Title 31
MARYLAND INSURANCE ADMINISTRATION

Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE PROFESSIONALS

31.03.05 Bail Bonds

Authority: Insurance Article, §§2-108 and 2-109, and Title 10, [Subtitle 3] *Subtitles 1 and 3*, Annotated Code of Maryland

Notice of Proposed Action

[14-045-P]

The Insurance Commissioner proposes to amend Regulations **.01 — .07**, adopt new Regulations **.08**, **.09**, and **.12**, and amend and recodify existing Regulations **.08**, **.09**, **.10**, **.11**, and **.12** to be Regulations **.10**, **.11**, **.13**, **.14**, and **.15**, respectively, under **COMAR 31.03.05 Bail Bonds**.

Statement of Purpose

The purpose of this action is to adopt regulations to establish the standards for producers to meet when providing bail bondsman services as provided for in Insurance Article, §10-303, Annotated Code of Maryland.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to katrina.lawhorn@maryland.gov, or fax to 410-468-2020. Comments will be accepted through March 10, 2014. A public hearing has not been scheduled.

.01 Scope.

A. (text unchanged)

B. [This chapter does not apply to bail bondsmen engaged in bail bond business in the State judicial circuit that by rule of court prescribes the terms and conditions for bail bonds filed in the circuit court for that county as authorized by Criminal Procedure Article, §5-203, Annotated Code of Maryland, and the Maryland Rule of Procedure 16-817] *Except as provided in Insurance Article, §10-309, Annotated Code of Maryland, this chapter does not apply to a bail bondsman who provides bail bondsman services under Criminal Procedure Article, §5-203, Annotated Code of Maryland.*

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Affidavit" means a dated written or printed statement of facts, made voluntarily, and confirmed by oath or affirmation of the person making it, taken before an individual having authority to administer such oath or affirmation in connection with posting a bail bond pursuant to Maryland Rule 4-217.

(2) "Appointment" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.

(3) "Authorized insurer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.

(4) "Bail bond" has the meaning set forth in Insurance Article, §10-301, Annotated Code of Maryland.

(5) "Bail bond application" means a written request to a surety insurer for a bail bond that sets forth the required information to purchase a policy of surety insurance.

[(1)] *(6)* "Bail bondsman" means a surety insurance producer who is appointed by [an] *a surety* insurer to solicit, [procure,] negotiate, [and] *or procure* [effectuate] bail bonds on behalf of that *surety* insurer.

(7) "Bail bondsman services" means any conduct relating to the sale, solicitation, negotiation, or procurement of a bail bond, and includes the posting of a bail bond.

(8) "Balance amount" means the amount of premium owed by a person under an installment agreement after subtracting the down payment from the premium.

(9) "Commissioner" means the Maryland Insurance Commissioner.

(10) "Indemnity agreement" means a written surety agreement that is executed by a bail bondsman and a person in which the person agrees to pay and the bail bondsman agrees to accept a premium for the issuance of a bail bond, subject to certain terms and conditions.

(11) "Insurance producer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.

(12) "Installment agreement" means a written agreement between a bail bondsman and a person in which the person agrees to pay, and the bail bondsman agrees to accept, the payment of a premium for a bail bond using installment payments.

(13) "Licensed insurance producer" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.

[(2) "Licensee" means an insurer which is authorized in this State to engage in the business of surety insurance, either directly or through an appointed surety insurance producer.]

[(3)] (14) "Property bail bondsman" [means a person who pledges currency or real or personal property as security for a bail bond in connection with a judicial proceeding] *has the meaning set forth in Criminal Procedure Article, §5-209, Annotated Code of Maryland.*

(15) "Surety Insurance" has the meaning set forth in Insurance Article, §1-101, Annotated Code of Maryland.

[(4)](16) "Surety insurance producer" means [an] *a licensed* insurance producer who, [holds a valid license from the Commissioner for the sale of surety insurance] *for compensation, solicits, negotiates, or procures surety insurance contracts* and is appointed by an authorized *surety* insurer to act as an insurance producer [in the sale of surety insurance].

(17) "Surety insurer" has the meaning set forth in Insurance Article, §10-301, Annotated Code of Maryland.

.03 Prohibited Actions.

A. An insurer may not [directly or indirectly pay any commission, fee, reward, or other consideration for procuring or influencing the procurement of any bail bond to any person unless that person is a surety insurance producer, as defined in Regulation .02B(4) of this chapter and is appointed by the insurer.]*:*

(1) Directly or indirectly pay any commission, fee, reward, or other consideration for the solicitation, negotiation, or procurement, or for influencing the solicitation, negotiation, or procurement of, a bail bond to any person unless that person is a bail bondsman, and is appointed by the surety insurer; or

(2) Delegate its authority to appoint a bail bondsman.

B. A person acting as a bail bondsman or *a person acting* on behalf of a bail bondsman may not in any manner solicit, [procure,] negotiate, or *procure* [effectuate for another any kind of] *a* bail bond *for a surety insurer* in this State unless that person is a [surety insurance producer as defined in Regulation .02B(4) of this chapter] *bail bondsman and is appointed by the surety insurer.*

C. A bail bondsman may not submit an affidavit required under Maryland Rule 4-217 to a court that relies on a promissory note unless the promissory note has been executed by the person signing the indemnity agreement or the defendant before the bail bondsman submits the affidavit to the court.

.04 Conduct of Business by a [Surety Insurance Producer] *Bail Bondsman.*

The business of a [surety insurance producer] *bail bondsman* may be conducted by an individual, partnership, or corporation, provided that an individual who solicits, *negotiates, or* procures[, negotiates, or effectuates surety business] *bail bonds* shall be a [surety insurance producer] *bail bondsman.*

.05 Appointments.

A. A bail bondsman shall:

(1) Before conducting business as a bail bondsman, be appointed by [an authorized insurer to act as the insurer's insurance producer in the placement of bail bonds] *a surety insurer to provide bail bondsman services*; and

(2) [File with the Commissioner and with the Chief Clerk of the District Court of Maryland the general power of attorney executed by or on behalf of the surety insurer evidencing the authorization of the surety insurance producer to conduct business as a bail bondsman on behalf of the insurer] *Comply with the requirements of Maryland Rule 4-217.*

B. A surety insurer [which] *that* terminates the appointment of [any surety insurance producer] *a bail bondsman* shall immediately file a written notice of *the* termination with the Commissioner and with the Chief Clerk of the District Court of Maryland.

.06 Suspension [and] *or* Revocation.

A [surety insurance producer] *bail bondsman* who [intentionally] makes a misleading or false representation to a court or to a public official for the purpose of avoiding a forfeiture of bail, having a forfeiture set aside, or obtaining the release of a defendant on the defendant's own recognizance, shall be [considered to have violated] *in violation of* Insurance Article, §10-126(a)(6), (13), and (14), Annotated Code of Maryland.

.07 Rates.

A. [Except for motor clubs, a surety insurance producer or licensee may not execute a bail bond without charging a specific premium for the transaction] *A bail bondsman shall issue a bail bond that complies with Insurance Article, §27-216, Annotated Code of Maryland.*

B. [In instances where a specific premium is charged the actual premium charged may not differ from the premium rate approved by the Commissioner pursuant to Insurance Article, Title 11, Subtitle 2, Annotated Code of Maryland] *Except as provided in §C of this regulation, it shall be an unfair business practice and a violation of the Insurance Article, §10-126, Annotated Code of Maryland, for a bail bondsman to solicit, procure, or negotiate a bail bond if:*

(1) A surety insurer has an approved premium rate for both cash bail bonds and corporate surety bail bonds;

(2) The premium rates differ for cash bail bonds and corporate surety bail bonds; and

(3) A defendant is sold a bail bond with the higher premium rate.

C. If a surety insurer has approved premium rates for cash bail bonds and corporate surety bail bonds, a bail bondsman may sell a defendant a bail bond regardless of the approved premium rate if the court specifies a type of bail bond.

.08 Indemnity Agreement.

An indemnity agreement shall:

A. Contain the signatures of the bail bondsman providing the bail bondsman services and the person signing the indemnity agreement;

B. Be executed prior to the issuance of a bail bond;

C. Contain the printed name and insurance producer license number of the bail bondsman providing the bail bondsman services;

D. Require the person signing the indemnity agreement to pay, and the bail bondsman to collect, the premium for the bail bond that is issued:

(1) At the time the indemnity agreement for the bail bond is executed by the bail bondsman and the person signing the indemnity agreement; or

(2) Through installment payments pursuant to a written installment agreement that complies with the requirements set forth in Regulation .09 of this chapter; and

E. Contain the following statement on the first page in capital and bold letters of at least 12-point font: "THE PERSON SIGNING THIS INDEMNITY AGREEMENT IS ENTITLED TO A REFUND, PAID WITHIN FIVE WORKING DAYS, OF 100% OF THE PREMIUM PAID IF THIS BAIL BOND IS NOT POSTED OR THE DEFENDANT IS NOT RELEASED PRE-TRIAL."

.09 Installment Agreement.

A. An installment agreement shall be signed by a bail bondsman and the person who signed the indemnity agreement.

B. The installment agreement shall contain the following information:

(1) The amount of the bail bond;

(2) The amount of the premium;

(3) The amount of the down payment;

(4) The amount of the balance owed;

(5) The total number of installment payments required to pay the balance;

(6) The amount and due date of each installment payment;

(7) The printed name and insurance producer license number of the bail bondsman executing the installment agreement;

(8) The printed name of the bail bond insurance producer firm and its insurance producer license number, if the bail bondsman is employed or otherwise engaged by a bail bond insurance producer firm; and

(9) The criminal case number for which bail was posted and the installment agreement entered.

C. The bail bondsman who signed the installment agreement shall maintain records demonstrating that the bail bondsman has taken all necessary steps to collect the amount owed.

D. Evidence that a bail bondsman has taken all necessary steps to collect the amount owed under the installment agreement may include, but is not limited to:

(1) Copies of all correspondence;

(2) Meeting logs, including the date and time the bail bondsman met with the person who signed the installment agreement;

(3) Telephone logs including the date, time, and name of the person with whom the bail bondsman communicated;

(4) Evidence that the debt has been referred to a collection agency, including the date of the referral and the name of the collection agency; and

(5) A copy of a civil court action seeking the money owed by the person who signed the installment agreement to the bail bondsman, including the filing of a writ of garnishment.

[.08] *.10* Records.

A. [A surety insurance producer shall maintain records of all bail bonds executed, in sufficient detail to enable the Commissioner to obtain all necessary information concerning each transaction. These records shall be made available for inspection by the Commissioner for at least 1 year after termination of the surety liability.] *A bail bondsman shall maintain for a period of 5 years after termination of the surety liability all documentation collected, prepared, and produced by the bail bondsman in the course of providing bail bondsman services, which shall include, but is not limited to, the following:*

(1) Evidence of the return of any security or collateral, including a receipt evidencing the return or repayment of the security or collateral;

(2) Copies of the affidavit made in connection with posting a bond or an indemnity agreement or collateral received; and

(3) Copies of all written representations made to any court or to any public official for the purpose of avoiding a forfeiture of bail, setting aside a forfeiture of bail, or causing a defendant to be released on the defendant's own recognizance.

B. [A surety insurance producer's] *In addition to the records set forth in §A of this regulation, a bail bondsman's* records shall include [a daily bond register. The register shall set forth,] *the following* [at a] minimum *information*:

(1) [The number] *A copy* of the power of attorney form;

(2) (text unchanged)

(3) The name of the [principal] person who signed the indemnity agreement;

(4) — (5) (text unchanged)

(6) The premium reported to the surety [company] *insurer* and the date reported;

(7) — (8) (text unchanged)

(9) The indemnity agreement[, if any; and]*;*

(10) The disposition of the bond, including the date of disposition[.]*;*

(11) A copy of any receipt for payment made to obtain an indemnity agreement or for an installment agreement;

(12) The bail bond application;

(13) A copy of the bail bond;

(14) The installment agreement, if any; and

(15) The information required under Regulation .09D of this chapter.

C. [A surety insurance producer shall retain] *Records required by this regulation shall be maintained in writing or by electronic means, provided that the records*:

[(1) Evidence of the return of any security or collateral, including a receipt evidencing the return or repayment of the security or collateral, for a minimum of 1 year from the date of return;

(2) Copies of all affidavits made in connection with indemnity agreements or collateral received, for a minimum of 1 year from the date of the termination of the surety liability; and

(3) Copies of all written representations made to any court or to any public official for the purpose of avoiding a forfeiture of bail, setting aside a forfeiture, or causing a defendant to be released on the defendant's own recognizance, for a minimum of 1 year from the date of the termination of the surety liability.]

(1) Are clear and legible;

(2) Accurately reproduce an original document in its entirety, including any attachments to the document; and

(3) Preserve any signature contained on the document.

D. The certification required pursuant to Insurance Article, §10-309(e)(3), Annotated Code of Maryland, shall be submitted by December 31 on a form made available by the Commissioner.

[.09] .11 Receipts.

A. A [surety insurance producer] *bail bondsman who collects a premium* shall provide a numbered receipt to [bail bond purchasers] *the person paying the premium.* A copy of the receipt shall be retained by the [surety insurance producer] *bail bondsman and maintained in accordance with Regulation .10 of this chapter.*

B. [The receipts] *A receipt*[, at a minimum,] shall contain the following *minimum* information:

(1) The name, place of business, address, and telephone number of the [surety insurance producer] *bail bondsman who collected the premium;*

(2) — (4) (text unchanged)

(5) The unpaid balance, if any; [and]

(6) The amount, value, and description of any collateral received[.]*;*

(7) The following statement, in capital and bold letters of at least 12-point font, at the bottom of the receipt: PERSON PAYING THE PREMIUM MUST RECEIVE A COPY OF THIS RECEIPT AT THE TIME OF MAKING A PAYMENT; and

(8) The insurance producer license number and the printed and signed name of the bail bondsman collecting the premium.

.12 Forms.

A bail bondsman shall:

A. Ensure that each document provided to, or executed by, the person signing the indemnity agreement contains the name and insurance producer license number of the bail bondsman providing the bail bondsman services and the bail bond insurance producer firm, if any; and

B. Provide the person signing the indemnity agreement with a copy of each document at the time the document is signed.

[.10] *.13* Collateral.

A [surety insurance producer] *bail bondsman* shall, in an affidavit, describe in detail any collateral received in connection with *the sale of* a bail bond [transaction] and the terms of [any] *an* indemnity or collateral agreement.

[.11] *.14* Return of Collateral.

A. Immediately upon the discharge of a *bail* bond, the [licensee or surety insurance producer] *bail bondsman* shall return any collateral held by the [licensee or surety insurance producer] *bail bondsman.* Upon receiving a request for return of collateral, the [licensee or surety insurance producer] *bail bondsman* shall promptly determine whether the [obligation] *bail bond* has been discharged.

B. The [licensee or surety insurance producer] *bail bondsman* may deduct any unpaid premiums due on the bail bond from any collateral being returned.

[.12] *.15* Pretrial Release.

In instances where a [licensee or surety insurance producer executes] *bail bondsman posts* a bail bond in anticipation of pretrial release of a defendant and the defendant does not subsequently qualify for pretrial release, [then] the [licensee] *bail bondsman* shall refund all premiums or fees received and all collateral held within 5 working days.

THERESE M. GOLDSMITH
Insurance Commissioner