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Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
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04333-0034

Eric A. Cioppa
Superintendent

November 8, 2021

Senator Donna Bailey
Representative Rachel Talbot Ross
Criminal Records Review Committee
c/o Legislative Information office
100 State House Station
Augusta, ME 04333

Re: Use of Criminal History

Dear Senator Bailey, Representative Talbot Ross, and Honorable Members of the Committee:

Thank you for the opportunity to provide information about the Bureau's use of criminal history.

Any person who wants to be a producer, adjuster, consultant, or Affordable Care Act navigator in the State of Maine must have a license or certification from the Superintendent of Insurance.¹ Insurance professionals routinely handle confidential personal information, handle insurance premiums, and enter the homes of their clients. Applicants who have certain types of criminal convictions must disclose these convictions, including withheld or deferred judgments, and current criminal charges when they apply for a Maine license.²

It is not uncommon for the Bureau to receive applications from individuals with criminal convictions, including theft and fraud. The Bureau therefore uses criminal history information to evaluate and act on these applications, but we do not independently run criminal background checks when we review these applications. The types of convictions that would be material to determining an applicant's suitability for licensure include convictions for theft, fraud, and various types of deceptive insurance practices. Review of these convictions is essential to the Bureau's ability to ensure that our licensing decisions appropriately protect Maine consumers, businesses, and insurers. The Bureau issues unrestricted licenses to some applicants with criminal convictions, but we may issue a conditional license or deny an application depending upon the applicant's circumstances. An applicant may appeal any decision the Bureau makes concerning a license

¹ 24-A M.R.S. §§ 1411 and 2188. Section 2188, concerning navigators, gives the Bureau the authority to require background checks but we have not established that requirement in 02 031 CMR 950, Navigator Certification and Training for Health Benefit Marketplaces.

² 24-A M.R.S. § 1419. The Bureau may consider an applicant's convictions for Class C crimes (and greater offenses) and Class D and E crimes that involve dishonesty or false statement or directly relate to the business of insurance. See 5 M.R.S. §§ 5301 – 5303 and 24-A M.R.S. § 1420-K.



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application. The Superintendent must give prior notice to an applicant that an application will be denied, and the applicant has a right to a hearing before the Superintendent to argue why the application should be granted. Applicants also have a right to appeal a license denial to the Superior Court.

Furthermore, federal law prohibits individuals who have been convicted of felonies involving dishonesty or a breach of trust from participating in the business of insurance in any capacity without consent from a state insurance regulator.³ Absent consent, participation in the business of insurance and the willful employment of a prohibited person in the business of insurance are both subject to prosecution as federal felonies. The National Association of Insurance Commissioners (NAIC)⁴ has provided guidance to assist state insurance commissioners in the review of requests from prohibited persons for written consent; this guidance explicitly includes for consideration convictions for which the records have been expunged. If a Maine resident's conviction that results in their classification as a prohibited person is subsequently expunged, the Bureau would not be able to identify the applicant as a prohibited person. It is unclear if the prohibited person status would be retained in the event of an expungement and whether a person who hired the prohibited person would be in violation of federal law.

Licenses' criminal history information does not appear in the Bureau's on-line licensing system. Information in applications is public. Were we to receive a Freedom of Access Act request for someone's application, we would redact the person's Social Security number. We have a process, outlined on our website,⁵ for anyone who files information with us to seek confidential treatment. This would apply to someone who submits a license application.

Anyone applying for licensure as a new insurer must include the proposed officers' and directors' backgrounds, including criminal histories. This applies to anyone who acquires control of a domestic insurer. If the acquiring entity is a business entity, this requirement applies to its managers, directors, and controlling owners.⁶ The Bureau also requests similar criminal conviction information from applicants for licensure as producer business entities, adjuster business entities, and consultant business entities. Most business entities that apply for other types of licenses or registration do not need to submit criminal record disclosures or biographical affidavits. An insurance administrator must notify the Bureau if it or any person responsible for its affairs is convicted of a crime punishable by more than one year imprisonment.⁷ A supervising

³ See 18 U.S.C. § 1033(e). Although the federal law does not specify which state has authority to grant or deny consent, insurance regulators have agreed on guidelines designed to prevent individuals from forum shopping.

⁴ The National Association of Insurance Commissioners is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

⁵ See https://www.maine.gov/pfr/insurance/confidential_treatment.html.

⁶ 24-A M.R.S. §§ 222(4-C)(C) and 407(2).

⁷ 24-A M.R.S. § 1908.



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travel insurance producer must certify that the travel insurance retailers on its register have complied with 18 U.S.C. § 1033, discussed earlier, concerning felony convictions based on dishonesty or breach of trust.⁸

Over the past five years, the Bureau has issued more than 105,500 new producer and business entity licenses. In that same period, the Bureau has taken adverse licensing actions against only 13 individuals related to criminal convictions under 24-A M.R.S. § 1420-K(1)(F).

An insurer may non-renew a personal motor vehicle insurance policy if the named insured, household resident, or customary operator is convicted of certain operating offenses.⁹ The Bureau would not have records about this unless the named insured requested a hearing under the Automobile Insurance Cancellation Control Act. Records of the conviction would be part of the hearing file.

I hope this is helpful to the Committee. Please let me know if there is any other information that you need.

Sincerely,



Eric A. Cioppa
Superintendent of Insurance

⁸ 24-A M.R.S. § 7054(2).

⁹ 24-A M.R.S. § 2916-A. The reasons include among others conviction for operating while impaired, vehicular homicide or assault, speeding or reckless operating that results in injury or death, filing a false claim, and racing.



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