

**WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER
PROCEDURES GOVERNING PERSONS
SUBJECT TO 18 U.S.C §1033**

Introduction

The federal "Violent Crime Control and Law Enforcement Act of 1994," Title 18 U.S. Code, §§1033 and 1034 ("the Act") became effective September 13, 1994. The Act provides for criminal and civil enforcement provisions aimed at white-collar crime and insurance fraud. The Act also provides penalties for a person who has been convicted of certain criminal acts, as discussed below, and who willfully engages in the business of insurance affecting interstate commerce, unless such person receives written consent from the state insurance regulatory official with appropriate jurisdiction.

The Act has broad, far-reaching implications for a person involved in the business of insurance or reinsurance in the United States. Insurers, officers, directors, producers and any employee of an insurance company engaged in the business of insurance could be subject to the requirements of the Act. Moreover, insurance companies, as well as persons employing individuals to conduct the business of insurance, may be in violation of the Act if they willfully permit participation by a prohibited person, including persons who are currently employed or being considered for employment. In addition, the failure to initiate a screening process to identify a prohibited person in current or prospective employment relationships may be a factor in determining if a violation of the Act has occurred.

Any entity conducting insurance activity in West Virginia has the responsibility of notifying, in writing, the West Virginia Offices of the Insurance Commissioner ("WVOIC") of each employee and agent who is a prohibited person under the Act and have each such prohibited person apply for written consent and have such prohibited person cease and desist from the business of insurance.

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

More particularly, the Act, in pertinent part, prohibits any person convicted of any criminal felony involving dishonesty, breach of trust or a violation of the Act from engaging in the business of insurance without the specific written consent of the state insurance regulatory official with appropriate jurisdiction. A prohibited person who fails to comply faces possible federal criminal and civil enforcement of the Act, as well as state administrative action.

The Act contains no grandfather provision for a prohibited person already engaging in the business of insurance. Further, the Act contains no automatic waiver for a prohibited person who may possess a state insurance license.

The Act provides the framework. As discussed below, the WVOIC has a procedure for a prohibited person to seek written consent.

Please note that this procedure does not apply to individuals whose insurance license(s) has been permanently revoked by the Division of Insurance, unless they wish to work in the insurance industry in an unlicensed capacity. Those whose licenses have been revoked for a specific, temporary period may seek written consent at the conclusion of that period.

How to Apply for Written Consent

Each prohibited person subject to the West Virginia Insurance Commissioner's ("the Commissioner") regulatory authority and jurisdiction must submit the following:

A request for written consent. A written request for written consent must reference the statutory provision at issue (18 U.S.C §1033(e)(2)), and be addressed to the WVOIC's 18 U.S.C. §1033 Advisory Committee ("Committee"), West Virginia Offices of the Insurance Commissioner, P.O. Box 50541, Charleston, WV 25305-0541 and must be filed within thirty (30) days of notification by the WVOIC of the Act's provisions. In addition, a request for written consent must include the following: (a) a notarized signature of the prohibited person making the request for written consent with an oath that the request is made under the pains and penalties of perjury; (b) the prohibited person's social security number and date of birth; (c) a waiver of confidentiality from the prohibited person which provides the WVOIC authorization to access, inspect, disseminate and freely utilize in the meeting procedure and preparation, thereof, infra, all criminal record information including, but not limited to information maintained by the West Virginia State Police and other agencies, both federal and state, maintaining the same and/or similar criminal information; and (d) a waiver of confidentiality from the prohibited person which provides the WVOIC authorization to access, inspect, and freely utilize in the meeting procedure and preparation thereof any other records and information that it deems relevant and useful in the determination of the issue(s) presented by the request for written consent.

File one (1) original and five (5) duplicate copies of the attached application for written consent with the Committee. The application must be filled out completely and truthfully and shall have attached to it the following: (a) two 2" by 2" recent passport photographs and (b) a credit bureau report prepared within thirty (30) days of the date on the application. It is the responsibility of the applicant to read the application in its entirety. Every question must be answered completely and accurately. Absolute and complete candor is required. Failure to complete the application shall result in denial of a meeting and of the request for written consent. An amendment to the application must be filed immediately upon the occurrence of any event or discovery or recollection of any fact that would change any answer on the application. Failure to file a timely amendment may result in denial of written consent or withdrawal of previously granted consent. **Please**

note that an application will be mailed to the prohibited person only after a request for written consent has been filed with the WVOIC.

Submit the One Hundred Dollar (\$100.00) application fee (check or money order payable to WVOIC).

The Committee's Role

The WVOIC has established a Committee to review written requests for consent to be in the business of insurance by prohibited persons under the Act. The Committee, after a non-adjudicatory, informational meeting with the prohibited person, shall make a recommendation to the Commissioner regarding whether the applicant is sufficiently trustworthy and suitable to work in the business of insurance. Recommendations made to the Commissioner by the Committee have no binding authority on the Commissioner and are merely advisory in nature.

The prohibited person shall pay all costs associated with his or her request for written consent, including but not limited to, the cost of stenographic transcription of the meeting, photocopying, and meeting security.

The applicant may waive the meeting in writing and request that the Committee's decision be based solely on the written application.

Granting Consent

The purpose of the application is to provide the prohibited person with the opportunity to demonstrate that, notwithstanding the commission of one or more crimes, he or she is sufficiently trustworthy and suitable to participate in the business of insurance without being a risk to consumers and /or insurers. The prohibited person must establish that the request for written consent warrants approval by the Commissioner. The Act gives complete authority to the Commissioner to grant or withhold written consent. See 18 U.S.C. §1033(e)(2). Each application will be handled on a case-by-case basis. Factors that will be considered by both the Committee and the Commissioner include, but are not limited to, the following:

- the nature and severity of the offense and sentence;
- the date of the conviction;
- the injury and/or loss caused by the act for which the prohibited person was convicted;
- whether the crime related to the business of insurance;
- whether the prohibited person received a pardon from the sovereign that convicted him or her, and the reason for it;
- whether the prohibited person successfully completed parole or probation without incident;
- the nature and strength of any letters of recommendation and other evidence of rehabilitation;

the prohibited person's business and personal record before and after the commission of the crime convicted of;

the nature of any consumer complaints in the WVOIC's possession or reported by the applicant.

whether and to what extent the prohibited person has made material false statements in any license application or in any other documents filed with the Division and/or the Committee; and whether and to what extent the prohibited person has made material false statements in any application or in other documents filed with any other state or federal agency.

All written consents granted by the Commissioner shall be conditioned upon the truth and veracity of the documents and information submitted by or on behalf of the prohibited person. In the event a prohibited person receiving the written consent has made materially false or misleading statements or has failed to disclose material information the consent shall be void. Further, the providing of false information in support of request for written consent may constitute a separate violation of the Act and/or the West Virginia insurance laws, or other applicable law.

Any person granted written consent to participate in the business of insurance shall immediately notify the Commissioner of any criminal charge subsequent to receiving written consent.

In addition, all written consents granted by the Commissioner shall be specific as to job responsibility and conditioned upon the prohibited person being employed in the same position with the same duties. A material change in position and/or duties will necessitate the filing of a new request for written consent. In the event the prohibited person receiving the written consent has been given materially different job duties, and has not so informed the Commissioner, the consent will be void.

Violating Terms of Consent

In the event a prohibited person has violated the terms of a written consent, the consent will be void. Thereafter, the prohibited person who continues to engage in the business of insurance is in violation of the Act.

Denial of Applicant's Request for Written Consent

No prohibited person shall be granted a license or permission to participate in the business of insurance if the request for a written consent has been denied. Upon denial, the Committee will accept no further applications for consent from an individual without a written showing, acceptable to the Committee, that the applicant's circumstances have changed materially since denial.

Definitions

Breach of Trust: Crimes involving breach of trust shall include, but not be limited to, any offense constituting or involving misuse, misapplication or misappropriation of (1) anything of value held as a fiduciary (including, but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer director or public servant) or (2) anything of value of any public, private or charitable organization.

Dishonesty: Crimes involving dishonesty shall include, but shall not be limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.

Business of Insurance: 18 U.S.C §1033 defines "business of insurance" as: (1) the writing of insurance, or (2) 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.

Corporate Official: Any director, officer, agent, solicitor, broker, producer or employee of a corporation.

Insurer: 18 U.S.C. §1033 defines "insurer" as any entity the business activity of which is the writing of insurance or reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business.

Interstate Commerce: 18 U.S.C. §1033 defines "interstate commerce" as within the District of Columbia, or any territory or possession of the United States; all commerce between any point in the state, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the state through any place outside such state; or all other commerce over which the United States has jurisdiction. State 18 U.S.C. §1033 defines "state" as any state, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin islands, American Samoa, and the Trust Territory of the Pacific Islands.

License and Licensee: "License" shall mean any license, registration, certificate of authority or other permit or approval issued or granted by the Commissioner of Insurance, and "licensee" shall mean any person or entity holding a license as required by the West Virginia insurance laws.

Application and Applicant: "Application" shall mean any filing made with the Commissioner or the WVOIC for permission pursuant to 18 U.S.C. §1033, and "applicant" shall mean any person or entity filing an application.

Felony: In West Virginia, a "felony" is any crime punishable by imprisonment in state prison for more than one year. Under federal law, a "felony" is an offense that is specifically classified as such in the section defining it. If the section defining the offense

does not contain a specific classification, the offense is classified as a felony if the maximum term of imprisonment authorized is more than one year, or if the maximum penalty is death.