

GUIDING PRINCIPLES
FOR THE
QUALIFICATIONS
REVIEW OF INSURANCE
PRODUCER LICENSE
APPLICATIONS

OFFICE OF FINANCIAL
AND INSURANCE REGULATION

OCTOBER 2009



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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

Memorandum

DATE: October 13, 2009

TO: Ken Ross, Commissioner

FROM: Deborah Canja, OGC Managing Attorney

SUBJECT: Guiding Principles for the Qualifications Review of Insurance Producer Applications

Attached please find for your approval a document entitled "Guiding Principles for the Qualifications Review of Insurance Producer License Applications." The development of these principles was a very collaborative process that involved input from both management and line staff involved in licensing insurance producers, as well as input from the OFIR Office of General Counsel.

Approved: _____

A handwritten signature in black ink, appearing to be "KR", written over a horizontal line.

Ken Ross, Commissioner

Introduction

A primary mission of the Michigan Office of Insurance and Financial Regulation (OFIR) is to protect the public from dishonest and untrustworthy persons. One way we do this is through the licensure process. A license is a privilege, not a right. Chapter 12 of the Insurance Code makes the Commissioner of OFIR responsible for evaluating the qualifications of applicants for licensure as insurance producers and for refusing to issue licenses to unqualified applicants.

These Guiding Principles were written to advise applicants of the specific provisions of Michigan law that govern licensure and how they are interpreted and enforced by OFIR.

Background

Michigan belongs to the National Association of Insurance Commissioners (NAIC) and our licensing process is heavily influenced by that fact. Formed in 1871, the NAIC is a voluntary organization of the chief insurance regulatory officials of each of the 50 states, the District of Columbia, and the five U.S. territories. It was created to address the need to coordinate the regulation of multistate insurers and their agents.

In October 1996, the NAIC created a non-profit affiliate, NIPR (the National Insurance Producer Registry) to reengineer, streamline and make uniform the insurance producer licensing process through online applications and databases. Michigan fully cooperates with NIPR and has adopted an online application process which may be accessed through our state website or the NIPR website. Both websites lead to the uniform online application approved by the NAIC.

Michigan Law

The NAIC recognizes that each state has its own licensing laws that must be followed and that some of Michigan's provisions may be different from those of other states. For example, in Michigan the issuance of a restricted or probationary license is not an option for either resident or non-resident applicants. The reasons used in Michigan to deny licensure are found in Michigan Compiled Law (MCL) 500.1239(1). In order to protect the public from dishonest and untrustworthy insurance producers, both resident and non-resident insurance producer applications will be denied if the applicant has committed acts that are grounds for refusing to issue a license under MCL 500.1239(1).

Section 1239(1) includes a list of fourteen reasons (a-n) for denial of an application for licensure as an insurance producer. Effective January 6, 2009, the Michigan Legislature amended Section 1239 to state that "the commissioner shall refuse to issue a license under section 1205 or 1206a for any 1 or more" of the fourteen reasons. Click here to read Section 1239:

[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getObject&objectName=mcl-500-1239](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getObject&objectName=mcl-500-1239)

Resident Applicants - Section 1205 of the Michigan Insurance Code (MCL 500.1205) governs the licensure of Michigan residents who are seeking to become insurance producers. In March of 2002, amendments to Section 1205 took effect stating that an application for a resident producer license shall not be approved if the Commissioner finds that the person has committed any act which is a ground for denial, suspension or revocation under Section 1239. The change took away much of the discretion the Commissioner previously held to grant a license where it might otherwise seem warranted. Click here to read Section 1205:

[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getObject&objectName=mcl-500-1205](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getObject&objectName=mcl-500-1205)

Non-Resident Applicants - Section 1206a governs the licensure of non-residents who are seeking to become insurance producers. It states that unless licensure is denied under Section 1239, a non-resident applicant shall be granted a license. Click here to read Section 1206a:

[http://www.legislature.mi.gov/\(S\(ptlizdz23r2z4h45espwdgi2\)\)/mileg.aspx?page=getobject&objectname=mcl-500-1206a](http://www.legislature.mi.gov/(S(ptlizdz23r2z4h45espwdgi2))/mileg.aspx?page=getobject&objectname=mcl-500-1206a)

The Application Process

OFIR requires applicants for both resident and non-resident insurance producer licenses to complete the NAIC Uniform Application for Insurance Producer License. This application contains 7 standard background information questions which applicants must answer “yes” or “no”. “Yes” answers require additional information and documentation.

Neither a yes answer to any background question nor an entry in the NAIC RIRS (Regulatory Information Retrieval System) or SAD (Special Activities Database) is automatically a cause for application denial. To support a recommendation for application denial, a yes answer to a background question or a RIRS or SAD entry must demonstrate one or more of the 14 causes for refusal to issue an insurance producer’s license listed in MCL 500.1239(1)(a)-(n).

Procedure

The qualification review process begins with the online submission of the NAIC uniform application. OFIR insurance licensing staff will review the qualification information required to complete the application and may also review information obtained from the NAIC RIRS and SAD, as well as from criminal history databases such as CRIMLAW and ICHAT. At this time, no criminal background check based on fingerprints is conducted. While the qualifications review is on-going, the application is in a pending status.

When information associated with an application indicates a possible qualification problem, OFIR insurance licensing staff will review the information and request additional information from the applicant. They will then review any additional information received and recommend approval or denial of the application. If an application is approved, OFIR will electronically report the approval to NIPR. The NIPR database is updated every evening and NIPR will

automatically send an email notification of the approval to the applicant. A physical license will be sent out the next business day by regular mail.

Recommendations for denial are implemented when the Deputy Commissioner of the insurance licensing section accepts the recommendation. If an application is denied, a Notice of Denial will be sent to the applicant by certified mail. The Notice will also include all instructions for appealing the denial.

The Most Common Reasons for Application Denial under MCL 500.1239(1)

- 1. MCL 500.1239(1)(a): “Providing incorrect, misleading, incomplete, or materially untrue information in the license application.”**

MCL 500.1239(1)(f): “Having been convicted of a felony.”

The first standard background information question on the NAIC uniform application asks:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

The instructions explain and define the question as follows:

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI) or driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.”

Implications for Michigan licensure:

Having a misdemeanor on your record is NOT a reason used in Michigan to deny licensure. **Failing to report that you have a misdemeanor on your record, unless it is one of those exempted below, IS a reason to deny licensure. When in doubt, disclose it and report it.**

Many applicants with past misdemeanors on their record believe that the misdemeanor will be dropped after the passing of five or ten years. This is incorrect. The only way that a misdemeanor will be removed from a record is by an action by the court and courts do not go back through old records and remove convictions unless prompted to do so.

This means that if you were told at the time of sentencing that if you completed probation and had no other offenses that the conviction would be removed, you must go back and check with

the court to be sure that the charge was dismissed and that you do not have a conviction on your record.

Many applicants have believed that offenses such as “surfing too close to the shore” and “jet-skiing without a horn” and “fishing after dark” and “improper tagging of a deer” were merely “ticket offenses” and not misdemeanors that were on their record. They were wrong.

Many applicants have believed that because past employers had done background checks on them and did not turn up a conviction, it meant that no conviction was on their record. They were wrong.

You can check your Michigan criminal record by going to <http://apps.michigan.gov/ICHAT/Home.aspx>. If you have a conviction from another state, you may check with that State’s Insurance Commissioner or Department of State Police to learn how to check a criminal record.

If you have a conviction on your record from the past and can show that you have had a clean record since then, you can often petition the court to remove the conviction from your record. In Michigan, the process to “set aside” a conviction requires a judge from the sentencing court to enter an order setting the conviction aside. It does not require an attorney. The process is set forth in MCL 780.621 (or at MCL 712A.18e for juvenile offenses). If you have a conviction from another state, you may find similar websites to check your conviction record by using popular internet search engines.

Instructions for setting aside a Michigan juvenile adjudication can be found here:
http://courts.michigan.gov/scao/selfhelp/family/setaside_help.htm

Instructions for setting aside a Michigan adult conviction can be found here:
http://courts.michigan.gov/scao/selfhelp/intro/criminal/setaside_help.htm

The adoption by Michigan of the uniform licensing application and directions means that the following misdemeanors do not have to be reported:

- misdemeanor traffic citations
- misdemeanor convictions for DUI or DWI
- **But other convictions arising out of a DUI incident should be reported including convictions such as resisting arrest, fleeing a police officer, etc. FELONY DUI’s MUST BE DISCLOSED AND WILL RESULT IN A DENIAL OF LICENSURE.**
- misdemeanor driving without a license
- misdemeanor reckless driving
- misdemeanor driving with a suspended license
- offenses committed while a juvenile
- For purposes of determining juvenile status, Michigan uses the age of majority as a cut-off point (however, felony “convictions” will still be taken into account. See below.)

If an applicant does not disclose one of the above offenses on their application and a later check of their criminal record reveals one, they will not be denied a license under Section 1239(1)(a) for providing incorrect, misleading, incomplete, or materially untrue information. Although the statute mentions “incorrect” and “incomplete” information, typographical errors in **demographic** information will not be used to deny licensure.

One last note: Even though Michigan does not use the mere fact that an applicant has a misdemeanor on his or her record as a reason to deny licensure, if the facts surrounding the misdemeanor show that the person used fraudulent, coercive or dishonest practices in the conduct of business or that an applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business, the application may still be denied under Section 1239(1)(h).

Felony Convictions

Michigan has a very strict law with respect to felony convictions. **If you have a felony conviction on your record, no matter how old or for what offense, we strongly suggest that you DO NOT apply for licensure as an insurance producer in Michigan. Your application will not be approved and the denial will be reported to the NAIC national data base.**

If the felony conviction is removed from your record through the process of expungement or set aside, it will not be considered for licensing purposes. If you were a juvenile at the time of an offense that would otherwise be considered a felony, you will need to provide information that shows that you were “adjudicated” and not “convicted” and/or that your adjudication/conviction was dismissed.

Conviction under the U.S. uniform Code of Military Justice is always a cause for refusal to issue an insurance producer’s license under MCL 500.1239(1)(f), unless the conviction has been expunged or set aside.

- MCL 500.1239(1)(b): “Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.”**

MCL 500.1239(1)(i): Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

The second standard background information question on the NAIC uniform application asks:

Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?

The instructions explain and define the question as follows:

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, as cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. “Involved” also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

Implications for Michigan licensure:

The recent change in Michigan law has had the effect of highlighting differences in state regulatory efforts. It has become apparent that the regulatory tools used in enforcement efforts are not used by all states in the same way. Often administrative action is taken, not as a means of punishing for bad acts, but as a means of educating an otherwise law-abiding agent on the difference in laws from state to state. A state may censure, suspend or revoke a license only to immediately reinstate the producer upon payment of fees or the filing of papers. Immediate reinstatement is an indication that the underlying offense was not considered serious and that the administrative action was not meant to punish or impair the producer’s ability to carry on business, but to educate – and recover the regulatory costs of such education. Thus, a person may have his or her license “suspended” or “revoked” in one state for an offense that Michigan considers “technical” and would not lead to suspension or revocation. Also, with different regulations in each of 56 different jurisdictions, mistakes are sometimes made by agents representing multi-state carriers.

An overly strict application of Section 1239(b) would have the effect of barring producers who are currently licensed and are doing business in all 49 other states. Some provide unique national products not otherwise available which would be of benefit to Michigan consumers.

The following administrative actions will not be considered grounds for denial:

- The failure to complete continuing education as well as terminations of licenses that were accomplished by operation of law (such as lapsing for failure to pay renewal fees), as opposed to terminations due to violations of law. If a licensee fails to complete the continuing education required for license renewal, the license simply expires by operation of law once the grace period is past, not because the licensee violated the law. Terminations due to a failure to update an address also fall within this category. This means that, for purposes of insurance licensing, terminations of licensure in Michigan or another state for a violation of CE requirements or for a failure to pay renewal fees or for a failure to update an address are not grounds for a later denial of Michigan licensure under either 1239(b) – violating this or another state’s insurance laws, or under 1239(i) - prior revocation, denial or suspension.

- Administrative actions that involve settlements that do not contain any findings or admissions of a violation of state insurance laws or orders;
- Violations of a regulation, order or subpoena of the OFIR Commissioner or other Commissioner pursuant to a law that is not an insurance law. For example, the OFIR Commissioner administers both the Insurance Code and Banking Code. If an applicant has violated a provision of the Banking Code, that is not a cause for denial under MCL 500.1239(1)(b).
- Administrative actions that involve settlements regarding a one-time violation of a technical nature where no consumers were shown to have been harmed and where the producer's license was not suspended or revoked or, if suspended or revoked, was reinstated and no pattern of repeat violations is apparent.

However, all such terminations and/or administrative actions MUST be reported and explained.

3. Other reasons for denial:

MCL 500.1239(1)(c): Obtaining or attempting to obtain a license through misrepresentation or fraud is a cause for denial under MCL 500.1239(1)(c). The term "license," as used in this subsection, is not limited to an insurance producer's license.

MCL 500.1239(1)(d): If an applicant has improperly withheld, misappropriated, or converted any money or property received in the course of doing insurance business, that is a cause for denial under MCL 500.1239(1)(d). Evidence of this behavior may show up in documentation related to a "yes" answer to Uniform Application Questions 1, 2, 3, 5, or 6 or in a RIRS/SAD check.

MCL 500.1239(1)(e): If an applicant has intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance, that is a cause for denial under MCL 500.1239(1)(e). Evidence of this behavior may show up in documentation related to a "yes" answer to Uniform Application Questions 1, 2, 5, or 6 or in a RIRS/SAD check.

MCL 500.1239(1)(g): An administrative finding, a conviction or an admission of insurance fraud or insurance unfair trade practices are causes for denial under MCL 500.1239(1)(g).

MCL 500.1239(1)(h) is a very broad cause for denial. An application will be denied under this subsection if the application and related background documentation or information from the RIRS or SAD indicates that an applicant used fraudulent, coercive or dishonest practices in the conduct of business or that an applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. This can be any business, not just an

insurance related business. The following are additional considerations under Section 1239(1)(h):

- Only misdemeanor convictions that involve fraud or other coercive or dishonest practices in the conduct of business will be considered;
- Bankruptcies, whether personal or business, which involve funds held on behalf of others have the potential to demonstrate financial irresponsibility in the conduct of business. In the case of an applicant who was in the insurance business and filed for bankruptcy, the presumption would be that the bankruptcy involved funds held on behalf of others and therefore demonstrated financial irresponsibility in the conduct of business. The applicant would be sent a notice of denial, which could be challenged through the administrative hearing process.
- Being a party to a lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentations or breach of fiduciary duty is a cause for denial under this subsection only if the documentation contains admissions or legal findings of the conduct described in this subsection.

MCL 500.1239(1)(i): This section applies only to actions taken by insurance regulatory jurisdictions other than Michigan.

MCL 500.1239(1)(j): If an applicant has forged another's name to an application for insurance or to any document related to an insurance transaction, that is a cause for denial under MCL 500.1239(1)(j). Evidence of this behavior may show up in the documentation related to a "yes" answer to Uniform Application Questions 1, 2, 5, or 6 or in a RIRS/SAD check.

MCL 500.1239(1)(k): If an applicant improperly uses notes or other reference material to complete an examination for an insurance license, that is a cause for denial under MCL 500.1239(1)(k). Evidence of this behavior may show up in the documentation related to a "yes" answer to either Uniform Application Question 1, 2, 5, or 6 or in a RIRS/SAD check or may come from resources at sites where insurance license examinations are administered.

MCL 500.1239(1)(l): If an applicant has knowingly accepted insurance business from an individual who is not licensed, that is a cause for denial under MCL 500.1239(1)(l). Evidence of this behavior may show up in the documentation related to a "yes" answer to Uniform Application Question 1, 2, 5, or 6 or in a RIRS/SAD check.

MCL 500.1239(1)(m): Applications will be denied for failure to comply with an administrative or court order imposing a child support obligation if an applicant has a child support obligation in arrearage and is not complying with the order. An applicant who is the subject of a repayment agreement and is current with the payments under that agreement can be approved.

MCL 500.1239(1)(n): A delinquent tax obligation that is not the subject of a repayment agreement is a cause for denial under MCL 500.1239(1)(n) only if the delinquent obligation involves the Michigan Single Business Tax or its successor, the Michigan Business Tax.

MCL 500.1239(3): A business entity insurance producer's license will be refused if an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

"Good Moral Character"

"Good moral character" is not now, and has not been since March 1, 2002, a qualification standard for determining whether or not the OFIR Commissioner will issue an insurance producer license. Before Michigan enacted the provisions of the NAIC Uniform Producer Licensing Model Act on March 1, 2002, the Commissioner was required to issue an insurance agent's license to an applicant who, among other qualifications, possessed good moral character to act as an agent. On March 1, 2002, this requirement was eliminated and replaced by Section 1239 (1)(a-n). A definition of "good moral character" remains in MCL 500.1200 because "good moral character" is still a qualification standard for determining whether or not issue a license to an insurance solicitor, an insurance counselor or an insurance adjuster.

Documentation and Confidentiality

Background qualification information in application files is investigatory information that can only be shared with other regulators, not with the public. MCL 500. 1246 requires that any documents, materials, or other information in the control or possession of OFIR that are furnished by an insurer, an insurance producer, or an employee or representative acting on their behalf in an investigation are confidential by law and privileged.

Common Questions

1. **Q.** *What if the person had a felony on their record, but it has been expunged?*
 A. An expunction means that a court has found that the person should no longer have the conviction on their record and it should not be considered. This is also true for exonerations, deferments pending successful completion of conditions, pardons and set asides. Michigan's Setting Aside Convictions law, 1965 PA 213, MCL 780.621 *et seq.* indicates which convictions may be set aside and provides the process for doing so. Once set aside, the applicant shall be considered not to have been previously convicted. New York's "restoration of civil rights" is not considered to be the same as an exoneration or the setting aside of a conviction.

2. **Q.** *What if a person was put into a first offender program and successfully completed the program?*
 Successful completion of a first offender program typically results in the crime being removed from the record. However, if the court has not cleaned up their

records, the crime might still show up. In such a case, the applicant should contact the court and get written verification that the program was successfully completed and the record is – or will be – cleared.

3. Q. *When is someone considered a juvenile?*

- A.** As the word “juvenile” has a variety of meanings, Michigan uses “age of majority” to determine juvenile status. In Michigan, if a misdemeanor incident happened before the person’s 18th birthday the incident would not count for licensing purposes and does not have to be reported. That standard is applied to both resident and non-resident applicants from all states and jurisdictions except:
- Alabama (19)
 - Mississippi (21)
 - Nebraska (19)
 - Nevada (upon graduation or reaching 19, whichever comes first)
 - Virginia (18 or, if still in high school, upon graduation)
 - Puerto Rico (14)
 - U.S. Virgin Islands (14)

If the incident is a felony, the application will not be denied for a failure to report under Section 1239(1)(a), but might be denied under Section 1239(1)(f) (felony conviction) unless the person was “adjudicated” and not “convicted.” Juvenile proceedings are not considered criminal, but civil, the goal is not punishment, but rehabilitation, and the state is not taking away rights, but is acting in the place of the parent(s).

4. Q. *How does Michigan’s Holmes Youthful Trainee Act apply?*

- A.** The HYTA allows a judge to place a youth between 17 and 20, who is alleged to have committed a crime and who has pleaded guilty to that crime, to be placed in prison or on probation *without a conviction* to avoid a criminal record. Excluded from this program are youth who are charged with a felony for which the maximum punishment is life imprisonment, a major controlled substance offense or a traffic offense. This action protects the privacy of the offender while on trainee status. If the youth successfully completes the program, there is no criminal record. That means that up to a person’s 21st birthday, if handled under HYTA, the offense cannot be used for licensing purposes unless the program was not successfully completed and a conviction was entered by the court. Imprisonment or probation cannot exceed three years meaning that a person who is almost 21 when placed in the program and is given a three year “sentence,” cannot have that used for licensing purposes until they are nearly 24, and only if he or she did not successfully complete the “sentence” and the court has entered a conviction.

5. Q. *What if a person is over the age of 18, but under the legal drinking age of 21 and is charged with minor in possession (MIP)?*
- A. Under age, alcohol-related offenses are considered juvenile offenses for purposes of insurance licensing.
6. Q. *If a corporate entity is applying for a license and a background check shows a misdemeanor or felony on the record of one of the people listed as an officer or member of the corporation, but the misdemeanor or felony was not disclosed on the application, can the corporation be denied for failure to disclose?*
- A. No. The corporate entity is the “person” for purposes of licensure and the question is whether the corporate entity has a criminal record. The application would be on hold while the issue of the person’s status is determined. However, federal law does not allow anyone with a felony or conviction involving dishonesty or breach of trust to engage in the business of insurance. Also, persons, or their agents, convicted of crimes involving the making of false material statements to a regulatory agency, willful embezzlement or misappropriation of funds or obstruction of justice are similarly barred by federal law from being engaged in the business of insurance. A prohibited individual may obtain relief from the prohibition by filing an application for a “1033 waiver.” This provision of federal law allows a prohibited individual to apply to the Commissioner for “written consent” to work in the business of insurance. Michigan requires the “long form” of the waiver application to be filed along with the application for agency licensure.
A copy of the long form of the waiver can be found here:
http://www.michigan.gov/documents/cis/shortapp1_174283_7.pdf
- Note: Although the NAIC uniform application includes an option for persons who are seeking licensure as an insurance producer to indicate whether they have applied for a Section 1033 waiver, **because Section 1239 now prohibits the licensure of insurance producers with felonies, no such waivers will be granted in Michigan for insurance producer applicants who have been convicted of a felony.**
7. Q. *Does the Federal Crime Bill of 1994 prohibit corporate entities from hiring or affiliating with persons with felonies?*
- A. Yes. See the answer to question 6. 18 USC Section 1033(e) provides that any individual who has been convicted of “any criminal felony involving dishonesty or a breach of trust” may not engage in the business of insurance.
8. Q. *Is a conviction for an “attempted felony” considered a felony?*
- A. When no express provision is otherwise made in the law for the punishment of an attempt, Section 92 of the Michigan Penal Code, MCL 750.92, provides that if the offense attempted is punishable by death, life imprisonment or five years or more in prison, the attempt is a felony; all other attempts are a misdemeanor.