

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT

ACT OF 1994

18 United States Code Sections 1033, 1034

INTRODUCTION

One purpose of the federal Violent Crime Control and Law Enforcement Act of 1994, is to protect the insurance industry, both insurers and consumers, from fraud and abuse by prohibiting certain persons from engaging or participating in the business of insurance. Pursuant to Section 1033 (e)(1)(A), “prohibited persons” include those convicted of a state or federal felony involving dishonesty, breach of trust, or a crime under Section 1033 of the Act. Pursuant to Section 1033 (e)(1)(B), persons engaged in the business of insurance are barred from willfully permitting the participation of a prohibited person. A prohibited person may apply to the Nevada Commissioner of Insurance or other appropriate insurance regulatory official for written consent to participate in the business of insurance under certain guidelines. The purpose of this bulletin is to provide you with information regarding affected persons and entities, and to provide direction in requesting the written consent required by the statutes.

Section 1033: Criminal Section

The Violent Crime Control and Law Enforcement Act of 1994 consists of two separate federal statutes: (1) Section 1033 is captioned “Crimes By and Affecting Persons Engaged in the Business of Insurance Whose Activities Affect Interstate Commerce;” and (2) Section 1034 is captioned “Civil Penalties and Injunctions for Violations of Section 1033.”

Section 1033, the “criminal” section, identifies specific crimes the conviction of which will prohibit the convicted individual from engaging or participating in the business of insurance affecting interstate commerce. The crimes generally consist of those involving intentional dishonesty or breach of trust or any of the following:

Knowingly, with the intent to deceive, making false material statement or report or willfully and materially overvaluing any land, property, or security in connection with any financial reports or documents presented to any insurance regulatory official or agency for the purpose of influencing the actions of that official or agency;

Willfully embezzling, abstracting, purloining, or misappropriating any of the moneys, funds, premiums, credits, or other property of any person engaged in the business of insurance (includes individuals acting as, or being an officer, director, agent, or employee of that person);

Knowingly making any false entry of material fact in any book, report, or statement of the person engaged in the business of insurance with the intent to deceive any person about the financial condition or solvency of such business;

By threats or force or by any threatening letter or communication, corruptly influencing, obstructing or impeding, or endeavoring to corruptly influence, obstruct, or impede the proper administration of the law under which any proceeding is pending before any insurance regulatory official or agency; or

Willfully engaging in the business of insurance whose activities affect interstate commerce or participating in such business, if the individual has been convicted of a criminal felony involving dishonesty or a breach of trust, or has been convicted of an offense under Section 1033. Further, other individuals shall not willfully permit the participation of an individual so convicted.

While the statute is not retroactive in its application, from the effective date (September 13, 1994) of the statute forward, it became illegal for prohibited persons to begin or continue to work in the business of insurance. The statute does not contain a grandfather clause for persons already working in the business of insurance.

SECTION 1034: Civil Enforcement

Section 1034, the “civil” section, allows the United States Attorney General to bring civil actions against a person who engages in conduct constituting an offense under Section 1033. If found to have committed the offense, the person is subject to a civil monetary penalty for each violation. This section also permits the Attorney General to seek an order prohibiting persons from engaging in illegal conduct.

Application of Insurance Regulatory Action

Section 1033(e) provides a mechanism by which a person who has been convicted of a crime covered by the statute, which would preclude that person from engaging in the business of insurance as defined, may apply to the appropriate insurance regulatory official for written permission to engage in insurance. The prohibited person must submit his/her application for a license together with a form prescribed by the Commissioner of Insurance requesting written consent and licensing. The Commissioner has sole discretion regarding the granting of written consent.

The Commissioner has adopted two standardized application forms for the use of persons seeking written consent.

1. **Short Application Form.** This form may be used to request an initial expedited determination. It may be used by a prohibited person whose insurance activities and employment duties do not on their face constitute a risk or threat to insurance consumers or to the insurer. The form and required attachments must provide sufficient detail for the Commissioner to make a determination as to the specific insurance activities of the applicant and that the applicant is rehabilitated and does not constitute a risk or threat to insurance consumers or the insurer. If the Commissioner decides that the applicant’s insurance activities are of the type to

pose a risk or threat to insurance consumers or to the insurer, the Commissioner will require completion of the standard application form.

2. Standard Application Form. This form must be used by all agents and others whose insurance activities are of the type to pose a risk or threat to insurance consumers or to the insurer. This form requires more specific information as a means for the Commissioner to delve more deeply into the life and affairs of the applicant. The form and required attachments must provide financial and credit histories in addition to specific details relating to the applicant's conviction(s), evidence of rehabilitation, past and proposed employment, and a full explanation of the grounds relied upon in seeking written consent. Particular attention must be devoted to addressing why written consent would not pose a risk or threat to insurance consumers or to the insurer.

Both forms require specific attachments which must be included for the Commissioner to consider the application. Incomplete applications, including applications submitted without one or more of the required attachments, will be returned to the applicant without action.

Both forms are available from the Division of Insurance. Copies of the forms may be obtained from the Division's website at www.doi.state.nv.us under "Producer Licensing — Licensing Forms."

Purpose of Bulletin

We encourage you to read 18 U.S.C. Sections 1033 and 1034 to evaluate your compliance. We further encourage you to review your employee records to determine whether your employees, consultants, agents, managing general agents, third party administrators, or others in your company may include "prohibited persons" barred from participating in the business of insurance by the federal law. If you or any of your associates may be prohibited, we encourage you to contact the Nevada Division of Insurance, Agent Licensing Section, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, (775) 687-4270 for clarification or further instructions.

ALICE A. MOLASKY ARMAN
Commissioner of insurance