

Qualification bond and bond database changes - 2018

Section 1.

§ 83-39-3. Individual license required; funding of agency expenses; deposit of monies into State General Fund
[Repealed effective July 1, ~~2018~~ 2020]

(1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2) (a) No license shall be issued or renewed except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation, as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under the professional bail agent's name. No license shall be issued to or renewed for any person who has ever been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the business of a professional bail agent, soliciting bail agent, or bail enforcement agent, including, but not limited to, any felony that involves an act of fraud, dishonesty, or a breach of trust, or money laundering. No license shall be issued to any person who is under twenty-one (21) years of age. No person engaged as a law enforcement or judicial official or

attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are or may be eligible for bail, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.

(b) (i) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official, or an employee, independent contractor or the contractor's employee of any police department, sheriff's department, jail or corrections facility that houses or holds federal, state, county or municipal inmates who are or may be eligible for bail, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a spouse, parent, grandparent, child, sister, brother, or a consanguineous aunt, uncle, niece or nephew. Violation of this prohibition shall result in license revocation.

(ii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.

(iii) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that

agency.

(4) (a) Each license issued hereunder shall expire biennially on the last day of September of each odd-numbered year, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or on behalf of such insurer had been terminated, or upon notice served upon the commissioner that the authority of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent.

(b) A soliciting bail agent or bail enforcement agent may, upon termination by a professional bail agent or upon his cessation of employment with a professional bail agent, be relicensed without having to comply with the provisions of subsection (7)(a) and (b) of this section, if he has held a license in his respective license category within ninety (90) days of the new application, meets all other requirements set forth in Section 83-39-5 and subsection (7)(b) of this section, and notifies the previous professional bail agent in writing that he is submitting an application for a new license.

(5) The department shall prepare and deliver to each licensee a license showing the name, address and classification of the licensee, and shall certify that the person is a licensed professional bail agent, being designated as a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the license of a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The

commissioner, after a hearing under Section 83-39-17, shall refuse to issue a license for a limited surety agent if he owes any premium or debt to an insurer to which he has been appointed. If a license has been granted to a limited surety agent or a soliciting bail agent who owed any premium or debt to an insurer or professional bail agent, the commissioner, after a hearing under Section 83-39-17, shall revoke the license.

(7) (a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) hours of prelicensing education approved by the Mississippi Insurance Department unless the applicant is currently licensed under this chapter on July 1, 2014, and has maintained that license in compliance with the continuing education requirements of subsection (8) of this section. Any applicant who has met all continuing education requirements as set forth in subsection (8)(a) of this section and has been properly licensed under this chapter within ninety (90) days of submitting an application for a license shall not be subject to the prelicensing education requirement.

(b) All applicants for a professional bail agent, soliciting bail agent or bail enforcement agent license applying for an original license after July 1, 2014, shall successfully complete a limited examination by the department for the restricted lines of business before the license can be issued; however, this examination requirement shall not apply to any licensed bail soliciting agent and bail enforcement agent transferring to another professional bail agent license, any licensed bail soliciting agent applying for a bail enforcement agent license, and any licensed bail enforcement agent applying for a bail soliciting agent license. An applicant shall only be required to successfully complete the limited examination once.

(c) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8) (a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first licensure year;

(ii) Except as provided in subparagraph (i), eight (8) hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall be approved by the Mississippi Insurance Department.

(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a bail agent for a continuous period of twenty (20) years immediately preceding the submission of the application as evidenced by submission of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

(9) No license as a professional bail agent shall be issued unless the applicant has been duly licensed by the department as a soliciting bail agent for a period of three (3) consecutive years immediately preceding the submission of the application. However, this subsection (9) shall not apply to any person who was licensed as a professional bail agent before July 1, 2011.

(10) A nonresident person may be licensed as a professional bail agent, bail soliciting agent or bail enforcement agent if:

(a) The person's home state awards licenses to residents of this state on the same basis; and

(b) The person has satisfied all requirements set forth in this chapter.

(11) On or before October 1, 2016, the Insurance Department shall establish a statewide Electronic Bondsmen Registry for all licenses, powers of appointment and powers of attorney requiring registration under this section. Once established, each professional bail agent, limited surety agent, bail soliciting agent, bail enforcement agent or

insurance company writing bail bonds shall be required under this subsection (11) to register and maintain a record of each required license, power of appointment and power of attorney in the registry. Failure to comply with this provision will subject the agent to the penalties provided in Section 83-39-29.

(12) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(13) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

Section 2.

§ 83-39-7. Qualification bond; return of defendant out on bond; return of qualification bond [Repealed effective July 1, ~~2018~~ 2020]

(1) (a) Each applicant for a professional bail agent license * * * shall be required to post a qualification bond in the amount of Thirty Thousand Dollars (\$30,000.00) in order to be qualified and licensed as provided in this chapter to issue bail bonds in the domicile county of the applicant county where the principal place of business of the applicant is located. The applicant shall identify the county of his or her principal place of business in the license application or license renewal application.

(b) To issue bail bonds outside the county of his or her principal place of business, an applicant or licensee must post an additional qualification bond of One Hundred Thousand Dollars (\$100,000.00). is required to issue bonds in any county outside of the domicile county. However, no

insurance company shall be required to post qualification bonds ~~more~~ totaling more than One Million Dollars \$1,000,000.00 ~~for~~ in order for its professional bail agents to issue bail bonds in multiple counties.

(c) Any licensed professional bail agent with ten (10) or more cumulative years of experience as a licensed Mississippi soliciting bail agent or bail enforcement agent or professional bail agent as of July 1, 2018, is not required to post an additional qualification bond to issue bail bonds in multiple counties. Any other professional bail agent issuing bonds in multiple counties shall increase the amount of the qualification bond to be posted by Twenty Thousand Dollars (\$20,000) upon renewal of his or her license ~~per licensing period/biannually~~ until the total qualification bond required for renewal of a license equals ~~of~~ One Hundred - Thirty Thousand Dollars (\$130,000) ~~is posted~~.

(~~b~~d) The Insurance Department shall submit a report to the Senate and House of Representatives Committees on Accountability, Efficiency and Transparency that details the amount of all bonds or undertakings that each bail bondsman has written in this state on which the bail bondsman is absolutely or conditionally liable since the Bail Bond Database was established by the department. The report shall be submitted on or before December 1, 2017. The report shall also include the number of bail bondsmen who have failed to comply with the database reporting requirements, if any, the technical issues that may have occurred since the database was established and any suggested legislation to ensure each bail bondsman's continued compliance with the database reporting requirements.

(2) The qualification bond shall be made by depositing with the commissioner the aforesaid amount of bonds of the United States, the State of Mississippi or any agency or subdivision thereof, or a certificate of deposit issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation and made payable jointly to the

owner and the Department of Insurance, or shall be written by an insurer as defined in this chapter, shall meet the specifications as may be required and defined in this chapter, and shall meet such specifications as may be required and approved by the department. The bond shall be conditioned upon the full and prompt payment of any bail bond issued by such professional bail agent into the court ordering the bond forfeited. The bond shall be to the people of the State of Mississippi in favor of any court of this state, whether municipal, justice, county, circuit, Supreme or other court.

~~(3) If any bond issued by a professional bail agent is declared forfeited and judgment entered thereon by a court of proper jurisdiction as authorized in Section 99-5-25, and the amount of the bond is not paid within ninety (90) days, that court shall order the department to declare the qualification bond of the professional bail agent to be forfeited and the license revoked. If the bond was not forfeited correctly under Section 99-5-25, it shall be returned to the court as uncollectible. The department shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by the professional bail agent and declared forfeited by the court, or the amount of the qualification bond, whichever is the smaller amount. The department shall, after hearing held upon not less than ten (10) days' written notice, suspend the license of the professional bail agent until such time as another qualification bond in the required amount is posted with the department. The revocation of the license of the professional bail agent shall also serve to revoke the license of each soliciting bail agent and bail enforcement agent employed or used by such professional bail agent. In the event of a final judgment of forfeiture of any bail bond written under the provisions of this chapter, the amount of money so forfeited by the final judgment of the proper court, less all accrued court costs and excluding any interest charges or attorney's fees, shall be refunded to~~

~~the bail agent or his insurance company upon proper showing to the court as to which is entitled to same, provided the defendant in such cases is returned to the sheriff of the county to which the original bail bond was returnable within twelve (12) months of the date of such final judgment, or proof made of incarceration of the defendant in another jurisdiction, and that a "Hold Order" has been placed upon the defendant for return of the defendant to the sheriff upon release from the other jurisdiction, the return to the sheriff to be the responsibility of the professional bail agent, then the bond forfeiture shall be stayed and remission made upon petition to the court, in the amount found in the court's discretion to be just and proper. A bail agent licensed under this chapter shall have a right to apply for and obtain from the proper court an extension of time delaying a final judgment of forfeiture if such bail agent can satisfactorily establish to the court wherein such forfeiture is pending that the defendant named in the bail bond is lawfully in custody outside of the State of Mississippi.~~

(3) The qualification bond may be released by the department to the insurance company or to the professional bail personal surety agent upon an order to release the qualification bond issued by a court of competent jurisdiction, or upon written request to the department by the insurance company or the professional bail personal surety agent no earlier than five (5) years after the expiration date of his last license.

§ 83-39-13. Annual financial statement; maintenance and registration of office physically located in Mississippi municipality or county required; Bail Bond Database [Repealed effective July 1, ~~2018~~ 2020]

(1) Each professional bail agent licensed under this chapter, under oath, shall provide to the Insurance

Department an annual financial statement. The annual financial statement shall show assets, liabilities and net worth as of the end of the most recent calendar year. The statement shall be submitted annually to the department by June 1.

(2) (a) For purposes of applicable examinations, a professional bail agent licensed in this state shall maintain at least one (1) office physically located in any municipality or county in this state, to serve as his principal place of business operations where records pertaining to his bail agent business conducted in Mississippi are maintained and this office location shall be registered with the Insurance Department.

(b) When applying for an original or renewal license as a professional bail agent, the applicant shall indicate the address of the office location to serve as his principal place of business operations, and this address shall be evidenced on the face of the license issued to the licensee.

(c) If for any reason the professional bail agent changes the location of his principal place of business operations, removes to another state, or no longer continues in the profession as a bail agent, the bail agent shall register the new location with the department, or notify the department of his removal from the state or his cessation of business as a professional bail agent as appropriate.

(3) On or before October 1, 2016, the Mississippi Insurance Department shall establish a Bail Bond Database within the department for the reporting of all bail bonds written by personal surety agents and limited surety agents in this state. By November 15, 2016, each bail agent must input his or her bail bond information into the Bail Bond Database for all bonds written from and after October 1, 2016. By the fifteenth day of each subsequent month, each bail agent must update the Bail Bond Database regarding his or her

bail bond information for bail bonds written from and after October 1, 2016, and each update must be current through the last day of the previous month. Any bail agent who fails to comply with the provisions of this subsection (3) shall be assessed a fine in an amount not to exceed One Thousand Dollars (\$ 1,000.00) per violation.

(4) (a) Information in the Bail Bond Database shall not be the basis for restrictions on the amount of bonds a professional bail agent may have outstanding at any given time until such time as the information in the Database is reliable and accurate, as certified by the Commissioner.

(b) Notwithstanding the above paragraph (a), at such time that all of the criminal courts of the State have access to and participate in a unified court filing system that allows those courts to reliably access and to accurately enter, correct or modify all necessary information into the Bail Bond Database, and professional bail agents have access to verify and modify their individual information in the Bail Bond Database, the Bail Bond Database shall be considered reliable and accurate.