

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

Regulation 123—Producer Responsibility for Bail Bond Collateral  
(LAC 37:XIII.Chapter 187)

The Department of Insurance, pursuant to the authority provided in R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to promulgate Regulation 123—Producer Responsibility for Bail Bond Collateral. Regulation. 123 establishes requirements and restrictions imposed upon bail bond producers and sureties who receive collateral in connection with a bail bond transaction. The regulation also sets forth standards for collecting, holding, and returning collateral upon the final termination of liability on the bond. Lastly, Regulation 123 requires that a written collateral agreement accompany all bail bond transactions involving collateral security.

**Title 37**

**INSURANCE**

**Part XIII. Regulations**

**Chapter 187. Regulation 123—Producer Responsibility for Bail Bond Collateral**

**§18701. Authority**

A. This regulation is promulgated on behalf of the Department of Insurance by the Commissioner of Insurance pursuant to the authority granted under Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

**§18703. Purpose**

A. The purpose of this regulation is to establish and identify the responsibilities of an insurance producer licensed for the line of bail bonds with respect to collateral accepted and held by the producer pursuant to a written bail bond collateral agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

**§18705. Scope and Applicability**

A. Regulation 123 sets forth requirements related to bail bond collateral agreements and identifies the responsibilities of a bail bond producer with respect to any collateral received as part of a bail bond transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

**§18707. Severability**

A. The provisions of this Subpart are severable. If any provision or item of this Subpart, or application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of this Subpart which are to be

given effect without the invalid provision, item, or application of the Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

### **§18709. Definitions**

A. These terms when used in this Chapter shall have the following meanings:

*Bail*—the security given by a person to assure a defendant’s appearance before the proper criminal court whenever required.

*Bail bond producer*—any person, corporation, or partnership which holds an insurance license and has a contract and an appointment from an insurer licensed and authorized to provide surety in Louisiana.

*Bail bond transaction*—a transaction between a bail bond producer or agency and defendant or person on behalf of defendant to secure collateral, premiums, and fees for securing the release of a defendant and guaranteeing a set sum of money to the court if the defendant fails to appear in criminal court when required. Furthermore, a bail bond transaction includes the solicitation and inducement, preliminary negotiation, and effectuation of a contract of surety insurance and matters related thereto, all in connection with the defendant’s release.

*Collateral*—anything of value, including money, personal property, or real property, which is accepted by a bail bond producer as security against potential losses arising from a contract of surety and is utilized as part of a bail bond transaction.

*Commissioner*—the Louisiana Commissioner of Insurance.

*Fiduciary*—a person who holds a thing in trust for another, such as a trustee; a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking.

*Forfeiture*—the issuance of a judgment of bond forfeiture resulting from a defendant’s failure to appear in court when required or to otherwise comply with any court ordered conditions of release as contemplated in the Code of Criminal Procedure.

*Insurance producer*—a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in Title 22 of the Louisiana Insurance Code as “insurance agent” or “agent”, or “insurance broker” or “broker”, or “insurance solicitor” or “solicitor”, or “surplus lines broker”.

*Surety*—an insurer licensed and authorized to provide surety in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

### **§18711. Necessity of a Written Agreement for Collateral**

A. All agreements concerning collateral must be in writing.

B. Written collateral agreements shall not contain any provision that is contrary to the requirements of this regulation or to those set forth in any law in Louisiana regarding bail bonds.

C. Written collateral agreements must include the full name of the person pledging the collateral, the full name of the defendant to be released, an accurate and sufficiently detailed description of the collateral, the bond amount, the power of attorney number, and such other information as necessary to specify the bail bond related to the collateral agreement.

D. A copy of the written collateral agreement and a written receipt for the collateral shall be provided to the person offering the collateral at the time of the transaction.

E. Written collateral agreements must also contain assurances that the collateral will not be used by the bail bond producer or surety for personal benefit or gain and that the collateral will be returned in the same condition as pledged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

### **§18713. Requirements for Collateral**

A. A bail bond producer or surety that accepts collateral as security for a bail bond shall comply with all of the following requirements:

1. For a bail bond producer or surety to accept collateral, the person pledging the collateral must have voluntarily pledged it at the time of the bail bond transaction and execution of the written collateral agreement. The intent to pledge collateral to secure the defendant's release must be clearly stated and verified by the signature of the person pledging the collateral.

2. The collateral shall be received and held in the surety's name by the bail bond producer or surety in a fiduciary capacity.

3. The collateral must be reasonable in relation to the face amount of the bond, and the collateral's value must be determined before the collateral agreement is executed.

4. The bail bond producer or surety shall keep and maintain collateral separate and apart from any other funds or assets.

5. It shall be a prohibited act pursuant to R.S. 22:1562 for any bail bond producer or surety to use any collateral for personal benefit or gain, or to fail to return the collateral to the person pledging it in the same condition as received by the bail bond producer or surety.

6. The bail bond producer or surety shall provide the person pledging the collateral a written receipt for the collateral received. The written receipt must include a detailed and specific description of the collateral, the full name of the person pledging the collateral, the full name of the defendant, the date of the bond, the approximate value of any non-cash collateral, and the specific amount of cash or other collateral.

7. If the parties to the collateral agreement subsequently agree to substitute other things of value as collateral, the substitution must be reflected in a new written collateral agreement, and the bail bond producer or surety must issue a new written receipt to the person pledging the substituted collateral.

8. The bail bond producer or surety shall return the collateral to the person who pledged the collateral not more than 30 days after the bail obligation is discharged in accordance with article 331 of the Code of Criminal Procedure.

B. If a forfeiture of the bail bond occurs, the bail bond producer or surety shall provide the person who pledged the collateral 10 days written notice from the date that a judgment of bond forfeiture is signed of the bail bond producer or surety's intent to take possession of the collateral deposit to satisfy the forfeiture. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person who pledged the collateral. If the collateral received by a bail bond producer is in excess of the bail forfeited, the bail bond producer or surety shall return the excess to the person who pledged the collateral within 30 days from the date a judgment of bond forfeiture is satisfied, less any verifiable and appropriate administrative expenses specifically provided for in Section 18715 below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, C.Cr.P. art 311, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

#### **§18715. Deductions from Collateral**

A. Only the premium amounts, fees, and expenses authorized pursuant to R.S. 22:1443, or as otherwise permitted in accordance with applicable state law, shall be recoverable by any bail bond producer or surety. No fee or other charge of any nature shall be deducted from the collateral due or charged in association with the storage or keeping of the collateral by the bail bond producer or surety.

B. A documented and itemized list of any such fees or expenses shall be given to the person who pledged the collateral. A copy of such documentation and itemization shall also be available to the Commissioner upon his request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

#### **§18717. Violations**

A. Failure to comply with the provisions of this regulation may be determined by the Commissioner to be a violation of R.S. 22:1562, and the violator shall be subject to penalties pursuant to R.S. 22:1554.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

#### **§18719. Effective Date**

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:1542, 22:1547, 22:1554, 22:1562, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_\_ (Month Year).

### **Family Impact Statement**

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

#### **Poverty Impact Statement**

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed regulation should have no effect on household income, assets, and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, there is no less

intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

#### **Provider Impact Statement**

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

#### **Public Comments**

Interested persons who wish to make comments may do so by writing to Philip Dominique, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, by faxing comments to (225) 342-1632, or electronically at [regulations@ldi.la.gov](mailto:regulations@ldi.la.gov). Comments will be accepted through the close of business, 4:30 p.m., September 12, 2022.

James J. Donelon  
Commissioner

#### **Fiscal and Economic Impact Statement**

1. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is promulgated to establish requirements and impose restrictions applicable to bail bond producers and sureties who receive collateral pledged in connection with a bail bond transaction. The proposed rule further prescribes protocols pertaining to the collection, maintenance, and return of collateral upon the final termination of liability on a bond, and it requires that a written collateral agreement accompany all bail bond transactions involving collateral security.

2. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rule will have no impact on state or local governmental revenues.

3. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS. (Summary)

The proposed rule may affect any bail bond producer and surety licensed in Louisiana. The proposed rule sets forth the duties and responsibilities of bail bond producers and sureties when collateral is pledged to secure a criminal defendant's release from custody.

4. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT. (Summary)

The proposed rule will have no impact upon competition and employment in the state.