



BUREAU OF INSURANCE

April 25, 2000

Administrative Letter 2000 - 5

TO: All domestic companies licensed in accordance with Chapter 10, 40, 41, 42, 43, 44 or 45 of Title 38.2 of the Code of Virginia or otherwise authorized to write insurance or reinsurance risks pursuant to Chapter 26, 27, 28, 29 or 51 of Title 38.2 of the Code of Virginia or § 65.2-802 of the Code of Virginia, and all reinsurance intermediaries that are residents of Virginia and licensed in accordance with Article 5 of Chapter 18 of Title 38.2 of the Code of Virginia.

RE: 18 U.S.C. §§ 1033, 1034 -- Violent Crime Control and Law Enforcement Act of 1994

The purpose of this administrative letter is to remind domestic insurers and others domiciled or residing in Virginia of the requirement and means of complying with 18 U.S.C. § 1033 (attached) pertaining to the federal Violent Crime Control and Law Enforcement Act of 1994 (Act). This Act prohibits any individual, who is engaged in the "business of insurance" as defined in 18 U.S.C. § 1033(f)(1) and whose activities affect "interstate commerce" as defined in 18 U.S.C. § 1033 (f)(3), from willfully permitting any individual who has been convicted of a criminal felony involving dishonesty or breach of trust, or who has been convicted of an offense under 18 U.S.C. § 1033, to be engaged in the business of insurance unless written consent is given pursuant to 18 U.S.C. § 1033(e)(2) by an insurance regulatory official authorized to regulate the insurer.

The Act requires a written consent from an insurance regulatory official authorized to regulate the insurer before an insurer may permit an individual, who has been convicted of a criminal felony involving breach of trust or dishonesty or any offense referenced in 18 U.S.C. § 1033 (prohibited individual), to engage in the business of insurance as the insurer's director, officer, agent or employee.

The attached *Notice and Request for Waiver Evidencing Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 (e)(2)* (application) should be reproduced, completed and filed with the State Corporation Commission Bureau of Insurance (Commission), by licensed companies domiciled in Virginia, before any prohibited individual is permitted to engage in the business of insurance as a director, officer or employee of such company. **THIS REQUIREMENT APPLIES TO CURRENT, AS WELL AS FUTURE, EMPLOYEES, DIRECTORS AND OFFICERS.** A letter from the company

expressly stating that the company wants to employ or otherwise retain the services of the individual in question must be filed with the application.

The filing of the application does not constitute written consent to engage in the business of insurance within Virginia. Any consent or waiver given by the Commission will be in writing and expressly given. Criminal sanctions are authorized for those who willfully permit a prohibited individual to engage in the business of insurance without written consent.

A company licensed in Virginia but domiciled in another state should contact the Commissioner, Director or Superintendent of Insurance of its domiciliary state for information regarding procedures for complying with the Act. Similarly, non-resident agents and intermediaries should contact the Commissioner, Director or Superintendent of Insurance in its domiciliary state for information regarding procedures for complying with the Act.

Questions concerning persons licensed as agents, insurance consultants, managing general agents, surplus lines brokers or viatical settlement brokers should be directed to:

Warren E. Spruill
Supervisor, Agents Licensing
Life and Health Division
SCC, Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218
(804) 786-9522

Completed applications and questions concerning this administrative letter should be directed to:

Victoria I. Savoy, CPA
Chief Financial Auditor, Financial Regulation Division
SCC, Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218
(804) 371-9869

Sincerely,

Alfred W. Gross
Commissioner of Insurance

Attachments

**NOTICE AND REQUEST FOR WAIVER EVIDENCING WRITTEN CONSENT
TO ENGAGE IN THE BUSINESS OF INSURANCE PURSUANT TO
18 U.S.C. § 1033(e)(2)
TO BE FILED WITH THE STATE CORPORATION COMMISSION BUREAU OF INSURANCE
(COMMISSION)**

Please fill in the blanks below; also number and attach requested descriptions, comments, and attachments.

SECTION I – APPLICANT INFORMATION

This Application is filed by _____
_____ (the Licensee), a company now or in the future to be domiciled in Virginia and licensed under Title 38.2 of the Code of Virginia and _____,
(the § 1033 (e)(1)(A) Individual).

1. **Licensee name:** _____ **NAIC #:** _____
2. **Contact person:** _____ **Title:** _____
—
3. **Telephone #:** _____ **FAX #:** _____
4. **§ 1033 (e)(1)(A) Individual (director, officer or employee):** _____
5. **Social Security Number:** _____
6. **Home Address:** _____
7. **Telephone #:** _____
8. **Alias or other names used, if any:** _____

SECTION II – PRESENT/PROPOSED INSURANCE EMPLOYMENT

9. The § 1033(e)(1)(A) Individual currently holds a position with the Licensee: Yes _____ No _____
 - Describe the current position.

10. The § 1033(e)(1)(A) Individual is contemplating a new position with the Licensee: Yes _____ No _____
 - Describe the new position.

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11. The position involves activities of a director _____, officer _____, employee _____ (check all that apply).
- Describe the nature, duties and activities of the office, position, occupation, trade, vocation or profession for which the issuance of written consent is sought. Attach all written agreements or contracts to be entered into between the Licensee and the § 1033(e)(1)(A) Individual.
12. Actual or prospective dates of employment or association with the Licensee: _____

SECTION III – CRIMINAL HISTORY

13. Type and date(s) of conviction(s): _____
- _____
- _____
- _____
- _____

- Provide the details regarding each felony conviction that appears to prohibit the § 1033(e)(1)(A) Individual from engaging in the business of insurance as defined in 18 U.S.C. § 1033. Include (i) the type, (ii) date of the offense, (iii) the court (with city/county and state), (iv) docket number, (v) age of the § 1033(e)(1)(A) Individual on such date, (vi) time that has since elapsed, (vii) whether the § 1033(e)(1)(A) Individual has made full payment of outstanding court costs, supervision, fees/fines and restitution concerning the offense, and (viii) whether the § 1033(e)(1)(A) Individual has received a full pardon or other type of pardon for the offense. Attach additional pages if needed.

14. Was the offense insurance related? Yes _____ No _____

- Comment on the bearing, if any, the criminal offense will have on the § 1033(e)(1)(A) Individual's fitness or ability to perform the duties, activities, or responsibilities presented in this Application. Attach additional pages if needed.
- _____
- _____
- _____

15. Are there special circumstances or additional information which should be considered with this Application? Yes _____ No _____
- Describe any mitigating circumstances and attach evidence of rehabilitation (such as a letter from the state parole or probation office outlining performance or satisfactory completion of parole) or evidence of current qualifications, including current employment history and records of professional certifications presently held. Attached additional pages if needed.
- _____
- _____
- _____

16. Has disclosure of the conviction(s) been made to any regulators? Yes _____ No _____
- Attach copies of any such notice or disclosure.

17. Has regulatory consent been requested or received by or on behalf of the § 1033(e)(1)(A) Individual from any insurance regulatory official or agency? Yes ____ No ____

- Attach a copy of the request and the regulatory response(s).

SECTION IV - ATTACHMENTS

Attach the following documents to this Application. Applications without attachments, or Applications with incomplete attachments, will be returned to the Licensee.

1. A current copy (no more than 90 days old) of the § 1033(e)(1)(A) Individual’s criminal history record report (CCRE). The § 1033(e)(1)(A) Individual can obtain a CCRE by contacting the state law enforcement agency in each state or other jurisdiction in which he or she has resided, and requesting the information. In Virginia that would be the Virginia State Police.
2. Certified copy of the indictment, criminal complaint, or docket sheet or other initiating documents for the charge(s) which is the subject of this Application.
3. A certified copy of the order of judgement and sentence of the court for the conviction that is the subject of this Application, including certification of completion and performance of all conditions imposed by the court.
4. A letter from the Licensee expressly stating that the Licensee wants to employ or otherwise retain the services of the § 1033(e)(1)(A) Individual.

For the § 1033(e)(1)(A) Individual:

I, _____ (name of the § 1033(e)(1)(A) Individual), swear under penalty of law that the statements in the attached Application, including the documents appended thereto, are true and correct and complete. I understand that the statements in the Application and the attachments to this Application are being filed with the Virginia State Corporation Commission Bureau of Insurance (Commission); and that they will be relied upon by the Commission in the execution of its duties under Title 38.2 of the Code of Virginia, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if there are any false statements in this Application, or if there are any false statements included in the attachments to this Application, I may be criminally prosecuted under any state criminal or administrative remedies available and that any insurance license(s) that I currently hold, or for which I have applied, will be subject to suspension or revocation. I further understand that a false statement would also constitute a violation of 18 U.S.C. § 1033. For the purposes of this Application, I do not contest the validity of any felony conviction upon which this request would be granted. *By signing this Application, I acknowledge that the Commission may make or direct to be made an independent investigation to confirm the information in this Application and I expressly consent and authorize any person, business or agency to release any information the Commission may request as part of the investigation, including but not limited to, records of my former employment, state and federal tax returns, business records, and banking records.*

§ 1033(e)(1)(A) Individual (signature)

Print Name

Sworn before me this _____ day of _____, _____.

Notary Public

City/County of _____ in the State of _____

My commission expires: _____

For the Licensee: Under penalty of perjury, I do hereby swear and/or affirm that I have reviewed the information contained in this Application, including all attachments, and to the best of my knowledge and belief, the information contained herein and all attachments is true, correct, and complete; and I further swear and/or affirm that the named § 1033(e)(1)(A) Individual will not be placed into a position by which the § 1033 (e)(1)(A) Individual's activities will constitute a risk or threat to this company or its insureds and policyholders.

Licensee

By: _____
Name and Title of Officer

Sworn before me this _____ day of _____, _____.

Notary Public

City/County of _____ in the State of _____

My commission expires: _____

**ATTACHMENT A:
18 UNITED STATES CODE, SECTIONS 1033 AND 1034**

Sec. 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.

(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and knowingly, with the intent to deceive, makes any false material statement or report or willfully and materially overvalues any land, property or security—

(A) in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court.

(b)(1) Whoever —

(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed \$5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to deceive any person, including any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person, about the financial condition or solvency of such business shall be punished as provided in paragraph (2).

(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years.

(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

(e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer , which consent specifically refers to this subsection.

(f) As used in this section-

(1) the term "business of insurance" means-

- (A) the writing of insurance, or
- (B) 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;

(2) the term "insurer" means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business

(3) the term "interstate commerce" means-

- (A) commerce within the District of Columbia, or any territory or possession of the United States;
- (B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;
- (C) all commerce between points within the same State through any place outside such State; or
- (D) all other commerce over which the United States has jurisdiction; and

(4) the term "State" includes 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.

Sec. 1034. Civil penalties and injunctions for violations of section 1033.

(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.