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**HOUSE BILL NO. 2078**

Offered January 9, 2019

Prefiled January 7, 2019

*A BILL to amend and reenact §§ 9.1-185.8 and 19.2-143 of the Code of Virginia, relating to forfeiture on recognizance; bail bondsman; suspension of license.*

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 Patron—Bell, Richard P.

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 Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 9.1-185.8 and 19.2-143 of the Code of Virginia are amended and reenacted as follows:**

**§ 9.1-185.8. Professional conduct standards; grounds for disciplinary actions.**

A. Any violations of the restrictions or standards under this statute shall be grounds for placing on probation, refusal to issue or renew, sanctioning, suspension or revocation of the bail bondsman's license. A licensed bail bondsman is responsible for ensuring that his employees, partners and individuals contracted to perform services for or on behalf of the bonding business comply with all of these provisions, and do not violate any of the restrictions that apply to bail bondsmen. Violations by a bondsman's employee, partner, or agent may be grounds for disciplinary action against the bondsman, including probation, suspension or revocation of license.

B. A licensed bail bondsman shall not:

1. Knowingly commit, or be a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, forgery, scheme or device whereby any other person lawfully relies upon the word, representation, or conduct of the bail bondsman.

2. Solicit sexual favors or extort additional consideration as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors.

3. Conduct a bail bond transaction that demonstrates bad faith, dishonesty, coercion, incompetence, extortion or untrustworthiness.

4. Coerce, suggest, aid and abet, offer promise of favor, or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.

5. Give or receive, directly or indirectly, any gift of any kind to any nonelected public official or any employee of a governmental agency involved with the administration of justice, including but not limited to law-enforcement personnel, magistrates, judges, and jail employees, as well as attorneys. De minimis gifts, not to exceed \$50 per year per recipient, are acceptable, provided the purpose of the gift is not to directly solicit business, or would otherwise be a violation of Board regulations or the laws of the Commonwealth.

6. Fail to comply with any of the statutory or regulatory requirements governing licensed bail bondsmen.

7. Fail to cooperate with any investigation by the Department.

8. Fail to comply with any subpoena issued by the Department.

9. Provide materially incorrect, misleading, incomplete or untrue information in a license application, renewal application, or any other document filed with the Department.

10. Provide bail for any person if he is also an attorney representing that person.

11. Provide bail for any person if the bondsman was initially involved in the arrest of that person.

C. A licensed bail bondsman shall ensure that each recognizance on all bonds for which he signs shall contain the name and contact information for both the surety agent and the registered agent of the issuing company.

D. An administrative fee may be charged by a bail bondsman, not to exceed reasonable costs. Reasonable costs may include, but are not limited to, travel, court time, recovery fees, phone expenses, administrative overhead and postage.

E. A property bail bondsman shall not enter into any bond if the aggregate of the penalty of such bond and all other bonds, on which he has not been released from liability, is in excess of four times the true market value of the equity in his real estate, cash or certificates of deposit issued by a federally insured institution, or any combination thereof.

F. A property bail bondsman or his agent shall not refuse to cover any forfeiture of bond against him or refuse to pay such forfeiture after notice and final order of the court.

G. A surety bail bondsman shall not write bail bonds on any qualifying power of attorney for which a copy has not been filed with the Department.

H. A surety bail bondsman shall not violate any of the statutes or regulations that govern insurance

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59 agents.

60 I. A licensed bail bondsman shall not charge a bail bond premium less than 10 percent or more than  
61 15 percent of the amount of the bond. A licensed bail bondsman shall not loan money with interest for  
62 the purpose of helping another obtain a bail bond.

63 For the purposes of this subsection, "bail bond premium" means the amount of money paid to a  
64 licensed bail bondsman for the execution of a bail bond.

65 J. A licensed bail bondsman who has been arrested for a felony offense shall not issue any new  
66 bonds pending the outcome of the investigation by the Department.

67 K. *If a recognizance is forfeited pursuant to § 19.2-143 and such recognizance is not paid by 4:00*  
68 *p.m. on the last day of the 150-day period from the finding of default, the Department shall suspend the*  
69 *license of any bail bondsman on the bond in the forfeited recognizance until the forfeited recognizance*  
70 *is satisfied. If any surety company that guarantees the bond or employer of such bail bondsman receives*  
71 *notice pursuant to § 19.2-143 to pay a forfeited recognizance within 10 business days and such*  
72 *forfeiture is not paid within 10 business days of the notice to pay, the Department shall suspend the*  
73 *licenses of such surety company and the agents thereof, or the licenses of such employer of the bail*  
74 *bondsman and the agents thereof, until the forfeited recognizance is satisfied.*

75 **§ 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when**  
76 **copy may be used; cash bond.**

77 When a person, under recognizance in a case, either as party or witness, fails to perform the  
78 condition of appearance thereof, if it is to appear before a court of record, or a district court, a hearing  
79 shall be held upon reasonable notice to all parties affording them opportunity to show cause why the  
80 recognizance or any part thereof should not be forfeited. The show cause notice shall be issued within  
81 45 the court shall record the default therein, and shall issue a notice of default within five days of the  
82 breach of the condition of appearance.

83 If the court finds the recognizance or any part thereof should be forfeited, the default shall be  
84 recorded therein, unless the defendant or juvenile is brought before the court within 150 days of the  
85 findings of default, the court shall dismiss the default upon the filing of a motion by the party in  
86 default. After 150 days of the finding of default, his default shall be recorded therein, and if it is to  
87 appear before a district court, his default shall be entered by the judge of such court, on the case papers  
88 unless the defendant or juvenile has been delivered or appeared before the court. The process on any  
89 such forfeited recognizance shall be issued from the court before which the appearance was to be, and  
90 wherein such forfeiture was recorded or entered. Any such process issued by a judge shall be made  
91 returnable before, and tried by, such judge, who shall promptly transmit to the clerk of the circuit court  
92 of his county or city wherein deeds are recorded an abstract of such judgment as he may render thereon,  
93 which shall be forthwith docketed by the clerk of such court. *If the forfeited recognizance is not paid by*  
94 *4:00 p.m. on the last day of the 150-day period from the finding of default, the license of any bail*  
95 *bondsman on the bond shall be suspended in accordance with § 9.1-185.8. At such time, the court shall*  
96 *issue a notice to pay within 10 business days to any surety company that guarantees the bond or any*  
97 *employer of such bail bondsman if a property bondsman. If the forfeiture is not paid within 10 business*  
98 *days of the notice to pay, licenses of such surety company and the agents thereof, or such employer of*  
99 *the bail bondsman and agents thereof, shall be suspended in accordance with § 9.1-185.8.*

100 If the defendant or juvenile appears before or is delivered to the court within 24 months of the  
101 findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such  
102 costs as the court may direct.

103 If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another  
104 state or country within 48 months of the finding of default, thereby preventing his delivery or  
105 appearance within that period, the court shall remit any bond previously ordered forfeited. If the  
106 defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be  
107 remitted without deduction of costs; otherwise, the cost of returning him to the Commonwealth shall be  
108 deducted from the bond.

109 Evidence that the defendant or juvenile is incarcerated or subject to court process in another  
110 jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician  
111 that the defendant was physically unable to so appear shall be considered evidence of good cause why  
112 the recognizance should not be forfeited.

113 If such recognizance so forfeited is not for such appearance, process thereon shall be issued from the  
114 court in which it was taken, or the court to which it was made returnable, and in a proceeding in one  
115 court on a recognizance entered in another a copy thereof shall be evidence in like manner as the  
116 original would be if it had been entered in the court wherein the proceeding is being had thereon.

117 However, when any defendant or juvenile who posted a cash bond and failed to appear is tried in his  
118 absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much  
119 thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the  
120 defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice.

121 However, if a rehearing is granted, the court may remit part or all of such cash bond not applied  
122 ultimately to fines or costs, and order a refund of the same by the State Treasurer, or by the treasurer or  
123 director of finance of the locality, if the bond was collected by a locality pursuant to § 19.2-136, but  
124 only if good cause is shown.

125 If the defendant or juvenile posted a cash bond and failed to appear, but is not tried in his absence,  
126 the bond shall be forfeited promptly without further notice. However, if the defendant or juvenile  
127 appears in court within 60 days after the bond is forfeited, the judge may remit part or all of any bond  
128 previously forfeited and order a refund of the same by the State Treasurer, or by the treasurer or director  
129 of finance of the locality, if the bond was collected by a locality pursuant to § 19.2-136.