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DANIEL A. GRABAUSKAS
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AND BUSINESS REGULATION

Bulletin 98-11

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

FROM: **Commissioner Linda Ruthardt**

DATE: **September 21, 1998**

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

This Bulletin is intended to advise all persons and entities engaged in or contemplating being engaged in the business of insurance in Massachusetts of the implications of the federal "Violent Crime Control and Law Enforcement Act of 1994," Title 18 U.S. Code, Sections 1033 and 1034 ("the Act") signed into law on September 13, 1994. The Act included new federal criminal and civil enforcement provisions aimed at white-collar crime and insurance fraud.

Under the Act, it is a criminal offense for anyone "engaged in the business of insurance" to willfully permit a "prohibited person" to conduct insurance activity. Section 1033 specifies certain activities as crimes if they are carried out by individuals, agents and employees engaged in the business of insurance. Section 1034 authorizes the U.S. Attorney General to bring civil actions against a person who engages in conduct constituting an offense under the previous section. A civil penalty does not preclude the application of any other criminal or civil statutory, common law or administrative remedy otherwise available.

Notification Requirements: A "prohibited person" is an individual who has been convicted of any felony involving dishonesty or a breach of trust or who has been convicted of an offense falling under this section and who willfully engages in the business of insurance as defined by the Act. A "prohibited person" who is engaged or intends to be engaged in the business of insurance in Massachusetts must notify, in writing, the Division of Insurance of their status and whether he or she seeks the written consent of the Commissioner. Any entity conducting insurance activity has the responsibility of notifying, in writing, the Division of Insurance of all employees and agents who are affected by this law and have them apply for an exemption or otherwise have such individuals cease or desist from their engagement. An insurer domiciled in a state other than Massachusetts which has agents or employees who transact business in

Massachusetts shall forward, in writing, the names of each employee or agent who is deemed to be a "prohibited person" to the Massachusetts Division of Insurance.

Applications for Written Consent: Every "prohibited person" may not engage in the business of insurance unless and until that person has received the specific written consent to do so from the Commissioner of Insurance with appropriate jurisdiction. Such consent must specify that it is granted for the purpose of Title 18 U.S. Code, Section 1033. Written consent from the appropriate regulatory official of other states should be likewise forwarded to the Massachusetts Division of Insurance if it has already been obtained.

Upon written notification and application for such consent, the Commissioner may request any relevant information to assist in the determination of the issue and will decide whether to grant or deny such consent on a case-by-case basis. The Division of Insurance encourages applicants to provide full and complete disclosure of such relevant information.

Specific inquiries concerning this Bulletin and applications for written consent should be addressed to the Massachusetts Division of Insurance's Office of the General Counsel.

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MEMORANDUM

TO: Commissioner Linda Ruthardt
First Deputy Commissioner Julianne Bowler

FROM: Michael T. Caljouw, Deputy General Counsel

CC: Daniel Judson, Acting General Counsel (& section members)
Craig Spratt, Assist. Commr. for Market Conduct (& section members)
Robert Dynan, Director of Financial Analysis
John Ritacco, Director of Financial Examination and Chief Examiner
Kevin Beagan, Director of Health Policy Unit
Matthew C. Regan, Chief Enforcement Counsel
James Kielty, Director of Special Investigations Unit
Burt Kagan, Acting Director of A & B Licensing (& section members)
Bob MacNicholl, Acting Director, State Rating Bureau
James Wright, III, CPCU, State Rating Bureau

RE: Bulletin and Internal Procedures Concerning Federal Violent Crime Control and Law Enforcement Act of 1994

DATE: September 21, 1998

Along with Bulletin 98-11 routed to all licensees, insurers and other interested parties, the following provides a summary of the Federal Violent Crime Control and Law Enforcement Act of 1994 and the internal procedures concerning the grant or denial of written consent to "prohibited persons."

I. Summary of Act

On September 13, 1994, President Clinton signed into law the omnibus anti-crime bill titled the "Violent Crime Control and Law Enforcement Act of 1994" (Public Law 103-322, H.R. 3355) ("Act"). The Act is quite broad in its application, particularly within the so-called insurance fraud provisions contained within sections 1033 and 1034.

18 U.S.C. § 1033 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, but are not limited to:

- 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;
- 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 communcation, 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 of 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 Section 1033. Further, other individuals shall not willfully permit the participation of an individual so convicted.

"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. "Business of insurance" is likewise broadly defined to include the writing of insurance or the reinsuring of risks by an insurer. This includes 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.

The Act is, thus, applicable to all present and prospective employees of insurers, whether working directly or indirectly, and appears to include consultants, third-party administrators and professionals so working (including law and accounting firms). Further, there is no "grandfather" clause for persons already working in the insurance realm.

II. Reporting Criminal Violations to Division Officials

Upon acquiring knowledge of any convictions, all Division employees shall inform the Special Investigations Unit, the Chief Enforcement Counsel and the Acting Director of Agent and Broker Licensing of any licensees or corporate officials/ representatives of licensees who are convicted of criminal offenses covered by the Act. The Chief Enforcement Counsel shall notify the Office of the General Counsel of such information.

III. Applicants and Licensees Subject to the Act

In the event that an applicant or licensee is subject to the Act, the Chief Enforcement Counsel shall do the following:

1. Inform the person of the criminal offense set forth in the Act;
2. Inform the person that a written consent from the Commissioner is required pursuant to 18 U.S.C. § 1033(e)(2);
3. Inform the person that a written request for written consent must be filed by the requestor within thirty (30) days of notification – i.e. that letter.

Such notification shall be made by certified mail, return receipt requested, and shall include a copy of the Act and the attached Bulletin. In corporate cases, said notification shall be mailed as above to both the company and the individual official at issue.

The Chief Enforcement Counsel shall notify other NAIC members, via electronic or regular mail, of the name, address, employer and social security number of all requestors and shall allow a reasonable time for NAIC members to respond if there is any relevant information concerning the person.

IV. Written Consent Required

"Prohibited persons," as detailed in the following Bulletin, must notify the Division of their status and may request written consent from the Division in order to work in the field of insurance in Massachusetts. Said request for consent must be made in writing, must reference the statutory provision at issue (18 U.S.C. § 1033(e)), and be addressed jointly to the Office of the General Counsel and the Chief Enforcement Counsel, Division of Insurance, 470 Atlantic Avenue, Boston, MA 02110-2223. The request for written consent shall contain the following items:

- A notarized signature of the person making the request with an oath that it is made under the pains and penalties of perjury;
- The requestor's social security number;
- A waiver consisting of the following language: "The undersigned expressly gives the Massachusetts Division of Insurance authorization to access and inspect all criminal and probation records pertaining to the undersigned. This waiver expressly applies to information maintained by the Massachusetts

Criminal History Systems Board and other agencies, both federal and state, maintaining such information. The undersigned expressly acknowledges that the Massachusetts Division of Insurance may request and have access to any other records and information it deems relevant and useful in the determination of the issues presented by this request."

After receiving written request for consent, the Chief Enforcement Counsel or his designee shall notify, in writing, all applicants for written consent within thirty (30) days of the receipt of the request that such request has been received, whether the initial items above have been proffered accordingly and inform the individual of the following requirements:

- Requirement for Character References – The Division shall require, at minimum, four (4) character references be submitted, directly to the Division by the individual writing the reference, on behalf of persons filing for written consent. Such references shall state how long and in what capacity the person knows or knew the requestor and shall speak to actual instances revealing the requestor's demonstrated character, particularly as to the requestor's veracity, trust, honesty and other character traits as they relate to employment. Such references shall also indicate that the person providing the reference is aware that 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 conviction.
- Requirement for Production of Documents – The Division shall require all persons seeking written consent to submit, within thirty (30) days of the request, certified copies of all relevant court documents together with any other documents or information the requestor wishes to be considered. The Division may also include requests for other documents or information which it deems relevant and useful in the determination of the issues presented by the request.

As an initial matter, upon receipt of the Criminal History Systems Board "waiver" from the requestor or upon proper authority to otherwise access such records, the Division's Special Investigations Unit and Chief Enforcement Counsel shall proceed with a Criminal History Systems Board check and provide any information produced thereto to the Commissioner or the appropriate designee. The Division shall also forward the following Interrogatories which shall be answered under oath within thirty (30) days of receipt. The Division may supplement or amend these Interrogatories with further questions in its discretion either during the initial forwarding of Interrogatories or at any time subsequent thereto. While the relevant information which may be requested will differ from case to case, the standard Interrogatories should include the following:

1. Please prepare a signed affidavit, and two copies, setting forth the following personal history:

   a. Place and date of birth; whether or not you are a citizen of the United States;

b. Full names and addresses of all schools attended and degrees obtained;
c. Each and every marriage, including a statement concerning whether any relatives, by blood or marriage, are currently serving in any capacity with any insurer or insurance agency;
d. Home address; mailing address (if different); home telephone number; work address; work telephone number; social security number;
e. Full names and addresses of each place of employment, including any military history, in chronological order from your first employment to the present date;
f. All arrests and convictions for felonies, misdemeanors or offense(s) and all imprisonments, jail terms, probationary periods and parole periods resulting therefrom;
g. Are there any mitigating circumstances surrounding your commission of the offense(s) listed in (e) above? If yes, please explain;
h. List all evidence that exists regarding your rehabilitation and set forth your present fitness or ability to perform your duties, activities or responsibilities proposed to be performed;
i. Please list the names and locations of all insurers for which you have advised, represented or in any manner worked with regard to the writing of insurance or the reinsuring of risks, including but not limited to 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 such insurer;
j. Please indicate whether written consent has been requested from any other Commissioner of Insurance, and if so, list the current status of said request;
k. Please set forth your net worth, including all assets held by you, or held in the names of others for you, the amount of each liability owed by you, or by you together with any person and the amount and sources of all income during the immediately preceding five (5) calendar years prior to the date of this application.

2. Please list below the details regarding all felony convictions and whether or not your civil and political rights have been restored (and, if so, the manner in which they have).
3. Please list fully the date(s) of the offense(s), your age on such date(s) and the time which has elapsed since the offense(s).
4. Please indicate whether or not you have made full payment of all court costs and supervision fees, fines and restitution concerning the offense(s).
5. Please specify the name and location of the insurer(s) or insurance agency with which you are currently employed or otherwise work and the dates of your employment, title, employer and employment address for any work which you have performed which was, in any way, associated with the insurance field.
6. Please describe in detail the office, position, title, etc. you will hold and a complete description of the activities and responsibilities which you seek to perform and for which the issuance of written consent is requested. Please attach all written agreements and contracts that you have entered with any insurer(s) or agency or that you prospectively seek to enter. N.B.: If consent is given, it will be applicable <u>only</u> to the activities described herein.

Persons alleged to have been aggrieved by the Commissioner's denial of a request may, of course, seek the ordinary course of redress to the appropriate court pursuant to Massachusetts General Law. The record on appeal shall include the request for written consent, any documents or information provided by the requestor or other relevant information obtained by the Division from outside sources and all correspondence to and from the requestor as otherwise permitted under Massachusetts law.

VI. Subsequent Convictions of Persons Previously Granted Consent

Upon discovering that a person previously granted written consent has been convicted of an offense under the Act or any other felony offense involving dishonesty or breach of trust subject to the provisions of the Act, said person shall be informed in writing via certified mail, return receipt requested, that the previously granted consent has been withdrawn and that engaging in the business of insurance is now prohibited by the Act. The Special Investigations Unit shall be provided with such information and other relevant documentation for further action, if needed.

VII. Failure to File Proper Request for Written Consent or Provide Information

If a requestor fails to file a complete or timely request or otherwise fails to proffer requested information or documents fully and promptly, the request shall be deemed to be abandoned. In such an instance, the Chief Enforcement Counsel shall file a Show Cause Order for revocation of licensure as otherwise appropriate and within the discretion of said counsel.

VIII. Applicability

The policies outlined in the present memorandum shall take effect immediately and shall apply to all matters, both pending and future, falling within the scope of the Act.