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TRANSMITTED BY CERTIFIED MAIL AND ELECTRONIC MAIL TO THE ADDRESS ON RECORD FOR THE LICENSEE

MEMORANDUM

TO: Surety Bondsmen, Surety Insurers, Professional Bondsmen, and Runners Authorized to Transact Bail Bonding Business in the State of South Carolina

FROM: Michael Wise
Director

RE: **Notice of SCDOI Order No. 2024-07:**
Regulatory Requirements for the Minimum Fee and Payment Agreement Requirements for Surety Insurers, Professional Bondsmen and Runners and Other Sureties Authorized to Transact Bonding Business in the State of South Carolina

DATE: December 11, 2024

Enclosed is Order No. 2024-07 which addresses reports that licensees are not complying with the minimum fee requirements set forth in S.C. Code Ann. § 38-53-170(e). The attached order summarizes South Carolina law and the requirements for compliance with the requirements of S.C. Code Ann. §38-53-170(e). It was distributed to licensees of this Department via electronic and certified mail. Licensees not in compliance with the requirements of the law as set forth in this order must come into compliance immediately. Licensees who ignore or disregard the minimum fee requirements of the law are subject to investigation and administrative disciplinary action if the allegations are substantiated.

Section 38-53-150 provides that the director or his designee may impose an administrative penalty, suspend or revoke the license of any bondsman or runner who: 1) violates any laws of this state relating to bail in the course of dealings under the license issued by this Department to a bondsman or runner; 2) engages in fraudulent or dishonest practices while conducting business as a licensee; 3) fails to comply with or violates a provision of this chapter or of any order of the director or his designee or regulation of the department; or 4) is no longer in good faith carrying on the bail bond business. S.C. Code Ann.§ 38-53-150 (2015).

Please do not hesitate to contact this Department at (803) 737-6200 if you have any questions about the content of this memorandum or the enclosed order.

TRANSMITTED BY ELECTRONIC MAIL AND CERTIFIED MAIL TO THE ADDRESS ON RECORD FOR THE LICENSEE AND POSTED TO THE SCDOI WEBSITE AT https://doi.sc.gov/105/Bulletins-Orders.

BEFORE THE STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

IN THE MATTER OF:	
Requirements for Surety Bondsmen, Professional Bondsmen, and Runners Authorized to Transact Bail Bonding Business in the State of South Carolina	**Order No. 2024-07** Promulgation of Guidance, Standards, and Other Requirements for Compliance with the Premium, Minimum Fee, and Payment Agreement Requirements of Act No. 83 of 2023

Act No. 83 of 2023 (R-98, H. 3532) ("Bond Reform Act" or "Act") amends provisions of South Carolina law pertaining to bail bonds, pretrial release, and electronic monitoring. Several sections modified by the Act fall within Title 38, Chapter 53 of the South Carolina Insurance Law.[1] Under South Carolina insurance laws, the director of the Department of Insurance ("Department") is authorized to 1) supervise the service of every insurer and to fix just and reasonable standards, practices, and measurements of service to be observed and followed by every insurer doing business in this State; and 2) see that all laws of the State governing insurers or relating to the business of insurance are faithfully executed.[2]

Since the enactment of the Bond Reform Act, the Department has participated in numerous educational and professional meetings designed to educate licensees on the compliance requirements of the law regarding premium, minimum fee requirements and payment agreements. Despite the Department's previous training and instructions on this issue, we continue to receive anecdotal reports and complaints that allege some members of the commercial bail industry are attempting to use a June 17, 2024 opinion issued by the Office of the South Carolina Attorney General (AG Opinion)[3] as justification to ignore the minimum fee requirement and charge amounts as low as 2% of the face amount of the bond as a part of an installment agreement arrangement. South Carolina law requires $100 or 10%, whichever is greater, to be collected prior to execution of the bond as the minimum fee. Accordingly, collecting $100 as the minimum fee would only be appropriate for bail bonds with face amounts of $1,000 or less.

For the past several months, the Department has discussed the language in the statute and the AG Opinion with various stakeholders. After fully considering the AG Opinion, and the opinions of other interested parties, the Department is issuing this Order to 1) confirm its regulatory instructions, 2) provide further guidance on payment agreements per the language of the statute, 3) eliminate any confusion which may exist among some members of the commercial bail industry concerning the minimum fee that must be charged and collected prior to execution of a bail bond in South Carolina and 4) provide formal notice that the Department intends to investigate and

[1] S.C. Code Ann. § 38-1-10. "This title may be cited and is known as 'The Insurance Law'".
[2] S.C. Code Ann. § 38-3-110.
[3] *State v. Ramsey*, 409 S.C. 206, 762 S.E.2d 15 (2014); *Charleston County School District v. Harrell*, 393 S.C.552, 560-61, 713 S.E.2d 604,609 (2011).

enforce the minimum fee requirements of § 38-53-170(e). The compliance standards set forth in this Order are consistent with the plain language of the statute and the purpose and intent of bail bond reform.

I. TEN PERCENT (10%) MINIMUM FEE REQUIREMENT

When interpreting a statute, as we are asked to do here, we start with the cardinal rule of statutory construction, which is to "ascertain and effectuate the intent of the legislature." *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). '"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" Id. at 85, 533 S.E.2d at 581 (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)). "Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction." *Id.*

As the regulatory agency charged with implementing and enforcing the language of this statute, we are constrained by the plain language of the statute as it exists.[4] The rules of statutory construction not only require that words be given their plain and ordinary meaning[5] but that conflicting *provisions,* if any, be interpreted to give effect to both. *See, e.g., Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Buchanan v. The South Carolina Property and Casualty Association*, 424 S.C. 542, 819 S.E.2d 124 (2018).[6]

A. The first paragraph of Section 38-53-170(e) establishes the minimum payment for the bail bond.

Section 38-53-170(e) was modified by the Bond Reform Act to read as follows:

No bondsman or runner may:

> *(e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. Conditions of the bond which expressly or implicitly require payment of monies in excess of the premium, as a cost of satisfying the condition of the bond, shall not be considered part of the bondsman's premium, and are not affected by this code provision. The bondsman may collect these fees from the defendant and is not limited by any language requirements of this code provision.*

The pertinent language of the second paragraph of this statutory provision reads as follows:

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[4] *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct. App. 2003).

[5] The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *See Hodges v. Rainey*, 342 S.C. 79,85,533 S.E.2d 578. 581 (2000). The words in the statute must be construed in context and the meaning of particular terms in the statute may be ascertained by reference to the words associated with them.

[6] South Carolina Supreme Court affirmed and modified the Court of Appeals decision, 417 S.C. 562, 790 S.E.2d 783 (2016).

*However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement **shall require** the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed.*

Some have argued that the language of the statute permits a bondsman to charge 10% of the face amount of the bond; however, there is no requirement to collect 10% minimum fee because the second paragraph creates an exception to the first paragraph and negates the requirement that the bondsman **charge and collect** the minimum fee. They contend that the minimum down payment language of the second paragraph is an alternative to the requirement to collect the minimum fee of $100 or 10%, and to construe the statute otherwise would render the payment agreement language meaningless in effect. They argue that under the second paragraph once the $100 downpayment is collected, the bondsman may allow the criminal defendant to pay the remainder of the premium via a payment agreement. We disagree because this interpretation fails to give effect to each of the terms of the statute.[7]

We believe the General Assembly was purposeful in making the changes to this provision of the law. Prior to the amendment of this provision in June 2023, S.C. Code Ann. § 38-53-170(e) read as follows:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, *with a minimum fee of twenty-five dollars*. However, the bondsman is permitted to accept collateral security or other indemnity from the principal which must be returned upon final termination of liability on the bond. The bondsman shall identify who is paying the premium and shall represent that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the principal's disappearance than appearance for trial. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond...

See S.C. Code Ann. § 38-53-170(e) (1998).

Minimum fees for bail bonds are not unusual.[8] The term *minimum fee* means the lowest amount or fee that can be collected. Section 38-53-170(e) requires a ***minimum fee of $100 or 10%, which is***

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[7] One of the basic canons of statutory construction is that a statute should be construed, if possible, in a manner that allows all of its provisions to be given effect so that no part of the statute is rendered inoperative or superfluous. *See City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53 (2011).

[8] *See, e.g., Platt v. Brown*, 872 F.3d 848 (2017)(Prior to January 1, 2016, criminal defendants in Cook County could secure their pretrial release in three ways: (1) personal recognizance, *see* 725 Ill. Comp. Stat. § 5/110-2; (2) execution of a full deposit bail bond, to be fully returned to the defendant upon performance of the bond conditions, *see id.* § 5/110-8; or (3) execution of a 10% bail bond, 10% of which (*i.e.*, 1% of the total bail amount) is retained by the state upon performance of the bond conditions (the "Bail Bond Fee" or the "Fee") ... Under the 10% system, the State bears 90% of the risk that a criminal defendant might jump bail. The government maintains a legitimate interest in reducing its exposure to this liability. Imposing a 1% surcharge on the 10% system makes the preferred full deposit system more enticing. This is particularly true for those with higher bail amounts, where the state not only carries more risk, but the defendant also forfeits a greater Bail Bond Fee.) see also *Claiborne v. Harris County Bail Bond Board*, 693 S.W.3d 699 (2024) (County bail bond board's action, in adopting rule requiring payment to a bail bondsman of 10% premium as a prerequisite for issuance of a bail bond for 17 enumerated crimes, was undertaken

greater be charged and collected by the bondsman. A minimum fee of $100 or 10% means the greater of these two amounts (*i.e.*, $100 or 10%) must be charged and collected by the bondsman prior to execution of the bond.

In amending this section, the General Assembly not only set a *minimum fee* amount in the first paragraph of ($100 or 10% of the bond, whichever is greater) it also included a requirement that the ***minimum fee*** be ***charged and collected prior*** to execution of the bond. Specifically, the language of the first paragraph of § 38-53-170(e) evidences the General Assembly's intent to (1) prohibit a bondsman or runner from accepting anything of value *except* premium; (2) limit the bond premium to 15% of the face amount of the bond; and (3) require a ***minimum fee of 10% or $100 whichever is greater be charged and collected prior to the execution of the bond.*** Other payments which may be in excess of the premium required to satisfy bond conditions (such as electronic monitoring fees) may be also collected by the bondsman.[9]

B. Giving effect to the minimum fee language in the first paragraph language does not negate the use of payment agreement language in the second paragraph.

We have fully considered the contention that the second paragraph of subsection 38-53-170(e) somehow negates the plain language of the first paragraph. There is no indication in the language of either paragraph that the General Assembly intended the execution of a payment agreement to be an alternative or exception to the *minimum fee* requirement of $100 or 10%. Nothing in statutory language indicates that it is an exception. South Carolina law provides that when a word is not defined by statute, a court normally construes it in accord with its ordinary or usual meaning.[10] The usual and ordinary meaning of the term "*however*" does not mean *except.* "Except" means with the exclusion or exception of. Miriam Webster defines "however" to mean "in whatever manner or way, nevertheless or notwithstanding."[11]

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pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, as set forth in Bail Bond Act...); *see, e.g.*, *Platt v. Brown*, 872 F.3d 848 (2017).

[9]To collect electronic monitoring fees, the bondsman must be certified by South Carolina Law Enforcement Division (SLED) to provide electronic monitoring services. *See* South Carolina Law Enforcement Division (sc.gov).

[10] When interpreting an undefined statutory term, the Court must look to its usual and customary meaning. *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998); *Perry v. Bullock*, 409 S.C.137, 761 S.E.2d 251 (2014).

[11] *See Pilot Life Insurance Company v. Morgan*, 94 Ga. App, 394, 94 S.E.2d 765 (Ga. App. 1956). Synonyms for *however* include though, nevertheless, nonetheless, still, yet, notwithstanding, at the same time, all the same, just the same, and even so. *See* HOWEVER Synonyms: 17 Similar Words | Merriam-Webster Thesaurus. The General Assembly used the term "however" in the following other provisions in Chapter 53: S.C. Code Ann § 38-53-70 (The court, in its discretion, *may* permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond.) S.C. Code Ann. § 38-53-100 (The director or his designee shall forward four hundred dollars to the State Treasurer to be placed in the general fund; however, of the four hundred dollars, two hundred dollars must be paid over to the director or his designee to offset the costs he incurs under the provisions of this chapter, and two hundred dollars must be paid over to the State Law Enforcement Division to offset the costs it may incur under the provisions of this chapter) and (The director or his designee shall forward two hundred dollars to the State Treasurer to be placed in the general fund; however, of the two hundred dollars, one hundred dollars must be paid over to the director or his designee to offset the costs he incurs under the provisions of this chapter, and one hundred dollars must be paid over to the State Law Enforcement Division to offset the costs it incurs under the provisions of this chapter.) S.C. Code Ann. § 38-53-102 (However, nothing contained in this section shall be construed to prohibit a bail

More importantly, when the South Carolina General Assembly wants to create an exception, it generally uses that specific term as it did in this and other provisions of Chapter 53.[12]" The General Assembly created two exceptions in § 38-53-170. The first exception is "... No bondsman or runner may: (b) pay a fee or rebate or give anything of value to an attorney in bail bond matters, *except* in defense of any action on a bond. The second exception may be found in subsection (e) No bondman or runner may: (e) accept anything of value from a principal ***except*** the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. If the General Assembly intended to create an exception to the statutory requirement to collect a minimum fee of 10%, it would have stated such in this paragraph.

The plain language as written requires a minimum fee of *$100 or 10%* ***whichever is greater, to be charged and collected*** *prior to execution of the bond). Enforcing this requirement does not* negate the need for the payment agreement. Those who have advanced that argument base it on their business model which is to not charge more than 10%. While that practice may be a business model, it is not South Carolina law. South Carolina law does not cap bail bond premiums at 10%. Licensees may charge up to 15% for a premium for a bond based on the plain language of this code provision.[13] Given the minimum fee requirement, payment agreements may be used for premium in excess of the minimum fee required to be collected by the statute.

Interpreting this statute to give effect to the payment agreement by negating or excluding the language that requires a **minimum fee of** ***$100 or 10%,*** *whichever* ***is greater, to be charged and collected*** *prior to execution of the bond* yields an absurd result. Bail bond reform was initiated, in part, to provide standards for electronic monitoring of criminal defendants and to require more

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bondsman, his associates, affiliates, or runners from indicating to a defendant that he should contact an attorney for professional assistance, as long as the bail bondsman, his associates, affiliates, or runners do not mention or in any other manner suggest or indicate a particular attorney or law firm by name.)

[12] *See, e.g.,* S.C. Code § 38-53-80 (No person may act in the capacity of a professional bondsman, surety bondsman, or runner or perform any of the functions, duties, or powers prescribed for professional or surety bondsmen or runners under the provisions of this chapter unless that person is qualified, **except** for an accommodation bondsman, licensed in accordance with the provisions of this chapter. No license may be issued to a professional bondsman, surety bondsman, or runner **except** as provided in this chapter.); S.C. Code Ann. §38-53-160 (No license may be refused, suspended, or revoked, or renewal refused, **except** on reasonable notice and opportunity to be heard afforded the person licensed or seeking renewal of the license. Any applicant for a license as a professional or surety bondsman or runner whose application has been denied or whose license has been suspended or revoked, or renewal of the license denied, has the right of appeal from the final order of the director or his designee to the Administrative Law Court as provided by law); S.C. Code Ann. §38-53-170 (No bondsman or runner may (b) pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond) (e) (accept anything of value from a principal except the premium...); S.C. Code Ann § 38-53-190 (Certain persons not allowed to be sureties; exceptions). S.C. Code Ann. § 38-53-160 (No license may be refused, suspended, or revoked, or renewal refused, **except** on reasonable notice and opportunity to be heard afforded the person licensed or seeking renewal of the license. Any applicant for a license as a professional or surety bondsman or runner whose application has been denied or whose license has been suspended or revoked, or renewal of the license denied, has the right of appeal from the final order of the director or his designee to the Administrative Law Court as provided by law.)

[13] S.C. Code Ann. §38-53-170(e).

than a minimum fee of $25 as a condition of pretrial release. If the General Assembly did not want to retain the minimum fee requirement, it could have deleted it entirely. If the General Assembly's intent was to increase the minimum fee to $100, all it had to do was strike twenty-five dollars and insert one hundred dollars. Moreover, if the General Assembly did not intend the minimum fee to be **charged and collected** prior to the execution of the bond, it would have only used the word "charged' and not have included the words "***and collected***" or the phrase "***prior to the execution of the bond***" in this provision.

Moreover, a cannon of statutory construction called *noscitur a sociis*[14] means that a word is known by the company it keeps. The terms *minimum fee* and *minimum downpayment* are distinct and separate terms used in separate and distinct provisions of the statute. *Minimum fee* is used in the first paragraph that addresses the minimum fee that must be charged and collected by the bondsman prior to execution of the bond. In the second paragraph, the General Assembly used the term *minimum down payment*. The term *down payment* referenced in the first paragraph was not intended to be synonymous with the *minimum fee* referenced in the first. Under South Carolina law, there is a *minimum fee* for all bail bonds; however, not all bail bonds will require a payment agreement. Under the Bond Reform Act, the first paragraph of § 38-53-170(e) functions to set the minimum premium amount that must be collected, and the second paragraph permits the bondsman to establish a payment schedule for all outstanding balances.

By harmonizing the statutory terms and construing the language of the statute as a whole, it is clear the language in the second paragraph is not an alternative or exception to the first paragraph.[15] Instead it 1) allows the bondsman to enter into a payment agreement for amounts that exceed the minimum fee that must be collected by attaching a statement of bondsman to the bond proceeding form; 2) provides the agreement shall require the principal on the bail bond or any indemnitor to make a *minimum down payment* of one hundred dollars to finance the amount in excess of the minimum fee; and 3) provides the payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed.

Bondsmen must collect a minimum fee of $100 or 10% of the bond, ***whichever is greater***, prior to the execution of the bond. For example, on a bond with a face amount of $10,000, the bondsman must collect a minimum fee of $1,000 but may charge a premium of up to $1500[16] for a bail bond. For a bond of $1,000 or less, the bondsman must collect a minimum fee of $100. The minimum fee must be collected *before* the bond is executed per the language of the statute. An installment or payment agreement may be used for premiums in excess of the 10% statutory minimum fee.

[14] "[W]ords in a statute must be construed in context," and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n,* 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Hitachi Data Sys. Corp. v. Leatherman,* 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

[15] *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005) citing *Municipal Assn of South Carolina v. AT & T Communications of S. States, Inc.*, 361 S.C. 576, 606 S.E.2d 468 (2004) (observing that the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose).

[16] S.C. Code Ann. § 38-53-170(e) allows the bondsman to charge a premium of up to 15% of the face amount of the bond.

Other fees paid in excess of the premium as a cost of satisfying the condition of the bond (such as electronic monitoring fees) are not considered a part of the premium[17] and must be handled in accordance with applicable law. The table below further illustrates this point.

Bond Face Amount	Minimum Fee (Premium) that Must be Collected Prior to Bond Execution	Maximum Permitted Premium
$250	$100	$100
$500	$100	$100
$1000	$100	$150
$10,000	$1,000	$1,500
$50,000	$5,000	$7,500
$100,000	$10,000	$15,000
$250,000	$25,000	$37,500
$500,000	$50,000	$75,000
$750,000	$75,000	$112,500

II. PAYMENT AGREEMENTS

A. Installment Payment Agreements must comply with the requirements of § 38-53-170(e).

Payment agreements may be used for bond amounts in excess of the minimum fee. Bond premium payments in excess of the minimum fee amount may be made in installments. Section 38-53-170(e) authorizes a bondsman to enter into payment agreements. Payment agreements must be attached to the bond proceeding form.[18] Once a payment agreement is made it cannot be altered. Moreover, the terms of the payment agreement cannot exceed 18 months from the date the bond was executed.

If the payment has not been made for 60 days, the bondsman must send a certified notice to the last known address of the principal and indemnitor demanding payment be made within ten days to bring the agreement current. If no payment is received by the end of the ten-day notice period, the bondsman must surrender the principal to the proper detention facility for holding and file a motion to be relieved as provided in S.C. Code Ann.§ 38-53-50(A) or (B). When this occurs, the installment payment agreement must be accelerated, and the balance paid in full, before or at the motion hearing for the principal to be rereleased on bond.

Insurers may use their own payment agreements. Surety bondsmen must use the payment agreements authorized by the insurer. Installment payment agreements must be: 1) in writing; 2) signed by the bondsman; 3) signed by the defendant or indemnitor; 4) set forth the amount of bail in the case and the premium charged; and 5) describe the amount and type of collateral held by the

[17] Effective January 1, 2024, only persons certified or grandfathered in by SLED may collect electronic monitoring fees.
[18] S.C. Code Ann. § 38-53-170(e).

bondsman and the conditions under which the collateral may be returned or converted if collateral is required.

Neither insurers nor bondsmen may charge interest on the remaining balance. For each payment received, the bondsman must provide a prenumbered receipt to the person tendering the payment. The signed receipt must contain the following information: the date, the defendant's name, a description of the payment type and the amount of money received, the purpose for which the money was received, the sum of the bond, the name of the person tendering the payment, and the balance owed, if any.

1. Detailed receipts must be provided for collateral accepted.

The Bond Reform Act permits the acceptance of collateral as security for the payment of the bond premium. It provides "the bondsman may accept collateral security or other indemnity from the principal which must be returned within ten days after final termination of liability on the bond unless a bench warrant has been issued." *See* S.C. Code Ann. § 38-53-170(e). If the bondsman accepts collateral as additional security for the payment of the bond premium, a detailed receipt must be provided to the depositor. S.C. Code Ann. § 38-53-180. For purposes of this order, a detailed receipt must be: 1) dated; 2) in writing; 3) signed by the bondsman; 4) signed by the defendant or indemnitor; 5) be prenumbered; 6) contain a full description and photograph of the collateral including the condition of the collateral at the time it was taken into custody; and 7) set forth the amount of the bail in the case, the name of the defendant released on bond, the docket number for the case, the court granting the bond, the premium charged, and the amount and type of collateral held by the bondsman and the conditions under which the collateral is returned or converted.

On the collateral receipt, the bondsman shall identify who is paying the premium and shall warrant that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the principal's disappearance than appearance for trial. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond. This means that the value of the collateral pledged must be close in value to the amount of the bond. For example, it would be unreasonable for a bondsman to accept as collateral a person's home or other real property as security for a $5,000 or $10,000 bond unless the market value of the property is equal or close to the amount of the bond.

2. Bondsmen must provide the following disclosure on all bonds secured by property.

Disclosure of Lien Against Property

Do not sign this document until you read and understand it. This bail bond will be secured by real or personal property you own or in which you have an interest. Failure to pay the bail bond premiums when due or the defendant's failure to comply with the conditions of bail could result in the loss of your property.

If a bond is secured by property, the bondsman shall provide the property owner with written notice that conforms to the preceding example, printed in a 14-point bold faced font either: 1) on a separate sheet of paper signed by the defendant or depositor of collateral; or 2) in a clear conspicuous statement on the face of the application for the bond. The application must also be signed by the defendant and the bondsman. The surety insurer or bondsman must provide a copy of this disclosure to the depositor or indemnitor prior to pledging or accepting collateral.

4. Collateral cannot be converted unless the bond is forfeited.

Collateral cannot be converted ***unless*** the bond is forfeited. There must be an order from the court indicating the defendant has forfeited the bond. Once that order is entered, the bondsman must not convert property received as security to cash ***unless and until*** he has provided 10 days' notice of the conversion to the depositor at the depositor's last known address. The notice must be sent by certified mail.

After the conversion of property, the bondsman must disclose any reasonable expenses incurred. Reasonable expenses may include certain apprehension costs[19] and legal costs[20] incurred as a result of the violation of the bond. Copies of the bill of sale, invoice, or other receipts must be attached to the form. Any funds received in excess of the bond less reasonable expenses must be returned to the depositor within three calendar days after settlement.

5. Licensees must keep accurate records for a minimum of five years.

Surety insurers and bondsmen must keep an accurate record of the business transacted by them in accordance with South Carolina law. *See* S.C. Code Ann. §§ 38-13-120, 38-43-250, and 38-53-310. Bondsmen must maintain copies of each receipt, application, indemnity agreement, bond, disclosure statement, payment plan and agreement, affidavit surrendering the defendant, bond revocation request, and any other document or information related to the bond transaction. As required by South Carolina law, these documents must be made available for inspection by the director or his designee upon request. Failure to do so constitutes a violation of South Carolina law and shall constitute grounds for administrative disciplinary action against the bondsman and the appointing insurer. The South Carolina insurance laws give the Department the authority to inspect the records of its licensees upon demand to verify compliance with the requirements of the law.

C. FAILURE TO COMPLY WITH APPLICABLE LAW AND STANDARDS

S.C. Code Ann. §§ 38-5-120 and 38-53-150 authorize the Director to initiate administrative disciplinary proceedings against licensees for violating the law or refusing to comply with an order of the Director. Please note that upon a determination by this Department that a licensee has violated the provisions of this order or applicable South Carolina law, the licensee will be subject to the penalties set forth in Title 38 of the South Carolina Code of Laws, including S.C. Code Ann.

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[19] Apprehension costs include reasonable costs incurred in the person's apprehension, such as costs for food, lodging, and transportation (*i.e.*, gas mileage) from the current location of the person to the detention facility which has jurisdiction.

[20] Legal costs include legal filing fees and attorneys' fees incurred by the bondsman or insurer related to the criminal defendant's apprehension and surrender and motions to be relieved on bond.

§§ 38-2-10, 38-5-120, 38-5-130, and 38-53-150, such as administrative fines of up to $5,000 for individual licensees and up to $30,000 for insurers, as well as license suspension or revocation, or a combination of the aforementioned penalties, for each violation.

ORDER

IT IS THEREFORE ORDERED that surety insurers, bondsmen, and runners comply with the minimum fee and installment payment requirements of the Bond Reform Act, the guidance and standards set forth in this order, and applicable provisions of South Carolina law regarding bail, including other applicable provisions of *The Insurance Law*, S.C. Code Ann. §§ 38-1-10 *et seq.*

This Order sets forth the requirements of existing South Carolina law and shall take effect immediately.

Dated this 11th day of December 2024.

Michael Wise

Michael Wise
Director