



PRODUCERS & ADJUSTERS BULLETIN NO. 23

TO: ALL SURETY INSURERS AND BAIL AGENT LICENSEES

RE: Amended Delaware Code Chapter 43 Surety Insurance Contracts
Subchapter II Bail Agents

DATED: December 19, 2013

REVISED: August 30, 2022

The purpose of Producers & Adjusters Bulletin No. 23 as revised is to summarize key amendments to the Delaware Insurance Code related to the licensure and operations of bail bond agents through the passage of Senate Bill No. 102 of the 151st General Assembly (“SB 102”), codified in 18 Del. C. Chapter 43, Subchapter II, as follows:

- SB 102 clarifies that individuals or businesses that loan or otherwise provide funds to bail agents for purposes of furnishing bail (“**bail funders**”) are themselves required to be licensed as bail agents. This clarification is necessary in light of attempts to circumvent the law, as reflected in the Superior Court opinion issued in the matter of Preferred Financial Services, Inc. v. A&R Bail Bonds LLC, et al., 2019 WL 315331 (Del. Super. January 23, 2019), aff’d 2019 WL 4042324 (Del. August 28, 2019).
- SB 102 defines what it means to have a “**financial interest**” in a bail agent’s business or bail bond.
- Bail agent applicants are now able to submit federal background check requests electronically through SBI.
- SB 102 expands the authority of the Commissioner to request financial information from property bail agents and bail agent business entities licensed in Delaware, including the authority to request financial statements and balance sheets, bank statements and other information necessary for the Commissioner to thoroughly review business operations.
- A bail agent business entity’s license will automatically be suspended if such entity’s designated responsible individual licensee is no longer in good standing. Further, a designated responsible individual licensee of a bail agent business entity is responsible for ensuring the entity’s compliance with all relevant laws and will be subject to the same

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penalties as the business entity for failure of the entity to comply with the relevant insurance laws.

- Bail agents are now required to file and maintain a **\$50,000** bond with the Department. Current licensees who either do not currently have a bond filed with the Department or were required to provide a bond in an amount less than \$50,000 at the time of their license applications under prior law shall file with the Department a new bond in the minimum amount of \$50,000 **by September 17, 2022.**
- The procedures for requesting a hearing in connection with a license application denial are now consistent with the procedures set forth in Chapter 17 of the Insurance Code for producers.
- SB 102 includes additional record maintenance requirements in connection with the use of bail funders and establishes separate record maintenance requirements for those individuals or entities acting as bail funders.
- All persons or entities licensed under Chapter 43, subchapter II, of Title 18 are required to substantively respond to Department inquiries within 21 days of the inquiry, which is consistent with the requirements under Title 18's Unfair Trade Practices Act (Ch. 23).
- Any licensed individual or entity whose license has been revoked or suspended on 2 occasions are no longer eligible for licensure as a bail bond agent or bail agent business entity.

The following provisions of Producers & Adjusters Bulletin No. 23 issued on December 19, 2013 remain in effect:

- Beginning January 1, 2014, all Producer License Types (individuals and business entities) authorized for the lines of authority Bail Agent and Property Bail Agent will be converted to a new License Type called "Bail Producer".
- Those licensees currently licensed for the Bail Agent and Property Bail Agent lines of authority will be notified via email of the conversion to the new License Type.
- The Department will no longer issue nonresident bail agent licenses. Individuals and entities that received a **nonresident** bail agent license under the prior law will not be permitted to renew the bail agent license (renewal fee is due February 28, 2015, for nonresidents) unless they comply with the residency requirement under the amended statute. In order to establish Delaware residency, a bail agent must maintain an office within the State of Delaware that complies with all record-keeping and other requirements contained in the statute.
- Any person or entity who charges a fee for or makes a business of furnishing property bail in any court proceeding, or who furnishes property bail in 4 or more court cases in any one (1) year whether for compensation or otherwise, is required to be licensed as a Bail Producer for the Property Bail line of authority.
- A licensee shall notify the Department in writing of any change in address within 30 days of such change. All Bail Producers must provide a business address within the State of Delaware wherein business is transacted as required by 18 **Del.C.**

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§4346. Bail Producers are required to provide the Court(s) with a current copy of their license once an address change has occurred.

- All Bail Producers shall disclose to the Commissioner the identity of each person or entity having or seeking to acquire a 10% or greater financial interest in the Bail Producer's business or any one (1) or more bail bonds pledged by or on behalf of such Bail Producer. Before any person or entity may acquire or maintain a 10% or greater financial interest in a Bail Producer's business or any one (1) or more bail bonds such person or entity must be licensed as a bail agent. No licensee shall allow a person or entity to acquire or maintain a 10% or greater financial interest in a Bail Producer's business or any one (1) or more bail bonds unless the person or entity seeking to acquire such interest is licensed as a Bail Producer. This shall include any business or entity that enters into financing arrangements or agreements with a Bail Producer to provide the financing of any bail bonds.
- Section 4347 sets forth permissible fees and charges, including maximum and minimum charges. It is unlawful for a bail agent to execute a bail bond without charging and collecting a premium or other charge therefor, and the premium rate or other charge may not exceed or be less than the premium rate as filed with and approved by the Department. With regard to any surety bail bond in excess of \$1,000.00, the total filed premium for a surety bail bond shall be at least 5% and not more than 10%. It shall be unlawful for a Bail Producer to post a surety bail bond without first charging and receiving at least 5% of the surety bail bond amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.
- The total charges or commissions for a cash bail may not be less than 20% or more than 30% of the bail amount posted by the property bail agent. It shall be unlawful for a property bail agent to post a bail without first charging and receiving at least 20% of the cash bail amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.
- No bail agent may use more than two (2) trade names.
- Each surety insurer is required to annually conduct an audit, for the period from January 1 through December 31, of each of its appointed surety bail agents to ensure such agents are charging the premium rate as required by 18 Del.C. §4347. The insurer is required to notify the Commissioner of the failure of any surety bail agent to charge the premium rate approved by the Commissioner pursuant to 18 Del.C. Ch. 25 no later than 45 days after the closing of the year for which the audit was performed. The notice shall include the name of the surety bail agent, the case docket number if assigned, the total amount of the bail bond, the date the bail bond was executed, the amount of the premium charged and reported to the surety insurer, the state, county and court in which the bond was executed, the insurer's NAIC Code, and the date the premium was due.
- The new law imposes criminal penalties for any unlicensed person acting as a bail agent, or engaging in related activities such as solicitation of business or collecting premiums or fees.

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- Please keep in mind that the law continues in effect the important role of the courts in regulating bail agents. No bail agent may operate under a license from the Department unless the bail agent has registered with and been approved by the courts of this State according to such rules and procedures as the courts shall have established. A bail agent's license that is otherwise in good standing with the Department shall be immediately suspended and be subject to revocation by the Department upon notice from a court that the bail agent has been struck from the list of approved bail agents by the court or courts. This means that an agent who has been suspended by one court may not post bails in any court of the state, until the agent has been reinstated by the court *and* the Department has reinstated the agent's license.

All surety insurers and bail agents, and other persons affected, are strongly encouraged to review the amended statute in its entirety to ensure full compliance. A complete copy of the amended statute may be found at:

<http://delcode.delaware.gov/title18/c043/index.shtml>

Any questions, comments, or requests for clarification about this Bulletin should be emailed to licensing@delaware.gov.

This bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Trinidad Navarro
Delaware Insurance Commissioner

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