month suspension.~~

~~(c) If the conduct is not related to the business of insurance, the penalty shall be a 3-month suspension.~~

(3)(a) In accordance with Section 626.207, Florida Statutes, any licensee that is convicted of, or has pleaded guilty or nolo contendere to, a first degree felony, a capital felony, a felony involving money laundering, fraud or embezzlement, or a felony directly related to the financial services business, regardless of adjudication, is permanently barred from applying for reinstatement of any license and from applying for a license under the Florida Insurance Code.

(b) Any licensee that is convicted of, or has pleaded guilty or nolo contendere to, a felony involving moral turpitude, including those felonies that are not specifically included in section (3)(a) of this rule or section 626.207(3), Florida Statutes, regardless of adjudication, is prohibited from applying for reinstatement of a license and from applying for a license under the Florida Insurance Code for a period of 15-years (subject to modification pursuant to rule 69B-211.042, FAC) beginning from that person's final release from supervision or upon completion of that person's criminal sentence, including payment of fines, restitution, and court costs for the crime for which the disqualifying period of section 626.207, Florida Statutes, applies.

(c) Any licensee that is convicted of, or has pleaded guilty or nolo contendere to, a felony not involving moral turpitude, regardless of adjudication, is prohibited from applying for reinstatement of a license and from applying for a license under the Florida Insurance Code for a period of 7-years beginning from that person's final release from supervision or upon completion of that person's criminal sentence, including payment of fines, restitution, and court costs for the crime for which the disqualifying period of section 626.207, Florida Statutes, applies.

(4) For purposes of this rule, the definitions of the terms "financial services business," "felony of the first degree" and "capital felony" contained in section 626.207, Florida Statutes, apply.

(5) For purposes of this rule, in the event that a conviction or plea is based on the law of a country other than the United States, the Department shall consider the following factors to determine if the crime is the equivalent of a

felony crime under section 626.611 and/or 626.621, Florida Statutes:

(a) Whether the crime would be a felony 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.

*Rulemaking Specific Authority 624.308, 626.207(8)(2), FS. Law Implemented 624.307(1), 624.308, 626.207(2), 626.611, 626.621, 626.631, ~~626.641~~626.631(1), FS. History—New 7-13-93, Amended 9-23-02, Formerly 4-231.150, Amended 8-15-06, \_\_\_\_\_.*