

*South Carolina Bail Agents Association*  
P.O. Box 3035  
West Columbia, S.C. 29169

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April 13, 2010

South Carolina Department of Insurance  
1201 Main Street, Suite 1000  
Columbia, S.C. 29201

Dear Sir/Madam,

My name is Michael Curlee and I am the President of the South Carolina Bail Agents' Association. The South Carolina Bail Agents' Association is seeking an opinion from the Attorney General regarding "10 percent cash deposit bonding" as referenced in Section 17-15-15 of the South Carolina Code of Laws. The Association understands that another state agency must request such an opinion from the Attorney General's Office.

We would greatly appreciate if the South Carolina Department of Insurance would request this opinion on our behalf. Below is a current summary of Section 17-15-15 and sections pertaining to bail bonds:

**SECTION 17-15-15.** Deposit of cash percentage in lieu of bond; assignment of deposit; restitution to victim.

(a) In lieu of requiring actual posting of bond as provided in item (a) of Section 17-15-10, the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten percent of the amount of bond set, which amount, when the defendant fulfills the condition of the bond, shall be returned to the defendant by the clerk except as provided in subsection (c).

**SECTION 38-53-10.** Definitions

(2) "Bail bond" means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a **cash deposit of the full amount of the bond**, an appearance bond secured by a mortgage, and an appearance bond secured by at least one surety.

In chapter 38-53-10 there is three forms or surety that can be used to secure the release of an individual from incarceration. These forms of surety guarantee 100 percent of the bail contract if forfeited.

As used in this chapter:

(1) "**Accommodation bondsman**" means a person who has reached the age of eighteen years, is a resident of this State, who, aside from love and affection and release of the person concerned, receives no consideration for action as surety, and who endorses the bail bond after providing satisfactory evidence of ownership, value, and marketability of real property to the extent necessary to reasonably satisfy the official taking bond that the real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions of the bond. "Consideration" as used in this item does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral does not exceed the defendant's liability to the surety by reason of a breach in the conditions of the bail bond.

(9) “**Professional bondsman**” means any person who is approved and licensed under the provisions of this chapter and who pledges cash or approved securities with the clerk of court 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.

(12) “**Surety bondsman**” means any person who is approved by and licensed by the director or his designee as an insurance agent, appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised money or other things of value for the execution or countersignature.

Under the **South Carolina State Constitution, Article 1, Section 15**, “Right to Bail” specifies the use of surety as a condition of release.

**SECTION 15.** Right of bail; excessive bail; cruel or unusual or corporal punishment; detention of witnesses.

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event.

Sureties are defined in Section 38-53-10 as:

(11) “**Surety**” means one who, with the defendant, is liable for the amount of the bail bond upon forfeiture of bail.

From Blacks Law Book: a surety bond is defined as:

When a first party (obligee) calls upon a second party (principal) to perform duties in contract form, a surety bond is issued by a third party (surety), guaranteeing that the second party will fulfill an obligation or series of obligations to the first party. In the event that the obligations are not met, the first party will recover its losses via the bond.

The questions and concerns raised by the South Carolina Bail Agents’ Association regarding 10 percent cash deposit that we are requesting an opinion from the Attorney General’s Office is as follows:

- Who guarantees the appearance of the defendant?
- Who pays the forfeiture of the bond if the defendant fails to appear in court?
- The defendant cannot be considered “surety” as defined in Section 38-53-10 (11) without “another” nor as defined in Blacks Law Dictionary under “surety bond.”
- The remaining 90 percent of the bond is not secured to the state as stated in Section 38-53-10 (2).
- Section 38-53-10 (2) requires a cash deposit in the full amount of the bond, which is in contradiction with 17-15-15 regarding the posting of 10 percent.

Thank you for your consideration of this request. I can be reached at 864-304-6677 with any questions. I look forward to hearing from you in the near future regarding the Department’s response.

Sincerely,

Mike Curlee  
President  
South Carolina Bail Agents’ Association