

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Professional Bail Bondsman Licensing Board

Department Labor & Licensing

Contact Randy Murray E-mail Randy.Murray@arkansas.gov Phone 501-682-9050

Statutory Authority for Promulgating Rules Ark. Code Ann. § 17-19-108

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02/14/20

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Randy Murray

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9/18/20

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-9050

Randy.Murray@arkansas.gov

Phone Number

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Title

9/18/20

Date

RULE 1 -RULES OF BAIL BOND BUSINESS

SECTION Page TITLE

1. 2 Purpose
2. 2 Authority
3. 2 Effective Date and Applicability
4. 2 Definitions
5. 3 Bail Bond Form
6. 3 Qualifying Power of Attorney Form
7. 4 Regular Power of Attorney Form
8. 5 Company Codes
9. 5 Quarterly Reports
10. 6 Secured Bail Bonds
11. 6 Clean Irrevocable Letter of Credit
12. 6 Certificate of Deposit
13. 7 Certificate of Deposit and Clean Irrevocable Letter of Credit; Release
14. 7 Licenses
15. 8 License Required
16. 8 Reciprocal Licensure
17. 11 Automatic Licensure for Returning Military Veterans and Spouses
18. 11 Transfer of Bail Bondsman License
19. 13 License Renewal, Continuing Education Required
20. 14 License Denial - Company
21. 14 License Denial - Bondsman
22. 15 Pre-Licensure Criminal Background Check
23. 15 Criminal Background Waiver Request
24. 16 Financial Statements; Guidelines
25. 16 Collateral; Fiduciary Relationship
26. 17 Return of Excess Collateral on Forfeiture; Expenses
27. 17 Refund of Premium
28. 17 Allowable Charges
29. 18 Forfeitures; Misrepresentations
30. 18 Unpaid Forfeitures and Misconduct; License Sanctions
31. 19 Bail Bond Complaint Form and Procedures
32. 19 Complaints, Cooperation Required
33. 19 Hearing Officer
34. 20 Hearings, Revocation or Suspension of License
35. 21 Gifts Prohibited
36. 22 Notice of Change of Address
37. 22 Written Statement of Bail Transactions; Contents
38. 22 Examinations
39. 22 Record Retention
40. 23 Company Appointment
41. 23 Advertising
42. 23 Apprehension of Defendants
43. 24 Compliance with Posted Rules of Jail
44. 24 Bail Bond Recovery Fund
45. 25 Severability

Appendix (A) – Bail Bond Form

Appendix (B) – Affidavit of Sole Proprietorship

Appendix (C) – Statement of Bail and Payment Received

Appendix (D) – Qualifying Power of Attorney

- Appendix (E) – Quarterly Report Form
- Appendix (F) – Clean Irrevocable Letter of Credit
- Appendix (G) – Bail Bond Complaint Form
- Appendix (H) – Advertising Examples
- Appendix (I) – Authorization by Surety to Arrest Defendant on Bail Bond
- Appendix (J) – Collateral Receipt (Example)

SECTION 1. PURPOSE

The purpose of this Rule ("rule") is to set specific requirements that should be followed by professional bail bond companies and professional bail bondsmen engaged in the bail bond business in this State pursuant to Act 417 of 1989, codified as Ark. Code Ann. Section 17-19-101 et seq., as amended.

SECTION 2. AUTHORITY

This rule is issued pursuant to the authority vested in the Board under Ark. Code Ann. Sections 25-15-201, et seq., 17-19-106 and all other applicable provisions of Arkansas law.

SECTION 3. EFFECTIVE DATE AND APPLICABILITY

This rule shall be effective July 1, 2020 and shall be applicable to all qualified professional bail bond companies and their licensees and all applicants for a professional bail bond company or individual bail bondsman license.

SECTION 4. DEFINITIONS

The following definitions as used in this rule shall have the following meaning:

- A. "Board" shall mean the Arkansas Professional Bail Bond Company and Professional Bail Bondsman Licensing Board/Arkansas Professional Bail Bondsman Licensing Board;
- B. "Director" shall mean the Executive Director of the Board;
- C. "Company" shall mean a professional bail bond company;
- D. "Bail bondsman" shall mean a professional bail bondsman as defined by Ark. Code Ann. Section 17-19-101(6);
- E. "Premium" shall mean the money paid to a bail bondsman or professional bail bond company for release of an arrestee;

- F. "Arrestee" shall mean any person actually detained or subject to detention in custody whose release may lawfully be effected by bail;
- G. "Licensee" shall mean a professional bail bond company or a professional bail bondsman;
- H. "Bail bond" shall mean a bond for a specified monetary amount executed by the defendant or principal and a qualified licensee which is issued to a court, magistrate, or authorized officer as security for the subsequent appearance of the defendant upon his release from actual custody pending the appearance;
- I. "Jail" shall mean any police station, sheriff's office or other place where persons in the custody of the law are detained;
- J. "Principal" shall mean the person(s) paying the bail bond premium and/or giving the collateral;
- K. "Surety" shall mean the person/company responsible for the appearance of the defendant in court;
- L. "Private Investigator" shall mean an Arkansas licensed private investigator as defined by Ark. Code. Ann. § 17-40-102(27);
- M. "Bail Enforcement Agent/Bounty Hunter" shall mean a person who is offered or given any compensation by a bail bond company/ bail bondsman or surety in exchange for assisting the bail bondsman or surety in apprehending or surrendering any defendant. This does not preclude the right of bail bondsman or sureties to hire counsel or to ask assistance of law enforcement officers.
- N. "Stacking" shall mean executing more than one bond to avoid exceeding a bail bondsman's current Qualifying Power of Attorney.
- O. "Direct Supervision" means the person is in the physical presence of, and acting pursuant to instructions from, an Arkansas licensed bail bondsman.

SECTION 5. BAIL BOND FORM

Every bail bond issued by a professional bail bond company or its licensee(s) shall conform exactly to the forms prescribed in Appendices "A" and "B", shall have attached to it a "Statement of Bail and Payment Received" as prescribed in Appendix "C" and shall be preprinted with sequential numbers.

SECTION 6. QUALIFYING POWER OF ATTORNEY FORM

- A. Each company, upon either an initial or renewal application for a company license, must submit to this Board a Qualifying Power of Attorney from the company, specifying the authority limits of each of its licensees.
- B. A new Qualifying Power of Attorney must be submitted to this Board immediately for any increases, decreases or other changes made between licensing periods.
- C. The original Qualifying Power of Attorney increase signed by the bail bondsman/attorney-in-fact, must be received by the Board prior to a bail bondsman initiating a bond for the increased amount.
- D. Qualifying Power of Attorney increases shall not be submitted for the purpose of allowing a bail bondsman to write a bond that violates his/her existing Qualifying Power of Attorney or with the intent of reversing the increase subsequent to the bond being written.
- E. The Qualifying Power of Attorney shall be executed in the form prescribed in Appendix "D" of this rule.
- F. All licensed bail bondsmen shall, at any time they are writing bonds, carry a current copy of their Qualifying Power of Attorney that is on file with the Arkansas Professional Bail Bond Licensing Board.
- G. Only one power of attorney per bond, not exceeding the bail bondsman's Qualifying Power of Attorney, is allowed, unless a court has separated the charges and amounts of bonds. Powers of attorney shall not be stacked.
- H. Those companies operating as sole proprietorships shall not be required to execute and file a Qualifying Power of Attorney form unless such company has licensees other than the sole proprietor.

SECTION 7. REGULAR POWER OF ATTORNEY FORM

- A. Every bond executed by a bail bondsman shall include a numbered power of attorney indicating a valid appointment from a professional bail bond company and referring to that company.
- B. The power of attorney shall be in the form prescribed in Appendix "A" of this rule and shall have "Item 2" preprinted.

C. A sole proprietor of a company shall include on bonds he executes an affidavit of sole proprietorship in the form prescribed by Appendix "B" of this rule.

SECTION 8. COMPANY CODES

A. Upon issuance of a license to a professional bail bond company, the Board shall assign an alpha code that will be exclusive to the company. For each individual licensee of that company, the Board will assign a consecutive numerical code.

B. Company codes and individual bond numbers shall be preprinted sequentially in the upper right hand corner of all bail bonds, powers of attorney, statements of bail and premium receipts executed by the licensee. The bail bondsman's code may be written in ink between the company code and the bond number.

SECTION 9. QUARTERLY REPORTS

A. Every company shall file with the Board a quarterly report as required by Ark. Code Ann. Section 17-19-303(c). The report shall be made in the form as prescribed in Appendix "E" of this rule. The form shall be either typed or computer generated. Bonds shall be listed in sequential number order.

B. The quarterly report due dates are as follows:

<u>Period Covered</u>	<u>Due Date</u>
July 1 - September 30	October 15
October 1 - December 31	January 15
January 1 - March 31	April 15
April 1 - June 30	July 15

C. Quarterly reports must be received by the Board on the above referenced due dates by 4:30 p.m.

D. Companies may request an extension of time for filing a Quarterly Report by submitting a written request to the Director. Such request must be received and approved in advance of the due date, and must be for good cause shown.

E. If the quarterly report is not received as required by Subsection "C" above and no extension has been granted pursuant to Subsection "D" above, the offending company may be suspended.

F. A penalty of One Hundred Dollars (\$100.00) per day will be assessed until the report is received, beginning the day after the report is due.

G. The company license will be reinstated upon the payment of said penalty and the signing of a consent order.

SECTION 10. SECURED BAIL BONDS

A. A "secured" bail bond is one that is secured by a grant of an interest in **identifiable, tangible property**.

B. A promissory note, whether or not co-signed, will not be considered security.

C. A bail bond is only secured up to an amount equal to the fair market value of the interest granted in tangible property.

D. If the amount of the bond exceeds the value of the security, that amount so exceeding the value of the security shall be considered unsecured.

E. Signatures of principals and/or indemnifiers that are not given in the presence of the bail bondsman shall be notarized.

SECTION 11. CLEAN IRREVOCABLE LETTER OF CREDIT

A. Every company posting a clean irrevocable letter of credit with the Board pursuant to Ark. Code Ann. Section 17-19-205(a)(2)(A) shall post such letter using the form approved by the Board and contained in Appendix "F" of this rule. Copies of the clean irrevocable letter of credit may be obtained from the Board.

B. Substituted forms from financial institutions are not acceptable.

C. No letter of credit shall be subject to termination or cancellation by either party in less than sixty (60) days after the giving of written notice thereof to the other parties and the Board. Notice of termination or cancellation to the Board shall be by certified mail, return receipt requested.

D. No termination or cancellation shall affect the liability of the surety or sureties on a bond incurred prior to the effective date of termination or cancellation.

SECTION 12. CERTIFICATES OF DEPOSIT

A. Any certificate of deposit filed with the Board pursuant to Ark. Code Ann. Section 17-19-205(a)(1) shall be a certificate of deposit issued by an Arkansas or federally chartered bank located in Arkansas.

B. No certificate of deposit shall be subject to termination or cancellation by either party in less than sixty (60) days after the giving of written notice thereof to the other parties and the Board. Notice of termination or cancellation to the Board shall be by certified mail, return receipt requested.

C. No termination or cancellation shall affect the liability of the surety or sureties on a bond incurred prior to the effective date of termination or cancellation.

SECTION 13. CERTIFICATE OF DEPOSIT AND CLEAN IRREVOCABLE LETTER OF CREDIT; RELEASE

Any company desiring the release of a certificate of deposit or clean irrevocable letter of credit that has been filed with the Board shall comply with either of the following requirements:

A. A company seeking release of a certificate of deposit or a clean irrevocable letter of credit may file with the Board a replacement security in an amount equal to or greater than the amount of the security for which release is sought, and the replacement security must be specifically retroactive to the date the original security was issued.

B. If a company wishes to procure the release of a clean irrevocable letter of credit or of a certificate of deposit, it must present a statement in writing from each court of each county in which the company was engaged in business to write bail bonds, stating that the company has satisfied all its outstanding liabilities, both actual and potential; that no outstanding forfeitures against the company remain; that all bail bonds which were issued by the company have been discharged; and that all civil judgments as to forfeitures on bonds issued by the licensee have been paid in full.

SECTION 14. LICENSES

A. At least one owner/officer/partner must be a licensed bail bondsman licensed in two of the preceding three years.

B. All company owners/officers/directors/stockholders/partners will be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and nationwide criminal records check to be conducted by the Federal Bureau of Investigation. The criminal records checks will be required for any company licensee regardless of whether the owner/applicant is a licensed Arkansas bail bondsman.

C. Changes in ownership or changes to the corporate structure of any Arkansas licensed bail bond company shall be transmitted to the Board via a completed bail bond company application indicating the change. Criminal record checks will be submitted for those owners/officers/directors/stockholders/partners not previously listed.

D. Names of applicants for a bail bondsman license will be forwarded to sheriffs, police chiefs and prosecutors for references. Negative replies shall be investigated to determine if licensing infractions exist.

E. Company licensees will go through the same procedure as a bail bondsman licensee in regard to letters to sheriffs, police chiefs and prosecutors. This applies to all sole proprietors, partners, stockholders and officers.

F. Any application for a company license will be approved or denied by the Board.

G. There will be no fictitious names used in the bail bond business. Company applications containing fictitious names will be returned.

H. Applicants for a bail bondsman license will be approved or denied by the Board or its designee.

I. In the case of a bail bondsman's application being denied by the Board Designee, the applicant can appeal the decision to the Board.

J. Applicants for an initial bail bondsman license who satisfactorily complete the examination and meet the other qualifications and requirements prescribed by law, including eight (8) hours of beginning education, shall be licensed by the Board.

SECTION 15. LICENSE REQUIRED

A. A licensed bail bondsman must carry a current copy of his/her company's license, his/her bail bondsman license and a current copy of his/her Qualifying Power of Attorney and must present same when initiating a bail bond if documents are requested by authorized person(s).

B. The signature of the bail bondsman issuing the bond must be affixed to the bond. Bonds shall not be pre-signed by the bail bondsman nor shall any licensee sign another bail bondsman's name.

SECTION 16. RECIPROCAL LICENSURE

A. Required Qualifications. An applicant applying for reciprocal licensure shall meet the following requirements:

1. The applicant shall hold a substantially similar license in another United States' jurisdiction.
 - a. A license from another state is substantially similar to an Arkansas Professional Bail Bondsman license if the other state licenses professional bail bondsmen.
 - b. The applicant shall hold his or her occupational licensure in good standing;
 - c. The applicant shall not have had a license revoked for:
 1. An act of bad faith; or
 2. A violation of law, rule, or ethics;
 - d. The applicant shall not hold a suspended or probationary license in a United States' jurisdiction;

2. The applicant shall be sufficiently competent to serve as a Professional Bail Bondsman; and
3. Have a valid appointment from a professional bail bond company in the State;
4. Provide a duly executed power of attorney issued by the professional bail bond company for whom the professional bail bondsman will be acting; and
5. Apply to the Identification Bureau of the Arkansas State Police for a state and nationwide criminal records check.

B. Required documentation. An applicant shall submit a fully-executed application, the required fee, and the documentation described below.

1. As evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas's, the applicant shall submit the following information:
 - a. Evidence of current and active licensure in that state;
 - b. And Evidence that the other state's licensure requirements match those listed in A.1.a.
2. To demonstrate that the applicant meets the requirement in A.1.b. through d., the applicant shall provide the Board with:
 - a. The names of all states in which the applicant is currently licensed or has been previously licensed;
 - b. Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant has not had his license revoked for the reasons listed in A.1.c. and does not hold a license on suspended or probationary status as described in A.1.d.
3. As evidence that the applicant is sufficiently competent to be a Professional Bail Bondsman, an applicant shall:
 - a. Pass the written examination prepared by the Board; and
 - b. Submit three (3) written statements from persons who know his or her character.

Temporary and Provisional License

- A. The Board shall issue a temporary and provisional license immediately upon receipt of the application, the required fee, and the documentation required under B.(I).i. and ii above.
- B. The temporary and provisional license shall be effective until the Board makes a decision on the application, unless the Board determines that the applicant does not meet the requirements in Reciprocity sections A.(I). and A.(II)., in which case the temporary and provisional license shall be immediately revoked.
- C. An applicant may provide the rest of the documentation required above in order to receive a license, or the applicant may only

provide the information necessary for the issuance of a temporary and provisional license.

License for person from a state that does not license profession

- A. Required Qualifications. An applicant from a state that does not license Professional Bail Bondsman shall meet the following requirements:
1. The applicant shall be sufficiently competent to serve as a Professional Bail bondsman; and
 2. Have a valid appointment from a professional bail bond company in the State;
 3. Provide a duly executed power of attorney issued by the professional bail bond company for whom the professional bail bondsman will be acting; and
 4. Apply to the Identification Bureau of the Arkansas State Police for a state and nationwide criminal records check.
- B. Required documentation. An applicant shall submit a fully-executed application, the required fee, and the documentation described below.
1. As evidence that the applicant is sufficiently competent in the field of [name], and applicant shall:
 - a. Pass the written examination prepared by the Board; and
 - b. Submit three (3) written statements from persons who know his or her character.

Reciprocity and state-specific education

- A. The Board shall require an applicant to take the written examination prepared by the Board if the applicant is licensed in another state that does not offer reciprocity to Arkansas residents that is similar to reciprocity to out-of-state applicants in A.C.A. §17-1-108.
- B. Reciprocity in another state will be considered similar to reciprocity under A.C.A. §17-1-108 if the reciprocity provisions in the other state:
1. Provide the least restrictive path to licensure for Arkansas applicants;
 2. Does not require Arkansas applicants to participate in the apprenticeship, education, or training required as a prerequisite to licensure of a new professional in that state, except that the state may require Arkansas applicants to participate in continuing education or training that is required for all professionals in that state to maintain licensure.

3. Does not require Arkansas applicants to take a state-specified education unless required under the same conditions described in A.C.A. §17-1-108.

SECTION 17. AUTOMATIC LICENSURE FOR RETURNING MILITARY VETERANS AND SPOUSES

- A. As used in this subsection, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.
- B. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:
 1. An active duty military service member stationed in the State of Arkansas;
 2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or
 3. The spouse of a person under B (1) or (2) above.
- C. The Board shall grant such automatic licensure upon receipt of all the below:
 1. Payment of the initial licensure fee;
 2. Evidence that the individual holds a substantially equivalent license in another state; and
 3. Evidence that the applicant is a qualified applicant under Section 17 . B.

SECTION 18. TRANSFER OF BAIL BONDSMAN LICENSE

A bail bondsman who desires to transfer his license from one company to another shall:

- A. Pay a transfer fee of two hundred fifty dollars (\$250) to the board; and
- B. File with the board:
 - (i) A sworn affidavit stating that all premiums, fees, and powers of attorney owed to or issued by the company from which the bail bondsman is transferring his or her license have been delivered to the company;
 - (ii) A letter of resignation addressed to the company from which the bail bondsman is transferring or a letter of termination addressed to the bail bondsman from the company terminating the bail bondsman’s appointment;
 - (iii) A completed bail bondsman application on forms prescribed by the board;

(iv) A completed company statement from the company to which the bail bondsman desires to transfer his or her license;
and

(v) An original qualifying power of attorney issued by the company to which the bail bondsman desires to transfer his or her license.

C. Upon receipt of a request for transfer of a bail bondsman license, the transfer fee and the documents specified in (B) above, the board shall forward copies of the letter of resignation, if applicable, and the sworn affidavit of the bail bondsman to the company from which the bail bondsman desires to transfer his or her license.

D. Upon receipt of the documents specified in (C) above, the company from which the bail bondsman is transferring shall have seven (7) business days in which to contest the bail bondsman's sworn statement.

E. A company contesting a bail bondsman's sworn statement shall file a written complaint on forms furnished by the board setting out in detail the property the company denies the bail bondsman has returned.

F. Any documents supporting the complaint that shall be offered as evidence to prove the complaint shall be attached to the complaint. G. Upon receipt of the complaint, the executive director shall set the matter for an informal hearing to be held within seven (7) days of receipt of the complaint and notify the company filing the complaint and the bail bondsman by certified mail, return receipt requested, of the date, time and location of the informal hearing.

H. Either party may appeal the decision of the executive director to a formal hearing before the board by filing a written notice of appeal with the board within seven (7) days of receipt of the executive director's decision.

I. No transfer of a bail bondsman's license shall be effective prior to the expiration of the seven (7) day period for contesting the transfer request unless the company from which the bail bondman is requesting a transfer shall notify the board it has no objection to the transfer, in which case the transfer may be entered prior to the expiration of the seven (7) day period.

(i) If no complaint contesting the bail bondsman's transfer is received during the seven (7) day contest period, the license shall be transferred as requested.

(ii) A company that does not contest the sworn affidavit of a transferring bail bondsman is not precluded by the failure to contest the sworn affidavit from filing a complaint that alleges a violation of the applicable

statutes, rules, by the transferring bail bondsman upon discovery of the alleged violation by the company.

J. If the allegations of a complaint contesting the transfer are found to have been established, no transfer of the license shall be accomplished until the bail bondsman accounts for, returns, or pays to the professional bail bond company contesting the transfer the property or money issued to or held in a fiduciary capacity by the bail bondsman.

(i) If a complaint contesting the transfer is filed, a specific finding of fact shall be made concerning whether the affidavit or complaint contesting the affidavit was filed in good faith by the respective parties.

(ii) In the case of a finding of a lack of good faith, the party to whom the finding applies shall be subject to sanctions or disciplinary action pursuant to the provisions of Ark. Code Ann. Section 17-19-210 and as provided by applicable rules.

SECTION 19. LICENSE RENEWAL, CONTINUING EDUCATION REQUIRED

A. All Professional Bail Bond Company licenses issued pursuant to Ark. Code Ann. §17-19-101 et. seq. expire on December 31 of every year. Renewal of professional bail bond company and professional bail bondsman licenses is required prior to December 31 to prevent expiration.

B. Every Arkansas licensed bail bond company shall submit its renewal packet by December 1 of each year to ensure renewal of both the company license and the bail bondsman licenses by January 1 of the next year.

C. Renewal packets received after December 1 will be processed; however, a penalty of one hundred dollars (\$100.00) per day will be assessed until the packet is received, beginning December 2 and continuing through December 31.

D. Company and bondsman renewal applications received after December 15 but prior to December 31 will be processed on the corresponding day in January of the following year. (Example: Packet received December 16 will be processed on January 16 of next year). No bonds shall be issued by any company or bondsman after December 31 until the new license is issued and received by the bond company/bondsman.

E. Renewal applications for a Professional Bail Bond Company or for a Professional Bail Bondsman license received after December 31 will be treated as applications for initial license. All applicants will be treated as applicants for a new license and will have to complete the entire licensing process.

F. Licensees shall annually complete not fewer than six (6) hours of continuing education courses presented by a Board approved provider.

G. Bondsmen who fail to complete the required continuing education program will not be re-licensed for the upcoming year. Those bondsmen desiring to have their licenses reinstated must attend a continuing education class offered in the current licensing year before a license will be issued. A second continuing education class must be attended in order for the bondsman to obtain a license for the following year.

SECTION 20. LICENSE DENIAL - COMPANY

A. A bail bond company license shall not be issued or renewed, and may be revoked, if any owner, partner, stockholder or officer:

1. Has been convicted of a felony or any offense involving moral turpitude listed under § 17-3-102 ;
2. Is regularly or frequently employed by:
 - a. A court of law; or
 - b. A public law enforcement agency;
3. Is an attorney licensed by the State of Arkansas or an employee of an attorney;
4. Is a person or entity found by the Board to be incompetent, untrustworthy, financially irresponsible or of doubtful personal and business reputation;
5. Is a person or entity whose license has been previously revoked.

B. A company owner having knowledge that another licensee has committed a violation of these rules or any statute regulating bail bonds, bail bondsman or bail bond companies, or has been convicted of a felony which would disqualify the licensee from holding such license shall promptly notify the Board.

SECTION 21. LICENSE DENIAL - BONDSMAN

A. A bail bondsman's license shall not be issued or renewed to any individual, and may be revoked, if that individual:

1. Has been convicted of an offense listed under § 17-3-102.
2. Is regularly or frequently employed by:
 - (a) A court of law; or
 - (b) A public law enforcement agency.
3. Is an attorney licensed by the State of Arkansas or an employee of an attorney.

4. Is found by the Board to be incompetent, untrustworthy, financially irresponsible or of doubtful personal and business reputation; or

5. Is a person whose license has been previously revoked.

SECTION 22. PRE-LICENSURE CRIMINAL BACKGROUND CHECK

A. Pursuant to § 17-3-102, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

B. The individual must obtain the pre-licensure criminal background check petition form from the Board.

C. The Board will respond with a decision in writing to a completed petition within thirty (30) days of receipt of all documentation.

D. The Board's response will state the reason(s) for the decision.

E. All decisions of the Board in response to the petition will be determined by the information provided by the individual.

F. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.

G. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

SECTION 23. CRIMINAL BACKGROUND WAIVER REQUEST

A. If an individual has been convicted of an offense listed in A.C.A. § 17-3-102(a), except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

1. An affected applicant for a license; or
2. An individual holding a license subject to revocation.

B. The Board may grant a waiver upon consideration of the following, without limitation:

1. The age at which the offense was committed;
2. The circumstances surrounding the offense;
3. The length of time since the offense was committed;
4. Subsequent work history since the offense was committed;
5. Employment references since the offense was

committed;

6. Character references since the offense was committed;
7. Relevance of the offense to the occupational license; and
8. Other evidence demonstrating that licensure of the

applicant does not pose a threat to the health or safety of the public.

C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.

D. The Board will respond with a decision in writing and will state the reasons for the decision.

E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

SECTION 24. FINANCIAL STATEMENTS; GUIDELINES

A. Assets listed on the financial statement of a corporation seeking to be licensed or re-licensed shall be assets directly owned by the corporation and held in the name of such corporation.

B. Assets listed on the financial statement of a partnership seeking licensure or re-licensure as a professional bail bond company shall be those assets owned by the partnership; assets owned individually by one partner may be listed as long as such assets are identified separately on the financial statement.

C. Assets listed on the financial statement of a sole proprietorship shall be those personally owned and held by such sole proprietor.

D. Property held as collateral on a bond shall not be considered an asset.

E. The Board may request any documentation to verify the worth of any asset listed or to show the extent of any encumbrance or the lack of any encumbrance.

SECTION 25. COLLATERAL; FIDUCIARY RELATIONSHIP

A. When a bail bond company/agent takes physical possession of collateral, a pre-numbered written receipt must be given reflecting the following:

- (1) the name, address and telephone number of the professional bail bond company;
- (2) the name and signature of the person giving collateral;
- (3) the bail bond number(s) for which collateral is posted;
- (4) a description and approximate value of collateral received;
- (5) the purpose for collateral received; and
- (6) the name and signature of the bail bond agent.

B. Any licensee who receives collateral in connection with a bail transaction shall receive such collateral in a fiduciary capacity, and, prior to any forfeiture of bail, shall keep it separate and apart from any other funds or assets of such licensee.

C. At no time shall collateral be converted to the personal use of the licensee or bail bond company prior to any forfeiture.

SECTION 26. RETURN OF EXCESS COLLATERAL ON FORFEITURE; EXPENSES

A. If collateral received is in excess of the bail forfeited, such excess shall be returned to the person who placed the collateral with the licensee immediately upon the application of the collateral to the forfeiture.

B. Documented reasonable expenses incurred due to a breach of the bail bond contract or Court Order may be deducted from the collateral, if the Court does not allow a remission from the sum specified in the bail bond.

SECTION 27. REFUND OF PREMIUM

The principal shall be entitled to a refund of his premium when the arrestee is surrendered by his bail bondsman at any time prior to the final termination of the liability of the bond provided that the arrestee has not committed any of the following:

- A. Left the jurisdiction of the court without written consent of the court for a period in excess of twenty-four (24) hours;
- B. Moved from his place of residence without notifying his bail bondsman;
- C. Was arrested for an offense other than a traffic violation;
- D. Violated any substantive provision in the bail bond contract. The principal shall be entitled to a refund of his premium when the bail bondsman fails to secure the defendant's release from actual custody.

SECTION 28. ALLOWABLE CHARGES

A. The premium allowed by Ark. Code Ann. Section 17-19-301 is the maximum amount a bail bondsman may charge for writing a bond.

B. The following separate charges are not allowable and shall not be charged by a company or any licensee:

- (1) Operating expenses
- (2) Mileage
- (3) Telephone calls
- (4) Photo fees

- (5) Postage
- (6) Extra personnel fees
- (7) Prepaid recovery expenses

C. Allowable charges do include any expenses such as filing fees for documents or other fees that are expenses incurred by the person executing any documents in order to procure coverage by a bail bond.

D. Any rebating or discounting of premiums by any company or licensee is strictly prohibited.

SECTION 29. FORFEITURES; MISREPRESENTATIONS

No bail bondsman shall purposely make any misleading or untrue representations to any court or to any public official for the purpose of avoiding or preventing a forfeiture of bail or setting aside a forfeiture that has already occurred.

SECTION 30. UNPAID FORFEITURES AND MISCONDUCT; LICENSE SANCTIONS

A. If it is found that any licensee has been found guilty of misconduct or malfeasance and upon notice from the aggrieved party of damages due to the licensee's misconduct, the Board may notify the licensee by certified mail of the claim.

- (1) If the verified amount due the aggrieved party is not paid within twenty (20) days of issuance of notice, the Board may suspend the license and immediately withdraw the allowable amount from the posted certificate of deposit or maintain a civil action on the letter of credit.
- (2) The license of the malefactor shall remain suspended until the amount of damage is paid.
- (3) If the amount remains unpaid after suspension, the Board may order a hearing for the licensee to show cause why his license should not be revoked.
- (4) Any company whose license is revoked pursuant to an order of the Board after notice and hearing must immediately discontinue operations.

B. When a final civil judgment of forfeiture is entered as to a bail bond issued by a licensee by a court of competent jurisdiction and the judgment is not paid within ninety (90) days thereafter and is forwarded to the Board pursuant to Ark. Code Ann. Section 17-19-208(b)(1), the Board shall notify the licensee involved by certified mail. If the forfeiture judgment remains unpaid for ten (10) days following issuance of notice, the Board may administratively suspend the license and make claim against the licensee's security deposit up to the allowable amount of ten thousand dollars (\$10,000.00).

SECTION 31. BAIL BOND COMPLAINT FORM AND PROCEDURES

- A. Complaints may be filed and hearings will be conducted pursuant to A.C.A. § 17-19-209.
- B. Any person desiring to make a complaint concerning an alleged violation of Ark. Code Ann. Sections 17-19-201, et seq., by any company or bondsman shall use the bail bond complaint form prescribed in Appendix "G" of this rule. A copy of the complaint form may be obtained from the Board.
- C. The form must be signed by the complaining party under penalty of perjury and be notarized.

SECTION 32. COMPLAINTS, COOPERATION REQUIRED

- A. All complaints will be investigated by the Executive Director or his/her designee.
- B. Every bail bondsman and company shall promptly respond to all correspondence, request for information, or otherwise, directed to the bondsman or company by the Board or an employee thereof. Every licensed professional bail bondsman and/or company shall fully cooperate with any examination or investigation conducted by the Board.
- C. Failure on the part of any company or its licensees to make all financial and business records available for inspection or examination upon request by the Board, or failure to otherwise cooperate, may be grounds for a hearing.
- D. If any person or company regulated by this Board files a complaint or causes a complaint to be filed against another person or company regulated by this Board and said complaint is ultimately determined by the Board to be a complaint without merit, the complaining party shall be brought before this Board for appropriate disciplinary action pursuant to Ark. Code Ann. Section 17-19-210.

SECTION 33. HEARING OFFICER

The Board may appoint a hearing officer to preside at hearings pursuant to Ark. Code Ann. §25-15-213 and who may, if authorized by the Board, prepare a proposal for decision pursuant to Ark. Code Ann. §25-15-210.

SECTION 34. HEARINGS, REVOCATION OR SUSPENSION OF LICENSE

- A. All hearings shall be conducted in the same manner as hearings held by the Board under the Arkansas Administrative Procedure Act, Ark. Code Ann. Section 25-15-201 et seq., unless otherwise stated.
- B. At the discretion of the Board, the Executive Director may hold informal hearings in reference to a complaint or the Executive Director may set a formal hearing before the Board. The company or bondsman may request a formal hearing before the Board. Consent agreements entered into as a result of an informal hearing shall be submitted for Board approval at the next regularly scheduled meeting of the Board after the informal hearing.
- C. The Board may subpoena witnesses; administer oaths and affirmations; examine any individual under oath; require and compel production of books, papers, contracts and other documents. Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court and may be served by certified mail.
- D. If any individual fails to obey a subpoena, duly issued and served, with respect to any matter concerning which he or she may be lawfully interrogated, the Board may apply to the Pulaski County Circuit Court which may issue an order requiring the individual to comply with the subpoena and to testify. Failure to obey the order of the court may be punished by the court as a contempt thereof.
- E. Any person willfully testifying falsely under oath to any matter material to any examination, investigation, or hearing shall, upon conviction, be guilty of perjury and punished accordingly.
- F. Notice of the time and place of the hearing, stating the matters to be considered shall be given not less than ten (10) days in advance.
- G. The Board shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his or her interest, and to have subpoenas issued by the Board to compel attendance of witnesses and production of evidence in his or her behalf.
- H. The Board may suspend for up to twelve (12) months or revoke or refuse to continue any license, if after notice and hearing the Board determines that the licensee or any member of a company has violated any provision of Ark. Code Ann. Section 17-19-210.
- I. The acts or conduct of any bondsman who acts within the scope of the authority delegated to him or her shall be deemed the act or conduct of the company for which the bondsman is acting as agent.

J. If the Board finds that one (1) or more grounds exist for the suspension or revocation of any license, the board may request that formal charges be filed against the violator and that the penalties set out in Ark. Code Ann. Section 17-19-102 be imposed.

K. If the Board finds that one (1) or more grounds exist for the suspension or revocation of any license and that the license has been suspended within the previous twenty-four (24) months, the license shall be revoked.

L. The Board may not again issue a license to any person or entity whose license has been revoked.

M. If the Board or its designee determines that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, a summary suspension of a licensee may be ordered pending an administrative hearing before the Board, which shall be promptly instituted.

N. If a company license is suspended or revoked, no member of the company or officer or director of the corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of suspension or revocation, unless the Board determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

O. A party may appeal from any order of the Board as a matter of right. The appeal shall be taken to the Pulaski County Circuit Court by filing written notice of appeal to the Court and by filing a copy of the notice with the Board within thirty (30) days after issuance of the Order by the Board.

P. Within thirty (30) days after filing of the copy of the notice of appeal with the Board, the Board shall make, certify and deposit in the office of the clerk of the court in which the appeal is pending a full and complete transcript of all proceedings had before the Board and all evidence before the Board in the matter, including all of the Board's files therein.

SECTION 35. GIFTS PROHIBITED

A. No licensee shall give, directly or indirectly, any gift of any kind to any public official, any candidate for public office, or any employee of a governmental agency who has duties or responsibilities with respect to the administration of justice or a place wherein detention of a person charged with a crime may occur or to any prisoner in any jail.

B. Items that are distributed generally for the purposes of advertising and political contributions lawfully given shall not be considered gifts for the purposes of this section.

SECTION 36. NOTICE OF CHANGE OF ADDRESS

A. Every professional bail bondsman and professional bail bond company shall notify the Board in writing of any change of his/her/its principal business address and/or his/her residence address within thirty (30) days of such change.

B. Failure to notify the Board of such address change may be grounds for a hearing.

SECTION 37. WRITTEN STATEMENT OF BAIL TRANSACTION; CONTENTS

Every bail bondsman shall, at the time of obtaining the release of an arrestee on bail, deliver (and keep a copy for his own records) to such arrestee or to the principal a numbered document signed by the arrestee containing the following information as prescribed in Appendix "C":

- (1) the name of the bail bondsman;
- (2) the name, address and telephone number of the professional bail bond company;
- (3) the name of the arrestee;
- (4) the date of arrest;
- (5) the date of release of the arrestee;
- (6) the date, time and place of the arrestee's required appearance, if known;
- (7) the amount of bail;
- (8) the offenses with which the arrestee is charged;
- (9) the premium for the bail bond;
- (10) the amount received;
- (11) the unpaid balance, if any; and
- (12) a description of and receipt number for any collateral received.

SECTION 38. EXAMINATIONS

After a person passes the examination for licensure, he shall have one (1) year from the date the examination result is certified to apply for a license. If he applies for a license more than one (1) year from the date the examination result is certified, he shall be required to retake and pass the examination before a license can be issued.

SECTION 39. RECORD RETENTION

All records required herein shall be maintained for a period of five (5) years at one central location. If the records are kept at a location other than the mailing address on file at the Board, such address must be submitted to the

Board in writing with a notation that such address is where the records are maintained.

SECTION 40. COMPANY APPOINTMENT

- A. A professional bail bondsman can represent no more than one professional bail bond company at a time.
- B. A company that notifies the Board it has terminated the appointment of a bail bondsman must wait a minimum of seven (7) days after notice of termination before requesting reinstatement of the bondsman's license.

SECTION 41. ADVERTISING

- A. All advertising pursuant to Ark. Code Ann. Section 17-19-109 shall prominently display the company name, i.e., the company name shall be larger than the agent's name. (See Appendix "H".)
- B. There will be no fictitious names used in the bail bond business. All advertising will be in the name of the licensed company only.
- C. Companies shall annually provide the Board a list containing the physical address and phone number of its offices or business locations publicly displaying advertising. The list shall be included in the company's renewal application.
- D. When a bail bond office or business location publicly displaying advertising changes addresses or closes or a new bail bond office or business location publicly displaying advertising is opened, the company must notify the Board within thirty (30) days of such address change, closing, or opening of the new bail bond office or business location.

SECTION 42. APPREHENSION OF DEFENDANTS

- A. No person shall represent himself/herself to be a bail enforcement agent, bounty hunter or similar title.
- B. No professional bail bond company/bondsman shall permit or authorize any person to apprehend a defendant on bail unless that person is qualified pursuant to Ark. Code Ann. §16-84-114 and is:
 - 1. A bail bond agent licensed by the state where the bond was written;
or
 - 2. A private investigator licensed in Arkansas; or
 - 3. A certified law enforcement officer; or
 - 4. A person who is acting under the direct supervision of an Arkansas licensed bail bondsman and who is at least twenty-one (21) years of age with no prior felony convictions or convictions for any offense involving moral turpitude or violence.

C. Any bail bond company/bail bondsman permitting or authorizing a person other than the surety to apprehend or surrender a defendant pursuant to A.C.A. §16-84-114(3)(b) must provide the agent with:

1. Written authorization on company letterhead using the form approved by the Board and contained in Appendix "I" of this rule; and
2. A certified copy of the bail bond or recognizance appropriately endorsed as provided in Ark. Code Ann. §16-84-114.

D. Any bail bondsman or agent authorized pursuant to Ark. Code Ann. §16-84-114 attempting to apprehend a defendant must notify the local law enforcement agency or agencies of his presence and provide them with the defendant's name, charges and suspected location

E. The bondsman or agent shall record the date and time of notification and the identity of the law enforcement agency official to whom notification was given.

F. Notification must be given prior to any apprehension attempt, to a law enforcement official on duty, at least once every forty-eight (48) hours during the apprehension attempt or as required by policies of the law enforcement agency to which notice is given.

SECTION 43. COMPLIANCE WITH POSTED RULES OF JAILS

A. A licensee shall comply with publicly posted rules of a jail.

B. As used in this section, "Rules" shall mean policies and procedures relating to the operation of a jail that are not in conflict with state or federal statutes and that have been approved by the chief law enforcement officer of the jail.

C. A licensee who is found, after notice and hearing, to have violated this section may be subject to disciplinary action as provided in Ark. Code Ann. §17-19-210.

SECTION 44. BAIL BOND RECOVERY FUND

Arkansas Code Ann. § 19-6-826 created the Bail Bond Recovery Fund. The fees collected under the provisions of Ark. Code Ann. § 17-19-301(g)(1)(A) are designated as the Bail Bond Recovery Fund, which shall be administered by the Board.

A. The Board will pay a claim against the Recovery Fund for an unpaid bond forfeiture judgment in accordance with the following process:

- (1) Pursuant to Ark. Code Ann. § 17-19-208, a Court sends the Board the statutorily-required documentation regarding an unpaid bond forfeiture;
- (2) The bail bond company's security deposit(s) is seized by the Board pursuant to Ark. Code Ann. § 17-19-112 and paid to the Court;

(3) The Board disperses the amount payable, which is calculated under subsection B. below, from the Recovery Fund to the Court.

B. The maximum fund available for disbursement under this section is fifty percent (50%) of the amount of the bond that is left unpaid after deducting the amount of the security deposit under A.(2) above. The maximum amount payable from the Recovery Fund is ten thousand dollars (\$10,000) per bond forfeiture judgment.

C. Failure of an entity subject to these rules to remit or pay fees as required under Arkansas Code Ann. § 17-19-301, or to file the quarterly reports required under that section, may result in discipline pursuant to Ark. Code Ann. § 17-19-210.

SECTION 45. SEVERABILITY

Any section or provision of this rule held by the court to be invalid or unconstitutional will not affect the validity of any other section or provision.