

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY
HOUSE BILL NO. 151

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING
TO BAIL BOND AGENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Subchapter II, Title 18, Delaware Code by making deletions as shown by strike through and insertions as shown by underlining and as follows:

§4331. Purpose.

(a) This subchapter governs the qualifications and procedures for the licensing of bail agents. This subchapter shall establish the qualifications for granting licenses to professional bail agents, establish the procedures to be followed in determining the initial and continuing qualifications for such persons, and provide standards for such persons' authorities, duties, responsibilities and prohibitions in a manner that will provide guidance to such personnel and control over such personnel by the Commissioner for the benefit and protection of the citizens of the State.

(b) Producer licensing is primarily governed by Chapter 17 of this title. In the event of a conflict between the provisions of this subchapter and Chapter 17 of this title, the provisions of this subchapter shall govern unless expressly provided otherwise.

§4332. Definitions.

(a) "Bail agent" or "licensee" means a person required to be licensed under the laws of this State to sell, solicit or negotiate contracts of surety bail bond insurance and appointed by a surety insurer that is authorized to transact business in this State to sell, solicit or negotiate contracts of surety bail bond insurance. The term "bail agent" shall also be deemed to include the terms "bail bondsman", "bail bond agent", "bail bonding agent" or any other similar term or phrase intended to mean a person or entity performing the function of issuing bail bonds in the State of Delaware. The term bail agent does not include the term "bail enforcement agent" as the same is used in Chapter 55 of Title 24. A bail agent may also act as a property bail agent.

(b) "Business entity" shall have the meaning ascribed to it in §1702 of this title.

(c) "Collateral" means United States currency, United States postal money orders or cashier's checks or other property pledged as security or surety for a bail bond in connection with a judicial proceeding.

~~(e)~~(d) "Commissioner" shall have the meaning ascribed to it in §102 of this title.

~~(d)~~(e) "Court" means any court of this State that has the power to set bail to enforce the appearance of a defendant in a criminal or civil proceeding.

~~(e)~~(f) "Department" shall have the meaning ascribed to it in §102 of this title.

~~(f)~~(g) "Designated bail agent" means the licensed bail agent who is the head or manager of a bail agent business entity that employs 1 or more licensed bail agents.

~~(g)~~(h) "Home state" means the District of Columbia or any state or territory of the United States in which a bail agent maintains that bail agent's principal place of residence or principal place of business and is licensed to act as a bail agent.

~~(h)~~(i) "License" shall have the meaning ascribed to it in §1702 of this title.

~~(i)~~(j) "Negotiate" shall have the meaning ascribed to it in §1702 of this title.

~~(j)~~(k) "Nonresident bail agent" means any licensed bail agent whose principal place of business or residence is located in any state or territory other than Delaware.

~~(k)~~(l) "Person" shall have the meaning ascribed to it in §1702 of this title.

(l) "Premium" is the consideration for a bail bond by whatever name called.

~~(l)~~(m) "Property bail agent" means any person who pledges ~~United States currency,~~
~~United States postal money orders or cashier's checks or other~~ property bail as security or surety for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.Any person who charges a fee for or makes a business of furnishing property bail in any court proceeding, or who furnishes property bail in four or more court cases in any one year whether for compensation or otherwise, shall be deemed a property bail agent and shall be subject to the provisions of this subchapter. Unless otherwise prohibited by this chapter, a bail agent or licensee under this subchapter may also act as a property bail agent. A property bail agent who is not a licensee appointed by an insurer under this chapter shall be obligated to pay any and all taxes, fees or the like for which any insurer would be obligated under this title. A property bail agent who is not licensed as an insurance producer shall be

subject to the jurisdiction of the Department of Insurance and be obligated to meet all of the requirements of this subchapter and Chapter 17 of this title insofar as they apply to bail agents.

~~(m)~~(n) "Revocation" shall have the meaning ascribed to it in §1702 of this title.

~~(n)~~(o) "Sell" shall have the meaning ascribed to it in §1702 of this title.

~~(o)~~(p) "Solicit" shall have the meaning ascribed to it in §1702 of this title.

~~(p)~~(q) "Surety insurer" shall mean an insurer having a certificate of authority from the Department to issue surety contracts or bonds to guarantee the performance of any person licensed under this subchapter.

~~(q)~~(r) "Suspension" shall have the meaning ascribed to it in §1702 of this title.

~~(r)~~(s) "Termination" shall have the meaning ascribed to it in §1702 of this title.

~~(s)~~(t) "Uniform Application" shall have the meaning ascribed to it in §1702 of this title.

~~(t)~~(u) "Uniform Business Entity Application" shall have the meaning ascribed to it in §1702 of this title.

§4333. Application for license as bail agent and licensure; ~~nonresident bail agent.~~

(a) A person applying for a bail agent producer license shall make application to the Commissioner on the Uniform Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application and shall declare

under penalty of denial, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief.

(b) Before approving the application, the Commissioner shall find that the individual:

(1) Is at least 18 years of age;

(2) Is a resident of the State of Delaware. For purposes of establishing Delaware residency, it shall be sufficient to show that the applicant maintains an office within the State of Delaware that complies with all requirements of Sections 4341 and 4346 of this Title.

~~(2)~~(3) Has not committed any act that is a ground for denial, suspension or revocation set forth in this chapter and §1712~~1721~~ of this title;

~~(3)~~(4) Has paid the fees set forth in Chapter 7 of this title;

~~(4)~~(5) Has successfully passed the examinations for the lines of authority for which the person has applied, unless specifically exempted from such examination by this subchapter;

~~(5)~~ Has identified a home state as a principal place of business;

(6) Has not been suspended or prohibited from acting as a bail agent by any court, or had a license suspended or revoked by the District of Columbia or any state or territory of the United States. The Commissioner shall verify the applicant's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; and

(7) Has, in the case of a property bail agent, established that the individual is financially responsible pursuant to such rules and regulations as may be established by the Commissioner and provided such surety bond or deposit in lieu thereof as required by §4336 of this title hereof.

(c) A person applying for, or having been granted, a bail agent producer license, shall disclose to the Commissioner the identity of each person having or seeking to acquire a ten percent or greater financial interest in (i) the bail agent's business or (ii) any one or more bail bonds pledged by or on behalf of the applicant or licensee. Before any person may acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, such person must be licensed as a bail agent under this section. No applicant for a license or licensee shall allow a person to acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, unless the person seeking to acquire such interest is licensed as a bail agent under this section.

~~(e)~~(d) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or such other person or persons as the Commissioner shall designate by rule or regulation.

~~(d)~~(e) Each application shall further contain, at the applicant's expense, a statement background check of the applicant's criminal history, dated within 45 days of the application. The background check shall consist of: (1) A report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person; and (2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (federal CHRI report). The Division of State Police shall be the intermediary for the purposes of this paragraph.~~which the applicant shall obtain from the Delaware State Bureau of Identification pursuant to §8513(a)(2) of Title 11.~~

~~(e)~~(f) All collateral premiums, return premiums or other funds received in any manner by a bail agent shall be held in a fiduciary capacity and shall be accounted for by such bail agent.

~~(f)~~(g) A ~~nonresident person who has~~ shall received a nonresident bail agent license under prior law, shall not be permitted to renew the bail agent's license, unless such person shall establish Delaware residency under sub-section (b)(2) of this section, and successfully pass the examination under sub-section (b)(5) of this section, in addition to meeting all other applicable requirements for resident licensing. if:

~~(1) The person is currently licensed as a bail agent and in good standing in that person's home state;~~

~~(2) The person has submitted the proper request for licensure and has paid the fees required by Chapter 7 of this title;~~

~~(3) The person has submitted or transmitted to the Commissioner the application for licensure that the person submitted to that person's home state, or in lieu of the same, a completed Uniform Application or forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application; and~~

~~(4) The person's home state awards nonresident bail agent licenses to residents of this State on the same basis as this State.~~

~~(5) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or such other person or persons as the Commissioner shall designate by rule or regulation.~~

~~(6) The Commissioner may verify the nonresident's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.~~

~~(7) A nonresident bail agent who moves from one state to another state or a resident bail agent who moves from this State to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence for which no license fee or license application is required.~~

~~(8) As a condition to continuation of a nonresident bail agent license issued under this section, the licensee shall maintain a resident bail agent license in that licensee's home state. The nonresident bail agent license issued under this section shall terminate and be surrendered immediately to the Department if the home state bail agent license terminates for any reason, unless the bail agent has been issued a license as a resident bail agent in that bail agent's new home state. Notification of such change, including both the old and new address, to the Department must be made as soon as possible, but no later than 30 days after obtaining a new state resident license. A new state resident license is required for a nonresident license issued by the Department to remain valid. The new state resident license must have reciprocity with this State in order for the nonresident license not to terminate.~~

~~(g)~~(h) Nothing contained in this subchapter or Chapter 17 of this title shall apply to any person who may pledge money or property for no fee or remuneration directly with a court on behalf of a defendant under such rules or procedures as may be approved by the court.

~~(h)~~(i) The applicant for a bail agent license shall bear all costs associated with the application or any reapplication.

§4334. Application for license as a business entity.

(a) A business entity advertising and acting as a bail agent is required to obtain a business entity insurance license. All surety bail bond contract transactions under the business entity license must be completed by a licensed bail agent of this State.

(b) Application for a business entity license shall be made using the Uniform Business Entity Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Business Entity Application.

(c) Before approving the application, the Commissioner shall find that:

(1) The business entity has paid the fees set forth in Chapter 7 of this title; and

(2) The business entity has designated a licensed bail agent or producer licensed under Chapter 17 of this title responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.

(d) The Commissioner may require any documents reasonably necessary to verify the information contained in an application.

§4335. License renewal.

Subject to the requirements of section 4333(g) of this Title, Aa person who is licensed as a bail agent shall renew the license in accordance with the same requirements established for insurance producers under Chapters 7 and 17 of this title. In addition, such person shall be required to show that since the last renewal or initial application in this state, neither the person nor any business in which the person is or was an owner, partner, officer or director, or member or manager of limited liability company, has been suspended or prohibited from acting as a bail agent by any court, or otherwise been involved in an administrative proceeding regarding any professional or occupational license, or registration. At the time of renewal, the person also shall

submit an updated state and federal criminal background check in accordance with Section 4333(e) of this Subchapter.

§4336. Bonds.

(a) At the time of the application for license as a bail agent, the applicant shall file with the Department a bond executed and issued by a surety insurer authorized to transact business in the State in the minimum amount of \$20,000, which bond shall secure the faithful performance of the applicant's duties as a bail agent. A bail agent license shall be automatically suspended if the bond is not in force or if the security referred to in subsection (c) of this section is impaired or unavailable to the Department.

(b) The bond shall have the following characteristics:

(1) The bond must be conditioned upon a full accounting and payment to the person entitled thereto of money, property or other matters coming into the licensee's possession through bail bond transactions under the license.

(2) The bond shall be in favor of the State and shall specifically authorize recovery by the Commissioner of the damages sustained if the licensee violates any of the terms of the license or the applicable laws and regulations of this State.

(3) The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

(4) The bond must remain in force until released by the Commissioner, or cancelled by the surety. The surety may cancel the bond upon 30-days' written notice to the

licensee and the Commissioner provided that the surety shall remain liable for any obligation arising under the bond prior to the effective date of cancellation or termination.

(c) In lieu of a surety bond, an applicant for licensure or a licensee may assign or post cash, negotiable securities, irrevocable letter or letters of credit or similar instruments under such terms as may be approved by the Department.

§4337. Examination for license as bail agent.

(a) Any natural person who intends to apply for a license as a bail agent, must personally take and pass a written examination of that person's competence to act as such. After passing the examination, the person may apply to the Commissioner for a bail agent license.

(b) The scope of the examination shall encompass all aspects of the bail bond business as shall be determined by the Department.

(c) The Department may make arrangements for administration and grading by an independent testing service.

(d) Any individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for a reexamination and remit all required fees and forms before being permitted to take the reexamination.

(e) All examination score reports are valid for a period of 12 months from the date of examination.

(f) A bail agent, whose license lapses and whose license is not suspended or revoked is exempt from retaking the examination required by this section if the bail agent applies for and is reinstated within 12 months after the date of lapse. All fees and fines associated with the lapsed and reinstated license must be paid in full prior to the Department's approval of the request for reinstatement. However, a penalty of double the regular license fee shall be required for any renewal fee received after the due date and within the first 6 months from the due date of the renewal fee. A licensee who does not pay within 6 months of the due date but pays prior to the expiration of 12 months from the due date shall be subject to a fine of not less than \$200 and not more than \$1,000 prior to the reinstatement of the license.

§4338. Issuance of license; notice of refusal to issue license; fees not refundable.

(a) Upon the Department's determination that the application is complete, the applicant has passed all required examinations and is otherwise qualified for the license applied for, the Department shall thereupon issue the license.

(b) A bail agent license shall remain in effect:

(1) Unless revoked or suspended;

(2) As long as the fee set forth in Chapter 7 of this title is paid and educational requirements as established by law or regulation for bail agents are met by the due date; and/or

(3) Unless the bail agent fails to procure or maintain in full force and effect a bond required by §4336 of this title herein.

(c) If a bail agent fails to comply with subsection (b) of this section above, the Department shall, without a hearing, deem the bail agent's license administratively lapsed until the requirements of subsection (b) of this section are met and the bail agent has satisfied all monetary and/or educational obligations and costs necessary under §1707(g) of this title to restore the license, provided that such action is taken within 1 year of the date the license is administratively suspended. After 1 year, the bail agent's license shall be deemed revoked and the bail agent would be required to reapply for licensure under §4333 of this title as a new applicant.

(d) If the applicant for a bail agent license fails to meet the requirements of this subchapter or any applicable regulation, the Department shall refuse to issue the license and shall notify the applicant of such refusal stating the grounds for the refusal. The notice of refusal shall constitute an order of the Commissioner as provided for in §323 of this title.

(e) Any fees required to be paid pursuant to this subchapter are nonrefundable.

(f) The license shall contain the licensee's name, address, and personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the Department deems necessary.

(g) Licensees shall inform the Department by any means approved by the Department of a change of address within 30 days of the change. Failure to timely inform the Department of a change in legal name or address shall result in a penalty pursuant to §1712(d) of this title.

(h) The Commissioner may issue a new license for any lost, stolen or destroyed license issued pursuant to this chapter upon written request from the licensee and payment of appropriate fees for such duplicate license.

§4339. Waiver of license fee.

A licensed bail agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance approved by the Commissioner may request a waiver of license fees and/or the extension of time to reinstate a license under such procedures as may be established by the Department. The bail agent may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures as a result of such military service or approved extenuating circumstance.

§4340. Contractual services.

(a) In order to assist in the performance of the Department's duties, the Commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Commissioner and the nongovernmental entity may deem appropriate.

(b) The Commissioner may participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry where bail agent licenses and appointments may be centrally or simultaneously affected for all states that require a bail agent license and participate in such centralized producer license registry. If the Commissioner finds that participation in such a centralized producer license registry is in the public interest, the Commissioner may adopt by rule any uniform standards and procedures as necessary to participate in the registry including the central collection of all fees for licenses or appointments that are processed through the registry.

§4341. Records.

The bail agent shall maintain at that bail agent's principal place of business in this State the license issued by the Department, together with such records as may be reasonably required by the Department. Such records shall show, for each bail bond, policy or contract placed or countersigned by or through the licensee, names of the insurers, principals, insureds, bond or policy number, expiration date thereof, premium payable under the terms of the bond, policy or contract, and such other information as the Department may, from time to time, require. Records shall be retained and available for inspection by the Commissioner for a period of 3 years after the bond has been exonerated by the courts. The records shall be open to examination by the Department at all times as provided for in Chapter 3 of this title.

(a) Each licensee, as a minimum requirement for permanent office records shall maintain:

(1) A daily bond register which shall be the book of original and permanent record of all bonds or undertakings executed by the licensee which shall state the number of the Power of Attorney form, date bond was executed, name of principal, amount of bond, premium charged, premium reported to surety company, security or collateral received, indemnity agreements, disposition of bond, and date of disposition.

(2) An individual file for each principal for whom bond is made which shall contain the original application for bail bond or undertaking, copy of premium receipt, copy of collateral receipt, copy of a bond discharge, if issued, security or collateral affidavit, where security or collateral is located, information as to any security or consideration received by the agency or licensee in connection with each particular bail bond or undertaking and purpose for which it was received, receipt or release executed by the person or persons posting security or collateral evidencing the return of such security or collateral and indemnity agreement as executed by any co-indemnitors.

§4342. Appointment of bail agents.

(a) Each insurer appointing a bail agent shall file an appointment with the Department and pay the same appointment fee as for producers under Chapter 17 of this title.

(b) Each appointment shall remain in effect until the bail agent's license is revoked or terminated, or the appointment is terminated by the insurer.

§4343. Termination of appointment.

(a) An insurer may terminate an appointment at any time. The insurer shall promptly give written notice of termination and the effective date thereof to the Department, on forms approved by the Department and to the bail agent if reasonably possible. The Department may require the insurer to provide reasonable proof that the insurer has also given such a notice to the agent unless there are valid reasons why such notice can or should not be given by the insurer.

(b) Accompanying each notice of termination given to the Department, the insurer shall file a statement of the cause, if any, for the termination. Any information or documents so disclosed to the Department shall be deemed a confidential document, disclosure of which shall be governed by the provisions of §1716(f) of this title.

(c) No agreement between an insurer and a bail agent or between an employing bail agent and a licensed bail agent shall affect the Department's termination of the appointment or license if the termination is requested by the insurer or the employing bail agent.

(d) The Department shall notify the courts upon the termination, suspension or revocation of a bail license.

(e) A bail agent's license that is otherwise in good standing with the Department shall be immediately suspended and be subject to revocation by the Department upon notice from a court that the bail agent has been struck from the list of approved bail agents by the court or courts.

§4344. Bail agents and designated responsible bail agents: special requirements.

(a) A bail agent shall not concurrently be employed or licensed by more than 1 bail agent or bail agent business entity.

(b) The designated bail agent is responsible for the acts or omissions of the bail agents employed or operating under the designated bail agent's authority only insofar as the bail agent is acting within the scope of that bail agent's employment or authority.

(c) The bail agent shall maintain that bail agent's office with that of the designated bail agent by whom he or she is employed.

(d) The bail agent's license must remain in the custody of the designated bail agent by whom he or she is employed. Upon termination of such employment as a bail agent, the designated bail agent shall give written notice of the reasons thereof to the Department.

(e)(f) [Repealed.]

§4345. Registration with the courts.

No bail agent may operate under a license from the Department unless the bail agent has registered with and been approved by the courts of this State according to such rules and procedures as the courts shall have established. Nothing in this subchapter shall limit the authority of the various courts of the State to regulate the manner in which bail agents conduct business within the courts of the State, including, but not limited to, imposing sanctions for violations of any laws or administrative rules established by the courts notwithstanding the fact that such bail agent may be duly licensed by the Department of Insurance.

§4346. Bail agent: place of business; display of licenses and fees charged; retention of records at place of business.

(a) Every ~~resident~~ bail agent shall have and maintain in this State a principal place of business accessible to the public, and identified by a sign clearly visible to the public. The address of this principal place of business must appear upon the application for a license and upon the license, when issued, and the licensee shall promptly notify the Department of any change in that address in accordance with the requirements of section 1707(j) of this Title. This subsection does not prohibit a licensee from conducting business from a residence in this State, provided that it meets all other requirements applicable to offices of bail agents.

(b) The licenses of the designated bail agent, and of those bail agents employed or authorized by the designated bail agent, and the fees charged for services rendered, must be conspicuously displayed in the principal place of business in a place or area customarily open to the public.

(c) All records of the designated bail agent and those bail agents employed or authorized to operate under the designated bail agent's auspices shall maintain all of their business records at the principal place of business identified in the license issued by the Department.

~~(d) A nonresident bail agent is not required to maintain a place of business in this State but is otherwise subject to all of the requirements and obligations imposed on resident bail agents under this subchapter with respect to the bail agent's activities in this State.~~

§4347. Collections and charges permitted.

(a) Bail bond rates are subject to the provisions of Chapter 25 of this title.

(b) It is unlawful for a bail bond agent to execute a bail bond without charging a premium therefor, and the premium rate may not exceed or be less than the premium rate as filed with and approved by the Department. With regard to any surety bail bond in excess of \$1,000, the total filed premium for a surety bail bond shall be at least 10% and not more than 12%. It shall be unlawful for a bail agent to post a bail bond without first charging and receiving at least seven percent (7%) of the surety bail bond amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

(c) It is unlawful for any bail agent to charge any administrative fee, service charge, company or agent fee or the like not filed and approved pursuant to Chapter 25 of this title.

(d) The bond may contain provisions to reimburse the bail agent personally, or permit the bail agent to have a right of action against the defendant or any indemnitor, for actual expenses incurred in good faith, by reason of breach by the defendant of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or bail bond was written. If there is no written agreement, or an incomplete writing, the bail agent may seek enforcement of such legal or equitable rights against the defendant and any of the defendant's indemnitors as may be permitted by law. Such reimbursement or right of action may not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that may be verified by receipt in a total amount of not more than the principal sum of the bond or undertaking, incurred in good faith by the bail agent, its agents, licensees and employees by reason of the defendant's breach.

(e) Property bail agents, in addition to the requirements set forth in this section, shall not be permitted to issue a bond without first obtaining the approval of their charge or commission schedule from the Department. Likewise, any change or modification to the approved charge or commission shall be submitted to the Department for approval prior to any use thereof. Property bail agents shall be required to maintain a written disclosure statement approved by the Department, of their approved charges or commissions and shall provide a copy of said written disclosure to every prospective client prior to accepting the payment for the bond from the prospective client.

(f) The total charges or commissions for a cash bail may not be less than twenty percent (20%) or more than twenty-five percent (25%) of the bail amount posted by the property bail agent. It shall be unlawful for a property bail agent to post a bail without first charging and receiving at least twenty percent (20%) of the cash bail amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

(g) All written contracts and other documents related to the bail bond or cash bail shall be maintained by the bail agent in accordance with the record-keeping requirements in Section 4341 of this chapter.

§4348. Collateral; limitations on transfer of collateral; fiduciary capacity; requirements for receiving title to real property as collateral; written receipt for collateral.

(a) A bail agent may accept collateral or security in connection with a bail transaction if the collateral or security is reasonable in relation to the face amount of the bond. The bail agent shall not transfer the collateral or security to any person other than a bail agent licensed pursuant

to this subchapter or to a surety insurer holding a valid certificate of authority issued by the Department. The collateral shall not be transported or otherwise removed from this State.

(b) Any person who receives the collateral:

(1) Shall be deemed to hold the collateral in a fiduciary capacity to the same extent as a bail agent; and

(2) Shall retain, return and otherwise possess the collateral in accordance with the provisions of this subchapter.

(c) The collateral or security shall be received by the bail agent in a fiduciary capacity, and, until such time as there is a default of appearance by the defendant and demand for a forfeiture of the bail, the collateral or security shall be kept separate and apart from any other funds or assets of the licensee. Any collateral or security received by the bail agent shall be returned to the person, or that person's assignee or designated representative, who deposited it with the bail agent as soon as the obligation which was secured by the collateral or security, is discharged and all fees owed to the bail agent have been paid. The bail agent or any surety insurer having custody of the collateral or security shall, immediately after the bail agent or surety insurer receives a request for return of the collateral or security from the person who deposited the collateral or security, determine whether the bail agent or surety insurer has received notice that the obligation is discharged. If the collateral or security is deposited to secure the obligation of a bond, it must be returned immediately after receipt of the request for return of the collateral or security and notice of the entry of any order by an authorized official by virtue of which liability under the bond is terminated or upon payment of all fees owed to the bail agent, whichever is

later. A certified copy of the order from the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of liability.

(d) When accepting real property as collateral for a bond, it shall be unlawful for a bail agent to require a transfer of title to the real property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post real property on the defendant's behalf, to provide such certifications as may be necessary to establish title and unencumbered value, at the defendant's expense, together with the appropriate security documents that may be necessary to establish a lien interest in the real property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(e) When accepting personal property as collateral for a bond, a bail agent may not require a transfer of title to the personal property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post personal property on the defendant's behalf, at their expense, to provide such financing statements, motor vehicle titles with a lien stamp or the like that may be necessary to establish a lien interest in the personal property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(f) Upon release or exoneration of the bail obligation, the bail agent shall be required to provide such release documents as may be required to discharge any lien of record obtained under subsections (d) and (e) of this section above. The bail agent shall not charge any fee for such

service but may require that the defendant pay any direct costs of document preparation and filing fees.

(g) If the amount of any collateral received in a bail transaction exceeds the amount of any bail forfeited by the defendant for whom the collateral was accepted, the bail agent or any surety insurer having custody of the collateral shall, immediately after the bail is forfeited, return to the person who deposited the collateral the amount by which the collateral exceeds the amount of the bail forfeited. Any collateral returned to a person pursuant to this subsection is subject to a claim for fees, if any, owed to the bail agent returning the collateral.

(h) If a bail agent accepts collateral, that bail agent shall give a written numbered receipt for the collateral. The receipt must include in detail a full account of the collateral received and a copy thereof provided to the principal and any indemnitor, or person or persons pledging the collateral.

(i) When collateral security in excess of \$5,000 cash or its equivalent is received by a bail bond agent, the entire amount shall be immediately forwarded to the insurer. Such collateral security may be placed in an interest-bearing account to accrue to the benefit of the person giving the collateral security, and the bail bond agent or insurer may not make any pecuniary gain on the collateral security deposited. Any such account shall be in a depository office of a financial institution located in this State. The insurer shall be liable for all collateral received. If the bail bond agent fails to return the collateral to the ~~indemnitor~~ person or persons pledging the collateral within 20 days after final termination of liability on the bond, the surety shall be liable for the collateral and shall return the actual collateral to the ~~indemnitor~~ person or persons pledging

the collateral or, in the event that the surety cannot locate the collateral, the surety shall pay the ~~indemnitor~~ person or persons pledging the collateral pursuant to the provisions of this section.

§4349. Notice to law-enforcement; bail enforcement agents.

(a) After a warrant has been issued for a defendant's failure to appear, a bail agent having knowledge of the whereabouts of the defendant shall immediately notify the law-enforcement agency closest to the defendant's location of:

(1) The identity of the defendant;

(2) The identity of the bail agent;

(3) The location of the defendant where law-enforcement officers might be able to obtain custody of the defendant; and

(4) Whether the bail agent has retained a bail enforcement agent and/or notified a bail enforcement agent of the defendant's location.

(b) A bail agent may employ the services of a bail enforcement agent or similar person under such terms as may be permissible by law, regulation and/or court rule, the costs of which may be assessed to the indemnitor.

§4350. Prohibited acts; persons who may not be bail agents.

(a) A bail agent shall not:

(1) Suggest or advise the employment of or name for employment any particular attorney to represent the defendant.

(2) Solicit business in or about any place where prisoners are confined or in or about any court.

(3) Pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission or reduction of the amount of any undertaking or bail bond.

(4) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except for legal services actually rendered.

(5) Pay a fee or rebate or give or promise anything of value to the defendant or anyone in the defendant's behalf.

(6) Participate in the capacity of an attorney at a trial or hearing of a person on whose bond that bail agent is surety, except for the purposes of surrendering the defendant, making motions to set aside orders of bail forfeitures and motions to exonerate bails and protecting that bail agent's financial interest in such a bond.

(b) The following persons may not be bail agents, and shall not, directly or indirectly, receive any benefits from the execution of any bail bond:

(1) Jailers;

(2) Police officers;

(3) Any person acting in a judicial capacity, including but not limited to justices, judges, alderman, commissioners, clerks, etc.;

(4) Sheriffs, deputy sheriffs and constables;

(5) Attorneys or persons employed in an attorney's office;

(6) Any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners; and

(7) Prisoners incarcerated in any jail, prison or any other place used for the incarceration of persons.

(c) A bail agent shall not sign or countersign in blank any bond, or give the power of attorney to, or otherwise authorize, anyone to countersign that bail agent's name to bonds unless the person so authorized is a licensed bail agent directly employed by the agent giving the power of attorney.

(d) A bail agent, shall not advertise or hold himself or herself out to be a surety insurance company.

(e) Bail agents may not conduct any business or advertise in this State under any firm or trade name that (i) is false, misleading or deceptive, (ii) implies any connection with any government agency; or (iii) is not registered, licensed, and approved by the Department. Any advertisement shall prominently display the registered name and license number of the bail agent, bail bond business entity or bail bond property entity. No advertisement may use terms such as "discounted" rates. No bail agent may use more than two trade names.

(f) Any bail bond business entity or bail bond property entity advertising in this State must be licensed under section 4334 of this subchapter.

§4351. Justification of suretyship.

A bail agent shall justify that bail agent's suretyship by attaching a copy of the power of attorney issued to that bail agent by the surety insurer to each bond.

§4352. Reporting of actions.

(a) A bail agent shall report to the Department any administrative action taken against the bail agent in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(b) Within 30 days of the initial pretrial hearing date, a bail agent shall report to the Department any criminal prosecution of the bail agent taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

§4353. Regulations.

The Commissioner may promulgate such regulations as are necessary or proper to carry out the purposes of this subchapter.

§4354. Enforcement.

(a) No person shall act in the capacity of a bail agent, advertise or solicit bail bond business, perform any of the functions or duties of a bail agent, collect premiums, charge fees, or otherwise exercise or attempt to exercise powers prescribed for bail agents, unless such person is qualified, licensed and appointed as provided in Chapter 17 and this subchapter. Any person found guilty of violating this section is guilty of a class F felony.

(b) The Commissioner may place on probation, suspend, revoke or refuse to issue or renew a bail agent's license, or may levy a penalty or impose any other sanction authorized by Title 18, Chapter 17, section 1712, for any one or more of the causes enumerated in such section.

§43554. Enforcement after license lapses or is surrendered.

The Commissioner shall retain authority to enforce the provisions of, and impose any penalty or remedy authorized by, this subchapter and title against any person who is under investigation for, or charged with, a violation of this chapter and title even if, while the investigation or charges are pending, such person's license or registration is surrendered or lapses by operation of law.

SYNOPSIS

Revisions to the bail bond statutes are necessary in order to curb abuses of the bail bond system, and better serve the citizens and courts of the State of Delaware. Under the statutes, the Insurance Department regulates a large contingent of bail bond agents. The statutes cover both surety bond bail agents, who post surety bonds issued by an insurance company, and property or cash bail agents, who post cash or property bails. Many agents operate both as surety bond bail agents and cash or property bail agents.

This bill clarifies and expands the definition of property bail agent by including any person who charges a fee or makes a business of furnishing property bail in court proceedings. This bill will allow the Department and the courts to monitor more closely bail agents by requiring them all to be residents of the State of Delaware. A number of states currently have similar provisions requiring bail agents to be residents of the licensing state. Delaware residency may be established under the bill by maintaining a principal place of business in the State. Nonresident bail agents who currently are licensed and who wish to renew their licenses will be required to establish residency and successfully pass the Delaware bail agent examination when their non-resident licenses come up for renewal in 2013.

This bill will restrict participation by unlicensed persons in the bail bond business by requiring disclosure to the Commissioner of the identity of each person having or seeking to acquire a ten percent or greater financial interest in a bail agent's business or any bail bond, and by requiring any person who acquires a ten percent or greater financial interest in a bail agent's business or a bail bond to be licensed as a bail agent. The bill also provides that any unlicensed person acting as a bail agent is guilty of a class F felony. This penalty is the same as the one imposed by 24 Del. C. §5515(b) upon any unlicensed person acting as a bail enforcement agent.

This bill will also more clearly authorize the Commissioner to impose the same sanctions upon bail agents that the Commissioner may impose on all insurance producers under Title 18, section 1712, in the event of agent misconduct.

Going forward the State will require criminal background checks from both the FBI and SBI in connection with initial applications for licensure, and for each biennial renewal. The current statute requires only a background check from the SBI, and only upon the initial application.

The bill also establishes tighter standards for solicitation, record retention, reporting requirements, and accounting for premiums that allow for stronger regulatory oversight by the Department. Uniform standards of record retention to

ensure that the Department has access to tangible records when conducting market conduct examinations of bail agents is also required. These requirements will result in more transparency in the industry.

Under current law, the premiums for surety bail bonds and the commissions and other charges for cash bails must be filed with, and approved by, the commissioner. However, unscrupulous bail agents engage in a practice of "undercutting:" where in order to get business, they obtain only a limited portion of the filed rate of commission, and do not enter into a written agreement, before posting the bond. This practice allows defendants to post bond and leave detention at potentially much lower rates than the courts would expect based on the rates, charges and commissions filed with the commissioner. Under the bill, bail agents are required to collect a minimum of 7% of a surety bond amount, or 20% of a cash bail, and to enter into a written agreement before posting a bond.

Also, this bill will establish clearer standards for the return of collateral to persons pledging the collateral, prohibit any bail agent from using more than two trade names, and make minor corrections and changes to the current law.