

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Recovery of Fugitive Fees by Surety Companies

Proposed New Rules: N.J.A.C. 11:1- 40

Proposed Amendment: N.J.A.C. 11:17B-3.2

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:22A-39 and 17:29AA-10 and 29

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2005-21

Submit comments by March 19, 2005 to:

Douglas Wheeler, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P. O .Box 325  
Trenton, NJ 08625-0325  
Email: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

N.J.S.A. 17:22A-39 provides that the Commissioner of Banking and Insurance (the Commissioner) shall establish by rule or regulation the lines of insurance that may be marketed through a limited lines producer. Bail bonds have been identified as one of the lines of insurance that a limited lines producer may offer to consumers. N.J.A.C. 11:17B-3.2 generally deals with service fees that may be charged by producers. N.J.A.C. 11:17B-3.2(c), however,

prohibits bail bond agencies from recouping fugitive fees (fees associated with the apprehension of a defendant who fails to appear for a court date).

N.J.S.A. 17:29AA-29 empowers the Commissioner to promulgate regulations on commercial deregulation issues.

N.J.S.A. 17:29AA-2C indicates that one of the purposes of the Commercial Insurance Deregulation Act of 1982 (N.J.S.A. 17:29AA-1 et seq.) is “to encourage the most efficient and economic rating and marketing practices”. In an effort to implement this provision, the Department is proposing to revise current, and adopt new, rules to authorize surety companies to recoup fugitive recovery expenses and to clarify uncertainty that presently exists with regard to the charging of fugitive recovery fees related to bail bond transactions.

The proposed rules would limit the amount of the fees surety companies may charge indemnitors for recovering fugitives to the actual reasonable expenses incurred in the investigation and apprehension of the fugitive, and filing fees and court imposed costs related to an application for the remittance of the previously forfeited bond on that fugitive, subject to certain maximum amounts tied to the amount of the surety bond issued on the fugitive. This approach will maintain the ability of surety companies to efficiently rate their products, as it will continue to exclude from the rate calculation process the highly variable factor of fugitive recovery costs. Consumers will, however, benefit from the fugitive recovery expense structure that would be established by the rules, as the fees will be calculated on a fair and uniform basis and will be the subject of a written contract between the surety company and the consumer.

The Department believes that surety companies are well suited to perform the tasks related to tracking the costs of fugitive recovery efforts because of the recordkeeping, financial

responsibility, regulatory compliance and accountability that is involved in bail bond transactions.

The proposed new and amended rules will promote a better understanding between indemnitors and surety companies because each party's responsibility will be clearly delineated. Also, the proposed new and amended rules would create a uniform structure for fugitive recovery fees imposed as part of bail bond transactions throughout the State of New Jersey.

The proposed new rules are set forth in N.J.A.C 11:1-40. They specify in detail the conditions under which surety companies may recover fugitive fees.

The proposed new rules are summarized as follows:

Proposed N.J.A.C. 11:1-40.1 contains the purpose and scope of the subchapter

Proposed N.J.A.C. 11: 1-40.2 contains definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-40.3 sets forth the conditions for the imposition of fugitive fees.

The proposed new rules require surety companies to only charge fugitive fees in amounts that equal the amount of the costs incurred for the investigation and apprehension of the fugitive. Proposed N.J.A.C. 11:1-40.4 provides that surety companies are responsible for the maintenance of case-specific records of these fees and costs as they relate to bail bond transactions.

The proposed amendment to N.J.A.C. 11:17B-3.2(c) clarifies that, while bail bond agencies may not do so, surety companies are authorized to charge fugitive fees as set forth in N.J.A.C. 11:1-40.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed new and amended rules will have a positive impact on consumers seeking to do business with bail bond agencies because they specify the amount of the fees surety companies will be allowed to charge to recover a defendant who becomes a fugitive, and establish the conditions under which the fugitive fees may be recovered. The proposed new rules and amendment would also promote better understanding between indemnitors, bail bondsmen and surety companies with regard to the party who will bear the cost of fugitive recovery efforts. Allowing New Jersey surety companies to recover fugitive fees will also promote the public interest by creating a further incentive for surety companies to apprehend fugitives. This added incentive should significantly reduce situations where a surety may otherwise make little or no effort to apprehend fugitives and instead pay the full amount of the bail bond, and thereafter seek full reimbursement from the indemnitor by liquidating collateral or otherwise recouping the amount of the forfeited bail. In addition, when economic incentives to apprehend fugitives are lacking, fewer fugitives are returned, which prevents the completion of the judicial proceedings against them, and indemnitors suffer what, in many cases, can be substantial economic losses.

### **Economic Impact**

The proposed new rules and amendment will have a positive economic impact on the public by clarifying the fees that surety companies can recover from an indemnitor in the event that a defendant becomes a fugitive. As a result, indemnitors will be better aware from the outset of the fees they may be charged during any bail bond transaction. The proposed new rules and amendment will also positively impact surety companies because, by enabling them to recoup fugitive recovery expenses, they will promote the solvency of surety companies and lead

to better underwriting practices. The proposed new rules will establish a uniform structure for fees charged by all of the companies engaged in this line of insurance and, as set forth in the Social Impact above, may also encourage surety companies to make greater efforts to apprehend fugitives, which, in many cases, will have a favorable economic impact on the indemnitors on the bail bonds issued on those fugitives.

### **Federal Standards Statement**

A Federal standards analysis is required when any State agency proposes to adopt or readopt or amend state regulations that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison of Federal law.

A Federal standards analysis is not required because the proposed new rules and amendments are not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department does not anticipate that jobs will be generated or lost as a consequence of the proposed new rules and amendment. The Department invites commenters to submit any data or studies regarding the job impact of this proposed new rules and amendment.

### **Agriculture Industry Impact**

The Department anticipates that the proposed new rules and amendment will have no impact on the State agriculture industry.

### **Regulatory Flexibility Analysis**

The Department believes that the proposed new rules and amendment will apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because some insurers may have fewer than 100 full-time employees. The proposed amendment to N.J.A.C. 11:17B-3.2 merely authorizes surety companies to charge fugitive fees should they choose to do so. Should they choose to do so, they would need to comply with the provisions of proposed new rules N.J.A.C. 11:1-40.

To the extent that these new rules will apply to such small businesses, those insurers will be required to comply with the proposed new rules as described in the Summary above. The Department does not believe that the proposed new rules will impose any substantial additional compliance costs on insurers. However, insurers would be responsible for the maintenance of records of fugitive recovery fees. The proposed new rules provide no differentiation in compliance requirements based on business size because the limitations on recoverable fugitive fees and the need to maintain adequate records of such expenses do not vary based upon the size of the surety company issuing the bail bond in question. All businesses should be able to comply with the proposed new rules utilizing existing staff and resources. No outside professional services will be required. The proposed new rules impose no substantial additional reporting requirements on insurers.

### **Smart Growth Impact**

The proposed amendment has no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:17B-3.2 Service fees

(a) – (b) (No change.)

(c) Bail bond agencies shall not charge the following fees:

1. Fugitive fees (fees charged for the apprehension of a defendant who fails to appear for a court date and administrative fees associated with creating a fugitive file). **Surety companies may, however, charge fugitive fees as set forth in N.J.A.C. 11:1-40;**
2. – 3. (No change.)

SUBCHAPTER 40. [(RESERVED)] **RECOUPMENT OF FUGITIVE RECOVERY EXPENSES BY SURETY COMPANIES**

**11:1-40.1 Purpose and scope**

**This subchapter authorizes surety companies to recoup fugitive recovery expenses that relate to bail bonds. It further sets forth the various conditions that would govern the recovery of such expenses and requires that surety companies be responsible for the maintenance of records regarding the expenses they incur in recovering a fugitive.**

**11:1-40.2 Definitions**

The following words and terms, when used in this subchapter, shall have the

following meanings, unless the context clearly indicates otherwise:

“Defendant” means a person for whom a surety bail bond is written.

“Fugitive” means a defendant:

1. Who failed to appear in court as required by the court;
2. For whom a bench warrant for arrest has been issued; or
3. Whose bail has been forfeited or revoked.

“Fugitive fee” means the amount that may be charged to an indemnitor by a surety pursuant to this subchapter, derived from the actual reasonable expenses incurred in the investigation and apprehension of a fugitive and any filing fees and court-imposed costs related to an application for the remittance of the previously forfeited bond on that fugitive.

“Indemnitor” means a person who promises to be financially responsible to the surety resulting from a defendant’s obligation to appear in court.

#### 11:1-40.3 Conditions for imposition of fugitive fees

(a) By written contract between a surety and an indemnitor, subject to (b) below, a surety may charge an indemnitor a fugitive fee, provided, however, that such a fee shall not exceed:

1. The greater of \$1,500 or 10 percent of the amount of the surety bail bond for a fugitive who is either apprehended or located while in custody within the State of New Jersey; or



2. The greater of \$1,500 or 20 percent of the amount of the surety bail bond for a fugitive who is either apprehended or located while in custody outside the State of New Jersey.

(b) Notwithstanding any computation to the contrary made pursuant to subsection (a) above, in no event shall an indemnitor's obligation to pay a fugitive fee exceed 110 percent of the face amount of the surety bail bond.

(c) Any contract seeking to hold an indemnitor financially responsible for a fugitive fee, and any legal action to collect a fugitive fee, shall be in the name of the surety, and not in the name of an insurance producer, regardless of whether said producer sold the underlying surety bail bond. Any such contract shall be signed by the indemnitor and a duly authorized officer of the surety, with the name and title of said officer clearly set forth in the contract.

(d) Within the meaning of (a) and (b) above, a fugitive fee shall not include the amount of any bail forfeiture assessed by a court, and shall not include any attorneys fees, but may include filing fees and other court-imposed costs related to an application for remittance of the previously forfeited bond. The rights and obligations of the surety company and the indemnitor with respect to the amount of any bail forfeiture assessed by a court shall be governed by the provisions of the surety bond agreement, which provisions shall not be inconsistent with any of the provisions of this subchapter.

#### 11:1-40.4 Records of fugitive fees

Surety companies shall be responsible for the maintenance of case-specific records reflecting the actual expenses incurred in the investigation and apprehension of fugitives

**and any filing fees and other court-imposed costs incurred in any action for the remittance of the previously forfeited bond issued in each case.**

ROG03-14/INOREGS