

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 138

April 6, 1999

SUBJECT: The Violent Crime Control and Law Enforcement Act of 1994

BACKGROUND: The importance of agent compliance with the Violent Crime Control and Law Enforcement Act of 1994 is a major issue for Louisiana agencies. Although there have not been any significant changes in the Act since it became law, there continue to be questions which indicate that more information is warranted.

MAIN POINTS: **Provisions Relating to the Insurance Business.** The Act makes it illegal for anyone to engage in the business of insurance after being convicted of a felony involving a breach of trust or dishonesty. The Act also makes it a crime for anyone to “willfully” permit such a felon to participate in the insurance business. The only exception to these restrictions is if the Louisiana Department of Insurance (LDI) waives the ineligibility of such a felon.

Application to Agents. The application of the Act to everyone engaged in the business of insurance makes its coverage fairly broad. The range of people covered include not only producers, but also all other employees, subcontractors and consultants participating in the business of insurance. The term “business of insurance” is broadly defined to include “all acts necessary or incidental to” writing insurance.

Penalties. The penalties for failure to comply with the Act’s restrictions against certain felons engaging in the business of insurance include a fine or imprisonment for up to 5 years, or both. In addition, prison terms can increase to 15 years for knowingly making false statements about certain issues to regulators and other intentional misconduct. Fines can be as high as \$50,000 per violation or the amount of compensation received or offered for the prohibited conduct, whichever is greater.

NECESSARY ACTION: There are some basic steps agents can take to proactively assure compliance with the Act. They are:

1. Obtain from LDI a copy of any guidelines it has prepared to implement the Act.

2. Institute procedures to identify individuals who now, or who may in the future, work in the agency and be subject to any restrictions imposed by the Act. Such procedures may include pre-employment screening via employment application questions concerning prior felony convictions and confidential discussions with current employees whose employment applications do not address prior felony convictions.
3. Request from LDI waivers for anyone engaged in the business of insurance with a prior felony conviction involving dishonesty or breach of trust. Obtain guidance from LDI about its policy concerning the ability of any such convicted felons to continue working for the agency, pending the grant or denial of the waiver.
4. Respond truthfully when applying for a license to transact the business of insurance and to any request or demand for information issued by LDI.
5. Treat information about the criminal records of others confidentially to assure dissemination to only those with a “need to know,” and avoid misuse of the information.
6. Seek legal counsel or direction from LDI, as appropriate, on questions concerning the act and its implementation.

For further information, IIAA has prepared answers to frequently asked questions about the act. Those questions and answers are attached.