THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Samuel L. Johnson, Administrative Law Judge

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Case No. 2025-ALJ-09-0270-CC

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South Carolina Department of Insurance, Respondent,

v.

Joyce Freeman, Appellant.

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**NOTICE OF APPEAL**

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Appellant Joyce Freeman (Respondent below) hereby gives notice of an appeal from the following attached orders: (1) February 13, 2026 Order Granting South Carolina Department of Insurance's Motion for Summary Judgment; (2) April 1, 2026 Order Granting in Part and Denying in Part Respondent Joyce Freeman's Motion for Reconsideration; and (3) April 1, 2026 Amended Order Granting South Carolina Department of Insurance's Motion for Summary Judgment. Appellant states that no hearings were held in this case and thus no transcripts are necessary for this appeal.

[*Signature on following page*]

Respectfully submitted,

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April 15, 2026
Columbia, South Carolina

# EXHIBIT 1

(February 13, 2026 Order Granting South Carlina Department of Insurance's Motion for Summary Judgment)

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Department of Insurance,<br><br>Petitioner,<br><br>vs.<br><br>Joyce Freeman,<br><br>Respondent. | ) | Docket No. 25-ALJ-09-0270-CC<br><br>**ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF INSURANCE'S MOTION FOR SUMMARY JUDGMENT** |

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Joyce Freeman (Respondent) on September 2, 2025, relating to a determination by Petitioner South Carolina Department of Insurance (DOI or the Department) that Respondent is liable for a $25,000 administrative fine due to misconduct related to Respondent's licensure as a resident producer and surety bondsman. The parties filed cross-motions for summary judgment on January 9, 2026 pursuant to Rule 19 of the South Carolina Administrative Law Court Rules (SCALC Rules) and Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP). In the Department's Motion, it argues that the $25,000 administrative fine should be imposed upon Respondent for her failure to collect a minimum fee of $100 or 10% of the bond amount, whichever was greater (in this case, the latter), prior to the execution of certain surety bonds, as required by S.C. Code Ann. § 38-53-170(e) (Supp. 2025). In her Motion, Respondent argues that Section 38-53-170(e) does not require a bondsman to charge and collect up front a minimum of $100 or 10% of the bond amount, whichever is greater, prior to the execution of the bond where, as here, the bondsman has entered into a payment agreement whose terms meet certain statutory requirements, including a minimum downpayment of $100 and a maximum term of eighteen months. For the reasons set forth below, the Court grants DOI's Motion and denies Respondent's Motion.

## CONSIDERATION OF DEPARTMENT'S EXHIBITS 1, 2, 3, and 7

In her January 23, 2026 response to the Department's Motion, Respondent objects to Exhibits 1, 2, 3, and 7 thereto, asking that the exhibits be stricken and disregarded by the Court. Respondent argues that the Department neither produced nor otherwise identified the documents

comprising these exhibits in discovery or its prehearing statement, nor did it identify Mark Keel (whose affidavit comprises Exhibit 1) or Ricky Hill (whose affidavit comprises Exhibit 2) as potential witnesses for the Department. Respondent argues that the Department failed to comply with SCALC Rule 21(A) and Rule 26(e), SCRCP, and did not seek to expand, reopen, or supplement discovery to identify these witnesses and documents prior to including the exhibits in its Motion. Respondent also argues the exhibits are irrelevant to the sole issue before the Court: the interpretation of Section 38-53-170(e) of the South Carolina Code. Specifically, Respondent contends the affidavits presented as Exhibits 1 and 2 and the compilation of news articles comprising Exhibit 3 seek to establish legislative intent, which cannot be properly ascertained through these sources, and further argues that the affiants can neither offer legal opinions nor testify to the state of mind of members of the Legislature when enacting the statutory provision at issue.

Also on January 23, 2026, the Department emailed the Court to provide a courtesy copy of its response to Respondent's Motion and to seek an opportunity to address Respondent's argument regarding the Court's consideration of the exhibits. The Court gave the Department until January 30, 2026 to provide a limited reply addressing the issue. On January 30, 2026, the Department filed a limited reply. The Department argues the exhibits were not submitted to prove Respondent failed to charge and collect the greater of $100 or 10% of the face of the bond amount (as none of these facts are in dispute) but only to support the Department's interpretation of Section 38-53-170(e). The Department also argues that Exhibits 1 and 2 to its Motion (i.e., the affidavits) were not obtained until January 8 and 9, 2026, respectively, while the news articles comprising Exhibit 3 were not reviewed until January 7, 2026 and were not compiled into an exhibit until January 9, 2026. Thus, these materials were provided to Respondent, by way of the Department's Motion, within 36 hours of being obtained, constituting prompt transmittal in compliance with Rule 26, SCRCP, and it would have been futile to resend the same documents via updated discovery responses. The Department further argues that the news articles in Exhibit 3 were public information available to Respondent, as was DOI Order No. 2024-07, the transmittal of which to licensees is memorialized in Exhibit 7 of the Department's Motion.[1] The Department further

[1] Order No. 2024-07 is included as Exhibit 6 to the Department's Motion and is not among the exhibits Respondent objects to. Exhibit 7 includes documentation of the transmittal of Order No. 2024-07 to licensees, including Respondent by mail and email. However, as discussed *infra*, Exhibit 7 also includes documentation related to the transmittal of an earlier, unrelated Department order to licensees.

argues that the affidavits in its Exhibits 1 and 2 meet the criteria of Rule 701 of the South Carolina Rules of Evidence (SCRE) as testimony of lay witnesses, and that they were offered "in furtherance of bringing swift resolution to this matter as is the goal of summary judgment."

After considering the arguments on this issue, the Court will not, in rendering its opinion, give any consideration to Exhibits 1, 2, and 3 of the Department's Motion, nor to the portions of Exhibit 7 that are unrelated to this matter.

With respect to the affidavits attached to the Department's Motion as Exhibits 1 and 2, the opinions or inferences of lay witnesses may be admissible, pursuant to Rule 701, SCRE, where they are "(a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." However, "[t]o be acceptable at summary judgment stage, the evidence presented in the affidavit must be evidence that would be admissible if presented at trial through the testimony of the affiant as a sworn witness." *Scosche Indus., Inc. v. Visor Gear, Inc*., 121 F.3d 675, 682 (Fed. Cir. 1997) (quoting 11 James Wm. Moore, Moore's Federal Practice § 56.14[1][d], at 56–162 (3d ed.1997); s*ee also* note to Rule 701, SCRE (acknowledging that with the exception of subsection (c) and "minor grammatical changes, this rule is identical to the federal rule.").

Here, the Court concludes that the content of the affidavits would not be admissible through the live witness testimony of the affiants if the matter presently before the Court were a trial (as opposed to cross-motions). First, the affiants were not included in the Department's witness list, so their knowledge and opinions were not subject to discovery. Although the Department's prompt transmittal of the affidavits would mitigate the element of surprise if this contested case were scheduled for trial weeks or months after the disclosure, here the parties agreed to seek resolution of this matter—an issue of law—via cross-motions for summary judgment to be filed by January 9, 2026. Thus, the Department's disclosure of the witnesses and the affidavits by way of filing and serving its January 9, 2026 Motion is roughly analogous to a previously undisclosed witness being called to testify at trial. Also, Exhibit 1 contains inadmissible hearsay by quoting other individuals, and otherwise sets out a legal interpretation of the statutory language at issue—matters that would be inadmissible as testimony from Chief Keel even if he testified at trial. *See* Rule 802, SCRE (hearsay is generally inadmissible); *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (expert testimony on issues of law is generally inadmissible). Similarly, Exhibit 2 contains

inadmissible hearsay, such as alleged concerns from other bail bondsmen, seeks to establish legislative intent for the enactment of the statutory language at issue,[2] and sets forth the affiant's view of consistency between the Department's position in this case and the relevant statutory language. As the Department itself noted in its response to Respondent's Motion:

> [T]he best evidence of legislative intent is the language of the statute itself... Anecdotal reports and testimony about a legislator's or interested parties' intent is not competent evidence of the intent of the legislative body enacting the measure…. *Creswick v. University of South Carolina,* 434 S.C. 77, 83, 862 S.E.2d 706, 709 (2021); *see also Bowaters Carolina Corp. v. Smith,* 257 S.C. 563, 572, 186 S.E.2d 761, 764 (1972) (holding the testimony of members of the legislative delegation who authored the statute as to its meaning was inadmissible).

(Pet.'s Response, p. 13) (citation omitted and other citations in original).[3] Thus, the Court finds that Exhibits 1 and 2 are insufficient as evidence of legislative intent. Moreover, even if the Court concluded the affidavits were admissible (at least in part), the Court would find the affidavits are more prejudicial than probative in determining the legal issue presently before the Court.

Similarly, with respect to Exhibit 3, the news articles compiled therein constitute hearsay which is neither admissible nor probative of legislative intent, and more prejudicial than probative in determining the meaning of Section 38-53-170(e).

Finally, as to Exhibit 7, the Court will consider the transmittal memorandum emailed and mailed from DOI Director Wise to Respondent and other licensees on December 11, 2024 because these transmittal records relate to the bonds and statutory language at issue in this contested case, and Respondent does not dispute that she had notice of the Department's Order No. 2024-07. However, the Court will not consider the transmittal memorandum and email sent to Respondent from Director Wise on October 20, 2022, which involved compliance issues unrelated to the statutory provision at issue in this case,[4] was not cited by the Department's Motion, and does not implicate any violation on the part of Respondent. Because the October 20, 2022 materials are not of consequence to the determination of this matter, these materials are not relevant and are therefore inadmissible. *See* Rules 401, 402, SCRE.

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[2] Exhibit 2 sets forth anecdotal testimony about "reports" of inappropriate monitoring and "concerns" of members of the General Assembly prompting the amendment of the statute.

[3] Exhibit 2 also appears to characterize the "administrative history" behind the Department's issuance of Order 2024-07, beyond what is set forth in the order itself.

[4] Indeed, the October 20, 2022 transmittal memorandum was issued before the statutory language at issue was even enacted.

For the foregoing reasons, the Court, in rendering its opinion in this matter, will not consider Petitioner's Exhibits 1, 2, 3, or the portion of Exhibit 7 relating to the Department's October 20, 2022 transmittal memorandum.

## FACTS/PROCEDURAL HISTORY

The facts in this case are not in dispute. Respondent is currently licensed as a producer and surety bondsman in South Carolina, specifically with Allegheny Casualty Company, Bankers Insurance, and Palmetto Surety Corporation. After receiving a complaint on or about June 2, 2025 that Respondent had failed to collect the full 10% minimum fee when a bond was posted in court, the Department investigated and concluded that on June 1, 2025, Respondent had been the surety bondsman who executed a $35,000 bond for Defendant Buff, charging a premium of $3,500 but only collecting $500 prior to the bond's execution, according to the payment agreement and payment receipts. Respondent allowed the balance of the 10% premium to be paid via a payment agreement.

On June 5, 2025, the Department issued Respondent a Notice of Investigation, in response to which Respondent, through counsel, contended that the law allowed her to collect less than 10% of the premium when the bond was posted because she had created a payment plan to receive the remainder of that premium. In support of this position, Respondent included in her response a copy of a South Carolina Attorney General Opinion dated June 17, 2024, which had adopted the same interpretation of Section 38-53-170(e).[5] Respondent also provided to the Department copies of the payment agreements and receipts for ten surety bond transactions (for bonds posted between May 2, 2025 and June 1, 2025) in which she charged a premium of 10% but collected substantially less than the 10% premium before executing the bond, entering payment agreements with the principals instead. This is illustrated in the following chart:

| **Defendant:** | **Date Posted:** | **Bond Amount:** | **Premium Charged:** | **Premium Collected:** | **Payment Agreement:** |
|---|---|---|---|---|---|
| Defendant Myers | 5/29/2025 | $25,000.00 | $2,500.00 | $480.00 | Yes |
| Defendant Byrd | 5/28/2025 | $2,500.00 | $250.00 | $150.00 | Yes |
| Defendant Keldsen | 5/27/2025<br>5/27/2025 | $2,100.00<br>$5,000.00 | $710.00 | $200.00 | Yes |

[5] *See* Op. S.C. Att'y Gen., 2024 WL 3186557 (June 17, 2024).

| | | | | | |
|---|---|---|---|---|---|
| Defendant Williams | 5/27/2025<br>5/27/2025 | $2,840.00<br>$10,000.00 | $1,284.00[6] | $400.00 | Yes |
| Defendant Womack | 5/28/2025 | $25,000.00 | $2,500.00 | $360.00 | Yes |
| Defendant Anderson | 5/02/2025 | $47,000.00 | $4,700.00 | $600.00 | Yes |
| Defendant Turnipseed | 5/02/2025 | $5,000.00 | $500.00 | $200.00 | Yes |
| Defendant Myers | 5/06/2025 | $22,500.00 | $2,500.00 | $350.00 | Yes |
| Defendant Johnson | 5/06/2025 | $15,000.00 | $1,500.00 | $300.00 | Yes |
| Defendant Buff | 6/01/2025 | $35,000.00 | $3,500.00 | $500.00 | Yes |

Prior to these bond transactions—on December 11, 2024—the Department issued SCDOI Order No. 2024-07 (Order 2024-07), which was distributed to Respondent and all licensed surety bondsmen, professional bondsmen, and runners authorized to conduct bail bond business in South Carolina.[7] This order, which refuted the position held by the South Carolina Attorney General (SCAG) as to the interpretation of Section 38-53-170(e), informed licensees that, among other things, South Carolina law requires the payment of a minimum fee in the amount of $100 or 10% of the bond's face amount, whichever is greater, and that this premium is to be charged and collected prior to execution of the bond as a minimum fee.[8] On December 11, 2024, the Department emailed a copy of this order to Respondent to the email address Respondent had provided to the Department, and the Department mailed a hard copy of the same order to

[6] This chart comes from the Department's Administrative Order issued August 18, 2025, but the premium charged for Defendant Williams has been corrected from the amount stated in the original Administrative Order. The bond amount figure listed in the Department's chart for Defendant Williams totals $12,840.00 with a premium charged amount of "$1,280." However, Respondent notes in her Motion that the premium charged for Defendant Williams should have read "$1,284.00," based on receipts and payment agreements she had provided to the Department. In its response to Respondent's Motion, the Department agreed its chart contained a scrivener's error and that the premium charged to Defendant Williams was "1,284.00," which was 10% of the total bond amount. The Department states it is willing to issue an amended order accordingly but that this error was immaterial, as Respondent only collected $400 of the premium prior to the execution of the bond in violation of Section 38-53-170(e).

[7] A "runner" is defined under Section 38-53-10(10) (2015), in pertinent part, as follows: "a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, assisting in the apprehension and surrender of the defendant to the court, keeping the defendant under necessary surveillance, and executing bonds on behalf of the licensed bondsman when the power of attorney has been recorded. 'Runner' does not include an attorney or a law enforcement officer assisting a bondsman."

[8] In a subsequent SCAG Opinion, which responded to a letter from general counsel for DOI requesting modification or withdrawal of the June 17, 2024 SCAG opinion, the SCAG declined to alter its interpretation of Section § 38-53-170(e) but did state the following: "[W]e defer to the interpretation of the Department of Insurance as the agency with regulatory authority … Further, we advise any bail bondsmen and runners to follow the [DOI's] instructions and orders regarding the issue pending any judicial or legislative clarification." *See* Op. S.C. Att'y Gen., 2025 WL 2369635 (July 31, 2025). This opinion was issued after the bonds at issue in this case had been executed.

Respondent via certified mail to Respondent's physical address of record. Neither communication was returned to the Department as undeliverable, and indeed the Department received a return receipt from the United States Postal Service reflecting that Respondent had signed for receipt of the correspondence.

On August 18, 2025, the Department issued an "Administrative Order Imposing Fine and Notice of Opportunity for Hearing" (Administrative Order) finding that Respondent violated Section 38-53-170(e) in the above ten instances by failing to collect the full amount of the 10% premium prior to bond execution and imposing a $25,000 fine on Respondent accordingly. The Department also warned in its order that "[i]f the total fine amount is not timely paid as required by this Order, Respondent's bail bondsman and producer licenses will be revoked without any further disciplinary proceedings by this agency."

On September 2, 2025, Respondent filed a request for a contested case hearing with this Court, and this matter was assigned to the undersigned Judge on September 10, 2025. On January 9, 2026, the Department and Respondent filed cross-motions for summary judgment. On January 23, 2026, the parties filed responses to each other's motions. On January 30, 2026, the Department filed a limited reply addressing Respondent's objection to certain exhibits to is Motion, discussed *supra*.

## STANDARD OF REVIEW

This Court has jurisdiction to hear this matter pursuant to S.C. Code Ann. §§ 1-23-600(A) (Supp. 2025), 38-53-150 (2015), and 38-53-160 (2015).

Rule 68 of the Rules of Procedure for the ALC provides that "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules." Pursuant to Rule 56(c), SCRCP, a trial court may grant a motion for summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). Where the only question before a court is one of statutory interpretation, summary judgment is appropriate because it is an issue of law. *See Hock RH, LLC*

*v. S.C. Dep't of Revenue*, 423 S.C. 208, 212, 813 S.E.2d 540, 542 (Ct. App. 2018) ("A question of statutory interpretation is one of law for the court to decide.") (quoting *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870-71 (2012)).

**DISCUSSION**

Both parties in this case seek summary judgment based on differing interpretations of Section 38-53-170(e). Therefore, the Court will begin by looking at this statute. Section 38-53-170 of the South Carolina Code (2015 & Supp. 2025) provides, in pertinent part, that no bail bondsman or runner may:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. Conditions of the bond which expressly or implicitly require payment of monies in excess of the premium, as a cost of satisfying the condition of the bond, shall not be considered part of the bondsman's premium, and are not affected by this code provision. The bondsman may collect these fees from the defendant and is not limited by any language requirements of this code provision.
>
> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed…

The Department's authority to administratively sanction licensed bail bondsmen for misconduct is discussed in Section 38-43-130 of the South Carolina Code (2015) and Section 38-53-150 of the South Carolina Code (2015). Section 38-43-130 provides, in pertinent part:

> (A) The director or his designee may place on probation, revoke, or suspend a producer's license after ten days' notice … when it appears that a producer has … violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State.
>
> . . .
>
> (C) The words "deceived or dealt unjustly with the citizens of this State" include, but are not limited to, action or inaction by the producer as follows:
>
> . . .
>
> (2) violating insurance laws, or violating any regulation, subpoena, or order of the director or of another state's director or his designee[.]

Section 38-53-150 provides, in pertinent part:

> (A) The director or his designee may deny, suspend, revoke, or refuse to renew any license issued under this chapter for any of the following causes:
>
> . . .
>
> (2) violation of any laws of this State relating to bail in the course of dealings under the license issued to a bondsman or runner by the director or his designee;
>
> . . .
>
> (7) failure to comply with or violation of the provisions of this chapter or of any order of the director or his designee or regulation of the department[.]
>
> . . .
>
> (B) The director or his designee, in lieu of revoking or suspending a license in accordance with the provisions of this chapter, in any one proceeding, by order, may require the licensee to pay to the director or his designee to be deposited in the general fund of the State a monetary penalty as provided in Section 38-2-10[(A)](2) for each offense....

Section 38-2-10 of the South Carolina Code (Supp. 2025) discusses the Department's imposition of administrative penalties against licensees, providing in pertinent part:

> (A) Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance:
>
> . . .
>
> (2) If the violator is a person, other than an insurer, pharmacy benefits manager, or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall fine the person in an amount not to exceed two thousand five hundred dollars, suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall fine the person in an amount not to exceed five thousand dollars, suspend or revoke the license of the person, or both.

Because the Department is seeking to impose an administrative penalty against a licensee in this matter, the Department has the burden of proof. SCALC Rule 29(B) (stating that the agency has the burden of proof in "the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders"). Accordingly, in order for this Court to impose a penalty, the Department must prove each element of the alleged Section 38-53-170(e) violations by a preponderance of the evidence. However, based on the facts in this case are not in dispute, this case turns on the interpretation of Section 38-53-170(e).

In this case, the parties disagree as to the interpretation of Section 38-53-170(e). The Department argues that a bondsman must charge and collect a minimum premium of $100.00 or 10% of a bond, whichever is greater, before the execution of the bond and may thereafter enter

into a payment agreement to collect any remaining amount of the bond premium, i.e. any amount of the bond premium that was not collected before the execution of the bond. Respondent, on the other hand, interprets the second paragraph of subsection (e), beginning with the word "However," as providing an alternative under which bondsmen may—instead of collecting 10% of the bond's face amount prior to its execution—enter into a payment agreement "subject to enumerated statutory requirements."[9]

"[A] court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't. Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) (citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 85, 533 S.E.2d at 581; *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature."). "If a statute is ambiguous, the court must construe its terms in accordance with the rules of statutory construction." *McInnis v. McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002) (citing *Lester v. S.C. Workers' Comp. Comm'n*, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). Thus, the Court first examines whether Section 38-53-170(e) is ambiguous.

In determining whether an undefined statutory term creates an ambiguity, courts must consider the terms' meanings in conjunction with the entire statute. *See Branch v. City of Myrtle Beach*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) ("When faced with an undefined statutory term … Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.") (*citing Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997)); *Ray Bell Const. Co. v. Sch. Dist. of Greenville Cnty.*, 331 S.C. 19, 25–26, 501 S.E.2d 725, 729 (1998) (court of appeals erred in determining statute unambiguous by focusing solely on language of one subsection without considering the intended purpose of statute).

[9] Respondent's interpretation is shared by the SCAG's office, which rendered an opinion in response to a question submitted by a municipal judge following that judge's disagreement with the Greenwood Clerk of Court over the interpretation of Section 38-53-170(e), the latter having interpreted Section 38-53-170 as the Department has. Thus, reasonable and intelligent minds have interpreted this statutory provision differently.

Here, the second paragraph of Section 38-53-170(e) begins with the word, "However," a word whose varied usage can signify an exception, alternative or limitation to preceding language, as discussed in more detail *infra*. Based on the language of the two paragraphs of the subsection, the Court concludes that the use of "However" in the second paragraph renders the meaning of the subsection as a whole ambiguous; therefore, statutory construction is required.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law." *S.C. Dep't of Consumer Affs. v. Cash Ctr. of S.C., LLC*, 435 S.C. 192, 202, 865 S.E.2d 789, 794 (Ct. App. 2021) (quoting *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 290 (Ct. App. 2007). A statute should therefore be read "as a whole [and must] must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.* (quoting *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013).

It is also well-recognized that courts "generally give[] deference to an administrative agency's interpretation of an applicable statute or its own regulation." *Kiawah Dev. Partners, II v. S. C. Dep't of Health & Env't Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) ( *Kiawah)* (quoting *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)) (internal quotation marks omitted); *see also State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)) ("It is true that agencies charged with enforcing statutes usually receive deference from the courts as to their interpretation of those laws.") (citation omitted). Our state Supreme Court has found that interpreting and applying statutes and regulations administered by an agency is a two-step process. *Kiawah*, 411 S.C. at 32, 766 S.E.2d at 717. "First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Id.* (citation omitted). In the event that "the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation assuming the interpretation is worthy of deference." *Id.* at 33, 766 S.E.2d at 717 (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843,

(1984)). An agency's interpretation of a silent or ambiguous statute that it is charged with administering is worthy of deference unless it is "arbitrary, capricious, or manifestly contrary to the statute," or unless there is a compelling reason to differ. *Id.* at 34-35, 766 S.E.2d at 718 (citing *Chevron*, 467 U.S. at 844); *but see S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) (finding the agency's reviewing body, "not [agency] staff, is entitled to deference from the courts.").

In this case, the Department interprets Section 38-53-170(e) as *requiring* bondsmen to charge and collect a minimum fee of $100.00 or 10% of a bond before the execution of the bond, and—if the bond premium exceeds the foregoing mandatorily collected amount—*permitting* bondsmen to collect that remaining, uncollected amount through a payment agreement, the terms of which must include a downpayment of $100 and full payment of the remaining bond premium within eighteen (18) months. The Court agrees.

Prior to its amendment in 2023, Section 38-53-170(e) provided that no bondsman or runner may:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars. However, the bondsman is permitted to accept collateral security or other indemnity from the principal which must be returned upon final termination of liability on the bond. The bondsman shall identify who is paying the premium and shall represent that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the principal's disappearance than appearance for trial. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond[.]

*See* S.C. Code Ann. § 38-53-170(e) (2015).

While maintaining a cap on bond premiums at 15% of the bond's face amount, the General Assembly amended subsection (e) by raising the minimum bond premium fee and also requiring it to be charged and collected before the execution of the bond, providing that no bondsman or runner may:

> (e) accept anything of value from a principal except the premium, … with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond...

S.C. Code Ann. § 38-53-170(e) (Supp. 2025). Thus, it appears that the General Assembly intended to impose a higher minimum-premium standard charged to those seeking bond and to ensure that

that amount is actually collected by the bondsman before the bond is executed. But this language was then followed up with additional language that the General Assembly added to subsection (e):

> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed…

*Id.*

At first blush, this second paragraph, with its use of the term "However" at the beginning, could seem to suggest, as Respondent argues, that the second paragraph presents an alternative to the requirements in the first paragraph. But in reading the statutory provision as a whole, taking into account what purpose the General Assembly intended to serve with this provision, the Court does not find this to be so.

Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); *see also Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 248, 647 S.E.2d 691, 697 (Ct. App. 2007) ("Dictionaries can be helpful tools during the initial stages of legal research for the purpose of defining statutory terms.") (citation omitted). With respect to the General Assembly's use of the word "However" in the second paragraph of subsection (e), the Court turns to the common understanding of the word "however" as the best indication of legislative intent. *State v. Adams*, 430 S.C. 420, 433, 845 S.E.2d 217, 224 (Ct. App. 2020) ("In discussing legislative intent, we begin, as always, with the words of the statute."). The word "however" can have several meanings, depending on the context in which it is used. Webster's Dictionary defines "however," when used as an adverb, as follows: "**1 a:** in whatever manner or way[;] **b:** to whatever degree or extent[;] **2** in spite of that: on the other hand[;] **3** how in the world."[10]

The Court concludes that the term "However" as used at the beginning of the second paragraph of Section 38-53-170(e) means "in spite of that," which is how Respondent also defines the use of the word in this case, according to her response to the Department's Motion. But this is

[10] Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/however (last accessed February 10, 2026).

where the agreement ends. In this case, the Court interprets the use of "However" at the beginning of the second paragraph to mean that in spite of any statutory language in the first paragraph suggesting otherwise, a bondsman who charges a premium exceeding the minimum fee that must be collected before bond execution may enter a payment agreement with the principal or an indemnitor for collection of the remaining amount. This usage makes clear that—despite language in the preceding paragraph that could be read to suggest otherwise[11]—collection of the *entire* bond premium before bond execution is not required where the entire premium exceeds the minimum. This usage also makes clear that, despite the preceding paragraph's prohibition on a bondsman accepting "anything of value" from the bond's principal after execution of the bond, the collection of additional premium (in excess of the statutory minimum) is permissible—if such collection occurs pursuant to a payment agreement meeting the requirements of the statute.[12] This interpretation harmonizes the two paragraphs of subsection (e) and reflects the General Assembly's purpose in stiffening the requirements to post bond—requirements only applicable where the bond court has determined the defendant's reappearance for trial is not reasonably assured and/or that the defendant's release may pose an unreasonable danger to the community or an individual.[13] By making the burden of posting bond commensurate with the bond amount determined by the bond court—whose determination as to the amount of bond must include consideration of factors such as a defendant's criminal record, other pending charges, incident reports of underlying offense, gang affiliation and alienage, et al.[14]—subsection (e) reflects how serious the General Assembly views crimes alleged to have been committed in this State, the criminal proceedings occasioned

[11] The first paragraph could be read to say that a bondsman may not "accept anything of value from a principal except the premium … that must be charged and collected by the bondsman before the execution of the bond."

[12] The use of "However" in this current version of subsection (e) is similar to the use of "However" in the prior version of the subsection, which read, in pertinent part: "No bondsman or runner may: … (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars. However, the bondsman is permitted to accept collateral security or other indemnity from the principal which must be returned upon final termination of liability on the bond…." The use of "However" under that prior version of the subsection did not provide for an alternative to requiring the payment of the minimum premium amount but was simply providing that in spite of the fact that a minimum premium had to be paid and could not exceed 15%, a bondsman was allowed, in addition to that requirement, to also accept collateral security or indemnity to secure the premium.

[13] *See* S.C. Code § 17-15-10(A) (Supp. 2025). Accused criminal defendants facing non-capital charges may be released on their own recognizance if the bond court does not determine they represent a flight risk or danger to others. *Id.*

[14] *See* S.C. Code § 17-15-30(B) (Supp. 2025) (listing factors a court must consider in determining conditions of release where criminal defendant's appearance not reasonably assured and/or release would constitute unreasonable danger to community or individuals)

thereby, and public safety. Thus, the General Assembly sought to reform the bail bond industry to ensure that the statutory regime in place—to determine whether bond is necessary to secure a criminal defendant's release, and, if so, to establish the amount of bond—cannot be undermined by business practices of bail bondsmen, including posting bond based on collecting a fee that is incommensurate with the bond court's determination. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 633, 922 S.E.2d 231, 235 (Ct. App. 2025) ("In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose…[S]tatutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction.") (citations and quotation marks omitted).

While the Court agrees with the SCAG and Respondent that the South Carolina Constitution provides a conditional right to bail (S.C. Const. Art. I § 15 (2009)), and that the General Assembly sought to strike a balance between "its desire to increase and standardize premiums" and "defendants' ability to pay those premiums and ensuring compliance with defendants' constitutional rights,"[15] one scale cannot negate the other scale and maintain a just balance. In this case, to interpret the second paragraph of Section 38-53-170(e) as providing for an alternative to the first paragraph's requirement for pre-execution collection of the minimum bond fee would eviscerate and render ineffective the first paragraph's very specific requirement regarding the minimum premium to be charged **and collected prior to the execution of the bond**. Such an interpretation would also beg the question as to why the General Assembly would have included the minimum, pre-execution collection requirements in the first paragraph at all instead of just requiring a minimum downpayment of $100 with the remainder of the premium to be paid and collected over eighteen months, i.e. through a payment plan. Had the General Assembly intended to provide an alternative for bailees who could not afford to pay the 10% minimum bond fee up front, it would not have included the 10% figure and the "whichever is greater" language in the first paragraph of subsection (e) and required this premium to be paid in full up front **and collected prior to the execution of the bond**, or, at the very least, would have provided a standard for determining whether a defendant qualified for the "financial assistance" alternative that

[15] As the Department correctly notes in its Reply in Opposition to Respondent's Motion for Summary Judgment, in making the above statement, the SCAG Opinion did not discuss a criminal defendant's constitutional right against excessive bail (or any other constitutional right, for that matter).

Respondent argues is offered in the second paragraph.[16] Though the Court agrees that the General Assembly did intend to provide some flexibility to not overburden the right to bail by maintaining the premium cap of 15% and allowing a third of that maximum amount to be collected over time via payment agreement, such flexibility was not intended to negate the clear added requirement that the greater of $100 or 10% of the bond's face amount must be charged and collected before the execution of a bond.[17]

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[16] Respondent's argument would be more persuasive had the General Assembly not included the phrase "must be … collected by the bondsman before the execution of the bond." Without that phrase, the provisions in subsection (e) could reasonably be interpreted as imposing a stiffer requirement for bond by raising the minimum premium to be paid while allowing for a payment agreement as an alternative means of paying for that higher minimum premium rather than paying it all up front. However, the Court must read the subsection as a whole and cannot ignore the requirement in the first provision that requires the bondsman to not only charge the bond premium minimum (which was done in this case) but also to **collect it before the execution of the bond**. In light of that phrase in the first provision, taken together with the second provision, Respondent's interpretation would create a contradiction that would render the prior-collection requirement in the first provision meaningless and ineffectual; the exception would swallow up the rule.

In her Response to DOI's Motion for Summary Judgment, Respondent further argues that if Section 38-53-170(e) was interpreted to require a defendant to pay the full 10% premium up front, this "would not serve to keep violent or dangerous criminals from achieving bail" but "would serve only to keep incarcerated those criminal defendants who cannot afford to pay 10% of their bond immediately[,]" and that "[t]he result would be our jails filled to the brim not with the most violent criminals, but with the poorest." First, it is for the General Assembly, not this Court, to set policy, and this Court must assume that the General Assembly was aware of the possible ramifications of its policies.

Second, while the Court agrees with Respondent that "the minimum payment provisions of § 38-53-170(e) do not depend upon the nature of the crime that was committed," that subsection does not operate in a vacuum. The nature of the criminal charge(s) affects the bond court's determination as to whether a surety bond will be required for a defendant's pre-trial release because it impacts the likelihood of a defendant to reappear and/or whether his release threatens the community. *See* S.C. Code Ann. § 17-15-10(A). The nature of the criminal charge also impacts the amount of any such surety bond, e.g., the bond court must consider incident reports related to the charged offense. *See id.* § 17-15-30(B)(3). Thus, Respondent's opinion that mandatory collection of the minimum bond premium before bond execution would have no effect on violent criminals achieving bail appears to be based on the language of Section 38-53-170(e) alone, without considering the broader statutory scheme surrounding bail and pre-trial release. Moreover, Respondent's suggestion that the Department's interpretation of Section 38-53-170(e) would affect only the poorest defendants also fails to account for other statutes surrounding bail. Specifically, the bond court is permitted to consider a criminal defendant's financial resources when setting the bond amount. S.C. Code Ann. § 17-15-30(A)(3) (Supp. 2025). If the judge setting bond is aware that the law requires the collection of 10% of the bond's face amount from the defendant up front, the judge can take the defendant's financial status into account when determining the appropriate amount of bond to set. Indeed, Section 38-53-170(e) itself envisions that some bonds would be set at low amounts when it included the phrase "with a minimum fee of one hundred dollars or 10% of the bond, whichever is greater," language that contemplates surety bonds set at amounts below $1,000. Therefore, the argument that our jails will be "filled to the brim … with the poorest [defendants]" is speculation and not a foregone conclusion.

[17] In the June 17, 2024 SCAG opinion discussed above, the SCAG resorted to legislative history, specifically 2023 Senate Journal, p. 2047 (April 11, 2023), which included a proposed amendment to Section 38-53-170(e) which, if enacted, would mirror the existing subsection, except that the payment agreement would be required to have a down-payment of $100 *or 5% of the bond's face amount*, whichever is greater. The SCAG opinion reasons that the proffered amendment would have treated the payment agreement as an alternative to pre-execution collection of the bond premium because otherwise, the payment agreement would be fully performed as soon as the down payment was made, because the amount collected before bond execution (10%) and the downpayment pursuant to the payment agreement (5%) would total the 15% bond premium cap, leaving nothing left to be repaid through a payment plan.

Moreover, this interpretation of Section 38-53-170(e) is consistent with the Department's interpretation, as expressed in Order No. 2024-07. The Department is the agency charged with regulating bondsmen and runners in the area at issue and with enforcing Section 38-53-170(e) and related provisions. Also, the Court concludes, for the reasons given above, that the Department's interpretation of subsection (e) is not arbitrary, capricious, or manifestly contrary to the statute, and there is no compelling reason to differ with its interpretation of subsection (e). For these reasons, the Court will defer to the Department's interpretation of Section 38-53-170(e). *See Kiawah Dev. Partners, II v. S. C. Dep 't of Health & Env 't Control*, 411 S.C. 16, 32-33, 766 S.E.2d 707, 718 (2014) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984), overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)).[18]

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While this is a logical construction of the proffered amendment, it is misapplied because this proposed legislation was **not** adopted in the final version of the statute—which may have been because it would have produced the absurd result that the SCAG highlights in its argument. In other words, the proposed amendment to the language in the second paragraph cited by SCAG may have been rejected because the General Assembly *shared* the Department's interpretation of the statute.

Similarly, legislative history subsequent to the issuance of the SCAG's and the Department's conflicting opinions appears to support the Department's interpretation. In S.C. House Bill No. 4512, which was introduced, given a first reading, and referred to the House Judiciary Committee on May 6, 2025, would have maintained the 15% bond premium cap and still have required the charge and collection of a minimum fee of $100 or 10% of the face value of the bond, whichever is greater, prior to the execution of the bond—though it would move these provisions to a newly created Section 38-53-175—but it would have added to the newly created Section 38-53-175 the following subsection: "**Payment agreements are permitted for amounts in excess of ten percent of the bond but are otherwise prohibited**." (Emphasis added). (2025 House Journal, p. 227 (May 6, 2025)). Also, the disputed language at the beginning of the second paragraph of the current Section 38-53-170(e), beginning with "However" and ending with "before or at the motion hearing for the principal to be released on bond[,]" would be eliminated. The reason for S.C. House Bill No. 4512, as it relates to the current statutory language, is debatable. It could reasonably be argued that this proposed legislation constitutes a clarifying amendment intended to resolve ambiguity in the present statute by more carefully spelling out the Legislature's intent consistent with the Department's position. By the same token, it could be argued that the provisions in the proposed legislation carry a different meaning than the existing statute and seek to change the meaning thereof, which would bolster Respondent's argument with respect to the meaning of the existing statute. However, like the proposed Senate amendment offered prior to the enactment of the existing Section 38-53-170(e), this recently proposed House amendment has not been enacted. *See Tallevast v. Kaminski*, 146 S.C. 225, 236, 143 S.E. 796, 799–800 (1928) ("The law as it is passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself, and the rule that the intention of the Legislature is the primary consideration in the construction of a statute does not permit the courts to consider statements made by the author of a bill or by those interested in its passage, or by members of the Legislature adopting the bill, showing the meaning or effect of the language used in the bill as understood by the person or persons making such statements." (quoting 25 R. C. L. 1037, 1038)).

Based on the foregoing, the Court does not give weight to the legislative history discussed in the SCAG's June 17, 2024 opinion.

[18] The Court agrees with the Department's analysis regarding agency deference at the state level and adopts another Administrative Law Judge's reasoning in *Friends of Horse Creek Valley v. S.C. Dep't of Env't Servs. & Rabbit Hill Class 2 Landfill*, S.C. Admin. Law Ct., 2025 WL 3045193, at *7 n. 17 (October 14, 2025) upholding the continuance of agency deference at the state level pursuant to *Kiawah Dev. Partners, II*, *supra* and South Carolina cases predating *Chevron* that applied similar deference principles.

As the Department observed in its Order No. 2024-07 and argues in its Motion, had the General Assembly sought to create an exception to the minimum pre-execution collection requirement set forth in the first paragraph of subsection (e), it would have done so using exception-creating language, as it did in multiple other places throughout the statute; but it did not.[19] Rather, it included the language in the second paragraph to provide bondsmen who charge a premium amount above that minimum (though not exceeding 15% of the bond's face amount) and their bailees the opportunity to finance any premium amounts exceeding the minimum. It appears that the General Assembly wished to increase the defendant's minimum fee amount for posting a bail bond and ensure that this amount was charged and collected before executing the bond in order to make the burden of obtaining a bail bond commensurate with the amount of bond determined by the bond court based on that court's mandatory consideration of statutorily prescribed factors, while at the same time recognizing that imposing these tougher restrictions on bond may require alleviation should a bondsman decide, especially for a large bond amount, to charge more than 10% of the bond value, up to 15%, and thus allowed for a payment plan option for any remaining amount charged above 10% of the bond value. This is also the interpretation shared by the Department, and the Court concludes that it is a reasonable one supported by the text and purpose of the statute.

Respondent argues that it would be absurd to interpret the statute as requiring an additional minimum up-front downpayment of at least $100 to be added as part of the payment plan for the remaining amount after already paying the higher of $100 or 10% of the bond amount, with both the minimum premium *and* the minimum downpayment due prior to execution of the bond. As a preliminary matter, Respondent's argument ignores that Section 38-53-170(e) contemplates that the payment agreement may be entered with (and the downpayment paid by) an indemnitor other than the defendant, a possibility that is reflected by references to an "indemnitor" later in the second paragraph.[20] Relatedly, and more importantly, the two paragraphs represent two different

[19] In footnote 12 of its Order No. 2024-07, the Department provides examples of exceptions created throughout chapter 53 of Title 38 including in Sections 38-53-80, -160, -170, and -190. In each of these examples, the General Assembly uses the term "except" to provide for exceptions.

[20] For example, the second paragraph in Section 38-53-170(e) provides in pertinent part that a payment agreement with a bondsman "shall require the principal on the bail bond **or any indemnitor** to make a minimum down payment of one hundred dollars…If the payment has not been made for two consecutive months, the bondsman must send a certified notice to the last known address of the principal **and indemnitor** demanding payment be made within ten das to bring the agreement current." (Emphasis added).

obligations relating to the bond. The first paragraph governs the terms of the execution of the bond, specifically the amount to be charged and collected as a mandatory prerequisite to the execution of the bond, whereas the second paragraph provides for the terms of a contractual agreement (i.e., a payment plan) between the bail bondsman and the principal and/indemnitor regarding the payment of any remaining premium that the bail bondsman may charge (up to the amount allowed by law). Accordingly, it would not be absurd for the General Assembly to require a separate downpayment of at least $100 as valuable consideration for the payment plan, it being a separate contractual arrangement with potentially different parties and with its own distinct obligations. Moreover, it would not be absurd if the General Assembly wished to ensure that at least some of the remaining bond premium (above the minimum already charged and collected) was paid by requiring an immediate "downpayment"—the first payment required under the payment plan—especially given the inherent risk of default on such a payment plan by a defendant who would be out on bond.

Respondent also considers it absurd that the General Assembly would provide a "comprehensive payment agreement structure … for only 5% of the face amount of the bond that the bondsman is not required to charge in the first place." First, this argument assumes that 5% of a bond's face amount is negligible, which is not true in all cases. Although, as a practical matter, the remaining (up to) 5% may be too negligible to collect via payment agreement where a bond is set at a low amount, it may be that the General Assembly contemplated that the practical application of payment plans would be limited to those situations where very high bonds are set. Moreover, the General Assembly may have reasoned that regulation of such payment agreements is necessary in light of the bondsman/insurer's own decision to charge a premium above the statutory minimum, reflecting the bondsman or surety's independent determination of risk that the principal will violate the conditions of their release. This may be reasonably inferred from the limitation of a payment plan's duration to eighteen (18) months; a strict duty on the bondsman to send a certified notice (not just a mailed notice) to a defendant and any indemnitor when payment has not been made for two consecutive months; and surrender of the defendant to a detention facility and acceleration of the balance of the premium under the agreement, the full payment of which being required for rerelease on bond, should payment not be received during the notice period. Regardless, the Court does not find the statutorily mandated provisions of a payment agreement to be "comprehensive," nor is the Court surprised that the General Assembly would

provide some level of detail to govern payment plans allowing collection of a portion of the bond premium after execution of the bond. After all, the collection of the premium itself is an exception to the general rule that bail bondsmen may not accept anything of value from the principal, a prohibition which serves the salutary purpose of preventing conflicts of interest and/or potential financial exploitation of criminal defendants.

Respondent further argues that interpreting Section 38-53-170(e) to require immediate payment of 10% of the bond to the bondsman would render the subsection "entirely superfluous" in light of S.C. Code Ann. § 17-15-15 (Supp. 2025), which already allows a defendant to, with a court's assent, "post that same amount with the clerk of court and then get it back at the end of the case rather than paying that amount as a premium to the bondsman." For this reason, Respondent questions "why anyone would use a surety bondsman in the first place." In making this argument, Respondent quotes the following from Section 17-15-15(A): "in lieu of requiring actual posting of bond . . . the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten percent of the amount of the bond set, which amount, when the defendant fulfills the condition of the bond, must be returned to the defendant by the clerk ...." However, Respondent omitted a key phrase from the statute. Section 17-15-15(A) begins with the pertinent phrase "**Except as provided in subsection (D)**[.]" Subsection (D) states, in pertinent part that "[t]he provisions of this section do not apply if the defendant is charged with a violent offense, as defined in Section 16-1-60, or any felony offense involving a firearm while out on bond or other pretrial release…." This is a major exception encompassing a large number of criminal defendants who would likely not be given a low bond amount or released on their own recognizance without a surety. This is the reason why there exists a bail bondsman option and hence why Section 38-53-170(e) exists in addition to Section 17-15-15, and this is why such criminal defendants would resort to the option under Section 38-53-170(e), even having to pay 10% up front—because they would have no choice if they wish to post bond. The fact that the option to post a cash deposit with the clerk of a court is not available to defendants charged with violent offense under Section 16-1-60 or a felony involving a firearm while out on bond or other pretrial release would also be consistent with a reading of Section 38-53-170(e) that reflects an intent by the General Assembly to toughen the terms of posting bond through bail bondsmen in South Carolina by ensuring the burden of posting bond is consistent with the bond amount determined by the bond court to be appropriate.

For the foregoing reasons, the Court adopts the interpretation of section 38-53-170(e) set forth above and rejects Respondent's interpretation thereof. In this case, Respondent failed to collect the full amount of the 10% premium charged on each of the ten bonds issued between May 2, 2024 and June 1, 2025 prior to their execution. Because Section 38-53-170(e) requires that a bondsman not only charge a minimum premium of $100 or 10% of the bond value, whichever is greater, but also collect the same prior to the execution of the bond, I conclude that Respondent violated Section 38-53-170(e) by collecting less than 10% of the bond value on all ten bonds at issue prior to their execution.

**Penalties Imposed for Violations of Section 38-53-170(e)**

In this case, the Court concludes that Respondent violated Section 38-53-170(e) with respect to the ten bonds at issue, for the reason discussed above, and that the Department has met its burden of proof. However, the Court also concludes that Respondent's actions are not worthy of the maximum financial penalty allowed by Section 38-2-10(A)(2) and sought by the Department. First, the version of Section 38-53-170(e) that was violated is fairly new, certainly ambiguous, and, to this Court's knowledge, the issue in this case has not been adjudicated and no declaratory judgment has been rendered relating to it. Second, as result of Section 38-53-170(e)'s ambiguity, reasonable and intelligent minds—including those of a municipal judge, the clerk of court in Greenwood, the SCAG's office, and the Department—have disagreed over its meaning. Even the Department sought the SCAG's withdrawal or modification of its June 17, 2024 opinion, thus acknowledging the influence it was having on bail bondsmen's application of Section 38-53-170(e) across the State. And while the SCAG, following the Department's request, did advise bail bondsmen (and runners) to "follow the [D]epartment's instructions and orders regarding the issue [in this case] pending any judicial or legislative clarification," this opinion was not issued until July 31, 2025, which was after Respondent's tenth and final violation on June 1, 2025. For these reasons, the Court does not believe that the maximum financial penalty of $2500 per violation, allowed under Section 38-2-10(A)(2), is warranted in this case.

Nevertheless, the Court believes that a financial penalty is still warranted because although Respondent asserts that she relied on the SCAG's June 17, 2024 opinion in not collecting the full amount of the charged bond premiums at issue, Respondent was subsequently issued a copy of Order 2024-07 from the Department on December 11, 2024, approximately six months prior to the date of the first of the ten violations at issue in this case (on May 2, 2025). While Order 2024-07

conflicted with the Attorney General's prior opinion, Respondent should have complied with the order from Department because it is the agency authorized to regulate this area, and she should have done so until obtaining a favorable declaratory judgment on the issue. Accordingly, the Court believes a $500 penalty for each of the ten violations is appropriate under the facts of this case.

## ORDER

**BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

Respondent shall **remit to the Department administrative fines in the amount of $5,000.00 within thirty (30) days of the date of this Order**.

Respondent is hereby notified that **failure to comply with the terms of this Order shall subject Respondent to contempt of court, including fine or imprisonment or both**.

**IT IS FURTHER ORDERED** that Petitioner South Carolina Department of Insurance may, but is not required to, file a copy of this final order as a judgment as provided in S.C. Code Ann. § 1-23-600(I) (Supp. 2025), provided that any such filing shall not relieve Respondent of the obligation created by this final order to pay the administrative fines. Further, the South Carolina Department of Insurance shall have the option to collect said judgment, as provided by the law applicable to collection of judgments.

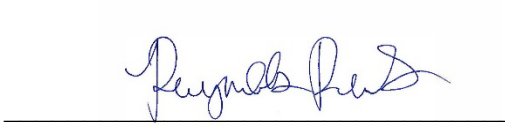
**AND IT IS SO ORDERED.**

_____
Samuel L. Johnson
Administrative Law Judge

February 13, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Reynolds C. Rawls, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Reynolds C. Rawls
Judicial Law Clerk

February 13, 2026
Columbia, South Carolina

# EXHIBIT 2

(April 1, 2026 Order Granting in Part and Denying in Part Respondent Joyce Freeman's Motion for Reconsideration)

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Department of Insurance,<br><br>Petitioner,<br><br>vs.<br><br>Joyce Freeman,<br><br>Respondent. | ) | Docket No. 25-ALJ-09-0270-CC<br><br>**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT JOYCE FREEMAN'S MOTION FOR RECONSIDERATION** |

This matter comes before the South Carolina Administrative Law Court (ALC or Court) upon a Motion for Reconsideration (Motion) filed by Respondent Joyce Freeman (Respondent) pursuant to Rule 29(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) asking the Court to reconsider its February 13, 2026 order (Order) granting South Carolina Department of Insurance's (DOI's or the Department's) Motion for Summary Judgment. For the reasons set forth below, the Court grants Respondent's Motion in part and denies it in part.[1]

## DISCUSSION

### Interpretation of S.C. Code Ann. § 38-53-170(e)

The Order held that Section 38-53-170(e) of the South Carolina Code (Supp. 2025) does not permit a payment agreement with respect to the mandatory minimum premium (10% of the face amount of the bond or $100, whichever is greater) that must be charged and collected prior to the execution of the bond; rather, the payment agreement provisions set forth in Section 38-53-170(e) would permit a bail bondsman to enter a payment agreement to collect, over time, any *additional* premium amount charged beyond the mandatory minimum premium. In its cross-motion for summary judgment giving rise to the Order, Respondent argued for an interpretation of Section 38-53-170(e) that would permit a payment agreement for the *entire* premium—including the 10% mandatory minimum premium amount the statute states must be charged and collected

[1] The Department filed a Response in Opposition to Respondent's Motion for Reconsideration (Response) on March 23, 2026. On March 24, 2026, the Court received an email from Respondent's counsel offering to submit a reply to the Department's Response if the Court would find it helpful. The Court agrees with counsel that SCALC Rule 29(D) does not appear to contemplate replies in support of motions for reconsideration. However, to the extent that the Court could nevertheless accept such a reply, the Court did not find it beneficial in this case and therefore declined Respondent's offer to submit one.

prior to execution of the bond—thereby allowing a bail bondsman to execute the bond without having collected the 10% mandatory minimum premium amount.

In support of the instant Motion, Respondent argues that the two paragraphs in Section 38-53-170(e) set forth two different options available to a bail bondsman[2] prior to executing a bail bond: either charge and collect the entire minimum premium amount up front before bond execution, or enter into a payment agreement the terms of which require a downpayment of $100 by the criminal defendant and completion of the agreement's obligations within eighteen months. Respondent further argues that whether a payment agreement is entered into or not, a bail bondsman is required to collect 10% of the face amount of the bond or $100, whichever is greater, and that "[t]he only thing the payment agreement provision does is that it gives the defendant *more time* to discharge this obligation." (Emphasis in original). Respondent then mentions the various obligations required under the second paragraph of subsection (e) for any payment plans entered into between bail bondsmen and criminal defendants, and notes that a criminal defendant will go to jail upon failure to meet his or her financial obligations for the bond. Respondent then asserts that this Court's interpretation of subsection (e), as set forth in its Order, would mean that "the Legislature went to great lengths – notably by including an incarceration-for-default provision in the statute – in order to ensure that bondsmen get their additional 5% premium payment." Respondent asserts that this framework evokes the specter of debtors' prisons, which have been abolished in South Carolina, arguing that "[t]his State does not imprison people for private debts,

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[2] Some of the Motion's arguments are framed in terms of what Section 38-53-170(e) requires, permits, or forbids with regard to a criminal defendant seeking to obtain a bail bond, rather than what the statute requires of a licensed bail bondsmen like Respondent. For instance, the Motion includes several statements about what a criminal defendant seeking a bail bond might be required to pay, *See* Motion at p.1 ("[I]n the absence of a payment agreement …, the *defendant* is indeed *obligated to pay* the entire minimum amount of the premium before the bond is posted.") (emphases added); *id.* p.3 ("In all cases, the *defendant* is *required to pay* 10% of the face amount of the bond or $100, whichever is greater.") (emphases added); *id.* p.4 (arguing Section 38-53-170(e) "provides two options for payment of the minimum 10% premium"); *id.* p.10 (discussing "the *defendant's compliance* with the minimum 10% premium *payment*.") (emphasis added).

Although the statute at issue regulates the conduct of bail bondsmen, the Court takes no issue with Respondent framing her arguments to address its potential, resulting effects on criminal defendants seeking to obtain a bail bond, particularly because the Motion elsewhere employs the language of the subject statute—e.g., what the bail bondsman must "charge" and "collect." *See id.* p.6 (discussing the "new requirement that a minimum of 10% of the face amount of the bond *must be charged and collected* by the *bondsman*.") (emphases added); *id.* p.7; (discussing "the *requirement that the bondsman collect* the full 10% premium prior to the execution of the bond.") (emphasis added).

To the extent this Order paraphrases the arguments set forth in the Motion, framing them in terms of the bail bondsman's obligations, such paraphrasing is intended to align Respondent's argument with the actual provisions of Section 38-53-170(e).

and any amount of the bondsmen's fee over and above the 10% minimum required by the Legislature is just that – a surplus fee that may be charged in the bondsman's sole discretion and for his sole benefit." Respondent then adds that "[t]he State has no interest in this additional fee except to cap it to prevent excessive fees charged by bondsmen, as earlier versions of the statute did." Respondent also quotes from S.C. Code Ann. § 38-53-50(B) (Supp. 2025) to argue that "it would be both unconstitutional and inconsistent with other provisions in Chapter 53 for the State to guarantee this private obligation upon pain of immediate imprisonment."

At the start, the Court will not respond again to Respondent's proposed interpretation of Section 38-53-170(e) because it has already done so in the Order by providing its own interpretation, which respectfully differs from Respondent's interpretation, and the Court remains unpersuaded by the Motion's presentation of Respondent's arguments in this regard. Regarding Respondent's debtors' prison argument—i.e., that the Court's interpretation would result in incarceration of a defendant merely for failing to pay amounts that are not even statutorily required to be charged in the first place—this is a new argument raised for the first time in support of reconsideration. "[T]here is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). However, arguments, like issues, cannot be raised for the first time in a motion for reconsideration. *See Repko v. Cnty. of Georgetown*, 424 S.C. 494, 502-03, 818 S.E.2d 743, 748 (2018) ("[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments"; and "[a]n issue may not be raised for the first time in a motion to reconsider.") (internal quotation marks and citations omitted); *see also Com. Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (finding an argument was not preserved for review on appeal because, according to the record, the first time the appellant made the argument was in its motion for reconsideration); *Hickman v. Hickman*, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990) ("I do not conceive of [the Federal Rule of Civil Procedure] 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.") (internal quotation marks and citation omitted); *Miller v. Dillon*, 432 S.C. 197, 207, 851 S.E.2d 462, 467-68 (Ct. App. 2020) (declining to consider an argument because it had been raised for the first time in a motion for reconsideration). Although Respondent couches the

new debtors' prison argument as addressing the *implications* of the Order's interpretation of the statute, the Court's interpretation was the same interpretation the Department argued for in its summary judgment motion, which the Order granted. As such, Respondent could and should have raised this argument in one of its prior submissions and cannot now raise it for the first time in a motion for reconsideration.

But even if Respondent's debtors' prison argument was properly raised in its Motion, the Court would still reject it. First, subsection (e), as interpreted by the Court, does not simply serve the purpose of enforcing a private obligation between a bondsman and defendant for the purpose of benefiting the bondsman. While the obligations for bail-bond payment agreements may have an incidental effect of providing more protection for a bondsman's premium (i.e., by helping ensure the collection of any bond premium charged above the minimum amount required to be charged and collected prior to the execution of the bond), the purpose of the statutory requirements is to further ensure against violation by defendants of the conditions of bond—an issue in which the State certainly has an interest. Moreover, while a bond-premium payment agreement may be considered a private agreement insofar as the state itself is not a party thereto, its subject matter is the payment of a bond premium amount capped by the state, to a bondsman licensed and regulated by the state as part of a criminal defendant's consideration for a bond sanctioned by the state to facilitate the release on bail of a defendant from state or local custody while ensuring the reappearance of the defendant for a public trial for an alleged crime against the state. Therefore, the state has a legitimate interest in regulating bond-premium agreements, and for the same reasons it requires the charging and collection of a minimum bond premium fee up front before the execution of the bond.[3] Further, the hypothetical scenario underlying Respondent's debtor's prison argument cannot fairly be described as an outgrowth of the Court's interpretation of subsection (e). Indeed, the scenario described by Respondent could also arise under Respondent's own proffered interpretation, under which a bondsman would be able to execute a bail bond solely upon execution of a payment agreement whose terms require a $100 downpayment. Under Respondent's construction of the statute, a bail bondsman who charged a 15% premium would still be required to "surrender the principal to the proper detention facility" if payments were missed for two

[3] Section 38-53-170(e)'s also has requirements regarding "collateral security and other indemnity," which would similarly involve state regulation of a "private obligation" between a bondsman and a depositor of such security that would protect depositors.

consecutive months and such default is not cured upon ten days' notice—even if the statutory minimum amount of premium (e.g., 10% of the bond's face amount) had already been collected by the bail bondsman through prior installments under the payment agreement.[4] In other words, even under Respondent's interpretation, a defendant who entered into a payment agreement for more than a 10% premium amount could still be sent to jail for violating the terms of bond after paying the mandatory minimum premium amount. However, this would not render the purpose of subsection (e) a state enforcement of a private obligation akin to a debtors' prison.

Furthermore, the Court is not persuaded by Respondent's contention that Section 38-53-50(B) conflicts with the Court's interpretation of Section 38-53-170(e). Section 38-53-50(B) provides, in pertinent part, that "[n]onpayment of premium fees alone is not sufficient cause to warrant immediate incarceration of the defendant." Respondent correctly notes that the General Assembly added the word "premium" to the foregoing provision in its 2023 amendment. Respondent concludes from this addition that the General Assembly did not intend "to immediately incarcerate defendants for failure to pay this 5% additional premium fee." Reading Sections 38-53-50(B) and 38-53-170(e), the Court finds nothing contradictory about its interpretation of the latter. Should a bail bondsman enter into a payment plan with a criminal defendant for a premium amount above ten percent of the bond (pursuant to Section 38-53-170(e)), a subsequent failure by that defendant to make a payment alone would not constitute sufficient cause for the surety to surrender the defendant for immediate incarceration (per Section 38-53-50(B). But Section 38-53-170(e) does not require a bail bondsman to take action for nonpayment of premium fees alone; rather it is only after the defendant misses payments for two consecutive months, and then makes no payment within ten days after certified notice is given by the bondsman, that the bondsman is required to surrender the defendant to a detention facility. And this process of reincarceration for nonpayment under a bond-premium payment plan would operate in the same manner whether Section 38-53-170(e) is interpreted as permitting a bondsman to enter a payment plan to collect the full amount of the premium (Respondent's interpretation), or only permitting payment agreements for amounts of premium, if any, above the minimum premium required to be charged and collected prior to the execution of the bond (the Court's interpretation).

[4] As the statute is interpreted by the Court, the statutory provisions surrounding payment agreements have nothing to do with the minimum amount of premium that must be collected by a bail bondsman prior to execution of the bond.

Finally, the Court agrees with Respondent that prior to the 2023 amendment to Section 38-53-170(e), this subsection still provided that a bail bondsman could charge a premium of not more than 15% of the face amount of the bond but had "no payment agreement mechanisms at that time." The Court also agrees with Respondent—or agrees that it is at least possible—that the "[payment agreement] provision was intended as part of, and as a response to, the Legislature's new requirement that a minimum of 10% of the face amount of the bond must be charged and collected by the bondsman." However, while Respondent views the payment agreement provisions of the second paragraph of Section 38-53-170(e) as an alternative to the first paragraph's command that a premium fee in the amount 10% of the bond's face value "must be charged and collected by the bondsman before the execution of the bond," the Court does not view the payment agreement permitted by the statute as an alternative that would permit bond execution without first collecting the minimum premium amount. Rather, in light of the more stringent premium requirements of the statute—e.g., the higher required minimum premium and the fact that it must be paid up front—the Court views the creation of the payment agreement mechanisms as a means of facilitating the ability of a bondsman to charge an above-minimum premium where warranted, by permitting credit bonding of premium amounts above the 10% required to be charged and collected before bond execution, while also providing strict guidelines to better ensure that bond terms are complied with.

**Legislative History Regarding S.C. Code Ann. § 38-53-170(e)**

Respondent next argues that the legislative history surrounding Section 38-53-170(e) supports her and the South Carolina Attorney General's (SCAG's) interpretation that the payment agreement provision in the second paragraph is an alternative to the first paragraph's "10% prior-collection requirement." Respondent looks at a proposed April 11, 2023 amendment—the first proposed change to Section 38-53-170(e)—that, if enacted, would have altered the language in the second paragraph to require a downpayment of $100 or 5%, whichever is greater, for any payment agreement entered into between a defendant and bondsman. Respondent then adds that a subsequent amendment offered by Senators Adams, Hutto, and Malloy the next day reflected the removal of the 5%-downpayment requirement, requiring only a $100 downpayment to obtain a payment agreement. Respondent concludes that "these amendments to § 38-53-170(e) were intended from the start to treat the payment agreement as an alternative to the 10% prior-collection requirement." Respondent also discusses the reasoning employed in the July 17, 2024 SCAG

Opinion regarding the proffered (April 11, 2023) amendment to Section 38-53-170(e) by stating that "if the full 10% premium were intended to be collected up-front, such that the payment agreement provision was intended only to apply to the remaining 5% of the bond permitted to be collected by the bondsman as a premium, then the 5% down payment requirement would leave nothing to be collected by the payment agreement." Respondent further notes that this Court characterized the SCAG's rationale as a "logical construction of the proffered amendment," but that the Court rejected the application of this reasoning because the amendment "may have been rejected because the General Assembly *shared* the Department's interpretation of the statute." (Emphasis in original).

First, the Court need not address most of this legislative-history argument because it already has done so in its Order and is not persuaded by this argument in Respondent's Motion. However, the Court will note that it erred in its wording in the last sentence of footnote 17 on p. 17 of the Order. The Court did not mean to suggest that the General Assembly shared the SCAG's, and thus Respondent's, interpretation of Section 38-53-170(e). Rather, the Court meant that the General Assembly may have shared the SCAG's concern that adding the 5% downpayment language to the second paragraph would have left nothing to finance through a payment plan because the General Assembly read the language of its amendment to Section 38-53-170(e) in the same manner as the Department interprets the same language as now codified. Accordingly, **the Court will amend the last sentence of the first paragraph of footnote 17 of the Order to read as follows:**

> In other words, the proposed amendment to the language in the second paragraph cited by the SCAG may have been rejected because the General Assembly shared the SCAG's concern that including the 5% downpayment language would have left nothing to finance through a payment agreement. However, this would only have been a concern if the General Assembly intended for the mandatory minimum premium fee to not only be charged but also collected prior to the execution of the bond and thus prior to the implementation of a payment plan, which would be consistent with this Court's interpretation of subsection (e).

It may be that the senator who proffered the 5% downpayment amendment interpreted subsection (e) as providing separate, alternative methods of collecting a bond premium, and thus shared the SCAG's and Respondent's interpretation. Had this proffered amendment been adopted and enacted, such legislative history (and the statutory language enacted thereby) would be supportive of the SCAG's and Respondent's interpretation. However, the fact that this proffered 5% downpayment language was not enacted could support the Court's interpretation that the General

Assembly intended the mandatory minimum of the greater of $100 or 10% of the bond amount to be collected prior to the execution of the bond and thus prior to the execution of any payment plan for any premium charged by the bondsman above the minimum—a system that would have been unworkable had the 5% downpayment amendment been included, leaving no remaining premium to finance in light of the 15% cap.

Finally, Respondent discusses S.C. House Bill 4512, which was introduced in the S.C. House of Representatives on May 6, 2025 and referred to the House Judiciary Committee. Respondent argues that "[t]his proposed legislation … would transform the current provisions of Chapter 53 into what the Department asserts they are now." Respondent further argues that because this proposed amendment would remove the detailed payment-agreement provisions (while maintaining the mandatory minimum premium fee requirement to be charged and collected before execution of the bond and allowing payment agreements in excess of 10% of the bond), this shows that the current, enacted statute's payment-agreement provisions are "intended to ensure the defendant's compliance with the minimum 10% premium payment[,]" and that the State has no interest in regulating payment agreements and ensuring compliance through incarceration for premium amounts in excess of the mandatory minimum." Respondent posits that "if § 38-53-170(e) in its current form operated as the Department asserts, there would be no reason for these amendments."

The Department argues in its Response that "to the extent that Respondent's argument as to the legislative history are supplemented, these arguments are improper for a motion for reconsideration[,]" citing to *Hickman*, *supra*. However, the Court will allow Respondent's arguments with respect to S.C. House Bill 4512 because that bill was first mentioned in the Court's Order, specifically in footnote 17. Because a motion for reconsideration was the first opportunity Respondent had to respond to the S.C. House Bill 4512 issue, Respondent is allowed to make arguments relating to that issue for the first time in its Motion, as it could not have been raised prior to the Order. *See, e.g., Fryer v. S.C. Law Enf't Div.*, 369 S.C. 395, 399, 631 S.E.2d 918, 920 (Ct. App. 2006) ("A post-trial motion must be made when the trial court either grants relief not requested or rules on an issue not raised at trial"), *quoted in Anderson Cnty. v. Preston*, 427 S.C. 529, 541, 831 S.E.2d 911, 917 (2019); *MailSource, LLC v. M.A. Bailey & Assocs., Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003) ("A party cannot raise an issue for the first time in a Rule 59(e), SCRCP motion *which could have been raised at trial*.") (emphasis added); *Brown v.*

*Odom*, 425 S.C. 420, 429, 823 S.E.2d 183, 187 (Ct. App. 2019) (noting that post-trial motions are utilized to raise issues not capable of being raised at trial) (citation omitted). The Court will, therefore, address those arguments at this time.

First, with respect to why the amendments were introduced, it may be that the House member who introduced the amendments intended to clarify the General Assembly's intent as to the current Section 38-53-170(e) by stating plainly that payment plans are applicable only to any premiums charged above the minimum premium fee required to be charged and collected prior to the execution of a bond. Such clarification would be warranted given that the current statutory language is ambiguous and has consequently resulted in differing interpretations among state agencies, a municipal judge and his clerk of court, and this Court and Respondent. Regarding the proposed removal of the premium payment-plan obligations/restrictions, the proposed bill plainly states in its summary, and it is reflected in the proposed deletions, that it would, inter alia, amend Section 38-53-170 to "remove references to limitations and other restrictions on bond agreements." However, this does not necessarily imply that the purpose of the directives governing payment agreements is to ensure the collection of the 10% bond premium as part of a payment plan as an alternative to charging and collecting this amount before bond execution. As already discussed, the state has an interest in regulating payment agreements for bond premium amounts above the minimum premium fee required to be collected up front. However, it may be that the House member who introduced the pending amendments proposed to delete the existing payment-plan obligations/restrictions because, notwithstanding the state's authority to regulate conditions for bail-bond-premium payment-plan agreements, he believes in less regulation by the state and saw no need for it with respect to such payment plans, or he may have had another or several other reasons for wanting to remove the obligations/restrictions on these payment plans. But regardless, this amendment is currently pending and is subject to further modification by other House members and/or senators who may share this House member's view with respect to the requirements that the minimum premium fee be charged and collected before execution of the bond and that a payment plan be allowed only for any amount above the minimum, but who may disagree with him about removing obligations/regulations for the payment plans. Thus, even if the House member who proposed the 2025 amendment shares Respondent's interpretation of the statute, the 2025 amendment may suffer the same fate as the failed 2023 Senate amendment because the General Assembly may not share his view.

As noted in the Order, the 2023 and 2025 proffered amendments discussed above are as ambiguous with respect to their sponsors' intent as the language is in the current Section 38-53-170(e), and they have not been enacted. Therefore, the Court does not find them helpful in discerning the General Assembly's intent from this legislative history and will consequently accord them no weight.

**Application of Agency Deference**

Appellant begins by arguing that "[u]nderlying Court's decision was the doctrine of deference to state agencies espoused in *Kiawah Development Partners, II v. South Carolina Department of Health & Environmental Control*, 411 S.C. 16, 32-33, 766 S.E.2d 707, 718 (2014)[,]" et al., and refers to this Court's "reliance on the deference-to-agencies doctrine." However, the Court will begin by clarifying its position on deference.

While the Court reached the same conclusion as the Department, the Court reached its own conclusions about the interpretation of Section 38-53-170(e), based on its own analysis throughout nearly all of the Order. The Court only intended the Order's discussion on deference to highlight an alternate/additional ground to support the interpretation at which it independently arrived. However, because the Order's deference discussion incorrectly suggests reliance on the doctrine ("… the Court will defer to the Department's interpretation…"), the Court finds it appropriate to amend the Order clarify that the statutory interpretation underlying its conclusion did not include deference to the Department's interpretation. Accordingly, the Court will amend its Order by deleting the discussion on agency deference, as it was never necessary to the Court's conclusion anyhow. Specifically, **the Court will amend its Order by deleting the only paragraph on page 17 thereof, including the footnote contained therein, as well as the last sentence of the first paragraph on page 18 ("This is also the interpretation shared by the Department, and the Court concludes that it is a reasonable one supported by the text and purpose of the statute.").**

Respondent next argues that deference is inappropriate in this case because the statute at issue is a penal statute, and agency deference is thus inapplicable. Respondent further argues that because Section 38-53-170(e) is a penal statute, even though this case involves no criminal liability, any ambiguity in it must be strictly construed in favor of Respondent, citing to *S.C. Dep't of Revenue v. Collins Ent. Corp.*, 340 S.C.77, 79, 530 S.E.2d 635 (2000) and *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017), et al.

As to Respondent's argument that agency deference is inapplicable because it is a penal statute, because the Court will be amending its Order to omit the brief discussion on agency deference, the Court need not address this argument. Moreover, even had the Court not omitted its discussion on agency deference, Respondent's argument was not raised in her Motion for Summary Judgment or her response to DOI's Motion for Summary Judgment. Respondent acknowledges in footnote 3 of her Motion that "she did not delve deeply into this issue [of agency deference] in her prior briefing"–her reason being that she viewed agency deference as inapplicable because "the Department's interpretation violates the plain language of the statute …." Because the Court disagreed with Respondent's plain-language argument and Respondent argues the Court "reli[ed] on the deference-to-agencies doctrine," Respondent now seeks to "submit[] a fuller examination of this topic." However, the Department raised the argument of agency deference in its Motion for Summary Judgment, and Respondent had ample opportunity to raise the issue of applicability of agency deference, including the argument that the statute at issue is penal. Respondent took care to note in her response to the Department's summary judgment motion that this case involved penalties and sanctions but only to support her argument that the Department carried the burden of proof. And while Respondent argues now that she did not "delve deeply" into the issue of agency deference because she believed her position was supported by the statute's plain language and agency deference thus inapplicable, Respondent took care in her response to the Department's summary judgment motion to make an argument even under the assumption that the Court found the statute to be ambiguous. Specifically, Respondent argued that that "even if the Court were to find that the statute is ambiguous, the Department's interpretation should be rejected because it is manifestly contrary to the language of the statute and the Legislature clear intent in enacting it." Respondent even cited to, and quoted from, *Kiawah*, *supra*, which established the deference standard Respondent now argues no longer applies in South Carolina, to argue that the Department's interpretation would not be worthy of deference in this case because the Department's interpretation was "plainly erroneous." Respondent could have argued in her prior submissions that deference does not apply in this case because the statute at issue is penal in nature, but she instead chose to argue only that deference does not apply because the statute is plainly written or, if ambiguous, was being interpreted in a "plainly erroneous" manner by the Department. However, a party limiting its arguments in response to a raised issue does not justify that party raising additional, previously reserved arguments on the issue by way

of a reconsideration motion challenging the order that rejected the arguments the party actually advanced. In other words, Respondent had ample opportunity in her prior submissions to the Court to raise the arguments she now seeks to make and cannot now get a second bite at the apple by raising them for the first time in her Motion. But again, none of this is consequential any longer because the Court's Amended Order will not address agency deference.

As to Respondent's argument that Section 38-53-170(e) should be strictly construed in Respondent's favor because it is a penal statute, because Respondent failed to raise this argument in her Motion for Summary Judgment or her response to DOI's Motion for Summary Judgment, she cannot do so now for the first time in a motion for reconsideration. *See Repko*, et al., *supra*.

But even if Respondent's "favorable construction" argument was properly raised in its Motion, and the Court agreed that Section 38-53-170(e) is a penal statute, the Court would still reject it. Generally, "[t]he rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute's scope be resolved in the defendant's favor." While "South Carolina has long recognized the principle that penal statutes are to be strictly construed [in favor of the defendant,] … [a]t the same time, the cardinal rule of statutory construction requires that [the Court] endeavor to ascertain and effectuate the intent of the legislature…A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly." *Hinton v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004) (citations and quotation marks omitted); *see also Nelson v. Ozmint*, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) ("When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.") (internal citation omitted). Thus, the rules of statutory construction still apply when there is an ambiguity in a penal statute; and though ambiguities in such statutes that cannot be resolved by reasonable discovery of legislative intent must be construed in favor of the defendant, such construction cannot be at the expense of legislative intent.

In this case, for the reasons discussed in the Court's Order, despite the ambiguity in the language of Section 38-53-170(e), the Court was able to ascertain the General Assembly's intent as reflected in its interpretation of the statute. Adopting Respondent's interpretation of Section 38-53-170(e) would render the up-front-collection requirement in the first paragraph meaningless and

would, in doing so, undermine the General Assembly's policy of stiffening the requirements to post bond to ensure that the burden of posting bond is consistent with the bond amount determined by the bond court. Therefore, preservation of the policy and intent of the General Assembly in enacting the 2023 amendments to Section 38-53-170(e) must prevail over the statutory construction rule of lenity.

**Conclusion**

In conclusion, the Court's will amend its Order by altering the last sentence of the first paragraph of footnote 17 (as set forth above) and by deleting the only paragraph on page 17, the footnote contained therein, and the last sentence of the first paragraph on page 18 (i.e., the language pertaining to agency deference). Otherwise, the Court denies Respondent's Motion. However, the Court will continue the stay granted in its March 13, 2026 order staying the proceedings pending its decision on the Motion. The Court will continue to stay this matter pending its final resolution.

**ORDER**

**IT IS THEREFORE ORDERED** that the Respondent's Motion is **GRANTED IN PART AND DENIED IN PART**.

**IT IS FURTHER ORDERED** that the imposition of a $5,000 fine set forth in the Court's February 13, 2026 Order is hereby **STAYED** pending the final resolution of this matter.

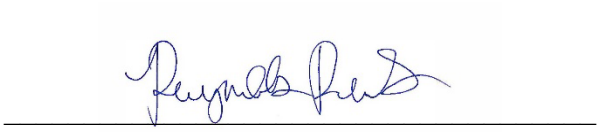
**AND IT IS SO ORDERED**.

Samuel L. Johnson
Administrative Law Judge

April 1, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Reynolds C. Rawls, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Reynolds C. Rawls
Judicial Law Clerk

April 1, 2026
Columbia, South Carolina

# EXHIBIT 3

(April 1, 2026 Amended Order Granting South Carolina Department of Insurance's Motion for Summary Judgment)

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Department of Insurance,<br><br>Petitioner,<br><br>vs.<br><br>Joyce Freeman,<br><br>Respondent. | ) | Docket No. 25-ALJ-09-0270-CC<br><br>**AMDENDED ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF INSURANCE'S MOTION FOR SUMMARY JUDGMENT** |

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Joyce Freeman (Respondent) on September 2, 2025, relating to a determination by Petitioner South Carolina Department of Insurance (DOI or the Department) that Respondent is liable for a $25,000 administrative fine due to misconduct related to Respondent's licensure as a resident producer and surety bondsman. The parties filed cross-motions for summary judgment on January 9, 2026 pursuant to Rule 19 of the South Carolina Administrative Law Court Rules (SCALC Rules) and Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP). In the Department's Motion, it argues that the $25,000 administrative fine should be imposed upon Respondent for her failure to collect a minimum fee of $100 or 10% of the bond amount, whichever was greater (in this case, the latter), prior to the execution of certain surety bonds, as required by S.C. Code Ann. § 38-53-170(e) (Supp. 2025). In her Motion, Respondent argues that Section 38-53-170(e) does not require a bondsman to charge and collect up front a minimum of $100 or 10% of the bond amount, whichever is greater, prior to the execution of the bond where, as here, the bondsman has entered into a payment agreement whose terms meet certain statutory requirements, including a minimum downpayment of $100 and a maximum term of eighteen months. For the reasons set forth below, the Court grants DOI's Motion and denies Respondent's Motion.

## CONSIDERATION OF DEPARTMENT'S EXHIBITS 1, 2, 3, and 7

In her January 23, 2026 response to the Department's Motion, Respondent objects to Exhibits 1, 2, 3, and 7 thereto, asking that the exhibits be stricken and disregarded by the Court. Respondent argues that the Department neither produced nor otherwise identified the documents

comprising these exhibits in discovery or its prehearing statement, nor did it identify Mark Keel (whose affidavit comprises Exhibit 1) or Ricky Hill (whose affidavit comprises Exhibit 2) as potential witnesses for the Department. Respondent argues that the Department failed to comply with SCALC Rule 21(A) and Rule 26(e), SCRCP, and did not seek to expand, reopen, or supplement discovery to identify these witnesses and documents prior to including the exhibits in its Motion. Respondent also argues the exhibits are irrelevant to the sole issue before the Court: the interpretation of Section 38-53-170(e) of the South Carolina Code. Specifically, Respondent contends the affidavits presented as Exhibits 1 and 2 and the compilation of news articles comprising Exhibit 3 seek to establish legislative intent, which cannot be properly ascertained through these sources, and further argues that the affiants can neither offer legal opinions nor testify to the state of mind of members of the Legislature when enacting the statutory provision at issue.

Also on January 23, 2026, the Department emailed the Court to provide a courtesy copy of its response to Respondent's Motion and to seek an opportunity to address Respondent's argument regarding the Court's consideration of the exhibits. The Court gave the Department until January 30, 2026 to provide a limited reply addressing the issue. On January 30, 2026, the Department filed a limited reply. The Department argues the exhibits were not submitted to prove Respondent failed to charge and collect the greater of $100 or 10% of the face of the bond amount (as none of these facts are in dispute) but only to support the Department's interpretation of Section 38-53-170(e). The Department also argues that Exhibits 1 and 2 to its Motion (i.e., the affidavits) were not obtained until January 8 and 9, 2026, respectively, while the news articles comprising Exhibit 3 were not reviewed until January 7, 2026 and were not compiled into an exhibit until January 9, 2026. Thus, these materials were provided to Respondent, by way of the Department's Motion, within 36 hours of being obtained, constituting prompt transmittal in compliance with Rule 26, SCRCP, and it would have been futile to resend the same documents via updated discovery responses. The Department further argues that the news articles in Exhibit 3 were public information available to Respondent, as was DOI Order No. 2024-07, the transmittal of which to licensees is memorialized in Exhibit 7 of the Department's Motion.[1] The Department further

[1] Order No. 2024-07 is included as Exhibit 6 to the Department's Motion and is not among the exhibits Respondent objects to. Exhibit 7 includes documentation of the transmittal of Order No. 2024-07 to licensees, including Respondent by mail and email. However, as discussed *infra*, Exhibit 7 also includes documentation related to the transmittal of an earlier, unrelated Department order to licensees.

argues that the affidavits in its Exhibits 1 and 2 meet the criteria of Rule 701 of the South Carolina Rules of Evidence (SCRE) as testimony of lay witnesses, and that they were offered "in furtherance of bringing swift resolution to this matter as is the goal of summary judgment."

After considering the arguments on this issue, the Court will not, in rendering its opinion, give any consideration to Exhibits 1, 2, and 3 of the Department's Motion, nor to the portions of Exhibit 7 that are unrelated to this matter.

With respect to the affidavits attached to the Department's Motion as Exhibits 1 and 2, the opinions or inferences of lay witnesses may be admissible, pursuant to Rule 701, SCRE, where they are "(a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." However, "[t]o be acceptable at summary judgment stage, the evidence presented in the affidavit must be evidence that would be admissible if presented at trial through the testimony of the affiant as a sworn witness." *Scosche Indus., Inc. v. Visor Gear, Inc*., 121 F.3d 675, 682 (Fed. Cir. 1997) (quoting 11 James Wm. Moore, Moore's Federal Practice § 56.14[1][d], at 56–162 (3d ed.1997); s*ee also* note to Rule 701, SCRE (acknowledging that with the exception of subsection (c) and "minor grammatical changes, this rule is identical to the federal rule.").

Here, the Court concludes that the content of the affidavits would not be admissible through the live witness testimony of the affiants if the matter presently before the Court were a trial (as opposed to cross-motions). First, the affiants were not included in the Department's witness list, so their knowledge and opinions were not subject to discovery. Although the Department's prompt transmittal of the affidavits would mitigate the element of surprise if this contested case were scheduled for trial weeks or months after the disclosure, here the parties agreed to seek resolution of this matter—an issue of law—via cross-motions for summary judgment to be filed by January 9, 2026. Thus, the Department's disclosure of the witnesses and the affidavits by way of filing and serving its January 9, 2026 Motion is roughly analogous to a previously undisclosed witness being called to testify at trial. Also, Exhibit 1 contains inadmissible hearsay by quoting other individuals, and otherwise sets out a legal interpretation of the statutory language at issue—matters that would be inadmissible as testimony from Chief Keel even if he testified at trial. *See* Rule 802, SCRE (hearsay is generally inadmissible); *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (expert testimony on issues of law is generally inadmissible). Similarly, Exhibit 2 contains

inadmissible hearsay, such as alleged concerns from other bail bondsmen, seeks to establish legislative intent for the enactment of the statutory language at issue,[2] and sets forth the affiant's view of consistency between the Department's position in this case and the relevant statutory language. As the Department itself noted in its response to Respondent's Motion:

> [T]he best evidence of legislative intent is the language of the statute itself... Anecdotal reports and testimony about a legislator's or interested parties' intent is not competent evidence of the intent of the legislative body enacting the measure…. *Creswick v. University of South Carolina,* 434 S.C. 77, 83, 862 S.E.2d 706, 709 (2021); *see also Bowaters Carolina Corp. v. Smith,* 257 S.C. 563, 572, 186 S.E.2d 761, 764 (1972) (holding the testimony of members of the legislative delegation who authored the statute as to its meaning was inadmissible).

(Pet.'s Response, p. 13) (citation omitted and other citations in original).[3] Thus, the Court finds that Exhibits 1 and 2 are insufficient as evidence of legislative intent. Moreover, even if the Court concluded the affidavits were admissible (at least in part), the Court would find the affidavits are more prejudicial than probative in determining the legal issue presently before the Court.

Similarly, with respect to Exhibit 3, the news articles compiled therein constitute hearsay which is neither admissible nor probative of legislative intent, and more prejudicial than probative in determining the meaning of Section 38-53-170(e).

Finally, as to Exhibit 7, the Court will consider the transmittal memorandum emailed and mailed from DOI Director Wise to Respondent and other licensees on December 11, 2024 because these transmittal records relate to the bonds and statutory language at issue in this contested case, and Respondent does not dispute that she had notice of the Department's Order No. 2024-07. However, the Court will not consider the transmittal memorandum and email sent to Respondent from Director Wise on October 20, 2022, which involved compliance issues unrelated to the statutory provision at issue in this case,[4] was not cited by the Department's Motion, and does not implicate any violation on the part of Respondent. Because the October 20, 2022 materials are not of consequence to the determination of this matter, these materials are not relevant and are therefore inadmissible. *See* Rules 401, 402, SCRE.

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[2] Exhibit 2 sets forth anecdotal testimony about "reports" of inappropriate monitoring and "concerns" of members of the General Assembly prompting the amendment of the statute.

[3] Exhibit 2 also appears to characterize the "administrative history" behind the Department's issuance of Order 2024-07, beyond what is set forth in the order itself.

[4] Indeed, the October 20, 2022 transmittal memorandum was issued before the statutory language at issue was even enacted.

For the foregoing reasons, the Court, in rendering its opinion in this matter, will not consider Petitioner's Exhibits 1, 2, 3, or the portion of Exhibit 7 relating to the Department's October 20, 2022 transmittal memorandum.

## FACTS/PROCEDURAL HISTORY

The facts in this case are not in dispute. Respondent is currently licensed as a producer and surety bondsman in South Carolina, specifically with Allegheny Casualty Company, Bankers Insurance, and Palmetto Surety Corporation. After receiving a complaint on or about June 2, 2025 that Respondent had failed to collect the full 10% minimum fee when a bond was posted in court, the Department investigated and concluded that on June 1, 2025, Respondent had been the surety bondsman who executed a $35,000 bond for Defendant Buff, charging a premium of $3,500 but only collecting $500 prior to the bond's execution, according to the payment agreement and payment receipts. Respondent allowed the balance of the 10% premium to be paid via a payment agreement.

On June 5, 2025, the Department issued Respondent a Notice of Investigation, in response to which Respondent, through counsel, contended that the law allowed her to collect less than 10% of the premium when the bond was posted because she had created a payment plan to receive the remainder of that premium. In support of this position, Respondent included in her response a copy of a South Carolina Attorney General Opinion dated June 17, 2024, which had adopted the same interpretation of Section 38-53-170(e).[5] Respondent also provided to the Department copies of the payment agreements and receipts for ten surety bond transactions (for bonds posted between May 2, 2025 and June 1, 2025) in which she charged a premium of 10% but collected substantially less than the 10% premium before executing the bond, entering payment agreements with the principals instead. This is illustrated in the following chart:

| **Defendant:** | **Date Posted:** | **Bond Amount:** | **Premium Charged:** | **Premium Collected:** | **Payment Agreement:** |
|---|---|---|---|---|---|
| Defendant Myers | 5/29/2025 | $25,000.00 | $2,500.00 | $480.00 | Yes |
| Defendant Byrd | 5/28/2025 | $2,500.00 | $250.00 | $150.00 | Yes |
| Defendant Keldsen | 5/27/2025<br>5/27/2025 | $2,100.00<br>$5,000.00 | $710.00 | $200.00 | Yes |

[5] *See* Op. S.C. Att'y Gen., 2024 WL 3186557 (June 17, 2024).

| | | | | | |
|---|---|---|---|---|---|
| Defendant Williams | 5/27/2025<br>5/27/2025 | $2,840.00<br>$10,000.00 | $1,284.00[6] | $400.00 | Yes |
| Defendant Womack | 5/28/2025 | $25,000.00 | $2,500.00 | $360.00 | Yes |
| Defendant Anderson | 5/02/2025 | $47,000.00 | $4,700.00 | $600.00 | Yes |
| Defendant Turnipseed | 5/02/2025 | $5,000.00 | $500.00 | $200.00 | Yes |
| Defendant Myers | 5/06/2025 | $22,500.00 | $2,500.00 | $350.00 | Yes |
| Defendant Johnson | 5/06/2025 | $15,000.00 | $1,500.00 | $300.00 | Yes |
| Defendant Buff | 6/01/2025 | $35,000.00 | $3,500.00 | $500.00 | Yes |

Prior to these bond transactions—on December 11, 2024—the Department issued SCDOI Order No. 2024-07 (Order 2024-07), which was distributed to Respondent and all licensed surety bondsmen, professional bondsmen, and runners authorized to conduct bail bond business in South Carolina.[7] This order, which refuted the position held by the South Carolina Attorney General (SCAG) as to the interpretation of Section 38-53-170(e), informed licensees that, among other things, South Carolina law requires the payment of a minimum fee in the amount of $100 or 10% of the bond's face amount, whichever is greater, and that this premium is to be charged and collected prior to execution of the bond as a minimum fee.[8] On December 11, 2024, the Department emailed a copy of this order to Respondent to the email address Respondent had provided to the Department, and the Department mailed a hard copy of the same order to

[6] This chart comes from the Department's Administrative Order issued August 18, 2025, but the premium charged for Defendant Williams has been corrected from the amount stated in the original Administrative Order. The bond amount figure listed in the Department's chart for Defendant Williams totals $12,840.00 with a premium charged amount of "$1,280." However, Respondent notes in her Motion that the premium charged for Defendant Williams should have read "$1,284.00," based on receipts and payment agreements she had provided to the Department. In its response to Respondent's Motion, the Department agreed its chart contained a scrivener's error and that the premium charged to Defendant Williams was "1,284.00," which was 10% of the total bond amount. The Department states it is willing to issue an amended order accordingly but that this error was immaterial, as Respondent only collected $400 of the premium prior to the execution of the bond in violation of Section 38-53-170(e).

[7] A "runner" is defined under Section 38-53-10(10) (2015), in pertinent part, as follows: "a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, assisting in the apprehension and surrender of the defendant to the court, keeping the defendant under necessary surveillance, and executing bonds on behalf of the licensed bondsman when the power of attorney has been recorded. 'Runner' does not include an attorney or a law enforcement officer assisting a bondsman."

[8] In a subsequent SCAG Opinion, which responded to a letter from general counsel for DOI requesting modification or withdrawal of the June 17, 2024 SCAG opinion, the SCAG declined to alter its interpretation of Section § 38-53-170(e) but did state the following: "[W]e defer to the interpretation of the Department of Insurance as the agency with regulatory authority … Further, we advise any bail bondsmen and runners to follow the [DOI's] instructions and orders regarding the issue pending any judicial or legislative clarification." *See* Op. S.C. Att'y Gen., 2025 WL 2369635 (July 31, 2025). This opinion was issued after the bonds at issue in this case had been executed.

Respondent via certified mail to Respondent's physical address of record. Neither communication was returned to the Department as undeliverable, and indeed the Department received a return receipt from the United States Postal Service reflecting that Respondent had signed for receipt of the correspondence.

On August 18, 2025, the Department issued an "Administrative Order Imposing Fine and Notice of Opportunity for Hearing" (Administrative Order) finding that Respondent violated Section 38-53-170(e) in the above ten instances by failing to collect the full amount of the 10% premium prior to bond execution and imposing a $25,000 fine on Respondent accordingly. The Department also warned in its order that "[i]f the total fine amount is not timely paid as required by this Order, Respondent's bail bondsman and producer licenses will be revoked without any further disciplinary proceedings by this agency."

On September 2, 2025, Respondent filed a request for a contested case hearing with this Court, and this matter was assigned to the undersigned Judge on September 10, 2025. On January 9, 2026, the Department and Respondent filed cross-motions for summary judgment. On January 23, 2026, the parties filed responses to each other's motions. On January 30, 2026, the Department filed a limited reply addressing Respondent's objection to certain exhibits to is Motion, discussed *supra*.

## STANDARD OF REVIEW

This Court has jurisdiction to hear this matter pursuant to S.C. Code Ann. §§ 1-23-600(A) (Supp. 2025), 38-53-150 (2015), and 38-53-160 (2015).

Rule 68 of the Rules of Procedure for the ALC provides that "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules." Pursuant to Rule 56(c), SCRCP, a trial court may grant a motion for summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). Where the only question before a court is one of statutory interpretation, summary judgment is appropriate because it is an issue of law. *See Hock RH, LLC*

*v. S.C. Dep't of Revenue*, 423 S.C. 208, 212, 813 S.E.2d 540, 542 (Ct. App. 2018) ("A question of statutory interpretation is one of law for the court to decide.") (quoting *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870-71 (2012)).

**DISCUSSION**

Both parties in this case seek summary judgment based on differing interpretations of Section 38-53-170(e). Therefore, the Court will begin by looking at this statute. Section 38-53-170 of the South Carolina Code (2015 & Supp. 2025) provides, in pertinent part, that no bail bondsman or runner may:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. Conditions of the bond which expressly or implicitly require payment of monies in excess of the premium, as a cost of satisfying the condition of the bond, shall not be considered part of the bondsman's premium, and are not affected by this code provision. The bondsman may collect these fees from the defendant and is not limited by any language requirements of this code provision.
>
> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed…

The Department's authority to administratively sanction licensed bail bondsmen for misconduct is discussed in Section 38-43-130 of the South Carolina Code (2015) and Section 38-53-150 of the South Carolina Code (2015). Section 38-43-130 provides, in pertinent part:

> (A) The director or his designee may place on probation, revoke, or suspend a producer's license after ten days' notice … when it appears that a producer has … violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State.
>
> . . .
>
> (C) The words "deceived or dealt unjustly with the citizens of this State" include, but are not limited to, action or inaction by the producer as follows:
>
> . . .
>
> (2) violating insurance laws, or violating any regulation, subpoena, or order of the director or of another state's director or his designee[.]

Section 38-53-150 provides, in pertinent part:

> (A) The director or his designee may deny, suspend, revoke, or refuse to renew any license issued under this chapter for any of the following causes:
>
> . . .
>
> (2) violation of any laws of this State relating to bail in the course of dealings under the license issued to a bondsman or runner by the director or his designee;
>
> . . .
>
> (7) failure to comply with or violation of the provisions of this chapter or of any order of the director or his designee or regulation of the department[.]
>
> . . .
>
> (B) The director or his designee, in lieu of revoking or suspending a license in accordance with the provisions of this chapter, in any one proceeding, by order, may require the licensee to pay to the director or his designee to be deposited in the general fund of the State a monetary penalty as provided in Section 38-2-10[(A)](2) for each offense....

Section 38-2-10 of the South Carolina Code (Supp. 2025) discusses the Department's imposition of administrative penalties against licensees, providing in pertinent part:

> (A) Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance:
>
> . . .
>
> (2) If the violator is a person, other than an insurer, pharmacy benefits manager, or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall fine the person in an amount not to exceed two thousand five hundred dollars, suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall fine the person in an amount not to exceed five thousand dollars, suspend or revoke the license of the person, or both.

Because the Department is seeking to impose an administrative penalty against a licensee in this matter, the Department has the burden of proof. SCALC Rule 29(B) (stating that the agency has the burden of proof in "the assessment of civil penalties, the imposition of sanctions, or the enforcement of administrative orders"). Accordingly, in order for this Court to impose a penalty, the Department must prove each element of the alleged Section 38-53-170(e) violations by a preponderance of the evidence. However, based on the facts in this case are not in dispute, this case turns on the interpretation of Section 38-53-170(e).

In this case, the parties disagree as to the interpretation of Section 38-53-170(e). The Department argues that a bondsman must charge and collect a minimum premium of $100 or 10% of a bond, whichever is greater, before the execution of the bond and may thereafter enter into a

payment agreement to collect any remaining amount of the bond premium, i.e. any amount of the bond premium that was not collected before the execution of the bond. Respondent, on the other hand, interprets the second paragraph of subsection (e), beginning with the word "However," as providing an alternative under which bondsmen may—instead of collecting 10% of the bond's face amount prior to its execution—enter into a payment agreement "subject to enumerated statutory requirements."[9]

"[A] court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't. Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) (citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 85, 533 S.E.2d at 581; *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature."). "If a statute is ambiguous, the court must construe its terms in accordance with the rules of statutory construction." *McInnis v. McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002) (citing *Lester v. S.C. Workers' Comp. Comm'n*, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). Thus, the Court first examines whether Section 38-53-170(e) is ambiguous.

In determining whether an undefined statutory term creates an ambiguity, courts must consider the terms' meanings in conjunction with the entire statute. *See Branch v. City of Myrtle Beach*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) ("When faced with an undefined statutory term … Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.") (*citing Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997)); *Ray Bell Const. Co. v. Sch. Dist. of Greenville Cnty.*, 331 S.C. 19, 25–26, 501 S.E.2d 725, 729 (1998) (court of appeals erred in determining statute unambiguous by focusing solely on language of one subsection without considering the intended purpose of statute).

[9] Respondent's interpretation is shared by the SCAG's office, which rendered an opinion in response to a question submitted by a municipal judge following that judge's disagreement with the Greenwood Clerk of Court over the interpretation of Section 38-53-170(e), the latter having interpreted Section 38-53-170 as the Department has. Thus, reasonable and intelligent minds have interpreted this statutory provision differently.

Here, the second paragraph of Section 38-53-170(e) begins with the word, "However," a word whose varied usage can signify an exception, alternative or limitation to preceding language, as discussed in more detail *infra*. Based on the language of the two paragraphs of the subsection, the Court concludes that the use of "However" in the second paragraph renders the meaning of the subsection as a whole ambiguous; therefore, statutory construction is required.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law." *S.C. Dep't of Consumer Affs. v. Cash Ctr. of S.C., LLC*, 435 S.C. 192, 202, 865 S.E.2d 789, 794 (Ct. App. 2021) (quoting *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 290 (Ct. App. 2007). A statute should therefore be read "as a whole [and must] must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.* (quoting *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013).

It is also well-recognized that courts "generally give[] deference to an administrative agency's interpretation of an applicable statute or its own regulation." *Kiawah Dev. Partners, II v. S. C. Dep't of Health & Env't Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) ( *Kiawah)* (quoting *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)) (internal quotation marks omitted); *see also State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010)) ("It is true that agencies charged with enforcing statutes usually receive deference from the courts as to their interpretation of those laws.") (citation omitted). Our state Supreme Court has found that interpreting and applying statutes and regulations administered by an agency is a two-step process. *Kiawah*, 411 S.C. at 32, 766 S.E.2d at 717. "First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Id.* (citation omitted). In the event that "the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation assuming the interpretation is worthy of deference." *Id.* at 33, 766 S.E.2d at 717 (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843,

(1984)). An agency's interpretation of a silent or ambiguous statute that it is charged with administering is worthy of deference unless it is "arbitrary, capricious, or manifestly contrary to the statute," or unless there is a compelling reason to differ. *Id.* at 34-35, 766 S.E.2d at 718 (citing *Chevron*, 467 U.S. at 844); *but see S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) (finding the agency's reviewing body, "not [agency] staff, is entitled to deference from the courts.").

In this case, the Department interprets Section 38-53-170(e) as *requiring* bondsmen to charge and collect a minimum fee of $100 or 10% of a bond before the execution of the bond, and—if the bond premium exceeds the foregoing mandatorily collected amount—*permitting* bondsmen to collect that remaining, uncollected amount through a payment agreement, the terms of which must include a downpayment of $100 and full payment of the remaining bond premium within eighteen (18) months. The Court agrees.

Prior to its amendment in 2023, Section 38-53-170(e) provided that no bondsman or runner may:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars. However, the bondsman is permitted to accept collateral security or other indemnity from the principal which must be returned upon final termination of liability on the bond. The bondsman shall identify who is paying the premium and shall represent that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the principal's disappearance than appearance for trial. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond[.]

*See* S.C. Code Ann. § 38-53-170(e) (2015).

While maintaining a cap on bond premiums at 15% of the bond's face amount, the General Assembly amended subsection (e) by raising the minimum bond premium fee and also requiring it to be charged and collected before the execution of the bond, providing that no bondsman or runner may:

> (e) accept anything of value from a principal except the premium, … with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond...

S.C. Code Ann. § 38-53-170(e) (Supp. 2025). Thus, it appears that the General Assembly intended to impose a higher minimum-premium standard charged to those seeking bond and to ensure that

that amount is actually collected by the bondsman before the bond is executed. But this language was then followed up with additional language that the General Assembly added to subsection (e):

> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed…

*Id.*

At first blush, this second paragraph, with its use of the term "However" at the beginning, could seem to suggest, as Respondent argues, that the second paragraph presents an alternative to the requirements in the first paragraph. But in reading the statutory provision as a whole, taking into account what purpose the General Assembly intended to serve with this provision, the Court does not find this to be so.

Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); *see also Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 248, 647 S.E.2d 691, 697 (Ct. App. 2007) ("Dictionaries can be helpful tools during the initial stages of legal research for the purpose of defining statutory terms.") (citation omitted). With respect to the General Assembly's use of the word "However" in the second paragraph of subsection (e), the Court turns to the common understanding of the word "however" as the best indication of legislative intent. *State v. Adams*, 430 S.C. 420, 433, 845 S.E.2d 217, 224 (Ct. App. 2020) ("In discussing legislative intent, we begin, as always, with the words of the statute."). The word "however" can have several meanings, depending on the context in which it is used. Webster's Dictionary defines "however," when used as an adverb, as follows: "**1 a:** in whatever manner or way[;] **b:** to whatever degree or extent[;] **2** in spite of that: on the other hand[;] **3** how in the world."[10]

The Court concludes that the term "However" as used at the beginning of the second paragraph of Section 38-53-170(e) means "in spite of that," which is how Respondent also defines the use of the word in this case, according to her response to the Department's Motion. But this is

[10] Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/however (last accessed February 10, 2026).

where the agreement ends. In this case, the Court interprets the use of "However" at the beginning of the second paragraph to mean that in spite of any statutory language in the first paragraph suggesting otherwise, a bondsman who charges a premium exceeding the minimum fee that must be collected before bond execution may enter a payment agreement with the principal or an indemnitor for collection of the remaining amount. This usage makes clear that—despite language in the preceding paragraph that could be read to suggest otherwise[11]—collection of the *entire* bond premium before bond execution is not required where the entire premium exceeds the minimum. This usage also makes clear that, despite the preceding paragraph's prohibition on a bondsman accepting "anything of value" from the bond's principal after execution of the bond, the collection of additional premium (in excess of the statutory minimum) is permissible—if such collection occurs pursuant to a payment agreement meeting the requirements of the statute.[12] This interpretation harmonizes the two paragraphs of subsection (e) and reflects the General Assembly's purpose in stiffening the requirements to post bond—requirements only applicable where the bond court has determined the defendant's reappearance for trial is not reasonably assured and/or that the defendant's release may pose an unreasonable danger to the community or an individual.[13] By making the burden of posting bond commensurate with the bond amount determined by the bond court—whose determination as to the amount of bond must include consideration of factors such as a defendant's criminal record, other pending charges, incident reports of underlying offense, gang affiliation and alienage, et al.[14]—subsection (e) reflects how serious the General Assembly views crimes alleged to have been committed in this State, the criminal proceedings occasioned

[11] The first paragraph could be read to say that a bondsman may not "accept anything of value from a principal except the premium … that must be charged and collected by the bondsman before the execution of the bond."

[12] The use of "However" in this current version of subsection (e) is similar to the use of "However" in the prior version of the subsection, which read, in pertinent part: "No bondsman or runner may: … (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars. However, the bondsman is permitted to accept collateral security or other indemnity from the principal which must be returned upon final termination of liability on the bond…." The use of "However" under that prior version of the subsection did not provide for an alternative to requiring the payment of the minimum premium amount but was simply providing that in spite of the fact that a minimum premium had to be paid and could not exceed 15%, a bondsman was allowed, in addition to that requirement, to also accept collateral security or indemnity to secure the premium.

[13] *See* S.C. Code § 17-15-10(A) (Supp. 2025). Accused criminal defendants facing non-capital charges may be released on their own recognizance if the bond court does not determine they represent a flight risk or danger to others. *Id.*

[14] *See* S.C. Code § 17-15-30(B) (Supp. 2025) (listing factors a court must consider in determining conditions of release where criminal defendant's appearance not reasonably assured and/or release would constitute unreasonable danger to community or individuals)

thereby, and public safety. Thus, the General Assembly sought to reform the bail bond industry to ensure that the statutory regime in place—to determine whether bond is necessary to secure a criminal defendant's release, and, if so, to establish the amount of bond—cannot be undermined by business practices of bail bondsmen, including posting bond based on collecting a fee that is incommensurate with the bond court's determination. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 633, 922 S.E.2d 231, 235 (Ct. App. 2025) ("In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose…[S]tatutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction.") (citations and quotation marks omitted).

While the Court agrees with the SCAG and Respondent that the South Carolina Constitution provides a conditional right to bail (S.C. Const. Art. I § 15 (2009)), and that the General Assembly sought to strike a balance between "its desire to increase and standardize premiums" and "defendants' ability to pay those premiums and ensuring compliance with defendants' constitutional rights,"[15] one scale cannot negate the other scale and maintain a just balance. In this case, to interpret the second paragraph of Section 38-53-170(e) as providing for an alternative to the first paragraph's requirement for pre-execution collection of the minimum bond fee would eviscerate and render ineffective the first paragraph's very specific requirement regarding the minimum premium to be charged **and collected prior to the execution of the bond**. Such an interpretation would also beg the question as to why the General Assembly would have included the minimum, pre-execution collection requirements in the first paragraph at all instead of just requiring a minimum downpayment of $100 with the remainder of the premium to be paid and collected over eighteen months, i.e. through a payment plan. Had the General Assembly intended to provide an alternative for bailees who could not afford to pay the 10% minimum bond fee up front, it would not have included the 10% figure and the "whichever is greater" language in the first paragraph of subsection (e) and required this premium to be paid in full up front **and collected prior to the execution of the bond**, or, at the very least, would have provided a standard for determining whether a defendant qualified for the "financial assistance" alternative that

[15] As the Department correctly notes in its Reply in Opposition to Respondent's Motion for Summary Judgment, in making the above statement, the SCAG Opinion did not discuss a criminal defendant's constitutional right against excessive bail (or any other constitutional right, for that matter).

Respondent argues is offered in the second paragraph.[16] Though the Court agrees that the General Assembly did intend to provide some flexibility to not overburden the right to bail by maintaining the premium cap of 15% and allowing a third of that maximum amount to be collected over time via payment agreement, such flexibility was not intended to negate the clear added requirement that the greater of $100 or 10% of the bond's face amount must be charged and collected before the execution of a bond.[17]

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[16] Respondent's argument would be more persuasive had the General Assembly not included the phrase "must be … collected by the bondsman before the execution of the bond." Without that phrase, the provisions in subsection (e) could reasonably be interpreted as imposing a stiffer requirement for bond by raising the minimum premium to be paid while allowing for a payment agreement as an alternative means of paying for that higher minimum premium rather than paying it all up front. However, the Court must read the subsection as a whole and cannot ignore the requirement in the first provision that requires the bondsman to not only charge the bond premium minimum (which was done in this case) but also to **collect it before the execution of the bond**. In light of that phrase in the first provision, taken together with the second provision, Respondent's interpretation would create a contradiction that would render the prior-collection requirement in the first provision meaningless and ineffectual; the exception would swallow up the rule.

In her Response to DOI's Motion for Summary Judgment, Respondent further argues that if Section 38-53-170(e) was interpreted to require a defendant to pay the full 10% premium up front, this "would not serve to keep violent or dangerous criminals from achieving bail" but "would serve only to keep incarcerated those criminal defendants who cannot afford to pay 10% of their bond immediately[,]" and that "[t]he result would be our jails filled to the brim not with the most violent criminals, but with the poorest." First, it is for the General Assembly, not this Court, to set policy, and this Court must assume that the General Assembly was aware of the possible ramifications of its policies.

Second, while the Court agrees with Respondent that "the minimum payment provisions of § 38-53-170(e) do not depend upon the nature of the crime that was committed," that subsection does not operate in a vacuum. The nature of the criminal charge(s) affects the bond court's determination as to whether a surety bond will be required for a defendant's pre-trial release because it impacts the likelihood of a defendant to reappear and/or whether his release threatens the community. *See* S.C. Code Ann. § 17-15-10(A). The nature of the criminal charge also impacts the amount of any such surety bond, e.g., the bond court must consider incident reports related to the charged offense. *See id.* § 17-15-30(B)(3). Thus, Respondent's opinion that mandatory collection of the minimum bond premium before bond execution would have no effect on violent criminals achieving bail appears to be based on the language of Section 38-53-170(e) alone, without considering the broader statutory scheme surrounding bail and pre-trial release. Moreover, Respondent's suggestion that the Department's interpretation of Section 38-53-170(e) would affect only the poorest defendants also fails to account for other statutes surrounding bail. Specifically, the bond court is permitted to consider a criminal defendant's financial resources when setting the bond amount. S.C. Code Ann. § 17-15-30(A)(3) (Supp. 2025). If the judge setting bond is aware that the law requires the collection of 10% of the bond's face amount from the defendant up front, the judge can take the defendant's financial status into account when determining the appropriate amount of bond to set. Indeed, Section 38-53-170(e) itself envisions that some bonds would be set at low amounts when it included the phrase "with a minimum fee of one hundred dollars or 10% of the bond, whichever is greater," language that contemplates surety bonds set at amounts below $1,000. Therefore, the argument that our jails will be "filled to the brim … with the poorest [defendants]" is speculation and not a foregone conclusion.

[17] In the June 17, 2024 SCAG opinion discussed above, the SCAG resorted to legislative history, specifically 2023 Senate Journal, p. 2047 (April 11, 2023), which included a proposed amendment to Section 38-53-170(e) which, if enacted, would mirror the existing subsection, except that the payment agreement would be required to have a down-payment of $100 *or 5% of the bond's face amount*, whichever is greater. The SCAG opinion reasons that the proffered amendment would have treated the payment agreement as an alternative to pre-execution collection of the bond premium because otherwise, the payment agreement would be fully performed as soon as the down payment was made, because the amount collected before bond execution (10%) and the downpayment pursuant to the payment agreement (5%) would total the 15% bond premium cap, leaving nothing left to be repaid through a payment plan.

As the Department observed in its Order No. 2024-07 and argues in its Motion, had the General Assembly sought to create an exception to the minimum pre-execution collection requirement set forth in the first paragraph of subsection (e), it would have done so using exception-creating language, as it did in multiple other places throughout the statute; but it did not.[18] Rather, it included the language in the second paragraph to provide bondsmen who charge a premium amount above that minimum (though not exceeding 15% of the bond's face amount) and their bailees the opportunity to finance any premium amounts exceeding the minimum. It appears that the General Assembly wished to increase the defendant's minimum fee amount for posting a bail bond and ensure that this amount was charged and collected before executing the

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While this is a logical construction of the proffered amendment, it is misapplied because this proposed legislation was **not** adopted in the final version of the statute—which may have been because it would have produced the absurd result that the SCAG highlights in its argument. In other words, the proposed amendment to the language in the second paragraph cited by the SCAG may have been rejected because the General Assembly shared the SCAG's concern that including the 5% downpayment language would have left nothing to finance through a payment agreement. However, this would only have been a concern if the General Assembly intended for the mandatory minimum premium fee to not only be charged but also collected prior to the execution of the bond and thus prior to the implementation of a payment plan, which would be consistent with this Court's interpretation of subsection (e).

Similarly, legislative history subsequent to the issuance of the SCAG's and the Department's conflicting opinions appears to support the Department's interpretation. In S.C. House Bill No. 4512, which was introduced, given a first reading, and referred to the House Judiciary Committee on May 6, 2025, would have maintained the 15% bond premium cap and still have required the charge and collection of a minimum fee of $100 or 10% of the face value of the bond, whichever is greater, prior to the execution of the bond—though it would move these provisions to a newly created Section 38-53-175—but it would have added to the newly created Section 38-53-175 the following subsection: "**Payment agreements are permitted for amounts in excess of ten percent of the bond but are otherwise prohibited**." (Emphasis added). (2025 House Journal, p. 227 (May 6, 2025)). Also, the disputed language at the beginning of the second paragraph of the current Section 38-53-170(e), beginning with "However" and ending with "before or at the motion hearing for the principal to be released on bond[,]" would be eliminated. The reason for S.C. House Bill No. 4512, as it relates to the current statutory language, is debatable. It could reasonably be argued that this proposed legislation constitutes a clarifying amendment intended to resolve ambiguity in the present statute by more carefully spelling out the Legislature's intent consistent with the Department's position. By the same token, it could be argued that the provisions in the proposed legislation carry a different meaning than the existing statute and seek to change the meaning thereof, which would bolster Respondent's argument with respect to the meaning of the existing statute. However, like the proposed Senate amendment offered prior to the enactment of the existing Section 38-53-170(e), this recently proposed House amendment has not been enacted. *See Tallevast v. Kaminski*, 146 S.C. 225, 236, 143 S.E. 796, 799–800 (1928) ("The law as it is passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself, and the rule that the intention of the Legislature is the primary consideration in the construction of a statute does not permit the courts to consider statements made by the author of a bill or by those interested in its passage, or by members of the Legislature adopting the bill, showing the meaning or effect of the language used in the bill as understood by the person or persons making such statements." (quoting 25 R. C. L. 1037, 1038)).

Based on the foregoing, the Court does not give weight to the legislative history discussed in the SCAG's June 17, 2024 opinion.

[18] In footnote 12 of its Order No. 2024-07, the Department provides examples of exceptions created throughout chapter 53 of Title 38 including in Sections 38-53-80, -160, -170, and -190. In each of these examples, the General Assembly uses the term "except" to provide for exceptions.

bond in order to make the burden of obtaining a bail bond commensurate with the amount of bond determined by the bond court based on that court's mandatory consideration of statutorily prescribed factors, while at the same time recognizing that imposing these tougher restrictions on bond may require alleviation should a bondsman decide, especially for a large bond amount, to charge more than 10% of the bond value, up to 15%, and thus allowed for a payment plan option for any remaining amount charged above 10% of the bond value.

Respondent argues that it would be absurd to interpret the statute as requiring an additional minimum up-front downpayment of at least $100 to be added as part of the payment plan for the remaining amount after already paying the higher of $100 or 10% of the bond amount, with both the minimum premium *and* the minimum downpayment due prior to execution of the bond. As a preliminary matter, Respondent's argument ignores that Section 38-53-170(e) contemplates that the payment agreement may be entered with (and the downpayment paid by) an indemnitor other than the defendant, a possibility that is reflected by references to an "indemnitor" later in the second paragraph.[19] Relatedly, and more importantly, the two paragraphs represent two different obligations relating to the bond. The first paragraph governs the terms of the execution of the bond, specifically the amount to be charged and collected as a mandatory prerequisite to the execution of the bond, whereas the second paragraph provides for the terms of a contractual agreement (i.e., a payment plan) between the bail bondsman and the principal and/indemnitor regarding the payment of any remaining premium that the bail bondsman may charge (up to the amount allowed by law). Accordingly, it would not be absurd for the General Assembly to require a separate downpayment of at least $100 as valuable consideration for the payment plan, it being a separate contractual arrangement with potentially different parties and with its own distinct obligations. Moreover, it would not be absurd if the General Assembly wished to ensure that at least some of the remaining bond premium (above the minimum already charged and collected) was paid by requiring an immediate "downpayment"—the first payment required under the payment plan—especially given the inherent risk of default on such a payment plan by a defendant who would be out on bond.

[19] For example, the second paragraph in Section 38-53-170(e) provides in pertinent part that a payment agreement with a bondsman "shall require the principal on the bail bond **or any indemnitor** to make a minimum down payment of one hundred dollars…If the payment has not been made for two consecutive months, the bondsman must send a certified notice to the last known address of the principal **and indemnitor** demanding payment be made within ten das to bring the agreement current." (Emphasis added).

Respondent also considers it absurd that the General Assembly would provide a "comprehensive payment agreement structure … for only 5% of the face amount of the bond that the bondsman is not required to charge in the first place." First, this argument assumes that 5% of a bond's face amount is negligible, which is not true in all cases. Although, as a practical matter, the remaining (up to) 5% may be too negligible to collect via payment agreement where a bond is set at a low amount, it may be that the General Assembly contemplated that the practical application of payment plans would be limited to those situations where very high bonds are set. Moreover, the General Assembly may have reasoned that regulation of such payment agreements is necessary in light of the bondsman/insurer's own decision to charge a premium above the statutory minimum, reflecting the bondsman or surety's independent determination of risk that the principal will violate the conditions of their release. This may be reasonably inferred from the limitation of a payment plan's duration to eighteen (18) months; a strict duty on the bondsman to send a certified notice (not just a mailed notice) to a defendant and any indemnitor when payment has not been made for two consecutive months; and surrender of the defendant to a detention facility and acceleration of the balance of the premium under the agreement, the full payment of which being required for rerelease on bond, should payment not be received during the notice period. Regardless, the Court does not find the statutorily mandated provisions of a payment agreement to be "comprehensive," nor is the Court surprised that the General Assembly would provide some level of detail to govern payment plans allowing collection of a portion of the bond premium after execution of the bond. After all, the collection of the premium itself is an exception to the general rule that bail bondsmen may not accept anything of value from the principal, a prohibition which serves the salutary purpose of preventing conflicts of interest and/or potential financial exploitation of criminal defendants.

Respondent further argues that interpreting Section 38-53-170(e) to require immediate payment of 10% of the bond to the bondsman would render the subsection "entirely superfluous" in light of S.C. Code Ann. § 17-15-15 (Supp. 2025), which already allows a defendant to, with a court's assent, "post that same amount with the clerk of court and then get it back at the end of the case rather than paying that amount as a premium to the bondsman." For this reason, Respondent questions "why anyone would use a surety bondsman in the first place." In making this argument, Respondent quotes the following from Section 17-15-15(A): "in lieu of requiring actual posting of bond . . . the court setting bond may permit the defendant to deposit in cash with the clerk of court

an amount not to exceed ten percent of the amount of the bond set, which amount, when the defendant fulfills the condition of the bond, must be returned to the defendant by the clerk ....” However, Respondent omitted a key phrase from the statute. Section 17-15-15(A) begins with the pertinent phrase “**Except as provided in subsection (D)**[.]” Subsection (D) states, in pertinent part that “[t]he provisions of this section do not apply if the defendant is charged with a violent offense, as defined in Section 16-1-60, or any felony offense involving a firearm while out on bond or other pretrial release….” This is a major exception encompassing a large number of criminal defendants who would likely not be given a low bond amount or released on their own recognizance without a surety. This is the reason why there exists a bail bondsman option and hence why Section 38-53-170(e) exists in addition to Section 17-15-15, and this is why such criminal defendants would resort to the option under Section 38-53-170(e), even having to pay 10% up front—because they would have no choice if they wish to post bond. The fact that the option to post a cash deposit with the clerk of a court is not available to defendants charged with violent offense under Section 16-1-60 or a felony involving a firearm while out on bond or other pretrial release would also be consistent with a reading of Section 38-53-170(e) that reflects an intent by the General Assembly to toughen the terms of posting bond through bail bondsmen in South Carolina by ensuring the burden of posting bond is consistent with the bond amount determined by the bond court to be appropriate.

For the foregoing reasons, the Court adopts the interpretation of section 38-53-170(e) set forth above and rejects Respondent’s interpretation thereof. In this case, Respondent failed to collect the full amount of the 10% premium charged on each of the ten bonds issued between May 2, 2024 and June 1, 2025 prior to their execution. Because Section 38-53-170(e) requires that a bondsman not only charge a minimum premium of $100 or 10% of the bond value, whichever is greater, but also collect the same prior to the execution of the bond, I conclude that Respondent violated Section 38-53-170(e) by collecting less than 10% of the bond value on all ten bonds at issue prior to their execution.

**Penalties Imposed for Violations of Section 38-53-170(e)**

In this case, the Court concludes that Respondent violated Section 38-53-170(e) with respect to the ten bonds at issue, for the reason discussed above, and that the Department has met its burden of proof. However, the Court also concludes that Respondent’s actions are not worthy of the maximum financial penalty allowed by Section 38-2-10(A)(2) and sought by the

Department. First, the version of Section 38-53-170(e) that was violated is fairly new, certainly ambiguous, and, to this Court's knowledge, the issue in this case has not been adjudicated and no declaratory judgment has been rendered relating to it. Second, as result of Section 38-53-170(e)'s ambiguity, reasonable and intelligent minds—including those of a municipal judge, the clerk of court in Greenwood, the SCAG's office, and the Department—have disagreed over its meaning. Even the Department sought the SCAG's withdrawal or modification of its June 17, 2024 opinion, thus acknowledging the influence it was having on bail bondsmen's application of Section 38-53-170(e) across the State. And while the SCAG, following the Department's request, did advise bail bondsmen (and runners) to "follow the [D]epartment's instructions and orders regarding the issue [in this case] pending any judicial or legislative clarification," this opinion was not issued until July 31, 2025, which was after Respondent's tenth and final violation on June 1, 2025. For these reasons, the Court does not believe that the maximum financial penalty of $2500 per violation, allowed under Section 38-2-10(A)(2), is warranted in this case.

Nevertheless, the Court believes that a financial penalty is still warranted because although Respondent asserts that she relied on the SCAG's June 17, 2024 opinion in not collecting the full amount of the charged bond premiums at issue, Respondent was subsequently issued a copy of Order 2024-07 from the Department on December 11, 2024, approximately six months prior to the date of the first of the ten violations at issue in this case (on May 2, 2025). While Order 2024-07 conflicted with the Attorney General's prior opinion, Respondent should have complied with the order from Department because it is the agency authorized to regulate this area, and she should have done so until obtaining a favorable declaratory judgment on the issue. Accordingly, the Court believes a $500 penalty for each of the ten violations is appropriate under the facts of this case.

## ORDER

**BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

Respondent shall **remit to the Department administrative fines in the amount of $5,000 within thirty (30) days of the date of this Order**.

Respondent is hereby notified that **failure to comply with the terms of this Order shall subject Respondent to contempt of court, including fine or imprisonment or both**.

**IT IS FURTHER ORDERED** that Petitioner South Carolina Department of Insurance may, but is not required to, file a copy of this final order as a judgment as provided in S.C. Code Ann. § 1-23-600(I) (Supp. 2025), provided that any such filing shall not relieve Respondent of the

obligation created by this final order to pay the administrative fines. Further, the South Carolina Department of Insurance shall have the option to collect said judgment, as provided by the law applicable to collection of judgments.

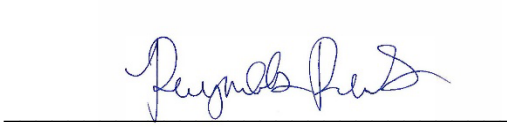
**AND IT IS SO ORDERED.**

_____
Samuel L. Johnson
Administrative Law Judge

April 1, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Reynolds C. Rawls, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Reynolds C. Rawls
Judicial Law Clerk

April 1, 2026
Columbia, South Carolina