

State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:

TORIANO PRIDE

Renewal Applicant.

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Case No. 14-0528484C

ORDER REFUSING TO RENEW
A MOTOR VEHICLE EXTENDED SERVICE CONTRACT
PRODUCER LICENSE

On October 27, 2014, the Consumer Affairs Division (“Division”) submitted a Petition to the Director alleging cause for refusing to renew Toriano Pride’s motor vehicle extended service contract producer license. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Toriano Pride (“Pride”) is a Missouri resident with a residential address of 408 Stone Park Drive, Wentzville, Missouri 63385.
2. On February 17, 2012, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received Pride’s “Application for Motor Vehicle Extended Service Contract Producer License” (“2012 Application”).
3. The “Applicant’s Certification and Attestation” section of the 2012 Application states, in relevant part, as follows:

I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Pride signed the 2012 Application under oath and before a notary.

5. Background Question No. 1 of the 2012 Application asks the following:

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

“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), 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.

“Had a judgement withheld or deferred” includes circumstances in which a guilty plea was entered and/or a finding of guilt is made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence – sometimes called an “SIS” or “SES”).

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document, and
- c) a copy of the official document which demonstrates the resolution of the charges or any final judgment[.]

6. Pride answered “No” to Background Question No. 1 of the 2012 Application and did not disclose any criminal convictions in response to the question.

7. Background Question No. 4 of the 2012 Application asks the following:

Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?

If you answer yes, identify the jurisdiction(s): _____

8. Pride answered "No" to Background Question No. 4 of the 2012 Application and did not disclose any delinquent tax obligation or repayment agreement.
9. Background Question No. 7 of the 2012 Application asks the following:

Do you have a child support obligation in arrearage?

If you answer yes:

- a) by how many months are you in arrearage? _____ months
 - b) are you currently subject to and in compliance with any repayment agreement?
 - c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
10. Pride answered "No" to Background Question No. 7 of the 2012 Application and did not disclose any child support obligation in arrearage or any repayment agreement.
 11. Relying upon Pride's answers to the Background Questions on the 2012 Application, the Director issued a motor vehicle extended service contract ("MVESC") producer license (No. 8114284) to Pride on February 28, 2012. Pride's license expired on February 28, 2014.
 12. On February 25, 2014, the Department received Pride's "Application for Motor Vehicle Extended Service Contract Producer License Renewal" ("Renewal Application"). The Department's Licensing Section requested additional information from Pride to complete the Renewal Application. Pride forwarded several documents,¹ and the Department considered his Renewal Application complete as of April 7, 2014.
 13. The "Applicant's Certification and Attestation" section of the Renewal Application states, in relevant part, as follows:

I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I

¹ The nature and content of those documents is detailed below.

am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

14. Pride signed the Renewal Application under oath and before a notary.
15. Background Question No. 1 of the Renewal Application asks, in relevant part:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence (“SIS”) or suspended execution of sentence (“SES”), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?

“Crime” includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.

“Convicted” includes, but is not limited to, having been found guilty by a verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having entered an Alford Plea, or having been given probation, a suspended sentence, or a fine.

“Had a judgment withheld or deferred” includes circumstances in which a guilty plea was entered and/or a finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence – sometimes called an “SIS” or “SES”).

16. Pride answered “No” to Background Question No. 1 of the Renewal Application and did not disclose any convictions not previously reported to the Department.
17. Background Question No. 4 of the Renewal Application asks the following:

Have you failed to comply with an administrative or court order directing payment of state or federal income tax, which has not been previously reported to this insurance department?

Answer "Yes" if the answer to either question (or both) is "Yes."

If you answer yes you must attach to this application:

- a) a written statement explaining the circumstances of each administrative or court order,
- b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
- c) a certified copy of each administrative or court order, judgment, and/or lien, and
- d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

18. Pride answered "Yes" to Background Question No. 4. Pride included, along with the additional documentation required to complete his Renewal Application, documents from the State of Missouri, Department of Revenue, Taxation Division. In particular, Pride enclosed copies of a delinquent tax payment agreement and a cover letter. Pride signed and dated the delinquent tax payment agreement on April 1, 2014. The agreement concerned Pride's delinquent tax debt of \$12,681.96, which Pride owed for tax years 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012. The agreement required an initial payment of \$550.04 on April 1, 2014, and 23 additional monthly payments of \$550.04.

19. Background Question No. 7 of the Renewal Application asks the following:

Do you currently have or have you had a child support obligation, which has not been previously reported to this insurance department?

If you answer yes:

- a) are you in arrearage?
- b) by how many months are you in arrearage? _____ months
- c) what is the total amount of your arrearage? _____
- d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
- e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of

current payments from the appropriate state child support agency.)

- f) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
- g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

20. Pride answered "Yes" to Background Question No. 7 on the Renewal Application. In particular, as to Background Question Nos. 7a and 7b regarding arrearages, Pride indicated that he was 14 months in arrears on child support payments. Pride did not answer Background Question No. 7c regarding the dollar amount of his child support arrearages. In response to Background Question 7d regarding repayment agreements, Pride answered "Yes," indicating that he was subject to a repayment agreement to cure the arrearage. In response to Background Question 7e, Pride answered "Yes," indicating that he was in compliance with the repayment agreement. In response to Background Question No. 7f, Pride answered "No," that he was not subject to a child support related subpoena or warrant. Finally, Pride did not answer Background Question No. 7g, though the form does not provide yes or no boxes to check in response.

21. As part of the additional documentation required to complete his Renewal Application, Pride forwarded to the Department a State of Missouri, Family Support Payment Center Billing Statement from February 7, 2014, showing \$251.00 as the amount due and \$15,387.99 as the total past due support at that time.

22. The Division's investigation regarding Pride and his background revealed the following:

- a) On February 27, 2008, Pride pled guilty in the St. Charles County Associate Circuit Court to the Class A Misdemeanor of Passing a Bad Check in violation of § 570.120, RSMo. The court suspended the imposition of sentence and placed Pride on two years of probation, which he successfully completed. *State v. Toriano Pride*, St. Charles Co. Assoc. Cir. Ct., Case No. 0711-CR06036. The St. Charles County Prosecuting Attorney alleged in the Information, in relevant part, that "on or about February 26, 2007 ... [Pride] with purpose to defraud, passed a check in the amount of \$1,639.00 drawn upon American Eagle Credit Union, payable to

Collector of Revenue, knowing that it would not be paid.” *Id.*

b) On October 17, 2011, the Missouri Director of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the St. Charles County Circuit Court, certifying that Pride owed \$11,158.74 in delinquent individual income tax, interest, additions to tax, penalties and fees, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied. *Department of Revenue v. Toriano Pride*, St. Charles Co. Cir. Ct., Case No. 1111-MC05999.

c) As of the time Pride filed his 2012 Application in February 2012, he owed \$9,614.99 in arrearage on his child support obligation. When Pride first filed his Renewal Application on February 25, 2014, he owed over \$15,387.99. As of April 7, 2014, when Pride completed his Renewal Application by submitting required additional paperwork, he owed \$15,889.99 in arrears. As of October 16, 2014, Pride owes \$16,943.69 in arrears. Since October 15, 1999, Pride’s monthly support obligation has been \$251.00 per month. That child support is for the benefit of his minor child T.R.P., who was born on October 31, 1996.²

d) On November 13, 2000, Pride filed Chapter 7 bankruptcy and his debts were discharged. *In re: Toriano Pride*, Petition No. 00-51380 (U.S. Bankr. E.D. Mo. Feb. 27, 2001).

23. It is inferable, and hereby found as fact, that Pride failed to disclose his criminal history, his delinquent tax obligation and his child support arrearage in his 2012 Application in order to misrepresent to the Director that he did not have such criminal, tax, and child support issues, and accordingly, in order to improve the chances that the Director would approve his application and issue a MVESC producer license to him.
24. It is inferable, and hereby found as fact, that Pride failed to disclose his criminal history and the full extent of his child support arrearage in his Renewal Application in order to misrepresent to the Director that he had no criminal history and that his child support arrearage was far less than what it actually is, and, accordingly, in order to improve the chances that the Director would approve his

² Section 452.340.3 provides that a child support obligation generally terminates when a child turns 18, or 21 if the child is enrolled in a secondary school program of instruction, or vocational or higher education. Section 452.340.3 and .5. As of October 31, 2014, T.R.P. is 18 years old.

Renewal Application and renew his MVESC producer license.

CONCLUSIONS OF LAW

25. Section 385.209.1³ provides:

The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

(1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation;

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax; or

³ This and all further references are to RSMo Supp. 2013 unless otherwise noted.

(14) Has within the last fifteen years been declared insolvent by the director or a motor vehicle extended service contract regulator of another state or has been the subject of a bankruptcy petition.

26. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees or applicants, but to protect the public, *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984), the purpose of § 385.209 is not to punish applicants for MVESC producer licenses, but to protect the public.

27. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(1) because Pride filed an application for license in this state within the previous ten years which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information, in that Pride failed to make various disclosures in his 2012 Application, as follows:

a) Pride failed to disclose his February 27, 2008 guilty plea to the Class A Misdemeanor of Passing a Bad Check and the suspended imposition of sentence;

b) Pride failed to disclose his Missouri state income tax delinquency of \$11,158.74 and the tax lien against him for that amount, as of October 17, 2011; and

c) Pride failed to disclose his child support arrearage of \$9,614.99 as of February 2012.

28. Each such omission by Pride constitutes separate and sufficient cause for refusal pursuant to § 385.209.1(1).

29. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(3) because Pride obtained a license through material misrepresentation or fraud in his 2012 Application, as follows:

a) Pride falsely answered "No" to Background Question No. 1 of the 2012 Application and failed to disclose in his 2012 Application the judgment withheld or deferred – that is, the suspended imposition of sentence – upon his February 27, 2008 guilty plea to the Class A Misdemeanor of Passing a Bad Check;

b) Pride falsely answered "No" to Background Question No. 4 of the

2012 Application and failed to disclose in his 2012 Application his delinquent tax obligation that was the subject of the Certificate of Tax Lien – Individual Income Tax, certifying that Pride owed \$11,158.74 in delinquent individual income tax, interest, additions to tax, penalties and fees, filed on October 17, 2011, in the St. Charles County Circuit Court by the Missouri Director of Revenue; and

c) Pride falsely answered “No” to Background Question No. 7 of the 2012 Application and failed to disclose the \$9,614.99 that he owed in back child support (at that time).

30. Pride provided such false answers, and failed to make such disclosures, for the purpose of representing to the Director that Pride had no criminal history, tax delinquency or child support obligation in arrearage and, accordingly, in order to improve the chances that the Director would approve Pride’s 2012 Application and issue him a MVESC producer license.

31. Each such material misrepresentation or instance of fraud is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).

32. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).

33. Renewal of Pride’s MVESC producer license may be refused under § 385.209.1(3) because Pride attempted to obtain a license through material misrepresentation or fraud in his Renewal Application, as follows:

a) Pride falsely answered “No” to Background Question No. 1 and failed to disclose in his Renewal Application the judgment withheld or deferred—that is, the suspended imposition of sentence—upon his February 27, 2008 guilty plea to the Class A Misdemeanor of Passing a Bad Check; and

b) Pride significantly understated the extent of the child support arrearage he owed at the time he submitted his Renewal Application. Whereas Pride represented that he owed only 14 months in arrearages, or approximately \$3,514.00 (14 x \$251.00), Pride actually owed \$15,387.99 in arrearages – approximately 61 months’ worth of payments – when he first filed his Renewal Application in February 2014.

34. Pride failed to disclose his guilty plea to the Class A Misdemeanor of Passing a Bad Check, and significantly understated the extent of the child support arrearage

that he owed, in order to improve the chances that the Director would approve his Renewal Application and renew his MVESC producer license.

35. Each such material misrepresentation or instance of fraud in an attempt to obtain a license is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).
36. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).
37. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(7) because Pride was found to have been in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state in a matter involving banking. In particular, Pride passed a bad check drawn on a credit union, and use of a check as legal tender involves the use of banking. An assistant prosecuting attorney for St. Charles County initiated the case when she filed the Information and the court found Pride guilty upon his plea of guilty. *State v. Toriano Pride*, St. Charles Co. Assoc. Cir. Ct., Case No. 0711-CR06036.
38. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(12) because Pride failed to comply with an administrative or court order imposing a child support obligation. When Pride first applied for a MVESC producer license, in 2012, he owed \$9,614.99 in child support arrearages. When Pride completed his Renewal Application in April 2014, the amount of Pride's child support arrearage had increased to \$15,889.99. As of October 16, 2014, Pride owes \$16,943.69 in back child support. Manifestly, Pride has failed to comply, and continues to fail to comply, with an administrative or court order imposing a child support obligation.
39. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(13) because Pride failed to comply with any administrative or court order directing payment of state income tax. The Missouri Department of Revenue filed its lien on October 17, 2011 for \$11,158.74 in delinquent tax that then became the judgment of the St. Charles County Circuit Court when the Department of Revenue filed it. *See* § 143.902. The judgment remains unsatisfied due to Pride's non-compliance. *Department of Revenue v. Toriano Pride*, St. Charles Co. Cir. Ct., Case No. 1111-MC05999. As of April 1, 2014, the amount due to the Department of Revenue had grown to \$12,681.96, as evidenced by the total on the delinquent tax payment agreement that Pride submitted to the Department.
40. Renewal of Pride's MVESC producer license may be refused under § 385.209.1(14) because within the last 15 years, Pride has been the subject of a

bankruptcy petition. In particular, on November 13, 2000, Pride filed Chapter 7 bankruptcy and his debts were discharged. *In re: Toriano Pride*, Petition No. 00-51380 (U.S. Bankr. E.D. Mo. Feb. 27, 2001).

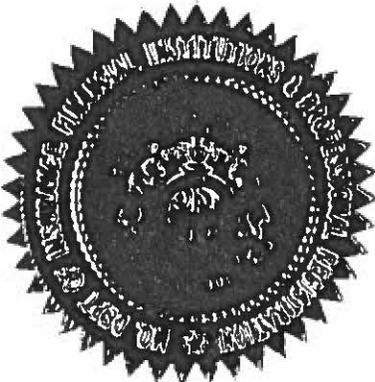
41. The above-described instances are grounds upon which the Director may refuse to renew Pride's MVESC producer license. Pride completed his 2012 Application in such a way that it appeared that he had no criminal history, no tax debt, and no child support arrearages, when that simply was not the case. He did so in order to increase the chances that the Director would approve his 2012 Application, and that strategy worked. In his Renewal Application, Pride still concealed his criminal history and, while he mentioned his child support arrearage, he minimized the extent of his indebtedness. Pride was found to be in violation of the law in a banking-related matter (in his misdemeanor conviction for passing a bad check). He has been the subject of a bankruptcy petition within the past 15 years. Finally, Pride has failed to comply with administrative or court orders against him that require the payment of both state income tax and child support.
42. The Director has considered Pride's history and all of the circumstances surrounding Pride's Renewal Application. Renewing Pride's MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to renew Pride's MVESC producer license.
43. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the MVESC producer license renewal application of **Toriano Pride**, is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 30TH DAY OF OCTOBER, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2014, a copy of the foregoing Order and Notice was served upon the Renewal Applicant in this matter by UPS, with signature required, at the following address:

Toriano Pride
408 Stone Park Drive
Wentzville, Missouri 63385

Tracking No. 1Z0R15W84295561382


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