BULLETIN B 07-04

TO: ALL BAIL BOND LIMITED PRODUCERS AND INSURERS AUTHORIZED TO TRANSACT BAIL BOND INSURANCE BUSINESS IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES

RE: BAIL BOND REGULATIONS

The Division of Insurance recently reviewed various bail bond limited producer files. The review revealed defective bail bond contracts and questionable business practices. To ensure that those who transact bail bond insurance in this state are familiar and comply with the regulatory requirements, the division is issuing this bulletin. This is not intended to be an exhaustive coverage of the laws and regulations governing bail bond transactions but a discussion of the bail bond regulations to remind affected parties of the requirements that must be followed. The complete text of Alaska statutes and regulations is located through Alaska Legislature Infobases at the following Internet web address: http://www.legis.state.ak.us/folhome.htm. Please note that only the official printed version of Alaska statutes and regulations should be relied upon for complete accuracy.

Although under AS 21.27.150, "a person who is appointed by and acts on behalf of a surety insurer pertaining to bail bonds" is issued a "bail bond limited producer license," for brevity in this bulletin, such a person will be referred to as a "licensee" when a regulation is not being quoted.

3 AAC 23.745 provides that a licensee is subject to "(1) the applicable licensing and recordkeeping requirements, fiduciary responsibilities, and disciplinary actions of AS 21.27, as they relate to an insurance producer; and (2) the trade practices and fraud provisions of AS 21.36." AS 21.27 is the chapter of the insurance code that governs producer licensing.

3 AAC 23.210 - 3 AAC 23.380 cover premium financing, which means any licensee under AS 21.27 extending credit or a loan to an insured to cover premium due must comply with the requirements of the premium financing regulation. However, under **3 AAC 23.250**, a licensee need not comply with these sections if the licensee (1) does not charge a service charge, and (2) within 30 days of extending credit, notifies the insured in writing of the amount and reason for the credit or loan. Although 3 AAC 23.250 allows a licensee to charge the licensee's standard late fee, **3 AAC 23.760 does not allow** a licensee to charge a late fee on a bail bond transaction.

3 AAC 23.750 discusses who may and who may not be licensed to transact bail bond insurance.

3 AAC 23.760(a) states that a licensee **"**may not charge, collect, or receive any fee or consideration in other than a premium that is based upon the effective rate on file with the director." Under (b) of this section, however, a licensee is allowed to charge for "reimbursement of travel, lodging, per diem, and any other expenses incurred at the time the bond is executed," which means the period dedicated solely to negotiating the bond. The division expects any cost associated with the bail bond transaction to reflect a reasonable and efficient use of resources by the licensee. For example, if more than one bond contract is negotiated on the same day or trip, the costs should be divided according to resources spent on each, and each purchaser should only be charged a fair share of the total cost. The licensee must also retain a record of all expenses incurred for three years.

Under (c) of this regulation, "After the execution of a bail bond, an additional premium **may not be charged** unless the (1) amount of the bond is increased; or (2) additional premium is based on the effective rate on file with the director." The division has learned that some licensees have charged "renewal premiums" at a bond's one-year anniversary date. **This practice is not allowed and the division will enforce this prohibition in the future.**

Under **3 AAC 23.770(a)**, "A licensee or surety shall, at the time of obtaining the release of a defendant on bail, deliver to the defendant and to any other person with whom bail negotiations were conducted, a prenumbered document that describes the bail bond transaction…." The document is considered the completed bail bond contract and must include all the items listed in that subsection. Under (b) of this section, a licensee must provide the surety with a copy of the completed bail bond contract form within 30 working days.

Further, under (c) the licensee must "make available at the licensee's office a copy of each form signed by the person who posts bail …" or, if requested, provide a copy of the form to the signer within 10 working days. The "person who posts bail" is the person who pays the bail bond premium to the licensee.

3 AAC 23.780 provides for record retention. The records listed in this section must be maintained for "five years after the liability of the surety is terminated." The list is extensive and, if requested, the records must be made available to the division. The records may be stored electronically or on other media equipment.

Of great importance are the bail bond activities that are prohibited. They are listed in **3 AAC 23.790**. A violation of any of these prohibitions is considered an unfair or deceptive act or practice that would subject the licensee to the suspension or revocation of a license under AS 21.27.410. Because it is important that each licensee is familiar with them, the prohibited practices are listed here in their entirety:

A licensee or surety **may not**

(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 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 on the defendant's behalf in exchange for a referral of bail bond business;

(4) also act as the defendant's attorney at a trial or hearing if the licensee or surety has also posted the defendant's bail bond;

(5) accept anything of value from a defendant except a premium, collateral, or reimbursement for expenses as provided for in 3 AAC 23.760(b);

(6) recommend a particular attorney to represent a defendant;

(7) solicit business where a prisoner is confined in or near a courtroom if otherwise prohibited by court order or law;

(8) sign or countersign a bail bond that the licensee did not execute; or

(9) delegate to a person the authority to sign the name of the licensee to bail bond.

Please note that in (8) above "execute" means the completion of a bail bond contract with the signatories physically present. A **bail bond contract is not valid** if it was signed by a licensee who is not present at the execution of the contract. No pre-signed contracts may be used.

Also under **3 AAC 23.790**, a single bail amount may not be divided or reduced for multiple charges or cases involving the same defendant. And the surety remains liable for the full amount of the bond for the duration of the case**.** Further, if separate bail amounts are ordered for each charge against a defendant, a separate bond must be executed for each amount.

3 AAC 23.800 addresses collateral and the licensee's fiduciary responsibility. Any collateral received in conjunction with a bail bond transaction must be kept separate from any other funds or assets of the licensee or surety until forfeiture of bail. The licensee or surety accepts the collateral in a fiduciary capacity, as defined in 3 AAC 23.859.

Maintenance of any cash collateral is governed by AS 21.27.360 and 3 AAC 23.500 – 3 AAC 23.730, all of which deal with the fiduciary responsibility of handling funds and provide for penalties for the mishandling of such funds.

If the collateral provided to a licensee or surety is a document that conveys ownership to a lien on real property, the document must state that it has been executed to be used as collateral for a bail bond. If the document is recorded, a recordable document to reconvey the ownership to the lien on real property must be prepared for delivery to the person providing the collateral or that person's successor in interest. Within 10 working days after the court has provided written notice of the bail bond's exoneration, the licensee must make the reconveyance document available to the person entitled to the document or mail it upon request.

3 AAC 23.810 allows a licensee to transfer collateral **only** to another licensee or surety and the collateral **may not** be removed from Alaska.

Under **3 AAC 23.820**, a licensee must provide a prenumbered receipt to the person who provides collateral for a bail bond transaction. The receipts must be issued in numerical order and must include all the items listed in this section and the statement regarding dispute resolution that is set out in the regulation. The licensee must permanently maintain an original receipt book at the

licensee's principal place of business although a clearly marked duplicate book may be kept elsewhere, and the licensee must send a copy of the receipt to the surety within 30 working days of its execution. A wilful misstatement or omission on a receipt constitutes a fraudulent act under AS 21.36.360.

Provisions for the return of collateral are outlined in **3 AAC 23.830**. Within 10 days of the receipt of written notification from and verification with the court that a bail bond and the surety have been exonerated, the licensee must make any collateral deposited for the bond available for return to the person who made the deposit or to that person's successor in interest. **A licensee may not retain bail bond collateral for collateralizing a future bail bond**. In (b) of this section, there are provisions for the use of the collateral to be applied to unpaid premiums on that bond. The licensee or surety **may not** return the collateral **until** the person entitled to receive the collateral has provided a written receipt that includes the information outlined in (c) of this section. The division expects the licensee or surety to diligently attempt to return the collateral as required and to document these efforts. If the return is not achieved within one year, the collateral is disposed of under of **3 AAC 23.850**.

Under **3 AAC 23.840**, should a bail bond forfeiture occur, the licensee must notify the surety within 60 working days of being notified of the forfeiture.

Under **3 AAC 23.850,** any unclaimed collateral, excess collateral on forfeiture, or excess payment of premium held by a licensee or surety that is not claimed or removed within one year after the termination of liability under a bail bond is governed by the provisions of AS 34.45 (Unclaimed Property).
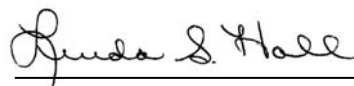
Many of the terms used in the bail bond regulations are defined in **3 AAC 23.859**.

Please note that **"performance bonds" are not allowed** under Alaska law. A licensee marketing or issuing such a product will be subject to appropriate administrative or criminal action. Issuing a performance bond is a crime under AS 21.36.360.

If you have questions regarding the information in this bulletin, please contact Rick Jones, Chief Investigator, in the division office in Anchorage, at 907-269-7900 or by email at Rick.Jones@alaska.gov.

The division expects full compliance with all statutes and regulations by all licensees and sureties in Alaska. The division carefully monitors the level and extent of consumer complaints received regarding the transaction of bail bond insurance and will take appropriate action regarding violations of the laws by a licensee or surety.

Dated this 9th day of August, 2007 at Anchorage, Alaska.

Linda S. Hall
Director