



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

ADVISORY LETTER 2018-02

TO: ALL INSURANCE PRODUCERS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: EMPLOYING OR ALLOWING TO ASSOCIATE WITH YOUR BUSINESS, ANY PERSON ENGAGED IN THE BUSINESS OF INSURANCE WHO HAS BEEN CONVICTED OF A FELONY.

DATE: JULY 31, 2018

Louisiana law currently prohibits an insurance producer from employing in his business or allowing to associate with his business any person convicted of a felony. Act 299 of the 2018 regular session of the Louisiana Legislature (Act 299), which becomes effective on August 1, 2018, gives the Commissioner of Insurance the authority to allow an insurance producer to employ in his business or to associate with his business an individual previously convicted of a felony if the producer first obtains the written consent of or a waiver from the commissioner.

La. R.S. 22:1554(A) as amended by Act 299 provides:

“The commissioner may place on probation, suspend, revoke, refuse to issue, renew, or reinstate an insurance producer license, or may levy a fine not to exceed five hundred dollars for each violation occurring, up to ten thousand dollars aggregate for all violations in a calendar year per applicant or licensee, or any combination of actions, for any one or more of the following causes:

(18) A producer, without the consent of or a waiver from the commissioner, has employed or allowed to associate with his business, in any manner, any person engaged in the business of insurance who has been convicted of a felony under the laws of this state or any other state or territory, the District of Columbia, the United States, or any foreign country. As used in this Section, business of insurance means the writing of insurance or the reinsuring of risks by an insurance producer or 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 producers or insurers, or who are other persons authorized to act on behalf of such persons.”

The state law contained in La. R.S. 22:1554(A)(18) restricts the employment or the association with the business of Louisiana licensed producers of persons who have been convicted of a felony. It is incumbent upon producers to make a written request to obtain the consent of or a waiver from the commissioner if the producer intends to employ or allow to associate with his insurance business in any manner a person who has been convicted of any felony. The consent or a waiver is specific to and exclusively in favor of the hiring producer to avoid regulatory action by the commissioner as provided for in the statute.

La. R.S. 22:1554(A)(18) operates independently from the federal law contained in 18 U.S.C. 1033. That federal law places the responsibility of obtaining a waiver on individuals who have been convicted of a felony involving dishonesty or a breach of trust. Under 18 U.S.C. 1033, those individuals who are considered prohibited persons cannot engage in the business of insurance unless they are given written consent to work in the business of insurance by an appropriate insurance regulator. A written consent granted by an insurance regulator under 18 U.S.C. 1033 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 a matter of state law, just as it would have been in the absence of 18 U.S.C. 1033. State law requires a hiring producer to obtain the consent of or a waiver from the commissioner for any and all felony convictions of a potential or current employee. As a result, both the producer and the convicted felon will be required to obtain the consent of or a waiver from of the commissioner in some situations.

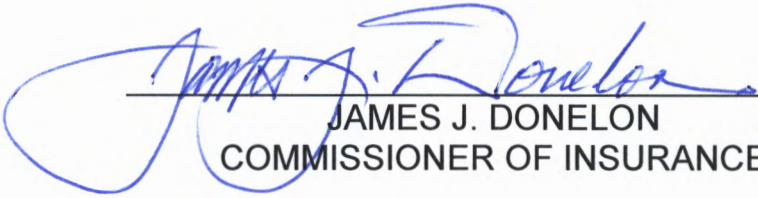
The failure of a producer to obtain the consent of or a waiver from the commissioner in compliance with Louisiana law pursuant to La. R.S. 22:1554(A)(18) may result in regulatory action against the producer which may include any of the following actions or a combination of actions: probation, suspension or revocation of your producer license, refusal to issue, renew or reinstate your producer license, and/or a fine of up to five hundred dollars for each instance.

Affected producers, those with current employees who have felony convictions, will have until December 31, 2018 to come into compliance with Act 299. Any employee hired after August 1, 2018 is immediately subject to R.S. 22:1554 (18) as amended by Act 299.

If you need to obtain the consent of or a waiver from the commissioner, you must do so in writing, either by mail, facsimile or email, to the Louisiana Department of Insurance, ATTN: Deputy Commissioner, Office of Licensing, P.O. Box 94214, Baton Rouge, LA 70802-9214, (225) 219-5941 or public@ldi.la.gov. Please provide the name of the person for whom you are requesting the consent or a waiver and a brief description of their conviction, including the crime, the jurisdiction where the conviction was obtained, the date of the conviction, and the sentence imposed. Documentation consisting of court records or official documents from the appropriate clerk of court or district attorney's office which clearly states the charge(s), plea, fine(s), restitution, probation and final outcome is required. Documentation of pretrial diversion and expungements is also required if applicable.

If the consent or waiver is denied, you have the right to an administrative hearing pursuant to La. R.S. 22:2191.

Baton Rouge, Louisiana this 31st day of July, 2018



JAMES J. DONELON
COMMISSIONER OF INSURANCE