

ALABAMA DEPARTMENT OF INSURANCE
ADMINISTRATIVE CODECHAPTER 482-1-146
CRIMINAL HISTORY DISCLOSURE AND 18 U.S.C. §1033 CONSENT

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482-1-146-.01 Authority. This chapter is adopted pursuant to Code of Ala. 1975, §27-2-17 (1975) to effectuate provisions in Title 27 relating to licensing and aspects of 18 U.S.C. §1033 granting authority to state insurance regulatory officials.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.02 Purpose And Scope.

(1) The purpose of this chapter is to specify the requirements and procedures for furnishing individual criminal history information and for Department actions based on that information in determining:

- (a) Whether to issue or renew a license.
 - (b) The applicability of 18 U.S.C. §1033(e).
 - (c) Whether to grant the consent required under 18 U.S.C. §1033(e).
- (2) This chapter applies to:
- (a) Any individual holding or initially applying for or seeking renewal of an existing license issued by the Department who, as part of the application or renewal process, discloses a criminal history or about whom the Department otherwise discovers an undisclosed criminal history.
 - (b) Any individual who must obtain the consent of the Commissioner to engage in the business of insurance as required by 18 U.S.C. §1033(e)(2).

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.
Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.03 Definitions. As used in this chapter, these words and terms have the following meaning, unless the context clearly indicates otherwise:

(a) **BUSINESS OF INSURANCE.** For purposes of 18 U.S.C. § 1033, the business of insurance is either the writing of insurance, or the reinsuring of risks, by a Section § 1033 insurer (as defined in 482-1-146-.03(i)), 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.

(b) **COMMISSIONER.** The Alabama Commissioner of Insurance.

(c)1. **CRIMINAL HISTORY.** Misdemeanor and felony crimes and criminal offenses in any jurisdiction, including Federal and military crimes or criminal offenses, that resulted in an individual's arrest, detention, indictment, or the fact of a

formal charge however named or characterized and irrespective of the ultimate disposition of the charge. Criminal history includes criminal offenses in which the fact of an arrest or conviction for an offense, the circumstances of the offense, or records relating to the offense, have been "expunged" unless it is demonstrated to the Department's satisfaction that the laws of the jurisdiction where committed specifically allow the individual to withhold disclosure or represent that the individual has not been arrested or convicted for the offense in the context of employment or license applications.

2. For purposes of this chapter, an individual's criminal history does not include any of the following:

(i) Traffic violation notices for parking or similar infractions.

(ii) Citations or misdemeanor charges for violations relating to violation of laws or ordinances pertaining to operation of motor vehicles or watercraft (including misdemeanor DUI or DWI, driving without a license or proof of insurance or with a suspended license, or reckless driving).

(iii) Crimes or offenses processed and disposed of as juvenile offenses by the jurisdiction within which the charges arose if the laws of that jurisdiction treat the fact of juvenile offenses as confidential and records associated with them as sealed or otherwise not subject to public disclosure.

(d) CRIMINAL HISTORY DISCLOSURE FORM. The form promulgated by the Department through which an individual discloses detailed information about his/her criminal history to the Department for purposes of this chapter. At the Department's election, the form may be paper or electronic.

(e) DEPARTMENT. The Alabama Department of Insurance.

(f) FELONY. A criminal offense that is either:

1. If committed in Alabama, an offense for which the sentence authorized by law includes the possibility of a term of imprisonment exceeding one year.

2. If committed outside of Alabama, an offense that the laws of the jurisdiction where the offense is committed categorize as a felony.

(g) LICENSE. Any form of license issued to an individual by the Commissioner under the authority of the Alabama Insurance Code together with the extension or renewal of that license.

(h) SECTION 1033 CONSENT. The written consent provided for by 18 U.S.C. §1033(e)(2).

(i) SECTION 1033 INSURER. An entity engaged in the business of insurance whose activities affect interstate commerce as provided in 18 U.S.C. §1033(f).

(j) SECTION 1033 OFFENSE. Criminal offenses under Section 1033 shall include those crimes:

1. Specifically enumerated in 18 U.S.C. §§1033(a), -(b), -(c), -(d), -(e)(1)(A), and -(e)(1)(B).

2. Any felony, as determined by the Department, that involves dishonesty or breach of trust.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.04 Criminal History Disclosure Requirements.

(1) A completed criminal history disclosure form and all documentation requested in applicable portions of the form must be submitted by any individual:

(a) Who discloses a criminal history in an application for a license or in the context of renewing an existing license. An individual who is renewing an existing license may be relieved from completing and submitting the form or documentation if the criminal history was previously disclosed to the Department in writing in the context of an initial application or an earlier renewal or otherwise.

(b) Who is notified by the Department of the Department's discovery of the individual's undisclosed criminal history.

(c) Who, though currently the holder of a license issued by the Commissioner, has a disclosed or undisclosed criminal history including Section 1033 offenses and is subject to the consent requirements of 18 U.S.C. § 1033(e) but has not received a Section 1033 consent from the Commissioner or an appropriate insurance regulatory official.

(d) Who, with a criminal history, is working or proposes to work in an unlicensed capacity in the business of insurance and is subject to the consent requirements of 18 U.S.C. §1033 (e). Such individual will be excepted from this requirement only if such individual has previously disclosed the criminal history to the Department in writing and has received a Section 1033 consent from the Commissioner applicable to the individual's position and employer based on that history or has been advised in writing by the Department of the Department's position that the consent requirement of 18 U.S.C. §1033(e) is not applicable.

(2) At any time, the Department may request that the individual submit:

(a) Additional information and documentation beyond that requested in the criminal history disclosure form to the extent the Department determines such additional information or documentation to be relevant as to whether a license should issue or be renewed and/or a Section 1033 consent granted.

(b) To an in-person interview and/or telephone interview by Department personnel concerning the circumstances disclosed in the criminal history disclosure form and supporting documentation.

(3) The Department may conduct additional background checks or investigations as part of the review process.

(4) The Department will withhold action on an initial license application, a license renewal application, and a request for a Section 1033 consent until receipt of a properly completed and documented criminal history disclosure form and, if requested, any additional or supplemental information, any personal or telephone interview, and further background investigation, if any, conducted by the Department.

(5) The following will be deemed withdrawal of any pending request for a license or license renewal or for a

Section 1033 request and cause a denial of the application or request:

(a) Failure of an applicant for a license or for renewal of a license and/or a Section 1033 consent to return a properly completed and documented criminal history disclosure form within the time stipulated by the Department.

(b) Failure to furnish any supplemental information requested by the Department within the time stipulated by the Department.

(c) Failure to submit to a personal or telephone interview if requested by the Department.

(6) The failure of a license holder to return a properly completed and documented criminal history disclosure form within the time period stated in an official communication from the Department transmitting the form will subject the license holder to administrative action by the Department.

(7) A completed and documented criminal history disclosure form may serve as the basis for additional administrative action against an applicant for, or holder of, a license.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.

Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.05 18 U.S.C. §1033(e) Consent Requirement.

(1) The Commissioner is designated as the insurance regulatory official in Alabama who may issue written consent as described in 18 U.S.C. §1033(e)(2).

(2) An individual who has been convicted of a Section 1033 offense and who is, or proposes to be, employed by and/or act as an agent for or otherwise on behalf of a Section 1033 insurer in a capacity for which a license is required must have a Section 1033 consent in addition to the applicable license.

(3) An individual who has been convicted of a Section 1033 offense and who is, or proposes to be, an officer,

director, employee, or other agent of a Section 1033 insurer in a capacity for which a license is not required must have a Section 1033 consent unless the Department determines that, due to the individual's particular position and responsibilities with the insurer, a Section 1033 consent is not required.

(4) An individual who is not an Alabama resident and who is applying for a non-resident license in Alabama must obtain from the appropriate insurance regulatory official in his/her resident licensing jurisdiction a Section 1033 consent specific to the applicant's Section 1033 offense(s) and to the activities in the business of insurance which the applicant proposes to engage in if granted an Alabama license or a written determination from such official that the requirement for Section 1033 consent is not applicable. The Department may require the applicant to submit a copy of the Section 1033 consent application materials relied upon by the resident licensing jurisdiction in addition to, or in lieu of, a criminal history disclosure form. Alabama will recognize a Section 1033 consent or determination of Section 1033 non-applicability issued from a non-resident applicant's resident licensing jurisdiction as a Section 1033 consent or determination of Section 1033 non-applicability for activities in the business of insurance in Alabama within the scope of that consent or determination and for purposes of this Chapter if the issuing jurisdiction gives the same effect to Section 1033 consents or determinations of Section 1033 non-applicability issued to residents of Alabama by the Commissioner. The Department may request the appropriate insurance regulatory official in the resident jurisdiction to certify that the jurisdiction gives reciprocal effect to Section 1033 consents or determinations of non-applicability issued from Alabama.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.

Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.06 Determination Of Applicability Of 18 U.S.C. §1033(e) Consent Requirement.

(1) Based on information disclosed in the criminal history disclosure form and the form's supporting documentation and from any other sources, the Department, through the Department's legal division, will determine whether a criminal

conviction was for a Section 1033 offense. That determination will include whether the criminal offense was a felony involving dishonesty or breach of trust to the extent the offense is not one otherwise described in 18 U.S.C. §§ 1033(a), -(b), -(c), -(d), -(e)(1)(A), and -(e)(1)(B).

(a) In general, any felony which, under the applicable laws of the jurisdiction where committed, includes one or more elements of deceit, untruthfulness, or falsification will be deemed a felony involving "dishonesty" for purposes of applying the Section 1033 consent process. Representative examples include felonies equating with or involving perjury, bribery, embezzlement, forgery, counterfeiting, fraud, or making false statements.

(b) In general, any felony which, factually or as an element of the offense, involved breach of a fiduciary-type duty imposed by the applicable laws of the jurisdiction where committed will be deemed to be a felony involving a "breach of trust" for purposes of applying the Section 1033 consent process.

(2) The Department's determination that a Section 1033 consent is not required does not affect the determination about whether a license should issue or be renewed in light of an individual's criminal history. If, in the context of a pending application for a license or renewal of a license, the Department determines that a Section 1033 consent is required in addition to the license, the matter of the consent will be processed in conjunction with the determination of whether the license should be issued or renewed.

(3) In the case of a non-licensed officer, director, employee, or agent of an insurer, the Department will determine from the criminal history disclosure form and any additional documentation whether a Section 1033 consent is required. The Department, in its discretion, may determine in particular instances and based on the specific circumstances that a non-licensed individual does not require a Section 1033 consent because the individual is not an officer, director, or within management of the Section 1033 insurer and the individual's employment responsibilities with the insurer or the actual scope of authority delegated by the insurer do not involve any of the following:

(a) Activity directly relating to the actual insuring or reinsuring of risks.

(b) Responsibility for, or ability to, make entries in the insurer's financial records.

(c) Responsibility for preparing and submitting any filings by the insurer to the Department.

(d) Responsibility for or direct involvement in interactions between the insurer and representatives of the Department.

(e) Responsibility for, or access to, an insurer's monies, funds, or other financial assets.

(4) An individual or entity may not rely upon a representation about whether a felony is a Section 1033 offense or whether a non-licensed employee or agent of an insurer must obtain a Section 1033 consent unless the determination is expressed in writing and signed by an appropriate Department representative.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.07 Review Process.

(1) The Department's legal division will initially screen a submitted criminal history disclosure form and supporting documentation, together with any supplemental information, to determine either or both of the following:

(a) Whether the individual has been convicted of a felony.

(b) Whether any felony conviction was for a Section 1033 offense.

(2) If an individual's criminal history disclosure form and supporting documentation discloses a criminal history including one or more prior felony convictions and/or a felony conviction(s) for Section 1033 offense(s), the form and documentation will be referred to and reviewed by a Review Committee consisting of Department employees. The Review

Committee shall recommend to the Commissioner (i) if a license should be issued or renewed and, if applicable due to the existence of a Section 1033 offense, (ii) whether or not a Section 1033 consent is required and, if so, should be granted. As part of the review and recommendation process, the Review Committee may request that an individual provide further or supplemental information or documentation and/or may request that the individual participate in a personal or telephone interview conducted by Department employees designated by the Review Committee.

(3) As a time standard only, the Review Committee will make reasonable efforts to furnish its recommendation to the Commissioner within fifteen (15) days after all information and documentation, including any personal or telephone interviews, if requested, has been furnished by the individual or conducted.

(4) The Review Committee's recommendation to the Commissioner will consider the following factors as may be applicable:

- (a) The nature and severity of the offense(s).
- (b) The particular circumstances of the offense(s).
- (c) The nature and extent of injury or loss to other persons or property as a result of the offense(s).
- (d) Whether the offense(s) involved is related to activities in the business of insurance or the exercise of any professional or other license or authority conferred by a Federal, state or local governmental agency.
- (e) The sentence imposed and whether all aspects of the sentence were satisfactorily completed, including satisfactory performance of any conditions imposed incident to probation, parole, or early release and payment of all fines, penalties, or other assessments.
- (f) Whether the individual has received a pardon and/or restoration of civil and/or political rights.
- (g) The time that has elapsed since the conviction and/or completion of any sentence imposed.
- (h) Any aggravating or mitigating factors.

(i) Any relevant evidence tending to demonstrate contrition or rehabilitation.

(j) If reasonably known, prior decisions made on applications presenting similar circumstances.

(k) If applicable, whether other jurisdictions have granted or denied a Section 1033 consent.

(l) Such other factors that the Review Committee may deem relevant for consideration in the context of a specific situation.

(5) The Review Committee's recommendation may, but is not required to, generally state the reasons for the recommendation.

(6) The Commissioner is vested with the authority to approve issuance or renewal of a license and to issue a Section 1033 consent. The recommendation(s) of the Review Committee are advisory only and are not binding on the Commissioner.

(7) An application for a license will be considered in conjunction with a request for any required Section 1033 consent. A decision to grant or deny a license will result in the same action as a pending request for a Section 1033 consent relating to the license.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.

Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act. **Revised:**

December 15, 2009; effective January 1, 2010. Filed with LRS December 17, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.08 Limitations On Section 1033 Consent.

(1) The Commissioner may impose reasonable conditions or terms on a Section 1033 consent, including a condition that the consent is temporary. A subsequent violation of any such conditions or terms may cause the Commissioner, in his or her discretion, to cancel or withdraw the Section 1033 consent and,

in the case of a consent granted to a licensee, may result in other administrative action by the Department.

(2) Whether or not specifically provided in the Section 1033 consent, every Section 1033 consent granted by the Commissioner is conditioned upon the accuracy, truth, and veracity of the criminal history disclosure form and all supporting documentation or information provided by an individual. The Commissioner reserves authority to cancel or withdraw a Section 1033 consent if it is subsequently demonstrated that the individual receiving the consent made materially false or misleading statements, provided false or misleading documents or written information, or failed to disclose information material to the question of whether a Section 1033 consent should have been initially granted.

(3) Whether or not specifically provided in the Section 1033 consent, every Section 1033 consent granted by the Commissioner is conditioned upon the recipient of the consent not being convicted of a felony after the consent issues and during the time of its effectiveness. The Commissioner reserves authority to cancel or withdraw a Section 1033 consent if the recipient is subsequently convicted of a felony.

(4) Unless otherwise specifically provided in the Section 1033 consent itself, a Section 1033 consent shall be limited in effect to the specific employment or contractual position for which granted.

(5) An individual who has been granted a Section 1033 consent for the purpose of employment by or affiliation with a Section 1033 insurer in a non-licensed capacity must advise the Department about any change in the individual's position or material change in the scope of the individual's duties or responsibilities. The Department, in its discretion, may require the individual to request a new Section 1033 consent and/or to provide additional information.

(6) A Section 1033 consent alone does not authorize the recipient to lawfully engage in any actions for which a license is required.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.09 Hearing.

(1) An individual may, in writing, request a hearing before the Commissioner as authorized by Ala. Code § 27-2-28(b) if the individual has been:

(a) Denied a license.

(b) Denied a Section 1033 consent.

(c) Adversely affected by any other action or failure to act within the scope of this chapter.

(2) Any hearing will be conducted in accordance with the procedural requirements in Chapter 482-1-065 applicable to the nature of the hearing.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.

Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.10 Records. A completed criminal history disclosure form and documentation submitted with that form, together with any written recommendation of the Review Committee within the scope of Rule 482-1-146, are designated as confidential and are not public records for the purposes of any statutes governing public access to government records.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.

Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.11 Responsibilities Of Section 1033 Insurers.

(1) A Section 1033 insurer subject to the Commissioner's examination authority shall have and apply the following:

(a) An internal procedure for determining, by means of background checks or investigations or otherwise, whether applicants for employment or individuals with whom the insurer intends to contract for activities in the business of insurance, whether or not in a capacity requiring a license, have a felony conviction for a Section 1033 offense.

(b) An internal procedure after initial employment or contracting, applied on a periodic basis, to ascertain the existence of a felony conviction for a Section 1033 offense.

(c) An internal procedure for assuring that affected employees or individual contractors have obtained and hold any required Section 1033 consent during the period of employment or contracting.

(2) Such procedures shall be maintained in a format capable of being furnished to the Department as part of the examination process or otherwise as requested by the Department.

(3) As part of an examination or otherwise, the Department may determine the existence of such procedures, whether and how they are being followed, and the effectiveness of the procedures.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.12 Referral For Criminal Prosecution Or Civil Penalty. The Commissioner or another authorized representative of the Department may at any time refer any circumstances suggesting a willful violation of 18 U.S.C. §1033(e) by any individual or entity to the appropriate law enforcement agencies or prosecutorial authorities for further investigation, possible criminal prosecution, and/or proceedings to assess the civil penalty provided for in 18 U.S.C. §1034 in addition to any administrative or other action that the Commissioner or Department may take in light of the circumstances.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009. Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.13 Severability. If any portion of this chapter or its applicability to any person or circumstance is held invalid by a court, the remainder of this chapter or the applicability of the provision to other persons or circumstances shall not be affected.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.
Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-146-.14 Effective Date. This chapter shall be effective upon its approval by the Commissioner of Insurance, and upon its having been on file as a public document in the office of the Secretary of State for ten days.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 2009; effective July 1, 2009.
Filed with LRS June 12, 2009. Rule is not subject to the Alabama Administrative Procedure Act.