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**OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT**

**HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER**

In the Matter of:

No. 16-0165

Karla Deane,

LIST OF ADMITTED EXHIBITS

Applicant.

HEARING DATE: 8/25/16

Exhibits submitted by applicant, Karla Deane, Darryl Colman, Office of Insurance Commissioner (OIC, and Presiding Officer William Pardee (PO) at the adjudicative hearing on August 25, 2016:

| No. | Description | Offered By |
|------|--|-------------|
| A | August 11, 2016 letter from Vicki L. Boser of Insurance Tek, Inc. | Karla Deane |
| B | Resume of Karla R. Deane | Karla Deane |
| C | September 30, 2015 letter from Chris Misenar, Manager, of Yarrow Bay 76 | Karla Deane |
| D | Undated letter from Karla R. Deane to Insurance Licensing | Karla Deane |
| E | Criminal conviction documents from Snohomish County Superior Court, Case No. 11-1-01301-9, regarding Karla Renee Deane | Karla Deane |
| 1 | June 6, 2016 application summary and court documents from Snohomish County Superior Court No. 11-1-01301-9 | OIC |
| 2 | June 15, 2016 email from Cheryl Penn re license application denial | OIC |
| 3 | Explanation of applicant Karla Deane | OIC |
| 4 | Letters of recommendation submitted by Karla Deane | OIC |
| PO-1 | NAIC guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994 | PO |



INSURANCE TEK, INC.

August 11, 2016

RE: Karla R Deane

Karla Deane has been employed with me since 1/14/2016. She was hired to perform processing, application input and reviewing open item reports. She is the daughter to another employee in my office and was hired to fill a processing role.

Through her excellent retention of the renewal process, detail and work ethics, she was asked to obtain her insurance license to continue her growth in my office. As I was aware of her history, I was not aware a pre-application was required. She passed her testing the first time which is not easy and we submitted all documents, letters and affidavit to your office.

I do not see Karla as a threat to the public whatsoever, but an asset in providing insurance products. This is a young adult working hard to better herself and a profession. Her family is clearly her priority and providing for them. Her potential is unlimited and I trust her knowledge of the rules and regulations. I don't have to worry about her crossing the line if a client calls in. She knows without her license, her communication is very restrictive.

I highly recommend Karla and look forward to her continued growth. I do not hold or view poorly, as 22 year old the choices made. I truly believe if she had any knowledge it was stolen and/or could have hired a professional attorney, these charges would have been dismissed or reduced.

Regards,



Vicki L. Boser, Agency Principal
InsuranceTek Inc.

"SERVICE EXCELLENCE OUR COMMITMENT"

108 Union Street • PO Box 70 • Snohomish WA 98291-0070
Local 425-357-1555 • Office 1-888-505-1555 • Fax 1-800-521-1528
www.Insurance-Tek.com

EXHIBIT

A

KARLA R. DEANE

11919 60th St NE Lake Stevens, WA 98258 |
425-551-8904 | Karladeane@yahoo.com

1/2007 – 4/2008

Assistant Teacher, *Kids Country*

My job/duties included taking care of children, cleaning, organizing and making lesson plans for each month.

5/2008 – 6/2009

Private Nanny

My nanny job included taking care of my employer's child Monday-Friday while each of them went to work. I cooked, cleaned and took care of all the regular duties of caring for a small child.

From June 2009 to July 2014, stayed home with new born daughter 2009. Took education classes at Everett Community College.

9/2014 – 9/2015

Cashier/Clerk, *Yarrow Bay 76*

My duties included running the cash register, cleaning, stocking and doing other various jobs. I was always on time, never missed a shift and always took on any task that was put in front of me.

1/2016 - Present

Processing Clerk, *InsuranceTek Inc*

My duties include Policy registration, policy input, along with other various tasks to assist others (scanning, copying, etc.)

EDUCATION

8/2013 – 7/2014

Pre requisites for Human Services degree, *Everett Community College*

EXHIBIT

B



Yarrow Bay 76

3828 Lake Washington Blvd. NE, Kirkland, WA 98033
425-827-6633 fax 425-827-6064

September 30, 2015

To whom it may concern,

Karla Deane was employed as a cashier/clerk at Yarrow Bay 76 from September, 2014 through September 2015. She was responsible for running a cash register and various stocking and cleaning tasks. Her accuracy and ability as a cashier was very good and she learned new skills as things changed. For stocking and cleaning, she consistently exceeded and was always very detailed and thorough. In addition, she often took on other infrequent tasks and was conscientious to getting the job done correctly and helping to create a good image of the business. She has been helpful in filling shifts when needed and tries to keep a positive attitude. Karla is also a reliable employee that is prompt and doesn't miss shifts. She has been a big help to us in growing our business.

Sincerely

Chris Misenar, Manager

EXHIBIT

Attn: Insurance Licensing

As per instructions, here is my letter of understanding regarding the felony charge on my record.

As I am not proud of this but between 2009-2011, I was in a very unhealthy relationship and too young to understand when I look back. I was abused and when I tried to stand up for myself, this only made my life worse. He even called police on me for abuse which things just turned out worse for me.

In July of 2010, this man handed me a camera which he told me was his sister. He asked if I could pawn it for him since he did not have a valid ID. He informed me that his sister had given him permission to pawn it to help him with his cell phone bill. Against my better judgement I agreed to do it as the repercussions of going against him scared me more.

It wasn't until late August 2010 that I received a call from my mom one evening, saying that the police were there looking for me. When I arrived at her home, I was told I was under arrest for pawning a stolen camera. I tried to explain to them that I did not steal it, I was asked to pawn it by my boyfriend. They informed me that it did not matter, it was my name on the pawn slip and there was nothing I could do.

I met with a public defender and he told me, if I would just plead guilty they were offering a lesser charge, a misdemeanor, since this was my first offense. I asked if there was any way we could fight to get the charge dropped, this type of charge on my record could hurt my future. This public defender was not looking out for my best interest.

In trying to find an experienced attorney to get my charged dropped, they did not offer pricing with plans I could afford. Realizing I could not afford experience council, I made the appointment to speak with my public defender again about taking the lesser charge.

At that point he advised, the offer was off the table as I needed to take the offer then. I would just have to plead guilty to the felony and take the minimum sentence, which was 30 days in county jail and a fine. I knew this would change my life forever.

With help from my family, I found the strength to leave my boyfriend and started my life over. I have 2 beautiful children that I support on my own and would do anything for. I have not put myself in any situation to cause legal conflict. Being so young, I have grown so much in the last 5-6 years.

I have been offered an opportunity for a carrier in Insurance with InsuranceTek Inc. As I was just looking for employment, I found I enjoyed this industry and want to learn more. The owner was aware of my situation and has been very supportive during my training and education. Obtaining my license as you know, is the only way I can continue my training and work with clients.

I ask that you please do not base your decision on my past mistakes, but instead on how I have turned my life around and all the wonderful path I have been given. As a single mom, this is for my future and my children. I appreciate your consideration very much.

Thank you!

Karla R Deane

EXHIBIT D

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL14908465

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

DEANE, KARLA RENEE

Defendant.

No. 11-1-01301-9

INFORMATION


Aliases:

Other co-defendants in this case:

Comes now MARK K. ROE, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, in the name and by the authority of the State of Washington, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE, committed as follows: That the defendant, on or about the 24th day of August, 2010, did recklessly traffic in stolen property, to-wit: a camera; proscribed by RCW 9A.82.055, a felony.

MARK K. ROE
PROSECUTING ATTORNEY



WALTER J. SOWA, #07539
Deputy Prosecuting Attorney

EXHIBIT

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CL15498892

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

RECEIVED

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

v.
DEANE, KARLA RENEE

SID: WA25074147
If no SID, use DOB:

No. 11-1-01301-9

JUDGMENT AND SENTENCE

- Prison
- Jail One Year or Less
- First Time Offender
- Special Drug Offender Sentencing Alternative
- Clerk's action required, firearm rights revoked, ¶ 5.5
- Clerk's action required, §§ 2.1, 4.1, 4.3, 4.5, 5.2, 5.3
- Clerk's action required, ¶ 5.6 (use of motor vehicle)
- Restitution Hearing set, ¶ 4.3

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

2.1 CURRENT OFFENSE(S). The defendant was found guilty on 10/25/10 by plea of:

| COUNT | CRIME | RCW | CLASS | INCIDENT # | DATE OF CRIME |
|-------|---|-----------|-------|-------------|---------------|
| 1 | Trafficking in Stolen Property in the Second Degree | 9A.82.055 | G | SSO 1016946 | 8/24/2010 |

as charged in the Information.

The jury returned a special verdict or the court made a special finding with regard to the following:

- See ¶ 4.1 regarding findings in relation to Drug Offender Sentencing Alternative or First Time Offender Waiver.
- The defendant used a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.94A.802, 9.41.010, 9.94A.533.
- The defendant used a deadly weapon other than a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.94A.802, 9.94A.533.
- Count(s) _____ is (are) a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.

CC PA
CC SCSO
CC JAIL
DPA SENT Y / N

ORIGINAL

43

- Count(s) _____ is (are) the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A._____.
- The defendant committed vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count(s) _____ is (are) a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- The defendant has a chemical dependency that has contributed to the offense(s) in Count(s) _____, RCW 9.94A.607.
- For the crime charged in Count(s) _____, domestic violence was pled and proved. RCW 10.99.020.
- Count(s) _____ involve(s) kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- Count(s) _____ and _____ merge. (See ¶ 3.2 for dismissal of specific count.)
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.689.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY. Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

| CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | A or J (Adult or Juvenile) | TYPE OF CRIME |
|--------|------------------|-----------------------------------|----------------------------|---------------|
| 1 none | | | | |

- The defendant committed Count(s) _____ while on community custody (adds one point to score). RCW 9.94A.525.
- The court finds the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3. SENTENCING DATA.

| COUNT NO. | OFFENDER SCORE | SRA LEVEL | STANDARD RANGE (not including enhancements) | *PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-----------|---|--------------------|---|-------------------|
| 1 | 0 | III | 1-3 Months | | 1-3 Months | 5 Years; \$10,000 |

(F) Firearm, (D) Other deadly weapons, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present, (CSG) Criminal Street Gang Involving Minor.

- 2.4 **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____ or within the standard range for Count(s) _____ but served consecutively to Count(s) _____.
- The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers and is consistent with the interests of justice and the purpose of the Sentencing Reform Act.
- Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory. Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753(5)):

- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 **PROSECUTOR'S RECOMMENDATION.** The prosecutor's recommendation was as follows:

30 days months on Count I _____ days/months on Count IV
 _____ days/months on Count II _____ days/months on Count V
 _____ days/months on Count III _____ days/months on Count VI

Terms on each count to run:

- concurrently with or consecutively to each other
 concurrently with or consecutively to the terms imposed in Cause No(s) _____

III. JUDGMENT

- 3.1 The defendant is **GUILTY** of the counts and charges listed in Paragraph 2.1.
- 3.2 The court **DISMISSES** Count(s) _____.
- 3.3 The defendant was found **NOT GUILTY** of Count(s) _____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 **JAIL ONE YEAR OR LESS.** The court sentences the defendant to total confinement as follows:

CONFINEMENT. RCW 9.94A.589. A term of total confinement in the custody of the county jail:

30 days/months on Count I _____ days/months on Count IV
 _____ days/months on Count II _____ days/months on Count V
 _____ days/months on Count III _____ days/months on Count VI

The confinement time on Count(s) _____ includes _____ months as enhancement for Deadly Weapon other _____.

Actual term of total confinement ordered is 30 days/months.

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to the sentence in cause number(s) _____ and consecutive to any sentence which was imposed before the date of violation for the offenses in this cause number. The sentence shall run concurrently to the sentence in cause numbers _____, RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

- work crew RCW 9.94A.725 home detention RCW 9.94A.731, .190
- work release RCW 9.94A.731

CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 day maximum) under the supervision of the Department of Corrections to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

Alternatives to total confinement were not used because of criminal history failure to appear defendant has served most or all confinement before sentencing other.

CREDIT FOR TIME SERVED. The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505(6). The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.2 **COMMUNITY CUSTODY, RCW 9.94A.505, .702.** The defendant shall serve the following term of community custody (up to 12 months):

| | |
|--|---------------------------------------|
| Count I for a period of _____ months | Count IV for a period of _____ months |
| Count II for a period of _____ months | Count V for a period of _____ months |
| Count III for a period of _____ months | Count VI for a period of _____ months |

The court may order community custody under the jurisdiction of Department of Corrections (DOC) for up to 12 months if the defendant is convicted of a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of Chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.701 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a) and for offenses after June 12, 2008 for unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang.

The defendant shall report to DOC, 8625 Evergreen Way, Suite 100, Everett, Washington 98208 not later than 72 hours after release from custody.

While on community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) notify DOC of any change in the defendant's address or employment; (4) not consume or possess controlled substances except pursuant to lawfully issued prescriptions; (5) not own, use, or possess firearms or ammunition; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with orders of the court as required by DOC; and (8) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The residence location and living arrangements are subject to the prior approval of DOC while on community custody.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with _____ See ¶ 4.5.
- The defendant shall remain within outside of a specific geographical boundary, to wit:

- The defendant shall participate in the following crime-related treatment or counseling services:

- The defendant shall participate in the following: State certified domestic violence treatment program chemical dependency evaluation mental health evaluation anger management program, and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.682.

4.3. LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the clerk of the court:

| | | | |
|------------------|---|--|--------------------------------|
| PVC | <input checked="" type="checkbox"/> \$500 | Victim assessment | RCW 7.88.035 |
| CRC | \$ <u> </u> <input checked="" type="checkbox"/> waived | Court costs, including | RCW 9.94A.030, .505; 10.01.160 |
| | | Criminal filing fee \$ | FRC |
| | | Witness costs \$ | WFR |
| | | Sheriff service fees \$ | SFR/SFS/SFW/SRF |
| | | Jury demand fee \$ | JFR |
| | | Other \$ | RCW 10.46.190 |
| PUB | <input type="checkbox"/> \$962 <input checked="" type="checkbox"/> waived | Fees for court appointed attorney | RCW 9.94A.760 |
| WFR | \$ | Court appointed defense expert and other costs | RCW 9.94A.760 |
| FCM | <input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 | Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency | RCW 89.50.430 |
| DDF/IDV | \$ | Drug enforcement fund of \$ | RCW 9.94A.760 |
| PCD/INTP/SAD/BDI | <input type="checkbox"/> \$100 | Crime lab fee <input type="checkbox"/> suspended due to indigency | RCW 43.43.890 |
| CLF | \$ | Extradition costs | RCW 9.94A.505 |
| EXT | \$ | Emergency response costs (Vehicular Assault, Vehicular Homicide, DUI only, \$1000 maximum) | RCW 38.52.430 |
| RTWR/JN | <input checked="" type="checkbox"/> \$100 | Biological Sample Fee (for offenses committed after 07-01-2002) | RCW 43.43.7541 |
| PDV | <input type="checkbox"/> \$100 | Domestic Violence Penalty (for offenses committed after 06-04-2004 - maximum \$100) | RCW 10.99.080 |
| | \$ | Other costs for: _____ | |
| | \$ <u> 6.00 </u> | TOTAL | RCW 9.94A.760 |

RESTITUTION. The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753.

- A restitution hearing shall be set for _____
- Defendant waives any right to be present at any restitution hearing (sign initials): _____
- Defendant waives any right to a restitution hearing within 6 months. RCW 9.94A.750.

A separate Restitution Order is being entered contemporaneously with this Judgment and Sentence.

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here of not less than:

\$ 50.00 per month commencing with 30 days re-arrest RCW 9.94A.760.

All payments shall be made within 10 months of release of confinement; entry of judgment; other _____

The defendant shall report to the clerk of the court or as directed by the clerk to provide financial and other information requested. RCW 9.94A.760(7)(b).

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at \$100.00 per day (not to exceed \$100 per day) unless another rate is specified here _____ RCW 9.94A.760(2).

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

- 4.4 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.
- HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 106, Everett, Washington 98201 within one (1) business day of entry of this order to arrange for the test. RCW 70.24.340.

4.5 **NO CONTACT.**

- The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (date) (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.
- A separate post conviction Domestic Violence No Contact Order, Anti-Harassment Order, or Sexual Assault Protection Order was filed at the time of entry of the plea of guilty/guilty verdict is filed contemporaneously with this Judgment and Sentence. (Entry of a separate order makes a violation of this no contact sentencing provision also punishable as a criminal offense, and the order will be entered into the law enforcement database.)
- The pre-trial Domestic Violence No Contact Order, Anti-Harassment Order, or Sexual Assault Protection Order entered on _____ is hereby terminated.

4.6 **OTHER.** _____

4.7 **OFF-LIMITS ORDER.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.
- 5.2 LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4); RCW 9.94A.760 and RCW 9.94A.505(5).
- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606.
- 5.4 VIOLATION OF JUDGMENT AND SENTENCE/COMMUNITY CUSTODY VIOLATION.**
(a) Any violation of a condition or requirement of sentence is punishable by up to 60 days confinement for each violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.
- 5.5 FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. *(The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.)* RCW 9.41.040, 9.41.047.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court.)

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ *(name of law enforcement agency)*. RCW 9.41.098
- 5.6 MOTOR VEHICLE.** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.265.
- 5.7 CERTIFICATE OF DISCHARGE.**
(a) If you are under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received notice from Department of Corrections and clerk's office that you have completed all requirements of the sentence and satisfied all legal financial obligations. RCW 9.94A.637.

(b) If you are not under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received verification from you that you have completed all sentence conditions other than payment of legal financial obligations and the clerk's office that you have satisfied all legal financial obligations.

6.8 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence. You may also have the right to appeal in other circumstances.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

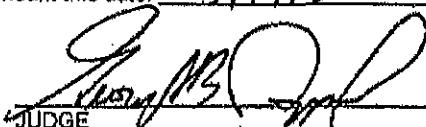
6.9 VOTING RIGHTS STATEMENT. I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.


My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.837; b) a court order issued by the sentencing court restoring the right, RCW 9.92.086; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

5.10 OTHER. _____

DONE in Open Court and in the presence of the defendant this date: 3/11/12


 JUDGE
 Print name: _____


 SCOTT HALLORAN
 WSBA 35171
 Deputy Prosecuting Attorney


 WILLIAM C. STEFFENER
 WSBA 36641
 Attorney for Defendant


 KARLA RENEE DEANE
 Defendant

Interpreter signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language. Cause No. of this case: 11-1-01301-9.

I, Sonya Kraski, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, _____, Deputy Clerk.

IDENTIFICATION OF DEFENDANT

SID Number: WA25074147
(If no SID, take fingerprint card for State Patrol)

Date of Birth: 06/02/1988

FBI Number: 603041DD9

Local ID Number: _____

PCN Number: _____

DOC Number: _____

Allas name, SSN, DOB:

Race: White

Ethnicity:

Sex: F

Hispanic

Non-Hispanic

Height: 507

Weight: 135

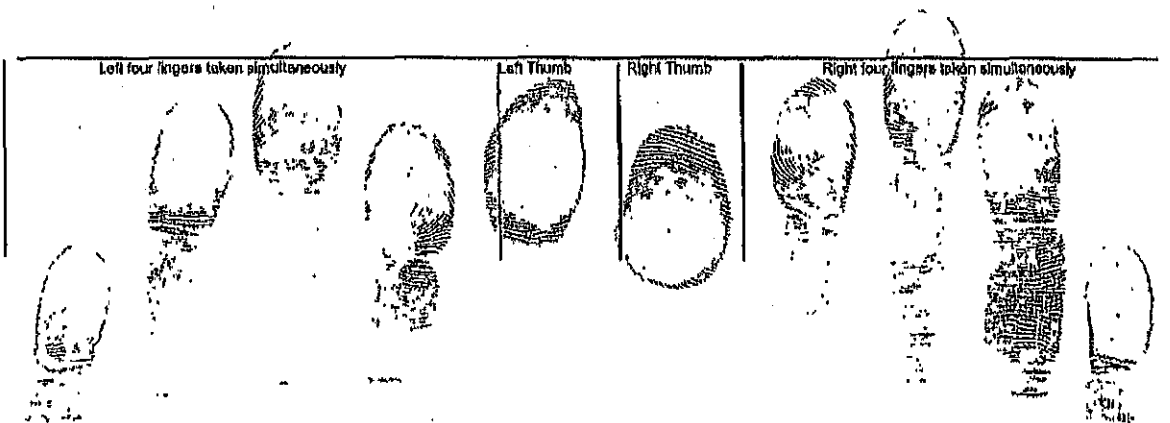
Hair: Brown

Eyes: Blue

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: J. McGilley, Deputy Clerk.

Dated: 3-1-12

DEFENDANT'S SIGNATURE: *Karla Deane*
ADDRESS: 5113 Hwy Pl Everett WA 98203



ORDER OF COMMITMENT

FILED

THE STATE OF WASHINGTON to the Department of Corrections of the State of Washington:

2012 MAR 6 PM 3:18

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

WHEREAS, KARLA RENEE DEANE has been duly convicted of the crime of Stolen Property in the Second Degree as charged in the Information and Judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of the Judgment and Sentence; Now, Therefore,

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize release of the defendant to a Work/Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS the Honorable GEORGE F.B. APPEL, Judge of the Snohomish County Superior Court and the seal thereof, this 1st day of March, 2012

Sonya Kraski
CLERK OF THE SUPERIOR COURT

By: J. McCollay
Deputy Clerk

APPLICATION SUMMARY

PERSONAL INFORMATION

Application Type Original Application Transaction # 703716 Application Date 06/06/2016
 Licensee Name Deane, Karla DOB 06/02/1988
 Resident Licensee? Y Resident License State N US Citizen? Y
 NPN # WAOLC # CRD #

ADDRESS DETAILS

| | |
|--|--|
| Mailing Address | Residence Address |
| 11919 60TH ST LAKE STEVENS WA 98258 PHONE:425-551-8904 | 11919 60TH ST LAKE STEVENS WA 98258 PHONE:425-551-8904 |
| karladeane@yahoo.com | karladeane@yahoo.com |

INSURANCE

| | | | |
|--------------------|------|-------|---|
| Insurance Producer | P, C | Agent | Y |
|--------------------|------|-------|---|

EMPLOYMENT HISTORY

| Employer Name | City | State | Country | Position Held | Start Date | End Date |
|---------------|----------|------------|---------------|---------------|------------|------------|
| Yarrow Bay 76 | Kirkland | Washington | United States | cashier | 09/26/2014 | 09/20/2015 |

APPLICATION SUMMARY

| QUESTION | ANSWER |
|---|--------|
| 1a. Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? | Yes |
| 1b. Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? | Yes |
| If you have a felony conviction involving dishonesty or breach of trust, have you applied for written consent to engage in the business of insurance in your home state as required by 18 USC 1033? | No |
| If so, was consent granted? (Attach copy of 1033 consent approved by home state.) | N/A |
| 1c. Have you ever been convicted of a military offense, had a judgment withheld or deferred, or are you currently charged with committing a military offense? | No |
| 2. Have you ever been named or involved as a party in an administrative proceeding including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? | No |
| 3. Has any demand been made or judgment rendered against you or any business in which you are or were an owner, partner, officer or director, or member or manager of a limited liability company, for overdue monies by an insurer, insured or producer, or have you ever been subject to a bankruptcy proceeding? Do not include personal bankruptcies, unless they involve funds held on behalf of others. | No |
| 4. Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement? | No |
| 5. Are you currently a party to, or have you ever been found liable in, any lawsuit, arbitrations or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? | No |
| 6. Have you or any business in which you are or were an owner, partner, officer, director, or member or manager of a limited liability company, ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct? | No |
| 7. Do you have a child support obligation in arrears? | No |
| 8. In response to a "yes" answer to one or more of the Background Questions for this application, are you submitting document(s) to the NAIC/NIPR Attachments Warehouse? | Yes |
| Will you be associating (linking) previously filed documents from the NAIC/NIPR Attachments Warehouse to this application? | No |

APPLICATION SUMMARY

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.
2. Unless provided otherwise by law or regulation of the jurisdiction, I hereby designate the Insurance Commissioner to be my agent for service of process regarding all insurance matters in the respective jurisdiction and agree that service upon the Insurance Commissioner is of the same legal force and validity as personal service upon myself.
3. I further certify that I grant permission to the Insurance Commissioner for which this application is made to verify information with any federal, state or local government agency, current or former employer, or insurance company.
4. I further certify that, under penalty of perjury, a) I have no child support obligation, b) I have a child support obligation and I am currently in compliance with that obligation, or c) I have identified my child support obligation arrearage on this application.
5. I authorize the jurisdictions to which this application is made to give any information concerning me, as permitted by law, to any federal, state or municipal agency, or any other organization and I release the jurisdictions and any person acting on their behalf from any and all liability of whatever nature by reason of furnishing such information.
6. I acknowledge that I understand and comply with the insurance laws and regulations of the jurisdictions to which I am applying for licensure/registration.
7. For Non-Resident License Applications, I certify that I am licensed and in good standing in my home state/resident state for the lines of authority requested from Washington State.
8. I hereby certify that upon request, I will furnish the jurisdiction(s) to which I am applying, certified copies of any documents attached to this application or requested by the jurisdiction(s).

| Fee Description | Fee (in USD) |
|----------------------------------|----------------|
| License Fee (Insurance Producer) | \$55.00 |
| Filing Fee | \$5.00 |
| Total Fee | \$60.00 |

FILED

2011 JUN 24 PM 4:03

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL14908465

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

DEANE, KARLA RENEE

Defendant.

No. 11-1-01301-9

INFORMATION

Aliases:

Other co-defendants in this case:

Comes now MARK K. ROE, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, in the name and by the authority of the State of Washington, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE, committed as follows: That the defendant, on or about the 24th day of August, 2010, did recklessly traffic in stolen property, to-wit: a camera; proscribed by RCW 9A.82.055, a felony.

MARK K. ROE
PROSECUTING ATTORNEY


WALTER J. SOWA, #07539
Deputy Prosecuting Attorney

Information Page 1
SI. v. DEANE, KARLA RENEE
PA#10F05075 6/19/2011

Snohomish County Prosecuting Attorney
SI\Felony\Fomis\Charging\summons_pky.dotx
NVL\AWJ8/vla

Address: 2109 123RD AVE NE, #9 LAKE WA 98258
STEVENS
HT: 507 DOB: 08/02/1988 SID: WA26074147
WT: 135 SEX: F FBI: 603041DD9
EYES: Blue RACE: White DOC:
HAIR: Brown DOL: DEANEKR127L8 WA
ORIGINATING AGENCY: SNOHOMISH COUNTY SHERIFF'S AGENCY CASE#: 1015948
OFFICE

Information Page 2
SI v. DEANE, KARLA RENEE
PA#10F08078 6/13/2011

Snohomish County Prosecuting Attorney
SI\Felony\FormalCharging\summons_pkg.dotk
NVLWJSH/a

FILED

2012 MAR -6 PM 3:18



CL15498892

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

RECEIVED

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

No. 11-1-01801-9

Plaintiff,

JUDGMENT AND SENTENCE

v.

Prison

DEANE, KARLA RENEE

Jail One Year or Less

First Time Offender

Defendant.

Special Drug Offender Sentencing Alternative

Clerk's action required, firearm rights

revoked, ¶ 6.6

SID: WA25074147

Clerk's action required, ¶¶ 2.1, 4.1, 4.3, 4.6, 6.2, 6.3

If no SID, use DOB:

Clerk's action required, ¶ 6.6 (use of motor vehicle)

Restitution Hearing set, ¶ 4.3

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

2.1 CURRENT OFFENSE(S). The defendant was found guilty on 10/25/10 by plea of:

| COUNT | CRIME | RCW | CLASS | INCIDENT # | DATE OF CRIME |
|-------|---|-----------|-------|-------------|---------------|
| 1 | Trafficking in Stolen Property in the Second Degree | 9A.82.065 | C | SSO 1016046 | 8/24/2010 |

as charged in the information.

The jury returned a special verdict or the court made a special finding with regard to the following:

- See ¶ 4.1 regarding findings in relation to Drug Offender Sentencing Alternative or First Time Offender Waiver.
- The defendant used a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.94A.602, 9.41.010, 9.94A.633.
- The defendant used a deadly weapon other than a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.94A.602, 9.94A.633.
- Count(s) _____ is (are) a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.

Judgment and Sentence (Felony) Under One Year Page 1 of 10
State v. DEANE, KARLA RENEE
PA #10F06078 Updated 9/22/09

Snohomish County Prosecuting Attorney
S:\Felony\Formal\Sentencing\Under J&S_rmg.dot
NVL\JSH\

ORIGINAL

43

Handwritten notes and stamps on the left margin, including "CC PA" and "CC SSO".

- Count(s) _____ is (are) the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9A.4A.702, 9.94A.
- The defendant committed vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9A.4A.030.
- Count(s) _____ is (are) a felony in the commission of which the defendant used a motor vehicle. RCW 4A.20.265.
- The defendant has a chemical dependency that has contributed to the offense(s) in Count(s) _____ RCW 9A.4A.607.
- For the crime charged in Count(s) _____ domestic violence was pled and proved. RCW 10.09.020.
- Count(s) _____ involve(s) kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- Count(s) _____ and _____ merge. (See ¶ 3.2 for dismissal of specific count.)
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9A.4A.550.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY. Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

| CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | A or J (Adult or Juvenile) | TYPE OF CRIME |
|--|------------------|-----------------------------------|----------------------------|---------------|
| none | | | | |
| <input type="checkbox"/> The defendant committed Count(s) _____ while on community custody (adds one point to score). RCW 9.94A.525. | | | | |
| <input type="checkbox"/> The court finds the following prior convictions are one offense for purposes of determining the offender score (RCW 9.9 A.525): | | | | |
| <input type="checkbox"/> The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: | | | | |

2.3 SENTENCING DATA.

| COUNT NO. | OFFENDER SCORE | SRA LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-----------|---|-------------------|---|-------------------|
| 1 | 0 | III | 1-3 Months | | 1-3 Months | 6 Years; \$10,000 |

*[F] Piracy, (D) Other deadly weapons, (VH) Vehicular Homicide, See RCW 48.81.020, (JP) Juvenile Present, (JSG) Criminal Street Gang Involving Minor.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____ or within the standard range for Count(s) _____ but served consecutively to Count(s) _____.

The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence further and is consistent with the interests of justice and the purpose of the Sentencing Reform Act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory. Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein, RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753(5)):

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 PROSECUTOR'S RECOMMENDATION. The prosecutor's recommendation was as follows:

30 days months on Count I _____ days/months on Count IV
 _____ days/months on Count II _____ days/months on Count V
 _____ days/months on Count III _____ days/months on Count VI

Terms on each count to run:

concurrently with or consecutively to each other
 concurrently with or consecutively to the terms imposed in Cause No(s), _____

III. JUDGMENT

- 3.1 The defendant is GUILTY of the counts and charges listed in Paragraph 2.1.
- 3.2 The court DISMISSES Count(s) _____
- 3.3 The defendant was found NOT GUILTY of Count(s) _____

IV. SENTENCE AND ORDER.

IT IS ORDERED:

4.1 JAIL ONE YEAR OR LESS. The court sentences the defendant to total confinement as follows:

CONFINEMENT, RCW 9.94A.689, A term of total confinement in the custody of the county jail:

30 days/months on Count I _____ days/months on Count IV
 _____ days/months on Count II _____ days/months on Count V
 _____ days/months on Count III _____ days/months on Count VI

The confinement time on Count(s) _____ includes _____ months as enhancement for Deadly Weapon other _____

Actual term of total confinement ordered is 30 days/months.

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to the sentence in cause number(s) _____

and consecutive to any sentence which was imposed before the date of violation for the offenses in this cause number. The sentence shall run concurrently to the sentence in cause number(s) _____

RCW 9.94A.689.

Confinement shall commence immediately unless otherwise set forth here: _____

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

- work crew RCW 9.9 A.726
- home detention RCW 9.94A.731, 190
- work release RCW 9.94A.731

CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses).

RCW 9.94A.680(3): The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local conditional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

ALTERNATIVE CONVERSION, RCW 9.94A.680, _____ days of total confinement ordered

above are hereby converted to _____ hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 day maximum) under the supervision of the Department of Corrections to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

Alternatives to total confinement were not used because of criminal history failure to appear defendant has served most or all confinement before sentencing other.

CREDIT FOR TIME SERVED. The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number, RCW 9A.06.005(b). The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.2 **COMMUNITY CUSTODY, RCW 9A.06.702.** The defendant shall serve the following term of community custody (up to 12 months):

Count I for a period of _____ months Count IV for a period of _____ months
Count II for a period of _____ months Count V for a period of _____ months
Count III for a period of _____ months Count VI for a period of _____ months

The court may order community custody under the jurisdiction of Department of Corrections (DOC) for up to 12 months if the defendant is convicted of a violent offense, a crime against a person under RCW 9A.04.011, or felony violation of Chapter 9A.60 or 9A.62 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2008, the court shall impose a term of community custody under RCW 9A.06.701 if the offender is guilty of failure to register (a second or subsequent offense) under RCW 9A.44.130(1)(a) and for offenses after June 12, 2008 for unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang.

The defendant shall report to DOC, 8825 Evergreen Way, Suite 100, Everett, Washington 98208 not later than 72 hours after release from custody.

While on community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) notify DOC of any change in the defendant's address or employment; (4) not consume or possess controlled substances except pursuant to lawfully issued prescriptions; (5) not own, use, or possess firearms or ammunition; (6) pay supervision fees as determined by DOC; (7) perform affirmatively acts necessary to monitor compliance with orders of the court as required by DOC; and (8) abide by any additional conditions imposed by DOC under RCW 9A.06.704 and 708. The residence location and living arrangements are subject to the prior approval of DOC while on community custody.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with _____ See ¶ 4.5.
- The defendant shall remain within outside of a specific geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall participate in the following: State certified domestic violence treatment program chemical dependency evaluation mental health evaluation anger management program, and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9A.06.562.

- 4.4 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.
- HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 108, Everett, Washington 98201 within one (1) business day of entry of this order to arrange for the test. RCW 70.24.340.
- 4.5 **NO CONTACT.**
- The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (date) (not to exceed the maximum statutory sentence). **EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.**
- A separate post conviction Domestic Violence No Contact Order, Anti-Harassment Order, or Sexual Assault Protection Order was filed at the time of entry of the plea of guilty/guilty verdict is filed contemporaneously with this Judgment and Sentence. (Entry of a separate order makes a violation of this no contact sentencing provision also punishable as a criminal offense, and the order will be entered into the law enforcement database.)
- The pre-trial Domestic Violence No Contact Order, Anti-Harassment Order, or Sexual Assault Protection Order entered on _____ is hereby terminated.
- 4.6 **OTHER.** _____
- 4.7 **OFF-LIMITS ORDER.** (Known drug trafficker), RCW 10.88.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____
- 4.8 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 6.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 6.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4); RCW 9.94A.760 and RCW 9.94A.806(6).
- 6.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7603.
- 6.4 **VIOLATION OF JUDGMENT AND SENTENCE/COMMUNITY CUSTODY VIOLATION.**
(a) Any violation of a condition or requirement of sentence is punishable by up to 60 days confinement for each violation. RCW 9.94A.833.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

6.5 **FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identification, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court.)

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency). RCW 9.41.098

- 6.6 **MOTOR VEHICLE.** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.288.
- 6.7 **CERTIFICATE OF DISCHARGE.**
(a) If you are under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received notice from Department of Corrections and clerk's office that you have completed all requirements of the sentence and satisfied all legal financial obligations. RCW 9.94A.837.
(b) If you are not under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received verification from you that you have completed all sentence conditions other than payment of legal financial obligations and the clerk's office that you have satisfied all legal financial obligations.

5.8 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence. You may also have the right to appeal in other circumstances.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is **IRREVOCABLY WAIVED**.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

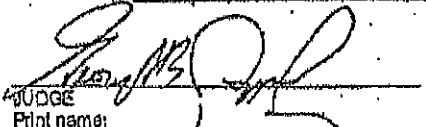
5.9 VOTING RIGHTS STATEMENT. I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

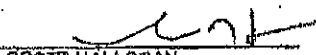
My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

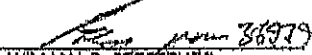
My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.837; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.98.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.860. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

5.10 OTHER. _____

DONE in Open Court and in the presence of the defendant this date: 3/1/12


 JUDGE
 Print name: _____


 SCOTT HALLORAN
 WSBA 86174
 Deputy Prosecuting Attorney


 WILLIAM O. STEFFENER
 WSBA 38841
 Attorney for Defendant


 KARLA RENEE DEANE
 Defendant

Interpreter signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language. Cause No. of this case: 11-1-01301-9.

I, Sanya Kraski, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, _____, Deputy Clerk.

IDENTIFICATION OF DEFENDANT

SID Number: WA26074147
 (If no SID, take fingerprint card for State Patrol)

Date of Birth: 08/02/1988

FEL Number: 603041009

Local ID Number: _____

PCN Number: _____

DOC Number: _____

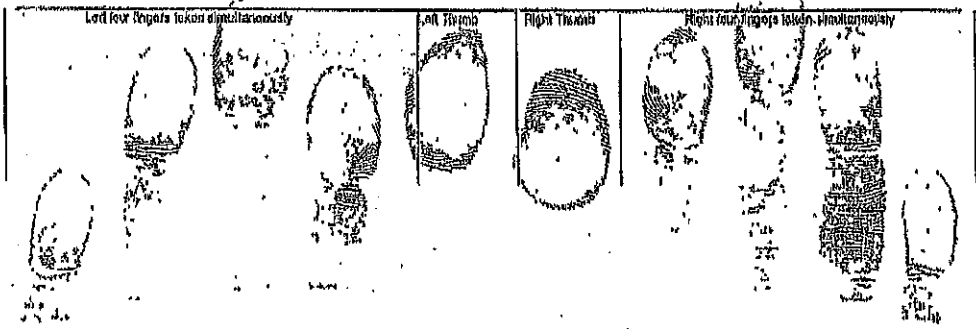
Alias name, SSN, DOB: _____

Race: White Ethnicity: Hispanic Non-Hispanic Sex: F

Height: 507 Weight: 135 Hair: Brown Eyes: Blue

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: Jim Colley Deputy Clerk.
 Dated: 8-1-12

DEFENDANT'S SIGNATURE: *Carla Renee Drake*
 ADDRESS: 5113 HWY 91 Everett WA 98203



ORDER OF COMMITMENT

FILED

THE STATE OF WASHINGTON to the Department of Corrections of the State of Washington;

WHEREAS, KARLA RENEE DEANE has been duly convicted of the crime of Stolen Property in the Second Degree as charged in the information and judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of the Judgment and Sentence; Now, Therefore,

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize release of the defendant to a Work/Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS the Honorable GEORGE F.B. APPEL, Judge of the Snohomish County Superior Court and the seal thereof, this 1st day of March, 2012.

Sonya Kraski
CLERK OF THE SUPERIOR COURT

By: J. McColley
Deputy Clerk

Penn, Cheryl (OIC)

From: Penn, Cheryl (OIC)
Sent: Wednesday, June 16, 2016 4:00 PM
To: 'karladeane@yahoo.com'
Cc: Sutherland, Janet (OIC); Ribble, Shella (OIC)
Subject: License Application Denial

Ms. Deane:

This email is to inform you that your application for an insurance producer license is denied. The denial is based upon the June 18, 2012 felony conviction for 2nd degree Trafficking In Stolen Property. RCW 48.17.530 (1)(f) gives the Commissioner the authority to deny the license application any person that has been convicted of a felony.

You have the right to demand a hearing to contest this decision. During this hearing, you can present your argument that the decision should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this decision. You may be represented by an attorney if you wish, although it is not required. In many hearings before this agency parties do choose to represent themselves without an attorney. ~~Your Demand for Hearing must be made within 30 days from the date of this decision, which is the date of this email, and will be by mail and this decision will stand.~~

Your Demand for Hearing should be sent to Hearing Unit, Office of the Insurance Commissioner, P.O. Box 40255, Olympia, WA, 98504-0255, and must briefly state how you are harmed by this decision and why you disagree with it. You will then be notified both by telephone and in writing of the time and place of your hearing. If you have questions concerning filing a Demand for Hearing or the hearing process, please telephone the Hearings Unit, at 360-725-7002.



Cheryl Penn, ACP

Producer Licensing & Oversight Compliance Supervisor
Associate Compliance Professional
Washington State Office of the Insurance Commissioner
360-725-7153 [direct line]
360-586-2019 [fax]
cheryl.p@oic.wa.gov [email]

Protecting Insurance Consumers

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Attn: Insurance Licensing

As per instructions, here is my letter of understanding regarding the felony charge on my record.

As I am not proud of this but between 2009-2011, I was in a very unhealthy relationship and too young to understand when I look back. I was abused and when I tried to stand up for myself, this only made my life worse. He even called police on me for abuse which things just turned out worse for me.

In July of 2010, this man handed me a camera which he told me was his sister. He asked if I could pawn it for him since he did not have a valid ID. He informed me that his sister had given him permission to pawn it to help him with his cell phone bill. Against my better judgement I agreed to do it as the repercussions of going against him scared me more.

It wasn't until late August 2010 that I received a call from my mom one evening, saying that the police were there looking for me. When I arrived at her home, I was told I was under arrest for pawning a stolen camera. I tried to explain to them that I did not steal it, I was asked to pawn it by my boyfriend. They informed me that it did not matter, it was my name on the pawn slip and there was nothing I could do.

I met with a public defender and he told me, if I would just plead guilty they were offering a lesser charge, a misdemeanor, since this was my first offense. I asked if there was any way we could fight to get the charge dropped, this type of charge on my record could hurt my future. This public defender was not looking out for my best interest.

In trying to find an experienced attorney to get my charges dropped, they did not offer pricing with plans I could afford. Realizing I could not afford experience counsel, I made the appointment to speak with my public defender again about taking the lesser charge.

At that point he advised, the offer was off the table as I needed to take the offer then. I would just have to plead guilty to the felony and take the minimum sentence, which was 30 days in county jail and a fine. I knew this would change my life forever.

With help from my family, I found the strength to leave my boyfriend and started my life over. I have 2 beautiful children that I support on my own and would do anything for. I have not put myself in any situation to cause legal conflict. Being so young, I have grown so much in the last 5-6 years.

I have been offered an opportunity for a carrier in insurance with InsuranceTek Inc. As I was just looking for employment, I found I enjoyed this industry and want to learn more. The owner was aware of my situation and has been very supportive during my training and education. Obtaining my license as you know, is the only way I can continue my training and work with clients.

I ask that you please do not base your decision on my past mistakes, but instead on how I have turned my life around and all the wonderful path I have been given. As a single mom, this is for my future and my children. I appreciate your consideration very much.

Thank you!

Karla R. Deane



INSURANCE TEK, INC.

June 10th, 2016

Attn: Insurance Division

Karla Deane has been employed with me since 1/14/2016 to perform part-time processing. As she has quickly excelled, I changed her to full time and performs the renewal processing and registration.

When I hired Karla, I did not expect to find this quality of person, with an excellent ability to adapt and learn.

In order for her to advance in the agency, obtain the medical insurance an raise she deserves, and start working directly with clients, her agency license is required.

I am confident in her, I see her love as a good mother, excellent employee and all around good person. It has been a pleasure watching her grow and to be a part of her happiness.

I do recommend her for an agency license and know she will do well. If you have any questions, please do not hesitate to give me a call.

Regards,

Vicki L. Boser, Agency Principal

"SERVICE EXCELLENCE OUR COMMITMENT"

108 Union Street • PO Box 70 • Snohomish WA 98291-0070
Local 425-357-1555 • Office 1-888-505-1555 • Fax 1-800-521-1528
www.insurance-tek.com

OIC Exhibit 4 - Page 1 of 3

EXHIBIT 4



Yarrow Bay 76

3828 Lake Washington Blvd. NE, Kirkland, WA 98033
425-827-6633 fax 425-827-6064.

September 30, 2015

To whom it may concern,

Karla Deane was employed as a cashier/clerk at Yarrow Bay 76 from September, 2014 through September 2015. She was responsible for running a cash register and various stocking and cleaning tasks. Her accuracy and ability as a cashier was very good and she learned new skills as things changed. For stocking and cleaning, she consistently exceeded and was always very detailed and thorough. In addition, she often took on other infrequent tasks and was conscientious to getting the job done correctly and helping to create a good image of the business. She has been helpful in filling shifts when needed and tries to keep a positive attitude. Karla is also a reliable employee that is prompt and doesn't miss shifts. She has been a big help to us in growing our business.

Sincerely

Chris Misener, Manager

KARLA R. DEANE

11919 60th St NE Lake Stevens, WA 98258 |
425-551-8904 | Karladeane@yahoo.com

1/2007 – 4/2008

Assistant Teacher, *Kids Country*

My job/duties included taking care of children, cleaning, organizing and making lesson plans for each month.

5/2008 – 6/2009

Private Nanny

My nanny job included taking care of my employer's child Monday-Friday while each of them went to work. I cooked, cleaned and took care of all the regular duties of caring for a small child.

From June 2009 to July 2014, stayed home with new born daughter 2009. Took education classes at Everett Community College.

9/2014 – 9/2015

Cashier/Clerk, *Yarrow Bay 76*

My duties included running the cash register, cleaning, stocking and doing other various jobs. I was always on time, never missed a shift and always took on any task that was put in front of me.

1/2016 - Present

Processing Clerk, *InsuranceTek Inc*

My duties include Policy registration, policy input, along with other various tasks to assist others (scanning, copying, etc.)

EDUCATION

8/2013 – 7/2014

Pre requisites for Human Services degree, *Everett Community College*



National Association of Insurance Commissioners

Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994

18 U.S.C. §§ 1033–1034

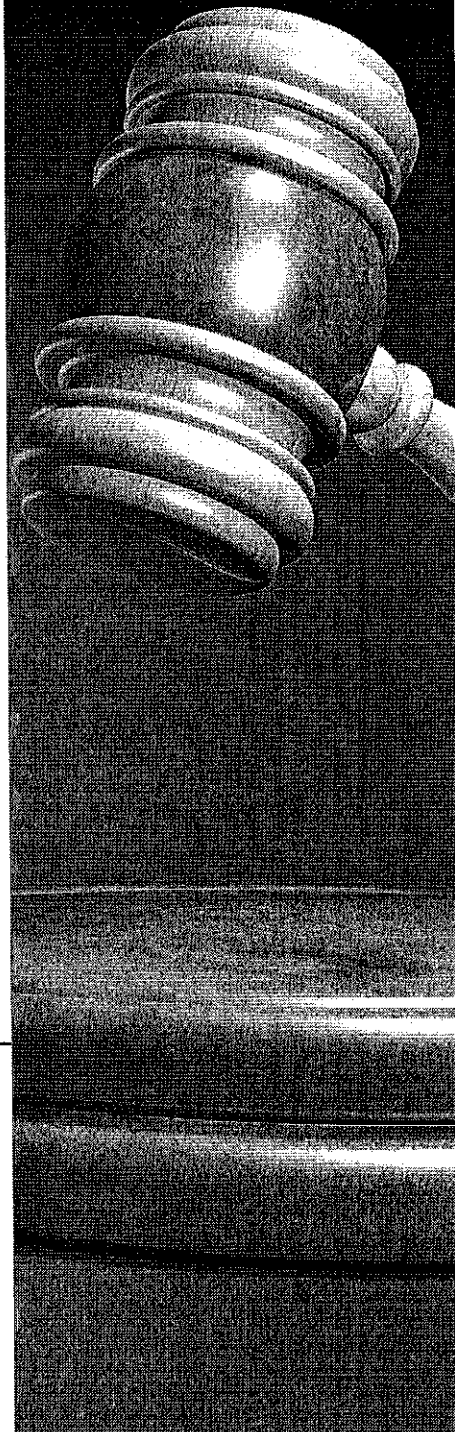


EXHIBIT PO-1



**Guidelines for State Insurance
Regulators to the Violent Crime
Control and Law Enforcement Act
of 1994: United States Code
§§ 1033 – 1034**

2011

NAIC Antifraud Task Force
Adopted 1998
1st Amended 2000
2nd Amended 2002
3rd Amended 2010



The NAIC is the authoritative source for insurance industry information. Our expert solutions support the efforts of regulators, insurers and researchers by providing detailed and comprehensive insurance information. The NAIC offers a wide range of publications in the following categories:

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
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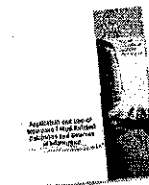
Companion Products

The following companion products provide additional information on the same or similar subject matter. Many customers who purchase the **Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994** also purchase one or more of the following products:



Antifraud Resources Report

Includes the results of a survey conducted by the NAIC Antifraud Task Force on a broad range of antifraud-related areas. Results are as reported by the insurance departments and, where necessary, other state agencies.



Application and Use of Insurance Fraud-Related Databases and Sources of Information: A Guide for State Insurance Departments

Identifies sources of antifraud information, including financial regulators, law enforcement and other fraud-related entities. Membership applications for several antifraud organizations are also included.



Insurance Fraud Prevention Model Act (MDL-680)

Helps regulators investigate and discover fraudulent insurance acts more effectively, halt fraudulent acts, and assist and receive assistance from state, local and federal law enforcement and regulatory agencies in enforcing laws prohibiting fraudulent insurance acts.



Insurance Fraud Prevention Law - Individual Compendium Chart (MC-10)

Individual chart from the *Compendium of State Laws on Insurance Topics*. Chart includes: Citation; Fraudulent Insurance Act; Immunity from Liability; Fraud Warning Required; Reporting of Suspected Fraud; Statutory Creation of Fraud Unit; Provision for Confidentiality; Insurer Antifraud Activities Required; Other Antifraud Statutes; Comments.



Investigation and Prosecution of Insider Misconduct in the Insurance Industry

Helps state insurance departments facilitate the investigation and prevention of insurance industry insider fraud. Establishes guidelines for the investigative and prosecutorial resources necessary to effectively investigate insider insurance industry fraud, based on such parameters as volume of insurance premiums written, the nature of the industry activity, population and other objective measures.



Unauthorized Entities Manual

Provides insurance regulators with information on detecting, investigating and determining how best to deal with the illegal activities of an unauthorized entity in their jurisdiction. It assists regulators, insurance fraud investigators and prosecutors by providing common examples of these entities.

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PURPOSE

The materials within this document, titled *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 United States Code Sections 1033 and 1034*, (herein referred to as the “Guidelines”), provide a general overview of the concepts, principles and procedures that the Antifraud Task Force of the National Association of Insurance Commissioners (NAIC) believes will be of assistance to insurance commissioners and regulators regarding the anticipated use of the statutes by federal prosecutors, and, more important, what obligations have been created for commissioners. Specifically, the Guidelines provide assistance to a commissioner who receives a request from a person prohibited from engaging or participating in the business of insurance (i.e., a person convicted of a state or federal criminal felony involving a breach of trust or dishonesty) for written consent to allow that person to engage or participate in such business. The Guidelines also provide certain suggestions to insurers in complying with these statutes.

DISCLAIMER

Decisions whether to prosecute individuals and entities under 18 U.S.C. §§ 1033 and 1034 are solely within the discretion of the U.S. Department of Justice and the U.S. Attorney General’s Office.

These Guidelines do not constitute legal advice to any reader. The materials are not intended to serve as a definitive statement of the law or set forth the administrative or procedural requirements of any particular jurisdiction. The materials are not intended, and shall not be construed, as being binding on any particular insurance commissioner. The Guidelines might not be suitable or applicable for use in all situations.

While the Guidelines have been prepared at the request of the membership of the NAIC, the document does not reflect the formal position of the NAIC as an organization, any person, insurance regulatory authority or commissioner in the United States, the District of Columbia or the U.S. territories. Adoption of this document by the NAIC committee process was solely for the purpose of providing for the publication and distribution of these materials to insurance commissioners and departmental staff.

Users of this document should consult the applicable federal statutory provisions, appropriate judicial and regulatory cases and authorities, and experienced personnel or other professionals prior to utilizing the information and opinions contained herein. No federal agency provided assistance to the Antifraud Task Force regarding the applicability or soundness of the interpretations and opinions herein.

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A. INTRODUCTION

On Sept. 13, 1994, President Bill 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 NAIC had been proposing legislation like this to members of the U.S. Congress since April 1991. The Act is broad in application, even reaching to people and activities of reinsurers doing business in, or with, U.S. domiciled insurers. It is important to keep in mind, however, that the Act does not preempt or supersede applicable state laws, so that an individual who has been granted relief from the Act or whose criminal record does not trigger the Act in the first place, might still be barred from the insurance industry by state law.

The insurance fraud provisions of the Act are contained within two new sections to Title 18 of the United States Code. Section 1033 is captioned "Crimes by and 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.

Prohibited activities include:

- Knowingly, with the intent to deceive, making any false material statement or report or willfully and materially overvaluing any land, property or security in connection with any financial reports or documents presented to any insurance regulatory official or agency for the purpose of influencing the actions of that official or agency.
- Willfully embezzling, abstracting, purloining or misappropriating any of the moneys, funds, premiums, credits or other property of any person engaged in the business of insurance [includes individuals acting as, or being an officer, director, agent, or employee of that person].
- Knowingly making any false entry of material fact in any book, report or statement of the person engaged in the business of insurance with the intent to deceive any person about the financial condition or solvency of such business.
- By threats or force or by any threatening letter or communication, corruptly influencing, obstructing, or impeding or endeavoring to corruptly influence, obstruct, or impede the proper administration of the law under which any proceeding is pending before any insurance regulatory official or agency.
- Willfully engaging in the business of insurance whose activities affect interstate commerce or participating in such business, if the individual has been convicted of a criminal felony involving dishonesty or a breach of trust or has been convicted of an offense under 18 U.S.C. § 1033. Further, other individuals shall not willfully permit the participation of an individual so convicted.

Punishments for engaging in the prohibited activities specified in Section 1033 range from a maximum of between one (1) to fifteen (15) years of imprisonment plus fines established under Title 18. Under certain provisions, penalties may be more severe if the activity jeopardized the safety and soundness of an insurer and was a significant cause of an insurer being placed into conservation, rehabilitation or liquidation.

“Insurer” is broadly defined to mean an entity whose business activity is the writing of insurance or the reinsuring of risks, including any person who acts as, or is, an officer, director, agent or employee of that business entity. The term “business of insurance” is also broadly defined to mean 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 these persons.

Section 1034 is captioned “Civil Penalties and Injunctions for Violations of Section 1033.” The section allows the U.S. Attorney General’s Office to bring civil actions against a person who engages in conduct constituting an offense under Section 1033. If found to have committed the offense, the person is subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation the person received or offered for the prohibited conduct, whichever amount is greater. If the offense contributed to the decision of a court issuing an order directing the conservation, rehabilitation or liquidation of an insurer, the penalty is remitted to the appropriate regulatory official for the benefit of the troubled insurer’s estate. 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 person. The section also permits the U.S. Attorney General’s Office to seek an order (an injunction) prohibiting persons from engaging in any illegal conduct.

While the NAIC is committed to state-based regulation of insurance, it believes there is an important role for the federal government to play in the area of law enforcement in partnership with state insurance departments and the NAIC. The NAIC originally proposed this type of federal insurance fraud statute because of the power of the federal government to bring additional jurisdictional, investigatory and law enforcement resources to bear in combating insurance fraud. State insurance departments have long been willing to investigate and prosecute insurance fraud in cooperation with federal law enforcement agencies but had lacked a firm federal statutory basis for doing so. Without a federal law specifically referencing insurance fraud, the states have had difficulty in turning to federal prosecutors to assist them with certain groups of wrongdoers. However, with these federal criminal and civil statutes in place, coupled with the law enforcement and judicial authority of the United States behind them, the states’ tools in their arsenal to combat insurance fraud activities improve. Federal statutes are viewed as enhancing, not superseding, state law enforcement and help to serve as additional deterrence to, and punishment of, individuals who engage in illegal insurance activities.

The NAIC originally proposed, and then strongly supported, the passage of an insurance fraud statute by the U.S. Congress. This role is in keeping with the efforts of the NAIC and state insurance departments to work cooperatively with the U.S. Department of Justice, U.S. Department of Labor, the Federal Bureau of Investigation, the Internal Revenue Service and other federal law enforcement

agencies. Because the statutes involved new responsibilities for state insurance regulators, the Federal/State Coordinating Working Group of the Antifraud Task Force was charged with providing a resource guide to insurance commissioners and regulators regarding the potential use of the statutes by federal prosecutors and, more important, what obligations have been created for commissioners. Specifically, the Guidelines provide advice to a commissioner who is asked by a prohibited individual (i.e., a person convicted of a state or federal criminal felony involving a breach of trust or dishonesty) for written consent to allow that person to engage or participate in the business of insurance.

It is important to know that there are other federal statutes making it a felony crime for individuals to engage in certain otherwise lawful activities after being convicted of a crime. For example, a collateral consequence to a person being convicted of certain crimes described in 29 U.S.C. §§ 504 and 1111 is the prohibition of that person from service and employment with labor unions, employer associations, employee pension and welfare benefit plans, and labor relations consultants in the private sector.¹ Another federal statute making it a crime to engage in certain activities arises from the banking industry as provided for in the Federal Deposit Insurance Corporation Act (*see* 12 U.S.C. § 1818(g)). However, under these federal statutes, there is a legal process available whereby otherwise barred individuals may apply to appropriate officials, under defined procedures, for a waiver from the prohibition.

As an aside, considering today's increasingly integrated insurance marketplace, it is theoretically possible for a prohibited individual to have need of securing written consent under all three of these federal statutory schemes in order to engage in the business of insurance. For example, if a prohibited individual were to seek employment as an insurance agent in a bank offering services to an employee pension and welfare benefit plan, the individual would need consent from an appropriate federal court judge, the Federal Deposit Insurance Corporation and one or more state insurance commissioners. Researching how federal prosecutors and courts have interpreted the earlier enacted statutory schemes is illustrative, although not binding, on how the prosecutors may react to 18 U.S.C. §§ 1033 and 1034.

A copy of 18 U.S.C. §§ 1033 and 1034 has been placed in Attachment A. Readers should conduct a thorough review of the statutes before continuing with the provisions below.

¹ 29 U.S.C § 1111(a) prohibits a person from service or employment:

- (1) As an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan.
- (2) As a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan.
- (3) In any capacity that involves decision-making authority or custody or control of the moneys, funds, assets or property of any employee benefit plan.

B. 18 U.S.C. § 1033(E) IMPOSES CERTAIN OBLIGATIONS UPON INSURANCE COMMISSIONERS

1. General Discussion

Section 1033(e)(1)(A) makes it a felony crime for a person to engage or participate in the business of insurance if that person has ever been convicted of a state or federal felony crime involving dishonesty or a breach of trust (or of a crime under 18 U.S.C. § 1033). The purpose of this subsection is to prohibit anyone convicted of a felony crime involving trustworthiness from conducting insurance activities. The statute operates as a bar to these individuals from participating in otherwise legal activities. In effect, the law prohibits certain felons from ever working in the business of insurance unless they secure written consent.

The prohibition went into effect Sept. 13, 1994. While *the statute is not retroactive in its application*, from that date forward it became illegal for certain individuals — regardless of when their offenses were committed — to either: (1) begin to work in the business of insurance; or (2) continue to work in the business of insurance. Thus, it is applicable not only to licensed insurance professionals and others performing similar work on behalf of insurers, but also to everyone acting as an officer, director, employee, or agent of an insurer, and to anyone else authorized to act on their behalf.² There appears to be no limitation or restrictions on the applicability of Sections 1033 and 1034 as to which persons are covered, so long as those persons are engaged in, or participate in, the “business of insurance” — a term broadly defined by Section 1033. The statutes contain no grandfather clause for persons already working in the business of insurance. To understand the broad reach of the statute, it should be kept in mind that all employees, regardless of their position, might thereby have access to sensitive and valuable information.

Section 1033(e)(1)(B) makes it a felony crime for a company or person, who is engaged in the business of insurance, to willfully permit the participation of a person who is prohibited under Section 1033(e)(1)(A). Thus, the statute makes it illegal for an insurer, reinsurer, its officers, directors, employees, agents and brokers (or others) to willfully employ a person who has been convicted of a felony crime involving dishonesty or a breach of trust. The law also makes it a crime for any of these employers or their subcontractors to continue to employ an individual if the employer or subcontractor subsequently learns of a conviction and does not immediately terminate the individual.

As to what constitutes “insurance activities,” the statute includes “all acts necessary or incidental to” the writing of insurance or the reinsuring of risks 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.”³ This latter group of “other persons” appears to include any subcontractors, third-party administrators, consultants, professionals and the like.

² The term “working” is used to generally describe activities that are defined in more detail in later sections of these Guidelines.

³ See 18 U.S.C. § 1033(f)(1).

Finally, as to the identification of the “individuals” who qualify as the persons or entities with whom prohibited persons may not participate with [or work with], the statute is very broad in its scope.⁴ The universe of these “individuals” includes insurers and reinsurers, and all of the persons who are authorized to act on their behalf as set out in the prior paragraph. From this point forward, when the term “insurer” is used, it means to include this entire universe of individuals. *See* 18 U.S.C. § 1033(f)(2).

If an individual is a “prohibited person” under this Act, the only way for that person to engage or participate in the business of insurance is to obtain the “written consent” of the appropriate insurance commissioner.

2. Prohibited Individuals May Obtain Relief

Section 1033 provides a mechanism whereby a prohibited individual may apply to the appropriate insurance commissioner for “written consent” to work in the business of insurance. *It is important to point out that this mechanism does not allow a person to work in the business of insurance while that person is applying for relief from the prohibition, nor does it grant relief from any applicable state law prohibition.* The statutory language for the mechanism underlined below in 18 U.S.C Sections 1033(e) and 1033(f) provides meaningful definitions:

(A) 18 U.S.C. § 1033(e)

(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 (1) shall be fined as provided in this title or imprisoned not more than (5) years, or both.

(C) A person described in paragraph (e)(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 (emphasis added).

⁴ *See* 18 U.S.C. § 1033(e)(1)(B).

(B) 18 U.S.C. § 1033(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.

3. Legislative History and Court Decisions

While the legislative history of the Violent Crime Control and Law Enforcement Act of 1994 is voluminous, very little of it applies to 18 U.S.C. §§ 1033 and 1034 (see 1994 U.S. Code, Cong. & Admin. News 1801). The few references to these sections in the history provide little assistance in interpreting its provisions. As of the date of these materials, there were no court decisions interpreting either 18 U.S.C Section 1033 or 1034.

4. Relevant Terms

- (A) Terms defined in Section 1033:
“Business of insurance,” “insurer,” “interstate commerce” and “state” are defined terms in the statute. The definitions appear above in Section B2, titled, “Prohibited Individuals May Obtain Relief.”
- (B) Terms contained in but not defined in Section 1033. The working group has assigned plain and ordinary meanings to the following terms:

- (1) "Insurance regulatory official" means commissioner, director or superintendent of insurance as the term is properly used in each state.
- (2) "Convicted"
 - (a) Federal Law. Convicted is defined in federal law at 29 U.S.C. § 504(c)(1) and 29 U.S.C. § 1111(c)(1) and means that a person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal. However, it appears that, under federal law, a person who is sentenced to some sort of *deferred adjudication status* may not be deemed to be "convicted" for purposes of these statutes and, thus, would not be a prohibited person. Although a deferred adjudication arises only after a finding of guilt, the federal judicial system generally views a person in a deferred adjudication status as still *under indictment* and, thus, not convicted.
 - (b) State Law. State laws might contain similar definitions for the term "convicted" and may well impose deferred adjudication sentences similar to the federal system. Thus, when determining whether an individual convicted under state law is a prohibited person, one should research the law of the state in which the person was tried, comparing the type of sentence received to the definition for convicted and whether it is affected by any type of deferred adjudication status.

While not discussed in more detail in these Guidelines, the granting of a state and/or presidential pardon could affect whether an individual is a prohibited person under these statutes. When confronted with an applicant who has received a pardon, commissioners should consult applicable state and/or federal law to determine its impact.

- (3) "Crime involving dishonesty or a breach of trust" is discussed within in section B6.
- (4) "Willfully" is discussed within in section B6.

5. Discussion of Issues Arising from the Statute

Discussed below are certain issues of concern regarding the interpretation and enforcement of Section 1033(e):

(A) Relationship to state law.

Many states have laws limiting the ability of certain persons with criminal records to engage in the business of insurance. It is important to keep in mind that these laws operate independently from 18 U.S.C. § 1033 and are not preempted or in any way modified by Section 1033. Often, these laws will differ in significant ways; for example, the state law prohibition might be triggered by a different list of crimes, might last only for a certain number of years, or might apply only to activities requiring a license. Thus, someone might be barred by 18 U.S.C. § 1033 but not by a similar state law, or vice versa.

A written consent granted by an insurance commissioner under the Act merely releases the holder of the consent from his or her status as a “prohibited person” under federal law. Whether the holder of the consent is qualified to engage in the business of insurance then becomes entirely a matter of state law, just as it would have been in the absence of 18 U.S.C. § 1033.

(B) Responsibilities of insurers and others to identify prohibited persons.

Insurance companies, reinsurers, agents and all other types of entities engaged or participating in the business of insurance as defined in these federal statutes should attempt to identify if any present employees or prospective employees have been convicted of one or more felonies.⁵ If the insurer is made aware of a felony conviction, it must then make a determination whether that felony involved dishonesty or a breach of trust.

If there is a determination that the felony conviction in fact involves dishonesty or a breach of trust, the next question is whether that person is engaged in the business of insurance whose activities affect interstate commerce. *Readers should again note that, ultimately, only a federal prosecutor or court will determine how restrictive or broad to interpret and apply the definition of the business of insurance contained in these statutes.* However, the definition appears on its face to be extremely broad and inclusive of almost all insurance activities.

Then, if a determination is made that a person has been convicted of a felony crime of dishonesty or breach of trust, and that person wants to engage, or is engaged, in the business of insurance, that person must refrain from conducting any insurance activities until such time as he or she has obtained “written consent” from the

⁵ From this point forward, the term “insurer” will be used to describe all of these insurance entities. See 18 U.S.C. § 1033(f)(2).

appropriate commissioner. Until that time, the person is a “prohibited person.” The burden to apply for “written consent” is on the prohibited person, in cooperation with the insurer for whom the insurance activities would be performed.⁶

While the statute does not appear to distinguish between individuals or employees as to their positions and whether those positions include any significant authority or responsibility, there are some positions that are not directly involved in the transaction of insurance business and the statutes could be read as not covering these persons. However, as noted above, federal prosecutors and the courts will ultimately determine who may be prohibited from transacting business due to felony convictions.

Section 1033(e)(1)(A) contains a distinction between “willfully engages in the business of insurance” vs. “participates in such business.” The rules of statutory construction require that a distinct meaning be found for each of the phrases. The second phrase usually modifies or adds to the first phrase. *Webster’s II, New Riverside University Dictionary* (1994), defines “participate” as meaning “to join or share with others: take part,” or “to share in: partake of.” The second phrase was added to expand the definition; for example, to the owners of insurers, or consultants, who actively oversee the activities of a company but are not technically an officer, director, employee or agent of that company. It may also include others who receive compensation or remuneration from such business.

Section 1033(e)(1)(A) applies only to “activities involving interstate commerce.” Interstate commerce is a defined term (*see* 18 U.S.C. § 1033(f)(3)). The definition in the statute appears to be so broad that, after much discussion, the working group could not anticipate any examples of activities that would not be covered.

Insurers under these statutes have an obligation not to willfully permit such an individual to engage or participate in the business of insurance should take steps to identify these individuals on a prospective basis. Regarding present employees, some insurers might have personnel records that contain evidence of past felony convictions relevant to these statutes. Officers and directors might have been verbally told of past criminal activity of employees and agents. The cost and effort to search through materials of this type, together with interviews of people who might know of such conduct, might be labor intensive and cost-prohibitive. It is safe to assume that, over the years, many individuals have been given a chance to put their past behind them and become employed in the business of insurance. However, these statutes make no exception for these types of individuals; *they are all prohibited persons*.

One possible way for insurers to avert such a burdensome identification effort would be to aggressively implement a program whereby they ask for a written certification from current and prospective employees.

⁶ A prohibited person must apply for “written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.” 18 U.S.C. § 1033(e)(2).

A certification should be required immediately prior to employing a person at any level within an organization or before a business relationship is formed with any of the "other persons" covered by these statutes. The certification should indicate whether the person has ever been convicted of a state or federal felony and should not be limited to disclosure of only "crimes of dishonesty or breach of trust." Disclosure limited to only such crimes will not be a defense to a prosecution under these statutes just because a person states that they did not know that their felony conviction was one involving a "crime of dishonesty or breach of trust." The better question to ask is whether a person has ever been convicted of a felony.

As these Guidelines have discussed in detail, only a legal analysis will determine whether a crime involves dishonesty or a breach of trust. Insurers should require all individuals working for them, or with whom they have a business relationship of the type covered by the statutes, to notify the insurer in writing of a felony within thirty (30) days of conviction.

Other suggested methods insurers might use to protect themselves would be to conduct criminal checks on individuals who are (or might be) placed into positions whereby the individual's activities potentially pose a substantial threat or risk to (a) its safety and financial soundness; or (b) an insurance consumer.

- (C) Authority to grant written consent to engage or participate in the business of insurance.

Numerous questions arise concerning the application of this provision. Which state's commissioner has primary (or sole) authority to consider a request for written consent pursuant to 18 U.S.C. § 1033(e)(2)? Is it:

- (1) the state where the insurer is domiciled?
- (2) the applicant's state of residence, and does that depend on whether the applicant's activities will also simultaneously require the issuance of a resident license?
- (3) the state where the applicant will work, if different from the insurer's state of domicile?
- (4) the state where the felony conviction occurred?
- (5) any state where the insurer possesses a foreign certificate of authority?

The statute, by its terms, grants this authority to "any insurance regulatory official authorized to regulate the insurer." Read literally, this would mean that "written consent" can be obtained in any jurisdiction where the insurer is authorized to conduct business; that is, in any jurisdiction in which the insurer possesses a domestic or foreign certificate of authority. This issue might not be as difficult when determining where an agent who is licensed in only one state should be applying; however, it is much more difficult when the prohibited person's activities affect

numerous states, such as an officer or director of the insurer, or when no specific insurer is involved.

Many regulators, on the other hand, believe that it could not have been the intent of the U.S. Congress to allow one state to extend its statutory power into other jurisdictions or to bind federal prosecutors from initiating actions against prohibited persons who are conducting insurance business in multiple jurisdictions. A number of other legal authorities expressed opinions that, regardless of how one would like the law to read, criminal statutes are narrowly construed in favor of defendants.

Regardless of the debate, as a defense to federal prosecution, the statute appears to permit a prohibited person to obtain one grant of written consent from the appropriate commissioner in order to engage or participate in the business of insurance, as opposed to securing consent from every jurisdiction in which he or she desires to conduct insurance activities. However, the statutes do not clearly identify who is the appropriate insurance regulatory official (commissioner) to apply to for written consent. If the states can agree among themselves as to who has primary jurisdiction, these disputes can be avoided and the risk of “forum shopping” can be minimized. That is one of the core purposes of these Guidelines.

(D) Methodology to determine the “appropriate insurance regulatory official.”

In determining which commissioner is the “appropriate insurance regulatory official” to consider a request for written consent pursuant to 18 U.S.C. § 1033(e)(2), the following shall be considered in the order indicated:

- (1) If the applicant is applying for a license as a producer or other licensed insurance professional, the state that would be issuing the resident license.
- (2) If the applicant is to become an employee or officer, partner, owner, director or board member of an insurance company, HMO, or any similar regulated insurance entity:
 - (a) Where the applicant’s most substantial work will be performed.
 - (b) The state of domicile of the regulated insurance entity.
- (3) If the individual is a consultant for, or an employee, officer, partner, owner, director or member of a non-licensed entity:
 - (a) The applicant’s state of residence;
 - (b) The focal point of the individual’s business or professional activities.

(c) The jurisdiction that has the most regulatory interest over the applicant's proposed insurance activities, as reflected in his or her application for consent. All of the following factors should be considered in determining which jurisdiction has the most regulatory interest:

- (i) Situs of proposed activity;
- (ii) Percentage of insurance business activity within the jurisdiction;
- (iii) Monetary value of insurance business activity within the jurisdiction; and
- (iv) Potential harm to the citizens within the jurisdiction.

(d) The jurisdiction (s) where the prior criminal activity occurred and the felony conviction was obtained.

If the commissioner receiving an application for 18 U.S.C. § 1033 consent determines that there is a more appropriate insurance regulatory official, then the commissioner should forward the application to the most appropriate NAIC member who satisfies the above criteria. Such an approach would guide the applicant to a state that has substantial ties with the applicant and his or her proposed activities, and discourage applicants from obtaining "stealth" consents in jurisdictions where their contacts are minimal or insubstantial.

(E) Notice to members of the NAIC and other commissioners by the "appropriate insurance regulatory official" responses.

Upon receipt of an application, a commissioner who has determined that he or she is the "appropriate insurance regulatory official" should notify all other members of the NAIC that an application for written consent has been filed together with a brief statement revealing the name, address, Social Security number and types of insurance activities to be conducted by the applicant. Further, the "appropriate insurance regulatory official" should make the application for the 18 U.S.C. § 1033 consent available to all other commissioners upon request.

This database or bulletin board should be monitored diligently by all commissioners. It should be the duty of any commissioner who has relevant information regarding the fitness of the applicant to immediately respond to any notice by the "appropriate insurance regulatory official" that a Section 1033 consent has been received by providing the "appropriate insurance regulatory official" with any adverse or relevant information regarding the applicant's fitness to engage in the business of insurance. In this regard, the application should not be acted on by the "appropriate insurance regulatory official" until other NAIC members have had at least ten (10) days from the date notice was sent to comment on the application. If a second commissioner believes that he or she has primary jurisdiction under these Guidelines and objects to the first commissioner's exercise of jurisdiction over the application, the second

commissioner should notify the first commissioner immediately, and the two commissioners should endeavor to reach agreement as to which of them is the “appropriate insurance regulatory official.”

Following a decision whether to grant or deny written consent, the “appropriate insurance regulatory official” should again notify all other NAIC members of the decision by e-mail and place an entry noting the decision into the appropriate NAIC database or bulletin board. Information regarding the granting or denial of written consent will be of great value to state licensing and administrative authorities to stop a prohibited person from returning to the business of insurance through an initial “sweetheart consent” obtained from a targeted state or from a state not privy to complete information about a prohibited individual.

If an “appropriate insurance regulatory official” (as determined by the factors listed above) issues a Section 1033 consent after due process consideration and investigation of the prohibited person’s complete application and after the database/bulletin board comment procedure described above, other commissioners must give full faith and credit to that consent. If the Section 1033 consent is denied, no other commissioner may subsequently entertain any application for consent filed by the same prohibited person without first making an explicit finding, after giving the commissioner who denied the previous application notice and opportunity to object, that the commissioner who denied the previous application is no longer the “appropriate insurance regulatory official”

The working group has devised a “Standards of Review” methodology, whereby only one commissioner is identified as the “appropriate insurance regulatory official.” If accepted by the commissioners of all the NAIC members, this method will direct applications for written consent to the commissioner with the most regulatory interest over the prohibited person’s insurance activities. This method includes first determining primary jurisdiction, and only then considering the merits of the application. When this method is followed, it will ensure that the prohibited person will be required to apply to a particular commissioner for written consent and, at the same time, prevent prohibited persons from “forum shopping.”

The recommended method also ensures that certain other threshold decisions will be made before considering an application on the merits, such as whether the applicant is actually a member of the class of persons who are prohibited by 18 U.S.C. § 1033 from engaging or participating in the business of insurance. It is possible that an individual might have submitted an application in good faith when, in fact, he or she is not a prohibited person.

(F) Consideration on the merits.

If the commissioner has primary jurisdiction pursuant to these Guidelines, the following should be considered on a review of the merits:

- (1) Whether the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and
- (2) Whether the issuance of written consent to the applicant is consistent with the public interest, federal and state law and any applicable court orders.

Guidelines and procedures should be developed to assist commissioners in ensuring that companies and individuals engaging or participating in the business of insurance are complying with the statute.

The working group is convinced that the focus of the application process should be to determine whether the activities the applicant will engage or participate in, constitute a risk or threat to insurance consumers or the insurer, and whether issuance of written consent is consistent with public interest and/or federal and state law.

(G) Burden of proof.

The burden of persuasion and evidence for going forward with an application for written consent is on the prohibited person seeking the relief. Such a person has no matter of right to receipt of written consent, nor do any State's presumptive rehabilitation laws apply to consideration by the commissioner. Study of other similar federal statutes makes this clear.

(H) Suggested administrative practices and procedures.

(1) Application process.

All applications and supporting documents received by the commissioner should be reviewed for completeness, and if found to be in compliance with this application process and the procedures established by the commissioner, the commissioner should accept them for filing.

(2) Deficiencies in the application.

After an application has been submitted to the appropriate commissioner, the applicant and/or his legal representative should be notified by the commissioner of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied should be specified in the notice. In the event the deficiencies are not remedied within the specified period or any extension thereof granted after application to the commissioner in writing within the specified period, the application should be deemed to have been withdrawn and notice thereof given to applicant. Incomplete or deficient applications and supporting documents should not be deemed to be filed until determined to be complete by the commissioner.

(3) Notification to all other NAIC members.

Upon receipt of an application, the commissioner should notify all other members of the NAIC that an application for written consent has been filed together with a brief statement revealing the name, address, Social Security number and types of insurance activities to be conducted by the applicant. Commissioners are urged to use the NAIC e-mail system to make this notification.

It is hoped that any commissioner who has relevant information regarding the fitness of the applicant to receive written consent will immediately respond back with that adverse information. It is recommended that the application not be acted on until other NAIC members have had at least ten (10) days from the date notice was sent to them to comment on the application.

Following a decision whether to grant or deny written consent, it is also hoped that the commissioner will again notify all other NAIC members of the decision by e-mail and place an entry noting the decision into the appropriate NAIC database. Information regarding the granting or denial of written consent will be of great value to state licensing and administrative authorities.

(4) Investigative resources available.

After determining the application is complete and that all jurisdictional prerequisites have been met, the commissioner should conduct an investigation of the applicant using the NAIC databases including, but not limited to, the Regulatory Information Retrieval System (RIRS), the Producer Database, the Complaint Database and the Special Activities Database (SAD).

(5) Examples of administrative practices and procedures.

While every state has its own code of administrative practices and procedures, the working group recommends that each State review that code to ensure that it adequately addresses how to handle and process an application for written consent. If a State's administrative practices and procedures do not properly address this type of request, the following are examples that might be used:

(a) Expedited form of application process.

The commissioner might want to establish the use of an "initial" application form in order to determine whether to grant written consent in an expedited manner to a prohibited person whose insurance activities *do not on their face constitute* a risk or threat to insurance consumers or to the insurer. *It is important to note, however, that regardless of the procedures established by a commissioner to review an application, that once written consent is granted, that*

person is no longer prohibited from the business of insurance, subject to whatever conditions or limitations the commissioner has provided for in the consent; and that written consent could bar prosecution under this federal statute in all jurisdictions.

The initial application should elicit enough information for the commissioner to make a determination as to the specific insurance activities of the applicant and that the applicant is rehabilitated and does not constitute a risk or threat to insurance consumers or the insurer. If the commissioner decides the applicant's insurance activities are of the type to pose a risk or threat, the commissioner should additionally require completion of the "standard" application form described later in this section.

- (b) Contents of the initial application.
 - (i) The initial application should contain the proposed job description and insurance activities of the applicant together with other pertinent questions. The initial application should be supported by an affidavit from the insurer's president (or his/her lawfully delegated designee) that states that: the applicant will in fact only perform those insurance activities as fully described in the application; the application is to the best of his/her ability, true and correct; and the applicant will not be placed into a position to where the persons activities will constitute a risk or threat to insurance consumers or the insurer. Commissioners may desire to include the following questions in an initial application form that should be affirmed or sworn to under oath by the applicant:
 - (ii) The name, address and Social Security number of the applicant and any other names and social security numbers used by the applicant and dates of such use; together with the complete name and location of the insurer, or its agent, for whom insurance activities will be performed.
 - (iii) A description of the nature, duties and activities of the office, position, occupation, trade, vocation or profession, for which the issuance of written consent is sought. Attach any written agreements or contracts to be entered into with the insurer or its agent.
 - (iv) Present employment or business activities, including office or offices held, with a description of the duties and activities thereof.

- (v) A statement of the details regarding all felony convictions that appear to prohibit the applicant from engaging in the business of insurance as defined in 18 U.S.C. § 1033, including but not limited to, the date of the offense or offenses which lead to the applicant becoming a prohibited person, the age of the applicant on such date and the time that has since elapsed.
- (vi) The bearing, if any, the criminal offense or offenses will have on the applicant's fitness or ability to perform one or more such duties, activities or responsibilities as presented in the application.
- (vii) Whether the applicant has made full payment of outstanding court costs, supervision, fees, fines and restitution concerning the offense or offenses.
- (viii) Whether the applicant has received a full pardon or other type of pardon to the offense or offenses.
- (ix) Whether there exists any evidence of mitigation or extenuating circumstances surrounding the applicant's commission of the offense or offenses.
- (x) What evidence exists of the applicant's rehabilitation.
- (xi) Professional licenses held, at the present time or at any time in the past, relating to the business of insurance, including, but not limited to, being a producer, agent, broker, solicitor, third-party administrator. If so licensed, whether the applicant has ever had a consumer complaint, administrative or other legal proceeding filed against him or her regarding his or her insurance activities, and whether as a result, has ever had such a license suspended, revoked or otherwise administratively sanctioned.

6. Granting of Written Consent by the Commissioner

Once the commissioner decides to grant written consent based upon the initial application and the supporting affidavit, the commissioner may issue written consent for that person to engage in the business of insurance or participate in such business, *which consent specifically refers to 18 U.S.C. § 1033(e)(2)*. The consent should also state that it is conditioned upon the truth and veracity of facts disclosed by the applicant in his or her application. The written consent should also be made conditional upon the applicant remaining in the approved position with its associated insurance activities considered not to be a risk or threat to insurance consumers or the insurer. Any other restrictions on the consent should be expressly noted as a condition of the receipt of the written consent. If the commissioner determines that the applicant fails any of the Standards of Review after consideration on the merits, written consent should be denied in writing and the applicant informed of any available appeal rights.

(A) Standard form of application process.

If the expedited form of application process is utilized by the commissioner, and based upon the initial application, it has been determined that the applicant's insurance activities are of the type to pose a risk or threat to insurance consumers or to the insurer, then an additional "standard" application form with more specific information should be requested.

This additional information need not overlap with the initial application but merely supplements it. This additional information is suggested as a means to delve more deeply into the life and affairs of the applicant prior to the commissioner's consideration of the request on the merits.

However, if the commissioner elects to establish a procedure where only one application is to be requested from an applicant, then the substance of the "initial" application and the "standard" application could be combined.

(B) Contents of the standard application.

The prohibited person applying for written consent should be required to answer the following questions in a "standard" application form that is affirmed or sworn to under oath by the applicant, in addition to those already attested to in the initial application form:

- (1) Place and date of birth. If the applicant was not born in the United States, then the time of first entry and port of entry, whether he or she is a citizen of the United States, and if naturalized, when, where and how he or she became naturalized. The number of the Certificate of Naturalization must be provided.
- (2) Extent of education, including names and addresses of all schools attended.

- (3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any insurer.
- (4) History of employment and business associations, including any military service, in chronological order.
- (5) A lifelong listing by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.
- (6) Whether applicant was ever on probation or parole, and, if so, the names of the courts by which convicted and the dates of conviction.
- (7) Names and locations of all insurers for which the applicant has advised, represented or in any manner worked for, concerning the writing of insurance, 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, together with a description of the activities performed for each such insurer.
- (8) A statement of applicant's net worth, including all assets held by the applicant, or held in the names of others for the applicant, the amount of each liability owed by the applicant or by the applicant, together with any person and the amount and sources of all income during the immediately preceding ten (10) calendar years plus income to date of application.
- (9) Whether any citizenship rights were revoked as a result of conviction or imprisonment, and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.
- (10) A full explanation of the reasons or grounds relied upon to establish that the applicant's insurance activities for which written consent is sought will not be contrary to the intent and purposes of 18 U.S.C. § 1033, and thus will not pose a risk or threat to insurance consumers or the insurer.
- (11) A statement that the applicant does not, for the purpose of this request, contest the validity of any felony conviction upon which the request would be granted.
- (12) Whether the applicant has ever applied for written consent from any other commissioner and, if so, the outcome in that proceeding.

- (13) Any other information that the applicant believes will assist the commissioner in making a determination whether to grant written consent.

(C) Character endorsements.

Each standard application should be accompanied by letters (or other forms of statement) addressed to the commissioner, attesting to the character and reputation of the applicant. The statement as to character should indicate the length of time the writer has known the applicant, and should describe applicant's character traits as they relate to the employment, position or activities for which written consent is sought and the duties and responsibilities thereof. The statement as to reputation should attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each statement should indicate that it has been submitted in compliance with these procedures and that the applicant has informed the writer of the factual basis of the application being filed with the commissioner and purpose thereof. The commissioner may wish to lessen the importance of statements from relatives by blood or marriage, prospective employers or insurance related business entities, or persons serving in any capacity with the insurer, its employees or agents.

(D) Request for additional information.

The procedure should provide a means whereby the commissioner can require the applicant to submit such additional information as the commissioner deems appropriate for the proper consideration and disposition of an applicant's request for written consent.

(E) Granting of written consent by the commissioner.

Upon review of the all the evidence and prior to a decision, it is recommended that the following supplemental factors be considered by the commissioner as a part of his or her deliberations:

- (1) The legitimate interest of the insurance commissioner or the insurer for whom the activities would be performed in protecting property, and the safety and welfare of specific individuals, businesses or the general public.
- (2) Whether the applicant or someone on his or her behalf has made a materially false or misleading statement or omission in the application process.
- (3) The nature of the circumstances surrounding, and the seriousness of, the offense or offenses, and whether any pre-sentencing reports contain any information related to same.
- (4) Whether the applicant has been charged with, indicted or convicted of multiple criminal offenses.

- (5) What evidence exists of the applicant's rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision (e.g. – letters of recommendation from prosecutors, law enforcement, or correctional officers who have, respectively, prosecuted, arrested or had custodial responsibility for the applicant; and; letters of recommendation from the sheriff or chief of police in the community where the applicant resides or has resided).
 - (6) Whether all NAIC members received timely notice of the applicant's request for written consent, together with any relevant information regarding the fitness of the applicant received back from other NAIC members.
- (F) Finally, the statute requires that if the commissioner chooses to grant written consent for the prohibited person to engage or participate in the business of insurance, that *the consent must specifically refer to 18 U.S.C. § 1033(e)(2)*. The consent should also state that it is conditioned upon the truth and veracity of facts disclosed by that person in his or her application. The written consent should also be made conditional upon the applicant remaining in the approved position with its associated insurance activities wherein the applicant is not considered to be a risk or threat to insurance consumers or the insurer. Any other restrictions on the consent should be expressly noted as a condition of the receipt of the written consent. If the commissioner determines that the applicant fails any of the Standards of Review after consideration on the merits, written consent should be denied in writing and the applicant informed of any available appeal rights.

7. Discussion of undefined terms in the statutes

- (A) “Criminal felony involving dishonesty or breach of trust.”
- Although 18 U.S.C. § 1033 is a federal law, and criminal violations are tried exclusively in the federal courts, there are at least two situations in which state regulators will be called upon to decide whether an individual's conviction involves “dishonesty or breach of trust.” One is if the regulator believes that a prohibited person is unlawfully engaging in the business of insurance within the state, and takes administrative measures such as a cease and desist order. The other is if there is uncertainty whether or not an applicant for consent is a prohibited person. An erroneous determination may result in an order denying consent in a case where no consent was actually required, or in an order dismissing a consent request for lack of jurisdiction in a case where the applicant was in fact a prohibited person. In the latter case, the commissioner's ruling, even if it is ultimately overturned by a federal court reviewing the issue *de novo*, should be an important factor to consider in determining whether the prohibited person or his or her employer acted willfully.

The statute does not list or define felonies that involve dishonesty or breach of trust. Identical language appears in several federal statutes, including provisions relating to Federally insured banks, savings and loans, and credit unions, the farm credit system, small business investment companies, and the rural business investment fund. There do not appear at this time to be any court decisions outlining standards for determining which crimes involve dishonesty or breach of trust in the context of either Section 1033 or Section 1034.

Federal courts seem to apply a “you know it when you see it” test. *See, e.g., FDIC v. Mallen*, 661 F. Supp. 1003, 1006 (N.D. Iowa 1987) [holding that the crime of making a false statement or entry to a Federal agency is obviously one of “dishonesty or breach of trust” within the meaning of the Federal Deposit Insurance Act]. In *Feinberg v. FDIC*, 420 F.Supp. 109, 116 (D.D.C. 1976), the court held that the determination of whether a crime involves “dishonesty or breach of trust” under the Federal Deposit Insurance Act, a statute containing language identical to 18 U.S.C. § 1033, rests with the FDIC. In *Feinberg* at 116–17, the court said:

[The Act], by its very language, requires that the agency decide whether the crime charged is one “involving dishonesty or breach of trust.” [Footnote omitted]. Given the variety and nature of State offenses, it is apparent that the agency must exercise discretion as to this issue. This discretion, in fact, is enhanced by the lack in the statute of a definition of a crime of “dishonesty or breach of trust.”

More illuminating are cases decided under Federal Rule of Evidence 609(a)(2), which provides that, for the purpose of attacking the credibility of a witness, “evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” The Conference Committee report on Rule 609 describes what Congress meant by the phrase “dishonesty or false statement:”

By the phrase “dishonesty and false statement” the Conference means crimes such as perjury or subornation of perjury, false statement, criminal fraud, embezzlement, or false pretense, or any other offense in the nature of *crimen falsi*, the commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused’s propensity to testify truthfully.⁷

⁷ Notes of Conference Committee, H. Rep. No. 93-1597.

In 1990, Congress considered amending Rule 609 to provide a clearer definition of “dishonesty or false statement.” It opted not to do so. In the notes regarding the 1990 proposed amendments, the committee wrote:

The Advisory Committee concluded that the Conference Report provides sufficient guidance to trial courts and that no amendment is necessary, notwithstanding some decisions that take an unduly broad view of “dishonesty,” admitting convictions such as for bank robbery or bank larceny.

Apparently, Congress intended Rule 609 to render admissible only those prior convictions which impact upon a witness’ credibility. The commission of “perjury or other crimes or acts of individual dishonesty, or untrustworthiness (e.g., offenses involving theft or fraud, bribery, or acts of deceit, cheating or breach of trust) will usually have a very material relevance” to the credibility of a witness. *United States v. Bartlett*, No. CV-92-2448, 1993 WL 372267 (E.D.N.Y. Sept. 9, 1993). On the other hand, crimes that do not involve an element of deceit do not fall within the rule. Courts have repeatedly held that drug crimes are not necessarily crimes of “dishonesty or false statement” within the meaning of the rule. *See, e.g., U.S. v. Logan*, 998 F.2d 1025, 1032 (D.C. Cir. 1993) [distribution of drugs]; *U.S. v. Lewis*, 626 F.2d 940, 946 (D.C. Cir. 1988) [same]; *U.S. v. Millings*, 535 F.2d 121 (D.C. Cir. 1976) [drug possession]; *U.S. v. Hayes*, 553 F.2d 824 (2d Cir. 1977) [drug smuggling]. Other types of crimes fall near the border, and good arguments can be made on both sides of the issue. Note in particular that the Federal Rules Advisory Committee considered it “unduly broad” to treat bank robbery or bank larceny as crimes of dishonesty, while the *Bartlett* court three years later recognized dishonesty as an inherent element of any theft offense.

Congress appeared to aim toward a similar target when it included “dishonesty or breach of trust” language in other federal statutes. Construing the Federal Deposit Insurance Act (FDIC Act), the court in *Mallen v. FDIC*, 667 F.Supp. 652, 659 (N.D. Iowa 1987) wrote that the statute allowed removal of bank officers and directors convicted of crimes involving dishonesty or breach of trust because allowing such persons to remain in their positions could “pose a threat to the bank or impair public confidence in the bank.” Both Fed. R. Evid. 609 and the FDIC Act are concerned with crimes that bear on a person’s credibility. If a person has been convicted of a crime involving an element of deceit, there exists substantial reason to question that person’s tendency to testify truthfully, and to direct the affairs of a bank honestly. Presently there is no authority on point so it is logical to presume that Congress had the same intent when it included the phrase “dishonesty or breach of trust” in these new federal statutes.

However, at the state level, the nature and elements of a crime are determined according to the relevant statutes and case law of that particular jurisdiction. When applying federal statutes that make classifications based on criminal history, and the defendant has been convicted of a crime under state law, federal courts look to the

elements of the crime as defined under state law, and compare them to the analogous federal offenses and the criteria in the federal statute.

As a general statement, crimes involving dishonesty involve some element of deceit, misrepresentation, untruthfulness or falsification. Crimes involving breach of trust are based on the fiduciary relationship of the parties and the wrongful acts violating that relationship. Research has disclosed that it is fairly difficult to produce a generic definition of a crime of dishonesty or breach of trust that can be readily applied in all the states. In *State v. Eugene*, 340 N.W. 2d 18 (N.D. Sup. Ct. 1983), a state court conducted a careful analysis of the meaning of a crime of dishonesty or false statement under both federal law and the laws of other states that had addressed the issue. In that case, the court adopted the federal approach in construing North Dakota's version of Rule 609, while recognizing that some of the states construed the term more broadly for purposes of their own versions of the rule.

However, each jurisdiction already has in place a mechanism for determining whether a person is "trustworthy" in order to obtain a license; or, in the case of a licensed agent who has just been convicted of a felony, a mechanism to determine whether that person is "untrustworthy" and thus subject to suspension or revocation of his or her license. Use of this existing mechanism might be helpful to designing and implementing a similar mechanism to consider what is a crime of dishonesty or breach of trust when faced with an application for written consent under Section 1033, to the extent that the state follows the approach taken by the federal courts and the majority of the states. If state and federal standards appear to be inconsistent, however, then it becomes necessary to conduct separate analyses for purposes of determining whether the individual is a prohibited person within the meaning of Section 1033, and for purposes of determining whether the individual is disqualified under state law.

Careful attention should be paid to applications for written consent by persons seeking employment in the business of insurance, who, because of the nature of their duties, do not require licensure by the states. The regulator should consider the actual duties of each applicant and the degree of control each person might have over the operations of the insurer. If consent is granted, it should be structured so as to require further review whenever the duties of a person who has been granted written consent change or are substantially altered from those disclosed on the original application, especially when the person seeks to exercise a greater degree of authority on behalf of the insurer.

(B) "Willfully"

While attempting to provide guidance on a definition for "willfully," the working group discussed a two-tier standard. The prohibited person knows they have a felony conviction. They cannot plead ignorance of the law as a defense to "...willfully engaged in the business of insurance...." The test for willfulness, however, for the insurer that permits a prohibited person to continue to conduct the business of

insurance might turn on the insurer's actual knowledge of a conviction and, perhaps, the affirmative action taken by that insurer to determine whether the individual is a prohibited person.

- (1) "Willfully" standard for entities found employing prohibited persons.

Whether the "willfulness" requirement of U.S.C. § 1033(e)(1)(B) requires actual knowledge and intent to violate the law or whether "willfulness" may be inferred from the facts and circumstances surrounding the prohibited person's employment is the subject of much legal discussion and case law.

- (2) *Black's Law Dictionary*, Fifth Addition (1979) contains many definitions for "willful." It defines "willful" as:

- (a) Proceeding from a conscious motion of the will; voluntary; or intending the result which actually comes to pass; designed; intentional; not accidental or involuntary. An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. Willful is a word of many meanings, its construction often influenced by its context. *Screws v. United States*, 325 U.S. 91, 101, 65 S.Ct. 1031, 1035, 89 L.Ed. 1495.

- (b) The word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely. The word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by a careless disregard whether or not one has the right so to act. *United States v. Murdock*, 290 U.S. 389, 394, 395, 54 S.Ct. 223, 225, 78 L.Ed. 381.

- (c) Whatever the grade of the offense the presence of the word "willful" in the definition will carry with it the implication that for guilt the act must have been done willingly rather than under compulsion and, if something is required to be done by statute, the implication that a punishable omission must be by one having the ability and means to perform. In re *Trombley*, 31 Cal.2d 801, 807, 193 P.2d 734, 739.

- (d) A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful

act differs essentially from a negligent act. The one is positive and the other negative.

- (e) Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

“Willfully” has been interpreted to require mere knowledge of the relevant facts and not knowledge that the fact situation (e.g., employment of a prohibited person is illegal. *United States v. Louis Lanni*, 446 F.2d 1102, 1110 (3d Cir. 1972); *United States v. Thermon Phillips, E.B. Rich, USX Corporation, a/k/a United States Steel Corporation*, 19 F.3d 1565, 1577 (11th Cir. 1994)). Other courts have construed “willfully” to require a finding of specific intent to violate the law. (*Cheek v. United States*, 498 U.S. 192, 200 (1991)). Thus, the oft-repeated maxim “ignorance of the law is no excuse” might be applicable to an insurer, or any person who works for it or with whom the insurer has the appropriate business relationship, that willfully permits a prohibited person under Section 1033(e) to engage in the business of insurance.

Further, failure to terminate an individual ineligible under 18 U.S.C. § 1033 to be employed in the insurance industry could result in criminal prosecution under the theory that Section 1033(e) creates an unambiguous affirmative duty to act. (See *United States v. James A. Irwin*, 654 F.2d 671, 678 (10th Cir. 1981); *United States v. Duane Wendall Larson*, 796 F.2d 244, 246 (8th Cir. 1986)).

The U.S. Supreme Court has observed that the term “willfully” has numerous meanings and “its construction [is] often...influenced by its context.”⁸ The interpretation of “willfully” turns on [each case’s] own peculiar facts.⁹ “Willfully” has been interpreted to require mere knowledge of the relevant facts and not knowledge that the fact situation (e.g., employment of a “prohibited person”) is illegal.¹⁰

The better construction of “willfully” is to require finding a specific intent to violate the law.¹¹ This interpretation is consistent with the purpose of Violent Crime Control and Law Enforcement Act of 1994, which was to make it a federal crime to “defraud loot or plunder an insurance company.”¹² This legislation does not focus on fraud

⁸ *Weldemar Ratzlaf and Loretta Ratzlaf v. United States*, 114 S.Ct. 655, 659 (1994).

⁹ *Screws v. United States*, 325 U.S. 91, 101 (1945).

¹⁰ *United States v. Lewis Lanni*, 466 F.2d 1102, 1110 (3rd Cir. 1972); *United States v. Thermon Phillips, et al.* 19 F.3d 1565, 1577 (11th Cir. 1994).

¹¹ *Cheek v. United States*, 498 U.S. 192, 200 (1991).

¹² H.R. Rep. No. 468, 103rd Cong., 2d Sess. @ 1 (1994).

committed by claimants or beneficiaries of insurance policies. When enacting the Act, Congress erroneously believed that parallels could be drawn between the insurance industry's and the savings and loan industry's financial condition and the degree of criminality occurring within those industries.¹³ Because the Act was meant to prosecute "company busters," and not the individual in an insurer's personnel department who hires a "prohibited person," the "prohibited person" provision should only be applied where a finding of a specific intent to violate the law has been made.

When defining "willful," a two-tier standard should be considered: one for prohibited persons and one for insurers. Clearly a prohibited person knows of their own felony record and each one has an obligation to determine if their crimes involve dishonesty or breach of trust. These people cannot plead ignorance of the law as a defense to "...willfully engaging in the business of insurance..." The test for "willfulness, however, for the insurer that willfully permits a prohibited person to participate in the business of insurance, should turn on the actual knowledge of the insurer and the affirmative action taken by that insurer to determine whether the individual is a prohibited person.

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Special thanks to those individuals who drafted various sections included within the text of this document and those who served on review panels. Additionally, the Federal/State Coordinating Working Group received comments from numerous interested persons and organizations. The working group appreciates their contributions in helping to enhance the usefulness of these Guidelines.

¹³ "Particularly in the wake of the crisis in the savings and loan industry and the number of bank failures, the Committee believes the Federal Government cannot simply sit by and watch another financial [industry] in this country be destroyed from within." H.R. Rep. No. 468, 103rd Cong., 2d Sess. @ 2 (1994).

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ATTACHMENTS TO
Guidelines for State Insurance Regulators
to the Violent Crime Control and Law
Enforcement Act of 1994:
18 U.S.C. §§ 1033–1034

National Association of Insurance Commissioners
Antifraud Task Force
Adopted March 1998
Attachments Amended 2010

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.

ATTACHMENT B

FDIC STATEMENT OF POLICY

The Federal/State Coordinating Working Group of the NAIC Antifraud Task Force has reviewed a statement of policy provided by the FDIC concerning its positions on interpreting a federal law which contain elements similar to 18 U.S.C. §§ 1033 and 1034. The FDIC statement of policy [on 12 U.S.C. § 1829] is found at 63 *Federal Register* 230, 66177 and the following summarizes some of the same:

MINIMAL INDUSTRY STANDARDS

At minimum each institution should institute a screening process to uncover information regarding a company applicant or potential independent contractor's convictions, which would include, for example, a written application listing such convictions, although other alternatives may be appropriate.

DEFINING DISHONESTY AND BREACH OF TRUST

"Dishonesty" means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. "Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

WHETHER A CRIME INVOLVES DISHONESTY OR BREACH OF TRUST

The FDIC believes that a finding of whether a crime involves "dishonesty" or "breach of trust" must be determined from the statutory elements of the crime itself, rather than the factual circumstances surrounding a crime. To do otherwise would require insured institutions and the FDIC to analyze the factual background of every conviction, including such offenses as disturbing the peace. Records of a factual background are not available for many convictions.

ATTACHMENT C

GUIDANCE FOR EVALUATING WHICH FELONIES INVOLVE “DISHONESTY OR BREACH OF TRUST”

18 U.S.C. § 1033 bars any “individual who has been convicted of any criminal felony involving dishonesty or a breach of trust” from the business of insurance, but does not include a definition of “dishonesty” or “breach of trust.” In light of the statute’s silence, the purpose of this attachment is to provide guidance for determining which felonies involve “dishonesty or breach of trust.” Because this is a federal statute, any court deciding whether a particular crime involves “dishonesty or breach of trust” under 18 U.S.C. § 1033 will more than likely look to other equivalent federal statutes. Therefore, those states called upon to decide whether an individual is a prohibited person within the meaning of Section 1033 should apply the same standards. In interpreting a federal law that contains element and language similar to that in 18 U.S.C. § 1033, the FDIC has promulgated a Statement of Policy defining “dishonesty or breach of trust” and providing guidance as to the determination of whether a particular crime involves “dishonesty or breach of trust.” Thus, the definition of a “criminal felony involving dishonesty or breach of trust” under 18 U.S.C. § 1033 should mirror the definitions set forth in the FDIC Statement of Policy.

(A) Definitions

We are providing these definitions in an attempt to provide some type of uniformity to states’ considerations and determinations of whether or not a particular crime triggers the prohibition contained in 18 U.S.C. § 1033, and to minimize the risk that state regulators and courts will make determinations inconsistent with the federal courts. It is important to keep in mind that standards under state law might be identical, might merely be similar, or might be completely different. To the extent that they differ, the federal standards will apply to decisions under Section 1033, while the state standards will apply to decisions under state law.

It is important to remember that it is essential to any determination as to whether or not a criminal offense contains an element of dishonesty or breach of trust to include a review of the criminal statute in question and the specific elements of that crime. Only through a thorough review of the statutory elements of a particular crime can a determination be made whether or not that crime would trigger the prohibitions contained in Section 1033.

a. Dishonesty

The FDIC Statement of Policy defines “dishonest” as “as directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.” 63 *Federal Register* 23, 66177.

Other commonly found definitions for dishonesty are similar to the FDIC’s definition: “Disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. Lack of honesty, probity or integrity and principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.” Black’s Law Dictionary 4th ed. 1991;. See also, Tucker v. Lower, 200 KAN. 1, 434 P. 2d 320.

“Want of honesty; lying, stealing, defrauding. Something more than mere negligence, mistake, error of judgment, or competence. Not necessarily such conduct as imports a criminal offense.” Ballentine’s Law Dictionary 1969.

b. Breach of Trust

The FDIC Statement of Policy defines “breach of trust” as “a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.” 63 *Federal Register* 23, 66177.

Listed below are several examples of various definitions for the offense of breach of trust that are similar to those in the FDIC’s Statement of Policy: “a trustee’s violation of either the trust terms or the trustee’s general fiduciary obligations; the violation of a duty that equity imposes on a trustee whether the violation was willful, fraudulent, negligent, or inadvertent.” *Black’s Law Dictionary* (7th ed. 1999).

“The elements which constitute breach of trust with fraudulent intent are not outlined in the statute governing the offense. However, the crime has been defined through the development of case law. Breach of trust with fraudulent intent is larceny after trust, which includes all the elements of larceny or in common parlance, stealing, except the unlawful taking in the beginning. Thus, the primary difference between larceny and breach of trust is that in common law, larceny, possession of the property stolen is obtained unlawfully, while in breach of trust, the possession is obtained lawfully.” See *State v. Jackson*, 527 SE 2nd 367 (S.S. APP. 2000).

(B) Examples of crimes involving “dishonesty or breach of trust”

The most important factor for determining whether a particular crime involves “dishonesty or breach of trust” is whether the statutory elements of the crime involve “dishonesty or breach of trust.” If such elements are involved in the crime, then 18 U.S.C. § 1033 is triggered. Further, it is important to remember that the crime in question must be a felony conviction to trigger the prohibition.

Below is a listing of criminal offenses that may be qualified offenses for the purposes of 18 U.S.C. § 1033.

1. Any type of fraud, including, but not limited to, insurance fraud, mail fraud, mortgage fraud, Medicare fraud, land fraud, tax fraud, securities fraud, and criminal fraud;
2. Counterfeiting or passing counterfeit money;
3. Bribery and bribe receipt;
4. Any crime involving false pretenses;
5. Money laundering;
6. Extortion;
7. Forgery or any crime involving the falsification of documents;
8. Embezzlement;
9. Criminal impersonation;
10. Fraudulent conveyance of property;
11. Fraudulent use of credit or debit card;

12. Knowingly issuing a bad check;
13. Any crime involving the making or utterance of a false statement;
14. Perjury and subornation of perjury;
15. Knowingly possessing a forged instrument;
16. Knowingly receiving or possessing stolen property;
17. Theft by deception;
18. Witness/evidence tampering; and
19. Crimes of financial exploitation.

There has been concern that serious crimes — including, for example, manslaughter, rape, burglary or robbery, arson, unlawful sexual conduct, child abuse, molestation or other crimes against children, kidnapping and murder — might not contain an element of dishonesty or a breach of trust and, despite their seriousness, might not be a trigger for this prohibition status. The focus of the U.S. Congress when enacting Section 1033 was not on the relative seriousness of different felonies, but on the relevance of the crime to the person's fitness to participate in the financial industry. If state law bars additional classes of convicted felons from participating in the business of insurance — or if state courts interpret the phrase “dishonesty or breach of trust” in an analogous state statute differently than do federal courts — the state retains the authority to apply its own law. These Guidelines only address questions of federal law; questions of state law must be decided on a state-by-state basis.

OTHER RELATED LEGISLATION

As further guidance, recent pending legislation may be helpful. On Nov. 6, 2001, the U.S. House of Representatives adopted HR 1408: Financial Services Anti-Fraud Network Act. HR 1408 advises that certain types of convictions (defined as “relevant information”) will be provided by the FBI to state insurance regulators when conducting background investigations on persons engaged in the business of conducting financial activity. HR 1408 defines “relevant information” as:

“Relevant Information”

1. All felony convictions
2. All misdemeanors convictions involving:
 - A. Financial activity
 - B. “Dishonesty or breach of trust,” as per 18 U.S.C. § 1033, including taking, withholding, misappropriating or converting money or property
 - C. Failure to comply with child support obligations
 - D. Failure to pay taxes
 - E. Domestic violence/child abuse
 - F. Crimes of violence
 1. Burglary of a dwelling
 2. Threat of great bodily harm
 3. Use or attempted use of physical force
 4. Use, attempt or threat to use a deadly weapon
 5. Murder, manslaughter, kidnapping, robbery, aggravated assault, forcible sex offenses, arson, extortion (or attempts)

ATTACHMENT D

DEPARTMENT OF INSURANCE PROCEDURES GOVERNING PERSONS SUBJECT TO 18 U.S.C. § 1033

[Drafting Note: These procedures are merely a model or guide for the implementation of 18 U.S.C. § 1033. The various state insurance departments are free to either accept or reject, in whole or in part, the procedures set out herein.]

INTRODUCTION

The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355; 18 U.S.C. §§ 1033-1034 (the Act) became effective Sept. 13, 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's Office to bring civil or criminal actions against offenders.

PERSONS REQUIRED TO OBTAIN WRITTEN CONSENTS TO ENGAGE IN THE BUSINESS OF INSURANCE

One 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 Sept. 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. Further, 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(e)(2) provides the framework, and the DOI 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 participants 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 this state, 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. § 1033 exemption.

The state statutory licensing qualifications and requirements are totally separate from any federal restrictions or requirements under 18 U.S.C. § 1033. Failure to inform the DOI of a prior felony conviction on a license application could result in a violation of this statute, as well as constitute a separate ground for denial of an insurance license under state licensing laws.

Insurance companies, as well as persons employing individuals 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 currently employed or being considered for employment. Failure to initiate a screening process in an attempt to identify prohibited persons in current or prospective employment relationships may be a factor in determining if a violation of this statute has occurred.

How to Seek Consent

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

Granting Consent

18 U.S.C. § 1033(e)(2) gives complete authority to "...any insurance regulatory official authorized to regulate the insurer..." to grant or withhold written consent (see Section III(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 prohibited person's business and personal record before and after the commission of the crime;
9. Whether and to what extent the person has made material false statements in an application;
10. Renewal or in other documents filed with the commissioner; and
11. Whether and to what extent the prohibited person has made material false misstatements in applications or other documents filed with other state or federal agencies.

How to Apply for Written Consent

All application packets submitted must include:

1. Completed initial application for written consent. The application should be filled out completely and truthfully. If you have any questions, please contact the DOI's [insert appropriate division].
2. A current credit report, certified by a credit bureau. The report must be certified by them. The report must accompany your application. A current credit report is one that was prepared within thirty (30) days of the date of your application.
3. A copy of the completed form (or letter) requesting release of a complete record of convictions from the [insert appropriate state agency – official state repository of criminal history information]. The original form should be mailed directly to them with a check for (fee charged for service).
4. Two 2" by 2" black-and-white recent passport photographs attached to the upper right-hand corner of the first page of the application for written consent.

It is the responsibility of the applicant to read the application in its entirety. Every question must be answered completely. Absolute and complete candor is required. Failure to complete the application may result in delay or denial of consideration for written consent. The purpose of the application is to provide you with an opportunity to demonstrate that, notwithstanding the federal bar, you are fit to participate in the business of insurance without being a risk to consumers or insurers. The burden is upon you to establish that your application warrants approval.

Answers must be typewritten; otherwise, the application will be returned.

Retain a copy of the application for your records. An amendment to the application must be filed immediately upon the occurrence of any event which 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.

DEPARTMENT OF INSURANCE PROCEDURES GOVERNING
PERSONS SUBJECT TO REQUIREMENT FOR WRITTEN CONSENT
UNDER 18 U.S.C. § 1033

I. Introduction

These procedures are designed to provide employees of the department of insurance (DOI) with a guide for dealing with all persons prohibited by 18 U.S.C. § 1033 from working in the business of insurance without permission from the appropriate state regulator.

II. Department of Insurance's 18 U.S.C. § 1033 Advisory Committee (Committee)

The DOI has established a 1033 Advisory Committee to review applications and provide recommendations to the Commissioner regarding the fitness of a prohibited person to work in the insurance industry.

A. General Responsibilities of the Committee

The Advisory Committee shall be responsible for:

1. Ensuring that these uniform procedures are implemented and followed;
2. Ensuring that all applicable federal and state laws and rules are followed;
3. Promoting consistency and fairness in all DOI decisions involving requests for written consent under 18 U.S.C. § 1033;
4. Reviewing all applications received;
5. Ensuring that applications that have been submitted are complete; and
6. Making recommendations to the commissioner regarding applications for the written consent.

B. Membership of the Committee

Members shall be appointed and serve at the pleasure of the commissioner or his designee. The Committee shall consist of the general counsel, who shall chair the committee, two associate counsels, the deputy commissioner of insurance, the deputy commissioner of consumer affairs, the deputy of agent licensing and the chief of financial examination. [Membership will vary with each state's circumstances and departmental structure.]

C. Committee Meetings

The Committee shall meet once a month, or as needed, to review all matters falling within its jurisdiction.

D. Powers of the Committee

The Committee shall review and discuss matters referred to it and shall forward its recommendations to the commissioner. The Committee does not, nor does its recommendations, affect or set public policy.

E. Administration of the Committee

The Committee shall appoint a Secretary who shall maintain records of all Committee meetings and actions. The secretary does not have to be a member of the Committee.

The Committee shall appoint an administrator. The administrator shall be responsible for gathering information, producing summary reports, and maintaining and distributing applications referred to the Committee during the month preceding its meetings. The administrator shall also be responsible for the forwarding of the Committee's recommendations, notifying the applicant of the status of their request, scheduling hearings and the preparation of orders.

If applicable, the Committee shall notify the employer or the prospective employer of the applicant that it has received an application for written consent. It shall further notify the employer or prospective employer of the Committee's final determination. The Administrator shall also ensure that the aforementioned documents and proceedings comply with state public record laws.

The administrator shall notify other states of pending applications and the commissioner's findings and actions.

III. General Procedures for Handling Requests for Written Consent under 18 U.S.C. § 1033

A. Jurisdiction

The DOI shall have jurisdiction under 18 U.S.C. § 1033 to consider requests for written consent filed by the following persons:

1. Officers, directors and employees of domestic insurance companies
2. Other persons (e.g., agents, third-party administrators, independent contractors, actuaries, reinsurers, brokers, underwriters, adjusters, etc.) who perform substantial insurance-related activities for a domestic insurance company or a resident licensee.
3. Any person who maintains a resident license in this state (e.g., agents, managing general agents, adjusters, brokers, solicitors, customer service representatives, etc.).

The foregoing persons must obtain written consent only if they engage or participate in the business of insurance as defined in 18 U.S.C. § 1033(f)(1):

1. The writing of insurance.
2. The reinsurance of risks.
3. All acts necessary or incidental to such writing or reinsuring; and, the activities of persons who act as, or are, officers, directors, agents, solicitors, brokers or employees of insurers, or who are authorized to act on behalf of such persons.

B. Prerequisite for Application

Applicants subject to the prohibitions set forth in 18 U.S.C. § 1033 shall be required to obtain written consent from the commissioner before any license application shall be considered. Because the federal statute does not contain a grandfather clause, even current licensees who are prohibited persons should not participate in the business of insurance without the commissioner's written consent which specifically refers to 18 U.S.C. § 1033.

When used herein, the term "license" shall be broadly construed to include any license, registration, certificate of authority or other permit or approval issued or granted by the Commissioner; and the terms "licensee," "application" and "applicant" shall follow the definitions set out in the Insurance Code.

C. Application Forms for Requesting Written Consent under 18 U.S.C. § 1033(e)

The DOI has developed two standardized applications for persons seeking written consent under 18 U.S.C. § 1033. They are the "Short Application Form" and the "Long Application Form." These applications require a notarized signature of the person submitting the application and shall state that the information provided therein is truthful and complete.

D. Short Application Form

The short application form will be sent to applicants in cases where the DOI is unable to determine whether that person could or does constitute a threat to the public. The Committee shall review the short form and make a recommendation to the commissioner as to whether the applicant, as a result of the work he/she does in the insurance industry, does or could constitute a threat to the public. If a determination is made that the applicant does not pose a threat to the public, and the employer verifies the applicant's responsibilities, it shall be the Committee's recommendation to grant exemptions in these cases. The intent of Section 1033's prohibition is to prevent certain persons from having the opportunity to harm the public or insurers.

E. Long Application Form

If the Committee determines, after discussing this matter with the applicant or after reviewing a short application, that the person does or could constitute a threat to the public, the long application form will be sent to the applicant for completion.

A long application form will be required in cases where the DOI determines that the position the person holds does or could constitute a threat to the public. All agents will be required to submit the long application forms.

If a long form is required to be submitted, and the applicant has previously filed a short form with the DOI, any duplicative answers or attachments may be disregarded. Upon receipt of the long form the DOI might wish to request additional information. Based on a review of the information, the Committee shall make a recommendation to the commissioner regarding the granting or denying of the written consent.

The burden of persuasion and evidence for going forward with a request for written consent (hereinafter referred to as an "application") is on the prohibited person seeking the relief.

It is further the prerogative of the Committee to withhold any recommendation until after a hearing if the Committee feels the record is incomplete, additional information needs to be obtained or that the Committee has questions regarding any aspect of the application.

F. Requirement for Character References

Written character references may be submitted to the DOI. References shall state how long and in what capacity the writer has known the applicant. The person providing the reference shall also state that he/she is aware the reference is being provided in connection with a request for written consent to engage or participate in the business of insurance despite the existence of a felony criminal conviction or guilty plea.

G. Requirement to Provide Documents

All persons subject to 18 U.S.C. § 1033 shall, within thirty (30) days of receipt of a request from the DOI, submit certified copies of all relevant court documents, and must submit any additional documents requested by the DOI. The applicant may also provide any other documents or information that he/she would like to be considered by the DOI.

H. Committee Recommendations to the Commissioner

A majority of the Committee members shall vote to either recommend granting or denying a written consent to work in the insurance business. If the recommendation is to grant consent the Committee will so notify the commissioner of its recommendation.

If it is the Committee's determination that the person does not constitute a threat to the public then written consent, which is specific as to the responsibilities and duties of the applicant at the time the application for written consent is made, should be granted. The Committee will so notify the commissioner and the applicant.

[Drafting Note: Such a written consent is not employer-specific. The applicant may switch jobs so long as his or her duties do not change.]

If the determination is made that the applicant does or could constitute a threat to the public:

1. If it is the Committee's recommendation to grant the written consent the Committee shall notify the commissioner and the applicant in writing, including the reasons on which they are basing their recommendation to grant.
2. If it is the Committee's recommendation to deny the written consent the Committee shall notify the commissioner and the applicant in writing, including the reasons on which the recommendation is based.
3. In every instance where a determination is made by the Committee that the applicant does or could constitute a threat to the public and regardless of the Committee's recommendation a hearing will be held before a ruling is issued.

IV. If it is determined that the applicant is not subject to 18 U.S.C. § 1033, the Committee shall recommend that the applicant be so notified.

A. Hearings and Burden of Proof

All hearings conducted by the DOI with regard to 18 U.S.C. § 1033 shall be conducted in accordance with this procedure guide. Anything not covered by this Guide shall be conducted in accordance with departmental regulations set out in the [cite specific department rule or statute].

The burden of proof in a Section 1033 proceeding shall be the same as that applied in a departmental administrative proceeding specifically set out [cite specific department rule or statute]. As a general rule, the party asserting an affirmative issue has the burden of proving said issue by [insert applicable state law as to burden of proof].

The burden of persuasion and production of evidence for granting a request for written consent is on the prohibited person seeking the relief.

The prohibited person shall pay all costs associated with this proceeding, including but not limited to the costs of the presence of a court reporter at all departmental hearings and/or meetings concerning his application.

As stated previously, if it is the Committee's finding the person does or could constitute a threat to the public, an administrative hearing will be held.

The applicant will appear before the commissioner, be sworn in and present information as to why a written consent should be granted. The commissioner or the Committee may ask questions of the applicant during this proceeding.

The applicant should be prepared to present evidence in response to the Committee's concerns outlined in the correspondence.

Recommendations made to the commissioner by the Committee have no binding authority on the commissioner and are merely advisory in nature.

B. Written Consent

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 person making the request. In the event the person receiving the written consent has made materially false or misleading statements or has failed to disclose material information, the consent shall be void *ab initio*. Further, the providing of false information would constitute a violation of 18 U.S.C. § 1033.

The commissioner may choose to grant a temporary consent at his or her discretion. Upon expiration of the consent the applicant would be in violation of 18 U.S.C. § 1033 if the applicant engaged in any insurance activity without first receiving a new consent.

All written consents granted by the commissioner shall be specific as to job responsibility and conditioned upon the person remaining in a similar position with the same duties. A change in duties shall necessitate the filing of a new request for written consent. In the event the person receiving the written consent has been given significantly increased job duties and has not so informed DOI, the consent shall be immediately invalidated as a matter of procedure. A change in employer or a line of business with the same duties may not necessitate an additional consent.

[Drafting Note: Applicants should be informed that they are obligated to inform the commissioner of any change in their job duties.]

In the event a person has violated the terms of a written consent, the consent will be invalidated and the person engaging in the business of insurance is prohibited by 18 U.S.C. § 1033. In the event such person is licensed by DOI, the matter shall be referred to the [insert appropriate division] for a filing of a revocation action.

C. Denial of Request for Written Consent Filed by Licensee

No person shall be granted a license or shall be permitted to retain a license or shall participate in the business of insurance if the request for a written consent has been denied. A denial of the request shall be reported to all regulators on the Section 1033 written consent e-mail notification list.

D. Subsequent Convictions of Persons Previously Granted Written Consent

Any person granted written consent to participate in the business of insurance shall immediately notify the DOI and their employer and, if an agent, all their appointed insurers if convicted of a felony during or subsequent to receiving a written consent. The consent previously issued is void *ab initio*. The person shall inform the DOI of the existence of any such felony offenses and shall provide all relevant documents and information.

V. Procedures with Respect to Persons Subject to 18 U.S.C. § 1033

A. Reporting Criminal Convictions of Licensees

The Legal Division shall assist the Committee in obtaining information on any applicants or persons already licensed by the DOI (or corporate officials of an applicant or licensee) who have been convicted of any criminal offense enumerated in 18 U.S.C. § 1033.

If the Committee or any other division determines that a material false statement concerning the criminal history of the person has been made on the Section 1033 application, or on a license application, or renewal, the Committee shall immediately refer the matter to the [insert appropriate division]. The [insert appropriate division] shall make an independent determination as to whether an investigation should be pursued and/or a criminal referral made.

The Committee or the DOI may request that the Legal Division refer to the appropriate law enforcement entity (or the appropriate division) a licensee or applicant who is in violation of Section 1033 or is in violation of any other penal statute as it pertains to not reporting criminal felony convictions involving dishonesty or a breach of trust.

B. Applicants and Licensees Subject to 18 U.S.C. § 1033

In the event the applicant or licensee (or corporate official of an applicant or licensee) is subject to the prohibitions set forth in 18 U.S.C. § 1033 (a felony conviction involving dishonesty, breach of trust or any conviction under 18 U.S.C. § 1033), the [insert appropriate division] shall:

1. Inform the person and their employer of the criminal offense set forth in 18 U.S.C. § 1033(e)(1).
2. Inform the person that, pursuant to 18 U.S.C. § 1033(e)(2), a written consent from the commissioner is required.
3. Inform the person that any such request for written consent must be made within thirty (30) days of receipt of the notification.

The foregoing notification shall be made in writing via certified mail, return receipt requested, and shall include a copy of the standard form for requesting written consent. In cases involving corporate officials, the said notification shall be sent to both the company and the corporate official.

In the event a question arises as to whether a particular criminal offense is covered by 18 U.S.C. § 1033(e), whether a particular employee is subject to the prohibitions set forth in 18 U.S.C. § 1033(e) or whether 18 U.S.C. § 1033(e) applies to a particular fact situation, the written question shall be referred to the Committee. The Committee shall make a determination as to the applicability of 18 U.S.C. § 1033(e) and shall so inform the referring DOI division or individual/ entity requesting the opinion.

C. Failure to File Documents

If the applicant subject to 18 U.S.C. § 1033 and/or the agency or company he/she represents or a licensed agent or corporate official of a licensee fails to file requested documents or information within thirty (30) days after initiating the request for regulatory consent or after additional requests for information sent by certified mail, return receipt requested, by the Committee, the request for written consent and the application shall be considered withdrawn and referred to the [insert appropriate division] for appropriate action, including but not limited to, the revocation of license.

D. Referrals to the Committee

All departmental divisions shall forward to the Committee any requests it receives for written consent under 18 U.S.C. § 1033.

All departmental divisions shall refer any individuals they discover through whatever means that might be prohibited persons.

All departmental divisions shall immediately forward to the Committee any matter in which material false statements concerning a person's criminal history may have been made on an application or renewal, regardless of whether the conviction has been set aside or whether a pardon has been granted.

E. Review by the Committee

Upon receipt by the Commissioner of a timely and complete application, the Committee shall review the same in light of the following guidelines:

1. The Committee shall consider the factors set forth in the insurance code in making its recommendation.
2. The Committee shall also consider any relevant additional factors in making its recommendation.
3. The Committee shall consider whether and to what extent the person has made material false statements in applications or other documents filed with other state agencies.
4. The Committee may consider charges that were *nolle prossed*.
5. The Committee may consider convictions resulting from arrests, the records of which have been expunged.
6. The Committee may consider convictions for which a pardon has been granted unless the circumstances indicate that the pardon was granted due to the innocence of the person involved.

7. Requests for written consent shall be granted only if the mitigating circumstances clearly and substantially outweigh the seriousness of the criminal history together with any other aggravating circumstances.

VI. Definitions

[Drafting Note: These definitions could differ depending on case law and state statutes.]

A. Breach of Trust

“Breach of trust” is not defined in 18 U.S.C. § 1033. 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.

B. Business of Insurance

“Business of insurance” is defined in 18 U.S.C. § 1033. Under this law, the “business of insurance” means (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. (*See* 18 U.S.C. § 1033(f)(1).)

C. Dishonesty

The term “dishonesty” is not defined in 18 U.S.C. § 1033. 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.

D. Corporate Official

As used in these procedures, the term “corporate official” shall mean any officer, director, agent, solicitor, broker or employee of a corporation.

E. Insurer

“Insurer” is defined in 18 U.S.C. § 1033 as any entity the business of which is the writing of insurance or reinsuring of risk, and includes any person who acts as or is an officer, director, agent or employee of that business.

F. Interstate Commerce

“Interstate commerce” is defined in 18 U.S.C. § 1033 as commerce 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 same state through any place outside such state; or all other commerce over which the United States has jurisdiction.

G. State

“State” is defined in 18 U.S.C. § 1033 as any state, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

H. 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 insurance code.

I. Application or Applicant

“Application” shall mean any filing made with the commissioner of insurance or the department of insurance for a license and “applicant” shall mean any person or entity filing an application.

ATTACHMENT E

**LONG FORM APPLICATION
FOR WRITTEN CONSENT TO ENGAGE IN THE BUSINESS OF INSURANCE
PURSUANT TO 18 U.S.C. §§ 1033 AND 1034**

Notice to Applicant: 18 U.S.C. § 1033 prohibits certain activities by or affecting persons engaged, or proposing to become engaged, in the business of insurance:

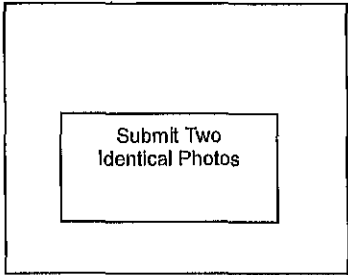
- (e)(1)(A)** Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such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

This Application will be reviewed by the chief insurance regulatory official in this state to determine whether the Applicant should be given written consent to engage in the business of insurance or participate in the business pursuant to 18 U.S.C. § 1033(e)(2).

You must answer every question on the Application. If a question does not apply, indicate N/A in the space provided for the answer. Your answers are not limited to the space provided on the Application. Attach additional pages as needed. The Department of Insurance will not process incomplete Applications. Additional information may be requested. If you have previously completed the *Short Form Application for Written Consent to Engage in the Business of Insurance*, you do not need to provide duplicate photos or attachments.

PLEASE TYPE

SECTION I – APPLICANT INFORMATION



Full Name of Applicant:

| Last Name | First Name | Middle | SS# |
|-----------|------------|--------|-----|
|-----------|------------|--------|-----|

| Home Address | City | County | State | ZIP | Home Phone |
|--------------|------|--------|-------|-----|------------|
|--------------|------|--------|-------|-----|------------|

| Business Address | City | County | State | ZIP | Business Phone |
|------------------|------|--------|-------|-----|----------------|
|------------------|------|--------|-------|-----|----------------|

1. If you were born in the United States, provide the following:

| Place of Birth | City | County | State | ZIP | Date of Birth |
|----------------|------|--------|-------|-----|---------------|
|----------------|------|--------|-------|-----|---------------|

2. If you were not born in the United States, provide the time of first entry and port of entry:

3. Are you a U.S. Citizen? Yes No
If no, provide the following:

| Citizenship Country | State/Province | Basis of U.S. Residence | Alien Registration Number |
|---------------------|----------------|-------------------------|---------------------------|
|---------------------|----------------|-------------------------|---------------------------|

4. If you are a naturalized citizen of the United States, indicate where and how you became naturalized. The number of the Certificate of Naturalization must be provided, if applicable.

5. Have you ever used or been known by another name (including maiden name) or used or been issued another social security number? Yes No
If yes, provide the following (attach additional pages as needed):

| Name | Social Security Number | Date of Use |
|------|------------------------|-------------|
|------|------------------------|-------------|

6. Provide identification of your current, and all former, spouses (attach additional pages as needed):

| Spouse's Last Name | First Name | Middle | Social Security Number | Marital Status |
|--------------------|------------|--------|------------------------|----------------|
|--------------------|------------|--------|------------------------|----------------|

7. Do any of your relatives, by blood or marriage (either current or prior), serve in any capacity with any entity engaged in the business of insurance? Yes No
If yes, provide the following (attach additional pages as needed):

| Name of Relative | Address | Relationship to Applicant | Insurer/Employer |
|------------------|---------|---------------------------|------------------|
|------------------|---------|---------------------------|------------------|

8. Have you ever been a party, in any capacity, in a civil action, lawsuit, bankruptcy or other proceeding?
 Yes No
 If yes, provide details of all civil actions (attach additional pages as needed):

| | |
|----------------------------------|--------------------------------|
| Title of Case | Case Number |
| <input type="checkbox"/> Federal | <input type="checkbox"/> State |

| | | |
|-------------------------|------------|----------------|
| Identification of Court | City/State | Date of Action |
|-------------------------|------------|----------------|

Description of case and your involvement, including outcome:

9. Have you ever applied for consent from an insurance regulatory authority? Yes No
 If yes, provide details below:

State(s): _____

Granted
 Denied
 Other _____

Please provide details of outcome of prior or pending applications for Consent:

SECTION II – EDUCATION

1. Provide complete details about your education and training, including identification of all schools that you have attended. Attach additional pages as needed.

| Name of High School(s) | Address | Major | Dates Attended | Highest Level Attained |
|------------------------|---------|-------|----------------|------------------------|
|------------------------|---------|-------|----------------|------------------------|

| Name of College(s) | Address | Major | Dates Attended | Highest Level Attained |
|--------------------|---------|-------|----------------|------------------------|
|--------------------|---------|-------|----------------|------------------------|

| Name of Tech School(s) | Address | Major | Dates Attended | Designation |
|------------------------|---------|-------|----------------|-------------|
|------------------------|---------|-------|----------------|-------------|

| Post Graduate Schools or Programs | Address | Dates Attended | Designation |
|-----------------------------------|---------|----------------|-------------|
|-----------------------------------|---------|----------------|-------------|

SECTION III – CHRONOLOGICAL EMPLOYMENT HISTORY AND PROFESSIONAL LICENSES – CERTIFICATIONS – DESIGNATIONS

1. List in chronological order each and every place where you have been employed, including any military service (attach additional pages as needed). Include all instances where you have served as a paid or non-paid officer or director.

| Name of Employer | Address | Title/Job | Employment Dates | Reasons for Leaving |
|------------------|---------|-----------|------------------|---------------------|
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2. Do you now hold, or have you ever held, a professional license relating to the business of insurance, including but not limited to, being a producer, agent, broker, solicitor, adjuster, or third party administrator? Yes No
 If yes, provide the following information about your active or prior insurance professional license(s) (attach additional pages as needed):

| Type of License | Date of Issue | State | Status of License |
|-----------------|---------------|-------|-------------------|
|-----------------|---------------|-------|-------------------|

3. Have you ever had a consumer complaint, administrative, civil or other legal proceeding (include pending actions) filed against you regarding your insurance activities? Yes No
 If yes, provide the following (attach additional pages as needed):

| Type of Action | Court/Administrative Agency | State | Date of Action | Outcome |
|----------------|-----------------------------|-------|----------------|---------|
|----------------|-----------------------------|-------|----------------|---------|

4. If your insurance-related license has ever been suspended, revoked, or administratively sanctioned (include pending actions) as a result of the legal or administrative action described in this section, provide the following information (attach additional pages as needed):

| Date of Sanction/Suspension/Revocation | Type of License | Fines Paid | Status of Proceeding |
|--|-----------------|------------|----------------------|
|--|-----------------|------------|----------------------|

5. Do you now hold, or have you ever held, any other professional licenses, certifications or designations not issued by a Department of Insurance? Yes No
 If yes, provide the following information about your active or prior professional licenses, certifications or designations (attach additional pages as needed):

| Issued by | Address | City/State |
|-----------|---------|------------|
|-----------|---------|------------|

| Type of License, certification or designation | Date of Issue | Status of license, certification or designation |
|---|---------------|---|
|---|---------------|---|

6. Have you ever had a customer, client or consumer complaint, administrative or other legal proceeding (include pending actions) filed against you regarding your other professional activities?
 Yes No
 If yes, provide the following (attach additional pages as needed):

| Type of Action | Court/Administrative Agency | State | Date of Action | Outcome |
|----------------|-----------------------------|-------|----------------|---------|
|----------------|-----------------------------|-------|----------------|---------|

7. If any other professional licenses, certifications or designations have ever been suspended, revoked, or administratively sanctioned as a result of the legal or administrative action described in this section (include pending actions), provide the following information (attach additional pages as needed):

| Date of Sanction/Suspension/Revocation | Type of License | Fines Paid | Status of Proceeding |
|--|-----------------|------------|----------------------|
|--|-----------------|------------|----------------------|

SECTION IV – CRIMINAL HISTORY

1. Provide a narrative statement describing the circumstances leading to all criminal charge(s) filed against you; the date of charge(s); place of charge(s); trial court(s); date of disposition; convicted charge(s); sentence(s); date(s) of incarceration; date(s) of probation/parole; date(s) of release from probation/parole; restitution ordered; restitution paid; fines/costs ordered; fines/costs paid. Include details of negotiated plea agreements and pleas of *nolo contendere* to an Information or indictment. Describe in detail the criminal conviction or convictions, which are the subject of this Application. Attach additional pages if needed.

2. Other than described in Section IV, No. 1, during your lifetime have you ever been charged, arrested, indicted, entered into a negotiated plea agreement, entered a plea of guilty or *nolo contendere* to an Information or indictment, had a sentence suspended or had pronouncement of a sentence suspended, in connection with any other felony or misdemeanor criminal activities? Yes No

If yes, provide a narrative statement describing the circumstances of every instance.

[Drafting Note: In lieu of, or in addition to, the questions contained in Section IV, Nos. 1 and 2, the working group has prepared a summary chart (attached) that states may wish to consider for inclusion in the Application.]

3. Have you received any type of pardon to the offense or offenses that are the subject of this Application, or any other offense listed in this Application? Yes No
 If yes, provide the following information (add additional pages if needed):

| Pardoning Authority | County | State | Convicted Offense | Date of Pardon | Terms of Pardon |
|---------------------|--------|-------|-------------------|----------------|-----------------|
|---------------------|--------|-------|-------------------|----------------|-----------------|

4. Have your civil rights been revoked? Yes No
If yes, provide the following information:

| Court of Judgment | Date of Revocation of Civil Rights | Date of Restoration of Civil Rights |
|-------------------|------------------------------------|-------------------------------------|
|-------------------|------------------------------------|-------------------------------------|

5. Have you made full payment of any and all outstanding court costs, supervision fees, fines and ordered restitution concerning any and all offenses? Yes No
If no, provide explanation (add additional pages if needed):

6. Are there mitigating or extenuating circumstances surrounding your commission of the offenses listed in Section IV? If yes, explain (attach additional pages as needed).

7. List all evidence that exists regarding your rehabilitation (attach additional pages as needed).

SECTION V – PRESENT/PROPOSED INSURANCE EMPLOYMENT

1. Provide complete details about your present employment or business association/relationship with an entity engaged in the business of insurance (attach additional pages as needed):

| Name of Employer | Address | City | State | ZIP | Telephone |
|--|---------|------|---------------------------|-----|-----------|
| Name of Insurance Entity | Address | City | State | ZIP | Telephone |
| Applicant's Direct Supervisor | Address | City | State | ZIP | Telephone |
| Business Location of Applicant's Employment/Insurance Related Activity | | | Offices Held or Job Title | | |

2. Describe in detail the nature, duties and activities of your present employment or business association/relationship with an entity engaged in the business of insurance, including office, position, occupation, trade, vocation, or profession (attach additional pages as needed):

3. Provide complete details about your proposed employment or business association/relationship with an entity engaged in the business of insurance (attach additional pages as needed):

| Name of Employer | Address | City | State | ZIP | Telephone |
|------------------|---------|------|-------|-----|-----------|
|------------------|---------|------|-------|-----|-----------|

| Name of Insurance Entity | Address | City | State | ZIP | Telephone |
|--------------------------|---------|------|-------|-----|-----------|
|--------------------------|---------|------|-------|-----|-----------|

| Applicant's Direct Supervisor | Address | City | State | ZIP | Telephone |
|-------------------------------|---------|------|-------|-----|-----------|
|-------------------------------|---------|------|-------|-----|-----------|

| Business Location of Applicant's Employment/Insurance Related Activity | Offices Held or Job Title |
|--|---------------------------|
|--|---------------------------|

4. Describe in detail the nature, duties and activities of your proposed office, position, occupation, trade, vocation, or profession (attach additional pages as needed):

5. Explain why your conviction(s) will not affect your fitness or ability to perform any of the above duties or activities (attach additional pages as needed):

6. List the names and locations of all insurers and entities providing services to insurers for which you have advised, represented or in any manner worked for or provided services to, together with a description of the activities performed for each such entity (attach additional pages as needed).

7. Provide details of any proposed or current written or oral agreements, contracts or understandings between yourself and any entities engaged in the business of insurance (attach additional pages as needed).

SECTION VI – FINANCIAL INFORMATION

1. Attach financial statement(s) indicating your net worth, including all assets held by you, or held in the names of others for you, the amount of each secured and unsecured liability owed by you, or by you together with any other person.

2. Do you have any judicial or administrative penalties, fines or outstanding (include pending actions)?

Yes No

If yes, describe in detail (attach additional pages as needed):

3. Do you have any civil judgments, tax or other liens or penalties outstanding (include pending actions)?

Yes No

If yes, describe in detail (attach additional pages as needed):

[Drafting Note: States should consider the advisability of obtaining confirmation that the applicant has no relevant administrative fines, civil judgments, tax or other liens or penalties outstanding. States should also consider obtaining confirmation that the applicant has no past due or delinquent loans, child support or alimony.]

4. Attach a list indicating the amount and sources of all income for five (5) calendar years prior to the Application through the date of the Application.

[Drafting Note: States might wish to consider requesting income information for a period longer than five (5) years.]

5. Have you ever been in a position which required a fidelity bond? Yes No

If yes, and any claims were made on the bond, provide details (attach additional pages as needed):

6. Have you ever been denied an individual or position schedule fidelity bond, or had a bond cancelled or revoked? Yes No
If yes, provide details (attach additional pages as needed):

7. Have you, or any business entity in which you served as an officer, director, trustee, investment committee member, key employee, stockholder or owner become insolvent, placed in bankruptcy, receivership, rehabilitation or liquidation? Yes No
If yes, provide details (attach additional pages as needed):

8. List any and all entities (corporations, partnerships, sole proprietorships, trusts, etc.) engaged, directly or indirectly, in the business of insurance in which you hold directly or beneficially (or hold in joint tenancy, or in the name of others for you) a stock or other ownership interest. Include any option agreements to purchase or participate in an ownership interest (attach additional pages as needed):

9. List any and all entities (corporations, partnerships, sole proprietorships, trusts, etc.) engaged, directly or indirectly, in the business of insurance in which your relatives, by blood or marriage, hold directly or beneficially a stock or other ownership interest. Include any option agreements to purchase or participate in an ownership interest (attach additional pages as needed):

SECTION VII – GROUNDS RELIED UPON FOR APPLICATION FOR WRITTEN CONSENT

1. Provide a complete explanation of the reasons or grounds the applicant relies upon to establish that the applicant's insurance activities for which written consent is sought will not be contrary to the intent and purpose of 18 U.S.C. § 1033, and will not pose a risk to the insurance consumers or the insurance companies (attach additional pages if needed):

2. You may enclose letters of recommendation addressed to the insurance regulatory official in the state where the Application is being submitted, attesting to your character and reputation. These letters should indicate the length of time that the writer has known you, and should describe your character traits as they relate to the employment, position or activities for which written consent is sought. Each letter should indicate that it is being submitted in compliance with these procedures and that you have informed the writer of the factual basis of the Application being filed with the regulatory official and the purpose thereof.

3. Have you ever applied for written consent with any other Commissioner or equivalent?
 Yes No
 If yes, provide the following information, together with a copy of the Application filed in other state(s):

| Name of Commissioner | State | Date of Application | Outcome of Request |
|----------------------|-------|---------------------|--------------------|
|----------------------|-------|---------------------|--------------------|

SECTION VIII – ATTACHMENTS

Attach the following documents to this Application for Written Consent. Applications without attachments, or Applications with incomplete attachments, will be returned to the applicant. However, if you have previously completed and submitted the *Short Form Application for Written Consent to Engage in the Business of Insurance*, you do not need to provide duplicate photos or attachments.

1. A certified copy of the applicant's criminal history.
2. A certified copy of the indictment, criminal complaint or other initiating document for the charge(s) which is(are) the subject of this Application.
3. A certified copy of the order of judgment and sentence of the Court for the conviction which is the subject of this Application (including certification of performance of all conditions imposed by the Court) and/or a certified copy of the Court docket.
4. A current financial statement and list of sources of income (as described in Section VI).
5. A current certified copy of applicant's credit report.
6. Copies of any and all current or proposed agreements between you and any entity engaged in the business of insurance.
7. A sworn affidavit from the president, or other designated officer or director of the insurer, that states: the basis under which the Affiant is authorized to execute and attest to the statements made in the affidavit; the applicant will in fact perform only those insurance activities as fully described in the Application; the Application is to the best of his/her knowledge and belief, true and correct; the applicant will not be placed in a position in which his/her activities will constitute a risk or threat to insurance consumers or the insurer.
8. A copy of any pardon.
9. Any other attachments that the insurance regulatory official deems appropriate.

The applicant may include the following evidence of rehabilitation for the Commissioner's consideration:

1. **Post-conviction community service.**
2. **Post-conviction charitable activity.**
3. **Any other information the applicant believes will assist the Commissioner in determining whether to grant written consent.**
4. **Letters of recommendation, addressed to the insurance regulatory official in the state where the Application is being submitted, attesting to the character and reputation of the applicant. The statement shall indicate the length of time the writer has known the applicant, their business or social relationship, and should include a description of the applicant's character traits and reputation in the community. The recommendation shall also verify that the writer knows of the applicant's criminal history.**

SECTION IX – APPLICANT'S SWORN STATEMENT VERIFYING TRUTH OF INFORMATION IN APPLICATION AND AUTHORIZATION FOR RELEASE OF INFORMATION

I, _____ (name of applicant), swear under penalty of law that my statements in the attached Application, and the documents appended thereto, are true and correct and complete. I understand that my statements in the Application and the attachments to my Application will be relied upon by the Insurance Commissioner of the State of _____ in the execution of his or her duties under the Insurance Code, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if I have made any false statement 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 these false statements would also constitute a violation of 18 U.S.C. § 1033. For 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 Insurance Department of the State of _____ may conduct 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 Insurance Department 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.*

Signature of Applicant

Date

STATE OF _____)
)
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by _____ to be his/her
free act and deed this ____ day of _____, 20____.

Notary Public, State at Large

My Commission Expires

PROVIDE A LIFELONG LIST OF ALL CHARGES AND CONVICTIONS FOR FELONY OR MISDEMEANOR CRIMES, INCLUDING: CIRCUMSTANCES LEADING TO CRIMINAL CHARGE(S), DATE(S) OF CHARGE(S); COURT(S); DATE(S) OF DISPOSITION; CONVICTED CHARGE(S); SENTENCE(S); DATE(S) OF INCARCERATION; DATE(S) OF PROBATION/PAROLE; DATE(S) OF RELEASE FROM PROBATION/PAROLE; RESTITUTION ORDERED; RESTITUTION PAID; FINES/COSTS ORDERED; FINES/COSTS PAID. ATTACH ADDITIONAL PAGES, IF NEEDED.

| Circumstances Leading to Charge(s) | Criminal Charge(s) and Date of Charge | Court | Date(s) of Disposition | Convicted Charge(s) | Sentence(s) | Date(s) of Incarceration | Date(s) of Probation/Parole | Release Date(s) from Probation/Parole | Restitution Ordered/Paid | Fines/Costs Ordered/Paid |
|------------------------------------|---------------------------------------|-------|------------------------|---------------------|-------------|--------------------------|-----------------------------|---------------------------------------|--------------------------|--------------------------|
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ATTACHMENT F

**SHORT FORM APPLICATION
FOR WRITTEN CONSENT TO ENGAGE IN THE BUSINESS OF INSURANCE
PURSUANT TO 18 U.S.C. §§ 1033 AND 1034**

Notice to Applicant: 18 U.S.C. § 1033 prohibits certain activities by or affecting persons engaged, or proposing to become engaged, in the business of insurance:

- (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 five (5) years, or both.

- (C)** 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 five (5) years, or both.

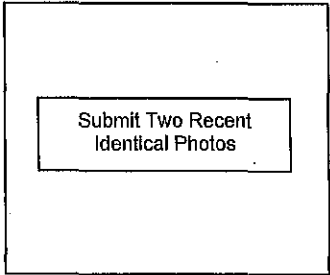
- (e)(2)** A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.

This Application will be reviewed by the chief insurance regulatory official in this state to determine whether the Applicant should be given written consent to engage in the business of insurance or participate in the business pursuant to 18 U.S.C. § 1033(e)(2).

You must answer every question on the Application. If a question does not apply, indicate N/A in the space provided for the answer. Your answers are not limited to the space provided on the Application. Attach additional pages as needed. The Department of Insurance will not process incomplete Applications. Additional information may be requested.

PLEASE TYPE

SECTION I - APPLICANT INFORMATION



1. Full Name of Applicant:

Last Name First Name Middle Name

Have you ever been known by or used another name, including maiden name? Yes No

If yes, Identify: _____

Home Address: _____
Street Address City State ZIP

Mailing Address: _____
P.O. Box or Street Address City State ZIP

Home Telephone Number: _____ Work Telephone Number: _____

Social Security No. _____

Have you ever used or been issued another social security number? _____

If so, provide an explanation and previous/other social security number(s) _____

Place and Date of Birth: _____

(Answer all questions fully and completely. Failure to answer the questions fully will result in delays in the application process. You are not limited to the space below. Attach additional pages if needed).

SECTION II - CRIMINAL HISTORY

1. List any felony(s) for which you have been arrested, charged, indicted, or convicted. Include details of any negotiated plea agreements and pleas of nolo contendere to an Information or indictment. Attach a full description of your acts involved in the aforementioned matters. Include dates of charge, location, and nature of offense. Attach additional pages if needed.

2. Provide details of the conviction for which you are seeking written consent and the final disposition of these matter(s) , including sentence; dates of incarceration; dates of probation/parole (if you are currently under probation/parole, include the name and phone number of person supervising your parole or probation; restitution paid; fines/costs ordered: fines/costs paid; and pardons granted. Include information as to whether or not your civil and political rights have been restored. Attach additional pages if needed.

3. Have you ever applied for consent from an insurance regulatory authority? Yes No
If yes, provide details below:

State(s): _____

- Granted
 Denied
 Other _____

Please provide details of outcome of prior or pending applications for Consent:

SECTION III - PRESENT/PROPOSED INSURANCE EMPLOYMENT

1. Please specify the name and address of your current or proposed employer to which the requested exemption will apply.

2. Please describe in detail the office, position, and title to which the requested exemption will apply and a complete description of the activities, duties and responsibilities. Please attach or describe any proposed or current written or oral agreements, contracts, or understandings with any entity engaged in the business of insurance as defined by 18 U.S.C. § 1033. (If consent is given, it will be applicable to the activities described herein.) Please include your date of employment or proposed date of employment.

SECTION IV - ATTACHMENTS

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. Certified copy of the applicant's criminal history.
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 judgment 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. An affidavit from the individual that seeks to employ you stating in detail the duties and responsibilities that you are performing or are to perform for them and for which you seek written consent and that it is that individual's opinion that the performance of these responsibilities does not constitute a threat to the public.

I, _____ (name of applicant), swear under penalty of law that my statements in the attached Application, and the documents appended thereto, are true and correct and complete. I understand that my statements in the Application and the attachments to my Application will be relied upon by the Insurance Commissioner of the State of _____ in the execution of his or her duties under the Insurance Code, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if I have made any false statement 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 these false statement(s) would also constitute a violation of 18 U.S.C. § 1033. For 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 Insurance Department, for the State of _____ may conduct 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 Insurance Department 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.*

Signature of Applicant Date

STATE OF _____)
)
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by _____ to be his/her free act
and deed this ____ day of _____, 19____.

Notary Public, State at Large My Commission Expires:



National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

For more information, visit www.naic.org



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