SCDOI Order No. 2024-02

sbs@naic.org <sbs@naic.org>
Tue 3/19/2024 6:33 AM

[redacted]

South Carolina Department of Insurance
1201 Main Street Suite 1000
Columbia, SC 29201

Mailing Address
P.O. Box 100105
Columbia, SC 29202

March 19, 2024

[redacted]

[redacted]

On June 20, 2023, Governor McMaster signed into law Act No. 83 of 2023 (R-98, H. 3532) ("Bond Reform Act"), which amends numerous provisions of South Carolina law pertaining to bail bonds, pretrial release, electronic monitoring, and other related criminal procedures, including provisions within Title 38, Chapter 53. South Carolina law authorizes the director of the Department of Insurance ("Department") 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. S.C. Code Ann. § 38-3-110. The Department will issue a number of orders that 1) outline and summarize the Bond Reform Act's changes to Title 38 affecting the commercial bail bond industry; 2) provide compliance requirements for surety insurers, professional bondsmen, surety bondsmen, and runners as wells as guidance, standards and other requirements for licensees in the commercial bail bond industry. The Department has conducted a number of educational sessions on the requirements of the law for some licensees.

The attached order addressing licensing and reporting changes was issued to licensees of this Department today via electronic and certified mail. Licensees are expected to govern themselves accordingly. Licensees who ignore the requirements of the law also risk the imposition of administrative disciplinary action by this Department.

The order is attached here for your review.

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

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. 2024-02** Promulgation of Guidance, Standards, and Other Requirements for Compliance with the Licensing and Continuing Education, Appointments, and Policy Form Requirements of Act No. 83 of 2023

On June 20, 2023, Governor McMaster signed into law Act No. 83 of 2023 (R-98, H. 3532) ("Bond Reform Act"), which amends numerous provisions of South Carolina law pertaining to bail bonds, pretrial release, electronic monitoring, and other related criminal procedures, including provisions within Title 38, Chapter 53. South Carolina law authorizes the director of the Department of Insurance ("Department") 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. S.C. Code Ann. § 38-3-110. The Department will issue a series of orders or bulletins implementing the various provisions of this statute. The purpose of this order is 1) to outline and summarize the Bond Reform Act's licensing and continuing education changes to Title 38 affecting the commercial bail bond industry and 2) to provide compliance requirements for surety insurers, professional bondsmen, surety bondsmen, and runners.

I. LICENSING CHANGES FOR SURETY BONDSMEN

The Bond Reform Act changes the definition of "surety bondsman." Effective July 1, 2024, a surety bondsman must be licensed as a property and casualty insurance agent or producer. This change affects the licensure of surety bondsman as well as their continuing education (CE) requirements if they wish to continue writing bail bonds in this State. Producers licensed in more than one line of authority must complete a minimum of eight hours of CE for each line of authority biennially by the end of their birth month. To remain licensed as a surety bondsman, a surety bondsman must have property and casualty lines of authority to write a bond in South Carolina on or before July 1, 2024. Existing surety bondsmen and producers with property and casualty authorities are encouraged to complete the requirements for licensure as soon as possible to ensure licensure by July 1, 2024, to avoid cancellation of their surety bondsman license.

A. New Applicants for a Surety Bondsman License (including Professional Bondsmen and Runners)

In addition to the eligibility requirements set forth in S.C. Code Ann. §§ 38-43-100 and 38-53-90, new applicants for a surety bondsman license must comply with the following requirements in both tables below to be eligible for licensure:

Eligibility Requirements for New Surety Bondsman License	**CE Compliance Requirements to Maintain Surety Bondsman License**
Eligibility for Surety Bondsman License: • Applicant must take the 30-hour bondsman pre-licensing course. • Applicant must pass the bondsman exam with a minimum score of 70%. • Applicant must submit an online application through NIPR to the Department with a set of fingerprints.	CE Requirements (*See* S.C. Code Ann. § 38-53-85) • 8 hours of bondsman related CE credits

<u>AND</u> COMPLETE THE REQUIREMENTS IN THE TABLE BELOW:

Eligibility Requirements for <u>New</u> Producer License	**CE Compliance Requirements to Maintain Producer License**
Eligibility for New Property and Casualty License: • Applicant must pass the Property & Casualty Producer Exam with a minimum score of 70%. • Applicants must submit an online application through NIPR to the Department with a set of fingerprints. • Pay the $25 fee.	CE Requirements (*See* S.C. Code Ann. § 38-43-106) • 21 hours of CE credits <u>and</u> • 3 hours of ethics credits.

B. Existing Bondsmen Applying to Add Property and Casualty Authority

Current surety bondsmen seeking to add property and casualty authority must comply with the eligibility requirements set forth in § 38-43-100 and the following:

Eligibility Requirements	**CE Compliance Requirements to Maintain License**
Existing Bondsman Applying to Add Property and Casualty Authority to Producer License: • Must pass the property and casualty producer exam with a minimum score of 70% • Submit an online application to the Department through NIPR to add property and casualty line of authority to their current producer license. • Pay the $25 fee.	CE Requirements (*See* S.C. Code Ann. § 38-43-106 and S.C. Code Ann. § 38-53-85). • 21 hours of CE credits; • 3 hours of ethics credits; <u>and</u> • 8 hours of bondsman-related CE credits.

Please note that fingerprints are <u>not</u> required when you are solely seeking to add the property and casualty line of authority.

C. Current Producers with Property and Casualty Authority Seeking to Add Surety Authority

Property and casualty producers seeking to add surety authority must comply with the following:

Eligibility Requirements	**CE Compliance Requirements to Maintain License**
Current Producer with Property and Casualty Authority • Producers must submit an online application to the Department through NIPR to add surety authority to their license. • Pay the $25 application fee.	CE Requirements (*See* S.C. Code Ann. § 38-43-106 and S.C. Code Ann. § 38-53-85) • 21 hours of CE credits; • 3 hours of ethics credits; and • 8 hours of bondsman-related CE credits.

For those producers in good standing (i.e., no license suspension or revocation), the Department will add the surety line of authority to the producer's license.

D. Current Producers who are already licensed with Property, Casualty, and Surety Authority

Producers who are already licensed with property, casualty, and surety authority will not be required to submit an online application and will only be required to meet the continuing education requirements set forth below:

CE Compliance Requirements to Maintain License
CE Requirements (*See* S.C. Code Ann. § 38-43-106 and S.C. Code Ann. § 38-53-85) • 21 hours of CE credits; • 3 hours of ethics credits; and • 8 hours of bondsman-related continuing education hours.

E. Continuing Education Requirements

The preceding charts set forth the CE requirements necessary to maintain licensure as a producer unless the producer qualifies for an exemption. Producers aged 65 or older with a total of 25 years in insurance are exempt from CE requirements. Bondsmen aged 60 or older with 20 years in the commercial bail bond industry are exempt from CE requirements. However, producers and bondsmen must apply for the CE exemption.

The number of CE hours that must be completed may be impacted by the date on which the applicant applies for the license or adds the new lines of authority. Additionally, when producers are licensed in more than one line, they must complete a minimum of eight hours of CE for each line of authority biennially by the end of their birth month.

The table below illustrates when a licensee must complete the additional 8 hours of CE for adding the property and casualty line of authority for the CE compliance period ending December 31, 2024. This illustration is provided for even numbered birth years (*i.e.,* birth years ending in 0, 2, 4, 6, or 8 such as

1980, 1982, 1984, 1986, 1988, etc.) because the new property and casualty license requirement is being implemented for the first time in an even numbered year (*i.e.*, 2024).

Birth Month in Even Birth Year	**Not Required** to Complete the 8 hours of Property and Casualty CE if the lines are added between:	**Required** to Complete 8 hours of Property and Casualty CE if the lines are added:
January	November 2 through January 31	On or before November 1
February	November 30 through February 28	On or before November 29
March	January 1 through March 31	On or before December 31
April	January 31 through April 1	On or before January 30
May	March 2 through May 31	On or before March 1
June	April 1 through June 30	On or before March 31
July	May 2 through July 31	On or before May 1
August	June 2 through August 31	On or before June 1
September	July 2 through September 30	On or before July 1
October	August 2 through October 31	On or before August 1
November	September 1 through November 3	On or before August 31
December	October 2 through December 31	On or before October 1

EXAMPLE: For existing producers,

- If your birth date is January 10, 1990, you **will not** be required to complete the 8 hours of CE if the property and casualty lines of authority are added to your license between November 2, 2023, and January 31, 2024, as depicted in the chart above.
- If the property and casualty lines of authority are added to your license on or before November 1, 2023, you **will** have to complete the 8-hour CE requirement.
- If the property and casualty lines of authority are added to your license after January 31, 2024, you will be required to complete the 8-hour CE requirement prior to your next compliance period, which would be before January 31, 2026.

The Department is in the process of amending the supplemental questions page of the producer application. A copy of the revised application and the forms referenced in this order will be posted on the Department's webpage, Department of Insurance, SC - Official Website | Official Website.

II. MODIFYING POLICY FORMS TO COMPLY WITH THE BAIL BOND REFORM ACT

The bail bond[1] is the contract between the State of South Carolina and the bondsman of the accused in which the bondsman promises to act as a guarantor of the defendant's appearance in court and compliance

[1] Any person charged with a noncapital offense shall be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. S.C. Code Ann. § 17-15-10(A). Courts may impose certain conditions upon release, including the "execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court" (*e.g.*, bail bond). *Id.* Electronic monitoring may be ordered as a condition of the criminal defendant's pretrial release.

with the bond conditions under risk of forfeiture of the entire bond.[2] Bail bonds are written by surety insurers authorized to transact the commercial bail bonding business in South Carolina. Surety bonds must reflect the terms and conditions related to the undertaking and conditions of pretrial release. These surety contracts are subject to review and approval by the Department. *See* S.C. Code Ann. § 38-15-10. This section provides:

> No surety insurer authorized to transact business in this State may execute a fidelity or surety bond for an officer or employee of this State or of a county, municipality, or other subdivision of this State or for an officer or employee of a bank, trust company, or other fiduciary corporation organized under the laws of this State except upon the assumption of risk and upon the forms prescribed by law or approved by the director or his designee and the Attorney General.

Id. Commercial bail bonds are a specialized form of insurance. Insurers underwrite bail bonds in some instances replacing cash bail paid directly to the court with a promise to appear that is backed by the surety insurer.

Bail bond applications and agreements must conform to changes in South Carolina law. They must also be consistent with the electronic monitoring standards promulgated by SLED.[3] The bail bond agreement and application must reflect the terms and conditions applicable to the criminal defendant's pretrial release.[4]

Filing Procedure for New Bail Bond Agreements or Electronic Monitoring Addendum to Existing Bail Bond Application and Agreement

Within 30 days of the date of this Order, surety insurers transacting bail bond business in South Carolina and underwriting bonds for criminal defendants subject to electronic monitoring shall file updated bail bond agreements and applications with this Department for its review or certify that its application forms comply with the bail bond reform changes and this order. Exhibit A is a copy of the Certification form that may be filed. *See* https://doi.sc.gov/DocumentCenter/View/14614/Certificate-of-Compliance-form?bidId=. The Department will conduct random audits to ensure that forms subject to the certification comply with South Carolina law.

The Department accepts electronic filings via SERFF. The SERFF system is designed to expedite the review process for form filings.[5] Instructions for submitting P&C form/rate/rule filings may be found on the SCDOI website at the following link: https://doi.sc.gov/432/Property-Casualty.

---

[2] Generally, the parties to this contract are the State (which brings the criminal charges); the bondsman or surety (who guarantees the defendant appears and complies with bail terms); and the defendant (who is the principal on the bond).

[3] SLED's electronic Monitoring Standards may be found at South Carolina Law Enforcement Division (sc.gov).

[4] *See* SCDOI Order No. 2022-04. Please note, however, if the surety insurer on a bond has notice of the conditions of pretrial release and accepts the bond (whether electronic monitoring is included in the language of the bond agreement or not) the surety is liable for that bond.

[5] The rate for surety bonds is set by statute. South Carolina law requires that the premium for the bond shall not exceed 15% of the face value of the bond. *See* S.C. Code Ann. § 38-53-170. Insurers do not need to file rates with the Department but must file the certification indicating their rates and forms, including the application and bond agreement, comply with applicable South Carolina law.

III. APPOINTMENTS AND TERMINATION OF APPOINTMENTS

Surety bondsmen must be licensed as insurance producers in South Carolina and must be appointed by the insurer they represent. *See* S.C. Code Ann. § 38-43-50(A). Insurers are required to certify on a form that they have duly investigated the character and record of the applicant they are appointing to represent them and that they have satisfied themselves that the applicant is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. South Carolina law requires each insurer appointing a bondsman to provide notice of the appointment to the director or his designee of such appointments.

Surety insurers and professional bondsmen are responsible for the actions of their representatives (*i.e.*, surety bondsmen or runners) and must take the actions necessary to ensure they are properly trained and compliant with the laws of the State of South Carolina. *Carson v. Vance*, 326 S.C. 543, 550, 485 S.E.2d 126, 129–30 (Ct. App. 1997).[6] An appointed bail bondsman or runner is considered the agent of the insurer or bondsman (*e.g.*, principal) it has been appointed to represent. The terms and conditions of the appointment are generally set forth in the agency or producer contract.

Generally, the death or incapacity of a bondsman or runner terminates the producer's appointment or contract with the insurer subject to the terms of their agreement. *See* S.C. Code Ann. § 38-53-210.[7] For purposes of this order, the terms "death" and "incapacity" mean the bondsman can no longer fulfill the responsibilities of his producer agreement due to poor health or death. Within 30 days' notice of the death or permanent incapacity of an appointed licensee (*i.e.*, bondsman or runner), the insurer or professional bondsman must submit a notice terminating the appointment of the bondsman in accordance with the requirements set forth in S.C. Code Ann. § 38-53-210 to the Department and clerks of the circuit courts of the counties in the State where the insurer has been obligated on bail bonds through the agent for the past three years. The insurer must also appoint a successor bondsman or runner to oversee or administer the bonds or liabilities of the bondsman. This notice must state the reason for termination of the appointment, the name and contact information for the deceased or incapacitated licensee, and the name and contact information for the successor bondsman or runner. Certain information submitted on the notice may be regarded as privileged and confidential and not subject to disclosure. *See* S.C. Code Ann. §§ 38-43-55, 38-53-210. Attached as Exhibit B is a revised Termination of Appointment notice that may be used by insurers for this purpose. *See* https://doi.sc.gov/DocumentCenter/View/12530/2020_surety-bondsman-appt-termination?bidId=.

IV. AGENCY LICENSES

Section 38-43-30 requires licensees purporting to transact the business of an insurance producer under a corporate or trade name (i.e., dba name) to be licensed as an agency. Generally, an insurance agency is a single agent or group of agents authorized to sell insurance on behalf of an insurer. Only businesses that

[6] "The activities of bail bondsmen and runners are statutorily regulated in South Carolina. Bail bondsmen have a statutorily imposed responsibility for the actions of their runners when they receive their license. These statutes specifically provide a bail bondsman shall supervise his runner's work and is responsible for the runner's conduct in the bail bond business. The statutorily imposed duty to supervise the runner is a clear mandate." S.C. Code Ann. §38-53-120.

are single-owner or sole proprietorships are not required to be licensed as an insurance agency. For example, a business organized as a limited liability company (LLC), corporation or partnership transacting business as James Bond dba XYZ Bonding, LLC must be licensed. It has come to the attention of the Department that there are licensees operating businesses under trade or corporate names without the appropriate insurance agency license. If so, this is a violation of the South Carolina Code of Laws. The Department is reviewing this matter and will initiate administrative actions against entities falling in this category to have them demonstrate why they should not be required to comply with S.C. Code Ann. § 38-43-30.

V. FAILURE TO COMPLY WITH APPLICABLE LAW AND STANDARDS

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. §§ 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 Bond Reform Act, the guidance and standards set forth in this order, and applicable provisions of South Carolina law regarding bail, including the provisions of *The Insurance Law*, S.C. Code Ann. §§ 38-1-10 *et seq*., and S.C. Code Ann. §§ 38-53-10 *et seq*., and train their employees, producers, agents, and runners on the requirements of South Carolina law pertaining to bail bonds.

IT IS FURTHER ORDERED that surety insurers, bondsmen, and runners comply with the standards and procedures developed by SLED for electronic monitoring of criminal defendants and requirements of the Bond Reform Act for reporting violations of bond conditions.

IT IS FURTHER ORDERED that surety insurers, bondsmen, and runners who are notified of violations of the terms and conditions of the bond or pretrial release order must notify the Solicitor in writing within 48 hours and otherwise comply with the procedures outlined in S.C. Code Ann. §§ 38-53-50, 38-53-84 and other applicable provisions of South Carolina law to have the defendant surrendered to the court or the detention facility pending further action by the court.

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

Dated this 13th day of March 2024.

Michael Wise

Michael Wise
Director