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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Samuel L. Johnson, Administrative Law Judge

Appellate Case No. 2026-000947

South Carolina Department of Insurance, Respondent,

v.

Joyce Freeman, Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Whether S.C. Code Ann. § 38-53-170(e) requires a bail bondsman to collect a minimum of 10% of the face amount of the bond as a premium prior to execution of the bond in all cases, or rather alternatively permits a bail bondsman to enter into a payment agreement with the principal and collect the minimum 10% premium over a period of time not to exceed eighteen months provided that the principal makes a minimum $100 down payment and adheres to the other requirements of § 38-53-170(e).

2. Whether the ALC erred in failing to apply the rule of lenity, which requires that any ambiguity in a penal statute be resolved in favor of the alleged offender.

STATEMENT OF THE CASE

This case arises from an order of the South Carolina Department of Insurance (the "Department") imposing a $25,000 fine upon Joyce Freeman, a licensed South Carolina bail bondsman, for purported violations of S.C. Code Ann. § 38-53-170(e), which regulates the amount of money that a bail bondsman may charge as a premium for a bond and the manner in which it may be charged. More particularly, on August 18, 2025, the Department issued an administrative order finding that Ms. Freeman violated § 38-53-170(e) in ten separate instances between May and June 2025 because she failed to collect a minimum of 10% of the face amount of the bond as a premium prior to the execution of the bond. It is undisputed that in each of these transactions, Ms. Freeman entered into a payment agreement with the principal calling for the payment of 10% of the face amount of the bond as a premium over a period of time not exceeding eighteen months, and that she collected a minimum of $100 as a down payment in each of these transactions prior to the execution of the bond. **R. p. 5, line 14–p. 6, line 8** (ALC Feb. 13, 2026 Summary Judgment Order at 5–6).

Ms. Freeman timely filed a request for a contested case hearing before the Administrative Law Court on September 2, 2025. The case was assigned to the Honorable Samuel L. Johnson, and on December 19, 2025, the court directed that the parties file motions for summary judgment, followed by corresponding responses to those motions. On February 13, 2026, the court issued an order granting summary judgment in favor of the Department. **R. p. 22, lines 5–17** (ALC Feb. 13, 2026 Summary Judgment Order). The order essentially agreed with the Department's interpretation of § 38-53-170(e), concluding that the statute requires a bail bondsman to collect a minimum of 10% of the face amount of the bond as a premium prior to the execution of the bond in all cases, but reduced the amount of the fine imposed upon Ms. Freeman to $5,000. Appellant subsequently filed a motion for reconsideration as required by SCALC Rule 29; on April 1, 2026, the court issued an order granting in part and denying in part Appellant's motion, **R. pp. 45–57** (ALC April 1, 2026 Order on Reconsideration), along with an amended order granting summary judgment to the Department, **R. pp. 23–44** (ALC April 1, 2026 Amended Summary Judgment Order). The amended order reached the same substantive conclusion as the court's original order, but amended its findings to clarify some of the discussion surrounding the legislative history of the 2023 amendments to § 38-53-170(e), and also to delete the original order's discussion about deferring to the interpretation of the Department pursuant to *Kiawah Development Partners, II v. S.C. Department of Health & Environmental Control*[1] and like cases. *See* **R. p. 51, lines 14–28; 54, lines 21–25 (**Reconsideration Order at 7, 10). The Reconsideration Order also stayed the imposition of the fine against Ms. Freeman pending the final resolution of this case.

Appellant filed her notice of appeal on April 15, 2026, and specifically appealed from (1) the ALC's February 13, 2026 order granting summary judgment for the Department; (2) the ALC's

[1] 411 S.C. 16, 32–33, 766 S.E.2d 707, 718 (2014).

April 1, 2026 order granting in part and denying in part Freeman's motion for reconsideration; and (3) the ALC's April 1, 2026 amended order granting summary judgment for the Department.

STANDARD OF REVIEW

When reviewing a final decision of the Administrative Law Court,

> [t]he court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610.

"Questions of statutory interpretation are questions of law, which the appellate court is free to decide without any deference to the ALC." *Amazon Servs., LLC v. S.C. Dep't of Revenue*, 442 S.C. 313, 326, 898 S.E.2d 194, 200 (Ct. App. 2024) (quoting *Rent-A-Ctr. E., Inc. v. S.C. Dep't of Revenue*, 425 S.C. 582, 587, 824 S.E.2d 217, 219 (Ct. App. 2019)) (alterations omitted).

ARGUMENT

This case turns entirely on the interpretation of one statutory provision, S.C. Code Ann. § 38-53-170(e). For ease of reference, the portions of that subsection that are relevant to this discussion are contained below:

> **Section 38-53-170.** Unlawful acts.
>
> 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 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. 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 days to bring the agreement current. If no payment is received by the end of the notice period, the bondsman must surrender the principal to the proper detention facility for holding and file a motion to be relieved as provided in Section 38-53-50(A) or (B), at which time the agreement must be accelerated, and the balance paid in full, before or at the motion hearing for the principal to be rereleased on bond.

S.C. Code Ann. § 38-53-170(e).

The Department and the ALC read this statutory language to mean that a bondsman must, in all cases, charge and collect a minimum fee of 10% of the face amount of the bond or $100, whichever is greater, prior to the execution of the bond. Appellant reads this statutory language to mean that a bondsman must indeed charge the principal (the criminal defendant) a minimum premium of 10% of the face amount of the bond or $100, whichever is greater, but that the bondsman may, in lieu of collecting that entire premium up front, enter into a payment agreement with the principal for the collection of the premium amount over a period of time not to exceed eighteen months, provided that the principal makes a $100 down payment and adheres to the other requirements contained in the second paragraph of § 38-53-170(e). Because the ten bond

transactions at issue followed the latter formulation, the only question presented by this case is which of these two interpretations of the statute is the correct one.

Of note, and because it is relevant to understanding the evolution of this statutory provision over time, Appellant observes that this statutory provision was amended to its current form in 2023. *See* **R. pp. 184–200** (2023 S.C. Act 83 (H. 3532) (enacted June 20, 2023)). Prior to that time, the entirety of § 38-53-170(e) read as follows:

> (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 by the bondsman must be reasonable in relation to the amount of the bond[.]

R. p. 202, (S.C. Code Ann. § 38-53-170 (enacted by 1998 Act No. 425, § 2)).

I. The Plain Language of S.C. Code Ann. § 38-53-170(e) Provides that Payment Agreements Are Permitted in Lieu of Collecting the Full Minimum Premium Up Front.

"In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)). "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 the language used must be construed in the light of the intended purpose of the statute." *Kiriakides v. United Artists Comms., Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). "When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language." *Hodges v. Rainey*,

341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000). Further, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene*, 352 S.C. at 212, 574 S.E.2d at 198.

Appellant submits that the plain language of § 38-53-170(e) explicitly permits bail bondsmen to enter into payment agreements with principals in lieu of collecting the full minimum 10% premium prior to the execution of the bond. In Appellant's view, the statute contains two operative components. The first paragraph addresses the premium generally and provides that a minimum fee of $100 or ten percent of the bond, whichever is greater, "must be charged and collected by the bondsman before the execution of the bond." The second paragraph immediately follows and begins with the word "however," followed by a comma, and states that the bondsman is permitted to enter into a payment agreement with the principal provided that the principal makes a minimum down payment of $100 and the agreement adheres to the detailed framework governing such agreements set forth in the balance of the paragraph. Of note, the second paragraph does not contain a different minimum premium amount that the bondsman is required to charge, signifying that the payment agreements described in the second paragraph are meant to encompass and apply to the minimum premium amount set forth in the paragraph immediately preceding it.

Any ambiguity about what the payment agreements described in the second paragraph of § 38-53-170(e) are intended to apply to is resolved by the Legislature's use of the word "however" at the beginning of that paragraph. The use of the word "however" followed by a comma signifies a contradiction or exception to the language immediately preceding it. *See However*, def. 2, Merriam-Webster's Dictionary (online edition 2025; *available at* https://www.merriam-webster.com/dictionary/however) ("in spite of that : on the other hand"). Reading both paragraphs of § 38-53-170(e) together, the only reasonable interpretation is that the second paragraph operates

as an exception to the first paragraph, meaning that bondsmen may either (1) charge and collect the full minimum premium up front, prior to the execution of the bond, or (2) enter into a payment agreement with the principal for the collection of the premium amount over time, provided that the other requirements for such agreements are met. Any other reading of this statutory provision would render the word "however"—and indeed the entire second paragraph of § 38-53-170(e)—superfluous in the statute. *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.") (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). Put another way, if the payment agreements described in the second paragraph of § 38-53-170(e) do not apply to the minimum premium amount required by the first paragraph, then those payment agreements would not logically apply to anything, rendering this statutory language futile and meaningless.

This formulation of the statute makes sense in the context of the amendments the Legislature made to § 38-53-170(e) in 2023. As set forth above, the prior version of the statute capped the premium that a bail bondsman may charge at 15% (as it does now), but then set a minimum fee for the bond of $25. The effect of this was that criminal defendants facing all manner of charges could, theoretically, pay $25 to a bail bondsman and then violate the terms of their bond, having lost only their $25. The 2023 amendments changed that calculation—now, criminal defendants are expected to pay a minimum of $100 (representing a 300% increase from the prior version of the statute) *or* 10% of the face amount of the bond, whichever is greater. The financial stakes for violating the conditions of the bond thus became significantly higher as a result of the Legislature's amendments.

But that solution would have posed its own problem: In South Carolina and beyond, criminal defendants have a constitutional right against excessive bail. *See* S.C. Const. art. I § 15 ("All persons shall be, before conviction, bailable by sufficient sureties . . . . Excessive bail shall not be required . . ."). What qualifies as "excessive" might mean different things for different people and depends, at least in part, on that defendant's financial resources. *See* S.C. Code Ann. § 17-15-30 (listing among the factors courts may consider in setting a bond, the charged person's "employment" and "financial resources"). A defendant facing a $50,000 bond may or may not be able to pay $5,000 to secure a bond, in which case that defendant would remain in jail rather than his appearance in court being reasonably assured. *See id.* (the purpose of a bond is to "reasonably assure appearance" of the defendant). The ranks of county jails would swell unnecessarily, and at significant expense to the taxpayer.

Thus, the payment agreement provision. Rather than paying the entire amount of the 10% premium up front, the Legislature devised a framework whereby defendants could avail themselves of a payment plan, provided the bondsman agrees to offer one, and the defendant pays the minimum $100 fee as a down payment. *See* § 38-53-170(e). The statute goes on to provide that such payment agreements "must not exceed eighteen months after the date on which the bond was executed," and then sets out in detail what happens in the event payments are not timely made under the agreement, including that the bondsman must send a certified letter to the last known address of the principal demanding payment within ten days, surrender the principal to the proper detention facility if the payments are not brought current within that time, file a motion to be relieved pursuant to S.C. Code Ann. § 38-53-50, and accelerate the payments due under the bond. *Id.* The statute further provides that any amounts due under the payment agreement must be "paid in full, before or at the motion hearing for the principal to be rereleased on bond." *Id.* Thus, while

the Legislature expanded access to surety bonds by this provision, it also put in place additional safeguards to ensure the principal's compliance with his payment obligations, and a swift mechanism for ensuring his appearance in court if he defaults on those obligations.

Appellant submits that this is the most logical reading of the statute, and that it comports with the Legislature's manifest intent in enacting the 2023 amendments to S.C. Code Ann. § 38-53-170(e). *See Kiriakides*, 312 S.C. at 275, 440 S.E.2d at 366 ("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 the language used must be construed in the light of the intended purpose of the statute."). This reading ensures that the statute is read as a whole, and that each of the two paragraphs in § 38-53-170(e) is given meaning and effect. *Denene*, 352 S.C. at 212, 574 S.E.2d at 198 ("In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect."). And it negates any need to read additional language into the statute, such as a different minimum premium amount applicable to the payment agreement provisions, which method of statutory construction is strongly disfavored in South Carolina. *Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

The Department has a very different reading of these statutory provisions. In the Department's view, a bondsman is required in all cases to both charge and collect the minimum premium amount called for in the first paragraph of § 38-53-170(e) prior to the execution of the bond. What, then, is the purpose of the second paragraph of § 38-53-170(e)? The Department's view is that the payment agreement provisions apply only to amounts that the bondsman elects to charge the principal as a premium over and above the minimum 10% premium required by the

statute. As demonstrated by the plain language of § 38-53-170(e), that amount cannot exceed 15% of the face amount of the bond; thus, the Department's reading is that the Legislature drafted the second paragraph of § 38-53-170(e) intending it to apply only to an optional 5% of the face amount of the bond that the bondsman may, but is not required, to charge the principal as a premium for the bond. The Department therefore envisions the second paragraph of § 38-53-170(e) as a kind of second transaction—first, the principal pays the minimum 10% of the face amount of the bond as a premium, and then enters into a payment agreement with the bondsman for an additional maximum 5% of the bond to be paid over a period of eighteen months should the bondsman elect to charge the principal that additional amount.

Setting aside the fact that § 38-53-170(e) does not say what the Department says it does, there are a number of problems with the Department's formulation. First, the Department's interpretation imagines a transaction where the bondsman first collects ten percent of the face amount of the bond prior to executing the bond, then charges the principal an *additional* $100 as a down payment, and then executes a payment agreement for no more than an additional five percent of the bond, to be collected over eighteen months upon pain of imprisonment if the payments are not met. That would be an absurd and overly complicated transaction that the Legislature could not have intended. *See Stone v. State (City of Orangeburg)*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994) ("This Court must avoid construing a statute so as to lead to an absurd result.") (citing *State v. Allen*, 314 S.C. 539, 431 S.E.2d 563 (1993)).

Second, the statutory requirements for a payment agreement contained in the second paragraph of § 38-53-170(e) demonstrate that it was intended to apply to the entire transaction between the bondsman and the principal rather than being limited to an optional premium of 5% of the bond. The most glaring of these is the requirement that, if the principal fails in his obligation

to make timely payments under the agreement, "the bondsman must surrender the principal to the proper detention facility for holding and file a motion to be relieved" as the bondsman. § 38-53-170(e) (emphasis added). The statute further requires that, once the principal is surrendered to the detention facility, "the agreement must be accelerated, and the balance paid in full, before or at the motion hearing for the principal to be rereleased on bond." It would be at least odd, if not unconstitutional, to imprison someone for the failure to pay a relatively small and surplus portion of the bond premium that the bondsman may elect to charge in his own discretion and for his own benefit, and then keep that defendant in jail until the full amount of that optional fee is paid. *See* S.C. Const. (1868) art. I § 20 (abolishing debtors' prisons); *see also* S.C. Const. (current) art. I § 19 ("No person shall be imprisoned for debt except in cases of fraud."). The point being, this state does not imprison people for private debts, and any amount of the premium over and above the 10% minimum required by the statute is just that—a private obligation owed to a bondsman that the state has no interest in regulating, except to cap it to prevent excessive fees charged by bondsmen.[2]

Other portions of § 38-53-170(e) demonstrate that it was not intended to be limited to 5% of the face amount of the bond charged as an additional premium. For example, why would the Legislature be concerned about the alterability and length of the term of the payment agreement if

[2] The ALC found in its Reconsideration Order that Appellant failed to timely raise this "debtor's prison" argument by first including it in her motion for reconsideration. **R. p. 47, line 8–p. 48, line 5** (Reconsideration Order at 3–4). But rather than introducing a new, distinct issue, this point was meant to further highlight the inconsistency of the Department's interpretation with other fundamental precepts of South Carolina law. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) ("There 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."). And in any event, the ALC fully considered this issue in its Reconsideration Order, **R. p. 48, line 6–p. 49, line 7** (Reconsideration Order at 4–5), rendering it appropriate for this Court to consider at the appellate stage. *See* discussion *infra* at 17–18 (regarding consideration of Appellant's rule of lenity argument).

it only applies to an optional portion of the premium that serves only to benefit the bondsman? Why would the Legislature require that the agreement be attached to the bond proceeding form in the defendant's criminal case if it is only for this surplus amount of the premium? And why would the Legislature require an additional $100 down payment for the payment agreement when the defendant has already demonstrated his ability to pay the minimum 10% premium? Simply put, the language of § 38-53-170(e) demonstrates that these payment agreements were plainly intended to ensure the defendant's compliance with the new, increased minimum premium amount that the Legislature required by its 2023 amendments to the statute. The Department's formulation of the statute would create a highly regulated payment agreement procedure that the Legislature could not have intended to apply only to an optional 5% of the bond. *See Sweat*, 386 S.C. at 351, 688 S.E.2d at 575 ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.") (citing *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)).

Third, and perhaps most importantly, the Department's formulation would defeat the obvious purpose of the payment agreement provision—to make bonds more accessible to criminal defendants who may not be able to pay the minimum 10% premium at once, and who require more time to meet that obligation. That purpose would be defeated if the payment agreement can apply only to a small, and elective, portion of the premium that the defendant may not even be charged. *Denene*, 352 S.C. at 212, 574 S.E.2d at 198 ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."). And it would further raise the specter of violating defendants' constitutional right to bond by making those bonds prohibitively expensive. *See* S.C. Const. art. I § 15; *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) ("In determining whether a statute complies with the South Carolina

Constitution, the Court will, if possible, construe the statute so as to render it valid.") (quoting *Moseley v. Welch*, 209 S.C. 19, 26–27, 39 S.E.2d 133, 137 (1946)). Plainly, the Legislature identified this issue when it raised the minimum premium for a bond, and alleviated this concern by enacting a payment agreement mechanism that both ensures that defendants can meet these higher financial obligations imposed by the statute and that the defendant will be present for trial if he fails in those obligations.

Appellant will note finally that the South Carolina Attorney General has passed on this very question and determined that the payment agreement provisions of § 38-53-170(e) were indeed intended to apply to the 10% minimum premium required by the statute. *See The Honorable B. Lee Miller*, Op. S.C. Att'y Gen., 2024 WL 3186557 (July 17, 2024). In that opinion, offered in response to an inquiry from a municipal judge, the Attorney General rejected the position that the Department now espouses, finding that § 38-53-170(e) "allows a bondsman to accept a minimum down payment of one hundred dollars along with a payment agreement for the remaining amount of the minimum premium as long as the bondsman attaches the agreement to the bond processing form and complies with the other requirements for the agreement contained in section 38-53-170(e)." *Id.* at *3. In order to reach this conclusion, the Attorney General performed a thorough analysis of the statute, taking into account its plain language and legislative history. The Attorney General specifically found that the interpretation of § 38-53-170(e) now adopted by the Department "could lead to an absurd result" and offered the following reasoning:

> First, we are at a loss as to why the Legislature would find it necessary to give permission for a payment agreement for an amount that the bondsman is not required to charge in the first place. Second, this reading would require the principal to pay not only the ten percent bond up front, but also an additional one hundred dollars for the opportunity to finance the premium in excess of the ten percent. We do not believe such an interpretation is in line with the intent of the Legislature.

Id. at *2.

The Attorney General further observed that the Department's interpretation of § 38-53-170(e) could raise constitutional concerns:

> Lastly, we must keep in mind that the South Carolina Constitution affords defendants the right to bail. S.C. Const. Art. I § 15 (2009). As our Supreme Court stated, "all statutes are presumed constitutional and, if possible, will be construed to render them valid." State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009) (quoting Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001)). While the revisions to section 38-53-170(c) [sic] indicate the intent of the Legislature to increase the premium charged and paid by defendants, we believe by giving defendants the ability to enter into a payment agreement with the bondsman, the Legislature is balancing its desire to increase and standardize premiums with defendants' ability to pay those premiums and ensuring compliance with defendants' constitutional rights.

Id. at *3.

Despite the comprehensive analysis of the statute offered by the Attorney General, the Department persisted in its interpretation, even going so far as to request that the Attorney General withdraw his opinion. In response to this inquiry, the Attorney General elected to defer to the Department given its regulatory authority over Title 38, but was careful to note that "[o]ur interpretation of Section 38-53-170(e) remains unchanged . . . ." *See* **R. p. 209, lines 14–15** (*Gwendolyn McGriff, Esquire*, Op. S.C. Att'y Gen. (July 31, 2025)).

Certainly, neither the ALC nor this Court are bound by the opinions of the Attorney General on South Carolina law, but this opinion presents a further and persuasive formulation of § 38-53-170(e) that Appellant believes is helpful in resolving the question before the Court. For these reasons, Appellant submits that the plain language of S.C. Code Ann. § 38-53-170(e) permits the formation of payment agreements in lieu of collecting the entire minimum premium at the time the bond is executed, and that the ALC's reading of this statute was erroneous.

II. Any Ambiguity in S.C. Code Ann. § 38-53-170(e) Must Be Construed in Favor of Appellant, and No Deference Should Be Afforded to the Department's Interpretation.

To the extent the Court finds any ambiguity in the language of § 38-53-170(e), that ambiguity must be strictly construed in Appellant's favor because § 38-53-170(e) is penal in nature. This statutory provision is entitled "Unlawful acts" and S.C. Code Ann. § 38-53-340 provides that "[a] person violating any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both." While Respondent was not charged with a crime in connection with this dispute, there can be no doubt that violations of § 38-53-170 carry with them criminal liability in addition to the civil liability that the Department has imposed upon Respondent in this case.

Our Supreme Court has repeatedly held that penal statutes are to be strictly construed in favor of the alleged offender:

> The principle is well established that penal statutes are strictly construed, and one who seeks to recover a penalty for the failure on the part of the defendant to discharge some duty imposed by law, must bring his case clearly within the language and meaning of the statute awarding the penalty. Such laws are to be expounded strictly against the offender and liberally in his favor. And it is immaterial, for the purpose of the application of the rule of strict construction whether the proceedings for the enforcement of the penal law, be criminal or civil.

S.C. Dep't of Revenue v. Collins Ent. Corp., 340 S.C. 77, 79, 530 S.E.2d 635 (2000) (quoting *State ex rel. Moody v. Stem*, 213 S.C. 465, 50 S.E.2d 175 (1948)) (internal alterations omitted); *see also Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 566, 556 S.E.2d 726, 729 (Ct. App. 2001) (same). This directive derives from the rule of lenity, which requires that any ambiguity in a penal statute must be resolved in the defendant's favor. *See State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017) ("The 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.") (citing *Berry v. State*, 381

S.C. 630, 633, 675 S.E.2d 425, 426 (2009)). Federal courts employ this same doctrine, and have likewise held that where a statute has both civil and criminal applications, it must be strictly construed in favor of the alleged offender. *See WEC Carolina Energy Solutions LLC v. Miller*, 687 F.3d 199, 204 (4th Cir. 2012) ("Where, as here, our analysis involves a statute whose provisions have both civil and criminal application, our task merits special attention because our interpretation applies uniformly in both contexts. Thus, we follow the canon of strict construction of criminal statutes, or rule of lenity.") (internal quotations and citations omitted).

Here, the ALC explicitly found that S.C. Code Ann. § 38-53-170(e) is ambiguous. **R. p. 33, lines 2–5; p. 43, lines 1–5** (Amended Summary Judgment Order at 11; 21 (finding that § 38-53-170(e) is "certainly ambiguous" and observing that "reasonable and intelligent minds . . . have disagreed over its meaning")). Because this statutory provision is penal in nature, that ambiguity ought to have been resolved in Respondent's favor. *See Miles*, 421 S.C. at 164, 805 S.E.2d at 210. And it matters not that Respondent has been subjected to no criminal liability in this case, because the Court's interpretation of this statute will apply equally to civil and criminal applications thereof. *Collins*, 340 S.C. at 79, 530 S.E.2d 635 ("[I]t is immaterial, for the purpose of the application of the rule of strict construction whether the proceedings for the enforcement of the penal law, be criminal or civil."). Thus, if this Court finds ambiguity in the language of § 38-53-170(e), as the ALC did, that ambiguity must be resolved in Appellant's favor rather than the Department's.

For the same reasons, the doctrine of deference to state agencies has no role to play in this case. While, as a general rule, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling circumstances," *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353

S.E.2d 132, 133 (1987), that rule must yield to the rule of lenity when the statute in question is penal in nature. *See Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 S.Ct. 789, 790 (2020) (Gorsuch, J., respecting denial of certiorari) (noting that "the law before us carries the possibility of criminal sanctions" and "whatever else one thinks about *Chevron*, it has no role to play when liberty is at stake"); *United States v. Apel*, 571 U.S. 359, 369 (2014) ("[W]e have never held that the Government's reading of a criminal statute is entitled to any deference."). Appellant observes that, even where our courts afford deference to a state agency's interpretation of a statute it administers, the agency's interpretation will be rejected if it violates the plain language of the statute. *See Sweat*, 386 S.C. at 351, 688 S.E.2d at 575–76 (2010) (quoting *Monroe v. Livingston*, 251 S.C. 214, 217, 161 S.E.2d 243, 244 (1968)) ("Even so, an administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute."); *see also Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 48, 885 S.E.2d 433, 440 (Ct. App. 2023) (noting that courts will reject an agency's interpretation of a statute "where the plain language of the statute is contrary to the agency's interpretation"); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) ("[W]e will reject an agency's interpretation if it conflicts with the statute's plain language."). For the reasons noted above, Appellant believes that the Department's interpretation does indeed violate the plain language of § 38-53-170(e); however, deference to the Department is not appropriate in the first instance given that § 38-53-170(e) carries with it criminal penalties, and the statute must rather be construed in Appellant's favor according to the rule of lenity.

Appellant notes that she raised this rule-of-lenity argument in her motion for reconsideration in response to the ALC's determination in its original order to defer to the Department's interpretation, and the ALC found that this was improper. *See* **R. p. 56, line 6–p. 57,**

line 5 (Reconsideration Order at 12) (citing *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 arguments"; and "[a]n issue may not be raised for the first time in a motion to reconsider.") (internal quotation marks and citations omitted). This Court should nevertheless apply the rule of lenity in this case for several reasons. First, this Court reviews questions of law de novo without any deference to the ALC. *See Amazon Servs.*, 442 S.C. at 326, 898 S.E.2d at 200 (internal quotations omitted). Should the Court find any ambiguity in § 38-53-170(e), the rule of lenity will play a critical role in resolving the statutory interpretation question before the Court, and it ought not be overlooked simply because of the timing when Appellant raised this issue in the tribunal below. *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."). Second, despite the ALC's finding in this regard, it went on to consider the issue fully, and rejected the argument because "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." **R. p. 56, lines 28–30** (Reconsideration Order at 12). Thus, the ALC considered and ruled on this issue, and the Department had a full and fair opportunity to respond to it, which resolves the harm sought to be avoided by raising arguments on a motion to reconsider. Third, Appellant's motion to reconsider followed not a trial but rather a ruling on summary judgment, where the trial court is free to reconsider its rulings. *See Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) ("The decision whether to reconsider a motion for summary judgment is within the trial judge's discretion."). This is especially true under the ALC Rules, where motions to reconsider are required in all cases prior to filing an appeal. *See* SCALC

Rule 29(D). Therefore, there is no prejudice to the Department or the trial court in this Court considering the rule of lenity as it construes the provisions of § 38-53-170(e).

Thus, to the extent the Court finds any ambiguity in the provisions of § 38-53-170(e), that ambiguity must be resolved in Appellant's favor given the penal nature of that statute, and no deference should be afforded to the Department's interpretation.[3] Appellant respectfully submits that the ALC's failure to resolve the ambiguity it identified in § 38-53-170(e) in Appellant's favor was error.

III. The Legislative History Surrounding S.C. Code Ann. § 38-53-170(e) Further Supports Appellant's Reading.

When conducting their analysis of S.C. Code Ann. § 38-53-170(e), both the ALC and the Attorney General resorted to legislative history to shed light on the Legislature's intent in enacting the 2023 amendments to the statute. *See Ex parte Cannon*, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009) ("The construing court may additionally look to the legislative history when determining the legislative intent.") (citing *State v. Byrd*, 267 S.C. 87, 92, 226 S.E.2d 244, 247 (1976)). Both observed that a prior, un-enacted version of the 2023 amendments to § 38-53-170(e) included the following language in the payment agreement 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 *or five percent, whichever is greater, of the face amount of the bond*.

[3] The briefing before the ALC also included a substantive discussion about the status of this state's doctrine of deference to state agencies following the U.S. Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and this Court's acknowledgement of that ruling in *Colonial Pipeline Co. v. S.C. Department of Revenue*, 443 S.C. 448, 905 S.E.2d 129 (Ct. App. 2024). However, because the ALC in its amended summary judgment order removed its discussion of deference to the Department, *see* **R. p. 54, lines 21–25** (Reconsideration Order at 10), Appellant will not repeat that discussion here. Should this discussion become relevant to the Court's consideration of these issues, Appellant will address this shifting deference doctrine in her reply brief.

R. p. 325, lines 31–33 (Senate Journal p. 2047 (April 11, 2023)) (emphasis added). As the Attorney General observed, these were the first amendments proposed to § 38-53-170(e) in the bill, offered by Senator Adams on the second reading of the bill in the Senate. *See id.*; *see also The Honorable B. Lee Miller*, 2024 WL 3186557, at *3. The emphasized language noted above was removed the next day on the third reading, leaving only the one-hundred-dollar down-payment requirement that exists in the statute now. *See* **R. p. 364, lines 26–28** (Senate Journal p. 2103 (April 12, 2023)).

The Attorney General reasoned that if the full 10% premium payment were intended to be collected up-front in all cases, 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 in the earlier version of the bill would leave nothing to be collected by the payment agreement, rendering it superfluous. The ALC characterized this as a "logical construction of the proffered amendment," but it rejected this reasoning because this version of the amendment was not adopted, and because it "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." **R. p. 39, lines 10–14** (Amended Summary Judgment Order at 17 n.17).

Appellant respectfully submits that the Attorney General's interpretation of this legislative history is the correct one because the April 11, 2023 amendment was the first time that any changes to § 38-53-170(e) were ever proposed—prior versions of the bill do not appear to address § 38-53-170(e) at all. This being the first instance in which changes were proposed to § 38-53-170(e), the April 11, 2023 amendment demonstrates how this language was originally intended to operate: either the defendant must pay $100 or 10% of the face amount of the bond up-front, whichever is greater, or he must enter into a payment agreement and pay $100 or 5% of the bond as a down

payment, whichever is greater. Viewed in this context, the subsequent amendment offered by Senators Adams, Hutto, and Malloy the next day shows that it was intended only to remove the 5% down payment requirement, such that the defendant may obtain a payment agreement with only a $100 down payment. This legislative history thus demonstrates 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. *See Powell v. Keel*, 433 S.C. 457, 471, 860 S.E.2d 344, 351 (2021) (finding that the Legislature's removal of prior, restrictive language in a statute evidenced an intent to broaden access to the records at issue).

The ALC also addressed S.C. House Bill 4512, which was introduced in the House on May 6, 2025 and was referred to the House Judiciary Committee. *See* **R. pp. 368–70** (2025 House Bill No. 4512). This proposed legislation would remove altogether from § 38-53-170(e) the provisions concerning minimum and maximum premiums charged for bail bonds, as well as the payment agreement provisions, and replace those provisions with a new section, § 38-53-175, which would read as follows:

> Section 38-53-175. (A) The bond premium may not exceed fifteen percent of the face amount of the bond.
>
> (B) A bondsman must charge and collect a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, before the execution of the bond.
>
> (C) Payment agreements are permitted for amounts in excess of ten percent of the bond but are otherwise prohibited.

This proposed legislation, obviously, would transform the current provisions of Chapter 53 into what the Department asserts they are now. The ALC discussed these proposed amendments in its order but placed no weight on them because they were not enacted. Order at 17 n.17. Appellant respectfully observes that if § 38-53-170(e) in its current form operated as the Department asserts, there would be no reason for these amendments. Appellant further notes that

these proposed amendments would remove altogether the detailed payment agreement provisions that currently appear in § 38-53-170(e), including the incarceration-for-default provision, which demonstrates that the payment agreements envisioned by § 38-53-170(e) are indeed intended to ensure the defendant's compliance with the minimum 10% premium payment. Said another way, House Bill 4512 acknowledges that if the payment agreement applies only to a premium charged in excess of the minimum 10% required by the Legislature, then the State has no interest in regulating these payment agreements and ensuring the defendant's compliance therewith by immediate incarceration. Thus, this subsequent legislative history further supports Respondent's reading of § 38-53-170(e) as it is currently enacted.

CONCLUSION

For these reasons, Appellant respectfully submits that S.C. Code Ann. § 38-53-170 permits a bail bondsman to enter into a payment agreement with the principal and collect the minimum 10% premium required by the statute over a period of time in lieu of collecting the entire minimum premium amount before execution of the bond, and that the ALC's ruling to the contrary was in error. Appellant therefore requests that the Court reverse the judgment of the ALC and vacate the fine imposed upon Ms. Freeman in this case.

Respectfully submitted,

s/Andrew R. Hand

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