Adopted by the Producer Licensing (D) Task Force, Oct. 7, 2026

Chapter 19

Bail Bond Agents

A bail bond is one method used to obtain the release of a defendant awaiting trial related to ~~upon~~ criminal charges from the custody of law enforcement officials. A bail bond can be based on an insurance product or collateral. The defendant, the defendant's family or~~and~~ friends, or a professional bail bond agent executes a document that promises to forfeit the sum of money determined by the court to be commensurate with the gravity of the alleged offense if the defendant fails to return for the trial date. A bail bond is considered a three-part contract between the defendant, the government and the insurance company.

Some states regulate bail bonds through the insurance department, and others leave the administration to the discretion of the court system or a combination of both. ~~It is usually required that a bail bond insurer file a power of attorney with the local court authority. This power of attorney is proof to the court that the bail agent is authorized to write bonds for that insurer up to a certain dollar amount.~~

~~State insurance departments vary in the manner in which bail bond activities are regulated. T~~here is no NAIC model to guide state licensing directors for bail bond agents. A number of states use the surety line of authority (LOA) to regulate only the bonds that are insurance-based. In other states, a more comprehensive system has been developed that includes examinations, background checks, and personal integrity bonds. The majority of bail bond transactions are executed by resident bail bond agents. Some states prohibit nonresident bail bond agents. In many states, the state court system and local county sheriff may also have a process for approval of bail bond agents.

States that regulate bail bond agents should consider including the following elements in their regulatory scheme:

1. Minimum content and disclosure requirements for the bail bond contract.
2. Detailed record-keeping.
3. Requirement that bail funds be segregated in a trust account.
4. Appointments for all bail bond agents.
5. Written examination.
6. Background check, including fingerprints.
7. Prelicensing education on state laws and bond procedures.
8. Completion of continuing education (CE).
9. Laws that clearly place liability on insurers' appointed bail bond agents who fail to comply with state law on bail bonds and return of collateral.
10. Cross reference the *Producer Licensing Model Act* (#218) and the state's unfair trade practices act to apply penalties for misconduct.
11. Laws that create a fiduciary relationship between the bail bond agent and the criminal defendant.
12. Dialogue with the appropriate state court and law enforcement officials to coordinate efforts at regulating bail bond agents.
13. Adoption of a specific list of prohibited activities by bail bond agents.

Bond Forfeiture

Forfeiture enforcement may or may not be the responsibility of the state insurance department. In some states, enforcement is left to the court system. This may result in a bail bond agent's bond privileges being revoked in a particular county. If enforcement is the responsibility of the state insurance department, the state will likely have authority to suspend or revoke the license of a bail bond agent.

Prohibited Activities

The following list contains excerpts from several states' laws and regulations regarding bail bond agent licenses. This is a suggested starting point for states to draft a list of prohibited activities for bail bond agents and insurers:

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1. Pay, rebate, give or promise anything of value to a jailer, peace officer, magistrate, or any other person who has power to arrest or hold a person in custody, or to any public official or public employee for the purpose of securing a settlement, compromise, remission or reduction of the amount of a bail bond, or to secure delay or other advantage. This section does not prohibit public reward paid for the return of a fugitive.
2. Pay, rebate, give or promise anything of value to an attorney in a bail bond matter, except in defense of an action on a bail bond, collateral or indemnification agreement.
3. Pay, rebate, give or promise anything of value to a defendant or anyone acting on the defendant's behalf in exchange for a referral of bail bond business.
4. Recommend a particular attorney to represent a defendant.
5. Solicit business where a prisoner is confined in or near a courtroom if otherwise prohibited by court order or law.
6. Sign or countersign a bail bond that the licensee did not execute.

Immigration Bonds

An immigration bond guarantees the Department of Homeland Security (DHS) and/or Department of Justice (DOJ) ~~Immigration and Naturalization Service (INS)~~ that an alien will comply with one of several obligations under U.S. immigration laws. Most often, an immigration bond guarantees the alien while released from U.S. custody during the pendency of immigration proceedings with DHS or DOJ. ~~the government's case for unlawful entry into the country.~~ An immigration bond can be in the form of a surety product or collateral (see ICE~~NS~~ Form I-352). With respect to surety products, the underlying guarantee is an insurance product permitted to be issued solely by a licensed insurer. Consequently, an individual selling, soliciting or negotiating an immigration bond must maintain a resident or nonresident producer license in order to legally sell the bond in a state.

States should recognize that immigration bonds are a form of insurance required to be issued by a licensed insurer, and the sale, solicitation and negotiation of immigration bonds constitute activities for which an individual must maintain a license as a resident or nonresident producer under the respective states' licensing laws. New Jersey Bulletin No. 09-09 contains an example of notification regarding appropriate treatment of immigration bonds.

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