**South Carolina General Assembly**

125th Session, 2023-2024

**S. 367**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Adams, M. Johnson, Kimbrell, Garrett, Rice, Harpootlian, Cash, Senn, Cromer and Gustafson

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Introduced in the Senate on January 10, 2023

Currently residing in the Senate

Summary: Bonds and Electronic Monitoring

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 209](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 209](h:\sj\20230110.docx))

1/12/2023 Senate Referred to Subcommittee: Malloy (ch), Sabb,
Adams, Garrett, Gustafson

2/9/2023 Scrivener's error corrected

2/22/2023 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 16](h:\sj\20230222.docx))

2/27/2023 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[01/10/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/367_20230110.docx)

[02/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/367_20230209.docx)

[02/22/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/367_20230222.docx)

[02/27/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/367_20230227.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

February 22, 2023

S. 367

Introduced by Senators Adams, M. Johnson, Kimbrell, Garrett, Rice, Harpootlian, Cash, Senn and Cromer

S. Printed 02/22/23--S. [SEC 2/27/2023 2:18 PM]

Read the first time January 10, 2023

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The committee on Senate Judiciary

To who was referred a Bill (S. 367) to amend the South Carolina Code of Laws by amending Section 17‑15‑20, relating to conditions of appearance, recognizance, or appearance bond; discharge, validity, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 2, by striking Section 17-15-30(B)(2) and inserting:

(2) any current charges, any prior charges, and existing bonds on prior charges, pending against a person at the time release is requested;

Amend the bill further, by deleting SECTION 3.

Amend the bill further, SECTION 6, by striking Section 38-53-83 and inserting:

Section 38‑53‑83. No person may engage in electronic monitoring of a defendant released by a court of competent jurisdiction pursuant to a bail bond unless that person is qualified as an approved monitoring agency pursuant to the provisions of Section 17-15-35.

Amend the bill further, by deleting SECTION 7.

Amend the bill further, SECTION 8, Section 38-53-170, by striking the undesignated paragraph between (e) and (f) and inserting:

However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding. 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. The bondsman may accept collateral security or other indemnity from the principal which must be returned upon within ten days after final termination of liability on the bond unless a bench warrant has been issued. 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. If the bond is forfeited, a bondsman may not convert collateral described in the collateral receipt to cash until he has provided a ten‑day notice of this pending conversion to the depositor. This notice must be sent by certified mail to the last known address of the depositor. After the conversion, the bondsman must disclose the actual amount received to the depositor and must return any amount received that exceed the final judgment or consent amount, less any reasonable expenses. These reasonable expenses include apprehension and legal costs incurred as a result of the violation of the bond. The bondsman must provide the depositor copies of all receipts and, if applicable, the overage money within three days after settlement;

Amend the bill further, by adding appropriately numbered SECTIONS to read:

SECTION X. Chapter 15, Title 17 of the S.C. Code is amended by adding:

Section 17-15-35. (A) As used in this section:

(1) “Approved active electronic monitoring device” and “monitoring device” mean either a tier one or tier two device approved by the South Carolina Law Enforcement Division;

(2) “Tier one device” means a body-worn device that actively monitors and records a person’s location at least once every minute for twenty-four hours a day and that timely records and reports the person’s presence, including whether near or within a prohibited area or the person’s departure from a specified geographic location, which is utilized by the approved electronic monitoring company who can provide live monitoring capability in conjunction with an internet-based computer system. The device must be approved by the South Carolina Law Enforcement Division, is resistant to removal from the person’s body without alarm, and must be resistant or impervious to unintentional or willful damage;

(3) “Tier two device” means a device or mobile phone application approved by the South Carolina Law Enforcement Division that is not body-worn which records or transmits oral or wire communications or an auditory sound, visual images, or information regarding the person's location and activities including, but not limited to mobile phone applications, that must verify live biometric, photographic, or videographic identification information;

(4) “Approved electronic monitoring agency” means a law enforcement agency, licensed bondsman or bonding company, or electronic monitoring company that is certified by the South Carolina Law Enforcement Division to supply, maintain, and monitor electronic monitoring devices to participants ordered by the court to wear electronic monitoring devices under the provisions of this section;

(5) “SLED” means the South Carolina Law Enforcement Division.

(6) “Monitoring agency” or “agency” means an approved electronic monitoring agency.

(7) “Participant” means a person, ordered by the court or as a condition of bond to wear or possess an approved tier one or tier two electronic monitoring device.

(B)(1) The court, in its discretion, may, for a person charged with a violation of criminal offense under the jurisdiction of the court of general sessions or any offense where the court finds sufficient evidence of a concern for the victim’s safety or the safety of any member of the public, order that the person be placed on surveillance via an approved tier one or tier two active electronic monitoring device which must be worn or possessed at all times for the duration specified by the court, either in lieu of setting or requiring the posting of bond or as an additional condition of the release on bond. The court may not order a tier two device for any defendant if there is a concern for the victim’s safety.

(2) For pre-trial bond consideration, the judge is not limited to non-violent offenses, but must take into consideration all concerns relating to the setting of an appropriate bond under Section 22-5-510, Sections 17-15-10, et seq. and Section 16-25-120. The device must be capable of recording the person’s location at all times. If the court orders a tier one device, before the participant is allowed to leave custody, the detention facility where the defendant is located, in coordination with the approved monitoring agency, must ensure the participant is fitted with an approved active electronic monitoring device, and that all appropriate bond paperwork, including the agreement with the bonding and electronic monitoring companies acknowledging the terms and restrictions of the bond, is completed.

(3) The participant:

(a)(i) who is ordered on tier one supervision must wear an approved active tier one device at all times to verify his compliance with the conditions of his detention and must maintain the monitoring device on his person at all times for the duration of the detention, subject to the order of the court and reasonable orders of an agent or employee of the monitoring agency in order to effectuate the conditions of the monitoring order. In areas of the State where cellular coverage requires the use of an alternate device, the approved electronic monitoring company may use an alternate approved device with approval of the court; or

(ii) who is ordered on tier two supervision must maintain possession of his approved tier two device on or near his person at all times for the duration of the detention and must verify his identity and location at any time required by the order of the court and reasonable orders of an agent or employee of the monitoring agency in order to effectuate the conditions of the monitoring order. For purposes of this subsection, “near” means within hearing distance of the device’s notification or call alerts but not farther than thirty feet. In areas of the State where cellular coverage requires the use of an alternate device, the approved electronic monitoring company may use an alternate approved device with approval of the court;

(b) must charge and maintain the monitoring device in working order and must report any damage, destruction, or noticeable malfunction of the active monitoring device, whether the incident was accidental or intentional, and including the device having a dead battery, to at least one of the following parties within two hours of the incident: the monitoring agency, the appropriate law enforcement agency with jurisdiction over the underlying offense, or any other party specified in the order;

(c) must abide by other terms and conditions set forth by the approved electronic monitoring agency with regard to the monitoring device and electronic monitoring program;

(d) must turn himself in to custody of the appropriate detention facility upon the order of the monitoring agency, or the appropriate law enforcement agency with jurisdiction over the offense;

(e) must pay for the cost of the approved active electronic monitoring device and the operation of the monitoring device for the duration of the time the person is required to be electronically monitored, subject to an order of indigency by the court. The summary court or circuit court has jurisdiction upon motion of the defendant to consider exempting a person from the payment of a part or all of the cost during a part or all of the duration of the time the person is required to be electronically monitored, if it is determined that exceptional circumstances exist such that these payments cause a severe hardship to the person who is deemed indigent. If the indigency hearing is held at a time and date separate from the initial bond hearing, the defense must notify the prosecutor, the bondsman, and the monitoring agency of the date, time, and location of the hearing subject to the notice requirements of the court.

The payment of the cost must be a condition of supervision of the person and a delinquency of two weeks or more in making payments may operate as a violation of a term or condition of the electronic monitoring and bond. No person shall be denied the privilege of electronic monitoring under this statute based on inability to pay upon a finding by the court that the defendant meets the qualifications for indigency. The State shall allocate funds to be housed in an indigency fund under the control of the Department of Public Safety to be distributed to the monitoring companies as appropriate to cover the cost of indigent participants.

(C) A participant ordered by the court to be monitored under the provisions of this section, who fails to comply with any of the provisions of this section or who fails to comply with any additional condition of the court order including location restrictions, may have his bond revoked or may be punished for contempt at the discretion of the court.

(D) It is unlawful for any person, knowingly and without authority, to remove, tamper with, damage, destroy, shield the signal from, or otherwise circumvent an active electronic monitoring device, or to aid or assist a person ordered by the court to be electronically monitored under the provisions of this section to remove, tamper with, damage, destroy, shield the signal from, or otherwise circumvent a monitoring device, and, upon conviction, the person must be punished under the provisions of Section 24-13-425. This subsection does not apply to a person or agent of the electronic monitoring agency or bonding company, or a member of law enforcement acting under the authority of and with compliance to the court order.

(E)(1) Upon violation of any of these requirements and a showing by affidavit and supporting records by the electronic monitoring company on a domestic violence bond or general sessions bond or where emergency circumstances exist on any other bond, the approved electronic monitoring company may approach a summary court judge for a bench warrant if one is not already provided for in the bond paperwork or other court order. Law enforcement shall immediately attempt to locate and incarcerate the defendant upon notice of the bench warrant. After incarceration, the prosecutor must be notified and the defendant must be brought before a summary court judge within three calendar days or before a circuit court judge within three business days, whichever has jurisdiction of the underlying charge, to determine whether the bond is to be reconsidered or bond conditions amended. The prosecution must provide the defense with any relevant evidence regarding the alleged violation within a reasonable time before the hearing and the hearing may be continued for cause.

(2) Nothing in this section shall reduce any duty of the bondsman to pick up the offending bailee and immediately incarcerate him for violation of bond conditions. Failure to do so may lead to bond estreatment for failure to enforce bond conditions by the bondsman and possible other administrative or criminal action.

(3) Nothing in this section may be used to hold the electronic monitoring agency civilly liable for any criminal acts of the defendant committed while being monitored.

SECTION X. Chapter 15, Title 17 of the S.C. Code is amended by adding:

Section 17-15-37. (A) The South Carolina Law Enforcement Division may promulgate regulations to effectuate the intent of Section 17-15-35 and this section, develop standards for the use and approval of tier one and tier two active electronic monitoring devices, and shall certify electronic monitoring agencies, including law enforcement agencies, electronic monitoring companies, and bondsmen and bonding companies. SLED must keep a public list of those companies that are certified.

(B) The approved electronic monitoring agency must:

(1) provide active electronic monitoring devices or mobile phone applications approved by SLED that:

(a) for a tier one device, must actively monitor and record a person’s location at least once every minute, twenty-four hours a day, and that timely record and report the person’s presence near or within a prohibited area or the person’s departure from a specified geographic location;

(b) for a tier two device or mobile phone applications, must provide verifiable identity and location information at regular and random intervals throughout the day, allowing for reasonable times of sleep, and that timely record and report the person’s presence near or within a prohibited area or the person’s departure from a specified geographic location;

(2) allow any law enforcement agency, including the prosecutor’s office, to have access to real-time monitoring, if possible, and any reports requested by law enforcement or the prosecution must be provided within twenty-four hours of the request;

(3) notify the solicitor having jurisdiction over the participant and the bondsman within forty‑eight hours when he becomes aware or should have become aware that the participant has violated any provision of the court’s order for electronic monitoring, or the participant has been surrendered to the custody of law enforcement; and

(4) immediately notify local law enforcement and make reasonable attempts to immediately notify the victim if the participant violates any exclusion zones related to the victim.

(C) Failure of the electronic monitoring agency to maintain compliance with regulations established by SLED, the order of the court, or any applicable statute shall be reported to SLED by the solicitor for administrative action. SLED may impose a fine, or suspend or revoke the certification for any approved agency who demonstrates a failure to maintain the standards and reporting requirements set forth under the regulations and appropriate statutes.

SECTION X. Section 38-53-10(12) of the S.C. Code is amended to read:

(12) “Surety bondsman” means any person who is approved by and licensed by the director or his designee as an a property and casualty insurance agent, appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised money or other things of value for the execution or countersignature.

SECTION X. Section 24-13-425 of the S.C. Code is amended to read:

Section 24-13-425. (A) For the purposes of this section:

(1) “Electronic monitoring device” includes any device ordered by a court or pursuant to any statute that is utilized to track the location of a person.

(2) “Person” includes any public or private agency or entity providing electronic monitoring services.

(B) It is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purpose of monitoring a person who is:

(1) complying with the Home Detention Act as set forth in Article 15, Title 24;

(2) wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) wearing an electronic monitoring device as a condition of probation, parole, or community supervision; or

(4) wearing an electronic monitoring device as required by any other provision of law.

(C) It shall be unlawful for any person to knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purposes described in subsection (B).

(D) This section does not apply to an employee or agent of the electronic monitoring company, bonding company, or law enforcement entity who removes or replaces an active electronic monitoring device in order to perform maintenance and repair on the device, who removes and replaces a non-working device, who removes the device once the person is placed into secure custody or if the underlying charges have been dismissed, or who otherwise is acting under the authority of the court order.

(E) Any person who violates the provisions of this section shall be guilty of the misdemeanor offense of tampering with the operation of an electronic monitoring device and shall be imprisoned for not more than three years, or fined up to three thousand dollars, or both.

Amend the bill further, by striking SECTION 14 and inserting:

SECTION 14. This act takes effect one hundred eighty days after approval by the Governor.

Renumber sections to conform.

Amend title to conform.

LUKE RANKIN for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill relates to bond matters for a defendant and, among other things, requires the court to consider the defendant’s existing bonds for prior charges when setting the conditions for release. In addition, the bill authorizes the court to issue a bench warrant for a defendant who has violated the conditions of his release on bond, and it increases the amount of time within which the court must provide notice of the issuance of the warrant. This bill also tasks DOI with the regulation and licensing of the electronic monitoring systems and companies for licensed bondmen in the state.

Department of Insurance. This bill tasks DOI with the regulation and licensing of the electronic monitoring systems and companies for licensed bondmen in the state. The bill further provides that no person, other than governmental entities, may engage in electronic monitoring except through licensees of the department. According to DOI, there may be an increase in the number of applicants applying for bondsman licenses, which would require additional staff to administer and verify the bondsman licenses. Currently, there are 686 bondsmen licensed through DOI. DOI also indicates that modification to the department’s licensing procedures would be needed to require bondsmen providing electronic monitoring to notify DOI of the monitoring company. Additional staff will be needed to review, process, and verify the information included in the applications and to investigate issues related to license denials for new and renewal applications. Further, the bill states that bondsmen who fail to report under the requirements of the bill will be reported to DOI for administrative action. DOI anticipates that there will be an increase in the number of bondsmen who fail to report violations, and staff will be required to investigate and enforce the provisions of this section.

DOI reports that the 6.0 FTEs would be required to carry out the provisions of the bill. This would include 1.0 Attorney III with annual salary and fringe of $135,106, 2.0 Investigators III with total annual salary and fringe of $158,948, 2.0 Program Coordinators with total annual salary and fringe of $143,054, and 1.0 Program Assistant with annual salary and fringe of $55,632. In total, expected personnel expenses beginning in FY 2023-24 are estimated to be $492,740. Additionally, DOI indicates that operating expenses totaling $16,000 annually would be incurred for miscellaneous contractual supplies and materials, fixed charges, and travel. DOI would also require IT equipment for the additional personnel needed under this bill, resulting in a $12,000 non-recurring expense in FY 2023-24. In total, this bill will increase expenses for DOI by $520,740 in FY 2023-24 and $508,740 in each year thereafter. The department indicates that additional General Fund appropriations would be requested to cover these expenses.

Judicial. The implementation of this bill will have no expenditure impact for Judicial because the responsibilities within the bill can be managed with existing staff and within existing appropriations.

State Revenue

The bill also requires the solicitor to notify the DOI of any failure of a bondsman to report instances where a defendant violates any provision of a court order for electronic monitoring. The DOI may subsequently fine, suspend, or revoke the bondman’s license. Further, the bill requires a surety bondsman to, within thirty days of executing a bail bond, file with his insurance provider a written or electronic report detailing all bail bonds on which he has caused to be executed. However, in lieu of submitting a monthly report, a bondsman may use a data management software system to record the bonds executed and provide the appropriate clerk of court or his designee with real-time access to the system.

The fine established by the bill that DOI may assess against a bondman not compliant with the reporting requirement will increase Other Funds revenue for DOI beginning in FY 2023-24. However, as the number of non-compliant bondmen is currently unknown, the revenue impact is undetermined. DOI further indicates that this bill will have no impact on bondman insurance premiums or premiums tax revenue.

Local Expenditure

RFA surveyed local governments, as well as MASC, as to the expenditure impact of the bill and received responses from Cherokee County, Clarendon County, and MASC. Cherokee County indicated that implementation of the bill may cause an influx of bench warrants, which could result in an additional backlog of cases. To address the increased workload, Cherokee County anticipates it would need to hire two additional general sessions clerks and two additional magistrate court clerks at a total minimum cost of $150,000 annually. Clarendon County and MASC responded that they did not anticipate any expenditure impact from implementation of the bill.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 17‑15‑20, RELATING TO CONDITIONS OF APPEARANCE, RECOGNIZANCE, OR APPEARANCE BOND; DISCHARGE, VALIDITY, AND RELIEF OF SURETY, SO AS TO PROVIDE THAT AN APPEARANCE BOND SHALL AUTOMATICALLY CONVERT TO A PERSONAL RECOGNIZANCE BOND AFTER THREE YEARS FOR A CIRCUIT COURT OFFENSE AND AFTER EIGHTEEN MONTHs FOR A MAGISTRATE’S OR MUNICIPAL COURT OFFENSE; BY AMENDING SECTION 17‑15‑30, RELATING TO MATTERS TO BE CONSIDERED IN DETERMINING CONDITIONS OF RELEASE, TO PROVIDE THAT THE COURT MUST CONSIDER A DEFENDANT’S PRIOR CHARGES AND EXISTING BONDS WHEN DETERMINING BOND; BY AMENDING SECTION 38‑53‑10 TO ESTABLISH A DEFINITION FOR ELECTRONIC MONITORING; BY AMENDING SECTION 38‑53‑50, RELATING TO SURETY RELIEVED ON BOND, TO PROVIDE THAT FAILURE TO PAY PREMIUM FEES ALONE IS NOT SUFFICIENT REASON TO WARRANT IMMEDIATE INCARCERATION OF THE DEFENDANT; BY AMENDING SECTION 38‑53‑70, RELATING TO ISSUANCE OF BENCH WARRANT, TO PROVIDE THAT THE COURT MUST NOTIFY THE BONDSMAN WITHIN THIRTY DAYS OF the ISSUANCE OF A BENCH WARRANT; BY ADDING SECTION 38‑53‑83 TO PROVIDE THAT ONLY a QUALIFIED AND LICENSED BONDSMAN OR RUNNER may engage in electronic monitoring of a defendant; BY ADDING SECTION 38‑53‑84 TO PROVIDE THAT A PERSON ENGAGED IN THE ELECTRONIC MONITORING OF A DEFENDANT MUST NOTIFY THE SOLICITOR WITHIN FORTY‑EIGHT HOURS OF ANY VIOLATION OF A CONDITION OF THE BOND BY THE DEFENDANT AND TO PROVIDE THAT FAILURE TO PAY THE MONITORING FEES IS A REVOKABLE CONDITION OF THE BOND; BY AMENDING SECTION 38‑53‑170, RELATING TO UNLAWFUL ACTS BY A BONDsMAN, TO PROVIDE CONDITIONS FOR THE PAYMENT AND COLLECTION OF PREMIUMS, FEES, AND COLLATERAL; AND BY AMENDING SECTION 38‑53‑310, RELATING TO WRITTEN REPORT TO BE FILED WITH CLERK OF COURT, TO PROVIDE THAT A BONDsMAN MUST PROVIDE A WRITTEN REPORT TO THEIR INSURANCE PROVIDER WITHIN THIRTY DAYS OF EACH BOND, AND TO PROVIDE THAT the requirement for monthly REPORTS TO THE CLERK OF COURT MAY BE SATISFIED WITH GIVING THE CLERK ACCESS TO AN ELECTRONIC DATABASE THAT CONTAINS THE REQUIRED INFORMATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 17‑15‑20 of the S.C. Code is amended to read:

Section 17‑15‑20. (A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what is enjoined by the court, and not to leave the State, and be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

(B) Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilt, a deferred disposition, or as otherwise provided by law. An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court, to be referred to as the statutory bail bond discharge period. In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety's intent to assert that the person is no longer subject to a valid appearance bond. If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order At the expiration of the statutory bail bond discharge period, the appearance bond converted shall automatically convert to a personal recognizance bond and the surety relieved of liability.

SECTION 2. Section 17‑15‑30(B) of the S.C. Code is amended to read:

(B) A court shall must consider:

(1) a person's criminal record;

(2) any prior charges, and existing bonds on prior charges, pending against a person at the time release is requested;

(3) all incident reports generated as a result of an offense charged;

(4) whether a person is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status; and

(5) whether the charged person appears in the state gang database maintained at the State Law Enforcement Division.

SECTION 3. Section 38‑53‑10 of the S.C. Code is amended by adding

(15) “Electronic monitoring” means monitoring a person by the use of a device which records or transmits oral or wire communications or an auditory sound, visual images, or information regarding the person's activities.

SECTION 4. Section 38‑53‑50(B) of the S.C. Code is amended to read:

(B) If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety, within three business days following recommitment, must file with the detention facility and the court an affidavit clocked in with the clerk of court on a form provided by the Division of Court Administration stating the facts to support the surrender of the defendant for good cause. Nonpayment of premium fees alone is not sufficient cause to warrant immediate incarceration of the defendant. When the defendant and the affidavit are presented at the appropriate detention facility, the facility shall take custody of the defendant. When the affidavit is filed with the court, the surety also shall file a motion to be relieved on the bond pursuant to subsection (A). A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16.

SECTION 5. Section 38‑53‑70 of the S.C. Code is amended to read:

Section 38‑53‑70. If a defendant fails to appear at a court proceeding to which he has been summoned violates the conditions of release on bond, the court shall issue a bench warrant for the defendant. The court shall make available for pickup by the surety or the representative of the surety who executed the bond on their behalf, a true copy provide written or electronic notice of the issuance of the bench warrant within seven thirty days of its issuance at the clerk of court's office to every party bound in the recognizance. If the surety fails to surrender the defendant or place a hold on the defendant's release from incarceration, commitment, or institutionalization within ninety days of the issuance of the bench warrant, the bond is forfeited. At any time before execution is issued on a judgment of forfeiture against a defendant or his surety, the court may direct that the judgment be remitted in whole or in part, upon conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. In making a determination as to remission of the judgment, the court shall consider the costs to the State or a county or municipality resulting from the necessity to continue or terminate the defendant's trial and the efforts of law enforcement officers or agencies to locate the defendant. The court, in its discretion, may permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond. If at any time during the period in which installments are to be paid, the defendant is surrendered to the appropriate detention facility and the surety complies with the recommitment procedures, the surety is relieved of further liability.

SECTION 6. Chapter 53, Title 38 of the S.C. Code is amended by adding:

Section 38‑53‑83. No person may engage in electronic monitoring of a defendant released by a court of competent jurisdiction pursuant to a bail bond unless that person is qualified and licensed as a professional bondsman, surety bondsman, or runner pursuant to the provisions of this chapter. This section does not apply to any agent or agency of the State, any agent or agency of any county or municipal government in South Carolina, or any agent or agency, department, or division of the federal government.

SECTION 7. Chapter 53, Title 38 of the S.C. Code is amended by adding:

Section 38‑53‑84. (A) A person engaged in electronic monitoring of a defendant must, within forty‑eight hours, notify the solicitor having jurisdiction over the defendant when he becomes aware or should have become aware that the defendant has violated any provision of the court’s order for electronic monitoring. Failure of a defendant to timely pay the bondsman the full monthly electronic monitoring fee associated with the cost of the electronic monitoring device and the associated cost of the monitoring service, shall, in and of itself, constitute good cause for the bondsman to file a motion to be relieved on the bond and to surrender the defendant to the custody of the appropriate detention facility pursuant to Section 38‑53‑50.

(B) Failure of the bondsman to maintain compliance with the reporting requirement of subsection (A) shall be reported to the South Carolina Department of Insurance by the solicitor for administrative action whereby the bondsman’s license may be fined, suspended, or revoked.

SECTION 8. Section 38‑53‑170 of the S.C. Code is amended to read:

Section 38‑53‑170. No bondsman or runner may:

(a) pay a fee or rebate or give or promise anything of value, directly or indirectly, to a jailer, law enforcement officer, committing magistrate, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or the forfeiture of the bail bond, including the payment to the law enforcement officers, directly or indirectly, for the arrest or apprehension of a principal or principals who have caused a forfeiture;

(b) pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

(c) pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf;

(d) participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety, nor suggest or advise the employment of or name for employment any particular attorney to represent the principal;

(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 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 or five percent, whichever is greater, of the face amount of the bond. 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. The bondsman may accept collateral security or other indemnity from the principal which must be returned upon within ten days after final termination of liability on the bond unless a bench warrant has been issued. 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. If the bond is forfeited, a bondsman may not convert collateral described in the collateral receipt to cash until he has provided a ten‑day notice of this pending conversion to the depositor. This notice must be sent by certified mail to the last known address of the depositor. After the conversion, the bondsman must disclose the actual amount received to the depositor and must return any amount received that exceed the final judgment or consent amount, less any reasonable expenses. These reasonable expenses include apprehension and legal costs incurred as a result of the violation of the bond. The bondsman must provide the depositor copies of all receipts and, if applicable, the overage money within three days after settlement;

(f) solicit business in any of the courts or on the premises of any of the courts of this State, in the office of any magistrate, or in or about any place where prisoners are confined. Law enforcement officers and jailers shall report any violations of this provision to the court. Any action taken pursuant to this provision resulting in a conviction, guilty plea, or plea of nolo contendere pursuant to Section 38‑53‑340 must be reported to the director or his designee by the court within thirty days; or

(g) advise or assist the principal for the purpose of forfeiting bond.

SECTION 9. Section 38‑53‑310 of the S.C. Code is amended to read:

Section 38‑53‑310. (A) Each professional bondsman shall by the fifteenth of each month file with the clerk of court of the county of his principal place of business and any other county where he is doing business a written report in a form prescribed by the director or his designee regarding all bail bonds on which he is liable as of the first day of each month showing:.

(B) Each surety bondsman shall, within thirty days of executing a bail bond, file with their respective insurance provider a written or electronic report in a form approved by the director or his designee detailing all bail bonds on which he has caused to be executed.

(C) The reports referenced in subsections (A) and (B) shall include the following:

(a)(1) each individual bonded;

(b)(2) the date the bond was given;

(c)(3) the principal sum of the bond;

(d)(4) the state or local official with whom the bond was filed;

(e)(5) the fee charged for the bonding service in each instance; and

(f)(6) all pending bonds; and

(7) any current data on monies to be collected and retained as an express condition of the bond, whether for electronic monitoring or otherwise.

(D) In lieu of the monthly submission of a written report to the clerk of court, the bondsman may utilize a data management software system, which contains the above required current information, and is capable of providing the appropriate clerk of court or his designee with real‑time access to the data management system through a portal, website, or other data access system through which the clerk of court can confirm he has access to the required information.

SECTION 10. This act takes effect upon approval by the Governor.

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