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Section 7

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

CASE NO. DIVISION SECTION

JEROME MORGAN, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY
SITUATED

VERSUS

BLAIR’S BAIL BONDS, INC., BANKERS INSURANCE COMPANY, INC.

FILED: _____

Deputy Clerk

**PETITION FOR CLASS CERTIFICATION AND
DECLARATORY JUDGMENT**

I. PRELIMINARY STATEMENT

1. Defendants Blair’s Bail Bonds, Inc. and Bankers Insurance Company, Inc. have since 2005 charged premiums in excess of what Louisiana law authorizes to secure a person’s release from jail.

2. Louisiana law limits bail bond companies and their sureties to charging 12 percent of the face value of an individual’s criminal bail bond.

3. Plaintiff Jerome Morgan signed a contract with Defendants in 2014 that required him to pay a 13 percent premium to purchase a bail bond—1 percent more than what state law authorizes.

4. In February 2019, the Commissioner of Insurance issued Directive 214 to all bail bond companies and their insurance underwriters operating in Orleans Parish after learning that they had been charging Mr. Morgan and others premiums in excess of what state law allows for the last 12 years. The Directive ordered Defendants and every other bail bond company and insurance underwriter that collected excess premiums to refund them by June 1, 2019.

5. After the Commissioner issued Directive 214, the Legislature passed 2019 La. Act 54 (“Act 54”), which retroactively absolves these bail bond companies and insurers from having to refund any excess premium. Act 54 went into effect on August 1, 2019.

6. Mr. Morgan seeks a declaratory judgment that Section B.(1) of Act 54 violates the Due Process Clauses of the State and Federal Constitutions and Article III, § 12 of the Louisiana

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Constitution. He further seeks a declaratory judgment that La. R.S. 22:1443 limits bail bond companies and their insurers to charging a 12 percent premium to purchase a bail bond and a declaration that La. R.S. 22:822 did not allow Defendants to exceed this limitation.

II. JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to Louisiana Code of Civil Procedure Articles 1, 2, and 6.

8. Venue is proper pursuant to Louisiana Code of Civil Procedure Articles 42 and 45.¹

III. PARTIES**A. Plaintiff**

9. Plaintiff Jerome Morgan is a resident of Orleans Parish.

B. Defendant

10. Defendant Blair's Bail Bonds, Inc. ("Blair's") is a domestic corporation duly licensed under the laws of the state of Louisiana with its principal place of business at 2767 Tulane Avenue, New Orleans, LA 70119.

11. Defendant Bankers Insurance Company, Inc. ("Bankers") is a foreign insurer domiciled in Florida with its principal place of business at 11101 Roosevelt Blvd. N., St. Petersburg, FL 33716.

IV. STATEMENT OF FACTS**A. Mr. Morgan Purchased a Bail Bond from Defendants.**

12. Jerome Morgan was wrongfully convicted of murder and sentenced to life in prison when he was 17 years old. Twenty years later, in 2014, an Orleans Parish Criminal District Court judge overturned Mr. Morgan's conviction, after he proved that prosecutors had withheld evidence that would have helped his defense and two people admitted they had been coerced into falsely accusing him of committing murder.

¹ In an action against a domestic corporation, venue is proper where its registered office is located. Defendant Blair's Bail Bonds, Inc. ("Blair's") is a domestic corporation with its registered office located in New Orleans. Defendant Bankers Insurance Company is a foreign insurance company with its principal place of business located in Florida. In an action against a foreign insurer, venue is proper in the Parish of East Baton Rouge. La. Code Civ. Proc. Ann. art. 42(7). Where there "is a conflict between two or more of Articles 42 . . . , the plaintiff may bring the action in any venue provided by any applicable article." La. Code Civ. Proc. Ann. art. 45.

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13. After the judge overturned Mr. Morgan's conviction, the Orleans Parish District Attorney decided to re-prosecute him for murder. The court first set Mr. Morgan's bond at \$250,000; it then reduced the bond to \$25,000, an amount that he still could not afford to pay. Mr. Morgan was forced to spend 18 days in jail while his family and friends borrowed enough money to pay for a commercial bail bond.

14. Mr. Morgan's family and friends ultimately obtained a bond from Blair's on February 3, 2014. Bankers acted as the surety on the bond. Blair's charged Mr. Morgan a bail premium of \$3,250, and additional fees totaling \$79.

15. This bail premium represented 13 percent of Mr. Morgan's \$25,000 bond—even though state law required Defendants to charge Mr. Morgan a 12 percent premium for a bail bond.

16. The entire premium was paid off in March 2014.

17. On May 27, 2016, after more than a year of re-prosecution, the District Attorney dropped Mr. Morgan's charges. In 2017, an Orleans Parish criminal district court judge found him "factually innocent" of the charges.

18. Mr. Morgan currently lives in New Orleans, where he is the co-owner of Real Gentleman Barbershop. He is also the co-founder and creative director of Free-Dem Foundations, Inc., a foundation dedicated to engaging youth through community-based education, mentorship, and business development programs to cultivate life skills and strengthen ties with the community.

B. State Law Did Not Authorize Defendants to Charge Mr. Morgan a 13 Percent Premium for a Bail Bond.

19. The Louisiana Legislature sets and adjusts the premiums that bail bond agents may charge to serve as a surety to facilitate an arrestee's release from jail. Louisiana law mandates that "the [premium] rate for all commercial surety underwriters writing criminal bail bonds in the state of Louisiana shall be twelve percent of the face amount of the bond, or one hundred twenty dollars, whichever is greater." La. R.S. 22:1443.

20. Until July 31, 2019, La. R.S. 22:1443 authorized just one exception to the 12 percent or \$120 premium limit: an additional 0.5 percent "fee on premium" that could be absorbed by bail bond consumers in Jefferson Parish, as authorized by La. R.S. 13:718(I)(2)(a). No such exception existed for Orleans Parish.

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21. Until July 31, 2019, a separate statute required “all commercial surety underwriters underwriting criminal bail bonds” to pay a “criminal bail bond annual licensing fee” equal to two percent of the face value of the bail bond, except for in Orleans Parish, where the “fee on premiums” was equal to three percent of the face value of the bail bond. La. R.S. 22:822.

22. The Legislature increased this licensing fee charged to bail bond companies in Orleans Parish in 2005 without increasing the premium that these companies could charge consumers. 2005 La. Act 350.

23. The additional one percent annual licensing fee authorized by La. R.S. 22:822 was intended to be absorbed by the bail bond industry.

24. Nevertheless, after the Legislature increased the bail bond licensing fee in Orleans Parish in 2005, many bail bond companies began charging a 13 percent premium to Orleans Parish consumers in violation of state law.

25. In rate filings to the Commissioner of Insurance, Defendant Bankers misrepresented the amount of premium that it would charge consumers. In 2011, Bankers represented to the Commissioner of Insurance that its agents would charge consumers a 12 percent premium to purchase a bail bond:

The company's rate for criminal bail bonds will be twelve percent (12%) of the penal amount, or \$120.00, whichever is greater.

26. However, in practice, Blair’s—Bankers’ agent—required consumers to pay a 13 percent premium, as is depicted in Blair’s bail contract below:

BLAIR'S BAIL BONDS, LLC

DEFENDANT'S NAME	[REDACTED]	
DATE	ISSUED BY	RECEIPT NO.
2-20-17	KORINNA	
BOND AMOUNT	50K	
PREMIUM @ 13.0%	6500	
PREMIUM @ 12.0% (JEFFERSON PARISH ONLY)	0	
PREMIUM @ 12.0%	0	
ADMINISTRATION FEE	25.00	
JAIL FEE	0	
TRANSFER FEE (IF APPLICABLE)	0	
TOTAL DUE	6579	

F**Section 7****C. The Criminal Bail Bond Licensing Fee Is Premium and Not a Reimbursable Expense.**

27. State law defines “premium” as “all sums charged, received, or deposited as consideration for the purchase or continuance of insurance.” La. R.S. 22:46; *see also Blanchard v. Allstate Ins. Co.*, 1999-2460 (La. App. 1 Cir. 10/18/00), 774 So. 2d 1002, 1005 (defining premium as any fees that are a “prerequisite to obtaining . . . [insurance] coverage”); *Cacamo v. Liberty Mut. Fire Ins. Co.*, 2004-0074 (La. App. 4 Cir. 9/29/04), 885 So. 2d 1248, 1254 (premium includes any fees that a person cannot “avoid” paying to obtain insurance).

28. The criminal bail bond annual licensing fee, La. R.S. 22:822, is premium because it is a prerequisite for the bail bond agent and insurer to serve as a surety for the arrestee. *See* La. R.S. 22:822(1), (2) (“Failure to pay the fee shall prevent the sheriff from accepting the appearance bond and power of attorney.”).

29. State statute does allow bail bond companies to charge an “agency fee” limited to \$25 for a criminal bail bond, La. R.S. 22:855(B)(1), and to receive “reimbursement from the insured for expenses incurred by the producer directly related to the insurance coverage for the insured.” La. R.S. 22:855(B)(2)(a), (b). These fees are not considered premium.

30. State statute does not define a reimbursable expense, but Louisiana courts have clarified that reimbursable expenses are fees for services performed for the convenience of some policyholders, such as installment plan fees or credit card servicing fees. *See Cacamo*, 885 So. 2d at 1256. While payment of premium is unavoidable, the insured is “free to accept or reject” the additional services (and fees) authorized under La. R.S. 22:855(B)(2)(a). *Id.* at 1251.

31. The criminal bail bond “annual licensing fee” is not a reimbursable expense because it is not a discretionary cost “directly related” to the insurance coverage for the insured. La. R.S. 22:855(B)(2)(a). Moreover, the arrestee is not free to accept or reject payment of the fee. Instead, the fee is a requirement for the insurer to maintain a bail bond license and thus a prerequisite for the arrestee to be released from jail.

32. Any agency fee or reimbursable expense must be “prominently disclosed and itemized separately on the [insurance] invoice.” La. R.S. 22:855(B)(2)(a).

F**Section 7****D. The Commissioner Issued Directive 214 After Learning that Defendants Systematically Overcharged Consumers to Purchase a Bail Bond.**

33. On February 20, 2019, the Commissioner of Insurance issued Directive 214 (“Directive”) to bail bond producers and commercial sureties after learning that Defendants and other bail bond companies and insurers had been charging consumers in Orleans Parish unlawful premiums. *See* Directive 214, attached as Ex. A.

34. The Directive reiterates that La. R.S. 22:1443 limits bail bond producers and commercial sureties to charging a 12 percent premium in the State of Louisiana and that the Legislature did not exempt Defendants or any other New Orleans bail bond company or insurer from the statute’s requirements. “Had the legislature desired to pass the [increased licensing] fee on in the form of increased premium,” the Directive explained, “they would have amended La. R.S. 22:1443. This was not done.”

35. The Directive further ordered Defendants and other bail bond companies and their insurers to review their records and to make “every effort” to return any excess premium by June 1, 2019. The Directive explains that an individual is also entitled to a refund if they present evidence to the bail bond company after June 1, 2019 that they were overcharged and had not been previously reimbursed.

36. On March 22, 2019, Defendants and several other bail bond companies and insurers requested a hearing in the Division of Administrative Law (“DAL”) to challenge the validity of the Directive and sought a stay of its requirements.

E. Mr. Morgan Is Entitled to a Refund Under Directive 214.

37. On March 15, 2019, Mr. Morgan requested a refund from Blair’s for the \$250 in excess premium that he paid for his bail bond. He did so in person, and also mailed a written request by certified mail. Notwithstanding this request, Defendants have not issued Mr. Morgan a refund.

38. Mr. Morgan subsequently filed a petition to intervene in the DAL proceedings to protect his and other Orleans Parish consumers’ interests in obtaining their refunds. On May 9, 2019, his petition to intervene was granted.

39. On May 17, 2019, the DAL denied Defendants’ request for a stay of the Directive

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prospectively prohibiting them from charging more than a 12 percent premium for a bail bond. However, the DAL granted a stay, pending a hearing, insofar as the Directive required Defendants to issue refunds by June 1, 2019 for any excess premiums collected.

40. A hearing before the DAL on the validity of Directive 214 is currently scheduled for December 9, 2019.

F. Section B.(1) of Act 54 Unlawfully Forgives Defendants for Overcharging Mr. Morgan and Other Consumers and Unconstitutionally Immunizes Them from Liability.

41. On June 1, 2019, the Governor signed SB 108—a bill designed to absolve Defendants and other bail bond companies and their insurers—for overcharging consumers that purchased bail bonds for the last twelve years. *See* 2019 La. Acts 54 (“Act 54”), attached as Ex. B. Section B.(1) of the Act states: “In any parish having a population of more than three hundred thousand and fewer than four hundred thousand persons according to the latest federal decennial census, to the extent an additional one percent has been collected under color of the provisions of Act 350 of the 2005 Regular Session, no repayment of overcollections as determined by the commissioner shall be required nor shall such actions be considered a violation of R.S. 22:855 or R.S. 22:1443.”²

42. Section B.(1) of Act 54 retroactively gives Defendants immunity from liability for collecting excess premiums in violation of state law and divests Mr. Morgan and others of vested causes of action and their right to a refund under R.S. 22:855(E).

43. Orleans Parish is the only parish in Louisiana with a population between 300,000 and 400,000 in the latest federal decennial census. Two parishes—East Baton Rouge Parish and Jefferson Parish—have populations greater than 400,000.

44. Statements by Legislators confirm that Section B.(1) of Act 54 is a local bill. One representative was included as a co-author because “[h]e’s in the middle of New Orleans, it’s a New Orleans issue, so I thought that was appropriate.”³ In describing an amendment to the bill, a

² The Act also prospectively reduces the criminal bail bond licensing fee in Orleans Parish from three percent of the face value of a bail bond to two percent of the face value of a bail bond.

³ *Bonds – Provides Relative to Criminal Bail Bonds: Hearing on SB 108 Before the S. Comm. on Insurance*, 2019 Leg., Reg. Sess. (La. 2019) (statement of Sen. Gary Smith, Jr., Member, S.

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Senator indicated that the language of the bill would refer to “Orleans Parish, by populations.”⁴ A House sponsor likewise stated that the bill “is only relative to New Orleans.”⁵

45. Although a hearing is scheduled before the DAL, the Administrative Law Judge does not have jurisdiction to determine whether Section B.(1) of Act 54 is constitutional. *See Albe v. Louisiana Workers’ Comp. Corp.*, 97-0581 (La. 10/21/97), 700 So. 2d 824, 827–28 (“In general, administrative agencies lack the power to hold statutory provisions unconstitutional . . . The courts of this state have consistently held that administrative agencies do not have the authority to determine questions of constitutionality.”).

V. CLASS ALLEGATIONS

46. Plaintiff brings this suit on behalf of himself and as a class action, seeking only declaratory relief, pursuant to La. Code Civ. Proc. Ann. 591(a) and (b)(2). The class is defined as: All individuals between June 30, 2005 and July 31, 2019 who were charged by Blair’s Bail Bonds, Inc. in Orleans Parish more than a 12 percent premium on the face value of any criminal bail bond.

47. A class action is a superior means by which Mr. Morgan and the unknown Class members can seek clarity as to the constitutionality of Section B.(1) of Act 54 and the proper interpretation of the state’s insurance statutes concerning criminal bail premium.

48. Class action status is appropriate because Defendants have acted, and refused to act, on grounds that apply generally to the proposed Class, such that final declaratory relief is appropriate with respect to each Class member.

49. As set forth more fully below, this action satisfies the numerosity, commonality, typicality, adequacy, and ascertainability requirements of Article 591(a), and is appropriate for certification under Article 591(b)(2).

Comm. on Insurance), *available at*
http://senate.la.gov/video/videoarchive.asp?v=senate/2019/04/041619INS_0.

⁴ *Id.* (separate statement of Sen. Smith).

⁵ *Debate on Bonds – Provides Relative to Criminal Bail Bonds, SB 108*, 2019 Reg. Sess. (La. 2019) (statement of Rep. Katrina Jackson), http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2019/may/0523_19_Day26_2019RS_P2.

A. Numerosity

50. The precise size of the Class is unknown by Plaintiff, but it is likely well over 5,000 people. In 2015, for example, nearly 2,352 defendants faced felony charges and were able to post bail. Blair's is one of the largest bail bond providers in New Orleans.

51. Many of the class members are low-income individuals who will likely lack financial resources to bring an independent action or to be joined in this action. Joinder of every member of the class would be impracticable.

B. Commonality

52. The relief sought by Mr. Morgan is common to all members of the Class. Mr. Morgan seeks a declaratory judgment that section 22:1443 of the Louisiana Revised Statutes limits bail bond agents and their insurers to charging a 12 percent premium to write a bail bond, and that the bail bond licensing fee required by section 22:822 of the Louisiana Revised Statutes is premium. He also seeks a declaratory judgment that Section B.(1) of Act 54 is unconstitutional.

53. Among the most important, but not the only, common questions of law are:

- a. Whether La. R.S. 22:1443 limits Defendants to charging consumers a 12 percent premium to purchase a bail bond;
- b. Whether the criminal bail bond licensing fee required by La. R.S. 22:822 is premium;
- c. Whether Section B.(1) of Act 54 violates La. Const. art. III, § 12; and
- d. Whether Section B.(1) of Act 54 violates Plaintiff and the putative Class' rights under the Louisiana and Federal constitutions.

54. Among the most common questions of fact are:

- a. Whether Defendants charged Plaintiff and members of the Class a 13 percent premium for a criminal bail bond between 2005 and 2019;
- b. Whether Plaintiff and members of the Class are eligible for a refund under Directive 214; and
- c. Whether Defendants are no longer required to give Plaintiff and members of the Class a refund following the passage of Act 54.

F**Section 7****C. Typicality**

55. Mr. Morgan's claims are typical of the claims of the other members of the Class, and he has the same interests in this case as all other Class members that he represents. Each of them suffers injuries from the failure of Defendants to comply with state statute: they were each required to pay premium in excess of what state law requires and are prevented from obtaining a refund in violation of the Louisiana and Federal Constitutions following the passage of Act 54. The answer to whether R.S. 22:1443 limits bail bond premiums to 12 percent of the face value of a criminal bond, R.S. 22:822 is premium, and Section B.(1) of Act 54 is unconstitutional will determine the claims of Mr. Morgan and every other Class member.

56. If Mr. Morgan succeeds in his claim that Defendants' practice of charging a 13 percent premium to purchase a criminal bail bond is unlawful and that Section B.(1) of Act 54 is unconstitutional, that ruling will likewise benefit every member of the Class, who would otherwise be barred from obtaining a refund from Blair's.

D. Adequacy

57. Mr. Morgan will fairly and adequately represent the interests of the proposed Class he seeks to represent.

58. Mr. Morgan has suffered the actual injury of being unable to obtain the refund he is owed, possesses first-hand knowledge of Blair's refusal to issue refunds, has a significant stake in the legislation relative to his fellow class members, due to his high bond, and has no interests antagonistic to or in direct conflict with those of the proposed class he seeks to represent. Mr. Morgan seeks no relief other than declaratory relief, which is sought on behalf of the entire proposed Class he seeks to represent.

E. Class Counsel

59. Mr. Morgan is represented by Professor Bill Quigley, who has experience in litigating complex civil rights matters in state and federal court and extensive knowledge of both the details of Defendants' practices and the relevant constitutional and statutory law. Counsel has the resources, expertise, and experience to prosecute this action.

F**Section 7****F. Ascertainability**

60. The proposed Class is defined objectively in terms of ascertainable criteria, such that the Court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case. Members of the Class will be readily ascertainable from their bail contracts, payment records, and/or bond instruments.

G. Article 591(b)(2)

61. Class action status is appropriate because Defendants have acted and refused to act on grounds generally applicable to the Class as a whole: Defendants charged all of the putative Class members a 13 percent bail premium, and Defendants have failed to issue refunds to any of the proposed Class members.

62. A class action is, therefore, the superior method for the fair and efficient adjudication of this case.

VI. CLAIMS FOR RELIEF**FIRST CLAIM FOR RELIEF****Declaratory Judgment
(La. Code Civ. P. art. 1871 and 1872)**

63. Mr. Morgan incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

64. Section 22:1443 of the Louisiana Revised Statutes limits bail bond agents and their insurers to charging a 12 percent premium to write a criminal bail bond.

65. The bail bond licensing fee required by La. R.S. 22:822 is premium.

66. Mr. Morgan and the Class paid a 13 percent premium to Defendants to purchase a bail bond.

67. Defendants violate La. R.S. 22:1443 by charging Plaintiff and the Class excessive premium.

SECOND CLAIM FOR RELIEF**La. Const. art III, § 12
(Prohibited Local Law)**

68. Mr. Morgan incorporates by reference each and every allegation contained in the

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preceding paragraphs as if fully set forth herein.

69. A law is local if it operates only in a particular locality without the possibility of extending its coverage to other localities or areas.

70. Section B.(1) of Act 54 is a local law because it applies only to Orleans Parish and there is no possibility that it could extend to other localities in the future.

71. A local law is unconstitutional if it sanctions the wrongful taking of any property or changes the method for the collection of debts.

72. Section B.(1) of Act 54 is unconstitutional because it exonerates Defendants from liability for wrongfully taking Mr. Morgan's property and immunizes them from repaying this debt.

THIRD CLAIM FOR RELIEF

**La. Const. art III, § 12
(Prohibited Special Law)**

73. Mr. Morgan incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

74. A law is special if it is intended to advantage or benefit private persons or confers special privileges or particular disabilities upon a class of persons.

75. Section B.(1) of Act 54 is an unconstitutional special law because it affords special benefits to bail bond companies and insurers that overcharged consumers in Orleans Parish and immunizes conduct that would otherwise subject them to liability.

FOURTH CLAIM FOR RELIEF

**Fourteenth Amendment to the U.S. Constitution and
Due Process Clause of the Louisiana Constitution**

76. Mr. Morgan incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

77. The Due Process Clauses of the State and Federal Constitutions limit the Legislature's power to enact retroactive laws.

78. A law is retroactive when it impairs a vested right, such as a right to assert a cause of action.

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79. Section B.(1) of Act 54 divests Plaintiff of his vested rights by taking away his cause of action against Defendants and his right to a refund under R.S. 22:855(E) by granting immunity to Defendants for unlawfully overcharging him for a bail bond.

80. Section B.(1) of Act 54 violates Plaintiff's rights under the due process clauses of the Louisiana and United States Constitutions. La. Const. art. I, § 2; U.S. Const. amend. XIV.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

81. That the Court assume jurisdiction over this action;
82. Certification of a class, under La. Code Civ. Proc. art. 591, represented by Jerome Morgan;
83. A declaration that La. R.S. 22:1443 limits bail bond companies in Orleans Parish and their insurers to charging a 12 percent premium for a bail bond;
84. A declaration that the criminal bail bond annual licensing fee required under La. R.S. 22:822 is premium;
85. A declaration that Section B.(1) of Act 54 violates La. Const. art. III, § 12 and the due process clauses of the Louisiana and United States Constitutions; and
86. Such other and further relief as may be just and proper.

DATED this August 12, 2019.

Respectfully submitted,



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Loyola University New Orleans
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Email: quigley@loyno.edu

Please serve:

Blair's Bail Bonds, Inc.
c/o Blair Boutte, Registered Agent
2767 Tulane Avenue
New Orleans, LA 70119

Bankers' Insurance Company
c/o Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

Jeff Landry, Louisiana Attorney General
Department of Justice
1885 N. 3rd Street
Baton Rouge, LA 70802

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CIVIL

DISTRICT COURT

EXHIBIT A



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

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DISTRICT COURT

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DIRECTIVE 214

TO: ALL LICENSED BAIL BOND PRODUCERS AND COMMERCIAL SURETIES

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: BAIL BOND PREMIUM RATE

DATE: FEBRUARY 20, 2019

I have been presented with evidence of over-charging of premium by the bail bond industry operating within Orleans Parish. This directive is intended for bail bond producers and commercial sureties writing criminal bail bonds in Orleans Parish.

The premium rate for criminal bail bonds is set in La. R.S. 22:1443. The statute sets the premium rate at twelve (12%) percent of the face amount of the bond, or one hundred twenty dollars, whichever is greater. The statute provides for an additional one-half (0.5%) percent fee in Jefferson Parish only as provided for in La. R.S. 13:718(l)(2). Therefore, the allowable premium on criminal bail bonds is twelve and one-half (12.5%) percent in Jefferson Parish and twelve (12%) percent everywhere else in the State of Louisiana, including Orleans Parish.

It has come to my attention that many criminal bail bond producers and commercial sureties operating in Orleans Parish are charging thirteen (13%) percent premium. This is not permissible. The premium rate for criminal bail bonds written in Orleans Parish was set by the Louisiana Legislature, pursuant to La. R.S. 22:1443, at twelve (12%) percent.

Act 350 of the 2005 Regular Legislative Session amended La. R.S. 22:822 and increased the criminal bail bond annual license fee for Orleans Parish commercial surety underwriters from two (2%) percent of liability written to three (3%) percent of liability written. This license fee is distributed between the judicial court fund, sheriff's general fund, district attorney's operating fund, and the Indigent Defenders Program. This license fee is not mentioned in La. R.S. 22:1443 and is therefore separate and distinct from the premium rate which may not exceed twelve (12%) percent in Orleans Parish. The effect of Act 350 was to increase the license fee, which resulted in increased proportionate distributions to each of the aforementioned public agencies. However, the increased fee was to be absorbed by the industry, not passed on to consumers. Had the legislature desired to pass the fee on in the form of increased premium, they would have amended La. R.S. 22:1443. This was not done.

Any criminal bail bond premium collected from consumers in Orleans Parish in excess of twelve (12%) percent of the liability written is in violation of the Louisiana Insurance Code. Any excess premium collected must be returned to the payer.

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Bail bond producers and commercial sureties may have been erroneously informed that they could charge thirteen (13%) percent premium. That notwithstanding, I am directing these entities to refund all persons to whom they charged an excessive premium since 2005. Any bail bond producer or commercial surety who has collected premium in excess of twelve (12%) percent is directed to refund said overcharge no later than June 1, 2019.

All bail bond producers and commercial sureties writing criminal bail bonds in Orleans Parish at any time between 2005 and the present are further directed to make every effort to identify the customers who may have been overcharged during this period. The bail bond producers and commercial sureties are directed to document these efforts to identify and locate impacted consumers and document the actual refunds they issue for potential review by the Louisiana Department of Insurance (hereinafter referred to as "LDI"). This document must then be maintained by the bail bond producer and/or commercial surety until at least June 1, 2024.

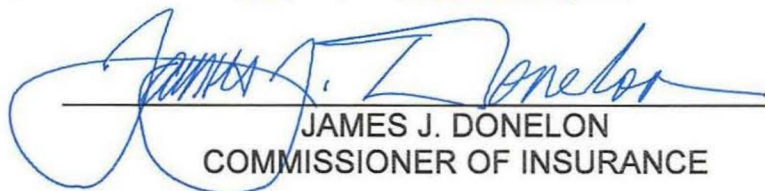
If at any point after June 1, 2019 a consumer, who the bail bond producer and/or commercial surety was unable to identify, presents evidence to the producer or surety that they were overcharged, the bail bond producer and/or commercial surety is directed to refund the overcharge to said consumer within thirty (30) days.

If at any point after June 1, 2019, the LDI receives evidence of an un-reimbursed overcharge, the LDI may examine the records of the applicable bail bond producer and/or commercial surety to evaluate the efforts of the entity in their attempt to identify impacted consumers and refund overcharges. In reviewing the efforts to locate consumers and refund overcharges, the LDI will review the documentation required to be maintained pursuant to paragraph seven (7) above. The LDI review will include, but not be limited to, the following data elements (the bail bond producer/commercial surety should record as many of which as they are able): consumer name, address, power number (or any number identifying the specific bond), date, amount of premium collected from each consumer, and the face amount of the applicable bond. The documentation should also include a narrative detailing the efforts of the bail bond producer and/or commercial surety in attempting to identify, locate, and refund impacted consumers.

If, after June 1, 2019, the LDI finds an overcharge that was not refunded, the LDI will order a refund be paid within thirty (30) days of the date of the order pursuant to La. R.S. 22:855(C),(E). Anyone found to not have refunded said excessive premium may also be subject to the provisions of 22:855(F),(G).

Please be governed accordingly.

Baton Rouge, Louisiana this 20 day of FEBRUARY, 2019.



JAMES J. DONELON
COMMISSIONER OF INSURANCE

2019-08430

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CIVIL

DISTRICT COURT

EXHIBIT B

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2019 Regular Session

ACT No. 54

CIVIL
~~ENROLLED~~
DISTRICT COURT

SENATE BILL NO. 108

BY SENATORS GARY SMITH, BISHOP, CARTER, MARTINY, MORRELL AND PRICE AND REPRESENTATIVES GAINES, JACKSON, LEOPOLD, LYONS, MARCELLE AND STEFANSKI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 22:1443, relative to the premium on criminal bail bonds; to
3 provide relative to additional collections in certain parishes; and to provide for
4 related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:1443 is hereby amended and reenacted to read as follows:

7 §1443. Premium on criminal bail bond

8 A. The premium rate set for commercial surety underwriters writing criminal
9 bail bonds in the various courts throughout the state of Louisiana shall not be subject
10 to the rates set by the insurance commissioner, but shall be set and adjusted by the
11 legislature. ~~The~~ **Except as provided in Subsection B of this Section, the** rate for
12 all commercial surety underwriters writing criminal bail bonds in the state of
13 Louisiana shall be twelve percent of the face amount of the bond; or one hundred
14 twenty dollars, whichever is greater. Any additional fee authorized by R.S.
15 13:718(I)(2) shall not be included in this premium rate and shall be exclusive of the
16 limit set by this Section. All other provisions of the code relating to enforcement of
17 the rate shall be effective and enforced in accordance with all parts of this Section.

18 **B.(1) In any parish having a population of more than three hundred**
19 **thousand and fewer than four hundred thousand persons according to the latest**
20 **federal decennial census, to the extent an additional one percent has been**
21 **collected under color of the provisions of Act 350 of the 2005 Regular Session,**
22 **no repayment of overcollections as determined by the commissioner shall be**
23 **required nor shall such actions be considered a violation of R.S. 22:855 or R.S.**
24 **22:1443.**

F

Section 7

SB NO. 108

1

(2) Notwithstanding any provision of law to the contrary, in no parish

2

covered by the provisions of this Subsection shall the fee provided for in R.S.

3

22:822 be more than two dollars for each one hundred dollars worth of liability

4

underwritten by the commercial surety.

5

Section 2. As enacted herein, R.S. 22:1443(B)(1) clarifies the procedure and

6

interpretation of Act 350 of the 2005 Regular Session and shall have retroactive effect.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____