

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the adoption of New )  
Rules I through VIII pertaining to Surety ) NOTICE OF PUBLIC HEARING ON  
Insurance Producers Who Sell, Solicit, ) PROPOSED ADOPTION  
or Negotiate Commercial Bail Bonds )

TO: All Concerned Persons

1. On May 28, 2020, at 10:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), will hold a public hearing via recorded teleconference via Zoom.us, in the second floor conference room, at the Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. Due to the guidance issued by the Governor of the State of Montana on March 26, 2020, regarding the coronavirus pandemic, no in-person attendance will be permitted. The public hearing will be available via electronic and/or telephonic means and will be recorded. You will need to register in advance with Zoom.us so you can join in the hearing by going to:

<https://zoom.us/meeting/register/upAtdOqqqj4quCmvmQNAwAEUzoVvEQsznQ>

After registering, you will receive a confirmation email containing information about joining the meeting.

3. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process via teleconference or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m., on May 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail [rbidon@mt.gov](mailto:rbidon@mt.gov).

4. The new rules proposed to be adopted are as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) "90-day surety arrest period" means the 90-day period, during which a surety bail insurance producer is allowed to arrest and surrender a principal, pursuant to 46-9-503 and 46-9-510, MCA, commencing upon the issuance by a court of an "Order of Forfeiture" and ending 90 days thereafter.

(2) "Bail bond agency" means a surety bail insurance producer agency which may be a corporation, limited liability company, partnership, limited partnership, limited liability partnership, sole proprietorship, or other legal entity which is owned

by, employs, or contracts with one or more individual surety bail insurance producers.

(3) "Commercial bail bond surety insurer" means a surety insurer who sells, solicits, or negotiates commercial bail bonds.

(4) "Indemnitor" is a person who, by agreement with a surety bail insurance producer, accepts liability for loss of the surety bail insurance producer in the event that a principal fails to perform according to the standards agreed upon between the principal and the surety bail insurance producer.

(5) "Premium" means the cost of a surety insurance bond, issued pursuant to 33-26-101, et seq., MCA, and contained in the contract with the principal.

(6) "Principal" is a defendant or a witness who has been admitted to bail and who is obligated to appear in court as required upon penalty of forfeiting bail under a commercial bail bond.

(7) "Surety bail insurance producer" or "producer" means an insurance producer who sells, solicits, or negotiates commercial bail bonds, pursuant to 33-26-101, et seq. and 46-9-401, MCA.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-26-108, MCA

NEW RULE II FINANCIAL RESPONSIBILITY REQUIREMENTS -- CLAIMS AGAINST BONDS (1) Each surety bail insurance producer shall purchase and maintain a surety bond in the amount of \$25,000 issued by a surety company authorized to do business in this state.

(2) A surety on a surety bail insurance producer's bond referred to in (1) may not cancel the bond without giving at least 21 days' written notice of cancellation to the surety bail insurance producer and the commissioner. If the commissioner receives notice of a surety's intention to cancel a surety bail insurance producer's bond, the commissioner shall notify the affected surety bail insurance producer that unless the surety bail insurance producer files another \$25,000 surety bond with the commissioner, the surety bail insurance producer may no longer transact insurance as a surety bail insurance producer in this state.

(3) The surety bond required by this rule must be issued on the form found in Appendix A of [NEW RULE VIII], and must be established in favor of a person, and the commissioner on behalf of a person injured as a result of a violation of the Montana Insurance Code, or an administrative rule promulgated thereunder. The surety bond must cover any restitution or fine ordered by the commissioner.

(4) Each surety bail insurance producer licensed in this state as of the effective date of this rule shall file with the commissioner a copy of a surety bond, together with a power of attorney, on a form supplied by the surety company within 90 days of the effective date of this rule. Each surety bail insurance producer who becomes licensed after the effective date of this rule shall file with the commissioner a copy of a surety bond purchased pursuant to (1), together with a power of attorney on a form supplied by the surety company within 45 days prior to commencing business in this state.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-1001, 33-26-108, MCA

NEW RULE III BOND INSTRUMENTS (1) A surety bail insurance producer may not sign or countersign bail bonds in blank. A surety bail insurance producer may not give power of attorney to, or otherwise authorize, anyone to countersign the surety bail insurance producer's signature to bonds.

(2) Bail bonds shall be signed by the principal and the surety bail insurance producer, and an executed copy shall be given to the principal.

(3) Surety bail insurance producers shall maintain copies of all bail bonds issued for not less than three years.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-201, 33-26-108, MCA

NEW RULE IV COLLATERAL, TRUST ACCOUNTS, RECORDS OF ARREST AND SURRENDER, LIST OF FORFEITURES, COSTS, NOTICE OF INCARCERATION (1) Any collateral security required by a surety bail insurance producer must be commercially reasonable in relation to the amount of the bond.

The value of any collateral security received by a surety bail insurance producer must not exceed two-and-one-half times (250%) the amount of the bond unless no other collateral is available. Any collateral must be acquired and secured by a signed security agreement and in accordance with Montana law.

(2) A surety bail insurance producer who accepts collateral shall give the principal the security agreement and a written receipt for the collateral. The receipt must give a detailed description of the collateral received.

(3) Collateral security must be held and maintained in trust. When collateral security is received in the form of cash, check, or other negotiable instrument, the surety bail insurance producer shall deposit the cash or instrument, within five banking days after receipt, in a trust account in a bank insured by the Federal Deposit Insurance Corporation. The trust account may not contain operating or personal funds.

(4) When personal property is received as collateral, the surety bail insurance producer must comply with the Montana Uniform Commercial Code-Secured Transactions, 30-9A-101, et seq, MCA.

(5) Each surety bail insurance producer shall keep records identifying all collateral received, the source of funds placed into all trust accounts, security agreements, and the terms of all commercial bail bond transactions. The records are open to inspection without notice by the commissioner.

(6) If the court exonerates a bail bond or pays the premium for the bail bond, the surety bail insurance producer shall return all collateral or other security to the person entitled to it within five business days after receipt of written notification of exoneration. All collateral or security must be returned in the condition it was received, and at the location it was received, at the principal's address, or the parties may mutually agree to another location.

(7) Each surety bail insurance producer shall maintain and retain for three years, and update on a continual basis:

(a) a list of forfeitures, which must include the names of the principal and indemnitor, the case name and number, the date of the forfeiture; and

(b) a list of arrests and surrenders, which must include the names of the principal and indemnitor, the case name and number, and the date of the failure of the principal to appear.

(8) A surety bail insurance producer may bill the principal for actual and reasonable costs, listed in this rule, which the surety bail insurance producer incurs in securing the appearance or arrest of a principal during the 90-day period defined in [NEW RULE I](1). A surety bail insurance producer shall keep receipts for actual costs for a period of three years. The costs which a surety bail insurance producer may recover from the principal, in addition to the premium or bail amount, are limited to the actual and reasonable direct expenses, including but not limited to gasoline, and food and lodging, incurred in searching for, arresting, and transporting (to a detention facility) the principal during the 90-day surety arrest period.

(9) If collateral is liquidated it must be done according to commercially reasonable standards and lawful procedures, and the balance, if any, must be returned to the principal or indemnitor as appropriate within ten business days of liquidation. For purposes of this rule, "balance" means the amount obtained by lawful liquidation of the collateral, minus the amount of premium or bail and costs allowed pursuant to [NEW RULE IV](8), which are due to the surety bail insurance producer. Prior to initiating any liquidation process, the principal must be given 30 days' written notice from the surety bail insurance producer, and an opportunity to pay all costs and fees in lieu of liquidation. The surety bail insurance producer cannot send this notice or initiate any liquidation process until 90 days after a court issues an order of forfeiture pursuant to 46-9-503(2), MCA.

(10) If the surety bail insurance producer fails to return the collateral or violates any provision of these rules or other Montana laws in the liquidation or the failure to return the collateral, the surety bail insurance producer shall be subject to a maximum penalty of three times the value of the collateral, or \$1000, whichever is greater.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-1001, 33-17-1102, 33-26-108, MCA

NEW RULE V PROHIBITED PRACTICES (1) A surety bail insurance producer may not:

(a) pay a fee or rebate, or give or promise anything of value, directly or indirectly to any public official, employee, or agent, who has power to arrest or hold in custody, in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond, or the forfeiture thereof;

(b) pay a fee or rebate, or give, or promise anything of value to the principal or anyone on his or her behalf;

(c) participate in the capacity of an attorney at a trial or hearing of a person on whose bond the surety bail insurance producer is a surety;

(d) advise or assist the principal for the purpose of forfeiting bond;

(e) fail to report, preserve without use, retain separately, or return after payment in full collateral taken as security on any bail bond to the party entitled to the collateral;

(f) arrest, attempt to arrest, enter a principal's residence, detain, conduct surveillance, or surrender a principal to law enforcement authorities, until after the principal has failed to appear before a court as required, and an order of forfeiture has been issued by a court, and only during the 90-day period thereafter, as defined in [NEW RULE I](1);

(g) arrest, attempt to arrest, detain, or surrender a principal to law enforcement authorities, for any of the following reasons:

(i) the principal's failure to comply with any condition of release imposed by the court, other than for non-appearance and during the 90-day surety arrest period;

(ii) failure of the principal to make payments on a deferred premium payment agreement or promissory note;

(iii) the principal's breach of any condition of the agreement with the surety bail insurance producer;

(iv) the principal's release of an indemnitor of the payment agreement with the surety bail insurance producer;

(v) alleged or actual fraud in the principal's application for the bond;

(vi) a belief or concern that the principal may not appear in court as required, regardless of the basis for the belief or concern;

(vii) violation of the principal's conditions of release set by the court.

(viii) for any other reason, other than after the principal's failure to appear at the time and date ordered by the court, and after the court enters an order of forfeiture.

(h) fail to return collateral within five business days of receiving written notice of exoneration;

(i) fail to purchase and maintain the surety bond required by [NEW RULE II];

(j) gain access to a prospective principal in a prisoner confinement facility for the purpose of solicitation by misrepresenting to facility officials that the prospective principal or someone on the prospective principal's behalf had so requested; or

(k) sell, solicit, or negotiate surety bail insurance while employed as an investigator with the Office of the Public Defender.

AUTH: 33-1-313, 33-26-108, MCA

IMP: 33-17-1001, 33-17-1103, 33-18-210, 33-18-212, 33-26-108, 46-9-401, 46-9-402, 46-9-502, 46-9-503, 46-9-505, 46-9-510, 46-9-511, 46-9-512, MCA

#### NEW RULE VI PORTION OF BOND PREMIUM PAYMENTS DEFERRED

(1) If an agreement between the principal and surety bail insurance producer calls for some portion of the bond premium payments to be deferred or paid after the principal is released from custody, the surety bail insurance producer shall keep the agreement on file and provide a copy to the principal and indemnitor, if applicable.

The agreement must contain the following information:

(a) the amount of the premium payment deferred, or not yet paid, at the time the principal is released from custody;

(b) the method and schedule of payment to be made by the principal or indemnitor to the surety bail insurance producer, including the dates of payment and amount to be paid on each date; and

(c) the interest rate.

(2) For the agreement to be enforceable, interest and finance charges on any unpaid premium must comply with 31-1-107, MCA.

AUTH: 33-26-108, MCA

IMP: 31-1-107, 33-18-213, 33-26-108, 46-9-403, MCA

NEW RULE VII BAIL BOND DOCUMENTS (1) The following requirements apply to documentation a surety bail insurance producer uses in connection with transacting business:

(a) an indemnity agreement must:

(i) be in writing;

(ii) be signed by the principal;

(iii) be signed by the indemnitor, if any;

(iv) be signed by the surety bail insurance producer;

(v) set forth the amount of bail, the name of the principal, the amount and type of collateral held by the surety bail insurance producer, and the conditions under which the collateral is to be returned, in compliance with these rules;

(vi) state that the principal and the indemnitor have received copies of signed and dated disclosure forms referred to in (1)(e);

(vii) if the principal or indemnitor is illiterate or does not read English, state that the surety bail insurance producer or a third party has read or translated the agreement for the principal or indemnitor; and,

(viii) conform to all requirements of, and use the forms designated by the surety company.

(b) if used in the bail bond transaction, a promissory note must be:

(i) in writing;

(ii) signed by the surety bail insurance producer;

(iii) signed by the principal or indemnitor; and

(iv) in an amount not in excess of the premium due from the principal.

(c) a collateral receipt must:

(i) be dated;

(ii) be in writing;

(iii) be signed by the surety bail insurance producer;

(iv) be signed by the principal or indemnitor;

(v) be prenumbered;

(vi) contain a full description of the collateral, including the condition of the collateral at the time it is taken into custody;

(vii) set forth the amount of bail, the name of the principal, the court case number, the court where the bond is executed, the amount of premium, the amount and type of collateral held by the surety bail insurance producer, and the conditions under which the collateral is to be returned; and

(viii) include a provision stating that the acquisition, liquidation, and disposition of all collateral must comply with these rules, and provisions of Montana law governing the liquidation of collateral.

(d) a prenumbered, signed receipt for payments made pursuant to a promissory note must be given to the person tendering payment for each payment received. The payment receipt must contain the date, the principal's name, a description of the consideration and amount of money received, the purpose for which it was received, the amount of the bail bond, and the name of the person tendering payment; and

(e) a surety bail insurance producer shall provide an advance written disclosure of any and all charges, in addition to the premium, that the principal or indemnitor may incur including, but not limited to, costs and interest, to the extent allowed by these rules. The disclosure must be:

- (i) in writing;
- (ii) dated;
- (iii) signed by the surety bail insurance producer; and
- (iv) signed by the principal or indemnitor.

(2) All bail bond documentation must be consistent and comply with the producer's agreement with the surety company, the surety company's policies and procedures, and these rules. In the event of a conflict, these rules supersede any agreements, policies, or procedures.

(3) In all bail bond documents, any interest or finance charges must comply with 31-1-107, MCA.

(4) Bail bond documents and agreements must comply with Montana law, including but not limited to 33-15-301 through 33-15-303, MCA. The agreement (surety insurance policy) between the bail bond company and the policyholder must contain the entire contract between the parties, and provisions must be plainly expressed in the policy.

AUTH: 33-26-108, MCA

IMP: 33-17-1001, 33-17-1102, 33-18-213, 33-26-108, 46-9-403, MCA

NEW RULE VIII FORM (1) The following form must be used pursuant to [NEW RULE II](3):

(a) APPENDIX A

**STATE OF MONTANA  
SURETY BAIL INSURANCE PRODUCER BOND**

**BOND NO.** \_\_\_\_\_  
**BOND AMOUNT \$25,000.00**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That we, \_\_\_\_\_ as PRINCIPAL, and \_\_\_\_\_, a corporation duly organized and existing under the laws of the state of \_\_\_\_\_, and authorized to do business in the state of Montana, as SURETY, are held and firmly bound unto the state of Montana, in the penal sum of \$25,000 lawful money of

the United States for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the PRINCIPAL is subject to the provisions of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (Code), and the administrative rules promulgated thereunder (Rules), and shall faithfully comply with the provisions thereof;

**WHEREAS**, this bond is established in favor of a person, and the Montana State Auditor, Commissioner of Securities and Insurance (Commissioner) on behalf of a person injured as a result of a violation or violations of the Code or the Rules by the PRINCIPAL; and

**WHEREAS**, this bond is established in favor of the Commissioner on behalf of the state of Montana for any fines levied, or restitution ordered, as against the PRINCIPAL and SURETY for a violation or violations of the Code or the Rules by the PRINCIPAL.

**NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH** that if the above bonded PRINCIPAL shall faithfully comply with the provisions of the Code, the Rules, and Orders of the Commissioner pursuant thereto, then and in that event the forgoing obligation shall be void, but otherwise to remain in full force and effect.

**PROVIDED HOWEVER, AND UPON THE FOLLOWING EXPRESS CONDITIONS** that any person, an issuing commercial bail surety insurer, or a court claiming against the bond for a violation of the Code or Rules occurring during the time period during which this bond is in effect may maintain an action at law against the PRINCIPAL and SURETY, or may file a consumer complaint with the Office of the Montana State Auditor, Commissioner of Securities and Insurance, which may result in fines and/or restitution after notice and opportunity for hearing before the Commissioner. The aggregate liability of the SURETY may not exceed the amount of this surety bond.

**PROVIDED FURTHER**, that the SURETY may terminate its liability hereunder as to future acts of the PRINCIPAL at any time by giving twenty-one (21) days written notice of such termination to the Commissioner.

This bond is for a definite term beginning \_\_\_\_\_, and ending \_\_\_\_\_, and may be continued by a Continuation Certificate.

**SIGNED, SEALED, and DATED** this \_\_\_\_\_ day of \_\_\_\_\_.

**PRINCIPAL, Surety bail insurance producer**

By \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Printed Name)

**SURETY, Attorney in Fact**

By: \_\_\_\_\_,  
(Signature)

\_\_\_\_\_  
(Printed Name)

[Affix Power of Attorney]

AUTH: 33-1-313, 33-26-108, MCA  
IMP: 33-17-1001, 33-26-108, MCA

REASON: The Montana State Auditor, Commissioner of Securities and Insurance, Matthew Rosendale (commissioner), is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance.

In 2003, the legislature granted the commissioner rulemaking authority for surety insurance producers who sell, solicit, or negotiate commercial bail bonds pursuant to 33-26-108, MCA. The commissioner has received consumer complaints, and is aware of incidents, indicating the need for regulation of surety bail insurance producers. Additionally, the commissioner has received requests for regulation from members of the industry seeking specific rules in order to give guidance to the industry, to proscribe against certain conduct, to prevent abuse against consumers, and to level the field in order to prevent unfair methods of competition. Therefore, the commissioner has determined that new rules should be proposed in accord with 33-26-108, MCA.

NEW RULE I is proposed to be adopted in order to define terms used in these rules.

NEW RULE II is proposed to be adopted in order to establish the requirement of the posting of a surety bond by each surety bail insurance producer so as to protect or indemnify persons, and the commissioner on behalf of persons injured as a result of a violation of an administrative rule or the Montana Insurance Code. The commissioner has determined that the proposed rule is reasonably necessary so as to ensure against financial irresponsibility of surety bail insurance producers, and to provide a mechanism to redress harm resulting to consumers and other persons involved in the surety bail industry.

NEW RULE III is proposed to be adopted in order to prohibit the signing of blank bail bonds and the utilization of unlicensed surety bail insurance producers. The

proposed rule is reasonably necessary to prevent the illegal utilization of unlicensed surety bail insurance producers.

NEW RULE IV is proposed to be adopted in order to establish rules relating to collateral and trust accounts, and to establish the requirement that surety bail insurance producers keep records of arrests and lists of forfeitures. It also seeks to clarify that surety bail insurance producers may bill for actual specified costs. The proposed rule is reasonably necessary so as to ensure that adequate records are maintained for collateral security, that lawful procedures are followed for the acquisition, holding, and liquidation of collateral, and that collateral security conditions, costs, and fees are reasonable.

NEW RULE V is proposed to be adopted in order to establish proscriptions against certain conduct in the surety bail bond industry. The proposed rule is reasonably necessary in order to clearly delineate specific types of conduct prohibited under the Montana Insurance Code, other Montana Code provisions, other rules herein, and conduct that has been the subject of consumer complaints. These prohibitions all serve the goals of protecting insurance consumers, the integrity of the producers, and promoting fair competition in this industry.

NEW RULE VI is proposed to be adopted in order to establish rules for surety bail insurance producers who defer payment of full premium. The proposed rule is reasonably necessary to protect consumers from usurious interest rates and so that consumers will be reasonably informed of the terms and conditions of their payment agreement.

NEW RULE VII is proposed to be adopted to establish minimum requirements for documents relating to the surety bail bond industry. The proposed rule is reasonably necessary to ensure that documents used in bail bond transactions meet minimum legal requirements in order to provide full disclosure and to protect insurance consumers.

NEW RULE VIII is proposed to be adopted to provide a template for the surety bond required under NEW RULE II. The proposed rule is reasonably necessary to allow surety bail insurance producers to fulfill the requirements of NEW RULE II, which requires the use of an approved surety bond.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing prior to the hearing. Written data, views, or arguments may also be submitted to Thomas M. Melton, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail [rbidon@mt.gov](mailto:rbidon@mt.gov), and must be received no later than 5:00 p.m., June 5, 2020.

6. Thomas M. Melton, has been designated to preside over and conduct this hearing.

7. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Requests may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 3 above or may be made by completing a request form at any rules hearing held by the CSI.

8. Pursuant to 2-4-302, MCA, the bill sponsor contact requirement applies. Senator Jim Keane, sponsor of 2003 HB 169, was notified directly by mail through the U.S. Postal Service by mailing him a copy of this notice on April 21, 2020.

9. With regard to the requirements of 2-4-111, MCA, the CSI has determined that the adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ Tom M. Melton  
Tom M. Melton  
Rule Reviewer

/s/ Michelle Dietrich  
Michelle Dietrich  
Chief Legal Counsel

Certified to the Secretary of State April 21, 2020.