

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 505.8 and 522B.16B and 18 U.S.C. Section 1033, the Insurance Division hereby adopts new Chapter 13, “Consent for Prohibited Persons to Engage in the Business of Insurance,” Iowa Administrative Code.

18 U.S.C. Section 1033 (the “Act”) provides, in part, that no person who has been convicted of a felony involving dishonesty or breach of trust or an offense under the Act shall engage in the business of insurance without having first obtained the consent of the Insurance Commissioner of the person’s resident state. Chapter 13 sets out the requirements, procedures and fees relating to how such persons may obtain the required consent of the Iowa Insurance Commissioner.

The new chapter will become effective December 23, 2009, and insurance companies, producers, and individuals shall comply with the rules beginning January 1, 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8144B**. A public hearing was held on October 1, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Comments were received, and some changes to the proposed new chapter were made as follows:

A request was made to remove the reference to independent contractors in the definition of “business of insurance” in rule 191—13.2(505,522B). That change was made.

The Insurance Division determined it would be more consistent with federal law to use the definition of “insurer” contained in the Act rather than the definition as published in the Notice. That change was made.

A request was made to either delete paragraph 13.5(2)“m” or clarify whether the fact that the conviction occurred in a foreign jurisdiction would have a positive or negative impact on a decision to grant or deny an application. The Insurance Division believes such a conviction could have either impact, depending on the jurisdiction, but the fact that the conviction is from a foreign jurisdiction should still be taken into account. That change was not made.

A request was made to clarify the extent of the job duties for which a person would have to receive a consent to work in the business of insurance. The Insurance Division declined to interpret federal law and has used the language of the federal law as the basis for these rules. That change was not made.

A request was made to add a provision whereby an insurer would be held harmless if the insurer was unable to determine that an employee was a prohibited person. The Insurance Division declined to do so because the federal law does not do so. That change was not made.

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

These rules will become effective December 23, 2009.

The following amendment is adopted.

Adopt the following **new** 191—Chapter 13:

CHAPTER 13
CONSENT FOR PROHIBITED PERSONS
TO ENGAGE IN THE BUSINESS OF INSURANCE

191—13.1(505,522B) Purpose and authority. The purpose of these rules is to implement the provisions of 18 U.S.C. Section 1033 and Iowa Code section 522B.16B. The Iowa insurance commissioner has jurisdiction under 18 U.S.C. Section 1033 to grant requests for consent to engage in the business of insurance. Insurance companies, producers, and individuals shall comply with these rules beginning January 1, 2010.

191—13.2(505,522B) Definitions. For the purpose of this chapter, the following definitions shall apply:

“Act” means the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355; 18 U.S.C. Sections 1033 and 1034.

“Applicant” means any person subject to the provisions of 18 U.S.C. Sections 1033 and 1034 who files an application for consent to engage in the business of insurance.

“Breach of trust” means any criminal act or an element of a criminal act by an applicant, including but not limited to an act that constitutes or involves misuse, misapplication or misappropriation of the following:

1. Anything of value held as a fiduciary, where “fiduciary” includes, but is 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.

“Business of insurance” means 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 activity of persons who are or who act as officers, directors, agents, or employees of insurers, producers or any other persons authorized to act on behalf of such persons.

“Commissioner” means the Iowa insurance commissioner or the commissioner’s designee.

“Consent” means the written consent issued by the commissioner for a prohibited person to engage in the business of insurance in Iowa.

“Dishonesty” means any criminal act which includes, but is not 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 or the failure to disclose material facts.

“Division” means the Iowa insurance division.

“Felony” means the following:

1. A federal crime for which the maximum authorized punishment exceeds one year of imprisonment; or

2. A crime in any state or country that is identified as a felony in that state or country or, if not identified as a felony in that other state or country, any offense for which the maximum authorized punishment exceeds one year of incarceration.

“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, producer, or employee of that business.

“License” means any license, registration, certificate of authority or other permit or approval issued or granted by the commissioner.

“Prohibited person” means any person who is a resident of Iowa and who has been convicted of any felony crime involving dishonesty or breach of trust in a state or federal jurisdiction or who has been convicted of any violation of the Act.

“Request for consent” means a completed application, submitted by a prohibited person, that requests the commissioner’s consent to allow that prohibited person to engage in or transact, or to continue to engage in or transact, the business of insurance in Iowa.

“State,” for the purposes of this chapter, includes any state of the United States, 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.

191—13.3(505,522B) Requirement for prohibited persons to obtain consent.

13.3(1) A prohibited person shall not engage in or transact the business of insurance in the state of Iowa without the consent of the commissioner of insurance of the person’s resident state.

13.3(2) A prohibited person who is a resident of Iowa must receive a consent from the commissioner before the division will consider any application or request for a license, certification, certificate of authority, or other permit or approval issued or granted by the division related to engaging in or transacting the business of insurance in Iowa.

13.3(3) A prohibited person engaging in or transacting the business of insurance in Iowa without the consent of the insurance commissioner of the person's resident state is in violation of these rules, is subject to the penalties of this chapter, and risks federal criminal and civil sanctions and penalties.

191—13.4(505,522B) Applications for consent. The prohibited person must file with the division an application for consent as set forth in this rule.

13.4(1) Except as provided in subrule 13.4(2), a prohibited person who is, or seeks to be, employed in any capacity in the business of insurance in Iowa shall complete and file an application for consent using the "Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 and 1034." The form is available on the division's Web site at www.iid.state.ia.us or is available by request from the division.

13.4(2) The commissioner may at any time request additional information from an applicant to support a pending application for consent. Failure to provide such information is grounds for denial of the application.

13.4(3) An application must include:

a. Two 2" x 2" recent passport-type photographs attached to the upper right-hand corner of the first page of the application for consent.

b. A certified copy of the applicant's criminal history record both from the applicant's state of residence and from the state in which the felony was committed if different from the state of residence. A Record Check Request form may be obtained from the Iowa division of criminal investigation at: www.state.ia.us/government/dps/dci/crimhist.htm.

c. A certified copy of court documents that demonstrate completion and performance of all conditions imposed by the court.

d. An affidavit from the immediate supervisor or potential immediate supervisor for the entity that employs the applicant or that seeks to employ the applicant stating in detail the duties and responsibilities which the applicant will perform and for which the applicant seeks consent.

e. Any other relevant documents or information that the prohibited person would like to have considered.

13.4(4) Upon the occurrence of any event that would change any answer on the application, an amendment must be promptly filed. Failure to file an amendment may result in denial of the request for consent or the immediate suspension or revocation of a previously granted consent.

191—13.5(505,522B) Consideration of applications for consent.

13.5(1) The commissioner shall have the sole discretion to grant or deny an application for consent to engage in or transact the business of insurance.

13.5(2) Each decision of whether or not to grant consent to engage in or transact the business of insurance to a prohibited person will be handled on a case-by-case basis. Factors to be considered include, but are not limited to, the following:

a. The nature and severity of the crime;
b. The length of time since the conviction;
c. The injury or loss caused by the prohibited person;
d. Whether the conviction is related to the business of insurance;
e. Whether the prohibited person received a pardon from the authority that convicted the person and whether the pardon was granted due to the innocence of the person;

f. Whether the prohibited person completed parole or probation;
g. Whether a breach of trust or dishonesty was involved;
h. The nature and strength of character reference letters;
i. The person's business and personal records before and after the conviction;
j. Whether and to what extent the person has made material false statements in an application, renewal or other documents filed with the commissioner;

k. Whether and to what extent the person has made material false statements in applications or other documents filed with other agencies of this state or of other states or with federal agencies;

- l.* Whether the prohibited person's conviction was expunged;
- m.* Whether or not the person received the conviction in a foreign country; and
- n.* Any additional relevant factors.

191—13.6(505,522B) Review of application by the division.

13.6(1) A completed application shall be reviewed by the commissioner, and the following shall be considered:

- a.* The information submitted by the applicant;
- b.* The factors set forth in subrule 13.5(2); and
- c.* Any mitigating or aggravating circumstances.

13.6(2) At the commissioner's discretion, the commissioner may convene a hearing to receive evidence and testimony about the application.

13.6(3) If the commissioner determines that the applicant does not seem to constitute a significant threat to the public, the commissioner shall issue the consent and specify its scope.

13.6(4) If the commissioner determines that the applicant does seem to constitute a significant threat to the public, the commissioner shall deny the application. Notice of the denial shall be sent to the applicant via certified mail to the address on record with the division, return receipt requested. The prohibited person shall have 30 days to request a hearing with the commissioner.

13.6(5) The application and materials supplied with the application or at the request of the division and any information obtained by the division during the course of its review shall be considered information submitted to the insurance division or obtained by the insurance division in the course of an investigation for purposes of Iowa Code section 505.8(8), and the commissioner shall keep such information confidential. A consent issued by the commissioner shall be deemed a public record for purposes of Iowa Code chapter 22; however, Iowa Code section 505.8(9) also shall apply.

191—13.7(505,522B) Consent effective for specified positions and responsibilities only. A consent issued by the commissioner shall be effective only so long as the prohibited person remains in the same or similar job position with the same or similar responsibilities to which the person attested in the initial request for consent. A material change in job responsibilities requires the prohibited person to file an amended request for consent.

191—13.8(505,522B) Change in circumstances.

13.8(1) *Failure to disclose.* In the event that the division determines that the prohibited person receiving the consent made materially false or misleading statements, or failed to disclose material information in the application for consent, the consent shall be suspended or revoked. The prohibited person shall have 30 days to request a hearing with the commissioner.

13.8(2) *New felony.*

a. A prohibited person who previously received consent from the commissioner to participate in the business of insurance shall immediately notify the division if that person is subsequently convicted of an offense under the Act, or of any felony offense involving dishonesty or breach of trust.

b. The entry of a new conviction shall automatically terminate the prior consent.

c. When the division becomes aware of the new conviction, it will inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been revoked.

d. The prohibited person may seek a new consent from the commissioner pursuant to the Act and to this chapter after reporting the new conviction.

13.8(3) *Violation of terms of consent.* If the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The prohibited person shall have 30 days to request a hearing with the commissioner.

13.8(4) *Suspension of insurance producer license.* The commissioner may summarily suspend the insurance producer license of a prohibited person for any of the actions described in subrule 13.8(1),

13.8(2) or 13.8(3) if the person has been issued a license by the division. A hearing shall be scheduled in accordance with Iowa Code chapter 17A to determine whether the person's license should be revoked.

191—13.9(505,522B) Burden of proof. The burden of proof of persuasion and of the production of evidence at a hearing regarding a request for consent is on the prohibited person. The person shall have to demonstrate by clear and convincing evidence that the person is not a threat to the public interest and public safety.

191—13.10(505,522B) Violations and penalties. A prohibited person who engages in the business of insurance without the consent of the commissioner or otherwise in violation of this chapter shall be deemed to be in violation of Iowa Code section 522B.2 and shall be subject to the penalties provided in Iowa Code section 522B.17.

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

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