WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Insurance Commission TITLE-SERIES: 114-103

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 114-103 Bail Bondsmen in Criminal Cases

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W.Va. Code 33-2-10, 51-10-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code 51-10-8, updated in 2021, requires the Insurance Commissioner to promulgate and propose legislative rules for promulgation to carry out the intent, administration, and enforcement of Article 10, Chapter 51 of the West Virginia Code regarding bail bondsmen.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? #Error

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/7/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/8/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

W.Va. Code 51-10-8, updated in 2021, requires the Insurance Commissioner to promulgate and propose legislative rules for promulgation to carry out the intent, administration, and enforcement of Article 10, Chapter 51 of the West Virginia Code regarding bail bondsmen. The commissioner is authorized to promulgate any emergency rules necessary to carry out the intent, administration, and enforcement of that article. The code further provides that the commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined Article 10, Chapter 51 of the West Virginia Code and that the rules required shall specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. Further, in promulgating and proposing rules required, and in granting a license to a person to engage in the bonding business, the Commissioner shall take into consideration both the financial responsibility and the moral qualities of the person applying, and a person who has been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character shall not be licensed. Accordingly, the proposed rule sets forth licensing requirements and qualifications for criminal bail bondsmen, provide a process for licensure applications and renewals, sets forth prohibited activities of bail bondsmen, provides a systems for license suspensions and revocations, provides for receipts, recordkeeping, cash securities held in trust, and reporting requirements of bail bondsmen to the Insurance Commissioner, sets forth penalties for violations of law, provides for financial responsibility standards, and sets for standards for discontinuances of business under various circumstances such as death, bankruptcy, and loss of licensure.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Insurance Commissioner, pursuant to House Bill 2758 (2021) was tasked with licensing bail bondsmen effective July 1, 2022. Specifically, in W.Va. Code §51-10-8, the Insurance Commissioner was mandated to propose legislative rules, and was permitted to promulgate emergency rules under W.Va. Code §29A-3-15, necessary to carry out the intent, administration, and enforcement of Article 10, Chapter 51 of the West Virginia Code. The rules required were to specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. The Insurance Commissioner's rule on bail bondsmen, effective July 1, 2022, contained a state residency restriction for licensure. Upon the advice of counsel, the residency restriction is being stricken from this proposed emergency rule as it may be unenforceable under the Commerce Clause.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Insurance Commissioner cannot currently provide an estimate of the overall impact on revenues. Bail Bondsmen must be charged a biennial fee of $200 for licensure. This will likely cause a slight increase in revenues of approximately $15,000 per year. However, based upon the relatively small number of licenses granted, likely less than 150, and the amount of time and staff that will be decided to licensure and regulation of bail bondsmen, the net impact to the Insurance Commissioner will likely be a revenue loss. However, an accurate estimate is not yet available.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

See A. The Insurance Commissioner is a "special revenue" state agency, and the impact noted in A. will be an impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Unknown at this time.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Unknown at this time.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 103
BAIL BONDSMEN IN CRIMINAL CASES

Section

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114-103-2. Definitions.

114-103-3. License Required and Qualifications for Licensure.

114-103-4. License Renewal.

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114-103-6. Qualifications of Sureties on Bail.

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114-103-13. Examinations.

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114-103-15. Reporting.

114-103-16. Penalties for Violations.

Attachments

Form A – Title Certificate for Bond

Form B – Notice of Bond Encumbrance

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 103
BAIL BONDSMEN IN CRIMINAL CASES

§114-103-1. General.

1.1. Scope. -- The purpose and intent of this rule is to provide for the qualifications a person must have when applying to be a bail bondsman, and to set the terms and conditions upon which the bonding business may be conducted in West Virginia.

1.2. Authority. -- W. Va. Code §§33-2-10 and 51-10-8.

1.3. Filing Date. -- ~~June 6, 2022.~~

1.4. Effective Date. -- ~~July 1, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, ~~2027~~ 2028.

§114-103-2. Definitions.

2.1. "Agent," "clerk" or "representative" of a bail bondsman means a person employed by a bail bondsman for the purpose of assisting the bondsman in presenting a defendant in court or, if a power of attorney has been duly executed, issuing bonds on behalf of the licensed bondsman.

2.2. "Bond" means an appearance bond for a specified monetary amount which is executed by the defendant and a licensed bondsman pursuant to the provisions of this rule and which is issued to a court as security for the subsequent court appearance of the defendant upon release from custody pending the appearance.

2.3. "Bonding business" means the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia.

2.4. "Bondsman" or "bail bondsmen" means any person:

2.4.1. Engaged in the bonding business who has satisfied the requirements for, and is duly licensed as, an insurance producer with a property and casualty line of authority as set forth by the Commissioner and W. Va. Code §33-12-1 *et seq.*, also referred to as "surety bondsmen;" or

2.4.2. Who is approved and licensed under the provisions of W. Va. Code §51-10-1 *et seq.* and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value for the pledge, also referred to as a "professional bondsman."

2.5. "Cash" means a personal or business check, a money order or cashier's check.

2.6. "Commissioner" means the Insurance Commissioner of West Virginia.

2.7. "Insurer" means any domestic, foreign or alien person, including a surety company, which has been qualified generally to transact surety business in the State of West Virginia.

2.8. "Person" means any individual, company, association, organization, society, reciprocal, partnership, syndicate, business trust, corporation or any other legal entity.

2.9. "Professional bondsman" means any person who has been approved and licensed by the Commissioner, pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding, and charges, receives or is promised money or other things of value in exchange for his or her services.

2.10. "Securities" or "approved securities" means cash, an irrevocable letter of credit, an annuity purchased through an insurance company licensed and in good standing in this State, a bond issued by an insurance company licensed and in good standing in this State, or real estate located in this State that is unencumbered in, at least, the amount of minimum financial responsibility required as set forth in this rule.

2.11. "Surety bondsman" means any person who has been approved and licensed by the Commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and charges, receives or is promised money or other things of value in exchange for his or her services, and includes a licensed insurance producer with a property and casualty line of authority.

§114-103-3. License Required and Qualifications for Licensure.

3.1. On or after July 1, 2022, a person may not engage in the bonding business or act in the capacity of a bail bondsman, or perform any of the functions, duties or powers prescribed for bail bondsmen, unless that person shall be qualified and licensed by the Commissioner as provided in this rule.

3.1.1. None of the provisions or terms of this rule shall prohibit any individual or individuals from pledging real or other property as security for a bail bond for himself, herself or another in judicial proceedings who does not charge or receive, or is not promised, a fee or other thing of value in exchange for his or her services, provided such person shall not be permitted to make in excess of ten bonds per year.

3.2. A person seeking a license under this rule shall apply on a form, as located at www.wvinsurance.gov, and in a manner prescribed by the Commissioner and shall comply with the provisions of W. Va. Code §33-12-37 regarding criminal history record checks.

3.2.1. The application shall provide the following information:

3.2.1.a. If the applicant is an individual:

3.2.1.a.1. The person's home and business address, home and business phone number, email address and current occupation;

3.2.1.a.2. That the applicant is at least 21 years of age;

3.2.1.a.3. That the applicant is a citizen of the United States;

~~3.2.1.a.4. That the applicant is a bona fide resident of the State of West Virginia;~~

~~3.2.1.a.5.~~ 3.2.1.a.4. If the applicant has been authorized to post criminal bonds in this State previously, or any other state or jurisdiction, a statement as to whether the applicant has ever had a bond forfeited and the name, address and phone number of a person to contact concerning the same;

~~3.2.1.a.6.~~ 3.2.1.a.5. Whether the applicant is in default in payment of any forfeited bail bond or recognizance in any court in any jurisdiction, the amount of bail bond or recognizance on any default, the date of forfeiture, the name of the court and style of the case in which the forfeiture was declared;

~~3.2.1.a.7.~~ 3.2.1.a.6. That the applicant has knowledge, training, or experience of sufficient duration and extent to prove the competence necessary to fulfill the responsibility of a bondsman;

~~3.2.1.a.8.~~ 3.2.1.a.7. That the applicant holds a valid and current ~~West Virginia~~ driver's license or ~~West Virginia~~ identification card ~~issued by the Division of Motor Vehicles~~;

~~3.2.1.a.9.~~ 3.2.1.a.8. That the applicant has not been previously convicted of, or pled guilty or no contest to, any felony crime that substantially relates to the occupation of a bail bondsman;

~~3.2.1.a.10.~~ 3.2.1.a.9. The charge, date, court and disposition of any offense, felony or misdemeanor, other than a minor traffic offense, for which the applicant has ever been convicted;

~~3.2.1.a.11.~~ 3.2.1.a.10. An affidavit from the applicant that he or she has read and understands, and will in all respects abide by, the provisions of this rule and W. Va. Code §51-10-1 *et seq.*; and

~~3.2.1.a.12.~~ 3.2.1.a.11. A list showing the name, age and residence of each person employed by the bondsman as an agent, clerk, or representative in the bonding business. This list must be updated with the Commissioner within 10 working days every time a person employed by the bondsman as a bondsman, agent, clerk or representative begins or leaves employment. For each person appearing on the list, the applicant shall submit an affidavit from the person stating that he or she will abide by the terms and provisions of this rule and W. Va. Code §51-10-1 *et seq.*

3.2.1.b. If the applicant is a licensed insurance producer with a property and casualty line of authority, and is applying for licensure as a surety bondsman, in addition to the information required pursuant to subdivision 3.2.1.a of this rule, the applicant shall also provide:

3.2.1.b.1. The applicant's National Producer Number;

3.2.1.b.2. Notice of appointment from each insurer that the applicant is authorized by power of attorney to execute or countersign bail bonds for; and

3.2.1.b.3. A qualifying power of attorney from an insurer that is in good standing with the Commissioner to conduct business in this State and is authorized to post criminal appearance bonds.

3.2.1.c. If the applicant is applying for licensure as a professional bondsman, in addition to the information required pursuant to subdivision 3.2.1.a of this rule, the applicant shall also provide:

3.2.1.c.1. A deposit of cash or approved securities with the Commissioner of an amount to be determined by the Commissioner in accordance with sections 8.1 and 8.2 of this rule, but shall in no circumstance be less than $10,000;

3.2.1.c.2. An applicant for a professional bondsmen license may make the required deposit by cash, irrevocable letter of credit, or by purchasing a bond or annuity through an insurance company licensed and in good standing in this State. All bonds, annuities, and irrevocable letters of credit must be on a form approved by the Commissioner and must permit the Commissioner to draw down the entire amount, if necessary, to secure the bondsman's obligations.

3.2.1.c.3. In lieu of cash, bond, letter of credit, or annuity, if an applicant for a professional bondsmen license uses real estate as security for the bonding authority, the applicant shall have an attorney admitted to practice in this State prepare a Title Certificate for Bond, as depicted on the form attached to this rule (Form A), that he or she has examined the title to the real estate and that record title to said real estate is in the name of the applicant subject to the limitations stated within such certificate.

3.2.1.c.3.a. The applicant shall submit the following declaration with the Title Certificate for Bond: "In the event this application is granted, the applicant will not sell, convey, mortgage or otherwise encumber any of the real estate or other property listed on the Title Certificate for Bond, except the posting of criminal appearance bonds, without first obtaining written approval of the Insurance Commissioner."

3.2.1.c.3.b. If licensure is approved, the bondsman shall deliver to the Office of the Clerk of the County Commission in the county wherein the real estate is located a "Notice of Bond Encumbrance," as depicted on the form attached to this rule (Form B). The recording fee shall be payable by the licensee.

3.2.1.d. If the applicant is a corporation, the applicant shall provide:

3.2.1.d.1. A copy of the corporation's articles of incorporation;

3.2.1.d.2. Evidence showing that said corporation is authorized to do business in the State of West Virginia;

3.2.1.d.3. A certificate of good standing from the West Virginia Secretary of State;

3.2.1.d.4. The name, phone number and email address of the corporate representative that the Commissioner may contact, if necessary; and

3.2.1.d.5. A list showing the name, age and residence of each person employed by the corporation as a bondsman, agent, clerk, or representative in the bonding business. This list must be updated with the Commissioner within 10 working days every time a person employed by the corporation as a bondsman, agent, clerk or representative begins or leaves employment.

3.2.1.d.5.A. For each person appearing on the list set forth in paragraph 3.2.1.d.5 of this rule, the applicant shall submit an affidavit from the person stating that he or she will abide by the terms and provisions of this rule and W. Va. Code §51-10-1 *et seq.*

3.3. The Commissioner may require any documents reasonably necessary to verify the information in the application and may propound any reasonable interrogatories to an applicant for a license, or on any renewal thereof, relating to qualifications, residence, prospective place of business and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the fitness of the applicant to be licensed or to continue to be licensed including, but not limited to, requiring a criminal history record check as set forth in W. Va. Code §33-12-37. The Commissioner may require proof of residency documentation such as pay stubs, utility bills, receipts for property taxes, written lease agreements, bank account information or an unexpired driver's license. The Commissioner shall keep all documents, material or other information obtained pursuant to section 3 of this rule confidential and said information is not open to public inspection and exempt from disclosure pursuant to subpoena or Chapter 29B of the West Virginia Code. The Commissioner is authorized to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

3.4. The application fee for a bail bondsman license is $200, every two years, which shall be paid at

the time of application and renewal. The application fee is nonrefundable. Failure to pay the fee at the time of application shall result in a denial of the license. The application fee for a bail bondsmen license is in addition to any applicable licensure fee paid by an insurance producer, adjuster, insurer, or other business entity. The fee is the same for individual applicants and for corporations.

3.5. A person whose application is denied may reapply, but the Commissioner shall not consider more than one application submitted by the same person within a six-month period.

3.6. The Commissioner shall establish a process for issuing an official picture identification card to licensed bail bondsmen, which, when issued, must be carried by the bail bondsmen at all times when working in the scope of the licensee's employment or occupation as a bail bondsman. A bail bondsman whose license has been revoked, or is otherwise expired or terminated, shall return the picture identification card to the Commissioner within 10 working days. The Commissioner may coordinate with the Division of Motor Vehicles to issue the identification cards described herein if necessary.

3.7. A license issued to a bail bondsman authorizes the licensee to act in that capacity until the license is expired, suspended or revoked.

3.8. A bail bondsman who employs an agent, clerk or representative may cancel the agent's, clerk's or representative's authority to act for the bail bondsman. When a bail bondsman cancels an agent's, clerk's or representative's authority, the bail bondsman must notify the Commissioner, in writing, within 10 working days.

3.9. If an individual holds a professional bondsman's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of disciplinary actions involving suspension, revocation or nonrenewal. However, separate application and renewal fees must be paid for each license.

3.10. The Commissioner shall not license a business entity as a bail bondsman unless each owner and/or shareholder is individually licensed as a bail bondsman. A licensed business entity must designate with the Commissioner one individually licensed bail bondsman as the designated responsible licensee.

3.11. A bail bondsman must notify the Commissioner of a change of legal name, residence address, business address, mailing address, e-mail address or telephone number within 30 days after a change is made.

§114-103-4. License Renewal.

4.1. Bail bondsman licenses shall be renewed biennially (every two years) by the last day of the birth month of the bondsman, unless revoked or suspended prior thereto by the Commissioner. The expiration year will be established based upon the year of initial licensure. Licenses issued to business entities shall renew on July 1 of the expiration year, which is established based upon the year of initial licensure.

4.2. The renewal fee for a bail bondsmen license is $200. The renewal fee is nonrefundable.

4.3. The renewal application shall provide attestation that the applicant meets the qualifications as set forth in section 3 of this rule.

4.4. The Commissioner shall require a criminal history record check at the time of renewal in accordance with W. Va. Code §33-12-37.

§114-103-5. Responsibilities and Prohibited Activities.

5.1. The bonding fee required by a bail bondsman shall be at least 10 percent of the amount of the

bond, but shall not, in the aggregate, exceed the amount of the bond. The bonding fee may be paid in full at the time of the issuance of the bond, or at least three percent paid at the issuance of the bond with the remaining percentage to be paid over a period not to exceed 12 months.

5.2. A bail bondsman, or any agent, clerk or representative thereof shall not, either directly or indirectly, charge, accept or receive any sum of money, or other thing of value, other than the authorized bonding fee from any person for whom he or she has posted or executed bond, for any other service whatsoever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia.

5.3. A bail bondsman, or any agent, clerk or representative thereof, shall not, either directly or indirectly, give, donate, lend, contribute or promise to give, donate, loan or contribute any money, property, entertainment or other thing of value whatsoever to any attorney, police officer, sheriff, deputy sheriff, constable, jailer, probation officer, clerk, or other attaché of a criminal court, or public official of any character for procuring or assisting in procuring any person to employ said bail bondsman to execute as surety any bond for compensation in any criminal case in the State of West Virginia. It shall further be unlawful for any attorney, police officer, sheriff, deputy sheriff, constable, jailer, probation officer, clerk, bailiff, or other attaché of a criminal court, or public official of any character, to accept or receive from any bail bondsman, or any agent, clerk or representative thereof, money, property, entertainment or other thing of value whatsoever for procuring or assisting in procuring any person to employ any bondsman to execute as surety any bond for compensation in any criminal case in the State of West Virginia.

5.4. A bail bondsman, or any agent, clerk or representative thereof, shall not settle, attempt to settle, procure, or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the State of West Virginia, with any court, prosecuting attorney or police officer.

5.5. A bail bondsman, or any agent, clerk or representative thereof, shall not procure, assist in procuring or attempt to procure the retention or employment of any attorney to represent any person charged with a crime in any court in this State. A bail bondsman shall not accept from any attorney, either directly or indirectly, a loan, donation, contribution, or promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any attorney for causing or procuring or assisting in causing or procuring any person to employ such attorney in any criminal case in the State of West Virginia.

5.6. A bail bondsman shall not have or attempt to have a personal relationship, which includes but is not limited to any type of a sexual relationship, with any person for whom the bail bondsman has posted a bond for the period during which the bond is posted regardless of whether said personal relationship is consensual or not. A bail bondsman is prohibited from accepting or attempting to obtain any type of personal service, favor or nonmonetary item in lieu of payment for bond. This section is not subject to waiver by anyone under any circumstances.

5.7. A bail bondsman is prohibited from initiating contact with persons for whom arrest warrants are pending for the purpose of soliciting business.

5.8. A bail bondsman, or any agent, clerk or representative thereof, is prohibited from entering a police precinct, jail, prison, court or other place of detention for the purpose of obtaining employment as a bail bondsman, without having been previously contacted by a person detained, or by some relative or other authorized person acting for or on behalf of the person detained. Whenever a bail bondsman, or any agent, clerk or representative thereof, enters a place of detention, he or she shall immediately identify the purpose of the visit and the name of the person who has contacted him or her to request their services.

5.9. No single bond shall be taken or approved which obligates the bail bondsman in any amount exceeding one-half of the bondsman's maximum amount of bonding authority.

5.10. A bail bondsman, or any agent, clerk or representative thereof, shall not impersonate a law enforcement officer or falsely represent that the bondsman is in any way connected with an agency of the federal, state or local government.

5.11. No police officer, sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, clerk or other attaché of a criminal court may become surety on a bail bond for any person. In addition, no person covered by this section may act as an agent, clerk or representative for any bail bondsman or bail bonding business. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as a bail bondsman. However, nothing in this section prohibits any such person from being surety upon the bond of his or her spouse, parent, brother, sister, child, grandchild or dependent.

5.12. A bail bondsman shall not sign or countersign in blank bail bonds, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so authorized is a licensed bondsman or agent, clerk or representative directly employed by the bondsman giving such power of attorney.

§114-103-6. Qualifications of Sureties on Bail.

6.1. Each and every surety for the release of a person on bail shall be qualified as:

6.1.1. An insurer and represented by a surety bondsman; or

6.1.2. A professional bondsman.

6.2. The Commissioner shall not be liable for any of the incurred liabilities of a surety bondsman in excess of the surety.

§114-103-7. Receipts for Collateral.

7.1. When collateral or security is received by a bail bondsman, a written receipt shall be furnished.

7.2. Receipts shall provide a full description of the collateral received and must:

7.2.1. Be prenumbered and used and provided in consecutive numerical order;

7.2.2. Show the name and address of the bail bondsman;

7.2.3. Show the name and address of the person providing the collateral;

7.2.4. Show the amount and nature of the collateral and the date received;

7.2.5. Show the name of the person accepting collateral; and

7.2.6. Show the total amount of the bond for which the collateral is being accepted, the name of the defendant, the criminal action number of the criminal proceeding, and the jurisdiction in which the criminal action is pending.

7.3. When collateral security is received in the form of cash or check or other negotiable instrument, the bail bondsman shall deposit the cash or instrument within five banking days after receipt, in an established, separate noninterest-bearing trust account in any bank located in West Virginia. The trust account funds under this section shall not be commingled with other operating funds of the bondsman.

§114-103-8. Financial Responsibility of Professional Bondsmen.

8.1. Each professional bondsman acting as surety on bail bonds in this State shall, unless real estate is used as security, maintain a deposit of approved securities with and satisfactory to the Commissioner of a value of at least one-tenth the amount of all bonds or undertakings written in this State on which he or she is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of each month, but the value of said deposit shall in no event be less than $10,000. The Commissioner shall not be liable for any of the incurred liabilities of the professional bondsman in excess of the pledged cash security.

8.2. If a professional bondsman secures criminal bonds with real estate, the aggregate amount of the bonds written thereunder cannot exceed an amount equal to five times the unencumbered, current assessed value of the real estate listed (as determined by the county assessor). The Commissioner shall not be liable for any of the incurred liabilities of the professional bondsman in excess of the unencumbered, current assessed value of the real estate.

8.3. A professional bondsman may apply to the Commissioner to increase the limit of his or her aggregate authority in regard to the writing of bonds in this State above the limits set forth in sections 8.1 and 8.2 of this rule without the need for maintaining additional security. The Commissioner will evaluate those requests on a case-by-case basis with consideration given to any special circumstances that apply, as well as the license history and financial responsibility of the bondsman making the request. A request may be granted on a temporary or permanent basis. Additionally, the Commissioner may, temporarily or permanently, decrease the limit of a professional bondsman's aggregate authority to write bonds below the limits set forth in sections 8.1 and 8.2 of this rule if the bondsman has shown financial irresponsibility in the conduct of bonding business in this State. A professional bondsman may request a hearing pursuant to W. Va. Code §§33-2-12 and 33-2-13 upon any decision of the Commissioner to deny a request to increase the bondsman's aggregate authority or decrease the bondman's aggregate authority in regard to the writing of bonds in this State.

8.4. If two or more bondsmen join in the writing of a single bond, the penalty of the bond shall be prorated between the several bondsmen, either equally or on the same proportionate basis as the bondsmen participate in the writing of the bond.

8.5. With the approved securities deposited with the Commissioner, the professional bondsman shall at the same time deliver to the Commissioner a power of attorney or assignment, on an approved form, as located at www.wvinsurance.gov, supplied by the Commissioner, executed and acknowledged by the professional bondsman authorizing the sale or transfer of said securities or any part thereof.

8.6. Any professional bondsman, whose security deposits with the Commissioner are, for any reason, reduced in value below the requirements of this rule shall, within ten working days, deposit such additional securities as are necessary to comply with the provisions of this rule or reduce the excess bond liability. No professional bondsman shall sign, endorse, execute, or become surety on any additional bail bonds, or pledge or deposit any cash, check, or other security of any nature in lieu of a bail bond in this State until the professional bondsman has cured the deficiency. If a bondsman does not cure the deficiency within ten working days, the license of the bondsman shall be suspended pending a hearing on the matter.

8.7. The Commissioner may deny the renewal of any license held by a professional bondsman if, at the time of the renewal application, the professional bondsman has not complied with or cured a deficiency.

8.8. The deposit provided for in section 8.1 of this rule shall constitute a reserve available to meet sums due on forfeiture of any bonds executed by the bondsman. The deposit shall be held in safekeeping by the

Commissioner and shall only be used if a bondsman fails to pay an order and judgment of forfeiture after being properly notified, or shall be used if the license of a professional bondsman has been revoked.

8.9. A pro rata portion of the securities shall be returned to the bondsman when the Commissioner is satisfied that the deposit of securities is in excess of the amount required to be maintained with the Commissioner by said bondsman, and all the securities shall be returned if the Commissioner is satisfied that the bondsman has satisfied, or satisfactory arrangements have been made to satisfy, the obligations of the bondsman on all the bondsman's bail bonds written in this State.

8.10. If a bondsman discontinues writing bonds due to death, permanent incapacitation, or some other circumstance that results in the bondsman returning the license issued, and the Commissioner is satisfied that no more bonds can be written against the bondsman's security deposit, the Commissioner shall return the portion of the security deposit in excess of that required to secure the bondsman's outstanding bond liability.

§114-103-9. Cash Securities Held in Trust.

9.1. Cash securities deposited by a professional bondsman with the Commissioner shall be held in trust for the protection and benefit of the holder of bail bonds executed by or on behalf of the bondsman in this State. The account shall be a separate account in the State Treasury designated the "Bail Bondsmen Cash Security Fund" and shall be administered by the Commissioner as set forth in section 9.2 of this rule.

9.2. The Commissioner may expend any and all cash securities or utilize the proceeds thereof for the purpose of satisfying the liabilities of the professional bondsman who pledged the cash security on bail bonds given in this State on which the bondsman is liable, but shall only be used if the bondsman fails to pay an order and judgment of forfeiture after being properly notified. The Commissioner shall not expend cash security pledged by one bondsman for the liabilities of another bondsman. The Commissioner shall not be liable for any of the incurred liabilities of the professional bondsman in excess of the pledged cash security.

§114-103-10. Discontinuance of Business; Cancellation of License; Death, Incapacitation or Incompetence of Bail Bondsman.

10.1. Any bail bondsman who discontinues writing bail bonds during the period for which the bail bondsman is licensed, shall inform the Commissioner, in writing, within thirty (30) days after the discontinuance.

10.2. In the case of death, incapacitation, or incompetence of a licensed bail bondsman, the spouse or surviving spouse, next of kin, person or persons holding a power of attorney, guardian, executor or administrator of the bondsman may contract with another licensed bail bondsman to perform those duties to have the licensee's outstanding bail bond obligations resolved. The contract must be filed with the Commissioner and every clerk of court where it can be determined the bondsman has pending outstanding bail bond obligations.

10.3. A bail bondsman may contract to transfer, convey or assign the bondsman's business to another licensed bail bondsman. The contract shall include a list of the transferring bondsman's pending, outstanding bail bond obligations and shall be filed with the Commissioner. The contract shall allow for the transferring bondsman to transfer, convey or assign assets to the purchasing bondsman that include, but are not limited to, any cash or approved securities with the Commissioner as security for bail bonds. Notwithstanding the filing of the contract with the Commissioner, the transferor remains responsible for all outstanding bond obligations until relieved from an individual obligation or satisfaction of any final judgment of forfeiture entered thereon.

§114-103-11. License Suspension and Revocation.

11.1. Any license issued pursuant to this section may, after notice and hearing pursuant to W. Va. Code §§33-2-12 and 33-2-13, be suspended or revoked for good cause at any time by the Commissioner. Good cause includes, but is not limited to:

11.1.1. Any cause for which issuance of the license could have been denied;

11.1.2. Violation of any laws of this State or any lawful rule or order of the Commissioner;

11.1.3. Material misstatement, misrepresentation or fraud in obtaining the license or on the license application or renewal application;

11.1.4. Misappropriation, conversion or unlawful withholding of monies or property belonging to insurers, insureds or others received in the conduct of business under the license;

11.1.5. Conviction of, or having entered a plea of guilty or no contest to, any felony crime that substantially relates to the occupation of a bail bondsman and poses a reasonable threat to public safety;

11.1.6. Fraudulent or dishonest practices or demonstrating financial irresponsibility in conducting business under the license;

11.1.7. When the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on bonding business or making continuance in the business detrimental to the public interest;

11.1.8. Misrepresentation of the terms of any actual or proposed bond;

11.1.9. Forging the name of another to a bond or application for bond;

11.1.10. Willful failure to return collateral security when the principal is entitled thereto;

11.1.11. Failing to notify the Commissioner of a change of legal name, residence address, business address, mailing address, e-mail address or telephone number within thirty (30) days after a change is made, or failing to respond to a properly mailed notification within a reasonable amount of time;

11.1.12. Failing to file a report as required by this rule or filing a materially untrue report;

11.1.13. Filing false affidavits;

11.1.14. Failing to pay any required fees or forfeited bonds to a court;

11.1.15. Failing to pay any required fee to the Commissioner;

11.1.16. Posting a bond for any defendant without first obtaining a written or oral agreement with the defendant or cosigner of the bond; or

11.1.17. Committing any of the prohibited acts set forth in section 5 of this rule.

11.2. If a bondsman's authority to post bonds in this State is suspended or revoked for any reason, said bondsman remains responsible for any and all bonds which were outstanding at the time of the suspension or revocation.

11.3. In addition to any applicable denial, suspension or revocation of a license, any person violating any provision of section 11.1 of this rule may be subject to a civil penalty of not more than $100 per

occurrence.

11.4. The Commissioner shall retain jurisdiction as to any person who cancels his or her bail bondsman's license or allows the license to expire, or otherwise lapse, if the person while licensed as a bail bondsman allegedly violated any provisions of this rule.

§114-103-12. Notice of Bankruptcy or Receivership.

Upon the filing for protection under the United States Bankruptcy Code or any state receivership law by any licensed bail bondsman or by any bail bond business in which the bail bondsman holds a position of management or ownership, the bail bondsman shall notify the Commissioner of the filing for protection within five working days after the filing. Failure to notify the Commissioner within five working days after the filing for bankruptcy protection shall cause the bail bondsman's license to be immediately suspended pending further investigation and hearing. The Commissioner will notify all detention facilities and courts in this State of a bail bondsmen's suspension pursuant to this section within five working days thereof. Notification under this section may be made electronically. The Commissioner shall not be liable for any of the incurred liabilities of a bondsman who files for bankruptcy.

§114-103-13. Examinations.

Whenever the Commissioner considers it prudent, the Commissioner shall visit and examine or cause to be visited and examined by a competent person appointed by the Commissioner for that purpose, any licensed bail bondsman. The Commissioner or person making the examination shall have free access to all records of the licensed bail bondsman that relate to the licensee's business and to the records kept by any of the licensee's agents.

§114-103-14. Records.

All records related to executing bail bonds, including bail bond reports, receipts, collateral security agreements, and memoranda of agreements shall be kept separate from records of any other business and must be maintained for not less than five years after the final entry has been made.

§114-103-15. Reporting.

15.1. In order to evaluate a professional bondsmen's financial responsibility, upon request and as often as the Commissioner deems necessary, a professional bail bondsman shall electronically file with the Commissioner a written report on a form, as located at www.wvinsurance.gov, prescribed by the Commissioner showing:

15.1.1. Each individual bonded;

15.1.2. The date the bond was given;

15.1.3. The principal sum of the bond;

15.1.4. The court file or docket number for the principal's court obligation; and

15.1.5. The fee charged for the bonding service in each instance.

15.2. Each insurer that appoints surety bondsmen in this State shall electronically file with the Commissioner, a written report in a form, as located at www.wvinsurance.gov, adopted by the Commissioner regarding all bail bonds on which the insurer is liable as of the last day of each calendar quarter showing the total dollar amount for which the insurer is liable. The report shall be filed on or before the 15th day following the end of each calendar quarter.

15.3. Annual Report by Insurers.

15.3.1. Before July 1 of each year, every insurer shall furnish the Commissioner a list of all surety bondsmen appointed by the insurer to write bail bonds on the insurer's behalf.

15.3.2. An insurer who appoints a surety bondsman on or after July 1 of each year shall notify the Commissioner at the time of the appointment.

15.4. An insurer terminating the appointment of a surety bondsman shall file a written notice of the termination with the Commissioner with a statement that the insurer has given or mailed notice of the termination to the surety bondsman. The notice to the Commissioner shall state the reason(s) for the termination.

15.5. Any law enforcement agency, prosecuting attorney's office, court clerk's office or insurer that is aware that a licensed bail bondsman has been convicted of or has pleaded guilty or no contest to any crime, should immediately notify the Commissioner.

15.6. The Commissioner may request any additional information or data from a bondsman or insurer that he or she deems necessary to enforce the provisions of this rule.

15.7. Notwithstanding any other provision of this rule, any documents, materials or other information in the control or possession of the Commissioner and furnished by an insurer or an employee or agent thereof acting on behalf of the insurer, or obtained by the Commissioner in an investigation under this rule, shall be confidential by law and privileged, shall not be considered public records under Chapter 29B of the West Virginia Code, shall not be subject to subpoena, shall not be subject to discovery in any civil action other than a proceeding brought by the Commissioner, and is otherwise subject to the confidentiality and information sharing provisions set forth in W. Va. Code §33-2-19. The Commissioner is authorized to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

§114-103-16. Penalties for Violations.

Except as otherwise provided in this rule, any person who violates any of the provisions of this rule shall be penalized in accordance with Chapter 51, Article 10, of the West Virginia Code.

FORM A - TITLE CERTIFICATE FOR BOND

ATTORNEY CERTIFICATION OF PROPERTY USED AS BAIL BOND SECURITY
(use separate form for each parcel on the land books)

This certifies that _____ is the owner of the hereinafter described property subject to certain encumbrances herein noted.

Legal Description Per Land Books: _____ _____

_____

_____

Record Title Owner: _____

Record Title Owner's Source of Title: _____

Assessed Valuation: _____

Encumbrances:

Nature of Encumbrance	Record Reference	Record Amount	Current Amount

Total Amount of Encumbrances:

Amount of Surety Provided by Property (assessed value minus encumbrances): _____

Defendant's Name: _____

Case Number (Circuit Court/Magistrate Court): _____

This Certificate is expressly made subject to:

1. The correctness and completeness of the indices in the Office of the Clerk of the County Commission of _____ County, West Virginia.

2. Any unrecorded notice of mechanic's lien.

3. Matters not available of record.

4. Matters of survey and inspection.

5. The payment of delinquency of property taxes.

6. This certificate is for a period of twenty years or to the immediate previous deed in the chain of title, whichever is longer, and is inclusive to the _____ day of _____, 20_____.

_____
Attorney

_____

_____
Address

FORM B - NOTICE OF BOND ENCUMBRANCE

Notice is hereby given that the following described property [Legal Description of Property (including deed book reference)] is _____

_____

_____

_____

_____ owned by [Legal Title Owner of Property]

is encumbered as security for bonds posted by the owner in his or her capacity as a professional bondsman in criminal cases in the State of West Virginia pursuant to Article 10, Chapter 51 of the Code of West Virginia and is subject to forfeiture to the State of West Virginia until such time as this encumbrance is released.

Dated this _____ day of _____, 20_____.

DOCUMENT is TO BE RETURNED TO: [Name and address of Court]

_____

(To be filled in by County Clerk):

This Notice is recorded in Book _____ @ Page _____