

**ALABAMA DEPARTMENT OF INSURANCE  
ADMINISTRATIVE CODE**

**CHAPTER 482-1-146  
CRIMINAL HISTORY DISCLOSURE AND 18 U.S.C. §1033 CONSENT**

**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.