

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING
PROCEDURES GOVERNING PERSONS
SUBJECT TO 18 U.S.C. 1033

Introduction

The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355; 18 U.S.C. Section(s) 1033-1034 ("the Act") became effective September 12, 1994. It provides criminal and civil enforcement provisions for insurance fraud committed by persons in the insurance industry. The Act also provides penalties for persons who have been convicted of certain prior criminal acts and who willfully engage in the business of insurance affecting interstate commerce, unless such person receives written consent from the appropriate regulatory official. The Act has broad, far-reaching implications for persons involved in the business of insurance or reinsurance in the United States. Insurers, officers, directors, agents and any employee of an insurance company engaged in the business of insurance could be subject to the requirements of this Act.

It appears to cover all acts necessary or incidental to the writing of insurance or reinsurance and the activities of persons who act as or are officers, directors, agents or employees and includes those authorized to act on their behalf.

The Act's insurance fraud provisions define the crimes and authorize the U.S. Attorney General to bring civil or criminal actions against offenders.

Persons Required to Obtain Written Consent to Engage in the Business of Insurance

On of the provisions of the Act prohibits any person convicted of any criminal felony involving dishonesty, breach of trust or a violation of this act from engaging in the business of insurance in interstate commerce without the specific written consent of the appropriate state insurance regulatory official.

In essence, on September 13, 1994, a person is prohibited, and it has become **illegal** for an individual convicted of a crime involving dishonesty, breach of trust or a violation of this Act **to work or continue to work** in the business of insurance affecting interstate commerce without receiving written consent from an insurance regulatory official authorized to regulate the insurer, which we have interpreted to mean the Commissioner of Insurance. A prohibited person who works or continues to work without a written consent risks federal criminal and civil sanctions. **The Act contains no grandfather provision for persons already transacting the business of insurance. The Act contains no automatic waivers for individuals who may possess a state insurance**

license. Further, there is no time limitation on how far back the felony conviction that triggers the prohibited person status may have occurred.

Section 1033(3)(2) provides the framework, and DISB has a procedure, for a prohibited person to seek approval and written consent to transact the business of insurance. The definition of a prohibited person may include, but is not limited to, any insurance agency or insurance company employee, agent, solicitor, broker, consultant, third-party administrator, managing general agent, or subcontractor representing an agency or company who engages or participates in the business of insurance, as it affects interstate commerce, and as defined by this Act. These individuals are required to submit a written request to the Commissioner of Insurance for permission to transact the business of insurance in the district, and receive written consent or risk federal criminal prosecution. **This includes currently licensed persons who do not have a written consent. The prohibited person is responsible for applying for and receiving written consent.**

Persons who fail to comply with this Act face federal sanctions, including fines and/or imprisonment. The mere granting of a license does not constitute an 18 U.S.C. Section 1033 exemption.

The state statutory licensing qualifications and requirements are totally separate from any requirements under 18 U.S.C. Section 1033. Failure to inform DISB of a prior felony conviction on a license application could result in a violation of this statute, as well as constitute grounds for denial of a insurance license.

Insurance companies, as well as persons employing anyone to conduct the business of insurance may be in violation of this statute if they willfully permit participation by a prohibited person, including persons who are already employed or being considered for employment. It is the responsibility of the employer to ensure that any prohibited person who is currently employed or being considered for employment is not permitted to conduct the business of insurance as defined in 18 U.S.C. Section 1033(c)(1)(B).

How To Seek Consent

The prohibited person shall make a request for written consent to the Commissioner of Insurance. The person shall complete any forms or applications necessary to comply with DISB's procedure for granting a written consent.

Granting Consent

18 U.S.C. Section 1033(e)(2) gives complete authority to “ .. *any insurance regulatory*

official authorized to regulate the insurer...” to grant or withhold written consent. (See Section 3(A) “Jurisdiction”) Decisions of whether or not to grant consent to engage in the business of insurance, to a prohibited person meeting the requirements of this Act, will be handled on a case-by-case basis. Factors that will be considered include, but are not limited to:

1. the nature and severity of the conviction;
2. date of the conviction;
3. the injury and/or loss caused by the act for which the prohibited person was convicted;
4. whether the crime related to the business of insurance;
5. whether the prohibited person received a pardon from the sovereign that convicted him;
6. whether the prohibited person completed a parole or probation;
7. the nature and strength of any character letters;
8. the person's business and personal record before and after commission of the crime;
9. whether and to what extent the person has made material false statements in an application, renewal or in other documents filed with the Commissioner; and
10. whether and to what extent the person has made material false misstatements in applications or other documents filed with other state or federal agencies.