

18 U.S.C. 1033-1034

The Violent "Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355, Title 18, United States Code, Sections 1033-1034 became effective September 13, 1994. The Act 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.

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

On September 13, 1994, it became illegal for an individual convicted of a crime involving dishonesty, breach of trust or a violation of the 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.

A prohibited person who works or continues to work without a written consent risks federal criminal and civil sanctions - no grandfather provisions. The Act contained no automatic waivers for individuals who possess a state insurance license. Further, there is no time limitation on how far back the felony conviction that triggers the prohibition may have occurred.

Definitions

The "insurance regulatory official" has been interpreted to mean the Commissioner of Insurance.

The term "business of insurance" is broadly defined in 18 U.S.C. 1033(f)(1) as:

- The writing of insurance, or
- The reinsuring of risks by an insurer, including all acts necessary or incidental to such writing or reinsuring, and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers, or who are other persons authorized to act on behalf of such persons.

"Prohibited person" includes but is not limited to, any insurance agency or insurance company employee, agent, broker, managing general agent, or subcontractor representing an agency or company who engages or participates in the business of insurance as it affects interstate commerce, who has been convicted of any criminal felony involving dishonesty, breach of trust, or a violation of the Act. The determination as to whether the felony falls within the guidelines of dishonesty or breach of trust is made by the federal government.

Responsibility of Prohibited Persons

Prohibited Persons are required to submit a written request to the Commissioner of Commerce and Insurance for permission to transact the business of insurance in this state on Form 1033. They must receive written consent from the Commissioner or risk federal prosecution. The prohibited person is responsible for applying for and receiving written consent. *Persons who fail to comply with this Act face federal sanctions.*

The state statutory licensing qualifications and requirements are totally separate from requirements under 18 U.S.C. 1033. Failure to inform the Division of a prior felony conviction on a license application could result in a violation of statute and constitute denial of an insurance producer license.

Responsibility of Insurers

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. It is the responsibility of the employer to ensure that any prohibited person who is employed or being considered for employment is not permitted to conduct the business of insurance in accordance with 18 U.S.C. 1033(e)(1)(B).