

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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### BULLETIN 98-05

**TO: Licensees, Admitted Insurers, and Interested Parties**

**RE: The Federal Violent Crime Control and Law Enforcement Act of 1994**

On September 13, 1994, President Clinton signed the omnibus anti-crime bill titled the "Violent Crime Control and Law Enforcement Act of 1994" (Public Law 103-322, H.R. 3355) (the "Act"). The Act included new Federal criminal and civil enforcement provisions aimed directly at white-collar and other insurance fraud. The Act is very broad in application, even reaching to people and activities of reinsurers doing business in the U.S. or with U.S. domiciled insurers.

The insurance fraud provisions of the Act are contained within two new sections, 1033 and 1034, of Title 18 of the United States Code. Section 1033 is captioned "Crimes by or Affecting Persons Engaged in the Business of Insurance Whose Activities Affect Interstate Commerce." The section enumerates certain activities as crimes if they are carried out by individuals, their agents and employees engaged in the business of insurance and whose activities affect interstate commerce. Section 1034 is captioned "Civil Penalties and Injunctions for Violations of Section 1033." This section allows the U.S. Attorney General to bring civil actions against a person who engages in conduct constituting an offense under Section 1033. Imposition of a civil penalty under Section 1034 does not preclude any other criminal or civil statutory, common law, or administrative remedy available by law to the United States or any other agency. This section also permits the Attorney General to seek an order (an injunction) prohibiting persons from engaging in any illegal conduct.

One portion of the law requires that any person who has been convicted of any criminal felony involving dishonesty or breach of trust who is engaged in the business of insurance, as defined in (f)(1) of the act, or is involved in a transaction relating to the conduct of affairs of such a business, and whose activities affect interstate commerce **may not engage in the business of insurance unless if the person has received the specific written consent of an insurance regulatory official authorized to regulate the insurer.** In essence, on September 13, 1994, it became illegal for an individual convicted of a crime involving dishonesty or breach of trust to work, or continue to work, in the business of insurance without receiving written consent from an insurance regulator authorized to regulate the insurer. Criminal sanctions are included for any individual who wilfully permits the participation described above. The statutes contain no grandfather provision for persons already transacting the business of insurance.

Section 1033(e)(2) provides a mechanism whereby a prohibited or barred individual may seek approval and written consent to transact the business of insurance. The provision, however, does not allow a person to work in the business while that person is applying for consent.

Under this law, the "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; (18 U.S.C. 1033 (f)(1)).

The intent of this bulletin is to provide notice to any person of the requirements to seek consent under 18 U.S.C. 1033 to engage or participate in the insurance business.

#### WHO MUST COMPLY

Any person convicted of a felony involving dishonesty or breach of trust wishing to engage or participate in the business of insurance must submit a written request seeking consent under 18 U.S.C. 1033. Under federal law, any convicted individual or person who is an employee of an insurance agency, an insurance company, and all employees, consultants, third-party administrators, managing general agents, or subcontractors representing an agency or insurance company who engage or participate in the business of insurance in this state, regardless of the functions or duties performed, must also file and receive written consent to transact the business of insurance. BOTH THE CONVICTED PERSON AND THE EMPLOYER OR PERSON AUTHORIZING THIS INDIVIDUAL AS ITS REPRESENTATIVE ARE RESPONSIBLE FOR RECEIVING WRITTEN CONSENT UNDER THE ACT.

A person who has not received written consent to engage or participate in the insurance business under 18 U.S.C. 1033 from a insurance regulatory official authorized to regulate the insurer is in violation of the federal law. Penalties provided for a person in violation of this section may be monetary and may include imprisonment.

#### HOW TO SEEK CONSENT

To seek consent under the federal provision, such a person and the entity who authorizes this person to act on its behalf should complete and submit a consent application form, including all relevant information, to the division for consideration. Decisions of whether or not to grant

consent to engage in the business of insurance to a person convicted of a felony involving breach of trust or dishonesty will be handled on a case by case basis.

We encourage you to read 18 U.S.C. 1033 and 1034 fully and to evaluate and determine if you and all employees, consultants, third-party administrators, managing general agents, or subcontractors representing your agency or insurance company are in compliance with the federal law.

If you have any questions about this bulletin or need a consent application form, please contact Linda Brunette, Division of Insurance, P. O. Box 110805, Juneau, Alaska 99811-0805, (907) 465-2545, or [Linda\\_Brunette@commerce.state.ak.us](mailto:Linda_Brunette@commerce.state.ak.us) via electronic mail.

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Marianne K. Burke  
Director