

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing to add new rules to implement Local Laws 142 and 143 of 2018, which require that bail bond agents make certain disclosures.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, January 18, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins on Friday, January 18, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 5:00 PM on Friday, January 18, 2019.

What if I need assistance to participate in the hearing? You must tell DCA's External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Wednesday, January 16, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCA to make this rule? Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b) and 20-833 of the New York City Administrative Code authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of Consumer Affairs' regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer Affairs is proposing to add new rules to implement Local Laws 142 and 143 of 2018, which require that bail bond agents make certain disclosures. Local Law 142 requires bail bond agents to post a sign containing certain fee information at the location where transactions are executed. Local Law 143, among other things, requires bail bond agents to provide a consumer bill of rights to prospective customers. Specifically, these proposed rules:

- clarify the size and font requirements for the informational sign required by section 20-831(b) of the Administrative Code;
- clarify the size and font requirements for the informational flyer that must be given to consumers as required by section 20-831(c) of the Administrative Code;
- create the consumer bill of rights required by section 20-831(a) and (c) of the Administrative Code; and
- create the bail bond fees sign as required by section 20-832 of the Administrative Code.

Finally, these proposed rules add a penalty schedule to chapter 6 of title 6 of the Rules of the City of New York for violations of the Code and Rules relating to bail bond agents.

Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b) and 20-833 of the New York City Administrative Code authorize the Department of Consumer Affairs to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

The Bail Bond Consumer Bill of Rights and Bail Bond Fees sign created by these proposed rules are underlined to designate that they are new material. However, they are not intended to be underlined in the versions produced and made available online by the Department of Consumer Affairs.

Proposed Rule Amendments

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter Q to read as follows:

Subchapter Q: Bail Bond Agents

5-272. Definitions.

As used in this chapter, the following terms have the following meanings:

Bail bond agent. The term “bail bond agent” has the same definition as that term is defined in Section 20-830 of the Administrative Code.

Designated citywide language. The term “designated citywide language” has the same definition as that term is defined in Section 20-830 of the Administrative Code.

5-273. Disclosures.

(a) To comply with Section 20-831(b) of the Administrative Code, a bail bond agent must post in a conspicuous manner at its business and where transactions are executed a sign, produced and made available by the Department, no less than 8.5 inches by 11 inches in dimension that contains the following information:

(1) The name of the bail bond agent as registered with the New York State Department of Financial Services;

(2) The New York State Department of Financial Services license number of the bail bond agent;

(3) All addresses and phone numbers registered under the license; and

(4) The name of any sublicensee registered under the license.

(b) To comply with Section 20-831(c) of the Administrative Code, before entering into a contract with a consumer, a bail bond agent must produce and distribute to every consumer a flier no less than 8.5 inches by 11 inches in dimension, containing the information described in subdivision (a) of this section.

(c) To comply with Section 20-831(c) of the Administrative Code, before entering into a contract with a consumer, a bail bond agent must produce and distribute to every consumer, the consumer bill of rights shown below on paper no less than 8.5 by 11 inches in dimension. The consumer must sign and date a copy of the consumer bill of rights produced and distributed by the bail bond agent. The bail bond agent must produce the consumer bill of rights in English and in a designated citywide language if the consumer is a limited English proficient individual who speaks a designated citywide language and the bail bond agent knows or reasonably should know that the consumer is such an individual.

Bail Bond Consumer Bill of Rights

This document outlines rights, defines important terms, and describes processes. Take the time to read and understand the Consumer Bill of Rights before you sign that you received it. The terms written in **bold** are defined below.

By law, bail bond agents must give you a copy of this document *before* you sign a contract. They must give you this document in your preferred language if it is one of the six designated citywide languages (Spanish, Bengali, Chinese, Haitian Creole, Korean, Russian) available on the Department of Consumer Affairs (DCA) website nyc.gov/dca. If you sign any document, including a contract, the bail bond agent must give you a copy of the signed document for you to keep.

Know Your Rights

It's illegal for a bail bond agent to:

- Charge a **premium** (fee) for the **bail bond** that is more than the **Compensation Cap** (or maximum allowable fees). See Compensation Cap Chart.
- Charge extra for services, such as **courier fees** or **check-in fees**, once you have already paid the premium or other fees that add up to the amount of the Compensation Cap.
- Require the defendant to pay for the bail bond if you have already paid the premium or other fees that add up to the amount of the Compensation Cap.

You have the right to:

- Negotiate the contract with the **bail bond agent**.

- Take documents off the premises to review them before signing them.
- Get a contract that tells you when the bail bond agent will return your collateral and under what conditions.
- Get back the collateral you provided when the case is over if the defendant followed all of the court's directions. *It does not matter if the defendant is convicted or acquitted.* The court will **exonerate** the bond and give you a **disposition** to give the bail bond agent.

Know Important Terms

Bail: Someone who is arrested may be held in jail until a trial or released on bail. The price of bail is set by the court. If defendants cannot afford **cash bail**, they or their family might go to a **bail bond agent**, also known as a bail bondsman, to arrange a **bail bond**.

Bail bond: A bail bond is a promise to pay the court money if a defendant does not comply with the court's orders.

Bail bond agent: A bail bond agent helps you get a bail bond from an insurance company—sometimes called a surety, bail business, or bail bond business—and usually charges a fee, or a **premium**, that is a percentage of the bail amount. The bail bond agent may also ask you to provide **collateral** and sign a contract. The bail bond agent provides the court with a bail bond on a defendant's behalf so the defendant can leave jail while awaiting trial.

The bail bond agent does not work for the court or the government but must be licensed by the New York State Department of Financial Services.

Cash bail: You may be eligible for cash bail, which means paying bail to the court rather than going through a bail bond agent. With cash bail you pay more up front, but there is no fee except if you pay by credit card. There is a small fee to pay by credit card (less than 3%).

Check-in fee: A charge requiring a defendant to “check in” with a bail bond agent on a designated day/time until a case is over. It is illegal if you have already paid a premium or other fees that add up to the amount of the Compensation Cap.

Collateral: Collateral can be cash; property, such as the deed to a home; or something with value that a bail bond agent keeps until a case is over. *Collateral is refundable*, so you get it back when the case is over. However, the bail bond agent keeps collateral if the defendant violates the court's orders; for example, if the defendant does not show up for a scheduled court appearance.

Compensation Cap: This is the maximum fee that a bail bond agent can charge for a bail bond. The cap is determined by a formula in the New York State Insurance Law and depends on the amount of the bond. Any premium or compensation above this cap is illegal. See the Compensation Cap Chart.

Courier fee: A charge for someone to transport paperwork. It is illegal if you have already paid a premium or other fees that add up to the amount of the Compensation Cap.

Disposition: A disposition is paperwork from the court, which says the bond was **exonerated**. You

give it to the bail bond agent to claim your collateral. The bail bond agent can return the collateral to you immediately or mail it to you.

Exonerate: A court will exonerate a bond, which means that the bail bond agent must return collateral to you, at the end of a case *if the defendant followed all of the court's directions.*

Forfeit: A bond is forfeited when the court revokes a defendant's bail for reasons that may include missing a court appearance or violating a court order. The bail bond agent can keep collateral when a bond is forfeited.

Premium or compensation: These are the fees the bail bond agent usually charges for a bail bond. *These fees are not refundable.* The agent keeps these fees.

How the Process Works

Someone close to you is arrested and must go to trial as a defendant.

The court sets bail. If you cannot pay cash bail directly to the court, you can go to a bail bond agent to arrange a bail bond. Know your rights when using a bail bond agent! See above.

You pay the bail bond agent, possibly provide collateral, and sign a contract. The bail bond agent secures the bail bond.

The defendant is released from jail.

The defendant awaits trial. During this time, the defendant must obey all court orders and attend all scheduled court appearances. If not, the court may revoke bail, which means the bond is forfeited and you lose your collateral.

The case ends. The court exonerates the bond and gives you a disposition.

You give the bail bond agent the court's disposition to get back your collateral.

The bail bond agent either gives you the collateral immediately or mails it to you.

Compensation Cap Chart

The formula to determine the Compensation Cap—or maximum allowable fees a bail bond agent can charge for a bail bond—is:

- 10% of the amount up to \$3,000
- An additional 8% for any amount between \$3,000 and \$10,000
- An additional 6% for any amount above \$10,000

<u>Bail Bond Amount</u>	<u>Calculation of Fees</u>	<u>Compensation Cap</u>
<u>\$1,000</u>	<u>10% of \$1,000</u>	<u>\$100</u>
<u>\$5,000</u>	<u>10% of \$3,000 + 8% of \$2,000</u>	<u>\$460</u>
<u>\$7,500</u>	<u>10% of \$3,000 + 8% of \$4,500</u>	<u>\$660</u>
<u>\$10,000</u>	<u>10% of \$3,000 + 8% of \$7,000</u>	<u>\$860</u>

\$20,000	<u>10% of \$3,000 + 8% of \$7,000 + 6% of \$10,000</u>	\$1,460
\$50,000	<u>10% of \$3,000 + 8% of \$7,000 + 6% of \$40,000</u>	\$3,260

Examples of LEGAL and ILLEGAL Fees

LEGAL

Jose is bailing out his friend, John. The judge set bail at \$20,000, cash or bond. Jose does not have the \$20,000 cash bail to pay the court, so he chooses to get a bond through a bail bond agent. Steve, the bail bond agent, asks him to provide \$5,000 as collateral and pay a \$1,460 premium (fee).

The \$5,000 collateral charge is legal. Jose will get it back at the end of the case if the judge exonerates the bond.

The premium (fee) is also legal because it is within the Compensation Cap: 10% of \$3,000 (\$300) + 8% of \$7,000 (\$560) + 6% of \$10,000 (\$600).

ILLEGAL

In addition to requiring Jose to provide \$5,000 as collateral and to pay a \$1,460 premium, Steve charges Jose an additional \$1,000 fee for someone to transport paperwork.

Jose already paid the maximum amount (Compensation Cap) for the bail bond, so charging a \$1,000 courier fee is illegal.

Frustrated with Steve, Jose goes to a different bail bond agent, Emily. He provides \$5,000 as collateral and pays a \$1,460 premium. After John is released, Emily requires John to check in with her office every Monday at 2:00 p.m. John misses one week, and Emily charges him \$100.

Jose already paid the maximum amount (Compensation Cap) for the bail bond, so charging the defendant any fee, including a check-in fee, is illegal.

What to Do if a Bail Bond Agent Breaks the Law

To report an unlicensed bail bond agent, or a bail bond agent charging illegal fees or failing to return or refund collateral, contact the New York State Department of Financial Services (DFS) at (800) 342-3736 or dfs.ny.gov.

To report other illegal business practices, contact the New York City Department of Consumer Affairs (DCA) by calling 311 or visiting nyc.gov/dca. Illegal business practices may include refusing to provide copies of documents; failing to provide a complete receipt or providing an illegal receipt; or false advertising.

For Consumer to Complete:

Signature

Date

Print Name

(d) To comply with Section 20-832 of the Administrative Code, a bail bond agent must post a copy of the sign shown below on a paper no less than 17 inches by 28 inches in a conspicuous manner at the location where transactions are executed.

Bail Bond Fees

Bail bond fees are capped by law. This cap on fees is called the Compensation Cap. It includes the premium and ALL other fees charged by the bail bond agent. It does NOT include collateral, which is "refundable" (you can get it back at the end of the case).

<u>Bail Bond Amount</u>	<u>Calculation of Fees</u> (10% of the first \$3,000 plus 8% of any amount between \$3,000 and \$10,000, plus 6% of any amount above \$10,000.)	<u>Compensation Cap</u>
<u>\$1,000</u>	<u>10% of \$1,000</u>	<u>\$100</u>
<u>\$5,000</u>	<u>10% of \$3,000</u> ± <u>8% of \$2,000</u>	<u>\$460</u>
<u>\$7,500</u>	<u>10% of \$3,000</u> ± <u>8% of \$4,500</u>	<u>\$660</u>
<u>\$10,000</u>	<u>10% of \$3,000</u> ± <u>8% of \$7,000</u>	<u>\$860</u>
<u>\$20,000</u>	<u>10% of \$3,000</u> ± <u>8% of \$7,000</u> ± <u>6% of \$10,000</u>	<u>\$1,460</u>
<u>\$50,000</u>	<u>10% of \$3,000</u>	<u>\$3,260</u>

	± 8% of \$7,000	
	± 6% of \$40,000	

Consumer Bill of Rights

You are entitled to receive a Consumer Bill of Rights and you must sign it before entering into a contract with the bail bond agent.

File a Complaint

If you think the bail bond agent broke the law by charging excessive fees, you should file a complaint.

To report an unlicensed bail bond agent, or a bail bond agent charging illegal fees or failing to return or refund collateral, contact the New York State Department of Financial Services (DFS) at (800) 342-3736 or dfs.ny.gov.

To report other illegal business practices, contact the New York City Department of Consumer Affairs (DCA) by calling 311 or visiting nyc.gov/dca. Illegal business practices may include refusing to provide copies of documents; failing to provide a complete receipt or providing an illegal receipt; or false advertising.

§ 2. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new Section 6-71 to read as follows:

6-71 Bail Bond Agents Penalty Schedule

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation shall mean a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within one year of the prior violation(s).

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third and Subsequent Violation</u>	<u>Third and Subsequent Default</u>
<u>Admin Code § 20-831(b)</u>	<u>Failure to post required sign</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>

<u>Admin Code § 20-831(c)</u>	<u>Failure to distribute to consumer the required bill of rights or flier in proper manner</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>Admin Code § 20-831(d)</u>	<u>Failure to include required information in receipts and contracts</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>Admin Code § 20-831(e)</u>	<u>Failure to provide to each consumer a copy of a document that was signed by consumer</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>Admin Code § 20-831(f)</u>	<u>Failure to maintain copies of required documents or make such documents available for inspection</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>Admin Code § 20-831(g)</u>	<u>Failure to maintain records of the names of persons employed or subcontracted</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>Admin Code § 20-832</u>	<u>Failure to post required compensation sign</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>6 RCNY § 5-273(a)</u>	<u>Failure to post required sign</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>6 RCNY § 5-273(b)</u>	<u>Failure to distribute to consumer the required flier in proper manner</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>6 RCNY § 5-273(c)</u>	<u>Failure to distribute to consumer the required bill of rights in proper manner</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>6 RCNY § 5-273(d)</u>	<u>Failure to post required compensation sign</u>	<u>\$3,750</u>	<u>\$5,000</u>	<u>\$4,500</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Bail Bond Disclosure Requirements

REFERENCE NUMBER: 2018 RG 133

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 7th, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Bail Bond Disclosure Requirements

REFERENCE NUMBER: DCA-89

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the rule's authorizing statute does not provide a cure period.

/s/ Renee Jeanty

Mayor's Office of Operations

December 10th, 2018

Date